



# Federal Aviation Administration

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## Memorandum

Date: May 16, 2012

To: ACO-100, Regional and Airports District Office Managers, 610 Branch Managers, and Regional Compliance Specialists

From: Randall S. Piertz, Director, Airport Compliance and Management Analysis

Subject: Compliance Guidance Letter 2012-01:  
FAA Implementation of Public Law 112-95 Section 813, Use of Mineral Revenue at Certain Airports

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### I. SUMMARY AND DEFINITIONS

On February 14, 2012, the President signed Public Law 112-95, also known as the FAA Modernization and Reform Act of 2012 (the Act). Section 813 of the Act, *Use of Mineral Revenue at Certain Airports*, grants the FAA Administrator the authority to exempt a defined amount of airport revenue generated from mineral extraction activities on general aviation airports from statutory, grant assurance, and policy obligations if specific conditions are met. This Compliance Guidance Letter (CGL) provides guidance to FAA's Airports personnel and FAA block grant state personnel responsible for general aviation airports requesting exemptions in accordance with Section 813.

#### A. Summary

The purpose of this Compliance Guidance Letter is twofold: (1) to meet the requirements set forth in Section 813(e) of the Act, which requires FAA to promulgate regulations to carry out this section not later than 90-days from the date of enactment. Accordingly, FAA published the Notification of Modification of Airport Improvement Program grant assurances on April 13, 2012, which modified Grant Assurance 25, *Airport Revenues*, to reflect this new statutory provision; and (2) to provide guidance to FAA personnel, block grant state personnel (where applicable), and airport sponsors, regarding the agency's methodology for implementing the provisions of Section 813.

The goal of this CGL is to ensure the conditions of the statute allowing the exemption of certain revenue are met in an expeditious and transparent manner. Section 813(d) of the Act provides FAA with 90 days to review a sponsor's "application and requisite supporting documentation" and make a determination. Therefore, FAA developed standardized procedures contained in this CGL for processing sponsor requests efficiently and consistently. This guidance provides

transparency and standardization to better assist airport sponsors and agency staff in developing and submitting an exemption application that meets the statutory threshold of “requisite supporting documentation.”

FAA’s intent in providing this guidance is to outline what is required for FAA review, using uniform procedures, to meet the statute’s 90-day turnaround timeline to make a determination. Statute specifically conveyed the authority to exempt certain revenue to the FAA Administrator. Subsequently, the Administrator has delegated this authority to ACO-1 with the issuance of this guidance.

## **B. Definitions**

For the purposes of this CGL, the following definitions apply:

- Airport Sponsor – As prescribed in 49 U.S.C. §47102.
- NPIAS – or National Plan of Integrated Airport Systems. Title 49 of United States Codes (USC) § 47103 requires the Secretary of Transportation to maintain a plan for developing public-use airports in the United States deemed to be significant to national air transportation and, therefore, eligible to receive AIP grants. The plan includes the kind and estimated cost of eligible airport development considered necessary to provide a safe, efficient, and integrated system of public-use airports. The plan identifies all projects meeting these requirements without constraints based on available funding.
- General Aviation Airport – Section 132(c) of the Act, AIP Definitions, amended Title 49 of United States Code Section 47102, by designating paragraph 8 to state the following:

*general aviation airport’ means a public airport that is located in a State and that, as determined by the Secretary—*

*“(A) does not have scheduled service; or*

*“(B) has scheduled service with less than 2,500 passenger boardings each year.”*
- Capital Improvement Program. In this document, the term capital improvement program is used to capture FAA’s planning and programmatic processes. In this respect, Capital Improvement Program should reflect the airport capital improvement plan (ACIP) which includes projects to be funded, as well as unconstrained capital improvement projects that have been identified by the airport sponsor in the most recent NPIAS Report to Congress.

## **II. BACKGROUND**

This section addresses which airports are subject to the statutory requirements governing airport revenue use and how to determine if an airport is eligible to request certain airport revenue be exempted under the provisions contained in Section 813.

## **A. Airport Revenue Use Obligations**

The Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified, 49 U.S.C. § 47101, et. seq., provides for federal airport financial assistance for the development of public use airports under the Airport Improvement Program (AIP). Title 49 U.S.C. § 47107 sets forth conditions that FAA must include in every grant agreement defining the conditions the sponsors accepts in exchange for receiving federal financial assistance.

