fees subject to 49 U.S.C. § 47129, upon request by the airport operator, or, in unusual circumstances, on the

Department's initiative.

1.1.5 To facilitate local resolution and reduce the need for direct Federal intervention to resolve differences over aeronautical fees, the Department encourages airport proprietors and aeronautical users to include alternative dispute resolution procedures in their lease and use agreements.

- 1.1.6 Any newly established fee or fee increase that is the subject of a complaint under 49 U.S.C. § 47129 that is not dismissed by the Secretary must be paid to the airport proprietor under protest by the complainant. Unless the airport proprietor and complainant agree otherwise, the airport proprietor will obtain a letter of credit, or surety bond, or other suitable credit instrument in accordance with the provisions of 49 U.S.C. 47129(d). Pending issuance of a final order determining reasonableness, an airport proprietor may not deny a complainant currently providing air service at the airport reasonable access to airport facilities or services, or otherwise interfere with that complainant's prices, routes, or services, as a means of enforcing the fee, if the complainant has complied with the requirements for payment under protest.
- 1.2 Where airport proprietors and aeronautical users have been unable, despite all reasonable efforts, to resolve disputes between them, the Department will act to resolve the issues raised in the dispute.
- 1.2.1 In the case of a fee imposed on one or more air carriers or foreign air carriers, the Department will issue a determination on the reasonableness of the fee upon the filing of a written request for a determination by the airport proprietor or, if the Department determines that a significant dispute exists, upon the filing of a complaint by one or more air carriers or foreign air carriers, in accordance with 49 U.S.C. 47129 and implementing regulations. Pursuant to the provisions of 49 U.S.C. 47129, the Department may only determine whether a fee is reasonable or unreasonable, and may not set the level of the fee.
- 1.2.2 In the case of fees imposed on other aeronautical users, the Department will first offer its good offices to facilitate parties reaching a successful outcome in a timely manner. Prompt resolution of these disputes is always desirable since extensive delay can lead to uncertainty for the public and a hardening of the parties' positions. Air carriers and foreign air carriers may request the assistance of the Department in advance of or in lieu of the formal

complaint procedure described in 1.2.1.; however, the 60-day period for filing a complaint under § 47129 is not extended or tolled by such a request.

1.2.3 In the case of fees imposed on other aeronautical users, where negotiations between the parties are unsuccessful and a complaint is filed alleging that airport fees violate an airport proprietor's federal grant obligations, the Department will, where warranted, exercise the agency's broad statutory authority to review the legality of those fees and to issue such determinations and take such actions as are appropriate based on that review.

Airport proprietors must retain the ability to respond to local conditions with flexibility and innovation. An airport proprietor is encouraged to achieve consensus and agreement with its airline tenants before implementing a practice that would represent a major departure from this guidance. However, the requirements of any law, including the requirements for the use of airport revenue, may not be waived, even by agreement with the aeronautical users.

Fair and Reasonable Fees

- 2. Rates, fees, rentals, landing fees, and other service charges ("fees") imposed on aeronautical users for the aeronautical use of the airport ("aeronautical fees") must be fair and reasonable.
- 2.1 Revenues from aeronautical fees (aeronautical revenues) may not exceed the costs to the airport proprietor of providing airport services and facilities currently in aeronautical use (aeronautical costs) unless otherwise agreed to by the affected aeronautical users.
- Aeronautical users may receive 2.1.1 a cross-credit of nonaeronautical revenues only if the airport proprietor agrees. Agreements providing for such cross-crediting are commonly referred to as "residual agreements" and generally provide a sharing of nonaeronautical revenues with aeronautical users. The aeronautical users may in turn agree to assume part or all of the liability for non-aeronautical costs, or an airport proprietor may cross-credit nonaeronautical revenues to aeronautical users even in the absence of such an agreement, but an airport proprietor may not require aeronautical users to cover losses generated by nonaeronautical facilities except by agreement.
- 2.1.2 In other situations, an airport proprietor assumes all liability for airport costs and retains all airport profits for its own use in accordance with Federal requirements. This approach to airport financing is

generally referred to as the compensatory approach.

- 2.1.3 Airports frequently adopt charging systems that employ elements of both approaches.
- 2.1.4 Federal law does not require a single approach to airport financing. Rates may be set according to a residual or compensatory rate-setting methodology, or any combination of the two, or according to a new rate-setting methodology, as long as the methodology used is applied consistently to similarly situated aeronautical users and as otherwise required by this policy. Airport proprietors may set rates for aeronautical use of airport facilities by ordinance, statute or resolution, regulation, or by agreement.
- 2.2 The "rate base" is the total of all aeronautical costs that may be recovered from aeronautical users through aeronautical fees. Airport proprietors must employ a reasonable, consistent, and "transparent" (i.e., clear and fully justified) method of establishing the rate base and adjusting the rate base on a timely and predictable schedule.
- 2.3 In the absence of an agreement with aeronautical users, costs that may be included in the rate base (allowable costs) are limited to all operating and maintenance expenses directly and indirectly associated with the provision of aeronautical facilities and services (including environmental costs, as set forth below); all capital costs associated with the provision of aeronautical facilities and services currently in use, as set forth below; and current costs of planning future aeronautical facilities and services.
- 2.3.1 Where airport proprietors have expended funds from nonaeronautical sources to finance capital investments for aeronautical use, the implicit capital cost of these funds may be included in the aeronautical rate base in addition to the cost of the asset. The Department considers it reasonable to use, as a measure of the implicit capital cost, the rate of interest prevailing on bonds issued for a comparable purpose at the time of the expenditure at that airport or at another airport with similar bond rating.
- 2.3.2 Airport proprietors may include reasonable environmental costs in the rate base to the extent that the airport proprietor incurs a corresponding actual expense. All revenues received based on the inclusion of these costs in the rate base are subject to Federal requirements on the use of airport revenue. Reasonable environmental costs include, but are not necessarily limited to, the following: