

HANGAR W-5
GROUND LEASE AGREEMENT
OWNER OCCUPIED HANGAR

This LEASE AGREEMENT made and entered into this ____ day of _____, 2023, by and between Baldwin County, Georgia, a political subdivision of the State of Georgia, of the first part, herein called "The Lessor", and Sinclair Aviation, LLC of the State of Georgia, of the second part, herein called "The Lessee".

WITNESETH:

That for and in consideration of the rents hereinafter provided for, and the covenants and agreements herein set forth, said The Lessor does hereby rent and lease to The Lessee, and The Lessee does hereby rent and lease from The Lessor, the parcel of land designated as W-5 in the attached "Exhibit A", together with all improvements to be placed thereon, including the right of ingress and egress thereto at all times upon the following terms and covenants:

1. TERM. The base term of this lease is for a period of thirty (30) years commencing on the first day of January 2024 and ending on DECEMBER 31, 2054 unless terminated as provided herein. After the base term, The Lessor shall have the option of:

- A. Terminating the lease and purchasing the improvements located thereon for value of \$1.00 in which case this ground lease shall terminate at that time and The Lessee shall execute in favor of The Lessor such deed or Bill of Sale as shall evidence their sale of said improvements to The Lessor; or
- B. Negotiate a new lease for an additional ten (10) years for the hangar and land rental for a fee to be agreed upon between the parties with ownership of land and building being with The Lessor.

2. BUILDINGS AND LAND. The Lessee covenants and agrees to maintain the existing building (W-5) constructed upon the leased land, during the term of this lease, as an aircraft hangar being generally described as 100 FEET LONG AND 100 FEET WIDE for an approximate square footage of 10,000 SQUARE FEET plus a TEN (10) FOOT WIDE BUFFER around the building for a TOTAL SQUARE FOOTAGE of 14,400 SQUARE FEET. The Lessee further agrees to maintain the paved entry pad area at his/her expense.

3. RENTS. The Lessee shall pay to The Lessor, during the term of this lease, as monthly rental, in advance, on or before the first day of each and every month of the term of this lease the sum of (@\$.07/sq. ft x 14,400 sq. ft. = \$1,008 /mo.) for the first five years and at a rate of (\$.07/sq. ft. x 14,400 sq. ft. x (1 + the cumulative CPI for the previous five years) for the next five years, and repeating to increase at each consecutive five year interval until the final contract date.

4. UTILITIES. The Lessee shall pay for all installation, maintenance and monthly service for water, electricity, gas, or other utilities used on said premises. The Lessor will grant to utility companies such easements as may be necessary to furnish said utilities to said premises.

5. MAINTENANCE. The Lessor shall not be required to make any repairs or any other improvements to the premises whatsoever. The Lessee, at its cost and expense, shall always maintain the leased premises in as good a condition as when received by The Lessee, and shall maintain the existing building to include periodic painting and repair as needed to present an acceptable appearance and appropriate for the use intended. At the expiration or termination of the term hereof, The Lessee shall surrender the premises to The Lessor in as good or better condition as when received by The Lessee, excepting only normal wear.

6. USE. Said premises shall be used as an aircraft hangar for aircraft storage. The Lessee must house plane(s) in the hangar that are registered and based at The Baldwin County Regional Airport. If The Lessee fails to have a based aircraft in the hangar for more than 3 months, a surcharge, in addition to the lease payments, of two (2) percent of the hangar valuation will be collected. The surcharge may be waived by The County if The Lessee demonstrates they are actively involved to acquire a replacement airplane. The Lessee will be permitted to rent aircraft space in the building as needed. The Lessee may utilize the services of the FBO as a rental agent upon agreement with the FBO for services rendered. The Lessee shall notify The Lessor of the details of such agent agreement. The Lessee may sublease space to a commercial enterprise with approval of The Lessor. The Lessee shall provide a copy of the proposed sublease for review prior to execution. The premises shall not be used for any commercial purpose without the prior expressed written consent of The Lessor. The Lessee shall pay The Lessor, at the end of each year, 5% of the yearly total income received from rental by non-based aircraft and/or a commercial enterprise. The hangar shall not be used for any illegal purpose, nor in violation of any valid regulation of any governmental body, nor in any manner which may create a nuisance or trespass. The Lessee shall be responsible to assure any sublease tenants comply with the attached "Exhibit B", *FAA Policy on the Non-aeronautical Use of Airport Hangars*.

7. HOLD HARMLESS/ INSURANCE. At all times during the lease term, The Lessee shall maintain at its sole cost, comprehensive broad-form general public liability insurance against claims and liability for personal injury, death and property damage arising from the use, occupancy, disuse, or condition of the demised premises and adjoining areas, the insurance shall be carried by a company authorized to transact business in the State of Georgia, acceptable to The Lessor with the following conditions to be met: The insurance provided pursuant to this paragraph shall be in an amount of not less than \$1,000,000.00 per occurrence and \$2,000,000.00 yearly aggregate with a deductible not to exceed \$5,000.00 per occurrence, with The Lessor named and Fixed Based Operator as additional insured. In satisfaction of the foregoing requirements, The Lessee shall furnish to The Lessor by delivery to the County Manager, Certificates of all insurance required by this Section, with each policy to provide that coverage shall remain in full force and effect and may not be cancelled without ten days written notice of intent to cancel being given to The Lessor and The Lessee. The Lessee agrees further to indemnify and save harmless The Lessor, its members, agents, officers, and employees, and their successors and assigns and the Fixed Base Operator, its successors and assigns, individually and collectively, from and against all liability for injuries to persons or damage to property occasioned by The Lessee's construction of said hangar or its maintenance or use and by virtue of any incident arising out of the use and possession of said premises under or by virtue of this lease through any act or omission or through any negligence of The Lessee, its officers, agents, or employees or their successors or assigns otherwise. The Lessee further agrees to pay all expenses in defending against any claims made against The Lessor, provided however, that The Lessee shall not be liable for any damage, injury or loss occasioned by the negligence solely on the part of The Lessor, its agents, or employees. The Lessee shall give to The Lessor prompt and timely notice of any claims made or service of process in any suit concerning such injury or damage.

