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[Proposed Rules]
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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. FAA-2014-0463]

Policy on the Non-aeronautical Use of Airport Hangars

AGENCY: Federal Aviation Administration (FAA).

ACTION: Notice of Proposed Policy; Request for Comments

SUMMARY: Under Federal law, airport operators that have accepted federal grants and/or those that have obligations contained in property deeds for property transferred under various Federal laws such as the Surplus Property Act generally may use airport property only for aviation-related purposes unless otherwise approved by the FAA. Compliance inspections by FAA staff, as well as audits by the Government Accountability Office, have found that some hangars intended for aircraft storage are routinely used to store non-aeronautical items such as vehicles and large household items. In some cases, this storage interferes with--or entirely displaces--aeronautical use of the hangar. Moreover, many airports have a waiting list for hangar space, and a tenant's use of a hangar for non-aeronautical purposes prevents aircraft owners from obtaining access to hangar storage on the airport. At the same time, the FAA realizes that storage of some small incidental items in a hangar that is otherwise used for aircraft storage will have no effect on the aeronautical utility of the hangar. The FAA is proposing a statement of policy on use of airport hangars to clarify compliance requirements for airport sponsors, airport manager, airport tenants, state aviation officials, and FAA compliance staff. This notice solicits public comment on the proposed policy statement.

DATES: Send your comments on or before September 5, 2014. The FAA will consider comments on the proposed policy statement. Any necessary or appropriate revisions resulting from the comments received will be adopted as of the date of a subsequent publication in the Federal Register.

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ADDRESSES: You may send comments [identified by Docket Number FAA-2014-0463] using any of the following methods:

Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

Mail: Docket Operations, U.S. Department of Transportation, West Building, Ground Floor, Room W12-140, Routing Symbol M-30, 1200 New Jersey Avenue SE., Washington, DC 20590.

Fax: 1-202-493-2251.

Hand Delivery: To Docket Operations, Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For more information on the notice and comment process, see the SUPPLEMENTARY INFORMATION section of this document.

Docket: To read background documents or comments received, go to <http://www.regulations.gov> at any time or to Room W12-140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Kevin C. Willis, Manager, Airport Compliance Division, ACO-100, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3085; facsimile: (202) 267-4629.

SUPPLEMENTARY INFORMATION:

Privacy: We will post all comments we receive, without change, to <http://www.regulations.gov>, including any personal information you provide. Using the search function of our docket Web site, anyone can find and read the comments received into any of our dockets, including the name of the individual sending the comment (or signing the comment for an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477-78).

Availability of Documents

You can get an electronic copy of this Policy and all other documents in this docket using the Internet by:

- (1) Searching the Federal eRulemaking portal (<http://www.faa.gov/regulations/search>);
- (2) Visiting FAA's Regulations and Policies Web page at (http://www.faa.gov/regulations_policies); or
- (3) Accessing the Government Printing Office's Web page at (<http://www.gpoaccess.gov/index.html>).

You can also get a copy by sending a request to the Federal Aviation Administration, Office of Airport Compliance and Management Analysis, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3085. Make sure to identify the docket number, notice number, or amendment number of this proceeding.

Authority for the Policy

This notice is published under the authority described in Title 49 of the United States Code, Subtitle VII, part B, chapter 471, section 47122(a).

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Background

Airport Sponsor Obligations

Airport sponsors that have accepted grants under the Airport Improvement Program (AIP) have agreed to comply with certain Federal policies included in each AIP grant agreement as sponsor assurances. The Airport and Airway Improvement Act of 1982 (AAIA), as amended and recodified at 49 U.S.C. 47107(a)(1), and the contractual sponsor assurances require that the airport sponsor make the airport available for aviation use. Grant assurance 22, Economic Nondiscrimination, requires the sponsor to make the airport available on reasonable terms without unjust discrimination for aeronautical activities, including aviation services. Grant assurance 19, Operation and Maintenance, prohibits an airport sponsor from causing or permitting any activity that would interfere with use of airport property for airport purposes. In some cases, sponsors who have received property transfers through surplus property and nonsurplus property agreements have similar federal obligations.

