

September 14, 2012

Docket Operations
U.S. Department of Transportation
1200 New Jersey Avenue, SE.
Washington, DC 20590

Submitted electronically via www.regulations.gov

**RE: DOCKET #FAA-2012-0754, AIRPORT IMPROVEMENT PROGRAM (AIP): POLICY REGARDING
ACCESS TO AIRPORTS FROM RESIDENTIAL PROPERTY**

The National Air Transportation Association (NATA), the voice of aviation business, is the public policy group representing the interests of aviation businesses before Congress, federal agencies and state governments. NATA's 2,000 member companies own, operate and service aircraft. These companies provide for the needs of the traveling public by offering services and products to aircraft operators and others such as fuel sales, aircraft maintenance, parts sales, storage, rental, airline servicing, flight training, Part 135 on-demand air charter, fractional aircraft program management and scheduled commuter operations in smaller aircraft. NATA members are a vital link in the aviation industry providing services to the general public, airlines, general aviation and the military.

NATA firmly believes that the strength of our National Airspace System (NAS) arises in part from the flexibility of airports to respond as the economic needs of their community and region grow over time. Many vital reliever and general aviation (GA) airports across the nation developed that flexibility over the past 30 years as the needs of their community changed. NATA's interest in the Federal Aviation Administration's (FAA) proposed policy stems from the association's objective of protecting the future utility of our nation's airports. Airports that have met short-term needs through solutions that hamper future expansion and growth are of a reduced utility to the NAS and our nation.

In general, NATA concurs with the FAA's reading of Public Law 112-95, Section 136 (section 136) and the *Proposed Final Policy on Existing Through-the-Fence Access to Commercial Service Airports From a Residential Property* (proposed policy) and offers the comments below on important areas of concurrence and difference.

Existing RTTF Access

NATA concurs with the FAA policy as presented in regards to existing Residential Through The Fence (RTTF) access.

New RTTF Access at Commercial Service Airports

NATA concurs with the FAA's interpretation that new RTTF access at commercial service airports would constitute a violation of grant assurance 5(g) and is, therefore, prohibited.

Review of Proposed New RTTF Agreements at GA Airports

NATA concurs with the FAA's interpretation that "the inclusion of specific terms and conditions [in PL 112-95, Section 136, indicates] Congress' intent for the FAA to enforce the provision accordingly."¹

Some may argue that Congress did not intend for prior review of proposed RTTF agreements but rather an after-the-fact review. Such a view, however, is flawed. After-the-fact reviews of signed RTTF agreements present no pathways to compliance since an airport sponsor would already be legally obligated to comply with the terms of the signed agreement. Under those situations, such an agreement and the associated access would likely continue as the airport sponsor would be obligated by the binding agreement.

Congress, during the debate surrounding the FAA Modernization and Reform Act of 2012, was well aware of the FAA's interim policy prohibiting new RTTF agreements; therefore, it must be assumed that the purpose of section 136 was to create a narrow carve-out that allowed new RTTF to occur only under the included restrictions. After-the-fact review of RTTF agreements, as it would likely allow non-compliant access to continue, therefore frustrates Congress' narrow intent that RTTF access only occur under the specific enumerated restrictions contained in section 136. Prior review of proposed RTTF agreements, therefore, is the only method to ensure that Congress' intent is fulfilled.

Interpretation of Conditions Contained in Section 136

NATA generally concurs with the FAA's interpretation of the restrictions contained in section 136. Of particular concern to NATA were the conditions regarding access for a property owner not party to an RTTF agreement through the property of an individual that is party to an RTTF agreement, commercial activities on a property with RTTF access, and aircraft refueling on property subject to an RTTF agreement. NATA believes that the FAA has properly interpreted Congress' intent in all but one case, detailed below.

The proposed interpretation regarding the requirement that property subject to an RTTF agreement must be "maintain[ed] ... for residential, noncommercial use"² states that the FAA believes this is a "prohibition on commercial aeronautical services offered by residential through-the-fence users."³ While NATA believes this interpretation to be correct, the language of section 136 also prohibits RTTF users from offering their property to the public for the sole purpose of receiving commercial aeronautical services from a third party⁴.

Without such an interpretation, a third party could establish a commercial aeronautical service facility off of the airport (and thus free from airport regulation and collection of fees applicable to similar on-airport providers) and perform those services for the public on the property of an RTTF access holder. The language of section 136 prohibits commercial (aeronautical) use of property subject to an RTTF agreement.

¹ 77 Fed. Reg. at 44516

² P.L. 112-95, section 136(A) "(t)(2)(B)(iii)

³ 77 Fed. Reg. at 44517

⁴ Checklist item #4 in Appendix D of the draft Compliance Letter provides language that NATA believes meets the full intent of the law; "airport sponsor prohibit[s] commercial aeronautical uses on the property"

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NATA requests that the FAA modify its interpretation to indicate that allowing public use of the property to receive commercial aeronautical services would be a violation of the conditions set forth in section 136.

Level of Review

The conditions set forth in section 136 regarding new RTTF access agreements at general aviation airports are novel, and thus their proper application will be vital in the early stages of this policy. Over time as a record is developed of the proper application of these restrictions, evaluations of proposed RTTF access agreements will become more routine. Under the current vision⁵ offered by this policy and the associated Compliance Guidance Letter, proposed new RTTF agreements at general aviation airports would be reviewed at the Headquarters level. NATA believes that in the early stages of this policy headquarters level review of proposed new RTTF access agreements is vital to ensure the consistent application of the policy. However, NATA believes over a number of years this review could be moved to the Regional or Airports District Office level. NATA requests that the FAA consider an appropriate time line for such a change.

NATA appreciates the opportunity to provide its comments on this proposed policy.

Sincerely,



Michael France
Director, Regulatory Affairs

⁵ Draft Compliance Letter, Section V(a), page 9