



Federal Aviation Administration

Memorandum

Date: March 4, 2022

To: Office of Airports Regional Directors, AXX-600s; Airport Planning & Programming, AXX-610s; Airports District Office Managers, XXX-ADOs.

From: Robert Craven, Director
Office of Airport Planning and Programming, APP-1

Robert John Craven

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Date: 2022.03.04 14:30:17 -05'00'

Subject: **Updated Reauthorization Program Guidance Letter (R-PGL) 19-03:
Airport Types and Eligibility**

This Reauthorization Program Guidance Letter (R-PGL) 19-03 explains and implements provisions in the FAA Reauthorization Act of 2018 (the 2018 Act) (P.L. 115-254), which amends and expands airport types and eligibility under 49 U.S.C. Chapter 471 (the primary statutory provision governing the Airport Improvement Program (AIP)). This R-PGL is directed to Office of Airports' staff for the purpose of helping them implement statutory changes. This R-PGL is not legally binding in its own right and will not be relied upon by the FAA as a separate basis for affirmative enforcement action or other administrative penalty. This R-PGL has been updated to reflect changes due to the Friendly Airports for Mothers Improvement Act (P.L. 116-190) enacted on October 30, 2020.

This R-PGL includes analyses and implementation strategies for the following topics and bill Sections:

Bill Section(s)	Topic	49 USC Section(s) impacted
131(1)	Grant Assurances, Qualifications Based Selection	47107(a)(17)
131(2)	Grant Assurances, Competition Plans	47107(r)(3)
131(3)(u)	Grant Assurances, Construction of Recreational Aircraft	47107(u)
131(3)(v)	Grant Assurances, Community Use of Airport Land	47107(v)
132	Mothers' Rooms ¹	47107(w), 47119(a)
134	Government Share of Project Costs	47109(a)
135	Updated Veterans' Preferences	47112(c)
137	Former Military Airports (MAP)	47118(a)
151(F)	Small Airport Regulation Relief (Changes to Virtual Primary)	47114(c)(1)(F)

¹ Further modified by S. 2630, Friendly Airports for Mothers Improvement Act (P.L. 116-190)

Bill Section(s)	Topic	49 USC Section(s) impacted
151(G)	Small Airport Regulation Relief (Virtual Primary Waivers)	47114(c)(1)(G)
151(H)	Small Airport Regulation Relief (Nonprimary Commercial Service Tier 1)	47114(d)(1)(H)
155	General Aviation Airport Expired Funds	47117(b)
160	Airport Investment Partnership Program	47134; 47102
162(1)	Airport Access Roads in Remote Locations (ARFF and SRE Buildings)	FY19-FY23 only, not codified in statute
162(2)	Airport Access Roads in Remote Locations (SRE Building Exception)	FY19-20 only, not codified in statute
162(3)	Airport Access Roads in Remote Locations (Access Roads)	47102(28)
164	Seasonal Airports	47114(c)(1)
165(1)(C)(R)	Amendments to Definitions (Airport Investment Partnership Program)	47102(R)
165(2)	Amendments to Definitions (Airport Planning)	47102(5)
165(3)	Amendments to Definitions (General Aviation Airport)	47102(8)
167	Buy America Requirements	50101

Summary of Changes

The Friendly Airports for Mothers Improvement Act (P.L. 116-190), enacted on October 30, 2020, expands upon the requirements in section 132 of the 2018 Act. Section 132 required Large and Medium hub airports to certify they have Mothers' Rooms that meet the statutory definition and obligations prior to receiving a grant beginning in FY 2021. The amendments in P.L. 116-190 expanded these requirements to applicable Small hub airports, which must certify they meet the statutory definitions and obligations prior to receiving a grant beginning in FY 2023.

Please note that this R-PGL update reflects changes made only to the requirements of section 132. All other sections remain unchanged from the version of this R-PGL as originally published.

Section 131(1), Grant Assurances, Qualifications-Based Selection.

Section 131(1) amends 49 U.S.C. § 47107(a)(17), by expanding the scope of qualifications-based selection (QBS) requirements for consultant-based projects receiving AIP funding. If any phase of a project received or may receive AIP funding as identified on the airport's capital plan, QBS must be applied to all consultant-based contracts and subcontracts for program management, construction management, planning studies, feasibility studies, architectural services, preliminary engineering, design, engineering, surveying, mapping, and related services, in addition to architectural and engineering services. Grant assurance 32, engineering and design services, will be amended to reflect this change.

Moving forward:

In administering AIP grants, ROs/ADOs will work with airport, planning and noise compatibility sponsors to explain the changes in the statute as they have a direct impact on grant awards.

QBS must be applied for consultant-based project contracts if:

- The contract to be awarded is for a project that is AIP funded.

- The contract to be awarded is for a project that is not AIP funded but the project is part of a multi-phase project that has AIP funding at any point.

QBS is not required for consultant-based projects if:

- A project is a stand-alone project that is not AIP funded.
- A project is part of a multiphase project that is not AIP funded at any point.

NOTE: A multi-phase project is one in which there are multiple components. For example: a runway project with planning, environmental, design, and construction. This may include projects such as facility relocation and demolition, followed by mass grading and drainage; paving; and then signage, marking, lighting and electrical.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect these changes. The grant assurances also will be amended to reflect this change. Until that time, the grant agreement in SOAR has been amended to include “2018 FAA Reauthorization.”

Section 131(2), Grant Assurances, Competition Plans.

Section 131(2) amends 49 U.S.C. § 47107(r)(3), by extending the Competition Plan requirements for medium and large hub airports through FY 2023. There are no changes to eligibility or program rules. This change also extends applicability of grant assurance 39, competitive access, through FY 2023.

Moving forward:

This provision does not change how grants are administered through FY 2023. The same eligibility rules apply. All relevant provisions in the current version of the AIP Handbook are applicable except for the expiration date and the location of this provision in the statute; the competition plan requirements remain in § 47106(f) and the competition plan disclosure requirement is found in § 47107(r).

