



[4910-13]

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 28895]

Airport Investment Partnership Program: Application Procedures

AGENCY: Federal Aviation Administration (FAA), DOT

ACTION: Notice of application procedures

SUMMARY: This document provides procedures for applying for FAA approval of the privatization or partial privatization of a federally obligated public airport. This document revises the procedures for applying for approval of the privatization of a federally obligated public airport, to reflect the provisions of the AIPP. It also revises the statement of issues the FAA will consider in granting exemptions and approving the transfer of a public use airport under the new program.

DATES: This policy takes effect [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. No changes are required to an applicationsubmitted and accepted for review prior to publication if there is no change to the applicant's proposed transaction. The FAA will evaluate all applications in the order of receipt.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Director, Office of Airport Compliance and Management Analysis, (ACO-1), Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, (202) 267-3085.

SUPPLEMENTARY INFORMATION:

INTRODUCTION AND BACKGROUND

Section 149 of the Federal Aviation Authorization Act of 1996 established an airport privatization pilot program (APPP), and authorized the Department of Transportation to grant

exemptions from certain Federal statutory and regulatory requirements for up to five airport privatization projects. A request for participation in the APPP was initiated by the filing of either a preliminary or a final application for exemption with the FAA. The FAA issued final guidance for applying for participation in the program in September 1997.

Section 160 of the FAA Reauthorization Act of 2018 established the Airport Investment Partnership Program (AIPP), which eliminates the limit on the number of airport privatizations that the FAA may approve, allows privatization of multiple airports by one airport sponsor, and allows public participation in ownership of a private operator. Requirements for FAA approval of an airport privatization are substantially the same as under the pilot program.

This notice of application procedures to be used by applicants for an airport privatization project is being published pursuant to section 149 of the Federal Aviation Administration Authorization Act of 1996, Pub. L. No. 104-264 (October 9, 1996) (1996 Reauthorization Act), which added a new section 47134 to Title 49 of the U.S. Code, and subsequent amendments of section 47134, including most recently Section 160 of the FAA Reauthorization Act of 2018, Pub. L. No. 115-254 (October 5, 2018).

Section 47134, as amended, authorizes the Secretary of Transportation, and through delegation, the FAA Administrator, to exempt a sponsor of a public use airport that has received Federal assistance, from certain Federal requirements in connection with the privatization of the airport by sale or lease to a private party. Specifically, the Administrator may exempt the sponsor from all or part of the requirements to use airport revenues for airport-related purposes, to pay back a portion of Federal grants upon the sale of an airport, and to return airport property deeded by the Federal Government upon transfer of the airport. The Administrator is also authorized to exempt the private purchaser or lessee from the requirement to use all airport revenues for airport related purposes, to the extent necessary to permit the purchaser or lessee to earn reasonable compensation from the operations of the

airport.

The term “public sponsor” is used in this document to mean the governmental agency or authority that currently owns or operates a public airport and proposes to sell or lease it to a private purchaser or lessee. The term “private operator” is used to refer to a private firm or firms that propose to purchase or lease a public airport under the program; the term “applicant” means all of the parties jointly participating in the application for privatization of a particular airport. The terms “operating entity” and “private investor” are used for a partial privatization transaction, in which the public sponsor holds an interest in the operating entity, jointly, with a private sector investor.

This document does not have the force and effect of law and is not legally binding in its own right. It is intended to provide clarity to the public regarding existing requirements under the law and agency policies. Mandatory terms such as “must” in this notice describe established statutory or regulatory requirements.

The September 1997 Notice of Final Application Procedures

To implement section 47134, the FAA requested comments in April 1997 on proposed program application procedures (62 FR 19638; April 22, 1997). The FAA issued a Notice of Final Application Procedures in September 1997 (62 FR 48693; September 17, 1997). In that notice, the FAA addressed comments received on the notice and request for comment, and adopted comprehensive procedures for applying for participation in the program. In addition to identifying the application procedures to be used, the final notice discussed the issues the FAA will consider in determining whether to approve an application for an exemption under section 47134 and other Federal requirements for airport operation.

The Notice of Final Application Procedures is posted on the FAA Web site at:

https://www.faa.gov/airports/airportcompliance_compliance/privatization/.

