associations representing air carriers and commuter airlines; representatives of other aeronautical businesses at airports; general aviation representatives; representatives of airport concessionaires; aviation consultants and law firms; and the staff of the Bureau of Economics of the Federal Trade Commission. Many of the comments from airport operators and representatives were similar, and all of the comments tended to focus on certain issues. Accordingly, the following discussion of comments is organized by issue rather than by commenter. Issues are grouped by their applicability generally or to one of the five principles stated in the policy. Airport proprietors and representatives who took the same position on an issue are collectively referred to as "airports;" the Air Transport Association (ATA) and other air carrier commenters are referred to as "air carriers." The summary of comments is intended to represent the general divergence or correspondence in industry views on various issues, and is not intended to be an exhaustive restatement of the comments received. All comments received were considered by The Department even if not specifically identified in this summary.

Discussion of Comments Received

The final policy statement includes an expanded introduction that reflects the discussion below.

1. General: Scope of Policy and Procedures

A. Should the policy apply to all aeronautical users or just air carriers?

Airports commented that policy and related procedures should apply only to rates and charges imposed on air carriers. The policy is mandated by § 113 of the 1994 FAA Authorization Act; based on the terms of § 113, the policy should be limited to air carriers. If new policy guidance is needed for fees assessed on other aeronautical users, the issue should be addressed separately. The American Association of Airport Executives (AAAE) and some individual airports specifically objected to the inclusion of foreign air carriers. Commenters suggested that automatic inclusion of foreign air carriers would provide them with valuable rights ordinarily secured through negotiation of intergovernmental agreements.

General aviation commenters stated that the Department should provide the same rights and protections for all aeronautical tenants, not just air carriers. However, the policy should reflect differences in the relationships between air carriers and airports and those between other aeronautical businesses and airports. In particular, more access to evidentiary hearing procedures should be available to non-carrier complainants than proposed by the Department.

In the policy adopted, the Department has continued to apply the policy to rates and charges assessed against all aeronautical users. Existing grant assurances obligate airport proprietors to give access on fair and reasonable terms to all types, kinds, and classes of aeronautical uses. However, where differences exist as a practical matter between air carriers and other kinds of aeronautical users, those differences have either been reflected in the guidance stated in the policy, or the policy will be applied with sufficient flexibility to reflect those differences. Some commenters noted that § 113 of the 1994 Authorization Act applies only to air carriers and argued that the policy statement should be similarly limited. However, § 113 relates only to the procedures for special handling of airport-airline fee disputes; it does not define limits on the applicability of policy.

The policy adopted applies to foreign air carrier rates as well as those imposed on domestic air carriers. The principles and guidance contained in the policy statement are consistent with the provisions of bilateral air service agreements, and the application of the same policy on fair and reasonable airport fees to both foreign and U.S. air carriers is appropriate.

B. Should the policy and procedures apply to rates excluded by section 113?

Airports commented that the policy and implementing regulations should clearly exclude rates and charges specifically excluded by the statute, e.g., rates established by agreement; Congress directed that the policies and procedures not apply to such excluded rates; in addition, the policy should reflect § 47129(f), which states that that section shall not adversely affect the rights of any party under any existing written agreement between an airport and air carrier or the ability of an airport operator to meet its debt obligations.

Air carriers commented that the policy should recognize that it is common for airports to increase fees by asserting that the increase is a routine adjustment to a preexisting agreement, even if the agreement does not allow for such an increase; therefore; the policy should make clear that a dispute as to whether a fee increase is within the terms of a contract or not should be covered by the policy to the same extent as a fee increase imposed in the absence of any agreement.

The policy statement adopted applies to all fees charged to air carriers for aeronautical uses, although the policy itself makes clear that carriers and airport operators have wide latitude to agree on alternate arrangements. The rules for implementation of the dispute resolution procedure provided in § 113 of the 1994 Authorization Act clarify that expedited ALJ procedures will be not be applicable to rates and charges excluded by § 113. However, The Department will consider claims that a fee is not covered by the exclusion because it was not in fact "imposed pursuant to a written agreement," even if a written agreement is in effect. Also, claims that are not subject to the § 113 dispute resolution procedure technically may still be brought under 14 CFR Part 13, which applies to complaints that an airport proprietor has violated the grant assurance that rates and charges for aeronautical users will be fair and reasonable.

C. Should the policy and procedures apply differently to different uses of the airport facilities by air carriers?

Several airports commented that elements of the policy may be appropriate when applied to the airfield and terminal, but would not be appropriate if applied to other facilities leased or used by carriers on the airport. The Department agrees, and the policy adopted makes distinctions, where applicable, between various kinds of facilities on the airport.

D. What airport users/tenants are included within the term "aeronautical users"?

Airport commenters in particular stated that the term aeronautical user was not clearly defined, and that it was not clear whether the policy applied to certain businesses commonly found on an airport but which arguably are not "aeronautical" in nature. Also, representatives of concessionaires who commented on the proposal conceded that concessions such as car rentals were not aeronautical activity, but argued that the rates and charges policy and dispute resolution procedures should apply to concessions.

The final policy statement does not substantially differ from the proposal. The Department believes that in most cases it is immediately clear whether a particular airport business is an aeronautical activity or not within the definition given in the policy. Where an ambiguous situation exists, an airport operator or airport user may contact the FAA Office of Airport Safety and Standards, AAS–300, for a determination.