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect these changes. The grant assurances do not need to be amended because they do not include an expiration date; however, grant assurance 39 remains applicable and enforceable through FY 2023.

Section 131(3)(u), Grant Assurances, Construction of Recreational Aircraft.

Section 131(3) adds paragraph (u) to 49 U.S.C. § 47107, which permits the construction of certain recreational aircraft to be considered aeronautical use for the purposes of compliance with an airport sponsor’s grant assurance obligations and eligibility for AIP funding. This provision only applies to an aircraft constructed or under construction by a private individual at a general aviation airport.

Moving forward:

The Office of Airport Compliance and Management Analysis (ACO) oversees airport sponsor compliance with its grant assurance obligations. RO/ADO personnel should direct questions and concerns regarding this provision to ACO.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect this change.

Section 131(3)(v), Grant Assurances, Community Use of Airport Land

Section 131(3) adds subparagraph (v) to 49 U.S.C. § 47107, which permits community use of airport land for less than fair market value provided specific conditions are met::

The agreement permitting the community use must:

- Have been initially entered into with the airport sponsor before February 16, 1999;
- Be between the sponsor and a local government providing for the use of airport property for an interim compatible recreational purpose at below fair market value;
- Be subordinate to any existing or future agreements between the sponsor and the FAA, including agreements related to a grant assurance under this section; and
- Must include a term of not more than 2 years to prepare the airport property for the interim compatible recreational purpose and not more than 10 years of use for that purpose.

The land upon which the community use will exist must be:

- Located on airport property that was acquired under a Federal airport development grant program.

The airport sponsor must:

- Provide a written statement to the RO/ADO that the property made available for a recreational purpose will not be needed for any aeronautical purpose during the next 10 years;
- Provide a certification that the sponsor is not responsible for preparation, start-up, operations, maintenance, or any other costs associated with the recreational purpose; and
- Ensure the recreational purpose will not impact the aeronautical use of the airport.

The recreational purpose must be:

- consistent with Federal land use compatibility criteria under section 49 U.S.C. § 47502

Section 131(3) also reaffirms that the statutory prohibition on the diversion of airport revenue applies to the capital or operating costs associated with the community use of airport land. In other words, if the entity operating the community-use recreational facility on an airport is charging fees for access, spectators, parking, etc., such revenues are considered airport revenue.

Moving forward:

Subparagraphs (1)-(2) of 49 U.S.C. § 47107(v) permit limited community use (i.e., a use for an “interim compatible recreations purpose”) that may otherwise be prohibited by 49 U.S.C. § 47107(a)(13), which is the statutory basis for grant assurance 24, fee and rental structure.

Section 47107(a)(13) requires that an airport sponsor impose a fee and rental structure to make the airport as self-sustaining as possible. This requirement is explained in the FAA’s Policy and Procedures Concerning the Use of Airport Revenue (64 FR 7696) (Revenue Use Policy). Congress directed the FAA to issue the Revenue Use Policy to adopt policies and procedures to assure compliance with both the revenue use and self-sustainability requirement. See Public Law 103-302, Section 112 (1994). The final Policy does permit limited community use exceptions to this requirement.

If an airport sponsor has an existing community use agreement that meets the terms prescribed above (in the statute), the FAA will not find the sponsor in non-compliance of its grant assurance obligations. This provision is limited in scope and does not apply to agreements initially entered into after February 16, 1999.

At this time, the FAA is only aware of one sponsor with an agreement meeting these statutory requirements. ROs/ADOs should contact ACO with questions.

This provision also creates Section 47107(v)(3), which reinforces the statutory prohibition on the diversion of airport revenue for the capital or operating costs associated with the community use of airport land. For example, the airport sponsor may not use airport revenue to mow the land, restore the land for community use, or fund or perform operations or maintenance of any aspect of the community use. The costs associated with these activities must be paid by the local government using the property.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook, (FAA Order 5100.38D Change 1) in its next version to reflect these changes.

Section 132, Mothers' Rooms.

Section 132(a) adds paragraph (w) to 49 U.S.C. § 47107, *Mothers' Rooms*, and 132(b) further amends § 47119(a) by adding subparagraph (3), *Lactation Areas*. The Friendly Airports for Mothers Improvement Act (P.L. 116-190), enacted on October 30, 2020, further modifies 49 U.S.C. § 47107(w) by extending requirements to applicable small hub airports.

Mothers' Rooms

The addition of (w) to § 47107 requires medium and large hub airports – and as modified by P.L. 116-190 to include applicable small hub airports as well – to maintain the following for the purposes of compliance with an airport sponsor's grant assurance obligations and eligibility for AIP funding:

- a lactation area in the sterile area of each passenger terminal building of the airport; and
- a baby changing table in at least one men's and at least one women's restroom in the sterile area of each passenger terminal building of the airport. P.L. 116-190 modified this requirement to add the words "at least" before "one men's" and "one women's" restroom.

Time frame: Beginning in FY 2021, medium and large hub airports must have a lactation area and baby changing tables as prescribed above prior to the FAA issuing an AIP grant for a project at such airports. Beginning in FY 2023, applicable small hub airports will be required to have a lactation area and baby changing tables as prescribed above prior to the FAA issuing an AIP grant for a project at such airports. The FAA may grant a period of time for the airport to comply on a case-by-case basis if the Secretary determines that construction or maintenance activities make it impracticable or unsafe for the lactation area to be located in the sterile area of the building.

Applicable Small Hub Airports: As prescribed by 49 U.S.C. § 47107(w)(2)(A)(ii), the term 'applicable small hub airport' means an airport designated as a small hub airport during any consecutive 3-year period beginning in or after 2020.

Sterile Area: As stated in the AIP Handbook:

A “sterile area” (as more fully defined in 49 CFR part 1540) is restricted to passengers, airline employees and others who have passed airport security.