The sponsor may designate some areas of the airport for non-aviation

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use, \1\ with FAA approval, but aeronautical facilities of the airport must be dedicated to use for aviation purposes. Limiting use of aeronautical facilities to aeronautical purposes ensures that airport facilities are available to meet aviation demand at the airport. Aviation tenants and aircraft sponsors should not be displaced by non-aviation commercial uses that could be conducted off of airport property.

 \1\ The terms ``non-aviation'' and ``non-aeronautical'' are used interchangeably in this Notice.

It is the longstanding policy of the FAA that airport property be available for aeronautical use and not be available for non-aeronautical purposes unless that non-aeronautical use is approved by the FAA. Use of a designated aeronautical facility for a non-aviation purpose, even on a temporary basis, requires FAA approval. See FAA Order 5190.6B, Airport Compliance Manual, paragraph 22.6. The identification of non-aviation use of aeronautical areas receives special attention in FAA airport compliance inspections. See Order 5190.6B, paragraphs 21.6.e and f(5).

Areas of the airport designated for non-aeronautical use must be shown on an airport's Airport Layout Plan (ALP). The AAIA, at 49 U.S.C. 47107(a)(16), requires that AIP grant agreements include an assurance by the sponsor to maintain an ALP in a manner prescribed by the FAA. Sponsor assurance 29, Airport Layout Plan, implements Sec. 47107(a)(16) and provides that an ALP must designate non-aviation areas of the airport. The sponsor may not allow an alteration of the airport in a manner inconsistent with the ALP unless approved by the FAA. See FAA Order 5190.6B, Airport Compliance Manual, paragraph 7.18, and Advisory Circular 150/5070-6B, Airport Master Plans, chapter 10.

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Clearly identifying non-aeronautical facilities not only keeps aeronautical facilities available for aviation use, but also assures that the airport sponsor receives at least Fair Market Value (FMV) revenue from non-aviation uses of the airport. The AAIA requires that airport revenues be used for airport purposes, and that the airport maintain a fee structure that makes the airport as self-sustaining as possible. 49 U.S.C. 47107(a)(13)(A) and (b)(1). The FAA and the Department of Transportation Office of the Inspector General have interpreted these statutory provisions to require that non-aviation activities on an airport be charged a fair market rate for use of airport facilities rather than the aeronautical rate. See FAA Policies and Procedures Concerning the Use of Airport Revenue, Sec. VII.C, 64 FR 7696, 7721 (Feb. 16, 1999) (FAA Revenue Use Policy). If an airport tenant pays an aeronautical rate for a hangar and then uses the hangar for a non-aeronautical purpose, the tenant may be paying a below-market rate in violation of the sponsor's obligation for a self-sustaining rate structure and FAA's Revenue Use Policy. Confining non-aeronautical activity to designated non-aviation areas of the airport helps to ensure that the non-aeronautical use of airport property is monitored and allows the airport sponsor to clearly identify non-aeronautical fair market value lease rates in order to meet their federal obligations. Identifying non-aeronautical uses and charging appropriate rates for these uses prevents the sponsor from subsidizing non-aviation activities with aviation revenues.

FAA Oversight

The FAA's enforcement of appropriate use of airport property has been the subject of two audits by the General Accounting Office (now called Government Accountability Office, or GAO). In August 1980, the GAO released a report to the Secretary of Transportation entitled "Misuse of Airport Land Acquired through Federal Assistance." This report highlighted several cases of federally funded land being used for various non-aeronautical purposes. The report cited a lack of oversight by FAA and recommended more active involvement in oversight. In May 1999, the GAO released the report, "General Aviation Airports: Unauthorized Land Use Highlights Need for Improved Oversight and Enforcement". This report highlighted the need for the FAA to increase its efforts to monitor airports for unauthorized use of land.

In response to this second report, the FAA began conducting land use inspections at 18 selected airports each year, at least two in each of the nine FAA regions. A frequent finding from these inspections has been the prevalence of non-aeronautical items stored in aircraft hangars designated for aeronautical use. In some cases, the aircraft hangars contained only non-aeronautical items, such as automobiles (including sponsor-owned police cruisers), boats, large recreational vehicles, etc. In other cases, non-aeronautical items shared space with legitimate aeronautical use of hangars. Inspections have frequently uncovered motorcycles, furniture, tools, and other non-aeronautical items stored in hangars along with aircraft. Some hangar tenants were found to be operating non-aviation commercial businesses out of an airfield hangar.