8. INSPECTION. The Lessor may enter upon the leased premises at reasonable hours to inspect the same for the purpose of seeing that The Lessee is complying with all its obligations hereunder.

9. DEFAULTS. If The Lessee defaults for ten (10) days after written notice thereof in paying said rent, or if The Lessee defaults for thirty (30) days after written notice thereof in performing any of The Lessee's obligations hereunder; or if The Lessee is adjudicated bankrupt; or if a permanent receiver is appointed for any of The Lessee's property, and such receiver is not removed within sixty (60) days after written notice from The Lessor to obtain such removal; or if, whether voluntarily or involuntarily, The Lessee takes advantage of any debtor's relief proceedings under any present or future law whereby the rent or any part thereof is, or is proposed to be, reduced or payment thereof deferred, or if The Lessee

makes an assignment for the benefit of creditors; or if any of The Lessee's effects or interest in said premises shall be levied upon or attached under process not satisfied or dissolved within thirty (30) days after written notice from The Lessor to The Lessee to obtain satisfaction thereof; then, and in any of said events, The Lessor at its option may at once, or at any time during the continuance of such default or condition, terminate this lease by written notice to The Lessee, or without terminating this lease, enter upon and rent said premises to others at the best price obtainable or reasonable effort, without advertisement and by private negotiation and for such term as The Lessor shall deem proper.

In the event of such re-entering, The Lessee shall be liable to The Lessor for the deficiency, if any, between The Lessee's rent hereunder and the price obtained by The Lessor on reletting or in the event of such termination this lease shall be at an end.

Upon the exercise of either of said options by The Lessor, The Lessee will at once surrender possession of the premises and remove all The Lessee's effects therefrom; and The Lessor may forthwith re-enter the premises and remove all persons and effects therefrom, using such force as may be necessary, without being guilty of trespass, forcible entry, detainer, or other tort. No termination of the term hereof shall affect The Lessor's right to collect rent for the period prior to termination.

10. ASSIGNMENTS. The Lessee may not, without the prior written consent of The Lessor, assign this lease or any interest or rights hereunder. The Lessee may sublet said premises or any part thereof or permit the use of said premises by any party according to the terms and conditions of this lease agreement and further according to the terms and conditions, rules, regulations, and ordinances affecting all tenants, licensees, and invitees of The Lessor's properties; provided, however, that The Lessee shall remain liable to perform all the terms and conditions of this lease upon any approved assignment or sublease.

11. ALTERATIONS. It is hereby agreed that during the term of this lease and any extension thereof, The Lessee shall be allowed to make necessary alterations and changes to the building constructed on said premises, to maintain and repair said building, including repainting as needed, provided the plans and specifications for alterations, and / or proposed paint color, are submitted to The Lessor and approved by it and do not expand the size of the building or required additional ground area for use or maintenance.

12. ATTORNEYS' FEES. If either party is required to take legal action to enforce or attempt to enforce any provision of this lease, then the party prevailing in said proceeding shall pay to the other party reasonable attorney's fees incurred in said action. What constitutes reasonable attorneys' fees shall be determined by the Judge of the Court in which said proceeding is pending upon application of either party.

13. WAIVERS. No failure of The Lessor to exercise any power given The Lessor hereunder, or to insist upon strict compliance by The Lessee of its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of The Lessor's right to demand exact compliance with the terms hereof.

14. TIME. Time is of the essence of this agreement.

15. RELATIONSHIP. This contract shall create the relationship of landlord and tenant between The Lessor and The Lessee; no estate shall pass out of The Lessor; The Lessee shall have only a usufruct, not subject to levy or sale.

16. CUMULATIVE RIGHTS. All rights, powers and privileges conferred hereunder upon the respective parties hereto shall be cumulative and not restrictive as to those given by law, however, there shall be no renewal or extension of the term of this lease by operation of law or by implication.

17. NOTICES. For purposes of this lease, any notice to be given in writing to The Lessee shall be deemed effective when mailed by registered or certified mail, with required postage prepaid, to The Lessee's address as follows:

ATTENTION: ASHLEY SMITH
SINCLAIR AVIATION, LLC
216 AIRPORT RD NE
MILLEDGEVILLE, GA 31061

Similarly, any notice to be given in writing to The Lessor shall be deemed to be effective when mailed by registered or certified mail, with required postage prepaid, addressed as follows:

COUNTY MANAGER
BALDWIN COUNTY, GEORGIA
BALDWIN COUNTY GOVERNMENT BUILDING
1601 NORTH COLUMBIA STREET
SUITE 230
MILLEDGEVILLE, GA 31061

18. MISCELLANEOUS

(a) The captions in this Lease are for convenience only, are not a part of this Lease and do not in any way define, limit, describe or amplify the terms of this Lease.

(b) All terms and words used in this Lease, regardless of the number or gender in which they are used, are deemed to include any other number and any other gender as context may require.

(c) This Lease represents the entire agreement between the Lessor and Lessee hereto and there are no collateral or oral agreements or understandings between the Lessor and Lessee with respect to the existing building (W-5). No rights, easements, or licenses are acquired in the existing building (W-5) or any land adjacent thereto by implication or otherwise, except as expressly set forth herein. This Lease shall not be modified in any manner except by an instrument in writing executed by the Lessor and Lessee and duly adopted by the Baldwin County Board of Commissioners. Both parties having participated fully and equally in the negotiation and preparation of this Lease, this Lease shall not be more strictly construed, nor any ambiguities in this Lease resolved, against either Lessor or Lessee.

(d) If any provision of this Lease shall be declared unenforceable in any respect, such unenforceability shall not affect any other provision of this Lease, and each such provision shall be deemed to be modified, if possible, in such a manner as to render it enforceable and to preserve to the extent possible the intent of the parties as set forth herein. This Lease is made and entered into in the State of Georgia and shall in all respects be interpreted, enforced, and governed under the Laws of the State of Georgia.