Eligible Facilities: As prescribed by 49 U.S.C. § 47107(w)(1), the FAA may issue a grant only to applicable small, medium and large hub airports if the airport sponsor certifies a lactation area, or a similar accommodation, as prescribed below, is in existence under this provision prior to the FAA awarding the grant. A qualified area must, under 49 U.S.C. § 47107(w)(3):

- Provide a location for members of the public to express breast milk that is shielded from view and free from intrusion from the public;
- Have a door that can be locked;
- Include a place to sit, a table or other flat surface, a sink or sanitizing equipment, and an electrical outlet;
- Be readily accessible to, and usable by individuals with disabilities, including individuals who use wheelchairs; and
- Not be located in a restroom.

Pre-existing Facilities Exemption: Sponsors of applicable small, medium and large hub airports may apply to be considered to be in compliance with this provision if the Secretary determines existing lactation area meets the intent of the provision even though they may not have a facility or characteristic described above (per the statute). This exemption does not apply to baby changing tables required by 49 U.S.C. § 47107(w)(1)(B).

Terminal Buildings, Lactation Areas

Section 132(b) adds subparagraph (3) under § 47119(a), which permits construction or installation of a lactation area [as defined in section § 47107(w)] at a commercial service airport. This provision expands AIP eligibility to include the construction and installation of lactation areas at large, medium, small, nonhub, and nonprimary commercial service airports. However, § 47017(w) only requires these facilities at large and medium hub airports by FY 2021 and applicable small hub airports by FY 2023.

Moving forward:

To assure compliance with § 47107(w), the FAA has added a special condition applicable only to sponsors of medium and large hub airports to airport sponsor grant agreements. To comply with the statutory requirement, the special condition language states:

Mothers’ Rooms. *As a medium or large hub airport, the sponsor certifies it is in compliance with § 49 U.S.C. 47107(w).*

Before FY2023 grants are issued, the FAA will revise special condition language in grant agreements to reflect expanded requirements to include applicable small hub airports.

Any grant issued to a sponsor of a medium and/or large hub airport beginning in FY 2021, or an applicable small hub airport beginning in FY 2023, must include this special condition, which implements the statutory requirement that such airports maintain lactation areas as prescribed in the law. If the sponsor of a medium or large hub airport cannot comply with this requirement before the FAA plans to award an FY 2021 grant for such airport, the sponsor may request a temporary extension based on the conditions prescribed above and in the statute to extend the period of time needed to comply.

Beginning in FY 2023, applicable small hub airports may also request such a temporary extension. The FAA may grant the extension if construction or maintenance activities make it impracticable or unsafe for the lactation area to be located in the sterile area of the building.

The “Mother’s Room Extension” indicator box in Plans/Certifications widget of the SOAR Workspace must be used by ROs/ADOs to indicate an airport’s compliance with § 47107(w). For airports in compliance, the indicator is not required since they are meeting the grant assurances for mother’s rooms. For airports with an approved extension, the box must be checked and the extension expiration date must be entered. Once an airport is in full compliance, the indicator must be unchecked.

Additionally, a sponsor may apply to have the FAA consider a pre-existing facility eligible for an exemption under 49 U.S.C. § 47107(w)(2)(B), as described above. Any pre-existing facility application exemptions approved by the ROs/ADOs must be communicated in writing to APP-500.

Starting in FY 2021 the statute permits the FAA to issue a project grant to the sponsor of a medium or large hub “only if” the sponsor certifies in writing it is in compliance with 49 U.S.C. § 47107(w). Starting in FY 2023, the statute, as amended, permits the FAA to issue a project grant to the sponsor of an applicable small hub airport “only if” the sponsor certifies in writing it is in compliance with 49 U.S.C. 47107(w)]. If the sponsor does not certify in writing or does not have a waiver or exemption, the FAA may not issue a grant for projects at such airports. If the sponsor of an applicable small, medium or large hub airport that is not in compliance with § 47107(w) also has other airports in its system, such as general aviation airports, the FAA may conduct a compliance investigation to withhold funds at those airports in accordance with 49 U.S.C. § 47106(d).

Beginning in FY 2019, lactation areas are considered eligible as rehabilitation projects for terminal development; therefore, terminal development funding rules apply as stated in the AIP Handbook. These include:

Airport type	Funding sources	Statutory citation
Large, Medium, and Small Hubs	Passenger entitlements only	47119(c)(2)(A)
Nonhub primary	Passenger entitlements, discretionary, and small airport funds	47119(c)(2)(A) and 47119(d)
Nonprimary commercial service	discretionary funds, limited to \$200,000 per fiscal year	47119(c)(2)

Reliever and General Aviation airports are not eligible for AIP funds for lactation areas because 47119(a)(3) only includes commercial service airports. As a reminder, Section 148 of the 2018 Act limits projects at unclassified airports to only those pertaining to the safety of the primary runway. (See R-PGL 19-02 for more details.)

For eligible lactation area projects, RO/ADO personnel will use the following work codes in SOAR:

Lactation Areas at primary and nonprimary hubs and nonprimary commercial service airports Use these codes for FY 2020 and beyond (New NPS Equation)		
Special Emphasis (SP) = 80	Terminal (TE) = 22	Improve/Modify (IM) = 62

In addition to the indicator and the special condition that were added to SOAR for the FY 2021 grant year, the following talking points have been added to SOAR for lactation area terminal projects using the above work code.

Beginning in FY 2021, if the project is at a large or medium hub, RO/ADO personnel should select the following talking point:

This project improves/modifies (#) terminal building(s) at a medium or large hub airport to construct (#) lactation areas to comply with 49 U.S.C. 47107(w).

Beginning in FY 2023, if the project is at an applicable small hub, RO/ADO personnel should select the following talking point:

This project improves/modifies (#) terminal building(s) at an applicable small hub airport as defined under 49 U.S.C. § 47107(w)(2)(A)(ii) to construct (#) lactation areas to comply with 49 U.S.C. 47107(w).

Beginning in FY 2023, if the project is at a non-applicable small hub, nonhub primary, or nonprimary commercial service airport, RO/ADO personnel should select the following talking point:

This project improves/modifies (#) terminal building(s) at a non applicable small hub as defined under 49 U.S.C. § 47107(w)(2)(A)(ii), nonhub, or nonprimary commercial service airport to construct (#) lactation areas.