An airport sponsor's revenue use obligations are codified under 49 U.S.C. §§ 47107(b) and 47133, which states in pertinent part:

*The Secretary of Transportation may approve a project grant application under this subchapter for an airport development project only if the Secretary receives written assurances, satisfactory to the Secretary, that local taxes on aviation fuel (except taxes in effect on December 30, 1987) and the revenues generated by a public airport will be expended for the capital or operating costs of—*

- (A) the airport;*
- (B) the local airport system; or*
- (C) other local facilities owned or operated by the airport owner or operator and directly and substantially related to the air transportation of passengers or property.*

These statutory obligations also are memorialized on an airport sponsor's grant agreements, specifically Grant Assurance 25, *Airport Revenues*, which states in pertinent part:

*All revenues generated by the airport and any local taxes on aviation fuel established after December 30, 1987, will be expended by (the sponsor) for the capital or operating costs of the airport; the local airport system; or other local facilities which are owned or operated by the owner or operator of the airport and which are directly and substantially related to the actual air transportation of passengers or property; or for noise mitigation purposes on or off the airport.*

In accordance with Section 813 and other applicable provisions of the FAA Modernization and Reauthorization Act of 2012, FAA published a Notice of Modification of Airport Improvement Program grant assurances in the Federal Register (77 FR 22376), on April 13, 2012. This Notice included the statutorily mandated amendment to Grant Assurance 25, *Airport Revenues*, to recognize the provisions Section 813. Specifically, paragraph a(3) was added to Grant Assurance 25, which now reads:

*Certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport (as defined at Section 47102 of title 49 United States Code), if the FAA determines the airport sponsor meets the requirements set forth in Section 813 of Public Law 112-95.*

Additionally, airport sponsors that are obligated by surplus airport property instruments of transfer, issued pursuant to section 13g of the Surplus Property Act of 1944, also must comply with airport revenue use requirements as may be specified in the transfer instruments.

All land purchased with AIP grants and most surplus property deeds of conveyance include the obligation to operate the airport property as an airport in perpetuity. Additionally, there are three assurances for which sponsors' obligations continue without limit as long as the airport is used as a public use airport: Grant Assurance 23, *Exclusive Rights*; Grant Assurance 25, *Airport Revenues*; and Grant Assurance 30, *Civil Rights*.

## **B. Definition of Airport Revenue to include Mineral Rights Revenue**

In 1999, at the direction of Congress, FAA published its final Policy and Procedures on the Use of Airport Revenue (64 FR 7696) (Revenue Use Policy). Congress specifically directed FAA to define airport revenue and identify permitted and prohibited uses. The final Policy is also based on consideration of comments received on two notices of proposed policy issued by FAA in February 1996 and December 1996, which were published in the Federal Register for public comment. In both of the two notices of proposed policy, FAA included royalties from mineral extraction on airport property earned by a sponsor in the definition of airport revenue. The final policy, published on February 16, 1999 retained this definition. As directed by Congress, all airports with active obligations as of October 1, 1996, including land obligations, are subject to the Revenue Use Policy and the "revenue-use requirement remains in effect as long as the airport functioned as an airport." [64 FR 7698]

Under the FAA Modernization and Reform Act of 2012, Congress confirmed FAA's interpretation that mineral rights revenue is airport revenue by providing a provision to allow certain revenue from mineral rights to be exempted from the statutorily required use. In the Act, Congress mandated FAA implement Section 813, Use of Mineral Revenue at Certain Airports, within ninety days of passage of the Act. This provision allows the FAA Administrator to declare certain revenue derived from mineral extractions on airport property to be used for other transportation purposes not related to the airport.

## **III. IMPLEMENTATION**

### **Use of Mineral Revenue at Certain Airports.**

#### **A. Public Law Overview**

Section 813 of the FAA Modernization and Reform Act of 2012 (the Act) grants FAA the authority to declare certain airport revenue, derived from mineral extraction activities on airport property, to be exempted from the above referenced statutory requirements and grant assurance obligation, and if applicable, surplus transfer instrument stipulations, when certain conditions are met and for specific uses.

The Act states:

*The Administrator of the Federal Aviation Administration may declare certain revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport to be revenue greater than the amount needed to carry out the 5-year projected maintenance needs of the airport in order to comply with the applicable design and safety standards of the Administration.”*

The Use of the Revenue [Section 813(b)] is limited to:

*Federal, State, or local transportation infrastructure projects carried out by the airport sponsor or by a governing body within the geographical limits of the airport sponsor’s jurisdiction.*

This CGL sets forth guidance to ensure airport sponsors requesting exemptions under this provision meet the thresholds and conditions identified in statute. Specifically, the legislation requires certain conditions be fulfilled before FAA may determine if the sponsor is eligible to exempt certain revenue from mineral extractions as well as identify the amount of revenue that may be exempted. These include: 1) creating a five-year capital improvement program with specific parameters; 2) agreeing to certain conditions; and 3) complying with all grant assurance obligations.