In May 2011, The Director of the Office of Airport Compliance and Management Analysis issued a Director's Determination under 14 CFR Part 16, \2\ finding the City in violation of Grant Assurance 19. Operations and Maintenance by allowing non-aeronautical use of airport hangars for storing non-aviation items. The FAA ordered the City to submit a

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Corrective Action Plan to bring the airport back into compliance. As part of the City of Glendale's effort to formulate a Corrective Action Plan, the City requested the FAA to provide written confirmation on the status of certain items as aeronautical or non-aeronautical. The agency's July 12, 2012 response to the letter became widely circulated in the airport community and has been interpreted by some as general policy. Insofar as that letter suggested that all non-aeronautical items stored in a hangar would constitute a violation of the grant assurances, it applied to a specific situation at a specific airport and does not represent general agency policy.

\2\ Valley Aviation Services, LLP v. City of Glendale, Arizona, FAA Docket No. 16-09-06 (May 24, 2011) (Director's Determination).

A sponsor's grant assurance obligations require that its aeronautical facilities be used or be available for use for aeronautical activities. If the presence of non-aeronautical items in a hangar does not interfere with these obligations, then the FAA will generally not consider their presence to constitute a violation of the sponsor's obligation to provide reasonable access to aeronautical users and tenants. In cases where excess hangar capacity is unused because of low aviation demand, a sponsor can request FAA approval for interim non-aeronautical use of a hangar until that hangar is needed again for an aeronautical purpose. However, aeronautical use must take priority and be accommodated over non-aeronautical use even if the rental rate would be higher for the non-aeronautical use (See FAA Order 5190.6B,] 22.6). The sponsor is required to charge a fair market commercial rental rate for any hangar rental or use for non-aeronautical purposes.

Use of Hangars for Fabrication and Assembly of Aircraft

While building an aircraft results in an aeronautical product, the FAA has not found all stages of the building process to be aeronautical for purposes of hangar use. A large part of the

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construction process can be and often is conducted off-airport. Only when the various components are assembled into a final functioning aircraft is access to the airfield necessary.

In Ashton v. City of Concord, NC, \3\ the complainant objected to the airport sponsor's prohibition of construction of a homebuilt aircraft in an airport T-hangar. The decision was based on a FAA determination that aircraft construction is not per se an aeronautical activity. While final stages of aircraft construction can be considered aeronautical, the airport sponsor prohibited this level of maintenance and repair in T-hangars but provided an alternate location on the airport. The FAA found that the airport sponsor's rules prohibiting maintenance and repair in a T-hangar, including construction of a homebuilt aircraft, did not violate the sponsor's grant assurances.

\3\ Ashton v. City of Concord, FAA Docket No. 16-99-09 (January 28, 2000) (Director's Determination and affirmed by Final Agency Decision).

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There have been industry objections to the FAA's designation of any aircraft construction stages as non-aeronautical. While the same principles apply generally to large aircraft manufacturing, compliance issues involving aircraft construction have typically been limited to homebuilt aircraft construction at general aviation airports. Commercial aircraft manufacturers use dedicated, purpose-built manufacturing facilities, and questions of aeronautical use for these facilities are generally resolved at the time of the initial lease. In contrast, persons constructing homebuilt aircraft sometimes seek to rent airport hangars designed for storage of operating aircraft and easy access to a taxiway, even though it may be years before a homebuilt aircraft kit will be able to take advantage of the convenient access to the airfield.

The FAA is not proposing any change to existing policy other than to clarify that final assembly of an aircraft, leading to the completion of the aircraft to a point where it can be taxied, will be considered an aeronautical use.

Proposed Policy and Request for Public Comment

The FAA intends to produce an agency policy on use of hangars and related facilities at federally obligated airports in sufficient detail to provide a clear and standardized guide for airport sponsors and FAA compliance staff. The FAA is proposing a policy statement for public comment based on the following general principles:

1. The primary goal of this policy is to protect federal investment in federally obligated airports by ensuring aeronautical facilities are available to aeronautical users. Aeronautical users requesting the use of a hangar for aircraft storage should not be denied access because the airport sponsor is permitting tenants to use hangars to store vehicles or household items, or to operate non-aviation businesses.

