

[Docket No. 8728; Amdt. 183-3]

PART 153—ACQUISITION OF U.S. LAND FOR PUBLIC AIRPORTS**Covenants and Reverter Clause in Conveyances**

The purpose of this amendment to Part 153 of the Federal Aviation Regulations is to add a new covenant and to revise existing covenants to be used in future conveyances of property interests in U.S. land for airport purposes; to revise the reverter clause to be used in those conveyances; and to adopt a definition of the term "airport purposes" that will ensure greater certainty in the operation of the covenants and reverter clause in these conveyances.

This amendment was proposed in Notice 68-2 that was issued on February 8, 1968, and published in the FEDERAL REGISTER on February 16, 1968 (33 F.R. 3078). The comments received in response to the notice expressed no views on the proposed new and revised covenants, or on the proposed definition of "airport purposes." However, the comments received supported the proposal to revise the reverter clause to make it operate 5 years, instead of 3 years, after the date of the conveyance. The FAA is adopting the amendments proposed for the reasons stated in the notice, but with some changes that are discussed below.

In Notice 68-2, the FAA stated that the covenants and the reverter clause now in § 153.13 "do not in terms deal with the contingencies of partial or delayed development which occur for excusable reasons." To remedy this situation, the FAA proposed to revise the reverter clause in § 153.13(b), to revise the covenants in § 153.13(a) (1), (6), and (7), and to add a new covenant. These changes are adopted as proposed in the notice with only minor changes in language that are not substantive in nature.

Section 16(b) of the Federal Airport Act requires that, when land is conveyed under that section, "each such conveyance shall be made on the condition that the property interest conveyed shall automatically revert to the United States in the event that the lands in question are not developed, or cease to be used, for airport purposes." Implementing this language, the reverter clause now in § 153.13(b) provides: "The property interest hereby conveyed shall automatically revert to the United States in the event that the lands in question are not developed for airport purposes within a period of 3 years from the date of conveyance * * *." As revised and adopted in new § 153.15, the reverter clause provides: "Any part of the property interest hereby conveyed that has not been developed for airport purposes within 5 years after the date of conveyance * * * shall automatically revert to the United States * * *." The new reverter clause deals with partial development by providing that the reverter operates only on the undeveloped part of the property interest conveyed. It also deals with delayed development by providing that the reverter operates 5 years, instead of 3 years, after the date of the conveyance.

To complement the reverter clause in new § 153.15, and as stated in the notice, the amended covenants "introduce a right of the Administrator, exercisable 1 year after conveyance, to enter upon and repossess any portion of the property interest conveyed that was not developed for airport purposes." The proposed covenants are adopted as new paragraphs (a) and (f) through (h) of revised § 153.13, that now contains only the covenants for Part 153 conveyances. Under new § 153.13(a), the grantee covenants, not only to use the property interest for airport purposes, but also to "develop that interest for airport purposes within 1 year after the date of this conveyance." If the grantee does not develop the interest within 1 year, under the covenant in new § 153.13(f), the Administrator may give notice requiring specific action toward development within a fixed time, and he may repeat, amend, or supplement these notices. If the grantee fails to complete action within the time fixed, the Administrator may exercise a right of entry as to all of the property interest conveyed, or in his discretion, as to the part of the property interest to which the breach relates. Under new § 153.13(g), if the grantee breaches a covenant other than that in § 153.13(a), the Administrator may exercise, without prior notice to the grantee, a similar right of entry as to all of the property interest, or in his discretion, as to the part of the property interest to which the breach relates. Under new § 153.13(h), the grantee covenants that, if the Administrator determines that the grantee has breached any covenant in the conveyance, his determination is conclusive of the facts. As in the past, the grantee also covenants to take any action that may be necessary to evidence transfer of title to the United States.