(e) In the event of any disputes between the parties over the meaning, interpretation, or implementation of the terms of this Lease, the matter under dispute, unless resolved between the parties, shall be submitted to the Superior Court of Baldwin County.

IN WITNESS WHEREOF, the parties to this agreement have hereunto set their hands and signatures effective as of the day and year first above written.

[SIGNATURE PAGE FOLLOWS]

Initials: _____

BALDWIN COUNTY, GEORGIA

BY: _____

Its: Chair, Baldwin County Board of Commissioners

Sinclair Aviation, LLC

BY: _____

Its: _____

Signed, sealed, and delivered.

This _____ day of _____ 2023

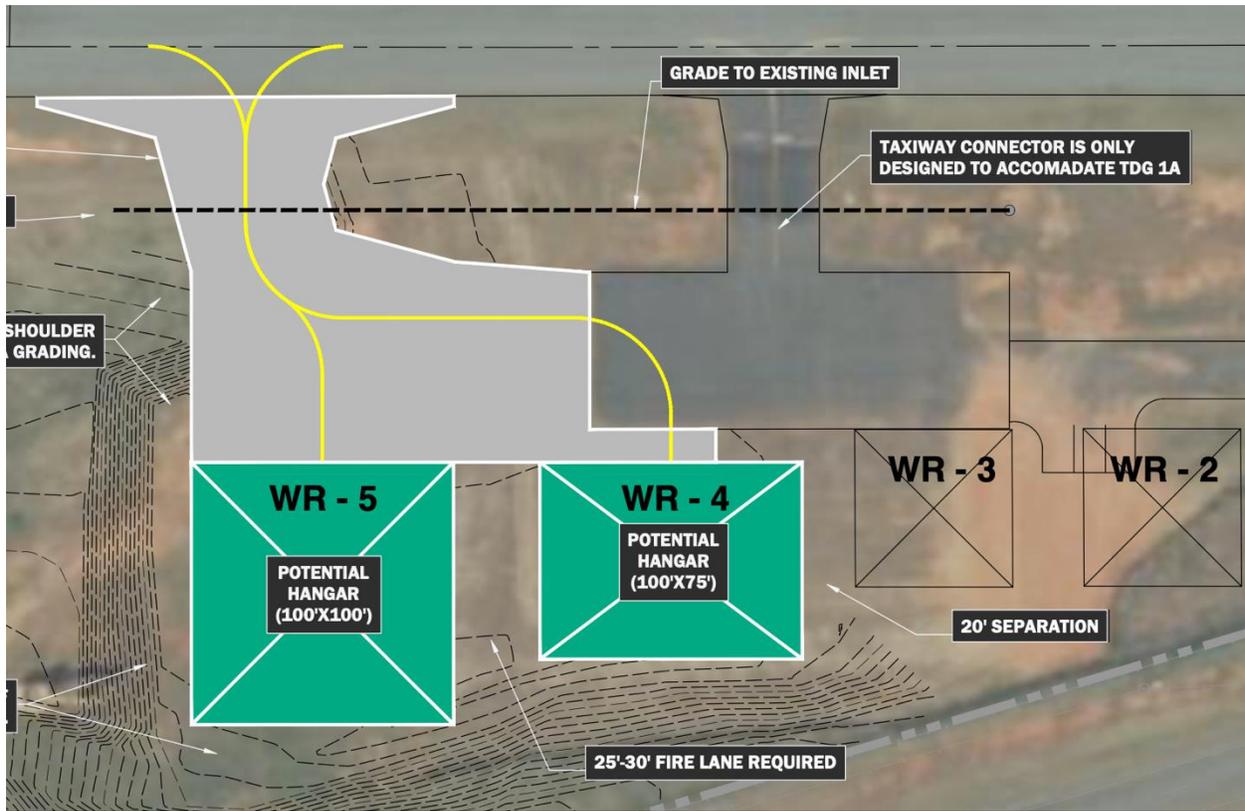
In the presence of:

Witness

Notary Public {SEAL}

My Commission expires: _____

EXHIBIT A



Hangar W - 5

Building - 10,000 Sq. Ft.

Buffer - 4,400 Sq. Ft.

Total -14,400 Sq. Ft.

