

headquarters' offices. Complaints by carriers drive the schedule for determining the reasonableness of airport fees. It is essential that carriers have adequate notice when a document is filed, particularly an initiating complaint, which starts the seven-day period for follow-on complaints. In light of ATA's comments, therefore, the final rule does not provide for serving the members of the airport's carrier committee.¹ Nevertheless, we continue to be concerned about the potential burden of a literal application of a requirement to serve "all carriers." As the comments of the Metropolitan Washington Airports Authority pointed out, "the requirement to serve 'all' carriers could become an unnecessary procedural hurdle that prevents the expeditious resolution of a fee dispute," because it could be read to require service on even the most infrequent users of the airport. The Metropolitan Washington Airports Authority recommended that service be limited to carriers that operated at the airport within the 30 days prior to the filing, while AAE and ACI-NA suggested using the Air Carrier Activity Information System (ACAIS) as the basis for determining which carriers should be served. As these parties note, airports already use the list of carriers on the ACAIS in determining which carriers to serve with respect to Passenger Facility Charges under 14 CFR Part 158. Accordingly, we believe that the ACAIS list can similarly serve as the basis for an acceptable means of compliance with the service requirements of subpart F as well.

While the ACAIS list provides an objective and convenient starting point for parties needing to serve all carriers, it must be recognized that the list is based on carriers that served the airport during the preceding year, and thus may not include new entrants. In addition, carriers operating under 14 CFR Part 135 are not required to submit data for ACAIS, although many do so voluntarily. Therefore, as ACI-NA proposed, any party intending to make use of the ACAIS list for service must also serve any other carrier known to be operating at the airport but not on the list. This is the same practice that is followed with respect to PFC applications.

The ACAIS list is routinely made available to airport operators. However, since carriers do not file PFC applications, we recognize that they have not previously used the ACAIS list to identify carriers for the purposes of service. The Department's Office of Aviation Analysis will provide the names of the carriers on the most recently published ACAIS list at the request of a carrier considering filing a complaint about a newly established or newly increased airport fee. Not all information from ACAIS will be available on request. Much of the data is potentially sensitive, and we believe most carriers would not want it made available to competitors. Therefore, only carrier identities will be released through this process.

The Los Angeles Department of Airports objected to the requirement to certify that the parties served have actually received the documents, arguing that it cannot know when a document will be received. It argued that parties should only have to certify that the documents were sent. We disagree. The short response time required by these procedures makes it essential that the receiving party receives the maximum notice possible that a complaint, request, or responsive document has been filed. Moreover, while we recognize that this constitutes an additional burden on the filer, that burden is not insurmountable. All three of the specified service methods allow the sender to ascertain quickly that the receiving party has received the filing. In the case of hand delivery, receipt is obvious. For electronic transmission, both facsimile machines and many electronic mail systems provide for receipts from the recipients. And the availability of immediate proof of delivery is a widely-advertised service of major overnight express delivery companies.

The Los Angeles Department of Airports also argues that hand delivery and overnight express may not be available to serve foreign air carriers, and it suggests that we permit utilization of "the next most-expeditious, commercially available manner for sending documents to the country in which the foreign air carrier must be served." Since in many cases this would make it difficult or impossible to achieve service in time to allow meaningful responsive pleadings, we cannot agree. Overnight express delivery is increasingly available commercially throughout the world, although it is true that the service is not available everywhere. However, that is one reason why the NPRM also proposed to permit service by electronic

transmission. There are few if any places in the world where facsimile service and/or electronic mail are unavailable. Indeed, it is hard to imagine in today's market that a carrier could conduct international operations without having some capacity to receive electronic communications. Moreover, many carriers, even foreign air carriers, will not need to be served with complaints or requests for determination in their home country. Unless a carrier indicates that a different person should receive service for the purposes of this subpart, the final rule authorizes service on the person responsible for communicating with the airport on behalf of the air carrier or foreign air carrier about airport fees. This person will be familiar with fee disputes involving the airport, and is a logical contact point for routing the document quickly to other key carrier personnel.

In addition to the foregoing, one additional point warrants mention with regard to the service of documents. All exhibits and briefs prepared on electronic spreadsheet or word processing programs should be accompanied by standard-format computer diskettes containing those submissions. Word processing and spreadsheets files must be readable by current versions of one or more of the following programs, or in such other format as may be specified by notice in the **Federal Register**: Microsoft Word, Word Perfect, Ami Pro, Microsoft Excel, Lotus, Quattro Pro, or ASCII tab-delineated files. Parties should submit one copy of each diskette to the docket section, one copy to the office of the Chief Administrative Law Judge (M-50), and one copy to the Chief, Economic and Financial Analysis Division (X-55), of the Office of Aviation Analysis. Submissions in electronic form will assist the Department and the administrative law judge in quickly analyzing the record and in preparing decisions under these expedited procedures. The paper copy will be the official record copy, but filers shall certify that files on the diskette are true copies of the data file used to prepare the printed versions of the exhibits or briefs. Filers should ensure that files on the diskettes are locked.

Section-by-Section Analysis

Section 302.601 Applicability

Section 302.601 describes the kinds of proceedings for which the Department will employ the expedited procedures contained in subpart F. ATA complained that we should not be issuing a procedural rule separate from

¹ For the same reason, we will not adopt ATA's contingent suggestion to allow carriers to serve only a written notice that a complaint had been filed, along with instructions on how to obtain complete copies. We believe interested persons must have immediate, full information about the filing. (In any event, ATA stated that its suggestion assumed additional time would be allowed for follow-on complaints).