2. A secondary goal of the policy is to ensure that airport sponsors receive fair market rental for any approved use of airport property for non-aviation purposes.

3. The primary purpose of a hangar in an aeronautical area of the airport is aircraft storage or operation of an aeronautical service business that requires maintenance or repair work on aircraft. If a hangar is serving one of these purposes, then incidental storage of non-aviation items that does not interfere with the primary purpose of the hangar and occupies an insignificant amount of physical hangar space will not be considered to constitute a violation of the grant assurances. In such cases, incidental storage of non-aviation items will be treated as having de minimis value (for purposes of compliance with the self-sustaining assurance) and will not require the sponsor to increase rent as a result of the storage of these incidental non-aeronautical items.

4. If an airport's hangar capacity substantially exceeds aviation demand (e.g., there are multiple vacant hangars and no requests to rent them for aeronautical purposes), the sponsor may request and FAA may approve interim non-aeronautical use of vacant hangars under the provisions found in FAA Order 5190.6B, Chapter 22.6. FMV non-aeronautical rental rates would apply to any non-aviation use.

5. Final, active assembly of an aircraft in the manufacturing or homebuilt construction process, resulting in a completed, operational aircraft requiring access to the airfield, is considered an

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aeronautical activity for the purposes of this policy.

6. Using hangar space as a residence on a full-time or even temporary basis is not a compatible land use, no matter where it is located on the airport, and is not permitted.

7. Airport sponsors are expected to take measures to ensure that aeronautical facilities on the airport are reserved for aeronautical use. These measures should include a periodic inspection program to ensure that the waiting time for those persons who are legitimately in need of a hangar for aircraft storage is minimized.

8. Airport sponsors may adopt more stringent rules for use of hangars than required by the grant assurances, based on proprietary concerns for the safe and efficient use of airport property. However, such rules must be reasonable and not unjustly discriminatory against any aeronautical user. For example, an airport sponsor may limit storage of vehicles in hangars if there is concern that vehicular traffic on taxilanes or taxiways may create a safety hazard.

9. The sponsor's federal obligations do not protect non-aeronautical users and/or storage of non-aeronautical items. Non-aeronautical use is not a protected activity.

Proposed Policy and Request for Comments

In accordance with the above, the FAA proposes to adopt the following policy statement on use of hangars at federally obligated airports. The agency requests public comments on the proposed policy statement, as described in the ``Address'' and ``Dates'' information in this notice. Comments received by the due date will be considered in the development of a final agency policy statement.

Use of Aeronautical Land and Facilities

Applicability

This policy applies to all aircraft storage areas or facilities on a federally obligated airport unless designated for non-aviation use on an approved Airport Layout Plan or otherwise approved for non-aviation use by the FAA. The policy statement generally refers to the use of hangars since they are the type of aeronautical facility most often involved in issues of non-aviation use. The policy applies to all users of aircraft hangars, regardless of whether a user is an owner or lessee of the hangar, including airport sponsors, municipalities, and other public entities.

I. General

The intent of this policy is to ensure that the Federal investment in federally obligated airports is protected by making aeronautical facilities available to aeronautical users, and to ensure that airport sponsors receive fair market value for rental of approved non-aviation use of airport property. Sponsors who fail to comply with grant assurances and this policy may be subject to administrative sanctions such as the denial of funding from current and future AIP grants.

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II. Standards for Aeronautical Use of Hangars

Hangars located on airport property must be used for an aeronautical purpose, or be available for use for one, unless otherwise approved by the FAA.

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Aeronautical uses for hangars include:

- [cir] Storage of operational aircraft
- [cir] Final assembly of aircraft
- [cir] Short-term storage of non-operational aircraft for purposes of maintenance, repair, or refurbishment

Provided the hangar is used primarily for aeronautical purposes, an airport sponsor may permit limited, non-aeronautical items to be stored in hangars provided the items are incidental to aeronautical use of the hangar and occupy an insignificant amount of hangar space (e.g., a small refrigerator). The incidental storage of non-aeronautical items will be considered to be of de minimis value for the purpose of assessing rent.

