Commonsense Recommendations for Regulatory Reform

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EXECUTIVE SUMMARY

On behalf of our members across the country, the American Association of Airport Executives (AAAE) appreciates the efforts that the Trump administration is taking to advance deregulatory initiatives, require federal agencies to "rethink" how to operate in a more efficient manner, limit agencies to carrying out their statutorily mandated functions, and provide for more regulatory certainty and expedited approvals in the National Environmental Policy Act (NEPA) review process. AAAE is pleased to present to the U.S. Department of Transportation (DOT) and Federal Aviation Administration (FAA) our regulatory reform priorities and recommendations that do not require congressional action and would further policies established in President Trump's executive orders (EOs) and advance the administration's agenda.

It is important to highlight at the onset of AAAE's recommendations the public nature of airports and their inherent mission to serve the traveling public and the communities in which they operate. As public entities, airport sponsors have every incentive to maintain and develop their facilities and property in a way that takes into careful consideration federal, state, and local requirements and minimizes to the greatest extent possible the impact on communities, the environment, and stakeholders who operate at their facilities. While FAA has and should maintain a central role in ensuring safety, the agency in recent decades has failed to recognize the public nature of airports and strayed well beyond its core mission, resulting in increasing costs and time to projects with little, if any, benefit.

Key Principles for Reform

FAA should eliminate the overregulation of airport capital improvement plans and return its focus to ensuring safety and efficiency. FAA is vitally important in ensuring that infrastructure projects do not adversely impact safety or the efficiency of airport operations. This is a critical function that should be maintained. However, the agency has ventured too far into micromanaging airport decision-making on capital development, including dictating whether airport sponsors have adequate "justifications," or a business case, for specific projects; regulating non-aeronautical development projects where no federal funds are involved; and precluding airport sponsors from developing land when FAA determines it may be needed for another purpose at some undetermined time in the future. FAA is not in the best position to make these decisions. The airport sponsor is. Unfortunately, the agency's current role has morphed beyond its core safety mission and created project review processes that are cumbersome, costly, and inefficient and lead to delays in the delivery of safety-critical infrastructure projects. Most of this overreach is not statutorily mandated, making it ripe for reform or elimination in accordance with recently issued EOs.

FAA should streamline airport infrastructure project review and approval processes to accelerate the delivery of safety-critical projects. For those reviews and functions where FAA does have an appropriate role, we urge the agency to work with industry to streamline these processes and establish deadlines for staff to complete the various reviews that are necessary for airport infrastructure projects to move forward. Airport sponsors must receive numerous approvals before any project may begin, even if the project is not receiving federal funds. Unfortunately, these reviews take an excessive amount of time, in some cases ignoring statutory deadlines. We are concerned the reduction in FAA staffing will only exacerbate this problem. Thus, we need to make these reviews easier for FAA staff, streamline where appropriate, and establish enforceable deadlines where if a review is not conducted within that timeframe, the specific request should be deemed approved. These commonsense changes would increase FAA staff efficiencies, promote accountability, significantly reduce costs and provide predictability for airport sponsors, and accelerate the delivery of key infrastructure projects.

FAA should make meaningful reforms to the NEPA review process to ensure regulatory certainty and expedited approvals. The NEPA review process is inhibiting airport sponsors from implementing capital projects because of delayed responses and uncertain and ambiguous review standards. While our members are keen on advancing their environmental priorities, airport sponsors need regulatory certainty to make it easier to comply with NEPA and keep projects on budget and on time. A recent D.C. Circuit decision, which invalidated the Council on Environmental Quality's (CEQ) regulations governing how federal agencies must conduct NEPA reviews, has afforded DOT an unprecedented opportunity for the department and FAA to update and tailor its NEPA implementation guidance in

a manner that is best suited for transportation infrastructure development. We believe reforms should include three primary components: stricter and enforceable review deadlines; greater clarity on the standards used for completing reviews; and increased use of categorical exclusions (CATEXs). The increased administrative use of CATEXs would provide certainty for airport sponsors, expedite approvals, and allow FAA to prioritize its limited resources on more complicated projects.

FAA should implement a series of regulatory and policy updates to reduce unnecessary costs for the airport industry. Over the past several years, airport sponsors have been subject to a slew of new regulations and policies that have imposed significant costs without any meaningful benefits. In accordance with the administration's deregulatory agenda, we have highlighted some commonsense regulatory and policy updates that would further the administration's goals, including fully implementing a streamlined passenger facility charge (PFC) authorization process in accordance with congressional intent; requiring infrastructure project reviews, noise compatibility programs (NCPs), and informal and formal complaints against airport sponsors to be completed or decided in a timely manner; protecting airport safety data from public disclosure; and rolling back unnecessary mandates that were recently implemented for Title VI compliance and the Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs. We also believe that eliminating FAA's overreach into capital projects would lead to significant cost savings for industry and the traveling public.

AAAE Recommendations for DOT/FAA Regulatory Reform

In furtherance of the Trump administration agenda and our high-level priorities, we strongly urge DOT and FAA to implement the following recommendations:

1. **Airport Layout Plan Reviews:**
    a. Require FAA field offices to review and issue a determination on any proposed airport layout plan (ALP) updates within 45 days and deem the update approved if the airport sponsor receives no response before the deadline.
    b. Update FAA's October 2024 "initial instructions" on ALP reviews—which implemented section 743 of the FAA Reauthorization Act of 2024—to (i) ensure agencies are not regulating non-aeronautical development projects that are outside of its authority; (ii) provide more clarity on the notice of intent (NOI) process, including what the expectations are for NOIs and how the agency will review them; and (iii) clarify that any portion of an ALP update that is outside FAA's approval authority is not subject to NEPA.
2. **Airport Land Use Change Policy:** Update FAA's land use change policy to (a) eliminate the expiration date, or sunset, of any letter of approval or consent that the agency issues in accordance with the policy; (b) allow airport sponsors to work with FAA early to designate land as non-aeronautical for a definitive period of time <u>before</u> engaging with private developers; and (c) require its field offices to review and issue a determination on an airport's proposed land use change request within 45 days or deem such change approved if no response is received.
3. **Aeronautical Studies of On-Airport Proposals:** Require FAA Office of Airports to process aeronautical studies of proposed construction or alterations under 14 C.F.R. pt. 77 within the required 45-day time period, which may include adjusting FAA's processes on how they conduct these evaluations.
4. **Passenger Facility Charge Authorizations:** Revise PFC Update 73-20, as soon as possible, and amend 14 C.F.R. pt. 158 to implement a streamlined PFC authorization process that (a) requires airport sponsors to conduct the appropriate outreach to air carriers and the public; (b) file a simple NOI that only includes the amount of revenue to be collected, a brief description of the project and cost, the PFC level, and any concerns raised during the comment period; and (c) requires FAA to provide any reasonable objections within a maximum of 30 days or the airport sponsor may proceed with imposing a PFC. FAA should emphasize to its staff that objections may only be raised in limited circumstances and, if made, must be resolved within 45 days.

5. **NEPA Reviews:**

    a. Update FAA's NEPA implementation guidance (Order 1050.1F and Order 5050.4B) as soon as possible, but not later than February 2026, to expedite approvals and provide regulatory certainty, consistent with EO 14154 and recent White House guidance.

    b. Update FAA's NEPA implementation guidance to better promote the use of CATEXs available for actions subject to NEPA involving airport development projects, including (i) establishing procedures to regularly review, update, and expand, as appropriate, CATEXs; (ii) precluding staff from preparing an EA when it is not required and when a CATEX is applicable; and (iii) allowing airport sponsors to apply and certify their own CATEXs with appropriate oversight.

    c. Update FAA's NEPA implementation guidance to (i) improve consistency and criteria for determining whether an EA or EIS is necessary and (ii) extend the validity of EAs and EISs, preferably to five years rather than only three.

    d. Establish a 60-day review period for processing CATEXs and ensure the existing statutory deadlines for completing environmental assessments (EAs) (one year) and environmental impact statements (EISs) (two years) are strictly enforced. This means requiring the NEPA review period "clock" to start when an airport sponsor notifies FAA of its intent to proceed with a NEPA review if the project is on its ALP or in its master plan.

    e. Update FAA's December 2024 internal guidance—which implemented section 788 of the FAA Reauthorization Act of 2024—to ensure that any action to approve, permit, finance, or authorize an airport development project receiving no federal funding or PFC revenue is entitled to a CATEX presumption.

    f. Update FAA's definition of "major Federal action" to exclude any actions associated with non-aeronautical projects that receive no federal funding.

6. **Airport Improvement Program Handbook:** Simplify the overly complicated FAA Airport Improvement Program (AIP) Handbook by (a) allowing AIP project eligibility questions to be determined by the statutory definition of "airport development" in 49 U.S.C. § 47102(3) and (b) eliminating the "project justification" test the agency applies before funding projects under AIP.

7. **Master Plans and Demand Forecasts:** Eliminate the requirement for FAA to accept master plans and review and approve aviation forecasts. FAA should instead allow airport sponsors to develop such forecasts in accordance with FAA guidelines in a limited set of circumstances where they are necessary and useful.

8. **Airport Noise Compatibility Planning:** Amend 14 C.F.R. pt. 150 to ensure the 180-day statutory review period for NCPs begins immediately upon receipt of the appropriate documentation in accordance with congressional intent.

9. **Airport Safety Management Systems:** Amend 14 C.F.R. pt. 139 to prohibit a Part 139 certificated airport from disclosing any data collected through its safety management system (SMS) program in response to state freedom of information (FOI) laws.

10. **Use of Guidance Documents:** Prohibit the use of CertAlerts, advisory circulars, and other guidance documents to impose new mandates on airport sponsors without a clear safety justification, notice-and-comment opportunity, and adjudication of such comments.

11. **Part 13 and Part 16 Complaints:** Require FAA Office of Airports to review and decide complaints filed with the agency under 14 C.F.R. pts. 13 and 16 within 120 days or dismiss the complaint, except for reasonable, short-term extensions in complex or exceptional cases.

12. **DBE/ACDBE Programs:** Amend 49 C.F.R. pts. 26 and 23 to repeal recently implemented requirements in the DBE and ACDBE programs that have resulted in unnecessary costs without any meaningful benefits.

13. **Title VI Compliance:** Rescind the 2021 DOT Order 1000.12C that implemented requirements for airport sponsors to develop Title VI and Community Participation Plans.