The term "airport purposes" is used in section 16 of the Federal Airport Act (quoted above) and in several sections of Part 153. Since that term is not defined in either section 16 or Part 153, a definition was proposed in Notice 68-2 to "make the operation of the proposed [covenants and reverter clause] more certain." As proposed, "airport purposes" includes the following uses of land in connection with the actual operation of a public airport, and the uses described were operational use, future developmental use, essential support services, and use for nonaeronautical complementary purposes. With the exception of future developmental use, each use described is related to actual airport operation. This use was described as "Reservation of land for foreseeable aeronautical development." While this is a "use of land," it does not clearly relate to "actual operation of a public airport." To carry out the intent of the notice, the FAA is adopting a definition of "airport purposes" that differs from the definition proposed. As adopted in new § 153.13(b), the definition of "airport purposes" contemplates uses of land that are directly related to both actual operation and foreseeable aeronautical development of a public airport, and it clearly indicates the use of examples in the kinds of uses described.

Several clarifying amendments to Part 153 are also adopted. For easier use and identification, the covenants and the reverter clause, as amended, are republished in separate §§ 153.13 and 153.15. Except for the addition of a statutory citation in new §§ 153.13(c), the covenants now in § 153.13(a) (2) through (5) are republished without change as new § 153.13 (b) through (e). The introductory paragraph of new § 153.15 conforms to the introductory paragraph of § 153.13. A reference to "Guam" is added to the introductory paragraph of § 153.3 to reflect the definition of "public agency" in section 1(7) of the Federal Airport Act. In § 153.3(b), the reference is corrected to cite § 151.35 that describes the kinds of airport development, rather than § 151.25. Section 153.5 is amended to reflect the fact that the FAA Area Manager is now the official within the FAA who is responsible for receiving requests for conveyances. Finally, cross-references in § 153.7 to present § 153.13 are changed to refer to new §§ 153.13 and 153.15.

In consideration of the foregoing, effective October 17, 1968, Part 153 of the Federal Aviation Regulations is amended as follows:

1. Section 153.1 is amended by inserting the paragraph designation and catch word "(a) General." before the first sentence thereof, and by adding the following new paragraph (b) at the end thereof:

§ 153.1 Applicability and purpose.

(b) *Definition of "airport purposes."* For the purposes of this part, "airport purposes" means uses of property interests in land that are directly related to the actual operation or the foreseeable aeronautical development of a public airport. It includes—

(1) *Operational use.* Use of property interests for aerial approaches, navalds, runways, taxiways, aprons, or other aircraft movement areas;

(2) *Future developmental use.* Reservation of property interests for foreseeable aeronautical development (for example, a planned runway extension or a planned terminal building development);

(3) *Essential support services use.* Use of property interests for activities directly supporting flight operations (for example, aircraft maintenance, fueling, and servicing; mail, passenger, and cargo processing facilities; communications, and air traffic control; crash rescue, fire fighting, and airport maintenance); and

(4) *Complementary activities use.* Use of property interests for facilities or services that enhance the utility or convenience of the aeronautical services (for example, facilities to provide food, shelter, surface transportation, or vehicular parking).

§ 153.3 [Amended]

2. The introductory paragraph of § 153.3 is amended by inserting the word "Guam", immediately after the words "the Virgin Islands,"; and paragraph (b) of § 153.3 is amended by striking out the reference "§ 151.25", and by inserting the reference "§ 151.35" in place thereof.

§ 153.5 [Amended]

3. Section 153.5 is amended by striking out the words "District Airport Engineer," and by inserting the words "Area Manager" in place thereof.

§ 153.7 [Amended]

4. Paragraph (b) (13), and the second and third sentences of paragraph (c), of § 153.7 are amended by striking out the reference "§ 153.13", and by inserting the references "§§ 153.13 and 153.15" in place thereof.

5. Section 153.13 is amended to read as follows:

§ 153.13 Covenants in conveyances.

