



Federal Aviation Administration

Memorandum

Date: August 27, 2019

To: Stan Allison, Acting Director, Airport Planning and Programming
ACO Staff

From: Kevin C. Willis, Director,
Office of Airports Compliance and Management Analysis, ACO-1 *KCW*

Prepared by: David Duchow, Airport Compliance Division, ACO-100, x79605

Subject: ACTION: Compliance Guidance Letter 2018-01, FAA Guidance Regarding
Annual Process for Compliance with 49 U.S.C § 47115 (f), *Consideration of
Diversion of Revenues in Awarding Discretionary Grants*, for Airports
"Grandfathered" Under the Revenue Use Statute

I. Purpose: This Compliance Guidance Letter (CGL) establishes Federal Aviation Administration (FAA) policy for the annual reporting requirements for those airports exempted (grandfathered) from certain aspects of airport revenue use requirements. It relieves the FAA field offices of the responsibility of informing grandfathered sponsors of their annual reporting requirements; that responsibility is transferred to ACO-100. It also provides guidance in helping these grandfathered sponsors to avoid "revenue diversion," i.e., the use of airport funds contrary to the terms of Federal statutes and Federal airport grant agreements. It is the standing document providing the FAA personnel with specific guidance to administer the compliance provisions of 49 U.S.C. § 47115(f). This CGL is published to satisfy a recommendation of the Office of the Inspector General Report on Grandfathered Airports, Report Number AV2018041, April 17, 2018.

Cancellation: This CGL cancels the memorandum entitled "Annual Process for Compliance with Sec. 47115(f) pertaining to Airports 'Grandfathered' Under the Revenue Use Statutes" issued on January 4, 2013.

II. Statutory and Policy Requirements

- A. The Airport Improvement Program (AIP), was originally enacted by Congress as the Airport and Airway Improvement Act (AAIA) of 1982, and subsequently codified at

49 U.S.C. § 47107(b). It required airport sponsors to assure that all revenue generated by an airport would be expended for the capital or operating costs of the airport, the local airport system, or other local facilities directly and substantially related to the actual air transportation of passengers or cargo.

- B. The FAA Reauthorization Act of 1996 added 49 U.S.C. § 47133 expanding the application of the revenue-use restriction to any airport that is the subject of Federal assistance and established a self-sustaining requirement for federally- assisted airports.
- C. Certain airport sponsors are "grandfathered," and may use airport revenues for local purposes other than those proscribed in 49 U.S.C. §§ 47107 and 47133. The provisions also permit local taxes on aviation fuel in effect on December 30, 1987 to be used for any local purpose.
- D. The airport sponsors have pre-existing arrangements and historically used airport revenue for non-airport purposes and were deemed "grandfathered," if the specific payments had been in place prior to the AAIA. This meant that the sponsor could continue to legally divert airport revenue for non-airport purposes.
- E. The FAA Reauthorization Act of 1994 added in provisions at 49 U.S.C. § 47115(f) addressing instances where sponsors exceeded amounts previously diverted under the grandfathered exception.¹
- F. 49 U.S.C. § 47115(f) requires the FAA, in certain circumstances, to consider the use of airport revenue for non-airport purposes under the grandfathered exception, as a factor militating against the distribution of discretionary AIP funding. The militating factor only applies if the airport is found to have exceeded its revenue use cap. Therefore, the use of airport revenue for non-airport purposes under this exception will not necessarily preclude the award of AIP grants to an airport sponsor.²
- G. Many affected sponsors own and operate multiple airports. There is no Federal requirement for sponsors to delineate the specific sources of revenue taken off the airport(s). Therefore, the FAA considers any overage as a militating factor against the award of AIP Discretionary funds for any airport owned by the sponsor, regardless of whether the specific airport is contributing to the sponsor's revenue use for non-airport purposes.

¹Exceeding the limit (cap) is considered as a militating factor against the award of discretionary funds. The militating factor applies only if the airport revenue used for non-airport purposes in the airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of revenues used in the airport's first fiscal year ending after August 23, 1994, and adjusted for changes in the Consumer Price Index.