14. **Task Force on Accelerating Project Delivery:** Establish an "Accelerating Airport Infrastructure Project Delivery Task Force," a joint FAA/industry body to develop implementable recommendations to eliminate or modify unnecessary and redundant processes and requirements associated with the review and approval of airport infrastructure projects. The group should focus on implementing reforms that would enable FAA to award AIP grants earlier in the year when conditions are more suitable for construction; providing more opportunities for airports to utilize alternative project delivery methods; and modernizing and updating AIP and federal grant contracting processes; among other objectives.

BACKGROUND AND JUSTIFICATION

Consistency with President Trump's Executive Orders

AAAE has carefully reviewed the EOs issued by President Trump, to date, and ensured that each of our regulatory reform priorities and recommendations are consistent with three major directives that have been given to DOT and FAA.

First, EO 14192, *Unleashing Prosperity Through Deregulation*, establishes the administration's policy to "significantly reduce the private expenditures required to comply with Federal regulations" and "alleviate unnecessary regulatory burdens."[1] To that end, whenever an agency, including DOT or FAA, propose a new regulation or guidance document, the agency must identify at least ten existing regulations to be repealed, informally known as the 10-for-1 rule.[2] More importantly, EO 14192 requires that the total incremental cost of all new regulations, including repealed regulations being finalized in fiscal year 2025 (FY25), "shall be significantly less than zero."[3] The order effectively requires agencies to reduce the overall cost of regulatory compliance across each agency by actively pursuing deregulatory actions rather than maintaining the status quo of regulations and guidance.

Second, EO 14219, *Ensuring Lawful Governance and Implementing the President's "Department of Government Efficiency" Deregulatory Initiative*, requires agencies to review and identify all regulations and guidance documents that, among other things, (a) are based on anything other than the best reading of the underlying statutory authority or prohibition; (b) implicate matters of social, political, or economic significant that are not authorized by clear statutory authority; (c) impose significant costs upon private parties that are not outweighed by public benefits; (d) harm the national interest by significantly and unjustifiably impeding technological innovation, infrastructure development, disaster response, economic development, and land use; or (e) impose undue burdens on small business and impede private enterprise and entrepreneurship.[4] The required list of regulations and guidance is due to the White House no later than April 20, and agencies must thereafter begin developing an agenda to repeal or modify, as appropriate, the regulations and guidance identified.[5]

Third, the Trump administration has also prioritized streamlining the efficiency of federal operations and functions while reducing the size of the federal workforce. EO 14210, *Implementing the President's "Department of Government Efficiency" Workforce Optimization Initiative*, directed each agency to "promptly undertake preparations" to initiative large-scale reductions in force (RIFs), prioritizing "[a]ll offices that perform functions not mandated by statute or other law."[6] The order further required agencies to develop and submit reorganization plans to the White House.[7]

To implement EO 14210, the White House has provided DOT and FAA with guidance on the development of "Agency RIF and Reorganization Plans" (ARRPs). There are two notable directives to agencies as they develop the ARRPs.

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1 Exec. Order No. 11,609, §§ 1–2, 90 Fed. Reg. 9065, 9065 (Feb. 6, 2025).
2 § 3(a), 90 Fed. Reg. at 9065.
3 § 3(b), 90 Fed. Reg. at 9065.
4 Exec. Order No. 14,219, § 2, 90 Fed. Reg. 10583, 10583 (Feb. 25, 2025).
5 § 2(c)–(d), 90 Fed. Reg. at 10583.
6 Exec. Order No. 14,210, § 3(c), 90 Fed. Reg. 9669, 9670 (Feb. 14, 2025).
7 § 3(e), 90 Fed. Reg. at 9670.

First, each agency must "focus on the maximum elimination of functions that are not statutorily mandated while driving the highest-quality, most efficient delivery of their statutorily-required functions."[8] This includes eliminating non-statutorily mandated functions through RIFs and requiring leadership to certify that statutes "have not been interpreted in a way that expands requirements beyond what the statute actually requires."[9] *Second*, agencies are directed to closely consider changes to regulations and agency policies that would lead to the reduction or elimination of agency subcomponents or speed up implementation of the ARRPs.[10]

Justification for DOT/FAA Regulatory Reform Recommendations

1. Airport Layout Plan Reviews

a. Require FAA field offices to review and issue a determination on any proposed ALP updates within 45 days and deem the update approved if the airport sponsor receives no response before the deadline.

As a condition for receiving a grant, an airport sponsor must maintain a current ALP of its facilities and ensure that any alteration to the airport or any of its facilities complies with the plan (or portions thereof) approved by FAA, except for any non-aeronautical portions of the ALP over which FAA has no authority.[11] FAA's authority to review and approve a portion of an ALP is limited to only those portions that materially impact the safety and efficiency of aircraft operations; adversely affect the safety of people or property on the ground due to aircraft operations; or adversely affect the value of prior federal investments to a significant extent, informally known as "zones of interest." An airport sponsor may file an NOI to proceed with a project (or portion of a project) that is outside of FAA's approval authority. If FAA does not object within 45 days of receiving the NOI, the project is deemed outside of FAA's approval authority, and the airport sponsor may proceed with the project.

Unfortunately, FAA does not have any mandatory deadlines or timeframe for reviewing a proposed ALP update that is within its authority, or those portions that fall within the agency's zones of interest. The lack of any enforceable deadlines, along with changes to the process in recent years, have led to excessive waiting times for airport sponsors in many cases, delaying the delivery of safety-critical infrastructure projects. As with the NOI process for non-aeronautical projects, we strongly recommend FAA implement a mandatory maximum 45-day review period for its field offices to conduct the necessary review of the proposed ALP update and issue an appropriate determination. As with non-aeronautical projects, if no determination is made within the required period, the proposed ALP update should be deemed approved.

b. Update FAA's October 2024 "initial instructions" on ALP reviews to (i) ensure agencies are not regulating non-aeronautical development projects that are outside of its authority, (ii) provide more clarity on the NOI process, and (iii) clarify that any portion of the ALP outside of its authority is not subject to NEPA.

Under section 743 of the 2024 FAA reauthorization law, Congress modified the ALP update review process in three notable ways.[12] *First*, FAA's authority was limited to only reviewing those portions of an ALP update that fall within FAA's zones of interest, as previously noted. *Second*, Congress clarified that FAA only has approval authority over the specific portions of a project that implicate one of its zones of interest. *Third*, Congress required that an airport sponsor submit an NOI to FAA if the sponsor wants to proceed with a project that is outside of FAA's authority. If FAA does not object to the NOI within 45 days, the project is deemed outside the scope of FAA's authority, and FAA may not "directly or indirectly regulate or place conditions on (including through any grant assurances)" such project.[13]

8 Off. of Mgmt. & Budget & Off. of Pers. Mgmt., Memorandum on Guidance on Agency RIF and Reorganization Plans Requested by *Implementing The President's "Department of Government Efficiency" Workforce Optimization Initiative*, at 2 (Feb. 26, 2025).

9 *Id.* at 3.

10 *Id.* at 3, 6.

11 49 U.S.C. § 47107(a)(16), (x).

12 Pub. L. No. 118-63, § 743, 138 Stat. 1025, 1279–80 (codified at 12 U.S.C. § 47107(a)(16), (x)).

13 49 U.S.C. § 47107(x)(2).

In 2024, FAA released "initial instructions" to its field offices on how to apply section 743 when determining whether FAA had authority to review and approve an ALP update.[14] To streamline the review process and be consistent with 49 U.S.C. § 47107, FAA should update its initial instructions and policy on the review of ALP updates to make three critical changes:

- ***FAA should remove language in the guidance contrary to congressional intent that continues to regulate non-aeronautical development projects that are outside FAA's authority***. The instructions direct FAA field offices to prepare a written response in cases where the agency lacks ALP approval authority. According to the instructions, FAA's response must contain language directing the airport sponsor to continue to manage that land and development project in accordance with federal grant obligations, even though 49 U.S.C. § 47107(x) specifically states otherwise. This is inappropriate and should be removed from any response in such cases.
- ***FAA should update the instructions to explain what the expectations are for NOIs and how the agency will review them***. FAA's guidance does not provide any details about the NOI process and instead directs field offices to send any such notices to headquarters for review. FAA should provide more guidance on how NOIs should be prepared, how the agency will review such notices, and any other pertinent details. Timely guidance is critical for airport sponsors, especially as they are trying to expeditiously carry out development projects.
- ***FAA should clarify that any portion of an ALP update that is outside FAA's approval authority is not subject to NEPA***. Under section 743, FAA is precluded from (a) requiring an airport sponsor to seek approval for a project outside of FAA's authority, and (b) regulating, directly or indirectly, or placing any conditions on such project. Thus, there should be no "federal action" subject to NEPA. FAA's initial instructions allow the agency to review the environmental effects of an ALP update for portions of a project that are outside of its approval authority, which is contrary to the clear language and intent of section 743.[15] Airport sponsor actions outside the agency's regulatory authority should not be treated as "connected" or "cumulative" actions for NEPA purposes.

2. **Airport Land Use Change Policy: Update FAA's land use change policy to (i) eliminate the expiration date, or sunset, of any letter of approval or consent, (ii) allow airport sponsors to designate areas for non-aeronautical development, and (iii) require field offices to review a proposed land use change within 45 days or deem such change approved if no response is received.**

Under its land use change policy, FAA must review and approve an airport sponsor's request to use any airport land (other than land subject to section 743 and outside FAA's ALP authority) for a non-aeronautical or mixed-use development project.[16] This is a relatively new process that FAA established in early 2024. According to FAA, the purpose of the policy is to ensure that federally acquired or conveyed airport land can adequately serve future aeronautical needs, particularly for advanced air mobility (AAM) and drone operators.[17] However, many airport sponsors have expressed frustration that the policy is overly complicated and cumbersome. In addition, there is no clear statutory or regulatory authority for this new process, and questions have been raised as to its necessity and scope.