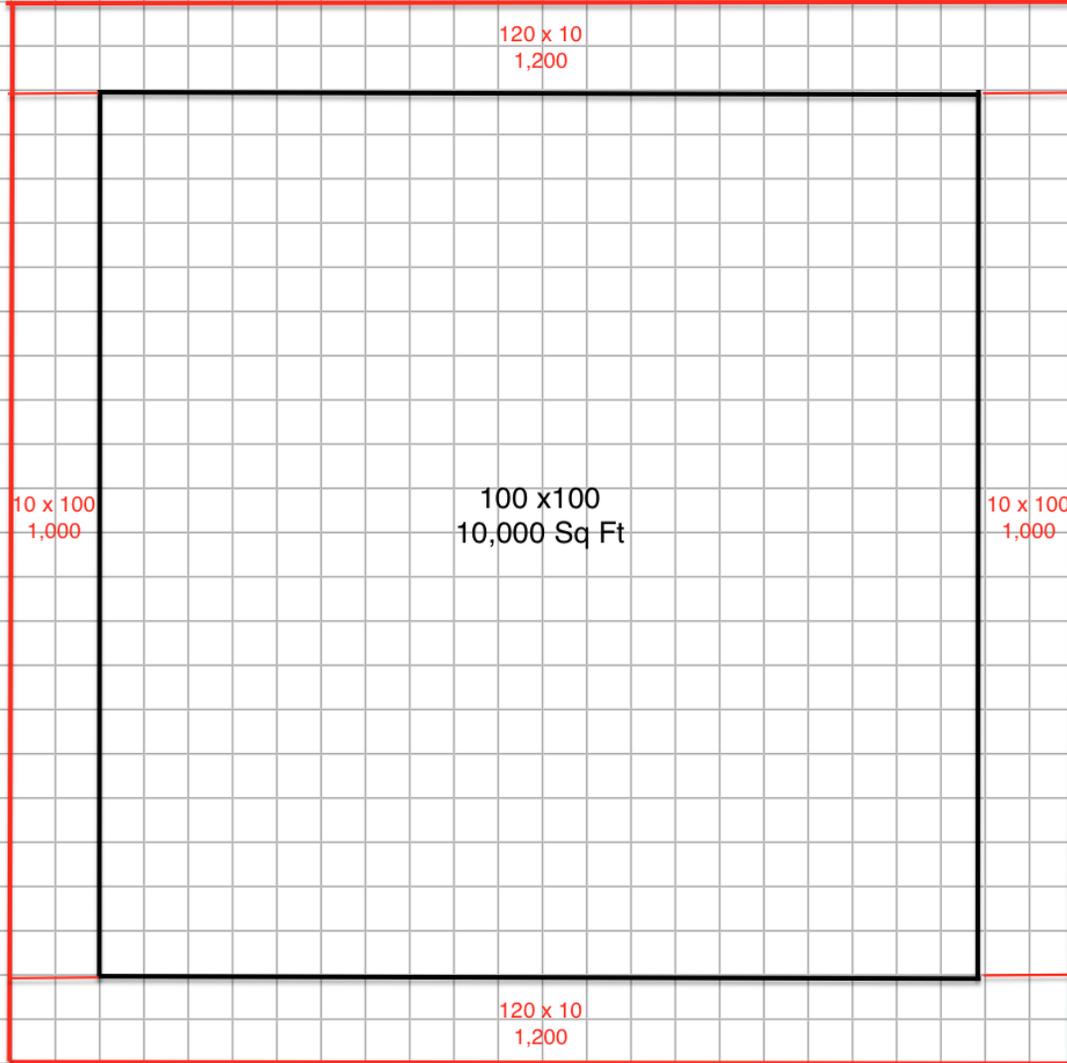


EXHIBIT B



in this AD to obtain corrective actions from a manufacturer, the action must be accomplished using a method approved by the Manager, International Branch, ANM-116, Transport Airplane Directorate, FAA; or the European Aviation Safety Agency (EASA); or Saab AB, Saab Aeronautics' EASA Design Organization Approval (DOA). If approved by the DOA, the approval must include the DOA-authorized signature.

(m) Related Information

Refer to Mandatory Continuing Airworthiness Information (MCAI) European Aviation Safety Agency Airworthiness Directive 2014-0255, dated November 25, 2014, for related information. This MCAI may be found in the AD docket on the Internet at <http://www.regulations.gov> by searching for and locating Docket No. FAA-2015-7524.

(n) Material Incorporated by Reference

(1) The Director of the Federal Register approved the incorporation by reference (IBR) of the service information listed in this paragraph under 5 U.S.C. 552(a) and 1 CFR part 51.

(2) You must use this service information as applicable to do the actions required by this AD, unless this AD specifies otherwise.

(3) The following service information was approved for IBR on July 20, 2016.

(i) Saab Service Bulletin 2000-38-011, dated October 22, 2014.

(ii) Reserved.

(4) The following service information was approved for IBR on September 9, 2014 (79 FR 45337, August 5, 2014).

(i) Saab Service Bulletin 2000-38-010, dated July 12, 2013.

(ii) Saab Service Newsletter SN 2000-1304, Revision 01, dated September 10, 2013, including Attachment 1 Engineering Statement to Operator 2000PBS034334, Issue A, dated September 9, 2013.

(5) For service information identified in this AD, contact Saab AB, Saab Aeronautics, SE-581 88, Linköping, Sweden; telephone +46 13 18 5591; fax +46 13 18 4874; email saab340techsupport@saabgroup.com; Internet <http://www.saabgroup.com>.

(6) You may view this service information at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, WA. For information on the availability of this material at the FAA, call 425-227-1221.

(7) You may view this service information that is incorporated by reference at the National Archives and Records Administration (NARA). For information on the availability of this material at NARA, call 202-741-6030, or go to: <http://www.archives.gov/federal-register/cfr/ibr-locations.html>.

Issued in Renton, Washington, on May 31, 2016.

Michael Kaszycki,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 2016-13740 Filed 6-14-16; 8:45 am]

BILLING CODE 4910-13-P

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), Department of Transportation (DOT).

ACTION: Notice of final policy.

SUMMARY: This action clarifies the FAA's policy regarding storage of non-aeronautical items in airport facilities designated for aeronautical use. 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. In some cases, airports have allowed non-aeronautical storage or uses in some hangars intended for aeronautical use, which the FAA has found to interfere with or entirely displace aeronautical use of the hangar. At the same time, the FAA recognizes that storage of some items in a hangar that is otherwise used for aircraft storage will have no effect on the aeronautical utility of the hangar. This action also amends the definition of aeronautical use to include construction of amateur-built aircraft and provides additional guidance on permissible non-aeronautical use of a hangar."

DATES: The policy described herein is effective July 1, 2017.

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.

ADDRESSES: 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.

SUPPLEMENTARY INFORMATION:

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

Background*Airport Sponsor Obligations*

In July 2014, the FAA issued a proposed statement of policy on use of airport hangars to clarify compliance requirements for airport sponsors, airport managers, airport tenants, state aviation officials, and FAA compliance staff. (79 **Federal Register** (FR) 42483, July 22, 2014).

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) (Pub. L. 97-248), as amended and recodified at 49 United States Codes (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 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 owners should not be displaced by non-

¹ The terms "non-aviation" and "non-aeronautical" are used interchangeably in this Notice.

aviation commercial uses that could be conducted off airport property.

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-aeronautical purpose, even on a temporary basis, requires FAA approval. See FAA Order 5190.6B, *Airport Compliance Manual*, paragraph 22.6, September 30, 2009. The identification of non-aeronautical use of aeronautical areas receives special attention in FAA airport land use compliance inspections. See Order 5190.6B, paragraphs 21.6(f)(5).