These three conditions airport sponsors must meet in accordance with Section 813 (capital improvement program, agreements, and compliance) are defined in Sections III. B and C of this guidance. To review the legislative language contained in Public Law 112-95, Section 813, see Appendix A-1.

## **B. Implementation Procedures – Capital Improvement Program**

Section 813 of the Act provides FAA with the authority to declare certain revenue generated from mineral extraction and related leases and activities at general aviation airports to be in excess of the airport’s five-year capital needs and thereby eligible for certain projects identified in the statute. The legislation includes specific conditions that must be met prior to FAA granting an exemption. This subsection, and Appendix B-1, Sponsor Submission Application, provides procedural guidance for FAA staff to work with airport sponsors to meet the statutory requirement regarding the condition specifically requiring the airport and the FAA develop and agree to a five-year capital improvement program.

Specifically, Section 813(c)(1)(A-B) of the Act requires the airport sponsor:

*[to enter] into a written agreement with the Administrator that sets forth a 5-year capital improvement program for the airport, which*  
*(A) includes the projected costs for the operation, maintenance, and capacity needs of the airport in order to comply with applicable design and safety standards of the Administration; and*  
*(B) appropriately adjusts such costs to account for inflation.*

FAA has created a sponsor submission application (see Appendix B-1) to assist sponsors in filing a complete application with “requisite supporting documentation” in accordance with statutory requirements. The items identified in the application will enable airport sponsors to develop a complete five-year capital improvement program in conformance with the legislation. As prescribed by statute, the capital improvement program must include costs to operate and maintain the airport for the five-year period of the proposed capital improvement program. To quantify projected operational costs, the capital improvement program submission should also include airport financial reports presenting the airport’s operational and non-operational expenses and revenues, and changes in net assets for the last two complete fiscal years based upon actual expenditures. FAA may request corresponding Statements of Cash Flow for each of the two fiscal years submitted at a later date if the submission appears to contain discrepancies.

The application captures the statutory requirements set forth in Section 813 and mirrors existing FAA procedures for determining long-term airport planning needs to develop capital improvement programs. Determining the amount of revenue that may be exempted under these legislatively directed conditions will be addressed under Section III.E. of this CGL.

NOTE: FAA’s Block Grant State partners (BGS) will develop the five-year capital improvement program with sponsors as required under their agreements<sup>1</sup> with FAA. However, the statute specifically reserves the authority to enter into five-year capital improvement program agreements precipitating revenue use exemptions for the Administrator. See Section III.F. of this CGL for a detailed explanation of internal implementation steps, procedures, and timelines for FAA and block grant state personnel.

- See Appendix B-1 for the *Sponsor Submission Application*.

### **C. Implementation Procedures – Agreements & Compliance.**

In accordance with the legislative requirements detailed in Subsection A above, an airport sponsor requesting an exemption under Section 813 of Public Law 112-95, *Use of Mineral Revenue at Certain Airports*, must submit an executed copy of the *Sponsor Agreements* [see, Appendix C-1], to FAA with the documentation detailed in Subsection B above and found in Appendix B-1 of this guidance. The *Sponsor Agreements* include clauses pertaining to the sponsor’s liability, funding waiver, revenue use, and airport use.

- See Appendix C-1, for the *Sponsor Agreements*.

In accordance with Section 813(c)(2)(A), entitlement and discretionary funding eligibility will be suspended beginning on the date the Exemption Agreement is executed or takes effect. An agreement should be effective upon execution unless the sponsor has a specific and eligible purpose for extending the commencement of the exemption period. Entitlement accruals will be pro-rated according to the execution/exemption date. [E.g., if the execution/exemption date is December 16, 2012, the airport may be eligible to begin accruing non-primary entitlement funds on December 17, 2017, provided the terms of the Exemption Agreement have been satisfied.]

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<sup>1</sup> As prescribed in 14 C.F.R. Part 156

ONGOING PROJECTS: An ongoing project is a project that is already included in an executed grant agreement but all funds have not been reimbursed to the sponsor as of the date the Exemption Agreement is executed. This includes entitlement or discretionary funds. On the date the Exemption Agreement is executed, the Office of Airport Compliance (ACO-100) will notify the Office of Airport Planning and Programming - Airports Financial Assistance Division (APP-500) that the sponsor is not eligible for new grants until the date the Exemption Agreement expires. APP-500 will note in SOAR that the airport sponsor is participating in the Mineral Rights Revenue Exemption program; accordingly, the sponsor voluntarily has agreed to waive its rights to receive all grants during the exemption period. The airport sponsor may not receive new grants until ACO-100 notifies APP-500 the terms of the Exemption Agreement have been satisfied. With respect to existing grants, open projects will be completed as programmed. Any funding used towards ongoing projects that had not already been accrued by the airport sponsor will be prorated after the Exemption Agreement expires.