²The militating factor applies only if the airport revenue used for non-airport purposes in the airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of revenues used in the airport's first fiscal year ending after August 23, 1994, and adjusted for changes in the Consumer Price Index.

- H. In 1999, at the direction of Congress, the FAA published its final *Policy and Procedures on the Use of Airport Revenue* (64 FR 7696) (Revenue Use Policy). Congress directed FAA to define airport revenue and identify permitted and prohibited uses. This policy was amended on November 7, 2014, to address revenue use for taxes on aviation fuel. That policy is titled, *The FAA Policy and Procedures Concerning the Use of Airport Revenue; Proceeds From Taxes on Aviation Fuel*, (79 FR. 66282), a scenario-based document for clarification of that policy is included in this guidance letter (**Attachment E**). The same document is also posted at www.regulations.gov under FAA Docket: FAA-22013-0988.
- I. Grant Assurance 25 implements 49 U.S.C. §§ 47107(b) and 47133, and requires that all airport-generated revenues be expended in support of air transportation of passengers or property. By accepting an AIP Grant, an airport sponsor agrees to abide by certain contractual obligations. Exceptions to Grant Assurance 25 include “If covenants or assurances in debt obligations issued before September 3, 1982, by the owner or operator of the airport, or provisions enacted before September 3, 1982, in governing statutes controlling the owner or operator's financing, provide for the use of the revenues from any of the airport owner or operator's facilities, including the airport, to support not only the airport but also the airport owner or operator's general debt obligations or other facilities, then this limitation on the use of all revenues generated by the airport (and, in the case of a public airport, local taxes on aviation fuel) shall not apply.

III. Responsibilities

A. Office of Airport Compliance (ACO)

1. Notification and Sponsor Submittal Requirements

- a. At least once during each Federal fiscal year, ACO will issue a standard letter (**Attachment B**), to remind the sponsor of a grandfathered airport of their statutory responsibilities regarding revenue use. The letter will remind sponsors that the FAA considers the use of airport revenue for non-airport purposes as a factor militating against the award of AIP discretionary funds if the amount exceeds the cap as adjusted by CPI. This letter will also reiterate sponsor requirements and deadlines associated with their financial data submissions.
- b. The letter will also advise the sponsor, it may take up to 75 calendar days after receipt, for the FAA to review the financial data and then make the appropriate findings regarding an AIP Discretionary grant. Therefore, the sponsor must factor the timeframe involved in this review into their capital planning process.
- c. Like all commercial service airports, sponsors of grandfathered airports must submit annual financial data to the FAA using Forms 5100-126, *The Financial Government Payment Report*, and 5100-127, *The Operating and Financial Summary* (“Form 126 /127”) within 120

days of the end of their fiscal year. Sponsors may request an extension of up to 60 days. When the FAA has agreed to permit a sponsor to submit grandfathered revenue data in a format other than Forms 126/127, the sponsor must still meet the same deadlines.

- d. Sponsors with a fiscal year ending on June 30, must submit their data by October 28, (or, with an approved extension, by December 27). Sponsors with a fiscal year ending on December 31, must submit the data by April 29 (or, with an approved extension, by June 29). Sponsors wishing to be considered for AIP discretionary funding earlier in fiscal year must submit their financial data earlier.

2. Review and Reporting Requirements

- a. Within 14 calendar days of receiving the financial data from each grandfathered airport sponsor, ACO will determine whether (and to what degree) the sponsor may have exceeded the statutory limit, and send that information to APP-1, APP-2, APP-500 and APP-520, copying the Regional Airports Division Manager and ADO Manager.
- b. If ACO concludes that there is any level of revenue use in excess of the established limit, then ACO will send a letter to the sponsor within 14 calendar days (**Attachment C**), copying APP-1, APP-2, APP-500 and APP-520, the Regional Airports Division Manager and ADO Manager. That letter will:
 - Outline the revenue use findings;
 - Remind the sponsor of the statutory requirement for the FAA to consider such revenue use findings as a factor militating against discretionary funding; and
 - Invite the sponsor to provide an explanation within 14 calendar days of any special or mitigating circumstances that the sponsor wants the FAA to consider.
- c. Within 14 calendar days of receiving a response from the sponsor, ACO will prepare a determination, including a financial analysis, (along with any supplemental information provided by the sponsor) and forward this information to APP-500.
- d. After completing an annual review of all grandfathered airports, ACO will prepare an annual summary report to ARP-1, APP-1, APP-500 and APP-520, outlining the complete set of analyses for all grandfathered airports for the prior fiscal year.

