entitled to airport access on fair and reasonable terms without unjust discrimination. Therefore, the Department considers that the principles and guidance set forth in this policy statement apply to all aeronautical uses of the airport. The Department recognizes, however, that airport proprietors may use different mechanisms and methodologies to establish fees for different facilities, e.g., for the airfield and terminal area, and for different aeronautical users, e.g., air carriers and fixed-base operators. The Department will take these differences into account if we are called upon to resolve a dispute over aeronautical fees.

B. Aeronautical Use and Users

The Department considers the aeronautical use of an airport to be any activity that involves, makes possible, is required for the safety of the operations of, or is otherwise directly related to, the operation of aircraft. Aeronautical use includes services provided by air carriers related directly and substantially to the movement of passengers, baggage, mail and cargo on the airport. Persons, whether individuals or businesses, engaged in aeronautical uses involving the operation of aircraft, or providing flight support directly related to the operation of aircraft, are considered to be aeronautical users.

In addition, the Department considers that the operation by air carriers or foreign air carriers of facilities such as a reservations center, headquarters office, or flight kitchen on an airport does not constitute an aeronautical activity subject to the principles and guidance contained in this policy statement with respect to reasonableness and unjust discrimination. Such facilities need not be located on an airport. A carrier's decision to locate such facilities is based on the negotiation of a lease or sale of property. Accordingly, the Department relies on the normal forces of competition for commercial or industrial property to assure that fees for such property are not excessive.

C. Applicability of § 113 of the FAA Authorization Act of 1994

Section 113 of the Federal Aviation Authorization Act of 1994 ("Authorization Act"), 49 U.S.C. 47129, directs the Secretary of Transportation to issue a determination on the reasonableness of certain fees imposed on air carriers in response to carrier complaints or a request for determination by an airport proprietor. Section 47129 further directs the Secretary to publish final regulations,

policy statements, or guidelines establishing procedures for deciding cases under § 47129 and the standards to be used by the Secretary in determining whether a fee is reasonable. Section 47129(e) excludes from the applicability of § 47129 a fee imposed pursuant to a written agreement with air carriers, a fee imposed pursuant to a financing agreement or covenant entered into before the date of enactment of the statute (August 23, 1994), and an existing fee not in dispute on August 23, 1994. Section 47129(f) further provides that § 47129 shall not adversely affect the rights of any party under existing air carrier/airport agreements or the ability of an airport to meet its obligations under a financing agreement or covenant that is in effect on August 23, 1994.

The Department does not interpret § 47129 to repeal or narrow the scope of the basic requirement that fees imposed on aeronautical users be reasonable and not unjustly discriminatory. Sections 47219(e) and (f) specifically apply the expedited hearing procedures mandated by § 47129(b) and (c) to air carriers, but do not preclude the adoption of policy guidance applicable to fees imposed on aeronautical users other than air carriers.

Therefore, the Department will apply the policy guidance in the case of a dispute over any aeronautical fee, including those described in § 47129(e) and (f).

In addition, as the statute provides, a dispute over matters described by § 47129(e) and (f) will not be processed under the procedures mandated by § 47129. Rather those disputes will be processed under procedures applicable to airport compliance matters in general.

Principles Applicable to Airport Rates and Charges

- 1. In general, the Department relies upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.
- 2. Rates, fees, rentals, landing fees, and other service charges ("fees") imposed on aeronautical users for aeronautical use of airport facilities ("aeronautical fees") must be fair and reasonable.
- Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.
- 4. Airport proprietors must maintain a fee and rental structure that in the circumstances of the airport makes the

airport as financially self-sustaining as possible.

5. In accordance with relevant Federal statutory provisions governing the use of airport revenue, airport proprietors may expend revenue generated by the airport only for statutorily allowable purposes.

Local Negotiation and Resolution

- 1. In general, the Department relies upon airport proprietors, aeronautical users, and the market and institutional arrangements within which they operate, to ensure compliance with applicable legal requirements. Direct Federal intervention will be available, however, where needed.
- 1.1 The Department encourages direct resolution of differences at the local level between aeronautical users and the airport proprietor. Such resolution is best achieved through adequate and timely consultation between the airport proprietor and the aeronautical users. Airport proprietors should engage in adequate and timely consultation with aeronautical users about airport fees.
- 1.1.1 Airport proprietors should consult with aeronautical users well in advance, if practical, of introducing significant changes in charging systems and procedures or in the level of charges. The proprietor should provide adequate information to permit aeronautical users to evaluate the airport proprietor's justification for the change and to assess the reasonableness of the proposal. For consultations to be effective, airport proprietors should give due regard to the views of aeronautical users and to the effect upon them of changes in fees. Likewise, aeronautical users should give due regard to the views of the airport proprietor and the financial needs of the airport.
- 1.1.2 To further the goal of effective consultation, Appendix 1 of this policy statement contains a description of information that the Department considers would be useful to the carriers and other aeronautical users to permit meaningful consultation and evaluation of a proposal to modify fees.

1.1.3 Airport proprietors should consider the public interest in establishing airport fees, and aeronautical users should consider the public interest in consulting with airports on setting such fees.

1.1.4 Airport proprietors and aeronautical users should consult and make a good-faith effort to reach agreement. Absent agreement, airport proprietors are free to act in accordance with their proposals, subject to review by the Secretary or the Administrator on complaint by the user or, in the case of