Beginning in FY 2023, revised talking points will be available in SOAR to reflect the expansion of requirements to include applicable small hub airports, as defined above.

Coronavirus Aid, Relief, and Economic Security (CARES) Act (Division B, Title XII) grant funding may be used to fund lactation areas. Use of such funds does not imply that the installation of such facilities meets the standards described in this guidance document.

Discretionary funding for development of a lactation area counts towards the \$20 million cap on terminal development, as provided for in 49 U.S.C. § 47119(f), for nonhub or small hub airports eligible to receive discretionary funds under 49 U.S.C. § 47108(e)(3). There is no such cap on terminal development when using entitlement funds. Additionally, terminal projects in Hawaii, Alaska, or Puerto Rico are eligible for state apportionment funds, for which there is no cap on terminal development.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D, Change 1) in its next version to reflect these changes. The work code and talking points for FY 2021 have been added to SOAR and updated talking points will be added to SOAR before FY 2023. A special condition was added to the grant agreement in SOAR for the FY 2021 grant year, and will be revised before the FY 2023 grant year, to confirm compliance with this section. An indicator was added to the worksite page in SOAR for the FY 2021 grant year for airports with approved extensions.

Section 134, Government Share of Project Costs.

Section 134 amends 49 U.S.C. § 47109(a) in two ways. First, by replacing former statutory language that referred to primary airport having “at least .25 percent of the total number of passenger boardings each year at all commercial service airports” with “medium or large hub airport.” This text change does not change the impact; instead, it simplifies the nomenclature. Second, by codifying an exemption that temporarily increases the Federal share of allowable project costs from 90% to 95% for specific projects. This exemption ONLY applies to a successive phase of a multiphase construction project for which the sponsor received a grant in fiscal year 2011 that would have had a Federal share of 90 percent following

the FAA Modernization and Reform Act of 2012 (Public Law 112-95). This exemption also has been included in FAA appropriations bills over the past several years. For example, see: Public Law 116-6 (2019); Public Law 115-141 (2018); and Public Law 115-31 (2017).

Moving forward:

This provision applies to only three ongoing projects from 2011:

Region	ST	City Name	LOC ID	Project
AL	AK	Angoon	+07E	Construct New Airport
CE	IA	Shenandoah	SDA	Construct Taxiway
SO	KY	Paducah	PAH	Construct Terminal Building

No other projects or airports qualify for this limited, temporary provision.

Guidance and Tools:

Due to the limited nature of this provision, the AIP Handbook (FAA Order 5100.38D Change 1) will be updated only to reflect the statutory existence of the provision only.

Section 135, Updated Veterans' Preferences.

Section 135 amends 49 U.S.C. § 47112(c)(1)(C), to update the definition of Afghanistan-Iraq war veteran and to include, "Operation Inherent Resolve and Operation Freedom's Sentinel" as well as "any successor contingency operation to such operations." This change impacts grant assurance 15, veteran's preference.

Moving forward:

ROs/ADOs should advise airport sponsors of the change as it amends grant assurance 15 and thereby may affect the sponsor's administration of contracts funded with AIP grants. As a matter of practice, ROs/ADOs should inform sponsors that Congress specifically requires a veterans' preference for AIP funded projects per 49 U.S.C. 47112; this is distinct from the federal employment preferences provided under 5 U.S.C. § 2108.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect these changes to the statute. The FAA will review the Airport Compliance Manual (FAA Order 5190.6B) for needed updates in its next revision to reflect this provision. The grant assurances also will be amended to reflect this change. Until that time, the conditions section of the grant agreement in SOAR has been amended to include a reference to the "2018 FAA Reauthorization," which incorporates the 2018 Act and the statutory changes to the grant assurances by reference.

Section 137, Former Military Airports (MAP).

Section 137 amends 49 U.S.C. § 47118(a) by expanding the type of airports eligible to apply for the Military Airport Program (MAP) to include nonhub primary airports that were former military installations owned and operated by the Department of Defense any time after December 31, 1965. Nothing in this provision or the 2018 Act changed the types of projects eligible for MAP funding.

Moving forward:

ROs/ADOs may advise airports inquiring about the program of this change; otherwise, there is no further action for field personnel. On an annual basis, the FAA announces an application period for available slots, which includes an explanation of airports eligible to apply and the types of eligible projects as prescribed by statute. The 2019 announcement included this change to airports eligible to apply.

This Section did not change the list of eligible projects prescribed in the statute (49 U.S.C. § 47118).

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect this change to the statute. Future information for the MAP will also continue to include this change.

Section 151, amending (F), Small Airport Regulation Relief (Changes to Virtual Primary).

Section 151 amends 49 U.S.C. § 47114(c)(1), by replacing the special rule for airports meeting criteria prescribed under subparagraph (F) with a new special rule for these airports, which the FAA has termed “virtual primary airports.” The new special rule, which applies only in fiscal years 2018, 2019, and 2020, allows airports with 10,000 or more passenger boardings in 2012 but fewer than 10,000 passenger boardings during calendar years 2016, 2017, and 2018 to earn the same passenger entitlements they earned in FY 2014 (based on CY 2012 passenger boardings). The FAA has apportioned funds for virtual primary airports, pursuant to special rules that have been in the statute, since AIR-21 was implemented in FY 2001.

Moving forward:

In FY 2019, the FAA determined that 22 airports met the virtual primary requirement; accordingly, each airport in this category was apportioned \$1 million in passenger entitlements. For FY 2020, 15 airports qualify under the virtual primary requirement. The virtual primary provision ends after FY 2020; however, a new subparagraph (G), which is explained below, provides criteria for the FAA to issue a waiver for a temporary extension.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect these changes to the statute.

Section 151, adding (G), Small Airport Regulation Relief (Virtual Primary Waivers).