B. Office of Airport Planning and Programming

1. Grant Administration and Processing

- a. At the beginning of every fiscal year, APP-500 will place all sponsors of "Grandfathered" airports within the Systems of Airport Reporting (SOAR) on "HQ Hold." This is a coordination step preceding to the review and processing of any programmed grants. Additionally, ACO-1 will advise APP-500 if a sponsor listed on the grandfathered airports list (**Attachment A**), is not exercising its rights under the grandfathering provision. APP-500 may then remove the "HQ Hold" designation for such sponsors until the beginning of the next fiscal year.
- b. Within 14 calendar days of receiving the determination and supporting data from ACO, APP-500 will provide a recommendation for consideration by APP-1/-2 and ARP-1/-2, as to whether the FAA should consider awarding any requested AIP Discretionary funds during the current fiscal year. APP-500 will consult with the Region and ADO in preparing this recommendation. Factors to be considered may include, among others:
 1. The magnitude of the excess revenue use;
 2. Explanation received as to the reason(s) for the excess revenue use;
 3. The magnitude of the AIP Discretionary funds requested, in comparison to the amount of excess revenue use;²
 4. The nature of the project(s) for which AIP Discretionary funds are requested (i.e., time-critical safety enhancements versus lower-priority projects); and
 5. Other factors normally considered
- c. Within 14 calendar days of a decision by ARP-1, APP-500 will prepare a memorandum to the file documenting the decision, and provide a copy to the Regional Airports Division Manager and the ADO Manager, for internal documentation only (not for external release). The above process is also summarized in an attached quick reference (**Attachment D**).

IV. Website

ACO will post a listing of all Grandfathered Airports and those grandfathered for aviation fuel taxes, information on what constitutes a grandfather payment, due dates and how payments should be reported on the Airport and Programs Guidance webpage. In addition, ACO will post its Annual Summary Report on the webpage. <https://cats.airports.faa.gov>

Attachments (5)

- 1) Attachment A - Grandfathered Airports Listing and Procedures for Capturing Payments
- 2) Attachment B - Annual Letter to Airport Sponsors from ACO
- 3) Attachment C - Grandfathered Revenue Use Overage Letter
- 4) Attachment D - Summary Outline of Process and Timetable
- 5) Attachment E - Aviation Fuel Tax Grandfathering Action Plans

ATTACHMENT-A
GRANDFATHERED AIRPORTS
May 2018

Pursuant to 49 U.S.C. § § 47107 (b)(2), 47133, and 47115 (f), the sponsors/airports listed below, constitute the Federal Aviation Administration's (FAA) current list of sponsors/airports officially "grandfathered" under the airport revenue use policy.

- Chicago, Illinois
- Denver, Colorado
- Hawaii
- Juneau, City and Borough, Alaska (dormant since 2001, provision expired)
- Maryland Aviation Administration
- Massachusetts Port Authority
- Niagara Frontier Transportation Authority, Buffalo, New York
- Port Authority of New York & New Jersey
- St. Louis, Missouri
- San Francisco, California
- Texarkana Airport Authority, Texas (expired)

What constitutes a Grandfather Payment?

Chicago, Illinois – Vehicle Fuel Tax

In 1981, the City of Chicago (City) imposed a 1 percent sales tax on the purchase of tangible personal property in the City, or outside the City for use in the City. In 1986, the City imposed a \$.05 per gallon tax on the purchase or use, in the City, of vehicle fuel, including aviation fuel. The City deposits the revenue into the City's corporate fund and supports numerous City operations.

