



U.S. Code

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§ 47129. Resolution of airport-air carrier disputes concerning airport fees

(a) Authority To Request Secretary's Determination.—

(1) In general.— The Secretary of Transportation shall issue a determination as to whether a fee imposed upon one or more air carriers (as defined in section 40102 of this title) by the owner or operator of an airport is reasonable if—

- (A)** a written request for such determination is filed with the Secretary by such owner or operator; or
- (B)** a written complaint requesting such determination is filed with the Secretary by an affected air carrier within 60 days after such carrier receives written notice of the establishment or increase of such fee.

(2) Calculation of fee.— A fee subject to a determination of reasonableness under this section may be calculated pursuant to either a compensatory or residual fee methodology or any combination thereof.

(3) Secretary not to set fee.— In determining whether a fee is reasonable under this section, the Secretary may only determine whether the fee is reasonable or unreasonable and shall not set the level of the fee.

(4) Fees imposed by privately-owned airports.— In evaluating the reasonableness of a fee imposed by an airport receiving an exemption under section 47134 of this title, the Secretary shall consider whether the airport has complied with section 47134 (c)(4).

(b) Procedural Regulations.— Not later than 90 days after August 23, 1994, the Secretary shall publish in the Federal Register final regulations, policy statements, or guidelines establishing—

- (1)** the procedures for acting upon any written request or complaint filed under subsection (a)(1); and
- (2)** the standards or guidelines that shall be used by the Secretary in determining under this section whether an airport fee is reasonable.

(c) Decisions By Secretary.— The final regulations, policy statements, or guidelines required in subsection (b) shall provide the following:

- (1)** Not more than 120 days after an air carrier files with the Secretary a written complaint relating to an airport fee, the Secretary shall issue a final order determining whether such fee is reasonable.
- (2)** Within 30 days after such complaint is filed with the Secretary, the Secretary shall dismiss the complaint if no significant dispute exists or shall assign the matter to an administrative law judge; and thereafter the matter shall be handled in accordance with part 302 of title 14, Code of Federal Regulations, or as modified by the Secretary to ensure an orderly disposition of the matter within the 120-day period and any specifically applicable provisions of this section.
- (3)** The administrative law judge shall issue a recommended decision within 60 days after the complaint is assigned or within such shorter period as the Secretary may specify.
- (4)** If the Secretary, upon the expiration of 120 days after the filing of the complaint, has not issued a final order, the decision of the administrative law judge shall be deemed to be the final order of the Secretary.
- (5)** Any party to the dispute may seek review of a final order of the Secretary under this subsection in the Circuit Court of Appeals for the District of Columbia Circuit or the court of appeals in the circuit where the airport which gives rise to the written complaint is located.
- (6)** Any findings of fact in a final order of the Secretary under this subsection, if supported by substantial evidence, shall be conclusive if challenged in a court pursuant to this subsection. No objection to such a final order shall be considered by the court unless objection was urged before an administrative law judge or the Secretary at a proceeding under this subsection or, if not so urged, unless there were reasonable grounds for failure to do so.

(d) Payment Under Protest; Guarantee of Air Carrier Access.—

(1) Payment under protest.—

(A) In general.— Any fee increase or newly established fee which is the subject of a complaint that is not dismissed by the Secretary shall be paid by the complainant air carrier to the airport under protest.

(B) Referral or credit.— Any amounts paid under this subsection by a complainant air carrier to the airport under protest shall

be subject to refund or credit to the air carrier in accordance with directions in the final order of the Secretary within 30 days of such order.

(C) Assurance of timely repayment.— In order to assure the timely repayment, with interest, of amounts in dispute determined not to be reasonable by the Secretary, the airport shall obtain a letter of credit, or surety bond, or other suitable credit facility, equal to the amount in dispute that is due during the 120-day period established by this section, plus interest, unless the airport and the complainant air carrier agree otherwise.

(D) Deadline.— The letter of credit, or surety bond, or other suitable credit facility shall be provided to the Secretary within 20 days of the filing of the complaint and shall remain in effect for 30 days after the earlier of 120 days or the issuance of a timely final order by the Secretary determining whether such fee is reasonable.

(2) Guarantee of air carrier access.— Contingent upon an air carrier's compliance with the requirements of paragraph (1) and pending the issuance of a final order by the Secretary determining the reasonableness of a fee that is the subject of a complaint filed under subsection (a)(1)(B), an owner or operator of an airport may not deny an air carrier currently providing air service at the airport reasonable access to airport facilities or service, or otherwise interfere with an air carrier's prices, routes, or services, as a means of enforcing the fee.

(e) Applicability.— This section does not apply to—

- (1) a fee imposed pursuant to a written agreement with air carriers using the facilities of an airport;
- (2) a fee imposed pursuant to a financing agreement or covenant entered into prior to August 23, 1994; or
- (3) any other existing fee not in dispute as of August 23, 1994.

(f) Effect On Existing Agreements.— Nothing in this section shall adversely affect—

- (1) the rights of any party under any existing written agreement between an air carrier and the owner or operator of an airport; or
- (2) the ability of an airport to meet its obligations under a financing agreement, or covenant, that is in force as of August 23, 1994.

(g) Definition.— In this section, the term "fee" means any rate, rental charge, landing fee, or other service charge for the use of airport facilities.

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