The November 1997 request for comments

Shortly after the final application procedures were published in September 1997, the FAA received a complaint about the effect of one provision of the final procedures on certain air carriers, relating to 49 U.S.C. 47134(b)(1)(A). That section of the statute limited the exemption to permit the use of funds by the public airport sponsor for non-airport purposes, to amounts approved by 65 percent of the air carriers serving the airport and 65 percent of the air carriers by total landed weight of air carriers from the preceding calendar year. The same approval was required for increases in air carrier fees that exceed the increase in the Consumer Price Index. In interpreting that requirement, the FAA stated that the air carriers included in the calculation of the 65 percent would not include otherwise qualified air carriers that submitted proposals or that participate in consortia that submitted proposals for the privatization of the subject airport. The FAA position was based on the consideration that an air carrier that sought to operate the airport, whether successful or not, could base its vote on interests other than those of an air carrier, as intended by Congress.

The complaint specifically objected to the exclusion of carriers that were unsuccessful in participating as private airport operator, and would be voting only from the point of view of an air carrier. In response, the FAA issued a *Notice of Amendment to Final Application Procedures; Request for Comments* (FR 62 63211; November 26, 1997). In that notice, the FAA suspended the exclusion of carriers that were *unsuccessful* in bidding on a privatization proposal, but confirmed that an air carrier that was a *successful* bidder on a privatization proposal would not be counted in a vote under the 65 percent rule. The notice requested comment on this issue, but no comments were received in the docket.

Accordingly, the FAA has continued the policies announced in the November 1997 notice, and incorporates them in this revised application procedure. A carrier that bids on a privatization proposal but is unsuccessful will be counted in the list of carriers participating in the 65 percent vote. A carrier that is successful in bidding on a privatization proposal, and

as a result will become the private airport operator or part of a consortium that will operate the airport, will not be included in the list of voting air carriers under section 47134(b)(1)(A) (as amended in 2003).

2003 amendments to section 47134

In 2003, in *Vision 100—Century of Aviation Reauthorization Act*, Congress amended the provisions of section 47134(b) (1)(A) for obtaining the views and consent of air carriers for an exemption from the airport revenue use requirements of 49 U.S.C. sections 47107(b) and 47133 (Pub. L. 108-176, section 155(a), Dec. 12, 2003, 117 Stat. 2508). As originally enacted in 1996, section 47134 required that 65 percent of air carriers at the airport, both by number of carriers and by percentage of total air carrier landed weight, approve the revenue use exemption. However, these provisions made no distinction between categories of airport.

The 2003 amendment replaced section 47134(b)(1)(A)(i) and (ii) with new requirements that differ for primary airports and nonprimary airports. A primary airport is a commercial service airport with more than 10,000 passenger boardings each year.

Section 47134(b)(1)(A) now provides:

1. At a primary airport, an exemption from revenue use requirements requires 65 percent approval by scheduled air carriers serving the airport and approval by scheduled and nonscheduled air carriers serving the airport whose landed weight was at least 65 percent of total landed weight the previous year.
2. At a nonprimary airport, the FAA may approve an exemption if the public sponsor has consulted with at least 65 percent of the owners of aircraft based at the airport.
3. An air carrier is deemed to have approved an application for exemption unless it submits an objection in writing to the sponsor with 60 days of the filing of the application with the FAA or the service of the application on the carrier, whichever is later.

The revised application procedure issued in this notice reflects the new requirements in the 2003 amendments to section 47134.

2012 amendment to section 47134

In 2012, in the *FAA Modernization and Reform Act of 2012*, Congress increased the number of airports that can participate in the privatization pilot program from 5 to 10 (Pub. L. 112-95, section 156, Feb. 14, 2012, 126 Stat. 36). That amendment has become irrelevant with the elimination in 2018 of any limit on the number of privatization projects that FAA may approve.

2018 amendments to section 47134

Section 160 of the FAA Reauthorization Act of 2018 enacted amendments to § 47134 to eliminate the limit on the number of airport privatization applications the FAA could approve, effectively maturing airport privatization beyond a pilot program. Section 160 made several additional changes to the FAA approval process.

1. If an exemption is granted to an airport sponsor from the revenue use requirement and permits use of airport revenues for non-airport purposes, then the FAA must grant an exemption to the sponsor from the requirement to repay Federal grant funds or return property to the Federal Government.
2. If an exemption is granted to an airport sponsor from the revenue use requirement and permits use of airport revenues for non-airport purposes, the FAA must grant an exemption to the private purchaser or lessee from the revenue use requirement and permit the purchaser or lessee to earn compensation from operation of the airport.

3. The FAA may accept applications from a sponsor for privatization of multiple airports if all of the airports are under the control of the sponsor and all are located in the same State.
4. A public airport sponsor may have an interest in the private operating entity that purchases or leases the airport.
5. FAA may fund a grant of up to \$750,000 for predevelopment planning costs related to preparation of a privatization application or draft application.