Section 151 amends 49 U.S.C. § 47114(c)(1), by adding subparagraph (G), which prescribes limitations and waivers applicable to the virtual primary airport provision under the new special rule in subparagraph (F). Specifically, (G) limits the number of years an airport qualifying for \$1 million in passenger entitlement under the special rule for “virtual primary airports” permitted under subparagraph (F) to three consecutive years. Once an airport has participated in the virtual primary special rule for three consecutive years, the only way the airport may continue to receive treatment under the special rule is if the FAA “determines that an airport’s enplanements are substantially close to 10,000 enplanements and the airport sponsor or affected communities are taking reasonable steps to restore enplanements above 10,000.”

Moving forward:

The limitation prescribed in this Section prohibits any airport that is categorized as a virtual primary under (F) from being eligible for the virtually primary designation beginning in FY 2021, when the virtual primary provision ends. Because subparagraph (F) does not extend beyond FY 2020, the virtual primary categorization ceases to exist in that fiscal year unless the FAA grants a waiver to an airport under subparagraph (G).

For FY 2021, the FAA may issue a waiver to permit an airport sponsor previously eligible under (F) to continue to receive entitlements beyond FY 2020 provided the FAA determines the airport meets the criteria prescribed in the statute under (G):

1. The FAA determines the airport's enplanements are substantially close to 10,000 enplanements; and
2. The FAA determines the airport sponsor or affected communities are taking reasonable steps to restore enplanements above 10,000.

For the FAA to determine an airport's enplanements are substantially close to 10,000, the FAA will confirm the airport had at least 9,000 enplanements in the preceding calendar year. This deviation applies a 10% differential to the 10,000-enplanement benchmark, which conforms to the standard the FAA has applied in long-standing policy, including the biennially published NPIAS Report to Congress. In accordance with existing procedures to determine airport categorizations each fiscal year, the FAA will use enplanement data from the previous calendar year, provided by the Department of Transportation (DOT), to determine whether this threshold has been met.

For the FAA to determine an airport sponsor or affected communities are taking reasonable steps to restore enplanements above 10,000, the FAA will determine if the airport's enplanements have increased by at least 10% during the three preceding calendar years before the fiscal year in which the waiver may be granted. The following example illustrates how the FAA may determine eligibility under this criteria for FY 2021:

CY 2017 enplanements	CY 2018 enplanements	CY 2019 enplanements	Qualifies under Criteria #2?
9,000	9,500	9,900	Yes
9,120	9,260	9,350	No
9,400	9,600	9,000	No

NOTE: The statute requires BOTH criteria #1 and #2 be met.

If the FAA determines the increase threshold has not been reached, the FAA may consider other factors to determine if the sponsor has taken reasonable steps.

The FAA must make positive determinations regarding both enplanements and reasonable steps for an airport to qualify for a waiver in accordance with the statute. These determinations will be made by APP-400 in coordination with the Region and APP-500. Once the FAA has made a determination, the FAA will notify the sponsors.

1. For airports not in the State Block Grant Program:

No further action; funds will be placed in the sponsor's SOAR checkbook by the FAA.

2. For airports in the State Block Grant Program (SBGP):

A sponsor of airport designated as a virtual primary may elect to advise the RO/ADO overseeing its state's block grant program whether the sponsor wishes to remain under the SBGP for the designated fiscal year. The SBGP statute permits exemptions from the program for airports receiving funds designated for use at primary airports. Virtual primary funds are apportioned as primary airport funds [§ 47114(c)(1)]. Unless the sponsor elects to advise the RO/ADO it wishes to opt out of the SBGP by the first day of the applicable fiscal year (October 1), the FAA will include the airport's virtual primary apportionment in the state's block grant allocation for that fiscal year.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect these changes to the statute.

Section 151, adding (H), Small Airport Regulation Relief (Nonprimary Commercial Service Tier 1).

Section 151 amends 49 U.S.C. § 47114(c)(1), by adding subparagraph (H), which creates a new category of commercial service airports eligible for “not less than \$600,000 in primary apportionments for each fiscal year the airport had fewer than 10,000 passenger boardings, but at least 8,000 passenger boardings, during the prior calendar year.” For future reference, the FAA will refer to qualifying airports as nonprimary commercial service tier 1 (CS1).

Moving forward:

For airports with more than 8,000 enplanements but fewer than 10,000, the FAA will confirm which airports are eligible for the \$600,000 apportionment each fiscal year using enplanement data at airport with schedule service from the previous calendar year, provided by the Department of Transportation (DOT). ROs/ADOs will be advised and will work with airport sponsors to adjust projects and funding in the airport’s capital improvement plan annually as needed. If an airport qualifies for apportionment funding provided under this provision and the virtual primary provision, the airport will receive the higher of the two apportionments but not both.

As part of the annual enplanement validation process, APP-400 will determine airports are eligible for this provision and will coordinate with the Region and APP-500. Once the FAA has made a determination, the FAA will notify the sponsors.

1. For airports not in the State Block Grant Program:

No further action; funds will be placed in the sponsor’s checkbook by the FAA.

2. For airports in the State Block Grant Program (SBGP):

A sponsor of airport designated as a nonprimary commercial service tier 1 airport (CS1) may elect to advise the RO/ADO overseeing its state’s block grant program whether the sponsor wishes to remain under the SBGP for the designated fiscal year. The SBGP statute permits exemptions from the program for airports receiving funds designated for use at primary airports. CS1 funds are apportioned as primary airport funds [47114(c)(1)]. Unless the sponsor elects to advise the RO/ADO it wishes to opt out of the SBGP by the first day of the applicable fiscal year (October 1), the FAA will include the airport’s CS1 apportionment in the state’s block grant allocation for that fiscal year.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect these changes to the statute.

Section 155, General Aviation Airport Expired Funds.

Section 155 amends 49 U.S.C. § 47117(b), by creating a secondary provision applicable to nonprimary apportionments expiring in the current fiscal year. The first part of Section 155 establishes paragraph (1) for the existing rules governing carryovers for both primary and nonprimary apportionments. The second part of Section 155 establishes paragraph (2), which creates a general aviation discretionary fund. It requires certain expiring AIP funds apportioned under 49 U.S.C. § 47114(d) to be placed into the general aviation (GA) discretionary fund. This fund is to be used for eligible and justified projects at airports

eligible to receive apportionments under 47114(d)(2), state apportionments, and § 47114(d)(3), nonprimary entitlements. If the funds in the general aviation discretionary account are not obligated before, or on July 1, each year in the year they expire, the remaining funds become available under § 47115, which is the AIP general discretionary fund. However, a separate rule explained below applies to state block grant airports.

