

# Regulatory Governance and System Trends

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**Federal Aviation  
Administration**

# Learning Outcomes

1. Overview of regulatory governance
2. Update on Planning Guidance



# Part 1 - Regulatory Governance



# 1 - Regulatory Governance

- **Why are some documents Orders and others ACs?**
- **Things we hear:**
  - The Order or AC doesn't say that it cannot be done...?  
So it must be OK!
  - The Orders and ACs are just guidance, i.e., there is flexibility to apply reasonable adjustments using professional judgement.

# 1 – Directives

- **Directives:** the primary means within the FAA to issue, establish, and describe agency policies, organization, responsibilities, methods, and procedures.
  - **Orders** – permanent directives that stay in effect until cancelled. Orders are mandatory instructions for FAA personnel in the administration of policy and programs.
  - **Advisory Circulars** - deliver advisory material to end users, industry, the aviation community, and the public.

Source: FAA Order 1320.1, and FAA Order 1320.46D

# 1 - Into the Unique Realm of AIP

1-13. General Principles of this Handbook. The contents of this Handbook are based on principles below:

- a) **The Use of the AIP Handbook is Mandatory.** The Handbook is the published policy for AIP. Except where options are specifically noted or where non-mandatory language is used, the procedures and requirements are mandatory. Any deviation from the procedures or requirements must be approved by the Director of the Office of Airport Planning and Programming. All requests for deviations must be sent to the Director of the Office of Airport Planning and Programming for processing.

# 1 - Into the Unique Realm of AIP (cont. 1)

- b) **Use of the Term FAA Policy.** The term FAA policy denotes policy that the FAA Office of Airports has established for AIP where there is not a direct statutory reference in the Act.
- c) **Regional Office Discretion.** Unless set procedures are necessary to achieve national standardization in grant program administration, regional offices may adjust procedures that are not dictated by legislation, rule, this Handbook, other published federal policy, or reasons beyond the FAA's control.

# 1 - Into the Unique Realm of AIP (cont. 2)

- b) **Reference to Other Guidance.** The Handbook summarizes pertinent information from other guidance material when appropriate to relieve users from needing to reference another document. The source documents, rather than this Handbook, are the authoritative technical sources; however, this Handbook is the authoritative source on AIP, including eligibility.





# 1 - AIP is Permissive Structure

1-10. The Act Is a Permissive Statute.

The key nature of the Act is that it is a permissive statute, rather than a mandatory or prohibitory one. Put more simply, if the AIP statute does not provide the authority to fund an action or an item, that action or item cannot be funded under AIP.

A permissive statute does not contain a comprehensive list of mandatory or prohibited actions. Rather, a permissive statute gives permission to do certain things. As such, an airport is not required to construct some or all of the items that are allowed under AIP but may do so provided that the FAA determines that the items are justified at that airport.

# 1 - AIP is Permissive Structure (cont.)

This is not a concept exclusive to AIP. This is a rule that stems from federal appropriations law, which applies to federal agencies. The Government Accountability Office's (GAO) Principles of Federal Appropriations Law, Third Edition (commonly referred to as the Red Book) states that "A federal agency is a creature of law and can function only to the extent authorized by law" *Atlantic City Electric Co. v. Federal Energy Regulatory Commission*, 295 F.3d 1, (D.C. Cir. 2002). The Supreme Court (*United States v. MacCollom*, 426 U.S. 317, 321 (1976)) has upheld this notion by stating "[T]he established rule is that the expenditure of public funds is proper only when authorized by Congress, not that public funds may be expended unless prohibited by Congress."

# 1 - AIP is Permissive Structure (cont. 1)

- **Stakeholder:**

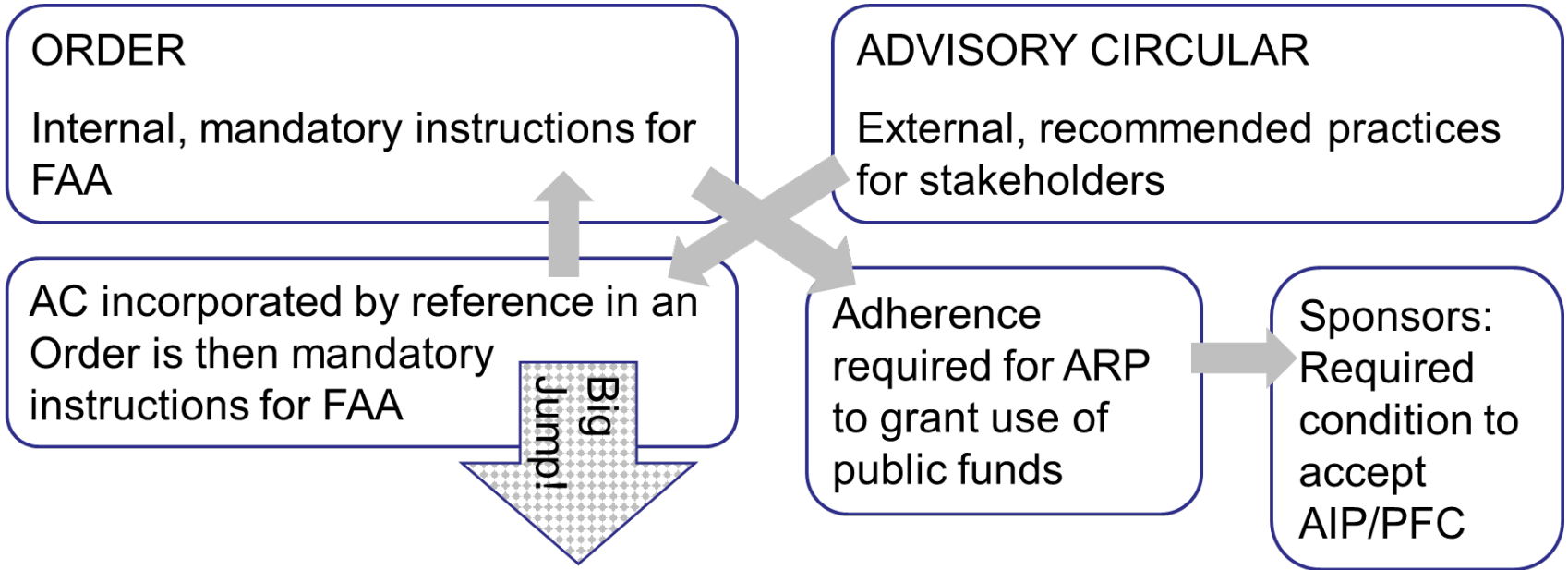
- *“Well, the Order or AC doesn’t say this cannot be done...”*

- **Orders and AC are primarily about what is permitted**

- **If not identified as permitted, then its not permitted**

- *l.e., no way to comprehensively list everything not acceptable*

# 1 - “Guidance”



# Advisory Circular

- ARP has a unique regulatory structure:
  - Regulation via Orders and ACs, rather than normal rulemaking process
- Example of APP-1 providing flexibility for a specific, unique project that required waiving ACs incorporated into AIP Handbook
- Unless the criteria are formally modified in writing, the existing Order and AC criteria are applicable

# Part 2 - Planning Guidance



# 2 - Planning Guidance Coming Soon!

- **Focus ACs and Guidance:**
  - Critical Aircraft and Regular Use Determination (5000-17, Change 1)
  - Forecast Review and Approval Instructions Memo
  - Airport Master Plans (5070-6b, Change 3)
  - Runway Length AC 150/5325-4C