AAAE has two major concerns with the current policy. *First*, no electric vertical takeoff and landing (eVTOL) aircraft have been certified by FAA; an assessment of projected eVTOL operations at any airport is highly speculative at this stage; and the necessity of airport land to support drone operations is confusing. *Second*, we believe airport sponsors are capable of making their own determinations as to the appropriate use of the land, including whether it would potentially be needed to meet future aeronautical demand. It is unnecessary for FAA to substitute its judgment for the airport sponsor's and inhibit the airport's ability to pursue non-aeronautical projects. Revenue from

14 Fed. Aviation Admin., Memorandum on Initial Instructions to Airports District Offices and Regional Office of Airports Employees Regarding Airport Layout Plan Reviews and Projects Potentially Affected by the FAA Reauthorization Act of 2024 (Oct. 3, 2024).

15 *See id.* at 7 ("Consideration of the environmental effects of an ALP approval frequently will encompass the effects of the entire proposal even where the FAA's statutory authority to approve the ALP is limited.").

16 Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land, 88 Fed. Reg. 85474 (Dec. 8, 2023).

17 *Id.* at 85475.

non-aeronautical projects is critical for airport sponsors to diversify their revenue stream and comply with the grant obligation to remain financially self-sustaining.[18]

To improve FAA's land use policy and its internal review process, and increase the ability for airport sponsors to pursue revenue-generating non-aeronautical development projects, we strongly urge the agency to update its policy and make three changes:

- ***FAA should eliminate the expiration date, or sunset, of any letter of approval or consent that the agency issues in accordance with the policy***. In the policy, FAA states that the length of approval or consent will be dependent on the circumstances, not limited to a specific lease term, and may be as long as the land is not needed for aeronautical use. However, this approach makes it difficult to attract private developers because of the uncertainty over the potential duration of the approval, and FAA does not consider the potential return on investment for the airport or the developer when determining an appropriate length of time for the approval.
- ***FAA should allow airport sponsors to work with the agency early to designate land as non-aeronautical for a definitive period of time before engaging with private developers***. This approach is critical to providing airport sponsors with the ability to participate in real estate transactions. FAA's policy is unclear as to whether an airport sponsor can request approval before the sponsor begins negotiations with a prospective developer or whether the sponsor must submit its request based on a specific project that has already been negotiated. As a corollary, FAA should clarify that the agency will not review lease agreements during the land use change review process.[19]
- ***FAA should require its field offices to review and issue a determination on an airport sponsor's proposed land use change request within 45 days***. As with reviews of a proposed ALP update or an NOI pursuant to section 743, if no determination is made within the 45-day period, the proposed change request should be deemed approved. FAA does not currently have any mandatory deadlines or timeframes for reviewing land use change requests. The lack of enforceable deadlines has led to unnecessarily long reviews and makes it more challenging for airport sponsors to work with and secure a private developer for a non-aeronautical development project because of uncertainty surrounding the review period.

3. **Aeronautical Studies of On-Airport Proposals: Require FAA Office of Airports to process aeronautical studies of proposed construction or alterations under 14 C.F.R. pt. 77 within the required 45-day time period.**

An airport sponsor or any other person must file the appropriate notice with FAA if the airport sponsor or person proposes the construction or alteration of a structure that may result in an obstruction of the navigable airspace or interference with air navigation facilities and equipment.[20] The notice requires FAA to conduct an aeronautical study to determine the extent of any adverse impact on the safe and efficient use of the airspace, facilities, or equipment, also known as an obstruction evaluation/airport airspace analysis (OE/AAA). Under Part 77, FAA requires the filing of a Form 7460-1 for "[a]ny construction or alteration" on a public-use airport "at least 45 days before the start date of the proposed construction or alteration or the date an application for a construction permit is filed, whichever is earliest."[21] Neither Congress nor Part 77 specifically requires FAA to approve or issue a non-objection for the construction or alteration to begin.

FAA Office of Airports has guidance directing airport sponsors on how to comply with these aeronautical studies, but it deviates from Part 77 on the timeline for the analysis. FAA acknowledges the requirement for airport sponsors to provide at least 45 days' notice before the start of a proposed project. However, FAA "highly" recommends sponsors file the notice 60 to 90 days before planned construction, or more than 90 days for more complex projects. In addition,

18 *See* 49 U.S.C. § 47107 (a)(13).
19 88 Fed. Reg. at 85476 ("The FAA does not approve leases but will continue to review some leases, as needed, to ascertain compliance with an airport sponsor's Federal obligations.").
20 49 U.S.C. § 44718(b)(1).
21 14 C.F.R. §§ 77.7(b), 77.9(d) (emphasis added).

the agency states that "[t]here is no guarantee that a final agency determination will be issued at the end of 45 days. Part 77 does not carry provisions for waivers or exemptions. There is no method to shorten or bypass this process. Days mentioned in this section refer to working days."[22] While Part 77 only requires filing of the appropriate form at least 45 calendar days before proposed construction or an alteration, not before approval or a non-objection, FAA still requires an acceptable aeronautical study to be completed before a grant may be programmed and issued.[23]

While we recognize the need for FAA to assess the potential safety hazards posed by a proposed airport infrastructure project, in practice, the aeronautical study process has taken an unnecessarily long period of time, delaying the delivery of key projects at airports and leading to uncertainty. We consistently hear from members regarding extended review times, including a recent example where it took six months for FAA to complete a study of a relatively routine hangar development project. It is an unacceptable outcome for airport sponsors to have to wait at least four calendar months, if not much longer, to determine if airspace or navigational aid impacts might impact project design, which has been progressing during the review period. This only increases project costs. Thus, FAA needs to implement an enforceable 45-day deadline, consistent with Part 77, to ensure projects can stay on time and on budget, which may include adjusting FAA's processes on how they conduct these evaluations.

4. **Passenger Facility Charge Authorizations: Revise PFC Update 73-20, as soon as possible, and amend 14 C.F.R. pt. 158 to (i) simplify the process for an airport sponsor to impose a PFC and (ii) establish strict deadlines on reviews.**

Since the PFC was established in 1990, FAA has maintained a cumbersome application process for airport sponsors to impose a PFC.[24] In 2018, Congress directed FAA to create a pilot program to test a streamlined process for all commercial service airports to receive authorization to impose a PFC and use PFC revenue for a project (PFC authorization).[25] Under the program, Congress only required airport sponsors to (a) provide reasonable notice and an opportunity for consultation with the appropriate air carriers, (b) provide reasonable notice and opportunity for public comment, and (c) file an NOI to impose a PFC, including the amount of revenue to be collected, the PFC level, and other information requested by FAA.[26] If no objection is received within 30 days, the airport sponsor is permitted to move forward, which is at least 90 days sooner than the longer application process. In section 776 of the FAA Reauthorization Act of 2024, the pilot program was made permanent and amended to allow FAA to object to NOIs for a narrow set of reasons.[27]

Over the past seven years, FAA has failed to take meaningful steps to streamline the PFC authorization process despite congressional direction and authority to do so. After the 2018 law, the agency in 2020 issued interim guidance, PFC Update 73-20, as a temporary measure to implement the required pilot program for all commercial service airports.[28] Unfortunately, the PFC Update outlined requirements for the NOI and review procedures that mirrored the longer, more cumbersome application process. FAA also provided itself with a litany of objections to raise in response to an NOI, which was contrary to the intent of Congress. In the 2024 law, Congress directed the agency to conduct a rulemaking to implement the streamlined process by September 13, 2024;[29] however, this has not occurred. The previous administration also took the position that it will not provide any updated streamlined processes through guidance until the rulemaking is finalized even though FAA has the authority to update PFC Update 73-20 to reflect changes made by the 2024 law.[30]

Thus, we strongly urge FAA to revise PFC Update 73-20, as soon as possible, and codify in 14 C.F.R. pt. 158 a streamlined PFC authorization process that will reduce costs for airports in pursuing infrastructure projects and

22 Fed. Aviation Admin., Advisory Circular 150/5300-20, Submission of On-Airport Proposals for Aeronautical Study 1-3 (2023) (emphasis added).
23 *See* Fed. Aviation Admin., Airport Improvement Program Handbook 3-14, 5-4, 5-22 (2019).
24 *See* 49 U.S.C. § 40117(c)–(d) (1994).
25 FAA Reauthorization Act of 2018, Pub. L. No. 115-254, § 121(b), 132 Stat. 3186, 3201 (codified at 49 U.S.C. § 40117(*l*)).
26 49 U.S.C. § 40117(*l*)(3) (2018).
27 Pub. L. No. 118-63, § 776(a)(3), 138 Stat. 1025, 1300 (codified at 49 U.S.C. § 40117(*l*)).
28 Fed. Aviation Admin., Memorandum on PFC Update, PFC 73-20 (Jan. 22, 2020).
29 § 776(b), 138 Stat. at 1301.
30 § 776(c), 138 Stat. at 1301 ("The interim guidance [PFC 73-20], issued on January 22, 2020, including any modification to such guidance necessary to conform with the amendments made by subsection (a), shall remain in effect until the effective date of the final rule issued under subsection (b)." (emphasis added)).

make it easier for FAA staff to process and review proposed authorizations. The policy updates should encourage airports to use the process and reflect two major recommendations:

- ***FAA should specify that the streamlined PFC authorization process only requires airport sponsors to conduct the appropriate outreach to air carriers and the public and file an NOI***. The NOI must only include the amount of revenue to be collected, a brief description of the project and cost, the PFC level, and any concerns raised during the comment period. No other information is necessary for FAA to evaluate the NOI. If no serious objections are raised by airlines or the public, FAA should not need to review the NOI. FAA must provide any reasonable objections within a maximum of 30 days or the airport sponsor may proceed with imposing a PFC. A plain reading of 49 U.S.C. § 40117(*l*) provides FAA clear authority to limit NOIs and the process in this manner.
- ***While FAA has limited authority to object to an NOI, FAA's guidance and Part 158 rulemaking should specify that such objections may only be raised in limited circumstances***. In addition, to the extent any objection is made, FAA must ensure that its staff resolves any objections within 45 days. This approach should be clearly communicated to field offices reviewing the NOIs.

5. NEPA Reviews

a. Update FAA's NEPA implementation guidance as soon as possible, but not later than February 2026, to expedite approvals and provide regulatory certainty, consistent with EO 14154.

