

the policy statement that will govern consideration of airport fee disputes. (As noted above, the FAA's Supplemental Notice of Proposed Policy was published in the **Federal Register** on October 12, 1994 (59 FR 51836). The comment period closed on the proposed policy on October 26, 1994, and a final policy statement is published elsewhere in today's **Federal Register**.) ATA urges us to consolidate these proceedings and allow additional comment on a consolidated proposal. We disagree. Because of the extremely short deadline for issuing rules governing these proceedings, the Department decided that the best course was to proceed in this two-stage fashion. Relatively few changes were needed in the proposed policy statement after the adoption of the FAA Authorization Act, while the FAA's previously proposed procedures had to be completely rewritten. If we had waited until the new proposed procedures were ready so that we could issue a consolidated document, the highly-abbreviated public comment period that was necessary in this proceeding would have had to apply to both the proposed procedures and the proposed policy statement.

As discussed above, the final rule adopts the proposal to include complaints by foreign air carriers, but complaints by other airport users would not be heard under this subpart. Subpart F also contains the procedural rules for reviewing an airport owner or operator's request for a determination of the reasonableness of an airport fee.

By statute, a fee is subject to review under this subpart only after it has been "imposed" on air carriers. As was proposed, § 302.601(a) states that a fee is considered to be imposed as soon as the airport owner or operator has taken all steps necessary under its procedures to establish the fee. Under the FAA Authorization Act in new 49 U.S.C. 47129(a)(1)(B), one essential element to those procedures is providing written notice to carriers of any new or increased fee. Also as proposed, the 60-day filing period for complaints begins to run as soon as the requirements for imposing a fee are met, whether or not the fee is being paid by the carriers. ACI-NA points out that this "may help resolve fee disputes before the airport is actually counting on receiving the amounts in dispute, and would thus be less disruptive of airport planning and financing." To the extent that it encourages airports to avoid raising fees on short notice, it should be less disruptive of carrier planning as well.

AAAE commented that the language in § 302.601 should be made consistent with the final language in the policy

statement. Specifically, it suggests adding the words "for aeronautical use" to describe the kinds of fees imposed by airports on carriers that may be challenged under this subpart. The Department agrees that the language of the procedural rule should be parallel to that in the policy statement, and the suggested change has been adopted.

Paragraph (b) of § 302.601 sets out the three limitations on applicability contained in the Authorization Act. The Secretary would not entertain complaints about a fee imposed pursuant to a written agreement with carriers using the facilities of an airport; a fee imposed pursuant to a financing agreement or covenant entered into prior to August 23, 1994, or any other existing fee not in dispute as of August 23, 1994. August 23, 1994 is the date the Authorization Act was enacted.

Some commenters suggested additional provisions. ACI-NA, for example, recommends that "Airlines should not be allowed to challenge a fee increase that is the result of the recalculation of airline fees due to the airport's loss of one or more air carriers, or the substantial diminution of service by one or more air carriers." We do not agree that this should be added to the final rule. If a fee is increased as a result of a proper recalculation of charges, the increase will be found reasonable. However, that is no basis for denying a carrier's right to file a complaint under this subpart. ATA would have us limit the exclusions on using subpart F to challenge fees imposed pursuant to agreements with carriers or pursuant to a financing agreement. These exclusions should apply, ATA believes, only if the agreements contain a basis for determining how fees are to be set. "[S]ome airports require air carriers to sign operating agreements that provide * * * that the carrier is required to pay whatever fees are established by the airport operator." We will not adopt ATA's comment; the statutory language is clear that these rules may not be used to challenge fees based on agreements.

Section 302.603 Complaint by an Air Carrier or Foreign Air Carrier; Request for Determination by an Airport Owner or Operator

This section describes the requirements for carrier complaints and airport requests for determination. In keeping with the proposal, paragraph (a) states that both complaints and requests would be submitted in accordance with the usual technical requirements of proceedings under 14 CFR Part 302. (14 CFR § 302.3 specifies such matters as the number of copies to be filed, the size of pages that may be used, and the filing

address.) ATA's comments stated that the proposed rule failed "to specify the type and form of briefs to be presented upon the filing of complaints." ATA is thus incorrect.

As noted above, no commenter objected in principle to the basic procedure proposed in the NPRM for consolidating all complaints and any request for determination once any carrier has filed a complaint under this subpart. The final rule adopts the language of the NPRM. Following the first complaint, other air carriers or foreign air carriers wishing to file their own complaints would have seven days to do so. An airport owner or operator's request for determination would also have to be submitted no later than seven days after a carrier complaint. The Authorization Act specifies that all complaints would have to be submitted within 60 days of the written notice, even if this is less than seven days after the initial complaint. The law does not provide for entertaining later complaints. No potential complainant, having had 54 or more days to prepare, will be disadvantaged by the immutability of the 60-day filing limit. As indicated above, JAL's request to extend the statutory deadline for foreign carriers is denied. While there is no statutory limitation on submitting airport requests for determination, no commenter objected to our proposal to impose a similar 60-day limit on such requests, and that proposal is also made final here. As noted in the NPRM, airport fee increases become incontestable under this subpart 60 days after the airport provides written notice to carriers of the imposition of a new or increased fee. The early determination of the reasonableness of a fee, which is the purpose of the Act, would be undermined by allowing more time. There is no point in expending Departmental resources on airport requests brought after that date.

Section 302.605 Contents of Complaint or Request for Determination

Most of the issues pertaining to this section have been fully discussed above. The following is only a brief summary of the requirements in the final rule.

Carriers filing complaints and airports filing requests for determination will generally be expected to submit documentation that contains the filing party's entire position and supporting evidence. We recognize, however, that an airport may control information or documents that a complaining carrier would need. If that is the case, and the carrier has unsuccessfully attempted to obtain the necessary information, § 302.605 now provides that the carrier