Whenever the Administrator requests a department or agency to make a conveyance under this part, he also requests that the instrument of conveyance contain, as a covenant binding on the grantee, its successors and assigns, a provision—

(a) That the grantee will use the property interest for airport purposes, and will develop that interest for airport purposes within one year after the date of this conveyance;

(b) That the airport, and its appurtenant areas and its buildings and facilities, whether or not on the land conveyed, will be operated as a public airport on fair and reasonable terms, without discrimination on the basis of race, color, creed, or national origin, as to airport employment practices, and as to accommodations, services, facilities and other public uses of the airport;

(c) That the grantee will not grant or permit any exclusive right forbidden by section 308(a) of the Federal Aviation Act of 1958 (49 U.S.C. 1349(a)) at the airport, or at any other airport now or hereafter owned or controlled by it;

(d) That in furtherance of the policy of the Federal Aviation Administration under the foregoing covenant the grantee agrees that, unless authorized by the Federal Aviation Administrator, it will not, either directly or indirectly, grant or permit any person, firm, or corporation the exclusive right at the airport, or at any other airport now or hereafter owned or controlled by it, to conduct any aeronautical activities, including, but not limited to, charter flights, pilot training, aircraft rental and sightseeing, aerial photography, crop dusting, aerial advertising and surveying, air carrier operations, aircraft sales and services, sale of aviation petroleum products whether or not conducted in conjunction with other aeronautical activity, repair and maintenance of aircraft, sale of aircraft parts, and any other activities which because of their direct relationship to the operation of aircraft can be regarded as an aeronautical activity; and that the grantee further agrees that it will terminate any such exclusive right (including any exclusive right to engage in the sale of gasoline or oil, or both) now existing at the airport or at any other airport now or hereafter owned or controlled by the grantee, at the earliest renewal, cancellation, or expiration date applicable to the agreement that established the exclusive right, and covenants that there is no exclusive right not subject to termination under this provision;

(e) That any later transfer of the property interest conveyed will be subject to the covenants and conditions in the instrument of conveyance;

(f) That, if the covenant to develop the property interest for airport purposes within 1 year after the date of this conveyance is breached, the Federal Aviation Administrator may give notice to the grantee requiring him to take specified action towards development within a fixed period. These notices may be issued repeatedly, and outstanding notices may be amended or supplemented. Upon expiration of a period so fixed without completion by the grantee of the required action, the Federal Aviation Administrator may, on behalf of the United States, enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates;

(g) That, if any covenant or condition in the instrument of conveyance, other than the foregoing covenant, is breached, the Federal Aviation Administrator may, on behalf of the United States, immediately enter, and take title to, the property interest conveyed or, in his discretion, that part of that interest to which the breach relates; and

(h) That a determination by the Federal Aviation Administrator that one of the foregoing covenants has been breached is conclusive of the facts; and that, if the right of entry and possession of title stipulated in the foregoing covenants is exercised, the grantee will, upon demand of the Federal Aviation

Administrator, take any action (including prosecution of suit or executing of instruments) that may be necessary to evidence transfer to the United States of title to the property interest conveyed, or, in the Administrator's discretion, to that part of that interest to which the breach relates.

6. A new § 153.15 is added to read as follows:

§ 153.15 Reverter clause in conveyances.

Whenever the Administrator requests a department or agency to make a conveyance under this part, he also requests that the granting clause of the instrument of conveyance contain a reverter clause, reading as follows:

Any part of the property interest hereby conveyed that has not been developed for airport purposes within 5 years after the date of conveyance, or that ceases to be used for airport purposes for a period of 6 months, shall automatically revert to the United States, the grantee agreeing by the acceptance of this conveyance or the rights granted herein that a determination by the Federal Aviation Administrator that all or a part of the property interest has not been so developed, or has ceased to be so used, is conclusive of the facts.

(Federal Airport Act, as amended (49 U.S.C. 1101-1120))

Issued in Washington, D.C., on September 10, 1968.

D. D. THOMAS,
Acting Administrator.

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