On day one of his administration, President Trump outlined his priority to accelerate infrastructure projects by requiring regulatory certainty during NEPA reviews. EO 14154, *Unleashing American Energy*, directed CEQ to rescind its NEPA regulations (40 C.F.R. pts. 1500–1508) and provide guidance to federal agencies on how to implement their NEPA obligations.[31] The EO further required CEQ's guidance, along with any updates to an agency's NEPA implementation guidance, to "expedite permitting approvals and meet deadlines established in the Fiscal Responsibility Act" (FRA).[32] Agencies also must "prioritize efficiency and certainty over any other objectives," including those that "could otherwise add delays and ambiguity to the permitting process."[33] Finally, the EO specifically required DOT to "undertake all available efforts to eliminate all delays within [its] respective permitting processes."[34] In February, CEQ released its guidance, directing agencies to update their implementation guidance no later than February 19, 2026, and repeatedly emphasized that such guidance must expedite approvals and prioritize efficiency and certainty over any other objective.[35]

AAAE recently conducted significant outreach with our members, requesting feedback on the FAA review processes that result in the longest review times and most unnecessary costs. The NEPA process was overwhelmingly cited as the biggest concern. To be clear, many airport sponsors believe NEPA is a valuable tool to understand the environmental effects of an infrastructure project. However, the NEPA review process has been plagued by uncertainty in recent years, including two major rewrites of the CEQ's regulations, a D.C. Circuit Court of Appeals decision declaring those regulations invalid, and enactment of the FRA.[36] The uncertainty has resulted in a confusing, cumbersome process that leads to subjective determinations, project delays, and a substantial amount of unnecessary paperwork and costs. Some AAAE members have shared examples of EAs taking 18 to 24 months—well beyond the statutory deadlines—and costing over $200,000. One medium hub airport noted that it incurs approximately $300,000 in costs per year for consultants to manage NEPA reviews. These costs have only risen in recent years due to inflation. Multiple members cited capital projects that have been unable to be completed because NEPA review costs make it financially infeasible. Others have decided to delay projects until further clarity is provided and the airport sponsor has confidence any approvals could withstand legal scrutiny.

31 Exec. Order No. 14,154, § 5(b), 90 Fed. Reg. 8353, 8355 (Jan. 29, 2025).
32 § 5(c), 90 Fed. Reg. at 8355.
33 *Id.*
34 § 5(d), 90 Fed. Reg. at 8355.
35 Council on Env't Quality, Memorandum on Implementation of the National Environmental Policy Act, at 1, 7 (Feb. 19, 2025).
36 *See* Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43304 (July 16, 2020) (codified in scattered sections at 40 C.F.R.); National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35442 (May 1, 2024) (to be codified at 40 C.F.R. pts. 1500–1508); Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, 137 Stat. 10 (codified in scattered sections at 42 U.S.C.); Marin Audubon Society v. Fed. Aviation Admin., No. 23-1067 (D.C. Cir. Nov. 12, 2024).

AAAE and our members welcome the administration's policy for "regulatory certainty" and expeditious approvals. Despite all the changes that have occurred with NEPA over the past five years, FAA's NEPA implementation guidance (Order 1050.1F) has not been updated in nearly 10 years and the agency's airport-specific NEPA implementation guidance (Order 5050.4B) in nearly 20 years. These documents are extremely outdated. Moreover, probationary employee layoffs and expected RIFs have reduced, and will continue to reduce, the number of staff conducting NEPA reviews, making streamlining NEPA more important than ever. We strongly urge FAA to update its NEPA guidance as soon as possible, but not later than the February 2026 deadline established by CEQ. FAA has a rare opportunity to update guidance within the next year and build consistency over the next four years. Consistent with EO 14154, we believe FAA should follow the following principles when updating its implementation guidance to ensure projects are expedited:

- Update policies and procedures to simplify and streamline NEPA reviews in recognition of the significantly reduced staffing across the agency, which would slow, not accelerate, approvals without an adjustment in how FAA manages these reviews;
- Establish policies and procedures that strictly enforce the statutory deadlines for staff when preparing all environmental documents;
- Provide regulatory certainty to eliminate subjectivity in determining the level of review and evaluating potential environmental effects from a project;
- Allow airport sponsors, if they choose, to prepare drafts of all environmental documents (CATEXs, EAs, and EISs), as permitted by most other agencies and other modal administrations;
- Promote the increased use of CATEXs, including revising FAA guidance to apply a presumptive CATEX to any actions associated with airport development projects receiving no federal funding or PFC revenue; and
- Provide the airport community with an opportunity to weigh in on any proposed updates to FAA's NEPA implementation guidance.

b. Update FAA's NEPA implementation guidance to better promote the use of CATEXs available for actions subject to NEPA involving airport development projects.

AAAE strongly urges FAA to take action to promote the use of CATEXs during the NEPA review process, including improving the processing of these exclusions. Doing so would provide regulatory certainty, expedite approvals, reduce costs for infrastructure projects, and promote further development at airports, all consistent with President Trump's EOs. AAAE offers several recommendations to fulfill this objective:

- ***FAA should establish procedures to regularly review, update, and expand, as appropriate, their CATEXs***. FAA's current list of CATEXs has not been updated for nearly a decade, and the airport-specific guidance on CATEXs has not been updated in nearly 20 years. AAAE recognizes existing CEQ guidance recommends that agencies periodically review, on a seven-year cycle, their CATEXs to ensure they are current and appropriate.[37] However, we believe that periodic review and updating of CATEXs should be mandatory and occur at more frequent intervals, preferably three years or less, and involve an opportunity for airport sponsors to provide input on the development of additional CATEXs. This would ensure projects with insignificant environmental impacts are vetted early and resources are not unnecessarily devoted to such projects.
- ***FAA should preclude its staff from preparing an EA when it is not required and when a CATEX is applicable***. CEQ's regulations (under both of the prior administrations) allow, but do not require, an agency to prepare an EA for any action to assist with planning and decision making.[38] Airport sponsors have voiced concerns over the increased use of EAs when a CATEX would suffice. This has resulted in delays

37 Final Guidance for Federal Departments and Agencies on Establishing, Applying, and Revising Categorical Exclusions Under the National Environmental Policy Act, 75 Fed. Reg. 75628, 75630 (Dec. 6, 2010).

38 40 C.F.R. § 1501.5(b).

in processing what otherwise should be an accelerated CATEX review. Allowing EAs to be prepared when the proposed action squarely qualifies as a CATEX merely wastes valuable agency resources while not advancing the purpose of NEPA.

- ***FAA should allow airport sponsors to apply and certify their own CATEXs with appropriate FAA oversight***. Given the limited federal resources and the inherent public nature of airports, FAA should create a framework that would allow airport sponsors, if they choose, to document and certify their own CATEXs under appropriate conditions established by FAA. This could involve, for example, having the airport sponsor complete and submit a certification to an FAA environmental protection specialist and moving forward with the project if no objection is received within 15 days. This would expedite the processing of CATEXs for relatively straightforward, less complicated projects, and allow FAA to allocate its staff for higher priority reviews. This is consistent with the approach used by many other agencies.

c. Update FAA's NEPA implementation guidance to (i) improve consistency and criteria for determining whether an EA or EIS is necessary and (ii) extend the validity of EAs and EISs.

One major concern from AAAE members is the subjectivity associated with determining the appropriate level of NEPA review, specifically an EA or EIS, leading to inconsistent interpretations and implementation across FAA regions and offices. Unless a CATEX is available, FAA is required to prepare (a) an EIS if the proposed action has a reasonably foreseeable significant effect on the quality of the human environment, or (b) an EA if the proposed action would not have such an effect or if the significance of the effect is unknown.[39] We believe FAA needs to develop additional guidance for its staff to improve the consistency of interpretations within the agency. Developing a centralized database with NEPA documentation and decisions would also assist in ensuring FAA is making significance determinations consistent with past decisions.

FAA should also extend the expiration dates for the validity of EAs and EISs. In a memorandum to agencies, "Forty Most Asked Questions Concerning CEQ's NEPA Regulations," CEQ indicated that as a rule of thumb, an EIS should only be reexamined after five years.[40] Despite this guidance, FAA considers a final EA and final EIS valid for only three years, requiring a re-evaluation thereafter.[41] FAA should consider setting a five-year validity for EAs and EISs, unless the agency can explain why a shorter time limit is necessary. This would increase and extend the value of prior studies and reduce unnecessary re-evaluations.

d. Require (i) CATEXs to be processed within 60 days and (ii) the NEPA review period "clock" to start when an airport sponsor notifies FAA of its intent to proceed with a NEPA review if the project is on its ALP or in its master plan.

Under the FRA, Congress established deadlines by which agencies must complete environmental documents.[42] Agencies must complete an EA within one year and an EIS within two years, beginning from the sooner of three different dates: (a) the date on which the agency determines that an EA or EIS is required; (b) the date on which the agency notifies the applicant that the application to establish a right-of-way for such action is complete; and (c) the date on which the agency issues a NOI to prepare the EA or EIS for the proposed action.[43] In recently issued guidance, the CEQ has reemphasized the need for agencies to follow the deadlines in the FRA for completing EAs and EISs.[44]

Despite the congressional mandate, AAAE members continue to experience excessive delays in the NEPA review process, especially EAs that extend well beyond the one-year timeline. One major problem is that no objective "starting point" exists for when the FRA deadlines begin. Unfortunately, FAA staff have a tremendous amount of discretion to determine when an EA or EIS is "required," thereby triggering the applicable statutory review period. We have heard of many instances where FAA staff conducts (or demands that the airport staff conduct) extensive

39 42 U.S.C. § 4336(b).
40 Forty Most Asked Questions Concerning CEQ's National Environmental Policy Regulations, 46 Fed. Reg. 18026, 18036 (Mar. 23, 1981).
41 Fed. Aviation Admin., Order 5050.4B, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions, ¶ 1401(c), at 14-2 (2006).
42 Fiscal Responsibility Act of 2023, Pub. L. No. 118-5, sec. 321(b), § 107(g), 137 Stat. 10, 42 (codified at 42 U.S.C. § 4336a(g)).
43 42 U.S.C. § 4336a(g)(1).
44 Council on Env't Quality, Memorandum on Implementation of the National Environmental Policy Act, at 3, 5 (Feb. 19, 2025).