These last two provisions are substantial changes from authority granted under the APPP. Accordingly, the following additional guidance is provided on how the agency proposes to address partial privatization applications and applications for the newly authorized planning grants.

PARTIAL PRIVATIZATION

Section 160 amended 49 U.S.C. 47134 by revising subsection (d)(2) to read: “(2) PARTIAL PRIVATIZATION.—A purchaser or lessee may be an entity in which a sponsor has an interest.” This new provision could authorize and promote forms of airport governance not previously used in the United States, resulting in applications for arrangements that would be not only unprecedented but also complex. In reviewing AIPP applications under section 47134(d)(2) and associated requests for exemption from the standard requirements for use of airport revenue, the FAA will seek to balance several key interests, including:

1. Preserving program incentives for private investment in airports, consistent with the requirements and legislative intent of the AIPP;
2. Ensuring that adequate airport revenues remain available for the operation, maintenance, and development of a participating airport; and
3. Continuing reasonable and not unjustly discriminatory terms for use of the

airport by aeronautical users and tenants.

Based on experience with the APPP and preliminary conversations with aviation and finance industry representatives, the FAA will apply the following principles in its review of applications involving partial privatization arrangements:

1. *“Partial privatization” means public participation in a lease of the entire airport.*

New section 47134(d)(2) authorizes a public airport sponsor to own and/or control an interest in a private firm operating the entire airport under a long-term lease. The term “partial privatization” refers to the public sponsor’s partial control of the private operation of the entire airport, and not to privatization of a part of an airport. Privatization of individual airport facilities has occurred at a number of airports in the U.S. through public-private partnerships, without participation in the APPP or AIPP, and without the need for special FAA review. *(See Item 10 below).*

2. *An AIPP project may have majority private control or majority public control.* An application under section 47134(d)(2) may propose that the public airport sponsor transfer a majority interest in the airport operation to a private entity, or, alternatively, that the public sponsor hold a majority interest in the private operating entity.

3. *The public airport owner remains the Airport Improvement Program (AIP) sponsor in a project with majority public control.* Where the public owner holds a controlling interest in a lease for private operation of the airport, the FAA will continue to consider the public airport owner as the airport sponsor, with responsibility for administration of grant projects and compliance with AIP grant agreements.

4. *The public owner remains the eligible agency for Passenger Facility Charges (PFC) collections in a project with majority public control.* Where the public owner holds a controlling interest in a lease for private operation of the airport, the public sponsor will also remain the eligible agency for imposition of passenger facility charges at the airport. While section 47134(g)(1) allows a private sponsor to impose a passenger facility charge, the

private investor in this case would not be the public agency, and also would not have satisfied the requirement in 49 U.S.C. 40117(a)(2) that an eligible agency “*controls* the use of a commercial airport.”

The PFC process is separate from the AIPP application process; PFC amendments related to a privatization initiative should be coordinated with the Office of Airports at FAA Headquarters.

5. *A reasonable concession fee paid by a private operator can be exempted from general revenue use requirements.* For every application approved under the AIPP, whether the public owner or the private operator is the controlling entity, an exemption under section 47134(b)(1) (3) will apply at a minimum to the private operator’s reasonable concession fee, i.e., the amount paid by the private operator for the right to operate the airport and earn a return on investment from airport revenues in proportion to the private operator’s share of the operating enterprise.

6. *The FAA will consider the degree of public participation in evaluating a request for exemption from general revenue use requirements.* For revenues other than the initial concession fee payment, the degree of the public sponsor’s control of a private entity operating the airport may affect the extent of the exemption granted under section 47134(b)(1) to allow use of revenue for non-airport purposes. For example, where a public sponsor retains majority control and ultimate responsibility for airport management, a reasonable concession fee payment could be expected to reflect only the value of the private investor’s share of revenue from its passive investment. Payments to the public sponsor by the operating entity in excess of that amount, as profit from ongoing airport operations over the lease term, would generally be considered obligated airport revenue not subject to exemption.

7. *The FAA will consider the effects of the terms of the agreement between the private investor and the public airport owner.* Where the degree of public participation in

the entity operating the airport could affect the kinds of revenue covered by an exemption under section 47134(b)(1), the FAA will look to the sources and effect of payments described in a proposed application and not simply the way various revenues are labeled by the applicants.