In addition, Section 813(c)(3) of the Act requires the airport sponsor comply with all grant assurance obligations in effect as of the date of the exemption during the 20-year period beginning on the date of exemption. In assessing an airport sponsor's proposal to exempt certain revenue, FAA will review the documentation submitted by the sponsor in accordance with Appendix B-1, *Sponsor Submission Application*, to ensure its proposed five-year capital improvement program is also compliant with the sponsor's grant assurance obligations as required by Section 813 paragraphs (a) and (c) of the Act. The Sponsor Agreements in Appendix C-1 include a clause pertaining to this legislative requirements.

- See Appendix C-1, *Sponsor Agreements*.

#### **D. Application of Proceeds from Exempted Revenue.**

Section 813(b) of the Act states that the use of the revenue identified to be exempted under this provision must be limited to:

*Federal, State, or local transportation infrastructure projects carried out by the airport sponsor or by a governing body within the geographical limits of the airport sponsor's jurisdiction.*

Accordingly, this guidance explains the information the airport sponsor must submit with its application for FAA to determine if the proposed project(s) meets the conditions set forth in statute. Appendix D, *Sponsor Project Identification Statement*, will assist airport sponsors in identifying eligible projects and providing the necessary documentation to meet the thresholds set by statute for the use of the exempted revenue.

- See Appendix D-1 for the *Sponsor Project Identification Statement*, which includes Table D, *Sponsor Project Identification Statements and Details*.

As part of the sponsor's submissions, FAA will require airport sponsors affirm that projects proposed to be funded using the exempted revenue are not also being funded with federal, state, or local grants unless specifically identified and the funding is not duplicative. If the overall cost of the project exceeds the exempted amount, the difference may be supplemented with such grants; however, the airport sponsor must verify that it will not apply for or accept public funds from other sources towards the costs included in the exemption proposal.

Finally, FAA will require the airport sponsor provide annual financial statements stating the revenue used to date and remaining funds available. Any differential from the total amount exempted versus the actual costs of the projects will be subject to recovery and returned to the airport's account. If the amount requested exceeds the actual costs by more than 20%, FAA may request reimbursement or application of the excess funds towards another eligible project. If the amount requested did not cover the entire cost of the project, FAA will meet with the sponsor at the sponsor's request to determine if additional revenue may be exempted.

□ See Appendix F-1 for *Sponsor Annual Project Financial Statement*

#### **E. FAA Completion of Action on Sponsor Applications.**

Section 813(d) requires that FAA make a determination on whether the airport sponsor's request for exemption shall be granted:

*not later than 90 after receiving the airport sponsor's application and requesting supporting documentation.*

In implementing this provision of Public Law 112-95, FAA has created this CGL, and specifically subsections III.B-E and associated Appendices, to provide FAA and block grant state personnel with guidance to assist airport sponsors in submitting complete applications and requisite documentation to meet statutory requirements. This subsection will detail the steps FAA and block grant states should take to coordinate with airport sponsors to obtain the "requisite documentation," as well as define the internal review process that will ensure FAA and block grant states meet the statutory time limits. This section is intended to make the review process transparent and assistive to implement the statute more effectively.

#### *Sponsor Submissions and Notifications -*

Airport sponsors interested in and eligible for the exemption should contact their assigned FAA program/project manager (PM) for airport planning and programming purposes. The FAA PM will notify ACO-100 promptly. The FAA PM will begin working with airport sponsors interested in and eligible for the exemption to develop the proposed five-year capital improvement program inclusive of the items identified in the application in Appendix B-1.

FAA's block grant state partners that received requests from airport sponsors interested in and eligible for the exemption should notify ACO-100 promptly. The block grant state immediately will begin working with the airport sponsors to develop a five-year capital improvement program inclusive of the items identified in the application in Appendix B-1.

## 1. FAA or Block Grant State Program/Project Manager Roles -

At such time when the FAA or block grant state program/project manager (PM) has completed the capital improvement program process with the sponsor as prescribed in Appendix B-1, the FAA or block grant state PM should advise the sponsor to submit the following items to the PM:

- Proposed five-year capital improvement program including documentation prescribed in Appendix B-1, *Sponsor Submission Application*
- Executed copy of Appendix C-1, *Sponsor Agreements*
- Executed copy of Appendix D-1, *Sponsor Project Identification Statement*
  - *with completed Table D, Sponsor Project Identification Statements and Details*

Upon receipt of these items, the FAA or block grant state PM will advise the sponsor within 10 days whether all documentation required has been submitted. If the documentation is not sufficient, the FAA or block grant state PM will advise the airport sponsor of any deficiencies.