"pre-work" before starting the clock or delays notifying an airport sponsor that an EA is required, so as to allow for a longer internal review. This is not just with EAs but also CATEXs. AAAE members report the processing of a CATEX has taken over a year in some cases, longer than the required time to complete an EA. These are unacceptable outcomes. FAA's internal guidance does not help. The agency's NEPA implementation instructions direct staff to determine if a proposed action qualifies as a CATEX or if an EA or EIS is required based on the proposed project and its environmental effects; however, there is no deadline or timeline for making these determinations.[45]

Thus, we strongly believe that FAA should implement two recommendations to ensure its staff complies with reasonable, enforceable deadlines for the completion of NEPA reviews. *First*, FAA should establish a 60-day review period for processing CATEXs, which would ensure that all three levels of review have an enforceable deadline. *Second*, FAA should instruct its staff that the "clock" for each of these reviews begins when an airport sponsor submits an NOI to FAA to proceed with a NEPA review if a project is already on its ALP or in its master plan. If a project is on an ALP or in a master plan already, FAA has sufficient information to make a determination about whether an EA, EIS, or CATEX is required or appropriate. If the project is not already on the ALP, FAA should have 45 days to review and make an appropriate determination on the proposed ALP update, as previously recommended.

e. Update FAA's December 2024 internal guidance to ensure that any action to approve, permit, finance, or authorize an airport development project receiving no federal funding or PFC revenue is entitled to a CATEX presumption.

Under NEPA, FAA must conduct environmental reviews for any "major Federal action" and prepare an environmental document—either an EA or EIS—unless the proposed action is excluded by a CATEX.[46] In the 2024 FAA reauthorization law, section 788 provided that an "action by the Administrator to approve, permit, finance, or otherwise authorize any airport project" must be presumed to be covered by a CATEX presumption if the project receives less than $6 million in federal grant funding or PFC revenue.[47] In December 2024, FAA issued "initial instructions" for its field offices on implementation of section 788 and inappropriately limited the scope of the CATEX presumption, stating, "Only projects that receive Federal financial assistance can be considered for application of this presumed CATEX."[48]

The FAA's current interpretation of section 788 is inconsistent with the law and clear congressional intent. The initial instructions mean that any project receiving no federal funds or PFC revenue cannot be covered by the CATEX presumption. We strongly disagree and believe this is a misinterpretation for several reasons:

- *First*, a plain reading of section 788(a) clearly states that any FAA action to authorize an airport project is presumed to be covered by a CATEX if that project receives less than $6 million in federal funds or PFC revenues. Obviously, receiving zero federal funds or PFC revenue for a project would fall within the scope of the statutory requirement applicable to projects "receiving less than $6 million" and is consistent with clear congressional intent to streamline NEPA reviews for projects with smaller-sized grants.

- *Second*, in its initial instructions, FAA mistakenly compares the CATEX presumption in section 788 to a similar but significantly different CATEX that Congress provided for highway projects that receive less than $6 million in funding.[49] However, the CATEX applicable to highway projects only applies to the federal action of financing or funding the project.[50] If no Federal Highway Administration funding is involved, it would make sense that the CATEX would not apply. In contrast, FAA has actions that do not involve federal funding, which is why Congress drafted section 788 more broadly to cover any

45 *See* Fed. Aviation Admin., Order 5050.4B, National Environmental Policy Act (NEPA) Implementing Instructions for Airport Actions, at 5-1–5-7 (2006).

46 42 U.S.C. §§ 4332(2)(C), 4336.

47 Pub. L. No. 118-63, § 788(a), 138 Stat. 1025, 1314 (codified at 49 U.S.C. § 47171 note) ("An action by the Administrator to approve, permit, finance, or otherwise authorize any airport project that is undertaken by the sponsor, owner, or operator of a public-use airport shall be presumed to be covered by a categorical exclusion under FAA Order 1050.1F (or any successor document), if such project—(1) receives less than $6,000,000 . . . of Federal funds or funds from charges collected under section 40117 of title 49, United States Code . . . ." (emphasis added)).

48 Fed. Aviation Admin., Memorandum on Initial Instructions to Office of Airports Environmental Protection Specialists on Implementation of Section 788(a) of the 2024 FAA Reauthorization Act 3 (Dec. 19, 2024).

49 *See id.* at 2.

50 23 U.S.C. § 109 note (Categorical Exclusion for Projects of Limited Federal Assistance) ("[T]he Secretary [of Transportation] shall-(1) designate as an action categorically excluded from the requirements relating to [EAs or EISs] under [40 C.F.R. § 1508.4] and [23 C.F.R. § 771.117(c)] any project-(A) that receives less than $6,000,000 . . . of Federal funds . . . .").

action and does not limit the "action"—which triggers the NEPA review—to FAA financing or funding a project with federal financial assistance. Indeed, the actions covered by the presumption are very broad ("an action . . . to approve, permit, finance, or otherwise authorize"). Thus, an action to review and approve a proposed ALP update with a project that will not receive federal funding, for example, should be covered by the section 788 language.

- *Third*, if FAA's interpretation prevailed, it would create an unusual situation where, for example, FAA reviews a $5 million self-funded airport project at a higher level under NEPA than a $5 million federally funded project. This was not Congress's intent in enacting the provision. In addition, most airport projects do not receive federal funds or PFC revenues. As a result, FAA's misinterpretation has a major impact on the airport community, as they should be able to take advantage of this new CATEX presumption for those projects.
- *Finally*, FAA's interpretation is contrary to the directive from President Trump in EO 14154, which directed his administration to expedite NEPA reviews. Updating the instructions would be consistent with the EO by providing airport sponsors with "regulatory certainty" in the NEPA review process.

Thus, we strongly urge FAA to swiftly revise its initial instructions to ensure that any action to approve, permit, finance, or authorize any project receiving no federal funding or PFC revenue is entitled to the CATEX presumption. This approach would benefit airports by expediting the approval process for projects with minimal or non-controversial environmental effects; support the development of more revenue generating facilities, such as retail spaces, rental car centers, hangars, and hotels; and allow the airport sponsor to prioritize its resources and time on the project itself and engage in future development projects. In addition, FAA would benefit by allowing its limited resources to focus on more complex, higher cost projects where a more significant federal interest exists.

f. Update FAA's definition of "major Federal action" to exclude any actions associated with non-aeronautical projects that receive no federal funding.

Many AAAE members believe there are certain FAA approvals which should not be considered an "action" that is subject to a NEPA review. Under the FRA, Congress defined "major Federal action" as "an action that the agency carrying out such action determines is subject to substantial Federal control and responsibility."[51] Congress also excluded from the definition any "non-Federal Action" (a) "with no or minimal Federal funding" or (b) "with no or minimal Federal involvement where a Federal agency cannot control the outcome of the project."[52] In many cases, infrastructure projects at airports are non-aeronautical in nature and involve no funding from FAA or federal government. Using its authority under the FRA, FAA should update its NEPA implementation guidance to exclude two types of actions from the definition of "Federal action" and the NEPA review process where the federal government has little, if any, interest in the project:

- ***Any actions associated with non-aeronautical projects that involve no federal funding or do not use federally acquired or conveyed land***. A federal action should only include those reviews and approvals of an ALP (or portion of the ALP) where the agency has authority under 49 U.S.C. § 47107(a)(16) (and section 743 of the 2024 FAA reauthorization law). If an airport sponsor filed an NOI to proceed with a project (or portion of a project) that is outside of FAA's approval authority and no FAA objection is received,[53] any further actions associated with those projects, or portions of the project, must be excluded from the definition of "federal action."
- ***Any actions associated with non-aeronautical or mixed-use projects on federally acquired or conveyed land but involving no federal funding***. A federal action should not include actions to review privately funded non-aeronautical or mixed-use projects on federally acquired or conveyed land, including an ALP update review or the issuance of a letter of approval or consent for a land use

51 42 U.S.C. § 4336e(10)(A).
52 *Id.* § 4336e(10)(B)(i).
53 49 U.S.C. § 47107(a)(16), (x).

change.[54] FAA's mission is to ensure a safe and efficient airspace system, not insert the agency into projects that involve no aeronautical purpose, no impact on safety or efficiency of aircraft operations at the airport, and no federal funding. While federally acquired or conveyed land may be involved, FAA's interest does not rise to "substantial Federal control and responsibility" that would justify subjecting these types of actions to the NEPA review process. These are generally private developers who comply with state or local environmental laws. Subjecting these types of projects to NEPA reviews will only make the airport less competitive for non-aeronautical revenue generating development opportunities. Excluding these actions from the definition would also allow the agency to allocate its limited resources on higher priority projects in which the federal government has a greater interest.

6. **Airport Improvement Program Handbook: Simplify the overly complicated FAA AIP Handbook by (i) allowing project eligibility questions to be determined by the statutory definition of "airport development" and (ii) eliminating the "project justification" test.**

Congress has directed FAA to implement a far simpler process for determining whether to award an AIP grant for a proposed airport development project than what the agency has implemented. Congress allows an airport sponsor to apply for an AIP grant if the airport (a) is identified in the FAA's National Plan of Integrated Airport Systems (NPIAS); (b) submits a proposed project description; (c) proposes an eligible "airport development" project, as defined in 49 U.S.C. § 47102(3); (d) proposes a project that complies with any applicable FAA technical standards, such as airport lighting guidance; and (e) provides other information requested by the agency.[55] 49 U.S.C. § 47106 outlines the factors FAA must consider when evaluating the application. While one of the criteria is for FAA to ensure the project "contribute[s] to carrying out this subchapter," Congress has outlined its policies and priorities for AIP, which impose no obligations on FAA and are extremely broad, such as improving airport safety, security, and capacity; protecting the environment; and minimizing noise impacts; among other things.[56]

In the AIP Handbook, FAA directs its staff to apply a broad three-part "project justification" test to each proposed project, and a field office is prohibited from funding "projects or project elements that are not justified" based on the test.[57] The test includes ensuring (a) the project advances an AIP policy as previously mentioned; (b) an "actual need" for the project exists; and (c) the project scope is appropriate. The handbook seems to acknowledge that two of the parts—the actual need and project scope—are simply FAA policy, not required by statute.[58] Indeed, Title 49 of the U.S. Code does not require FAA to determine whether a proposed project has an "actual need" or the appropriateness of the project scope. Under the statute, there are only two extremely nuanced cases where FAA must apply a "justification" or "airside needs test" requirement for a proposed project.[59] If Congress wanted FAA to apply such requirement to all projects, it could have included that as a condition for FAA to consider when evaluating a project application. However, Congress did not do so. The omission means FAA should not be applying this "project justification" test.