8. *The FAA will consider the private investor's relative participation in an AIPP initiative in approving an exemption for compensation from airport revenues.* An exemption under section 47134(b)(3) allowing a private investor to receive compensation for investment in and operation of the airport will be generally proportionate to the private investor's participation in the entity operating the airport.

9. *An AIPP initiative with both public and private participation should not result in diversion of airport revenue (by exemption permitted at a fully privatized airport).* As a general principle, in an application filed under section 47134(d)(2), the total airport revenue paid to the public owner and the private investor and subject to exemption from revenue use requirements should not exceed the amount of exempted revenue a private investor would receive in a fully private transaction.

10. *An application must be permitted under State law.* In some States, it is not clear that State law would permit the partial public ownership of a private firm operating an airport. The FAA encourages submission of the legal opinion described in item 1.H. of the final application, a statement of the public sponsor's authority to participate in a private enterprise, at the time of the preliminary application.

AVAILABILITY OF AIP GRANTS UNDER SECTIONS 47102(3)(R) and 47134(l)

Section 165 of the FAA Reauthorization Act of 2018 added a new item to the definition of "airport development," at 49 U.S.C. 47102(3)(R), to extend eligibility for AIP grant funding to certain work performed relating to the preparation of an airport privatization project application under the AIPP:

(R) predevelopment planning, including financial, legal, or procurement consulting services, related to an application or proposed application for an exemption under section 47134.

Section 160 of the Act included a revised paragraph 47134(l), which limited a grant for predevelopment costs relating to an application under section 47134 to \$750,000 per application.

On July 29, 2019, the FAA issued Program Guidance Letter (PGL) 19-03, *Grants for Predevelopment Costs for Airport Investment Partnership Program*. The PGL contains guidance for agency staff on the review and approval of AIP grant applications for predevelopment planning related to a Section 47134 application. The PGL is available on the FAA web site at: https://www.faa.gov/airports/aip/guidance_letters/media/aip-pgl-19-03-AIPP.pdf.

SUMMARY OF REVISIONS TO PROGRAM APPLICATION PROCEDURES

In addition to minor style edits for clarity and program improvement, the following revisions have been made to the Process for Applying for an Exemption under section 47134:

1. References to a limit of 10 airports and procedures for determining eligibility as one of the 10 participating airports have been deleted. A procedure is retained for filing a preliminary application, because of the value of the preliminary application in confirming an applicant's legal authority and preliminary plans for privatization of its airport, and the involvement of the FAA in the application process at an early stage.
2. Because Section 160 allows a public sponsor to have an interest in the entity operating the airport, the procedures provide for three possible parties in a partial privatization of an airport: the "public sponsor," the "private investor" (which may be a consortium of investors), and the "private operator" or "operating entity" that

would be co-owned by the public sponsor and the private investor. In a full privatization of the airport, the application continues to refer to two parties: the public sponsor, and the private operator, who would be both investor and airport operator.

3. “Contents of the Preliminary Application” eliminates the requirement for a distribution-ready copy of the request for proposals for management and operation of the airport.
4. Regulatory references to TSA and airport security have been updated to cite to 49 CFR Part 1542 rather than 14 CFR Part 107 where applicable.
5. Part II, “Airport Property,” requires information on each airport included in the application, in recognition that a public sponsor can request privatization of more than one airport in a multi airport system.
6. Part II, “Airport Property,” has an added requirement for an explanation of any differences between the airport’s Airport Layout Plan and Exhibit A to the public sponsor’s Airport Improvement Program grant agreements for the airport.
7. Part IV, “Qualifications of the Private Operator,” adds a request for any pending civil litigation against the private operator or its key personnel.
8. Part IV, “Qualifications of the Private Operator,” adds letter of credit equal to cash reserves of six months for the initial operation.
9. Part VI, “Certification of Air Carrier Approval,” is rewritten to implement the 2003 amendment to section 47134. That amendment requires a percentage of air carrier approval for issuance of an exemption from revenue use requirements at a primary airport. At a nonprimary airport, the FAA may issue an exemption upon certification that that public sponsor has consulted with at least 65 percent of the owners of aircraft based at the airport.
10. In Part VII, “Airport Operation and Development,” paragraph A.5 adds more

specific guidance for certification of air carrier approval of an increase in fees that will exceed the rate of inflation.

11. In Part VII, “Airport Operations and Development,” paragraph A.3 requires the application to include a legal opinion and certifications from both the public sponsor and the private operator to address bankruptcy.
12. Paragraph VII.B requires that transfer documents reflect the private operator’s assumption of legal responsibility for compliance with grant assurances in effect under the public sponsor’s current AIP grant agreements.
13. The requirement for a fax number has been changed to an email address.