Areas of the airport designated for non-aeronautical use must be shown on an airport's Airport Layout Plan (ALP). The AAlA, 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 § 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 Order 5190.6B, paragraph 7.18, and Advisory Circular 150/5070-6B, *Airport Master Plans*, Chapter 10.

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 AAlA 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*, (64 FR 7696, 7721, February 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

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 the presence of those items to constitute a violation of the sponsor's obligations. When an airport has unused hangars and low aviation demand, a sponsor can request the FAA approval for interim non-aeronautical use of a hangars, until demand exists for those hangars for an aeronautical purpose. 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. The sponsor is required to charge a fair market commercial rental rate for any hangar rental or use for non-aeronautical purposes. (64 FR 7721).

The FAA conducts land use inspections at 18 selected airports each year, at least two in each of the nine FAA regions. See Order 5190.6B, paragraph 21.1. The inspection includes consideration of whether the airport sponsor is using designated aeronautical areas of the airport exclusively for aeronautical purposes, unless otherwise approved by the FAA. See Order 5190.6B, paragraph 21.6.

The Notice of Proposed Policy

In July 2014, the FAA issued a notice of proposed policy on use of hangars and related facilities at federally obligated airports, to provide a clear and standardized guide for airport sponsors and FAA compliance staff. (79 FR 42483, July 22, 2014). The FAA received more than 2,400 comments on the proposed policy statement, the majority from persons who have built or are in the process of building an amateur-built aircraft. The FAA also received comments from aircraft owners, tenants and owners of hangars, and airport operators. The Aircraft Owners and Pilots Association (AOPA) and the Experimental Aircraft Association (EAA) also provided comments on behalf of their membership. Most of the

comments objected to some aspect of the proposed policy statement. Comments objecting to the proposal tended to fall into two general categories:

- The FAA should not regulate the use of hangars at all, especially if the hangar is privately owned.
- While the FAA should have a policy limiting use of hangars on federally obligated airports to aviation uses, the proposed policy is too restrictive in defining what activities should be allowed.

Discussion of Comments and Final Policy

The following summary of comments reflects the major issues raised and does not restate each comment received. The FAA considered all comments received even if not specifically identified and responded to in this notice. The FAA discusses revisions to the policy based on comments received. In addition, the FAA will post frequently asked Questions and Answers regarding the Hangar Use Policy on www.faa.gov/airport-compliance. These Questions and Answers will be periodically updated until FAA Order 5190.6B is revised to reflect the changes in this notice.

1. *Comment: Commenters stated that the FAA should defer to local government and leave all regulation of hangar use to the airport operator.*

Response: The FAA has a contract with the sponsor of an obligated airport, either through AIP grant agreements or a surplus property deed, to limit the use of airport property to certain aviation purposes. Each sponsor of an obligated airport has agreed to these terms. The FAA relies on each airport sponsor to comply with its obligations under this contract. To maintain a standardized national airport system and standardized practices in each of the FAA's nine regional offices, the agency issues guidance on its interpretation of the requirements of the AIP and surplus property agreements. It falls to the local airport sponsor to implement these requirements. The FAA allows airport sponsors some flexibility to adapt compliance to local conditions at each airport.

However, some airport sponsors have adopted hangar use practices that led to airport users to complain to the FAA. Some airport users have complained that sponsors are too restrictive, and fail to allow reasonable aviation-related uses of airport hangars. More commonly, aircraft owners have complained that hangar facilities are not available for aircraft storage because airport sponsors have allowed the use of hangars for purposes that are unrelated to aviation,

such as operating a non-aviation business or storing multiple vehicles. By issuing the July 2014 notice, the FAA intended to resolve both kinds of complaints by providing guidance on appropriate management of hangar use. The agency continues to believe that FAA policy guidance is appropriate and necessary to preserve reasonable access to aeronautical facilities on federally obligated airports. However, the final policy has been revised in response to comments received on the proposal.

2. *Comment: Commenters, including AOPA, stated that the FAA lacks the authority to regulate the use of privately owned hangars.*

Response: The FAA has a statutory obligation to assure that facilities on aeronautically designated land at federally obligated airports are reasonably available for aviation use. Designated aeronautical land on a federally obligated airport is a necessary part of a national system of aviation facilities. Land designated for aeronautical use offers access to the local airfield taxiway and runway system. Land designated for aeronautical use is also subject to certain conditions, including FAA policies concerning rates and charges (including rental rates) which were designed to preserve access for aeronautical users and to support aeronautical uses. A person who leases aeronautical land on the airport to build a hangar accepts conditions that come with that land in return for the special benefits of the location. The fact that the tenant pays the sponsor for use of the hangar or the land does not affect the agreement between the FAA and the sponsor that the land be used for aeronautical purposes. (In fact, most hangar owners do not have fee ownership of the property; typically airport structures revert to ownership of the airport sponsor upon expiration of the lease term). An airport sponsor may choose to apply different rules to hangars owned by the sponsor than it does to privately constructed hangars, but the obligations of the sponsor Grant Assurances and therefore the basic policies on aeronautical use stated in this notice, will apply to both.

3. *Comment: Commenters believe that a policy applying the same rules to all kinds of aeronautical structures, and to privately owned hangars as well as sponsor-owned hangars, is too general. The policy should acknowledge the differences between categories of airport facilities.*

Response: A number of commenters thought that rules for use of privately constructed and owned hangars should be less restrictive than rules for hangars

leased from the airport sponsor. The Leesburg Airport Commission commented that there are different kinds of structures on the airport, with variations in rental and ownership interests, and that the FAA's policy should reflect those differences. The FAA acknowledges that ownership or lease rights and the uses made of various aeronautical facilities at airports will vary. The agency expects that airport sponsors' agreements with tenants would reflect those differences. The form of property interest, be it a leasehold or ownership of a hangar, does not affect the obligations of the airport sponsor under the Grant Assurances. All facilities on designated aeronautical land on an obligated airport are subject to the requirement that the facilities be available for aeronautical use.