Moving forward:

The general aviation discretionary fund will be comprised of expiring funds (see below) previously made available under:

- Section 47114(d)(2): State apportionments (SAs), which include Insular Areas (Guam, American Samoa, the Northern Mariana Islands, and the U.S. Virgin Islands); and
- Section 47114(d)(3)(A): non primary entitlements (NPEs).

The statute includes two tracks for administering this provision:

- **For airports not in the State Block Grant Program, see § 47117(b)(2)(A):**
Requires expiring funds (both NPEs and SAs) that will not be obligated before, or on July 1, to be transferred to the GA discretionary fund. GA discretionary funds must be used for eligible and justified projects at general aviation airports and will only be available to this limited pool of airports until July 1. GA discretionary funds that are not obligated as of July 1 will be become available under § 47115, which is the AIP general discretionary fund.
- **For airports in the State Block Grant Program, see § 47117(b)(2)(B):**
Requires expiring NPEs apportioned to airports within a block grant state to be transferred to the State's state apportionment (SA) account in the year the funds expire.

Attachment A to the R-PGL includes a diagram explaining the process for recovered and expiring NPEs and SAs subject to this provision for FY19.

What are expiring funds? This provision applies to non-primary entitlement (NPE) and state apportionment (SA) funds, including Insular Areas.

As already provided in statute [49 U.S.C. § 47117(b)(1)], non-primary entitlement funds expire three fiscal years after the year apportioned and state apportionment funds expire two fiscal years after the year apportioned.

	Expiring NPEs were apportioned in this fiscal year	Expiring SA funds were apportioned in this fiscal year
For FY 2018	FY 2015	FY 2016
For FY 2019	FY 2016	FY 2017
For FY 2020	FY 2017	FY 2018
For FY 2021	FY 2018	FY 2019

The above chart provides reference points to explain when funds expire. This provision carries forward without sun setting; therefore, this chart is only intended to be a snapshot to illustrate implementation.

Note: This provision does not apply to unclassified airports receiving non-primary entitlements during FY 2019 and FY 2020 as provided by Section 148 of the Act. See, R-PGL 19-02 for more information on Section 148.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect these changes to the statute. SOAR has been updated to add the General Aviation discretionary fund.

Section 160, Airport Investment Partnership Program.

Section 160 amends 49 U.S.C. § 47134 in several ways:

1. Renames the former Airport Privatization Pilot Program as the Airport Investment Partnership Program (AIPP).
2. Eliminates the previous cap on the number of airports eligible to participate in the AIPP.
3. If the Secretary grants an exemption to an airport sponsor from the requirement to use airport revenues for non-airport purposes (Sections 47107(b) and 47133), the Secretary must also waive the obligation to repay federal grants and grant an exemption to the private purchaser or lessee to allow the purchaser or lessee to earn compensation from operation of the airport (Sections 47107 and 47152), to the extent necessary to waive repayment of AIP grants or return property acquired with Federal funds or through Federal agreements.
4. Permits a public airport sponsor with multiple airports under its control to include all of those airports in the AIPP application, provided the airports are in the same state.
5. Permits partial privatization when a purchaser or lessee is an entity in which the sponsor has an interest.
6. Deletes reporting requirements formerly contained in § 47134 under (l) and the definition of a general aviation airport formerly contained under (m).
7. Replaces (l) with a new (l) under § 47134 entitled, *Predevelopment Limitation*, which limits AIP funding newly permitted under § 47102(3)(R) for predevelopment planning costs relating to the preparation of an AIPP application or proposed application to \$750,000.

Moving forward:

The Office of Airport Compliance and Management Analysis administers the AIPP; all inquiries regarding applications and program administration should be directed to that office. The Office of Airport Planning and Programming oversees the statutory permissions for grant eligibility, justifications, and reasonableness.

The new paragraph (l), *Predevelopment Limitation*, states a grant to an airport sponsor for predevelopment planning costs relating to the preparation of an application or proposed application to enter the AIPP may not exceed \$750,000 per application or proposed application. Section 165 of the Act created new eligibility under § 47102(3)(R) for AIPP planning grants. The parameters for grant applications under § 47102(3)(R) are explained later in this R-PGL under Section 165(1)(C)(R) and in PGL 19-03, *Grants for Predevelopment Costs for Airport Investment Partnership Program* (note: the latter is **NOT** an R-PGL; it is a traditional program guidance letter and is available on the Program Guidance Letters webpage). The new paragraph (l) limits the amount of each eligible planning grant permitted in conjunction with § 47102(3)(R) to \$750,000.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect these changes to the statute. PGL 19-03, *Grants for Predevelopment Costs for Airport Investment Partnership Program*, has been posted on the Office of Airports Program Guidance letter webpage. Applicable changes and additional information on the AIPP is posted on the FAA's Office of Airports AIPP webpage.

Section 162(1), Airport Access Roads in Remote Locations (ARFF and SRE Buildings).

Section 162(1) does not amend 49 U.S.C. § 47102; it creates a temporary expansion of the definition of airport development under Section 47102 only through FY 2023. The FAA may temporarily allow AIP eligibility for the construction of storage facilities for snow removal equipment (SRE) or aircraft rescue and firefighting (ARFF) equipment, provided the following conditions prescribed in the Act are met:

- The SRE and/or ARFF equipment stored in the facility is owned by an airport sponsor;
- The SRE and/or ARFF equipment stored in the facility is used exclusively to maintain safe airfield operations; and
- The facility size may not exceed the square footage necessary to accommodate the types and quantities of equipment prescribed by the FAA.

This provision applies regardless of whether Federal funding was used to acquire the equipment.