PROCESS FOR APPLYING FOR AN EXEMPTION UNDER SECTION 47134

Exemption Application and Review Process: Overview

The FAA will apply the following policies and procedures for filing and review of requests for privatization of a public airport under 49 U.S.C. 47134:

1. A request for participation in the airport investment partnership program will be initiated by the filing of a preliminary application for exemption under section 47134(a). A public sponsor may also elect to file a final application without the prior filing of a preliminary application, if the public sponsor has selected a private operator.
2. All applications will be evaluated in the order of receipt.
3. FAA will consider an application to be filed on the date it is received by the FAA. Application packages will be date-stamped on receipt in Room 600 East at the FAA headquarters building.
4. FAA will review the application to determine if it meets the procedural requirements stated in this notice.

5. The FAA will accept preliminary applications filed before the applicant has commenced the procurement process for the selection of an operator. The preliminary application must contain the information listed under the section titled “Contents of Applications.” The FAA will notify applicants of its decision on the acceptance of the application for review within 30 days of the filing of the preliminary application.
6. If the preliminary application meets the requirements described in this notice, the applicant will be notified that the application is “accepted for review.” The FAA may request additional information before accepting the application for review, but the original filing date will remain in effect. Following the FAA’s acceptance of the preliminary application, the applicant is authorized to select a private operator, negotiate an agreement, and submit a final application to the FAA.
7. If the preliminary application does not meet the requirements described in this notice, and cannot be brought into compliance with those requirements with information requested by the FAA during its 30-day review, the preliminary application will be rejected. The FAA will notify the applicant that the application is rejected and that the application is no longer on file. The applicant may file a new application at any time, and receive a new “on file” date at that time.
8. The FAA will publish in the Federal Register a notice that a preliminary application has been received under 49 U.S.C. 47134, and that the FAA has accepted the application for review.
9. Applicants may file a final application after the public sponsor has selected a private operator and reached substantial agreement on the terms of the privatization transaction. If an application cannot reasonably be brought into compliance with the requirements of section 47134 and other applicable Federal statutes with current information in accordance with the time schedule submitted during the preliminary

application, and any extensions of time approved by the FAA, the FAA will notify the applicant that the application is rejected and that the application is no longer on file. The applicant may file a new application at any time, and receive a new “on file” date at that time.

10. If an applicant fails to timely file a final application in accordance with the time schedule submitted during the preliminary application, and any extensions of time approved by the FAA, the FAA will notify the applicant that the application is rejected and that the application is no longer on file. The applicant may file a new preliminary application at any time, and receive a new “on file” date at that time.
11. The FAA will publish in the Federal Register a notice of receipt of the final application, establish a docket, and accept public comment on the application for a period of 60 days. The FAA reserves the right to modify the comment period at its own discretion. If an application is approved, exemptions will be issued after the execution of all documents necessary to fulfill the requirements of section 47134 and other laws and regulations within the FAA’s jurisdiction (e.g., issuance of a Part 139 certificate to the private operator; FAA confirmation that the private operator has a TSA approved security program under 49 CFR Part 1542). FAA representatives will be available to meet with parties interested in an airport privatization project both before and after the filing of a preliminary application for exemption to discuss the Federal statutory requirements and policies that apply to applications under section 47134. Airport sponsors are encouraged to meet with the FAA early in the process to ensure that the parties understand the actions that will be necessary for final program participation.

Filing an Application

1. Applicants must submit one original application package and four copies containing the information described under “Content of Applications” in this notice to:

Associate Administrator for Airports, ARP-1

Room 600 East

Federal Aviation Administration

800 Independence Avenue, S.W.

Washington, DC 20591
2. All preliminary and final applications may be delivered, mailed, or submitted on a USB flash drive, but will not be considered to be “on file” with the FAA until received in the Office of the Associate Administrator for Airports, Room 600 East.
3. There is no required form for an application. However, the preliminary application package must be submitted with a cover letter, signed by appropriate officials of the current public sponsor or, in the case of the final application, signed jointly by appropriate officials of the current public sponsor and the private operator proposing to buy or lease the airport. The cover letter must request one or more of the exemptions authorized by 49 U.S.C. 47134(b) for the purpose of the privatization of an airport. Please title each section according to the section titles below.
4. Officials signing for the public sponsor must provide evidence of their authority to file the application, e.g., an enacted state statute or adopted city council resolution.