4. *Comment: Commenters agree that hangars should be used to store aircraft and not for non-aviation uses, but, they argue the proposed policy is too restrictive on the storage of non-aviation related items in a hangar along with an aircraft. A hangar with an aircraft in it still has a large amount of room for storage and other incidental uses, and that space can be used with no adverse effect on the use and storage of the aircraft.*

Response: In response to the comments, the final policy deletes the criteria of "incidental" or "de minimis" use and simply requires that non-aviation storage in a hangar not interfere with movement of aircraft in or out of the hangar, or impede access to other aeronautical contents of the hangar. The policy lists specific conditions that would be considered to interfere with aeronautical use. Stored non-aeronautical items would be considered to interfere with aviation use if they:

- Impede the movement of the aircraft in and out of the hangar;
- Displace the aeronautical contents of the hangar. (A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft);
- Impede access to aircraft or other aeronautical contents of the hangar;
- Are used for the conduct of a non-aeronautical business or municipal agency function from the hangar (including storage of inventory); or
- Are stored in violation of airport rules and regulations, lease provisions, building codes or local ordinances.

Note: Storage of equipment associated with an aeronautical activity (e.g., skydiving, ballooning, gliding) would be considered an aeronautical use of a hangar.

5. *Comment: Commenters stated the policy should apply different rules to situations where there is no aviation demand for hangars, especially when hangars are vacant and producing no income for the sponsor.*

Response: At some airports, at some times, there will be more hangar capacity than needed to meet aeronautical demand, and as a result there will be vacant hangars. The FAA agrees that in such cases it is preferable to make use of the hangars to generate revenue for the airport, as long as the hangar capacity can be recovered on relatively short notice for aeronautical use when needed. See Order 5190.6B, paragraph 22.6. The final policy adopts a provision modeled on a leasing policy of the Los Angeles County Airport Commission, which allows month-to-month leases of vacant hangars for any purpose until a request for aeronautical use is received. The final policy requires that a sponsor request FAA approval before implementing a similar leasing plan:

- The airport sponsor may request FAA approval of a leasing plan for the lease of vacant hangars for non-aeronautical use on a month-to-month basis.
- The plan may be implemented only when there is no current aviation demand for the vacant hangars.
- Leases must require the non-aeronautical tenant to vacate the hangar on 30 days' notice, to allow aeronautical use when a request is received.
- Once the plan is approved, the sponsor may lease vacant hangars on a 30 days' notice without further FAA approval.

The agency believes this will allow airports to obtain some financial benefit from vacant hangars now, while allowing the hangars to be quickly returned to aeronautical use when needed. FAA pre-approval of a month-to-month leasing plan will minimize the burden on airport sponsors and FAA staff since it is consistent with existing interim use guidance.

6. *Comment: Commenter indicates that the terms "incidental use" and "insignificant amount of space" are too vague and restrictive.*

Response: The FAA has not used these terms in the final policy. Instead, the policy lists specific prohibited conditions that would be considered to interfere with aeronautical use of a hangar.

7. *Comment: Commenter states Glider operations require storage of items at the airport other than aircraft, such as tow vehicles and towing equipment. This should be an approved use of hangars.*

Response: Tow bars and glider tow equipment have been added to the list of examples of aeronautical equipment. Whether a vehicle is dedicated to use for glider towing is a particular fact that can be determined by the airport sponsor in each case. Otherwise the general rules for parking a vehicle in a hangar would apply.

8. *Comment:* Commenter states it should be clear that it is acceptable to park a vehicle in the hangar while the aircraft is out of the hangar being used.

Response: The final policy states that a vehicle parked in the hangar, while the vehicle owner is using the aircraft will not be considered to displace the aircraft, and therefore is not prohibited.

9. *Comment:* Commenters, including Experimental Aircraft Association (EAA), stated that aviation museums and non-profit organizations that promote aviation should not be excluded from hangars.

Response: Aviation museums and other non-profit aviation-related organizations may have access to airport property at less than fair market rent, under section VII.E of the FAA Policy and Procedures Concerning the Use of Airport Revenue. (64 FR 7710, February 16, 1999). However, there is no special reason for such activities to displace aircraft owners seeking hangar space for storage of operating aircraft, unless the activity itself involves use and storage of aircraft. Accordingly, aviation museums and non-profit organizations will continue to have the same access to vacant hangar space as other activities that do not actually require a hangar for aviation use, that is, when there is no aviation demand (aircraft storage) for those hangars and subject to the discretion of the airport operator.

10. *Comment:* Commenters suggest that the policy should allow a "grace period" for maintaining possession of an empty hangar for a reasonable time from the sale of an aircraft to the purchase or lease of a new aircraft to be stored in the hangar.

Response: The FAA assumes that airport lease terms would include reasonable accommodation for this purpose and other reasons a hangar might be empty for some period of time, including the aircraft being in use or at another location for maintenance. The reasons for temporary hangar vacancy and appropriate "grace periods" for various events depend on local needs and lease policies, and the FAA has not included any special provision for grace periods in the final policy.

11. *Comment:* Commenters believe that the policy should allow some leisure spaces in a hangar, such as a lounge or seating area and kitchen, in

recognition of the time many aircraft owners spend at the airport, and the benefits of an airport community.

Response: The final policy does not include any special provision for lounge areas or kitchens, either specifically permitting or prohibiting these areas. The policy requires only that any non-aviation related items in a hangar not interfere in any way with the primary use of the hangar for aircraft storage and movement. The airport sponsor is expected to have lease provisions and regulations in place to assure that items located in hangars do not interfere with this primary purpose.

12. *Comment:* Commenters, including EAA, stated that all construction of an aircraft should be considered aeronautical for the purpose of hangar use, because building an aircraft is an inherently aeronautical activity. The policy should at least allow for use of a hangar at a much earlier stage of construction than final assembly.

Response: The FAA has consistently held that the need for an airport hangar arises at the time the components of the aircraft are assembled into a completed aircraft. Prior to that stage, components can be assembled off-airport in smaller spaces. This determination has been applied to both commercial aircraft manufacturing as well as homebuilding of experimental aircraft.