In accordance with EO 14210 and accompanying guidance, FAA has been directed to "focus on the maximum elimination of functions that are not statutorily mandated while driving the highest-quality, most efficient delivery of their statutorily-required functions."[60] The over scrutiny of proposed airport development projects is one area where the agency has far exceeded its statutory mandate and created substantial amounts of unnecessary paperwork

54 FAA's current land use policy does not address whether such reviews are subject to NEPA. Policy Regarding Processing Land Use Changes on Federally Acquired or Federally Conveyed Airport Land, 88 Fed. Reg. 85474, 85476 (Dec. 8, 2023).

55 49 U.S.C. § 47105(b).

56 *Id.* § 47101.

57 Fed. Aviation Admin., Airport Improvement Program Handbook, ¶ 3-8, at 3-7 (2019).

58 *See id.* (stating that the "actual need" test must be considered "[p]er FAA policy").

59 *See* 49 U.S.C. § 47110(h) (allowing FAA to decide the construction costs of revenue producing aeronautical support facilities are allowable for an airport development project at a nonprimary airport if, among other things, FAA determines "that the sponsor has made adequate provision for financing airside needs of the airport"); *id.* § 47119(a)(2) (allowing FAA to approve as allowable costs the expenses of terminal development in a "revenue-producing area and construction, reconstruction, repair, and improvement in a nonrevenue-producing parking lot" if, among other things, the airport "certifies that any needed airport development project affecting safety, security, or capacity will not be deferred").

60 Exec. Order No. 14,210, § 3(c), 90 Fed. Reg. 9669, 9670 (Feb. 14, 2025); Off. of Mgmt. & Budget & Off. of Pers. Mgmt., Memorandum on Guidance on Agency RIF and Reorganization Plans Requested by *Implementing The President's "Department of Government Efficiency" Workforce Optimization Initiative*, at 2 (Feb. 26, 2025).

and costs. Airport sponsors need more project flexibility in order to maintain and grow their facilities safely and efficiently. To fix this problem and comply with the EO, we strongly believe FAA should simplify its overly complicated AIP Handbook in two ways:

- ***FAA should allow project eligibility questions to be determined by the statutory definition of "airport development" in 49 U.S.C. § 47102(3)***. In many cases, the handbook creates eligibility rules that have no basis in the statutory definition and seem, at least to industry, completely arbitrary. These overly complicated rules and interpretations lead to FAA staff unnecessarily picking apart elements of a project and second-guessing an airport sponsor's judgment; higher costs and review times for projects; and, in some cases, legitimate projects not being funded through AIP at all. FAA should simplify project eligibility questions by relying upon the statutory definition. This would save critical FAA resources, which is the intent of EO 14210 and the development of ARRPs.
- ***FAA should eliminate the "project justification" test used for evaluating a proposed airport development project***. The test far exceeds what the agency is required to consider when evaluating project applications under its statutory authority. Airport sponsors also report incurring significant consultant costs to justify and explain to FAA why the project is appropriate and why the airport should be allowed to use funds that it is entitled to under the law. A simpler approach is for FAA staff to examine if a proposed project is eligible under the definition of "airport development." If a project is considered eligible under that definition, FAA can reasonably presume that the project advances the AIP policies established by Congress. While we understand FAA may request information on "project need" for purposes of prioritizing awards for AIP discretionary grants, that should be addressed through the application process for those grants and not be a prerequisite for airport sponsors to use their AIP entitlement funds.

7. **Master Plans and Demand Forecasts: Eliminate the requirement for FAA to accept master plans and review and approve aviation forecasts and instead allow airport sponsors to develop such forecasts in accordance with FAA guidelines in a limited set of circumstances where they are necessary and useful.**

During our recent outreach with our members, significant discussion focused on FAA's approach toward airport master plans, including the forecasts of aviation demand. Under Title 49 of the U.S. Code, Congress does not require airport sponsors to develop master plans or aviation forecasts just as there are no congressional directives to provide a justification for AIP funding. In its only meaningful mention of these plans, Congress has encouraged airports to work with state and local officials to develop master plans and system plans for the purpose of promoting the development of "intermodal connections on airport property between aeronautical and other transportation modes and systems to serve air transportation passengers and cargo efficiently and effectively and promote economic development."[61] Unfortunately, FAA has taken the utilization of master plans far from their intended purpose. Indeed, a cursory review of FAA's advisory circular on master plans reveals that the word "intermodal" is used a total of three times in a 152-page document (two of which are in the reference materials appendix).[62]

While master plans are intended as a voluntary tool (and are not required by any statute), FAA has elevated the master plan into a necessary document that airport sponsors use to justify and explain to FAA their decision-making on projects to pursue. While FAA only "accepts" a proposed master plan, the agency's guidance states that it must approve two elements in the plan: the ALP, as previously discussed, and the forecasts of demand.[63] According to FAA, the forecasts of future levels of aviation activity are "used to determine the need for new or expanded facilities" and "provide an adequate justification for airport planning and development" through the AIP.[64] Thus, FAA has effectively required the development of master plans—which was intended to be voluntary—for an airport sponsor

61 49 U.S.C. § 47101(g)(2) (requiring FAA to encourage airports to develop master plans for purposes of promoting intermodal planning).
62 Fed. Aviation Admin., Advisory Circular No. 150/5070-6B, Airport Master Plans 66, 115 (2005).
63 *Id.* at 8.
64 *Id.* at 35; Fed. Aviation Admin., Memorandum on Forecast Review and Approval Instructions 2 (Aug. 12, 2024) ("Forecasts are used to evaluate the need, justification, and timing for new or expanded infrastructure . . . .").

to justify its capital improvement plan and receive funding. We would emphasize again that there are no statutory requirements for the "justification test," master plans, or aviation forecasts. Yet, each is now used by FAA routinely, adding to project costs and complexity.

Based on feedback from our members, forecast reviews and approvals have become another process with excessive delays and FAA review periods that lead to unnecessary costs, disputes over projected activity, and project delays. One airport sponsor cited an example where they have been waiting 21 months to receive forecast approval from FAA. Multiple airports have shared instances where they have had to hire consultants and gather independent data to argue its position on projected activity. And when airport sponsors finally receive approval, in many cases the sponsor has to update their forecasts again because projections and circumstances have changed during the period of FAA delay. FAA also does not typically allow an FAA-approved forecast to function for multiple purposes, such as meeting the "project justification" test and evaluating potential environmental effects during a NEPA review.

We understand value exists for airport sponsors to complete a master plan, as Congress recognized by encouraging airports to do them. However, we believe these plans should be fundamentally repurposed by implementing two recommendations:

- ***FAA should eliminate the requirements to accept master plans and review and approve aviation forecasts***. The agency's role should be providing guidance and direction on how to effectively develop a master plan and conduct an appropriate forecast of aviation demand, including providing technical assistance. Forecasting future activity has value, as every airport sponsor is always looking to plan for the future. But the process has become unwieldy, costly, and unhelpful in many cases. The data is often not valuable by the time FAA issues its approval. Congress intended these documents to be useful planning tools. Any formal FAA approval or similar role should be eliminated.
- ***FAA should allow airport forecasts, developed in accordance with FAA guidelines, to be considered within the context of other reviews where projected activity is a factor***. As previously discussed, the primary need for aviation forecasts—justifying projects for purposes of AIP funding—should no longer be applicable, as FAA should eliminate the "project justification" test when determining AIP funding eligibility. However, we recognize there are other circumstances where FAA may consider projected activity, such as part of a NEPA review to consider potential environmental effects of a project. For these limited cases, FAA should develop forecasting guidelines or standards and allow airport sponsors to certify, on their own or through a consultant, that its projections meet the appropriate guidelines. FAA may then consider the estimated activity like any other factors or data during that specific review. Formal forecast approval is unnecessary and has no statutory basis.

8. **Airport Noise Compatibility Planning: Amend 14 C.F.R. pt. 150 to ensure the 180-day statutory review period for NCPs begins immediately upon receipt of the appropriate documentation in accordance with congressional intent.**

Under the Aviation Safety and Noise Abatement Act,[65] Congress directed FAA to allow airport operators to submit an NCP to the agency if the operator complied with certain conditions. The program outlines the measures the airport operator has taken, or proposes to take, to reduce noncompatible uses and prevent the introduction of additional noncompatible uses in the area surrounding the airport. In the law, Congress provided that the "Secretary <u>shall approve or disapprove</u> a program . . . not later than 180 days after receiving it," and such a program "is deemed to be approved if the Secretary does not act within the 180-day period."[66]

Unfortunately, FAA has circumvented the statutorily mandated review period. Despite clear congressional direction, FAA has provided its Regional Airports Division Managers (Division Managers) with the authority to determine when the clock for the 180-day period should begin. Under 14 C.F.R. § 150.31, Division Managers are instructed to acknowledge receipt of an NCP from an airport operator within no specific timeframe. The manager must then conduct a "preliminary review" without any specific deadline, and only if the manager finds the program conforms to Part 150

65 Pub. L. No. 96-193, §§ 101–108, 94 Stat. 50, 50–54 (1980) (codified as amended at 49 U.S.C. §§ 47501–47506).
66 49 U.S.C. § 47504(b)(1)–(2) (emphasis added).

may the manager publish in the *Federal Register* a "notice of receipt of the program for comment."[67] According to FAA, the "date of signature of the published notice of receipt starts the 180-day approval period for the program."[68]

Under 49 U.S.C. § 47504, Congress was unambiguous that FAA must review NCPs within 180 days from receipt, and they are deemed approved if no action is taken. FAA's regulations and internal processes effectively provide Division Managers with an unlimited review period because they alone can determine what date the 180-day review period begins. Not surprisingly, this discretion has been abused. AAAE members have reported NCP reviews taking approximately 18 months to complete because the *Federal Register* notice took nearly 12 months to be published. The effects increase costs for the development of NCPs (and the grants that fund them) and delay action on efforts to implement noise mitigation measures in the airport environment.

Thus, we urge FAA to direct its Division Managers to conduct their preliminary review of an airport's proposed NCP and publish the *Federal Register* notice within 7 days of receipt. This would be consistent with congressional direction, which intended to have the 180-day clock begin when the proposed NCP is received by the agency, not when the agency determines the clock should start. FAA should also amend 14 C.F.R. § 150.31 to codify this change and make it permanent. This change would bring FAA policies into accord with the statutory mandate.