CONTENTS OF THE PRELIMINARY APPLICATION

The preliminary application should consist of:

1. As much of the information required by Part I, “Parties to the Transaction,” from the Final Application, as is available.

2. A summary narrative of the objectives of the privatization initiative, i.e., what the public sponsor wants to accomplish by the solicitation. The narrative should indicate whether the applicant plans on the full privatization of the airport by lease or sale to a private operator, or intends a partial privatization by holding an interest in the operating entity that will operate the airport.
3. A description of the process and a reasonable, realistic timetable to be employed in selecting an operator and completing transfer of the airport. This should include the identification of all local approvals and the time frame when the FAA can anticipate the final application will be submitted for review.
4. All of the information required by Part II, "Airport Property," from the Final Application.
5. Financial statements including balance, income, and cash flow statements for the last two full fiscal year periods.
6. A description of the procurement, i.e., selection/evaluation of a private operator for the management and operation of the airport with reference to the nine statutory conditions under 49 U.S.C. 47134.

THE FINAL APPLICATION

The following statements and information must be included in the final application. The FAA realizes that some documents, figures, and other information will not be available until shortly before the execution of the transfer transaction. The final application may only be filed after the public sponsor has selected a private operator and reached sufficient agreement with the operator on the terms of the transaction to represent those terms in an application. The FAA will not require that all information listed below be provided at the time of the application. However, for each item below for which information is not available, the applicant may substitute a description of the expected response and the date by which the final information

will be available. Information not provided with the application should be submitted to the FAA as soon as it becomes available.

Part I. Parties to the Transaction

- A. Name of the airport proposed for sale or lease.
- B. Name and address of the public sponsor of the airport; name, address, telephone number, and email address of the person to contact about the application.
- C. Name and address of the private operator proposing to purchase or lease the airport; name, address, telephone number, and email address of the person to contact about the application.
- D. If the private operator proposing to purchase or lease the airport is a partnership, joint venture, or other consortium of multiple interests, the name and address of each of the participating members.
- E. Citizenship of the private operator or each member of the private operator consortium, and percentage of interest of each such member.
- F. If the public sponsor will retain an interest in the new operating entity and share ownership of that entity with a private investor, the percentages of ownership to be held by the public sponsor and the private investor respectively.
- G. A statement of the public sponsor's authority to sell or lease the airport, with a citation to legal authorities.
- H. If the public sponsor will share ownership in the operating entity with a private investor, a statement of the public sponsor's authority to participate in a private enterprise.

Part II. Airport Property

- A. For each airport included in the application, a description of the airport property to be transferred. Applicants should describe property in sufficient detail to identify the parcels of property and facilities to be transferred; a map and a legal description of the property may be included but are not required.
- B. A history of the acquisition of existing airport property. Applicants should include information on grants, types of deeds, the dates and means of conveyance, e.g., Surplus Property Act, other Federal conveyance of donated property, parcels purchased with Federal funds, and parcels purchased with only local funds.
- C. An explanation of any differences between the airport property to be transferred and Exhibit A to recent AIP grant agreements.
- D. Evidence of Good Title to the airport property satisfactory to the FAA.

Part III. Terms of the Transfer

- A. A detailed description of the terms of the transfer, other than financial, including:
 - 1. Term of the lease or other transfer agreement.
 - 2. A description of any rights, authority, or interests retained by the public sponsor, including reversion of title to facilities.
 - 3. If the private operator is a consortium, a description of the respective rights and responsibilities of each member.
 - 4. If the public sponsor will share ownership of the operating entity, a description of the respective rights and responsibilities of the public sponsor and private owners of the operating entity.
- B. Financial terms of the transaction:
 - 1. Amounts and timing of payments to the public sponsor.
 - 2. Amounts of payments to sponsor to be used, respectively, for airport

purposes (including recoupment of public sponsor investments not previously recovered) and for other purposes.

3. Financing arrangements, including sources of the funds used by the private operator for purchase or initial lease payment and future lease payments, and for return on investment.
 4. Projected impact of the initial transaction on the fee structure for charges to airport users.
 5. Projected impact of future purchase or lease payments to the public sponsor on the fee structure for charges to airport users.
 6. Other relevant financial terms of the transfer.
- C. Copies of all documents executed as part of the transfer, to be provided as they are executed or are in sufficiently final form to indicate the substantive nature of the expected final document.
- D. If applicable, a request for confidentiality of any particular document or information submitted, with supporting information.
- E. Provisions of a document conferring third-party beneficiary rights on behalf of the FAA to enforce, directly against the private operator, key obligations contained in AIP grant agreements and the assurances required by section 47134.

