



U.S. Department
of Transportation
**Federal Aviation
Administration**

Memorandum

Subject: **ACTION:** Program Guidance Letter 04-2

Date: April 30, 2004

From: Manager, Airports Financial Assistance
Division, APP-500

Reply to
Attn. of:

To: PGL Distribution List

04-2.1 Intermodal Planning Coordination – Pat Sullivan (202) 267-3707 and Mark Beisse (202) 267-8826.

Section 187 of Vision 100 amends Title 49, United States Code, section 47106(c)(1)(A), to include a new requirement for the airport sponsor to certify coordination with a relevant intermodal planning agency.

The new provision requires that for airport development projects, large and medium hub airports must, upon request, provide the airport layout plan amendment and associated master plan document to the relevant Metropolitan Planning Organization (MPO) if it involves location of:

- An airport;
- A runway; or
- A major runway extension.

In cases where required study coordination was accomplished during advanced planning, coordination need not be repeated at the implementation stage unless the scope of work has changed, substantial new information became available, or significant time elapsed. The region should ensure coordination at the earliest possible time to avoid delays and additional costs of the project.

We anticipate adding the new requirement to the standard grant application during current re-design of the forms. Until the incorporation of this certification has been accomplished, regions should obtain this airport sponsor certification for each applicable project prior to grant offer. The required format is contained within Attachment 1.

Contact APP-520 for assistance with interpretations of the coordination provision.

04-2.2 Increase in Apportionment for, and Flexibility of, Noise Compatibility Planning Programs – Kendall Ball (202) 267-7436.

Section 151 of Vision 100 amends section 47117(e)(1)(A) to require at least 35 percent of the available discretionary funds to be used for grants for airport noise compatibility planning under section 47505(a)(2) and noise compatibility programs under section 47504(c).

Also, inserted with Section 151 is the following: “for noise mitigation projects approved in an environmental record of decision for an airport development project under this title, ... and airport development described in section 47102(3)(F), 47102(3)(K), or 47102(3)(L) to comply with the Clean Air Act (42 U.S.C. 7401 et seq.)” This now makes noise mitigation projects and development undertaken as a mitigation project required in an environmental record of decision to comply with the Clean Air Act, except for constructing or purchasing capital equipment that would benefit primarily a revenue-producing area of the airport used by a nonaeronautical business, eligible for noise set aside funds.

All projects, when undertaken by other than the airport sponsor, must be compatible with existing airport development plans and coordinated with the airport sponsor.

Section 306 of Vision 100 is another provision which is very similar to this new expanded eligibility for the noise set-aside. Section 306 amends section 47504(c)(2) to include noise mitigation projects under a record of decision for capacity enhancement at congested airports as defined in a new section 47175, which was added by section 304(a) of Vision 100. Any project found eligible under amended section 47504(c)(2) would also be eligible under section 47117(e)(1)(A) if undertaken at a congested airport.

All projects undertaken as a result of this expanded eligibility will continue to be coded using the current ACIP codes.

04-2.3 Federal Share for Private Ownership of Airports – Jim Borsari (202) 267-8822.

Section 163 of Vision 100 amends section 47109(a)(4) and changes the Federal share of a project funded from the discretionary fund, from 40 percent to 70 percent, for airports in the privatization pilot program established in section 47134 of title 49.

04-2.4 Considerations for Discretionary Grants – Jim Borsari (202) 267-8822.

Section 148 of Vision 100 amends section 47115(d) and consolidates various issues that FAA must consider when making discretionary grants. For the most part, this provision was intended to put existing considerations into one place. However, Vision 100 included two additional considerations. The first addition requires the FAA to consider funding priority under the FAA's numerical priority system. Deferring projects with high numerical scores in order to fund lower priority projects is highly discouraged. Ordinarily the FAA will not defer projects with higher numerical scores to fund lower priority projects. Therefore, for any project being deferred to a later fiscal year for technical or environmental reasons and funding provided to a lower priority project, regions and ADO's must document in their files the reason that the higher priority project has been deferred. Further, regions must notify APP-520 of any such deferral to a later fiscal year with the reason of the deferral.