9. **Airport Safety Management Systems: Amend 14 C.F.R. pt. 139 to prohibit a Part 139 certificated airport from disclosing any data collected through its SMS program in response to state FOI laws.**

In 2023, FAA released a final rule directing certain Part 139 certificated airports to implement airport SMS programs over a multi-year period.[69] The rule required airport operators to develop safety risk management (SRM) processes and procedures that include, among other things, establishing a system for identifying operational safety issues.[70] One major gap identified during the first two years of implementation is the inability of airports and air carriers to efficiently share hazard data identified through the SRM. As governmental entities, airport operators are generally subject to state FOI laws and must disclose hazards and other safety-related data to the public upon request. These laws, while well intended, stymie safety by inhibiting data disclosures and collaboration among entities that is needed to address issues before they arise.

We strongly urge FAA to amend 14 C.F.R. pt. 139 to prohibit a Part 139 certificated airport from publicly disclosing hazard or other safety-related data collected through its SMS program, whether such data is reported by the airport operator or an air carrier or other tenant operating at its facility, if withholding the information is consistent with the airport's safety and security responsibilities. There are several reasons justifying this action:

- *First*, FAA has previously taken the position, without any explanation, that it does not have the authority to preempt state FOI laws.[71] We strongly disagree. Under 49 U.S.C. § 44701, Congress directed FAA to promulgate minimum safety standards for passenger-serving airports that receive a Part 139 certificate.[72] In addition, Congress provided the agency with authority to promulgate "regulations and minimum standards for . . . other practices, methods, and procedures the Administrator finds necessary for safety in air commerce and national security."[73] With this authority, FAA has promulgated requirements governing the management of a wide-range of safety-related records for Part 139 certificated airports, including when such records must be created and records pertaining to the airport's SRM processes.[74] A regulation dictating when and how certain hazard data can or cannot be disclosed absolutely falls within its authority. In addition, many state FOI laws explicitly provide exemptions from disclosure for information that is protected by federal law or regulations. A mandatory federal regulatory confidentiality requirement is necessary to take advantage of these state laws.

67 14 C.F.R. § 150.31(c).
68 *Id.* § 150.31(d); *see, e.g.*, Receipt of Noise Compatibility Program Update and Request for Review at Naples Airport (APF), Naples, FL, 89 Fed. Reg. 52531, 52531 (June 24, 2024) ("The effective start date of the FAA's 180-day review period for the NCP Update is June 18, 2024.").
69 Airport Safety Management System, 88 Fed. Reg. 11642 (Feb. 23, 2023) (codified at 14 C.F.R. §§ 139.401–139.403).
70 12 C.F.R. § 139.402(b)(1).
71 *E.g.*, 88 Fed. Reg. at 11656.
72 49 U.S.C. § 44701(b)(2).
73 *Id.* § 44701(a)(5).
74 14 C.F.R. § 139.301 (governing maintenance of records for personnel training, self-inspections, accident and incidents, airport condition, and safety communication, among others); *id.* § 139.402(b)(3) (records documenting SRM processes); *id.* § 139.402(d)(2) (records of safety awareness orientation materials made available and means of distribution); *id.* § 139.402(d)(5) (records of communications regarding safety promotion).

- *Second*, collecting and sharing data among stakeholders, including FAA, without fear of punishment is a fundamental principle of highly successful programs that have already been implemented by the agency, such as the Aviation Safety Information Analysis and Sharing (ASIAS) program and the Aviation Safety Reporting System (ASRS). Increasing the ability and efficiency of data sharing between airports and air carriers is undoubtedly aligned with these other programs and will promote safety, which is the underlying purpose of the SMS rule.
- *Third*, Part 139 certificated airports are actively exploring options to use third parties to de-identify data or develop a national database to store and share data obtained through the course of an airport's SMS. These options, however, have significant costs and inefficiencies associated with their use. If FAA amended 14 C.F.R. pt. 139 instead and prohibited the disclosure of data, except in limited conditions, the airport industry would incur cost savings by foregoing these expensive methods needed to obtain data protection and ensure collaboration with our airline partners.

10. **Use of Guidance Documents: Prohibit the use of CertAlerts, advisory circulars, and other guidance documents to impose new mandates on airport sponsors without a clear safety justification, notice-and-comment opportunity, and adjudication of such comments.**

We strongly urge DOT and FAA to adopt and implement internal orders prohibiting the use of guidance documents that impose mandatory directives on airport sponsors and circumvent the Administrative Procedures Act, including, but not limited to, the issuance of advisory circulars, Part 139 CertAlerts, policy statements, or any "reinterpretation" of federal grant obligations, unless FAA has a clear safety justification, airports have an opportunity to comment on the proposal, and the agency makes public its adjudication of the comments. In the recently passed FAA Reauthorization Act of 2024, Congress required FAA to ensure that the agency consults with appropriate regulated entities regarding proposed changes to policies, orders, and guidance prior to making such changes.[75] Unfortunately, the prior administration often ignored this requirement.

Our members appreciated the Trump administration, under its first term, maintained policies that required federal agencies to follow notice and comment procedures prior to implementing any new requirements or policy changes.[76] Indeed, we believe it is critical for federal agencies, such as DOT and FAA, to consult and work collaboratively with industry to address any potential issues before new policies are implemented. In the event that safety issues arise and need to be addressed, we respectfully request that airport sponsors be permitted to comment on the proposal and any adjudication of such comments be made public. While we recognize that circumstances and policies need to change, our input can ensure that any potential negative impacts are mitigated, and the directives are narrowly tailored to achieve their desired purpose.

11. **Part 13 and Part 16 Complaints: Require FAA Office of Airports to review and decide complaints filed with the agency under 14 C.F.R. pts. 13 and 16 within 120 days or dismiss the complaint, except for reasonable, short-term extensions in complex or exceptional cases.**

Under 14 C.F.R. § 13.2, any affected party may file an informal complaint with the FAA, alleging that an airport sponsor violated federal law, including any regulation, rule, policy, or order issued under such laws. Similarly, any person "directly and substantially affected" by an airport's alleged noncompliance with a grant assurance or certain other federal laws may file a formal complaint with FAA under 14 C.F.R. pt. 16.[77] Federally obligated airports are occasionally subject to informal and formal complaints, primarily from aircraft operators and other airport users, which may result in the loss of future grant funding.

Unfortunately, FAA has historically taken an excessive amount of time to resolve complaints filed against the airport. These complaints, which may have no merit, linger over an airport and lead to airports incurring excessive costs to defend their rights. While users have a right to assert claims, airport sponsors should have the right to receive

75 Pub. L. No. 118-63, § 822, 138 Stat. 1025, 1331 (codified at 49 U.S.C. § 44701(h)(2)) ("The Administrator shall consult as appropriate with regulated entities who will be impacted by proposed changes to the content or application of policies, orders, and guidance before making such changes.").

76 Exec. Order No. 13,891, 84 Fed. Reg. 55235 (Oct. 15, 2019); Exec. Order No. 13,892, 84 Fed. Reg. 55239 (Oct. 15, 2019).

77 14 C.F.R. §§ 16.1(a), 16.23(a).

a decision in a timely manner, as it is unfair to the sponsor for allegations to remain unresolved for years. It is not uncommon for FAA to take more than two years to resolve these complaints, and there is even one instance in which FAA took more than a decade.

Thus, we strongly urge FAA to implement a policy—and later codify in Parts 13 and 16—a requirement that if FAA fails to render a decision on an informal or formal complaint within 120 days (as currently required for Part 16 complaints),[78] the complaint must be dismissed. However, we would also support short, reasonable extensions in cases with exceptional circumstances or complexities. Not only is a firm deadline already set forth in regulation (but routinely ignored), eliminating the delay will save airports considerable funds that are spent waiting for a decision.

12. **DBE/ACDBE Programs: Amend 49 C.F.R. pts. 26 and 23 to repeal recently implemented requirements in the DBE and ACDBE programs that have resulted in unnecessary costs without any meaningful benefits.**

Airport sponsors must comply with a series of assurances as a condition for receiving a federal grant under AIP or another applicable federal financial assistance program. These assurances require airport sponsors to administer DBE and ACDBE programs in accordance with regulations outlined in 49 C.F.R. pts. 26 and 23, respectively.[79] Under the previous administration, DOT conducted a major rulemaking initiative that was finalized in April 2024 and made a wide range of changes to the regulations that govern both programs.[80] While some revisions were commonsense updates, others imposed new mandates on the airport community in the areas of reporting, monitoring, and fostering small business participation without any adequate justification or resulting benefits for grant recipients or DBE/ACDBE firms. None of these new requirements were based on any statutory requirements;[81] however, airport sponsors have now incurred unnecessary costs and resources to comply.

While AAAE and airports are supportive of the DBE and ACDBE programs, we did raise concern about various aspects of the rulemaking finalized last year and believe the recently issued EOs relating to deregulation are applicable to some of the new requirements that were included in the 2024 update to the DBE/ACDBE programs. Accordingly, we strongly urge DOT to repeal the following recently implemented program requirements:

- ***Expanded DBE Program Reporting***. The rule expanded the amount of data that airport sponsors must collect and report to DOT through the "Uniform Report of DBE Awards or Commitments and Payments," despite near-universal opposition to additional data collection requirements.[82]
- ***Data Entry of DBE Bidders List***. The rule required airport sponsors to provide all data from their bidders list—which are currently created based on DBE and non-DBE firms that seek work on federally assisted contracts—to DOT through a centralized database.[83] However, as of last year, DOT had not created the database in which airport staff must input the data.[84]
- ***Creation of New ACDBE Participant List***. The rule required airport sponsors to create and maintain an "active participants list" that contains information about ACDBE and non-ACDBE firms that have participated or attempted to participate in airport concessions programs in previous years.[85] As with the DBE bidders list, DOT established this new data entry requirement without having an operational database.[86]
- ***"Running Tally" Payment Monitoring***. The rule expanded the "running tally" provisions by requiring that airport sponsors maintain an accounting of each contractor's progress in attaining a contract goal

78 *See id.* § 16.31(a) ("After consideration of the pleadings and other information obtained by the FAA after investigation, the Director will render an initial determination and serve it upon each party within 120 days of the date the last pleading specified in § 16.23 was due.").

79 Fed. Aviation Admin., Airport Sponsor Assurances, ¶ 37, at 18 (2022).

80 Disadvantaged Business Enterprise and Airport Concession Disadvantaged Business Enterprise Program Implementation Modifications, 89 Fed. Reg. 24898 (Apr. 9, 2024) (to be codified at 49 C.F.R. pts. 23, 26).