Moving forward:

This provision creates a temporary exception to the definition of airport development permitted under 49 U.S.C. § 47102 through FY 2023. The FAA may approve a grant application submitted by an airport sponsor to build or expand a facility to shelter both AIP funded and non-AIP funded ARFF or SRE equipment, provided the equipment is the type and quantity prescribed by the FAA and is used exclusively to maintain safe airfield operation. The facility can be built up to the limits for the prescribed equipment that is eligible and justified based on the current versions of Advisory Circular 150/5200-30, *Airport Field Condition Assessments and Winter Operations*, and Advisory Circular 150/5220-20, *Airport Snow and Ice Control Equipment*.

The work codes for these projects remain the same for construction and expansion of ARFF and/or SRE buildings.

Guidance and Tools:

This is a temporary provision at this time; therefore, the FAA will not update the AIP Handbook (FAA Order 5100.38D Change 1). This R-PGL should be used by RO/ADO personnel until this provision expires.

Section 162(2), Airport Access Roads in Remote Locations (SRE Building Exception).

Section 162(2) does not amend 49 U.S.C. § 47102; it creates a temporary expansion of the definition of airport development under Section 47102 only through FY 2023. The FAA may temporarily allow AIP

eligibility for the construction of a snow removal equipment (SRE) storage facility that is **larger** than the size necessary to accommodate the types and quantities of equipment prescribed by the FAA, as permitted by Section 162(1) above and under 49 U.S.C. § 47102, provided all of the following conditions prescribed in the Act are met:

- The storage facility is used to store SRE exclusively used for clearing airfield pavement of snow and ice following a weather event;
- The airport is categorized as a “local” asset category general aviation airport in the Federal Aviation Administration’s 2017–2021 National Plan of Integrated Airport Systems (NPIAS) report;
- The 30-year annual snowfall normal, of the nearest weather station based on the National Oceanic and Atmospheric Administration Summary of Monthly Normals 1981–2010, exceeds 26 inches;
- The airport serves as a base for a medical air ambulance transport aircraft;
- The airport master record (Form 5010–1) effective on September 14, 2017 for the airport indicates 45 based aircraft consisting of single engine, multiple engine, and jet engine aircraft;
- No funding under this section will be used for any portion of the storage facility designed to shelter maintenance and operations equipment that are not required for clearing airfield pavement of snow and ice;
- The airport sponsor will complete design of the storage building no later than September 30, 2019, and will initiate construction of the storage building no later than September 30, 2020; and
- The area of the storage facility to be funded under this subsection does not exceed 6,000 square feet.

This provision applies regardless of whether Federal funding was used to acquire the equipment.

Moving forward:

This provision creates a temporary exception to the definition of airport development permitted under 49 U.S.C. 47102 through FY 2023 and further augments Section 162(1) above. An RO/ADO may approve a grant application submitted by an airport sponsor to build or expand an SRE building larger than the size necessary to accommodate the types and quantities of equipment prescribed by the FAA, provided the conditions above, as prescribed in the Act, have been met. The RO/ADO shall confirm the conditions have been met prior to approving the grant application.

At this time, APP is only aware of one airport meeting these prescriptive requirements. ROs/ADOs should contact APP-500 with questions.

NOTE: The Consolidated Appropriations Act of 2019 (Appropriations Act, P.L. 116-6) included similar text to this provision in Section 119E of Division G, Title I. The only difference between Section 165(2) of the Reauthorization Act and Sec 119E of the Appropriations Act applies to the eligible years for the design and construction of the SRE facility. The Appropriation Act limits eligibility to designing the building in 2018 and constructing it in 2019. The Reauthorization Act limits eligibility to designing the building in 2019 and constructing it in 2020. ROs/ADOs may contact APP-500 with questions about eligibility under either Act.

Guidance and Tools:

This is a temporary provision at this time; therefore, the FAA will not update the AIP Handbook (FAA Order 5100.38D Change 1). This R-PGL should be used by RO/ADO personnel until this provision expires.

Section 162(3), Airport Access Roads in Remote Locations (Access Roads).

Section 162(3) does not amend 49 U.S.C. § 47102; it creates a temporary expansion of the definition of terminal development under Section 47102 only through FY 2023. The FAA may temporarily allow AIP eligibility for the development of an airport access road beyond what is currently permitted under 49 U.S.C. § 47102, provided all of the following conditions prescribed in the Act are met:

- The airport is located in a noncontiguous State;
- The access road is not more than 5 miles in length;
- The access road connects to the nearest public roadways of not more than the 2 closest census designated places; and
- The access road may provide incidental access to public or private property that is adjacent to the road and is not otherwise connected to a public road.

Moving forward:

This provision creates a temporary exemption to the definition of airport development permitted under 49 U.S.C. § 47102 through FY 2023. An RO/ADO may approve a grant application submitted by an airport sponsor to develop an airport access road, provided the conditions above, as prescribed in the Act, have been met. The RO/ADO shall confirm the conditions have been met prior to approving the grant application.

This provision does not waive other provisions in the AIP statute, including those that require the airport sponsor to have good title to the property upon which AIP-funded improvements will be made. [See, 49 U.S.C. § 47106(b)(1) and Grant Assurance 4].

At this time, the FAA is only aware of one airport meeting these prescriptive requirements. ROs/ADOs should contact APP-500 with questions.

Guidance and Tools:

This is a temporary provision at this time; therefore, the FAA will not update the AIP Handbook (FAA Order 5100.38D Change 1). This R-PGL should be used by RO/ADO personnel until this provision expires.

Section 164, Seasonal Airports.

Section 164 amends 49 U.S.C. § 47114(c)(1) by adding subparagraph (I), which creates a new category of airports called “Seasonal Airports.” For an airport to be categorized as “seasonal,” it must be a commercial service airport with at least 8,000 passenger boardings receiving scheduled air carrier service for fewer than 6 months in the calendar year used to calculate apportionments to airport sponsors in a fiscal year. Seasonal airports shall be considered to be a nonhub primary airport for purposes of Chapter 471.