Denver, Colorado – Aviation Fuel Tax

Denver initially adopted a \$.04 per gallon fuel tax in 1981, and in 1986 amended the tax to \$.02 per gallon. The fuel tax revenue is not considered airport revenue and is deposited into Denver's general fund.

State of Hawaii – 5% gross receipts tax

A revised 1970 State statute authorized the transfer of a 5 percent surcharge from the airport revenue fund to the State general fund to defray State expenses.

Maryland Aviation Administration- Payments made to the Transportation Trust Fund

In 1970, a State law created the Maryland Department of Transportation (MDOT) responsible for oversight of Maryland transportation facilities and programs, and the MDOT Trust Fund (Fund). Each transportation agency within MDOT, including the Maryland Aviation Administration, must deposit all revenue collected into the Fund.

Massachusetts Port Authority – PILOTS Chelsea, Winthrop, Boston, Seaport deficits/surpluses

In 1956, a State law created MASSPORT, which owns and operates three airports, and directed MASSPORT to make annual payments-in-lieu-of-taxes for the cities of Chelsea, Winthrop and Boston. In addition, Massport reports Seaport surpluses and deficits.

Niagara Frontier Transportation Authority, Buffalo, New York – Payments or obligations made to other NFTA facilities

In 1967, the New York State Legislature created the Niagara Frontier Transportation Authority (NFTA), a multi-modal authority that operates two airports, a bus and light-rail system, and a port terminal. The enabling statute states that NFTA may cross-utilize its revenues to fund any of its operations.

Port Authority of New York & New Jersey – consolidated revenues

St. Louis, Missouri – 5% operating revenues to general fund

A 1954 City of St. Louis (City) ordinance required the airport to pay the City's general fund 5 percent of airport operating revenue annually. The payment was continued in 1968.

San Francisco, California – 15% of non-airline concession revenues per airline agreement

As of 1980, San Francisco's (City's) governing charter called for the transfer of airport revenue to the City's general fund to support other city facilities. Pursuant to a 1981 Settlement Agreement between the airport and airlines, the revenue payment was to be the greater of 15 percent of concession revenues or \$5 million.

ACO-100 Guidance for Capturing Grandfather Payment Data:

Utilizing the FAA's Compliance Activity Tracking System (CATS), sponsors of grandfathered airports must submit their annual financial data to the FAA using Forms 5100-126 and 127 within 120 days of the end of their fiscal year.

- The total grandfather amounts reported should be placed on the "grandfather payments" line on the Form 126, except for City and County of Denver, City of Chicago, and Port Authority of New York and New Jersey.
- City and County of Denver should report this information on the "aviation fuel tax" line.

- The City of Chicago and Port Authority of New York and New Jersey report grandfather payments to the FAA via written correspondence and/or spreadsheets.
- The State of Hawaii has airports that do not meet the criteria for reporting on the Form 126 and must provide that data separately to the FAA. For the purposes of grandfather payment evaluation, the State will provide a worksheet with accrued payment amounts for all 15 grandfathered airports (Honolulu, Hilo, Kaehole, Kahului, Lihue, Hana, Molokai, Kalaupapa, Lanai, Waimea, Dillingham, Kalaeloa, Kapalua, Upolu, and Port Allen).
- State of Maryland must provide its offset payment, the payments made by the Transportation Trust Fund on behalf of Maryland Aviation Administration to the FAA. This amount must be reported on the Form 126 in the “other” category as a negative number, noted as “offsets to grandfathering payment.”

Verification of Payment Amounts:

The airport’s chief financial officer or airport director must certify and validate the financial information transmitted by the airport to the FAA. ACO-100 will on an annual basis verify reported grandfather payments amounts to the airport’s audited financial statements/Single Audits and/or other source documents to ensure the accuracy of the data. ACO-100, at a minimum will randomly select at least 2-3 grandfathered sponsors for verification.