The other consideration is whether an airport sponsor will be able to commence the work within the same fiscal year or within 6 months, whichever is later. Regions and ADO's should construe for the purposes of this provision, "commence the work" to mean actual construction in the case of construction grants or execution of a purchase contract in the case of a grant for equipment. For design only grants, or grants in which the design is part of the grant, the project is considered to be commenced when the design is initiated.

04-2.5 Duration of NonPrimary Entitlements – Jim Borsari (202) 267-8822.

Section 150 extends the availability for the nonprimary entitlements from three years to 4 years. This additional year will be added to entitlements that have been apportioned in a prior year, but remain available in 2004, as well as to any new entitlements apportioned in 2004 and later years. Entitlements that were apportioned in FY 2001 are not extended since their duration ended on September 30, 2003, prior to the enactment of Vision 100.

04-2.6 Military Airport Program (MAP) Changes – Jim Borsari (202) 267-8822.

Section 153 made three changes to MAP funding. First, the total discretionary amount per year for terminal development was increased from \$7 million to \$10 million per airport per fiscal year in fiscal years 2004 and 2005. The total reverts to \$7 million per year thereafter.

Second, the discretionary funding for parking lots, fuel farms, utilities, hangars and air cargo terminals has been increased from \$7 million total per airport (note: this amount was not per fiscal year but a total per airport) to \$10 million per year per airport for fiscal years 2004 and 2005 and \$7 million per airport per each year thereafter.

Finally, MAP airports may be reimbursed using entitlements, discretionary or MAP discretionary for the cost of construction work for parking lots, fuel farms, utilities, hangars and air cargo facilities performed in fiscal years 2003 and 2004 and prior to a grant.

04-2.7 Flexible Use of Nonprimary Entitlements – Jim Borsari (202) 267-8822.

A number of changes were made by section 149 to the use of nonprimary entitlements. The most significant change expanded the eligibility for using nonprimary entitlements for revenue producing facilities supporting aeronautical activities. For the most part, these would include hangars and fuel farms but other potential projects may exist. If the project is other than hangars and fuel farms, please contact APP-520 for guidance. This provision requires the Secretary (through the regions/ADO's) to determine that the airport sponsor has made adequate provision for financing the airside needs of the airport before approving a grant under the expanded eligibility. Therefore, with the application for revenue producing facilities, the airport sponsor should be advised to identify any airside need and provide a financial strategy for financing the need. Regions/ADO's must review the submittal and make the determination. Although AIP funding can be part of the plan, it should not be relied on as the primary means for financing since it would appear that the sponsor would be using its entitlements for lower priority work in order to fund revenue-producing areas.

Further, all administrative and statutory requirements such as updates to Airport Layout Plans (ALP) and airspace determinations would apply to these projects.

This provision should primarily be used for new construction rather than acquisition of existing facilities. Any request for acquisition of existing facilities must be coordinated with APP-520. Some factors that must be addressed include the analysis of any existing environmental issues with the existing facilities and whether the existing facilities have an adequate remaining useful life.

The purpose of this provision was to enable a non-primary airport to have additional revenue-producing facilities available to assist the airport in reaching the goal of self-sustainability. It would appear that this provision is in conflict with the additional requirements under 49 USC 47107(a)(13)(b) to exclude the Federal share in the rate base for facilities and services at the airport.

To the extent practicable, use of facilities and services should be priced at a high enough level to generate additional revenue for the nonprimary airport. Nonprimary airports should also be reminded of the need to provide aeronautical facilities using "reasonable terms and without unjust discrimination." Traditionally, this has been accomplished through rates and charges.

In order to avoid negating the highly desired effect of self sustainability through the revenue producing nature of this provision, the FAA will exercise its discretionary authority under 49 USC 47101(a) to enable nonprimary airports to include the federal share in the traditional rate basis if the sponsor has made adequate provision for financing the airside needs of the airport.

Therefore, in regard to the pricing of these facilities and services, particularly hangar space and fuel pricing, nonprimary airports may include the Federal share of the project in calculating the rates and charges.