Part IV. Qualifications of the Private Operator

- A. A complete description of airport management and operations experience, including the identity, experience, expertise, and responsibility of key personnel. A description of the facilities and airports presently being managed by the company, both domestically and internationally. If the private operator is a newly formed entity, describe the experience of the constituent members and the proposed management structure to integrate operational functions.

- B. Financial resources for operating/capital expenses of the airport. Copies of the 10K annual reports filed in the past three years with the Securities and Exchange Commission, if filed. If 10K annual reports were not filed, provide a balance sheet and income statement prepared in accordance with Generally Accepted Accounting Principles, with all footnotes applicable to the financial statements. The private operator should have a letter of credit equal to cash reserves of six months for the initial operation of the airport unless a lower amount is approved in advance by the FAA.
- C. Timing and details of application for Part 139 certificate, if applicable.
- D. Plan for compliance with 49 CFR Part 1542, if applicable.
- E. A description of the private operator's capability and experience of complying with the public sponsor's existing grant assurances, including the assurance of compatible land use around the airport; the protection of navigation aids, approach lights, runway safety areas, and runway protection zones; and the continuation and extension of aviation easements.
- F. Affiliations with air carriers or other persons engaged in aeronautical business activity at an airport (other than airport management).
- G. A description of all charges of unfair or deceptive practices or unfair methods of competition brought against the private operator and private operator's key personnel; and, in the case of a private operator that is a joint venture, partnership, or other consortium, the separate members of the entity in the past 10 years. The description should include the disposition or current status of each such proceeding.
- H. Any other pending civil litigation against the private operator or its key personnel.

Part V. Requests for Exemption

- A. Describe the specific exemption requested by the public sponsor under 49 U.S.C. 47134(b)(1), from the prohibition on use of airport revenue for general purposes, including the amount of funds involved. The description should include sale or lease proceeds as well as funds in existing airport accounts that would be transferred to general accounts.
- B. Describe the specific exemption requested by the public sponsor under 49 U.S.C. 47134(b)(2) from the requirement to repay Federal grant funds or return property.
- C. Describe the specific exemption requested by the private operator under 49 U.S.C. 47134(b)(3) from the prohibition on use of airport revenue for general purposes. The description should include the anticipated amount of airport revenue to be used for compensation of the private operator, the source of airport funds involved, and a description of the effect, if any, on air carrier and other aeronautical user fees.

Part VI. Certification of Air Carrier Approval

- A. For an application relating to a primary airport:
 - 1. Provide a certification that air carriers meeting the requirements of 49 U.S.C. 47134(b)(1)(A)(i) approve the exemption described in Part V.A. above.
 - 2. Provide:
 - i. A list of all U.S. air carriers serving the airport, to include all carriers conducting operations at the airport under authority of 14 CFR Part 121 that have a lease and/or use agreement at the airport or that conducted at least 50 flights under such authority in the preceding calendar year;
 - ii. A list of all carriers conducting operations at the airport as a commuter air carrier within the meaning of 14 CFR Part 298 that

have a lease and/or use agreement at the airport or that conducted at least 50 flights under such authority in the preceding calendar year; and

iii. A list of all operators conducting operations at the airport under authority of 14 CFR Part 135 that have a lease and/or use agreement at the airport and that have at least one aircraft used in Part 135 operations based at the airport.

3. The lists described in VI.A.2 should exclude any carrier that is not currently serving the airport or that has responded to a solicitation or submitted a proposal to serve as a private airport operator or participate in a private airport operator consortium at that airport.

4. Provide:

i. A list of the air carriers that have approved the exemption;

ii. The total landed weight of operations by all air carriers listed under VI.A.2 above at the airport for the preceding year;

iii. The total landed weight of each air carrier listed under VI.A.2 above that has approved the exemption; and

iv. A list of carriers serving the airport in the previous or current year but excluded from the lists in VI.A.2, with the reason for exclusion.

5. Provide a copy of each document indicating air carrier approval of or objection to the exemption requested.

6. Provide a description of consultation with foreign air carriers serving the airport on proposals for air carrier approval under 49 U.S.C. section 47134(b)(1)(A).

B. For an application relating to a nonprimary airport:

1. Provide certification that the public sponsor has consulted with at least 65 percent of the owners of aircraft at the airport regarding the sponsor's application for the exemption described in Part V.A. above.
2. Copies or a description of the information conveyed to aircraft owners at the airport regarding the proposed exemption.
3. Copies of comments received from aircraft owners on the proposed exemption.