If the FAA or block grant state PM concurs with the sponsor's proposed five-year capital improvement program, the FAA or block grant state PM will forward the packet to the Regional Program Manager<sup>2</sup> for this program.

If the FAA or block grant state PM does not concur with the proposed five-year capital improvement program submitted, the FAA or block grant state PM will advise the sponsor within 10 days of receipt of the package. The sponsor and FAA or block grant state may continue to work on the capital improvement program or the sponsor may appeal the FAA or block grant state PM's decision to the designated regional contact.

## 2. FAA Airport Regional Division Managers/Regional Program Managers Roles -

Each ARP-600 division manager is required to assign a Regional Program Manager (RPM) for this program. Within 10 days of receiving the packet from the FAA or block grant state PM, the RPM will determine if the application and documentation submitted in the packet by the sponsor is substantially complete. The RPM will notify the airport sponsor if the packet is substantially complete or if it is deficient within those 10 days. If the RPM determines any part of the submission is deficient, the notification to the sponsor will cite the deficiencies. The notification letter will serve only as a notice whether or not FAA has found the airport sponsor's application and documentation to be substantially complete. If found to be complete, the notice will trigger for the 90-day clock for FAA to make a final determination. The notice of substantially complete is not a final FAA determination or "order" within the meaning of 49 U.S.C. § 46110.

When the RPM determines the packet is substantially complete, the RPM must send the entire contents of the packet to ACO-100<sup>3</sup> within two (2) days of sending the sponsor notification letter. The RPM must send the following (electronically and hard copies) to FAA's Office of Airport Compliance (ACO-100):

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<sup>2</sup> Each region's Airport Division Manager (600) will assign a Regional Program Manager (RPM). The 600 and designated RPM will determine internal regional processes for reviews, and communicate its processes to ACO-100. It is recommended 600's sign notifications advising sponsors submissions are substantially complete.

<sup>3</sup> Contact the Office of Airports Compliance Division at 202 267 3085 to determine the appropriate program lead within this office.

- The proposed five-year capital improvement program.
- All appendices noted above (B1, C-1, D-1 with Table D).
- FAA or block grant state program/project manager's cover letter concurring with or objecting to the proposed five-year capital improvement program. Cover letter from the designated regional contact stipulated concurrence or objection to the proposed five-year capital improvement program.

### 3. ACO-100 Role –

ACO-100 must receive the entire submission packet, at least by electronic means, within 2 days of the designated regional contact notifying the sponsor that the submission is substantially complete. ACO-100 will review the submissions to ensure they meet statutory requirements.

ACO-100 will work with the FAA or block grant state PM and/or the designated regional contact providing the recommendation or objection to make a final assessment. ACO-1 will notify the sponsor of the agency's determination no later than 90 days after the sponsor was notified its application was substantially complete.

If the FAA or block grant state PM and/or the designated regional contact objected to the sponsor's proposed five-year capital improvement program, ACO-100 will work within the agency and with the sponsor to attempt to resolve discrepancies.

If ACO-1 finds the application is consistent with statute, the Director will notify the sponsor the amount of revenue deemed eligible for diversion under this provision. With the formal notification letter, the Director will include the following

- A copy of the final agreement (See Appendix E-1, *Final Determination – Exemption Agreement*)

FAA will deem the exemption complete upon receipt of the signed and executed *Final Determination – Exemption Agreement* (Appendix E-1) from the airport sponsor. Within 5 days of receipt, ACO-100 will notify APP-500 the agreement has been completed. APP will take the necessary steps to ensure SOAR reflects FAA's estimate of development for this airport over the next five (5) years shows \$0.00. In accordance with statute, APP-500 will ZERO out the airport's five-year needs to ensure they earn \$0 NPE funds and are ineligible for discretionary under AIP.

### **F. Scope and Applicability.**

Under this policy, as prescribed by the enabling legislation, an airport sponsor may only request to exempt revenue derived from or generated by mineral extraction, production, lease, or other means at a general aviation airport as defined in statute by PL 112-95, Section 132(c).

Revenue generated from other sources is not eligible for exemption under this provision.

FAA will review only applications received from sponsors of general aviation airports, as prescribed in statute and cited in the definitions section of this CGL. Requests received by a non-sponsoring body or non-General Aviation Airport sponsor will not be reviewed.