



Aviation Legal Update: Policy on the Non-Aeronautical Use of Airport Hangars

Washington Public Ports Association
Aviation Committee – Fall Meeting
November 16, 2016

Policy Background

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- If federal grants or deed restrictions, generally may use airport property only for aviation-related purposes unless approved by FAA
 - Keep aviation facilities available for aviation use
 - Assure fair market value for non-aviation uses (sustainability)
 - Audits revealed widespread non-compliance
 - Prevalence of non-aeronautical items
 - Sometimes, only non-aeronautical items (e.g., boats, RVs)

FAA Register Notice FAA-2014-0463

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- Proposed policy published July 22, 2014
 - Comment period extended due to “significant interest”
 - Received over 2,400 comments
 - Two general categories of comments
 - 1) FAA should not regulate use of hangars at all, especially if the hangar is privately owned
 - 2) While FAA should regulate hangar use, proposed policy too restrictive in defining what activities should be allowed

FAA Responses to Policy Comments

- *Comment: FAA should defer to local government and leave regulation of hangar use to airport operator*
 - Short answer: No (but have revised policy)
 - Airport sponsors have agreed to the terms of their grant agreements or surplus property deeds
 - FAA trying to balance both concerns – too restrictive vs. not restrictive enough (not enough space)

FAA Responses to Policy Comments

- *Comment: FAA lacks authority to regulate privately owned hangars*
 - Statutory obligation to assure that facilities on aeronautical land are reasonably available for aviation use
 - Lessee accepts the conditions of lease in return for the special benefits of that location (e.g., easy access to airport facilities, lower rental rates)
 - Most hangar owners do not have fee ownership anyway (structure typically reverts to airport upon lease expiration)

FAA Responses to Policy Comments

- *Comments: Proposed policy too restrictive on storage of non-aviation items with an aircraft; terms like “incidental use” and “insignificant amount of space” too vague*
 - FAA agrees
 - Delete policy references to “incidental” or “*de minimis*” use
 - Instead simply require that non-aviation storage not interfere with movement of aircraft or impede access
 - Lists specific conditions that are considered to interfere

FAA Responses to Policy Comments

- *Comment: Should have different rules when low aviation demand for hangars, especially if hangars are vacant and producing no income*
 - FAA agrees
 - Better to use hangars to generate revenue, as long as hangar can be quickly recovered for aviation use
 - Can request FAA approval of month-to-month leasing plan


FAA Responses to Policy Comments

- *Comment: All construction of an aircraft should be considered aeronautical use*
 - FAA agrees
 - Majority of comments were about this issue
 - Recognizes difference between amateur-built aircraft and large-scale commercial aircraft manufacturing
 - Will consider construction of amateur-built or kit-built aircraft as an aeronautical activity
 - Sponsors should consider safety measures and progress benchmarks

Final Policy Highlights (effective July 1, 2017)

- Hangars on airport property must be used for an aeronautical purpose, or be available for such use, unless otherwise approved
 - Not a change in the core FAA policy
- Policy applies to all aircraft storage areas or facilities at a federally obligated airport that are designated for aeronautical use (not just hangars)
- Does not matter whether user is a hangar owner or lessee

Policy Highlights: Aeronautical Uses

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- Storage of active aircraft
 - Final assembly of aircraft under construction
 - Non-commercial construction of amateur- or kit-built aircraft
 - Maintenance, repair, or refurbishment of aircraft (but not indefinite storage of non-operational aircraft)
 - Storage of aircraft handling equipment, for example:
 - Towbars and glider tow equipment
 - Workbenches
 - Tools and materials used in servicing, maintenance, repair, etc.

Policy Highlights: Non-Aeronautical Items

- As long as primary use is aeronautical, sponsor may permit non-aeronautical items to be stored, as long as they do not “*interfere with the aeronautical use of the hangar*”
- What is “interference”? Generally cannot –
 - Impede movement of aircraft in and out of hangar
 - Impede access to aircraft or other aeronautical contents
 - Displace aeronautical contents of hangar
 - Conduct a non-aviation business or municipal agency function (including storage of inventory)
 - Store items in violation of airport rules and regulations, lease provisions, building codes, or local ordinances


Policy Highlights: FAA Approval

- Advance approval of interim use
 - Where hangars unoccupied and no current aviation demand
 - Interim use for 3-5 years
- Approval of month-to-month leasing plan
 - Must provide for 30-day notice to vacate
 - If plan approved, then can lease without further FAA approval
- “Other cases” – need advance written FAA approval

Other Policy Highlights

- Specific provision allowing use for construction of aircraft
 - Sponsors not required to construct or upgrade facilities
 - Consider safety measures and progress benchmarks
- No right to non-aeronautical use
 - Sponsors may still restrict or prohibit storage of non-aeronautical items
 - Should consider emergency access, fire codes, security, insurance, impact on traffic
 - To avoid discrimination claim, impose consistent rules

Airport Sponsor Compliance

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- Expected that aeronautical facilities will be available and used for aeronautical purposes; non-aeronautical use should be the exception
 - Should have a program to routinely monitor hangar use and take measures to eliminate and prevent unapproved uses
 - Should ensure that waiting list times are minimized

Airport Sponsor Compliance

- Should consider lease provision that automatically adjusts rental rates to FMV if tenant uses hangar in violation of the policy
- FAA personnel may request a copy of your hangar use program and evidence that sponsor has limited hangars to aeronautical use
- Note that FAA conducts land use inspections at 18 or more selected airports each year, at least two in each of the 9 regions