A large majority of the more than 2,400 public comments received on the notice argued that aircraft construction at any stage is an aeronautical activity. The FAA recognizes that the construction of amateur-built aircraft differs from large-scale, commercial aircraft manufacturing. It may be more difficult for those constructing amateur-built or kit-built aircraft to find alternative space for construction or a means to ultimately transport completed large aircraft components to the airport for final assembly, and ultimately for access to taxiways for operation.

Commenters stated that in many cases an airport hangar may be the only viable location for amateur-built or kit-built aircraft construction. Also, as noted in the July 2014 notice, many airports have vacant hangars where a lease for construction of an aircraft, even for several years, would not prevent owners of operating aircraft from having access to hangar storage.

Accordingly, the FAA will consider the construction of amateur-built or kit-built aircraft as an aeronautical activity. Airport sponsors must provide reasonable access to this class of users, subject to local ordinances and building codes. Reasonable access applies to currently available facilities; there is no

requirement for sponsors to construct special facilities or to upgrade existing facilities for aircraft construction use.

Airport sponsors are urged to consider the appropriate safety measures to accommodate aircraft construction. Airport sponsors leasing a vacant hangar for aircraft construction also are urged to incorporate progress benchmarks in the lease to ensure the construction project proceeds to completion in a reasonable time. The FAA's policy with respect to commercial aircraft manufacturing remains unchanged.

13. *Comment:* Commenter suggests that the time that an inoperable aircraft can be stored in a hangar should be clarified, because repairs can sometimes involve periods of inactivity.

Response: The term "operational aircraft" in the final policy does not necessarily mean an aircraft fueled and ready to fly. All operating aircraft experience downtime for maintenance and repair, and for other routine and exceptional reasons. The final policy does not include an arbitrary time period beyond which an aircraft is no longer considered operational. An airport operator should be able to determine whether a particular aircraft is likely to become operational in a reasonable time or not, and incorporate provisions in the hangar lease to provide for either possibility.

14. *Comment:* Commenter suggests that the FAA should limit use of hangars on an obligated airport as proposed in the July 2014 notice. Airport sponsors frequently allow non-aeronautical use of hangars now, denying the availability of hangar space to aircraft owners.

Response: Some commenters supported the relatively strict policies in the July 2014 notice, citing their experience with being denied access to hangars that were being used for non-aviation purposes. The FAA believes that the final policy adopted will allow hangar tenants greater flexibility than the proposed policy in the use of their hangars, but only to the extent that there is no impact on the primary purpose of the hangar. The intent of the final policy is to minimize the regulatory burden on hangar tenants and to simplify enforcement responsibilities for airport sponsors and the FAA, but only as is consistent with the statutory requirements for use of federally obligated airport property.

Final Policy

In accordance with the above, the FAA is adopting the following policy statement on use of hangars at federally obligated airports:

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

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 by ensuring that airport sponsors receive fair market value for use of airport property for non-aeronautical purposes. The policy implements several Grant Assurances, including Grant Assurance 5, *Preserving Rights and Powers*; Grant Assurance 22, *Economic Nondiscrimination*; Grant Assurance 24, *Fee and Rental Structure*; and Grant Assurance 25, *Airport Revenues*.

II. Standards for Aeronautical Use of Hangars

a. Hangars located on airport property must be used for an aeronautical purpose, or be available for use for an aeronautical purpose, unless otherwise approved by the FAA Office of Airports as described in Section III.

b. Aeronautical uses for hangars include:

1. Storage of active aircraft.
2. Final assembly of aircraft under construction.
3. Non-commercial construction of amateur-built or kit-built aircraft.
4. Maintenance, repair, or refurbishment of aircraft, but not the indefinite storage of nonoperational aircraft.
5. Storage of aircraft handling equipment, e.g., towbars, glider tow equipment, workbenches, and tools and materials used in the servicing, maintenance, repair or outfitting of aircraft.

c. Provided the hangar is used primarily for aeronautical purposes, an airport sponsor may permit non-aeronautical items to be stored in hangars provided the items do not

interfere with the aeronautical use of the hangar.

d. While sponsors may adopt more restrictive rules for use of hangars, the FAA will generally not consider items to interfere with the aeronautical use of the hangar unless the items:

1. Impede the movement of the aircraft in and out of the hangar or impede access to aircraft or other aeronautical contents of the hangar.
2. Displace the aeronautical contents of the hangar. A vehicle parked at the hangar while the vehicle owner is using the aircraft will not be considered to displace the aircraft.
3. Impede access to aircraft or other aeronautical contents of the hangar.
4. Are used for the conduct of a non-aeronautical business or municipal agency function from the hangar (including storage of inventory).
5. Are stored in violation of airport rules and regulations, lease provisions, building codes or local ordinances.

e. Hangars may not be used as a residence, with a limited exception for sponsors providing an on-airport residence for a full-time airport manager, watchman, or airport operations staff for remotely located airports. 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).

f. This policy applies regardless of whether the hangar occupant leases the hangar from the airport sponsor or developer, or the hangar occupant constructed the hangar at the occupant's own expense while holding a ground lease. When land designated for aeronautical use is made available for construction of hangars, the hangars built on the land are subject to the sponsor's obligations to use aeronautical facilities for aeronautical use.