Other changes in the flexible use of nonprimary entitlements include the ability to receive multiyear grants, the ability to be reimbursed for work performed prior to a grant (if the work was performed after December 12, 2003, the effective date of Vision 100) if all administrative and statutory requirements have been met, and the ability to receive a grant for terminal development using the nonprimary entitlements. All of these items are similar to those in effect for many years for primary airports and regions/ADO's should use existing guidance in applying these flexibilities.

One last change permits an airport to share its entitlements with another airport in the same state or geographic area. We are providing, as attachment 2, an updated Appendix 16 to the AIP Handbook, Order 5100.38B, Change 1, that shows the reference to nonprimary entitlements. The intention of this statutory provision is to permit an airport to share its unused entitlements with another airport so that the funds do not get carried over each year. Airports may share these entitlements under an agreement that in the future they may be repaid with the receiving airport's entitlements when a project is needed at the donor airport. However, airports may not "sell", trade or barter away their entitlement for a consideration since such "sale" may be construed as using Federal funds in an inappropriate manner. In other words, an airport may not trade its entitlements for money or property that would not be eligible under AIP.

04-2.8 Liability Clauses for Consultant Contracts – Jim Borsari (202) 267-8822.

Recently, some airports have been requiring consultants to agree to excessive liability clauses making consultants liable for damages beyond the scope of their contracts. One example is a clause that makes a consultant liable for acts of third party contractors not under the control of the consultant. Airports should be advised that expanding the liability beyond the scope or purpose of a contract could affect the competitive process of contract award in a way that conflicts with

the requirements of 49 CFR Part 18, the government-wide grant common rule, and thus impact federal eligibility.

A handwritten signature in black ink that reads "Barry L. Molar". The signature is written in a cursive style with a prominent initial "B" and a flourish at the end.

Barry L. Molar

Attachments

**UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION
AIRPORT IMPROVEMENT PROGRAM
INTERMODAL PLANNING CERTIFICATION**

.....
(Sponsor)

.....
(Airport)

.....
(Project Number)

For airport development projects involving location of a runway or major runway extension at a medium or large hub airport, or the location of a medium or large hub airport, the airport sponsor has made available to and has provided upon request to the metropolitan planning organization, if any, in the area in which the airport is located, a copy of the proposed airport layout plan or ALP amendment to depict the project and a copy of any airport master plan in which the project is described or depicted.

I certify, for the Project identified herein, the foregoing statement is correct and complete.

(Name of Sponsor)

(Signature of Sponsor's Designated Official Representative)

(Date)



**U.S. Department
of Transportation
Federal Aviation
Administration**

AGREEMENT FOR TRANSFER OF ENTITLEMENTS

In accordance with section 47117(c)(2) of Title 49 U.S.C. (hereinafter called the "Act).

(Name of Transferor Sponsor)

Hereby waives receipt of the following amount of funds apportioned to it for each fiscal year specified under section 47114(c)(1) or 47114(d)(3)(A) of the Act.

<u>Amount</u>	<u>Fiscal Year</u>
\$	20
\$	20
\$	20
TOTAL \$	=====

On the condition that the Federal Aviation Administration makes the waived amount available to:

(Name of Transferee Sponsor)

for eligible projects under section 47104(a) Act. This waiver shall expire on earlier of (date) or when the availability of apportioned funds would lapse under section 47117(b) of the Act.

**FOR THE UNITED STATES OF AMERICA
FEDERAL AVIATION ADMINISTRATION**

FOR

(Signature)

(Signature)

(Typed Name)

(Typed Name)

(Title)

(Title)

(Date)

(Date)

CERTIFICATE OF SPONSOR'S ATTORNEY

I, _____ acting as Attorney for the Sponsor do hereby certify:

That I have examined the foregoing Agreement and find that the Sponsor has been duly authorized to make such transfer and that the execution thereof is in all respects due and proper and in accordance with the laws of the State of _____ and the Act.

Dated at _____ this _____ day of _____, _____.

By _____
(Signature of Sponsor's Attorney)