Generally, items are considered incidental if they:

- [cir] Do not interfere with the aeronautical use of the hangar;
- [cir] Do not displace the aeronautical contents of the hangar;
- [cir] Do not impede access to aircraft or other aeronautical contents of the hangar;
- [cir] Do not require a larger hangar than would otherwise be necessary if such items were not present;
- [cir] Occupy an insignificant amount of hangar space;
- [cir] Are owned by the hangar owner or tenant;
- [cir] Are not used for non-aeronautical commercial purposes (i.e., the tenant is not conducting a non-aeronautical business from the hangar including storing inventory);
- [cir] Are not stored in violation of airport rules and regulations.

Hangars should be leased with consideration of the size and quantity of aircraft to be stored therein. To maximize the availability of hangars for all aeronautical users, sponsors should avoid leasing a hangar that is disproportionately large for the aircraft to be stored in the hangar (i.e., hangars built to store multiple aircraft should be used for multiple aircraft storage).

Hangars must not be used as a residence. The FAA differentiates between a typical pilot resting facility or aircrew quarters versus a hangar residence or hangar home. The former are designed to be used for overnight and/or resting periods for aircrew, and not as a permanent or even temporary residence. See FAA Order 5190.6B, Paragraph 20.5.b.

This policy on hangar use applies regardless of whether the hangar occupant leases the hangar from the airport sponsor or developer, or the hangar occupant constructed the hangar at their own expense and holds a ground lease only. When designated aeronautical land is made available for construction of hangars, the hangars built on the land will be fully subject to the sponsor's obligations to use aeronautical facilities for aeronautical use.

III. Approval for Non-Aeronautical Use of Hangars

Where hangars are unoccupied and there is no current aviation demand for hangar space, the airport sponsor may request that FAA approve an interim use of a hangar for non-aeronautical purposes for a period no more than five years. Interim leases of unused hangars can generate revenue for the airport and prevent deterioration of facilities. FAA will review the request in accordance with Order 5190.6B,] 22.6. Approved interim or concurrent revenue-production uses must not interfere with safe and efficient airport operations and sponsors should only agree to lease terms that allow the hangars to be

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recovered on short notice for aeronautical purposes.

The airport sponsor is required to charge non-aeronautical fair market rental fees for the non-aeronautical use of airport property, even on an interim basis. (See Policies and Procedures Concerning Airport Revenue, Sec. VII.C.)

IV. No Right to Non-Aeronautical Use

In the context of enforcement of the grant assurances, this policy allows some incidental storage of non-aeronautical items in hangars. However, the policy neither creates nor constitutes a right to store non-aeronautical items in hangars. Airport sponsors may restrict or prohibit storage of non-aeronautical items. Sponsors should consider factors such as emergency access, fire codes, security, insurance, and the impact of vehicular traffic on their surface areas when enacting rules regarding hangar storage. In some cases, permitting certain incidental non-aeronautical items in hangars could inhibit the sponsor's ability to meet obligations associated with grant assurance 19, Operations and Maintenance. Sponsors should ensure that taxiways and runways are not used for the vehicular transport of such items to or from the hangars.

V. Sponsor Compliance Actions

It is expected that aeronautical facilities on an airport will be available and used for aeronautical purposes in the normal course of airport business, and that non-aeronautical uses will be the exception. Sponsors should have a program to routinely monitor use of hangars and take measures to eliminate and prevent unapproved non-aeronautical use of hangars. Sponsors should ensure that length of time on a waiting list of those legitimately in need of a hangar for aircraft storage is minimized. Sponsors should also consider incorporating provisions in airport leases, including aeronautical leases, to adjust rental rates to FMV for any non-incidental non-aeronautical use of the leased facilities. FAA personnel conducting a land use or compliance inspection of an airport may request a copy of the sponsor's hangar use program and evidence that the sponsor has limited hangars to aviation use.

Issued in Washington, DC, on July 15, 2014.
Randall S. Fiertz,
Director, Office of Airport Compliance and Management Analysis.
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