III. Approval for Non-Aeronautical Use of Hangars

A sponsor will be considered to have FAA approval for non-aeronautical use of a hangar in each of the following cases:

a. FAA advance approval of an *interim use*: Where hangars are unoccupied and there is no current aviation demand for hangar space, the airport sponsor may request that FAA Office of Airports approve an interim use of a hangar for non-aeronautical purposes for a period of 3 to 5 years. The FAA will review the request in accordance with Order 5190.6B

paragraph 22.6. Interim leases of unused hangars can generate revenue for the airport and prevent deterioration of facilities. 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 recovered on a 30 days' notice for aeronautical purposes. In each of the above cases, 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. (64 FR 7721).

b. FAA approval of a *month-to-month leasing plan*: An airport sponsor may obtain advance written approval month-to-month leasing plan for non-aeronautical use of vacant facilities from the local FAA Office of Airports. When there is no current aviation demand for vacant hangars, the airport sponsor may request FAA approval of a leasing plan for the lease of vacant hangars for non-aeronautical use on a month-to-month basis. The plan must provide for leases that include an enforceable provision that the tenant will vacate the hangar on a 30-day notice. Once the plan is approved, the sponsor may lease vacant hangars on a 30-day notice basis without further FAA approval. If the airport sponsor receives a request for aeronautical use of the hangar and no other suitable hangar space is available, the sponsor will notify the month-to-month tenant that it must vacate.

A sponsor's request for approval of an interim use or a month-to-month leasing plan should include or provide for (1) an inventory of aeronautical and non-aeronautical land/uses, (2) information on vacancy rates; (3) the sponsor's procedures for accepting new requests for aeronautical use; and (4) assurance that facilities can be returned to aeronautical use when there is renewed aeronautical demand for hangar space. In each of the above cases, 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. (64 FR 7721).

c. *Other cases*: Advance written release by the FAA for all other non-aeronautical uses of designated aeronautical facilities. Any other non-aeronautical use of a designated aeronautical facility or parcel of airport land requires advance written approval from the FAA Office of Airports in accordance with Order 5190.6B chapter 22.

IV. Use of Hangars for Construction of an Aircraft

Non-commercial construction of amateur-built or kit-built aircraft is considered an aeronautical activity. As with any aeronautical activity, an airport sponsor may lease or approve the lease of hangar space for this activity without FAA approval. Airport sponsors are not required to construct special facilities or upgrade existing facilities for construction activities. Airport sponsors are urged to consider the appropriate safety measures to accommodate these users.

Airport sponsors also should consider incorporating construction progress targets in the lease to ensure that the hangar will be used for final assembly and storage of an operational aircraft within a reasonable term after project start.

V. 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 that do not interfere with aeronautical use. 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*. To avoid claims of discrimination, sponsors should impose consistent rules for incidental storage in all similar facilities at the airport. Sponsors should ensure that taxiways and runways are not used for the vehicular transport of such items to or from the hangars.

VI. Sponsor Compliance Actions

a. 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.

b. Sponsors should have a program to routinely monitor use of hangars and take measures to eliminate and prevent unapproved non-aeronautical use of hangars.

c. Sponsors should ensure that length of time on a waiting list of those in need of a hangar for aircraft storage is minimized.

d. Sponsors should also consider including a provision in airport leases, including aeronautical leases, to adjust rental rates to FMV for any non-incident non-aeronautical use of the leased facilities. In other words, if a tenant uses a hangar for a non-aeronautical purpose in violation of this policy, the rental payments due to the sponsor would automatically increase to a FMV level.

e. 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 aeronautical use.

The FAA may disapprove an AIP grant for hangar construction if there are existing hangars at the airport being used for non-aeronautical purposes.

Issued in Washington, DC, on the 9th of June 2016.

Robin K. Hunt,

Acting Director, Office of Airport Compliance and Management Analysis.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 660, 801, and 809

[Docket No. FDA-2013-N-0125]

RIN 0910-AG74

Use of Symbols in Labeling

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA or the Agency) is issuing this final rule revising its medical device and certain biological product labeling regulations to explicitly allow for the optional inclusion of graphical representations of information, or symbols, in labeling (including labels) without adjacent explanatory text (referred to in this document as "stand-alone symbols") if certain requirements are met. The final rule also specifies that the use of symbols, accompanied by adjacent explanatory text continues to be permitted. FDA is also revising its prescription device labeling regulations to allow the use of the symbol statement "Rx only" or "R only" in the labeling for prescription devices.

DATES: This rule is effective September 13, 2016.

FOR FURTHER INFORMATION CONTACT: For information concerning the final rule as it relates to devices regulated by the Center for Devices and Radiological Health (CDRH): Antoinette (Tosia) Hazlett, Center for Devices and Radiological Health, Food and Drug Administration, Bldg. 66, Rm. 5424, 10903 New Hampshire Ave., Silver Spring, MD 20993-0002, 301-796-6119, email: Tosia.Hazlett@fda.hhs.gov.

For information concerning the final rule as it relates to devices regulated by the Center for Biologics Evaluation and Research: Stephen Ripley, Center for Biologics Evaluation and Research, Food and Drug Administration, 10903 New Hampshire Ave., Bldg. 71, Rm. 7301, Silver Spring, MD 20993-0002, 240-402-7911.

SUPPLEMENTARY INFORMATION:

Executive Summary

Purpose of the Regulatory Action

The final rule explicitly permits the use of symbols in medical device labeling without adjacent explanatory text if certain requirements are met. The medical device industry has requested the ability to use stand-alone symbols on domestic device labeling, consistent with their current use on devices manufactured for European and other foreign markets. The final rule seeks to harmonize the U.S. device labeling requirements for symbols with international regulatory requirements, such as the Medical Device Directive 93/42/EEC of the European Union (EU) (the European Medical Device Directive) and global adoption of International Electrotechnical Commission (IEC) standard IEC 60417 and International Organization for Standardization (ISO) standard ISO 7000-DB that govern the use of device symbols in numerous foreign markets.

Summary of the Major Provisions of the Regulatory Action in Question

FDA has generally interpreted existing regulations not to allow the use of symbols in medical device labeling, except with adjacent English-language explanatory text and/or on in vitro diagnostic (IVD) devices intended for professional use. Under the final rule, symbols established in a standard developed by a standards development organization (SDO) may be used in medical device labeling without adjacent explanatory text as long as: (1) The standard is recognized by FDA under its authority under section 514(c) of the Federal Food, Drug, and Cosmetic Act (FD&C Act) (21 U.S.C. 360d(c)) and the symbol is used according to the specifications for use of the symbol set