Due Dates for Grandfather Reporting:

Chicago, Illinois	No later than April 30
Denver, Colorado	No later than April 30
Hawaii	No later than October 31
Maryland Aviation Administration	No later than October 31
Massachusetts Port Authority	No later than October 31
Niagara Frontier Transportation Authority	No later than July 31
Port Authority of New York and New Jersey	No later than April 30
St. Louis, Missouri	No later than October 31
San Francisco, California	No later than October 31

Attachment-B

SAMPLE LETTER –SPONSOR REVENUE USE REPORTING

(THIS LETTER SHOULD BE CUSTOMIZED TO THE APPLICABLE SPONSOR)

Airport Sponsor's name
Address

Dear Mxxxxxxx:

As you know, _ (sponsors name) _____ is identified as a grandfathered airport sponsor. Each year in accordance with Federal law, grandfathered airport sponsors must report to the Federal Aviation Administration (FAA) the amount of grandfathered revenues generated by the airport and/or by local taxes on aviation fuel. Under 49 U.S.C. 47107(b)(2) and 47133(b)(1), airports can be found to be grandfathered from the revenue use requirement where local covenants, assurances, or governing laws enacted not later than September 2, 1982 specifically pledge the use of airport generated revenues to support not only the airport but also the general debt obligations or other facilities of the owner or operator.

Under Title 49 United States Code § 47115 (f), the Secretary with delegated authority to the FAA is required to consider a grandfathered airport's excess revenue diversion as a factor militating against the awarding of Airport Improvement Program (AIP) discretionary funds. When an airport exceeds its limit, the Secretary must decide if the excess use of grandfathered revenues should be considered in awarding AIP funds. In such cases, the Secretary may withhold future discretionary AIP funds from the airport. This authority is stated in :

Section 47115(f), Consideration of diversion of revenues in awarding discretionary grants, states:

- (1) General rule.--Subject to paragraph (2), in deciding whether or not to distribute funds to an airport from the discretionary funds established by subsection (a) of this section and section 47116 of this title, the Secretary shall consider as a factor militating against the distribution of such funds to the airport the fact that the airport is using revenues generated by the airport or by local taxes on aviation fuel for purposes other than capital or operating costs of the airport or the local airports system or other local facilities which are owned or operated by the owner or operator of the airport and directly and substantially related to the actual air transportation of passengers or property.
- (2) Required finding.--Paragraph (1) shall apply only when the Secretary finds that the amount of revenues used by the airport for purposes other than capital or operating costs in the airport's fiscal year preceding the date of the application for discretionary funds exceeds the amount of such revenues in the airport's first fiscal year ending after August 23, 1994, adjusted by the Secretary for changes in the Consumer Price Index of All Urban Consumers published by the Bureau of Labor Statistics of the Department of Labor.

As the statute indicates, the base year is an airport's first fiscal year ending after August 23, 1994. For example, an airport whose fiscal year ends on June 30th, the first fiscal year-end after August 23, 1994 would be June 30, 1995. The CPI for the sponsor's fiscal year end will be utilized by the FAA to determine if the grandfathered revenues exceed the statutory limit for each year subsequent to the base year.

Utilizing the FAA's Compliance Activity Tracking System (CATS), sponsors of grandfathered airports must submit their annual financial data to the FAA using Forms 5100-126 and 127 within 120 days of the end of their fiscal year.

What constitutes a Grandfather Payment?

- According to FAA records, [name of grandfathered airport sponsor] Grandfather payment is based on:
[DEFINED IN ATTACHMENT A]

Verification of Payment Amounts:

- The airport's chief financial officer must certify and validate the financial information transmitted by the airport to the FAA. The FAA will periodically verify grandfather payments amounts to the airport's audited financial statements and/or other source documents to ensure the accuracy of the data.

Due Dates for Grandfather Reporting:

- Sponsor's reporting is due no later than [Month, date].
- Sponsors may request an extension of up to 60 days from the above dates, however it may hold up an application for discretionary funding. If the FAA has agreed to permit you to submit grandfathered revenue data outside of Forms 126 and 127, you still must meet the same deadlines.
- Within 14 calendar days of receiving your financial data, the Airports Compliance Division (ACO) will send a letter to [name of grandfathered airport sponsor],
- If the amount of airport revenue exceeds the established limit. [name of grandfathered airport sponsor] must provide an explanation of any special or mitigating circumstances for exceeding the limit within 14 days of receiving notification from ACO.