81 *See* 49 U.S.C. § 47113 (DBE program requirements); *id.* § 47107(e) (ACDBE program requirements).

82 49 C.F.R. § 26.11(a); 89 Fed. Reg. at 24901–03.

83 49 C.F.R. § 26.11(c).

84 U.S. Dep't of Transp., Implementation Guidance for the Final Rule (Part 26) 1 (2024) ("Recipients need not submit the required data to the relevant OA before the Department's system is operational.").

85 49 C.F.R. § 23.27(c).

86 U.S. Dep't of Transp., Implementation Guidance for the Final Rule (Part 23) 4 (2024) ("The Department intends to develop its own database for use by recipients.").

through progressive payments to committed DBEs.[87] However, most AAAE members have raised questions as to what problem DOT was trying to address with this requirement, as airport sponsors already monitor primary contractors' progress in this area.

- ***Prompt Payment Monitoring***. The rule required airports' DBE programs to outline the mechanisms that the airport sponsor will use to "proactively" monitor and conduct oversight for the purpose of ensuring that prime contractors are promptly paying subcontractors.[88] The new mandate has become time consuming and unduly burdensome and increased costs and workload for airport staff without any meaningful value added.

- ***DBE Open-Ended Performance Plans (EOPP)***. The rule required prime contractors, which respond to a request for proposal (RFP) on a design-build procurement, to submit an EOPP with the proposal.[89] The EOPP must detail the types of work the contractor will solicit DBEs to perform and a projected timeframe in which actual subcontracts will come to fruition. Airport sponsors are responsible for monitoring the contractor's adherence to the plan throughout the contract. Most AAAE members opposed this requirement because, among other reasons, the additional restrictions and conditions in RFPs lead to fewer potential contractors that may bid on projects, an issue with which airport sponsors already struggle.

- ***ACDBE Small Business Participation***. The rule required airport sponsors to implement a new "small business element" to promote and foster small business participation as part of its ACDBE program and submit annual reports to DOT regarding the success of the new "element."[90] Most airports expressed concerns over this new mandate for many reasons, including that it may result in decreased firm participation and fails to address an identified concern or problem.

13. **Title VI Compliance: Rescind the 2021 DOT Order 1000.12C that implemented requirements for airport sponsors to develop Title VI and Community Participation Plans.**

In addition to the DBE and ACDBE programs, airport sponsors must agree to a series of other assurances as a condition for receiving a federal grant, including compliance with Title VI of the Civil Rights Act of 1964 (Title VI),[91] DOT's regulations implementing Title VI, and other nondiscrimination requirements.[92] Title VI effectively requires that no person "shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance."[93]

In 2021, the Biden administration issued DOT Order 1000.12C—which repealed the 2019 Order 1000.12B—and instituted two new requirements for all grant recipients under DOT federal financial assistance programs.[94] *First*, the order directed FAA and other modes to require that all grant recipients develop and adopt a "Title VI Plan" that outlines the recipient's measures to ensure compliance with Title VI.[95] *Second*, the order directed FAA and other modes to require that all recipients develop "Community Participation Plans." DOT argued these plans were necessary (a) to facilitate Title VI compliance by requiring meaningful public participation and engagement to ensure recipients are informed about how programs or activities will potentially impact affected communities, and (b) to ensure that "diverse views are heard and considered throughout all stages of the consultation, planning, and decision-making process."[96] In implementing the directive, FAA has required that each of these plans be approved by the agency before the airport sponsor may receive a grant award.[97]

87 49 C.F.R. § 26.37(c).
88 *Id.* § 26.29(d)–(f).
89 *Id.* § 26.53(b), (e).
90 *Id.* § 23.26.
91 42 U.S.C. §§ 2000d–2000d-7.
92 49 U.S.C. § 47123; 49 C.F.R. §§ 21.1–21.23.
93 42 U.S.C. § 2000d.
94 U.S. Dep't of Transp., Order 1000.12C, The U.S. Department of Transportation Title VI Program 10, 12 (2021).
95 In contrast, the 2019 DOT Order 1000.12B only required a limited scope of grant recipients to develop Title VI plans, which we do not believe included airport sponsors. *See* U.S. Dep't of Transp., Order 1000.12B, The Department of Transportation Title VI Program 8 (2019).
96 U.S. Dep't of Transp., Order 1000.12C, at 12.
97 Fed. Aviation Admin., Letter to Airport Sponsors on DOT Order 1000.12C (Aug. 12, 2022).

There are several reasons why the 2021 DOT order should be rescinded:

- *First*, the development of Title VI and Community Participation Plans is not required by any specific statute or regulation.[98] Instead, the update to DOT guidance on Title VI compliance was justified by the issuance of two EOs issued by President Biden in the first month of his administration. One order focused on tackling the climate crisis at home, while the second sought to advance racial equity and support for underserved communities. Both of these orders, however, were repealed by President Trump on the first day of his administration.[99] Accordingly, we believe the underlying authority and rationale for DOT Order 1000.12C no longer applies.

- *Second*, after the DOT order was implemented, FAA began implementing the directive in 2022. However, the Title VI and Community Participation Plans have not added any meaningful value aside from unnecessarily implementing new requirements for FAA to review and approve these plans.

- *Finally*, the 2021 DOT order failed to explain what problem or issue the previous administration was trying to address by requiring airport sponsors and other recipients to develop these plans. DOT Order 1000.12B, which was implemented under the first Trump administration, was a more suitable approach toward ensuring Title VI compliance. Rescinding the 2021 DOT order would also be consistent with ensuring FAA is focused on its core mission, ensuring the safety of aircraft operations and the traveling public, and preserving limited staffing and resources that may be more efficiently used on other priorities.

AAAE and our members recognize the importance of Title VI compliance, but our members would still be required to comply with the law and be subject to Title VI compliance reviews even if Order 1000.12C were to be repealed.

14. **Task Force on Accelerating Project Delivery: Establish an "Accelerating Airport Infrastructure Project Delivery Task Force," a joint FAA/industry body to develop implementable recommendations to eliminate or modify unnecessary and redundant processes and requirements associated with the review and approval of airport infrastructure projects.**

FAA has a tremendous number of processes and reviews that all need to be completed before project construction may begin, even if no federal funding is involved. FAA and industry need to collaboratively and holistically look at these processes to make them easier, more efficient, and less costly while preserving FAA's mission to ensure projects do not adversely impact safety or the efficiency of aircraft operations. The overall process for delivering safety-critical infrastructure projects is entirely too cumbersome, and one delay for one review leads to increased costs and delays with other interrelated reviews (e.g., delays in an aeronautical study may negatively impact a NEPA review).

In addition to implementing the recommendations outlined in this paper, we believe FAA should establish an Accelerating Airport Infrastructure Project Delivery Task Force, a joint FAA/industry group to examine the existing review and approval procedures with the goal of streamlining and eliminating or modifying unnecessary, duplicative, or wasteful procedures and requirements. We received extensive feedback regarding other requirements and processes that airports must comply with and believe a task force could focus resources on reforming the infrastructure review requirements and approvals. This should include, but not be limited to:

- Streamlining and/or reducing criteria used for reviewing ALP updates;

- Implementing policies and procedures to improve consistency across all FAA field offices, empower local decision-making, and expedite processes, such as the development of checklists for FAA staff to review items submitted by airport sponsors;

- Providing more opportunities for airports to utilize alternative project delivery methods;

98 Neither Title VI of the Civil Rights Act of 1964 (42 U.S.C. §§ 2000d–2000d-7) nor 49 C.F.R. pt. 21—which airport sponsors agree to comply with in their grant assurances—requires the development and approval of Title VI and Community Participation Plans.

99 Exec. Order No. 14,148, § 2, 90 Fed. Reg. 8237, 8237–38 (Jan. 28, 2025).

- Accelerating and simplifying approvals and reviews for privately funded or developed airport infrastructure;
- Conducting a comprehensive review of FAA's technical standards on airport planning, design, and construction to determine appropriate modifications to reduce unnecessary costs, provide airports with more flexibility, and eliminate outdated standards;
- Simplifying and updating the process for airport sponsors to request and receive a waiver from applicable Buy America or Build America, Buy America (BABA) Act requirements;
- Modernizing and updating AIP and federal grant contracting processes, consistent with recently issued EO 14222, *Implementing the President's "Department of Government Efficiency" Cost Efficiency Initiative*, which requires agencies to evaluate their contracting policies, procedures, and personnel.[100] This should include a review of, for example, sponsor certifications,[101] grant reporting obligations, grant oversight and audit policies, and the DELPHI system;
- Examining lessons learned from the Infrastructure Investment and Jobs Act (IIJA), which provided $20 billion to airports for infrastructure development over a five-year period,[102] to incorporate efficiency and other improvements into the AIP funding process;
- Implementing reforms that would enable FAA to award AIP grants earlier in the year when conditions are more suitable for construction projects, including the appropriate timing for airport sponsors to collect bids;
- Establishing an accessible database of precedents (e.g., memoranda, decisions, internal guidance, opinions) for FAA decisions that can have national or widespread significance and are relevant for infrastructure development;
- Allowing airport staff to electronically access FAA's System of Airports Reporting (SOAR) program to upload or submit their capital improvement plans; and
- Streamlining the appropriate review processes and approvals for smaller grants where FAA has a lesser federal interest.

CONCLUSION

AAAE's commonsense recommendations for regulatory reform will advance the Trump administration's agenda in accordance with the president's EOs and strengthen the nation's airports by eliminating the overregulation of airport capital development projects, ensuring FAA focuses on its core mission of promoting safety and efficiency, accelerating the delivery of safety-critical infrastructure projects, promoting accountability and efficiency within the federal workforce, and reducing unnecessary regulatory requirements and costs for the airport industry. We look forward to working with the administration on implementation.

100 Exec. Order No. 14,222, § 3(c)–(d), 90 Fed. Reg. 11095, 11096 (Mar. 3, 2025).

101 For example, FAA currently requires airport sponsors to complete eight separate certifications and forms when the agency could instead consolidate them into a single document. Fed. Aviation Admin., Airport Improvement Program Handbook 5-19–5-21 (2019).

102 Pub. L. No. 117-58, 135 Stat. 429, 1416–19 (2021).