Moving forward:

The FAA will identify commercial service airports with at least 8,000 passenger boardings and review their air carrier schedules as part of its annual passenger enplanement and entitlement validation process to confirm the airport receives scheduled air carrier service for five months or less during the calendar year. Qualifying airports will receive \$1 million in passenger apportionments during the next fiscal year and the airport shall be considered a nonhub primary airport for other funding considerations. This includes terminal development under § 47119 and small airport fund eligibility under § 47116, as examples.

At this time, APP is only aware of one airport meeting these prescriptive requirements. ROs/ADOs should contact APP-500 with questions.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect these changes to the statute.

Section 165(1)(C)(R), Amendments to Definitions (Airport Investment Partnership Program).

Section 165(1)(C)(R) amends 49 U.S.C. 47102(3) by adding subparagraph (R), which permits AIP eligibility for predevelopment planning, including financial, legal, or procurement consulting services, related to an application or proposed application for an exemption under section 47134, Airport Investment Partnership Program (AIPP). This provision establishes eligibility for predevelopment grants for the newly renamed and revised Airport Investment Partnership Program, formerly the Airport Privatization Pilot Program under § 47134.

Moving forward:

Airport sponsors interested in applying for AIP grants to pursue predevelopment activities defined in the statute may refer to Program Guidance Letter 19-03, *Grants for Predevelopment Costs for Airport Investment Partnership Program*, for more detailed guidance. Such grants are limited by statute to \$750,000 [See 47134(l)]. In addition, this grant may not fund preparation of AIPP applications, as the statute does not permit these activities.

RO/ADO personnel should use the following work codes in SOAR when programming AIPP predevelopment grants:

AIPP Predevelopment grants		
Use these codes for FY19 (Current NPS equation)		
Planning (PL) = 8	Privatization (PI) = 6	New Plan/Study/Assessment (NP) = 7

AIPP Predevelopment grants		
Use these codes for FY 2020 and beyond (New NPS Equation)		
Planning (PL) = 65	Privatization (PI) = 65	New Plan/Study/Assessment (NP) = 70

In addition, talking points already have been added to SOAR for AIPP predevelopment grants, which are eligible beginning in FY 2019. RO/ADO personnel should select the following talking point:

This grant will help the airport examine the benefits and risks of potential privatization under the Airport Investment Partnership Program.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect these changes. The new work code has been added to SOAR for the FY 2019 grant year. Additionally, a new talking point has been added to SOAR for eligible predevelopment activities grants. Lastly, PGL 19-03, *Grants for Predevelopment Costs for Airport Investment Partnership Program*, has been posted on the Office of Airports Program Guidance letter webpage.

Section 165(2), Amendments to Definitions (Airport Planning).

Section 162(2) amends 49 U.S.C. 47102(5), which is the definition of Airport Planning, by changing the word “regulations” to “requirements.”

Moving forward:

This Section changes the definition of airport planning to incorporate *requirements* the Secretary prescribes, as opposed to regulations. This definition governs integrated airport system planning; developing an environmental management system; and developing a plan for recycling and minimizing the generation of airport solid waste, consistent with applicable State and local recycling laws, including the cost of a waste audit. Accordingly, eligibility for planning now encompasses requirements sets forth by the FAA.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect this change to the statute.

Section 165(3), Amendments to Definitions (General Aviation Airport).

Section 162(3) amends 49 U.S.C. 47102(8), which is the definition of General Aviation Airport, by changing the word “public” to “public use.”

Moving forward:

This Section changes the definition of general aviation airport to public use airports located in a State that do not have scheduled commercial service or have scheduled service but have less than 2,500 passenger boardings each year.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect this change to the statute. Also, FAA Order 5090.5, Formulation of the NPIAS-ACIP, which is pending final release, will include this change.

Section 167, Buy America Requirements.

Section 167 requires all Buy-American waivers issued under 49 U.S.C. § 50101 to be published for at least 10 days before the waiver takes effect as well as an annual report to Congress on waivers issued.

The waiver determinations must include a detailed written justification and must be published in a publicly available location on the Department of Transportation (including the FAA) website not less than 10 days before the waivers take effect. The FAA must provide an informal public notice and comment opportunity on the waiver determination. However, the waiver will take effect once the 10-day period ends, regardless of whether or not comments are received.

Moving forward:

ROs/ADO must follow the following procedures for issuing waivers:

Waiver type	FAA Actions
Type 1: Inconsistent with the public interest [See, 49 U.S.C. 50101(b)(1)]	None; the FAA has never issued a type I waiver and does not foresee circumstances changing in the future.
Type 2: Steel and goods produced in the U.S. are not produced in a sufficient and reasonably available amount or are not of a satisfactory quality [See, 49 U.S.C. 50101(b)(2)]	Only ARP HQ manages all Type 2 waivers (ROs/ADOs do not issue these).
Type 3: Cost of components and subcomponents produced in the U.S. is more than 60 percent of the cost of all components of the facility or equipment; and final assembly of the facility or equipment has occurred in the U.S. [See, 49 U.S.C. 50101(b)(3)]	<p>Sponsor/Manufacturer/Contractor submits waiver request to RO/ADO/HQ.</p> <ul style="list-style-type: none">▪ RO/ADO/HQ determines the product/project meets FAA Buy American requirements.▪ Approved waiver determinations are issued to sponsor/manufacturer, and published on the FAA website, open to public comment for 10 days.▪ After 10 days, public comment period closes, waiver becomes effective, project(s) may proceed.▪ Notifications of public comments and waiver publications are copied to RO/ADO/HQ staff and management. <p>NOTE: Whether or not comments are received, the waiver determination becomes effective as prescribed above unless the FAA takes further action. (See Public Law 115-254, Section 167)</p>
Type 4: Including domestic material will increase the cost of the overall project by more than 25 percent. [See, 49 U.S.C. 50101(b)(4)]	These waivers occur after a project has been bid and follow the procedures for the Type 3 waivers.

APP-520 will collect data from the waivers issued and generate a report to Congress annually.

Guidance and Tools:

The FAA will update the current version of the AIP Handbook (FAA Order 5100.38D Change 1) in its next version to reflect these changes. The FAA will update the Office of Airports Buy American Preference webpage to collect and report data required by this provision.