Part VII. Airport Operation and Development

- A. Provide a description of how the private operator, the public sponsor, or both will address the following issues with respect to the operation, maintenance, and development of the airport after the proposed transfer.
 1. Part 139 certification. If applicable, a request for a Part 139 certificate should be filed with the local FAA Regional Airports Division. The exemption application needs only to reflect the private operator's intentions and the status of a certificate application, if applicable.
 2. Continuing access to the airport on fair and reasonable terms and without unjust discrimination, in accordance with section 47134(c)(1).
 3. Continued operation of the airport in the event of bankruptcy or other financial or legal impairment of the private operator, in accordance with the specific terms of section 47134(c)(2). The application should include any provision for reversion to the public sponsor. The application should include a legal opinion and certifications from both the public sponsor and the private operator that the proposed plan will be effective under operation of all applicable law, including but not limited to bankruptcy law, in assuring the continued operation of the airport.

4. Maintenance, improvement, and modernization of the airport, in accordance with section 47134(c)(3), including the public sponsor's most recent 5 year capital improvement plan and the 5 year capital improvement plan proposed by the private operator. Applicants should identify the sources of funds to be used for capital development, including any continuing contributions by the public sponsor. If funds are to be borrowed, applicants should identify the expected sources, anticipated repayment terms of any borrowed funds, and the source of revenue to be used for repayment. Applicants should also include any financial security provisions, such as a letter of credit or performance bond, for the accomplishment of the maintenance, improvement, and modernization projects committed to by the private operator.
5. Compliance with the limitations on air carrier fees, pursuant to section 47134(c)(4), not imposed for funding of new capital development undertaken after the transfer to the private operator. If it is the private operator's intent to impose an increase in fees on air carriers exceeding the limit in section 47134(c)(4), provide:
 - i. The amount of the planned increase in fees;
 - ii. A list of the air carriers that have approved the increase;
 - iii. The total landed weight of all operations by air carriers at the airport for the preceding year (which for a primary airport should be the same as provided in VI.A.4.b); and
 - iv. The total landed weight of all operations by air carriers that have approved the increase.
6. Compliance with the limitation on general aviation fees described in section

47134(c)(5).

7. Maintenance of safety and security at the airport, in accordance with section 47134(c)(6). The application should note the applicant's contacts with the FAA Regional Airports Division or Airports District Office on Part 139 and TSA on Part 1542, but does not need to duplicate information filed in connection with those actions. The application should include planned efforts by the private operator to maintain the public sponsor's existing mechanisms for communicating with airport tenants and users and the public on safety and security issues.
8. Mitigation of adverse effects of noise from airport operations, in accordance with section 47134(c)(7). The applicant should specifically describe its intentions with respect to an existing or future Part 150 noise compatibility program for the airport, with respect to the public sponsor's commitments under past records of decisions on airport development projects, and other measures the private operator proposes to take in the future.
9. Mitigation of adverse effects on the environment from airport operations, in accordance with section 47134(c)(8).
10. Confirmation that any collective bargaining agreement that covers employees of the airport and is in effect on the date of the sale or lease of the airport will not be abrogated by the sale or lease, as required by section 47134(c)(9).
11. The private operator's intentions regarding consultation with general aviation users regarding the planned privatization of the airport, and the projected effect on general aviation of the proposed changes in operation and management of the airport.
12. Private operator's plans (if known) for development of general aviation.

B. The private operator's acceptance of the grant assurances contained in the public

sponsor's grant agreements with the FAA and intention to assume legal responsibility for compliance with those assurances, as reflected in the transfer documents. Assurance 25 need not be addressed. In addition, the applicants' agreement that the grant assurances and the assurances required for granting an exemption under section 47134 create third-party beneficiary rights enforceable by the FAA in an administrative or judicial legal proceeding, and permit FAA to enforce directly against the private operator the grant assurances and the assurances required for granting an exemption under section 47134.

- C. Provide a description of the parties' efforts to consult with airport users about the proposed transaction and of the parties' community outreach efforts.

Part VIII. Periodic Audits.

- A. Section 47134(k) provides that the FAA may conduct periodic audits of the financial records and operations of an airport receiving an exemption under the pilot program. Applicants should indicate in the application their express assent to this provision.

Issued in Washington, DC.

Winsome A. Lenfert
Acting Associate Administrator
for Airports

[FR Doc. 2021-07586 Filed: 4/19/2021 8:45 am; Publication Date: 4/20/2021]