The FAA will then make a determination based upon your response and provide a recommendation for consideration of awarding any requested AIP Discretionary funds during the current fiscal year. It may take up to 75 calendar days to review the financial data and all other substantiating information once it has been submitted to the FAA and to make the necessary findings before considering an AIP discretionary grant. Therefore, we emphasize that you factor the timeframe involved in this review into your capital planning process.

If you have any questions, please contact XXXXXXXXXXXXXXX at (202) 267-XXXX.

Sincerely,

Kevin C. Willis, Director
Office of Airport Compliance
and Management Analysis

Attachment-C

SAMPLE LETTER - GRANDFATHERED REVENUE USE OVERAGE



U.S. Department of
Transportation
Federal Aviation
Administration

Airport Compliance and Management Analysis

Independence Ave., SW,
Washington, DC 20591

October 6, 2015

Chief Business and Finance Officer
Anywhere International Airport
P.O. Box 1960
Anywhere, XX 12345

Dear XXXXXXX,

Thank you for filing Anywhere International Airport's (PFO) Forms 5100-126 and 5100-127 for the fiscal year 2015, to include your information on grandfathered revenue use.

We reviewed this information to determine if the payment exceeded the base-year adjusted amount. The base-year adjusted amount equals airport revenue used for non-airport purposes in the airport's first fiscal year after 1994, adjusted for the Consumer Price Index. The base-year that is used for the City of Anywhere is the year ending June 30, 1995. Our review found that the City exceeded the adjusted base-year amount of \$22,301,713.

Whenever this occurs, the Federal Aviation Administration (FAA) is required to make a corresponding finding under the criteria provided in Title 49 United States Code § 47115 (f). Specifically, the statute requires the Secretary to consider excess revenue diversion from PFO as a factor militating against the awarding of Airport Improvement Program (AIP) Discretionary funds.

Before making a finding, we are inviting the City to submit an explanation for any special or mitigating circumstances the sponsor would like the FAA to consider. For easy reference, we are enclosing the City's FY 2014 filing and our calculations of the excess amount. For FY 2014, the excess amount is \$11,643,052.

The FAA will consider any information you provide within 14 calendar days of the date of this letter. If you have any questions about the revenue-use provisions, please feel free to contact Mr. _____ of my staff at (202) 267-XXXX.

If you have any questions about AIP Discretionary funding, please contact Manager of the FAA's Airports District Office at (XXXX).

Thank you for your cooperation in this matter.

Sincerely,

Kevin C. Willis, Director
Office of Airport Compliance
and Management Analysis

Enclosure

cc: Director, Anywhere International Airport
Associate Administrator for Airports
Director, Office of Airport Planning and Programming
Manager, Airports Financial Assistance Division, APP-520
Director, Regional HQ, Airports Division
Manager, Airports District Office

Attachment D

SUMMARY OUTLINE OF PROCESS AND TIMETABLE

Annual Date:	Necessary Action	Responsibility of:
October 1	Advise APP-500 if any designated sponsors are not exercising grandfathering rights	ACO
October 15	Place remaining sponsors on "HQ Hold" in SOAR	APP-500
October 28	Normal deadline for submission of financial data-sponsors with fiscal year ending June 30)	Sponsor
December 1	Prepare current template for standard advisory letter to sponsors - (Alert RO/ADO of upcoming requirements)	ACO
December 15	Send standard letter to sponsors (per template from ACO)	Region or ADO
December 27	Extended deadline submission of financial data-sponsors with fiscal year ending June 30	Sponsor
April 29	Normal deadline for submission of financial data-sponsors with fiscal year ending December 31	Sponsor
June 29	Extended deadline for submission of financial data-sponsors with fiscal year ending December 31	Sponsor
Submission date +14	Determine if sponsor has exceeded grandfathered limit	ACO
Submission date +28	Where sponsor has exceeded limit, send sponsor a letter requesting explanation	ACO
Submission date +42	Sponsors provides explanation	Sponsor
Submission date +56	Send determination to APP-500	ACO
Submission date +70	Provide recommendation to APP-1/-2 and ARP-11-2.	APP-500
Submission date +84	Prepare record memorandum to the file	APP-500

