

DEPARTMENT OF TRANSPORTATION**Office of the Secretary****Federal Aviation Administration**

[Docket No. 27782]

Policy Regarding Airport Rates and Charges

AGENCY: Office of the Secretary and Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Policy statement; request for comments.

SUMMARY: This document announces DOT and FAA policy on the fees charged by Federally-assisted airports to air carriers and other aeronautical users. The statement of policy was required by the Federal Aviation Administration Authorization Act of 1994, Public Law 103-305 (August 23, 1994). While the policy stated in this document is effective immediately, the Department is requesting further comment on the policy adopted because of substantial industry interest in the proposed policy and because the final policy adopted differs in several respects from the proposal, in response to comments received on the proposal.

DATES: Comments must be received by May 4, 1995.

ADDRESSES: Comments should be mailed, in quadruplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC-10), Docket No. 27782, 800 Independence Avenue, SW., Washington, DC 20591. All comments must be marked: "Docket No. 27782." Commenters wishing the FAA to acknowledge receipt of their comments must include a preaddressed, stamped postcard on which the following statement is made: "Comments to Docket No. 27782." The postcard will be date stamped and mailed to the commenter.

Comments on this Notice may be examined in room 915G on weekdays, except on Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: John Rodgers, Director, Office of Aviation Policy, Plans and Management Analysis, Federal Aviation Administration, 800 Independence Ave. SW., Washington, DC 20591, telephone (202) 267-3274; Barry Molar, Manager, Airports Law Branch, Office of the Chief Counsel, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3473.

SUPPLEMENTARY INFORMATION: On June 9, 1994, the Office of the Secretary of

Transportation (OST) and the FAA issued two related notices on the subject of Federal policy on airport rates and charges. A notice of proposed policy entitled "Proposed Policy Regarding Airport Rates and Charges" listed and explained the principles that the Department believes define Federal policy on the rates and fees that an airport proprietor can charge to aeronautical users of the airport. Docket No. 27782 (59 FR 29874, June 9, 1994). Notice 94-18, a notice of proposed rulemaking entitled "Rules of Practice for Federally Assisted Airports," proposed detailed procedures for the filing, investigation, and adjudication of complaints against airports for alleged violation of Federal requirements involving rates and charges and other airport-related requirements (59 FR 29880, June 9, 1994).

The FAA Authorization Act of 1994, Public Law 103-305 (1994 Authorization Act) was signed into law on August 23, 1994. In response to provisions in the 1994 Authorization Act that specifically address airport rates and charges, the Department issued a supplemental notice of proposed policy with revisions to reflect relevant provisions of the Act. (59 FR 51835, October 12, 1994). The relevant provisions of the 1994 Authorization Act were summarized in the October 12 notice.

The 1994 Authorization Act also required that the Secretary issue two other documents relating to airport fees and finances: first, procedural rules for the resolution of disputes between air carriers and airport owners and operators regarding airport fees; and second, policies and procedures for the enforcement of Federal restrictions on the use of airport revenue. The procedural rules are being published in the **Federal Register** on the same date as this Policy Regarding Airport Rates and Charges; the policies and procedures on revenue use and revenue diversion will be published within the next several weeks.

Summary of Policy Statement

The policy statement being adopted retains the structure of the proposed policy, and is organized into five general principles with supporting guidance for each. In brief, the first principle establishes the continued reliance on direct local negotiation between airports and aeronautical users. The Department is available to resolve the issues raised in a dispute when the airport and aeronautical users are unable to resolve disputes directly.

The second principle restates the legal requirement that rates, fees and charges

to aeronautical users must be fair and reasonable, with more detailed guidance on the practices and restrictions that define "fair and reasonable." The guidance for this principle incorporates flexibility to deviate from the proposed policy guidance based on agreement with aeronautical users; recognition that both compensatory and residual pricing approaches are legitimate; standards for the valuation of airport property in establishing rates; prescription of the kinds of costs that can be reflected in the rate base for aeronautical users; and guidance on subsidization of other airports. The policy makes certain distinctions in the reasonable accommodation of air carriers versus other aeronautical users, and does not establish fee standards for rates and charges for nonaeronautical users or limit the amount of revenues generated by nonaeronautical rates and charges.

The third principle restates the legal prohibition on unjustly discriminatory rates and charges.

The fourth principle restates the legal obligation of the airport sponsor to maintain a fee and rental structure that makes the airport as self-sustaining as possible. Supplemental guidance encourages the sponsor of an airport that is not currently self-sustaining to establish long-term goals and targets to make the airport financially self-sustaining. While the requirement that an airport be as self-sustaining as possible under the circumstances existing at the airport is required by statute to be included in each sponsor's grant assurances, and is subject to enforcement by the FAA in accordance with its grant compliance procedures, it is not the intent of the Department that this requirement alone be the grounds for a complaint as to the reasonableness of an airport fee.

The fifth principle restates the basic legal requirements for the application and use of airport revenues. Supplemental guidance on the use of airport revenue has been deleted from the statement of policy on airport fees, and instead will be incorporated in a separate statement of policy on the enforcement of the revenue use provisions of the Airport and Airway Improvement Act of 1982 and the 1994 FAA Authorization Act.

Comments on the Notices of Proposed Policy

The Department received more than 150 comments on the Notice and Supplemental Notice of Proposed Policy. Comments were received from all segments of the airport community, including airport operators and representative organizations;