Attachment-E

Aviation Fuel Tax Grandfathering Action Plans*

The FAA Policy and Procedures Concerning the Use of Airport Revenue; Proceeds From Taxes on Aviation Fuel, (79 Fed. Reg. 66282, November 7, 2014) (Amendment) provides that proceeds from taxes on the sales of aviation fuel (imposed by either an airport sponsor or a non-sponsor) are required to be used for airport-related purposes except for taxes that qualify for grandfathering from revenue use requirements. State taxes on aviation fuel may also be used for a state aviation program.

Taxes on aviation fuel that qualify for grandfathering are state or local taxes on aviation fuel in effect on December 30, 1987. Any amendments of the grandfathered tax statutes that make substantive changes after December 30, 1987 do not qualify for continued grandfathered status. The FAA will need to receive justification from state and local taxing authorities to make a determination of the grandfathered status of existing state and local taxes in effect on December 30, 1987.

The guidance provided in the following scenarios should assist sponsors and non-sponsors to determine an appropriate course of action and/or development of an action plan for aviation fuel taxes that may or may not qualify for grandfathered status:

- (1) State and/or local tax statute in effect on December 30, 1987, and has been amended forward requiring that funds be used for airport or state aviation purposes – no grandfathering issue; statement from entity confirming use of taxes in compliance with the law.
- (2) State and/or local tax statute in effect on December 30, 1987 or thereafter, exempts aviation fuel tax –no grandfathering issue; statement from entity confirming the use of taxes in compliance with the law.
- (3) State and/or local tax statute in effect on December 30, 1987 without any changes since enactment; proceeds used for other than airport purposes; and no current grandfathering determination - submit action plan providing written justification why tax on aviation fuel qualifies for grandfathered status, with the following:
 - a. True and correct copies of original legislation and/or tax code and summary explanation of law reflecting tax was in effect on December 30, 1987, and unchanged;
 - b. Document identifying the purpose and applicability of the tax, the use of proceeds, any administrative costs charged for the collection and allocation of the proceeds of the aviation fuel tax;
 - c. Document must identify the tax rate or rates, credits, or exemptions; and
 - d. Document detailing commitment to advise of any subsequent amendments that could affect grandfathered status.

(4) State and/or local tax statute in effect on December 30, 1987 and amended in subsequent periods, proceeds used for other than airport purposes, and no current grandfathering determination – submit action plan providing written justification why tax on aviation fuel qualifies for grandfathered status for portion of tax in effect on December 30, 1987, with the following :

- a. True and correct copies of original legislation and/or tax code and summary explanation of law reflecting tax was in effect on December 30, 1987 and the amendments;
- b. Document identifying the effective date of the aviation fuel tax, the purpose and applicability of the tax, the use of the proceeds, any administrative costs charged for the collection and allocation of the proceeds of the aviation fuel taxes;
- c. Document identifying the tax rate or rates, credits, or exemptions; and
- d. Document detailing commitment to advise of any subsequent amendments that could affect grandfathered status.

(5) State and/or law tax statute not in effect on December 30, 1987, and not eligible for grandfathered status – submit action plan to correct non-compliant law with the following:

- a. True and correct copies of the legislation and/or tax code, and summaries of the legislation creating the tax on aviation fuel;
- b. Document identifying the effective date of the aviation fuel tax, the purpose and applicability of the tax, use of the proceeds, and any administrative costs charged for the collection and allocation of the proceeds of the aviation fuel taxes;
- c. Summaries of any amendments and/or recodifications of the tax code;
- d. Document identifying the tax rate or rates, credits, or exemptions; and

Detail the commitment to undertake the legislative process, including the process necessary to develop reporting requirements and tracking systems to provide for discrete information on aviation fuel tax revenues, and disclosure of a reasonable transition period (not to exceed three years) to implement the necessary processes to become compliant with the Amendment.