

must state that fact in the complaint. As discussed above, the Department anticipates that airports will promptly disclose any necessary information.

The carrier filing the complaint or the airport owner or operator filing the request must serve the complaint or request and accompanying documents on all carriers serving the airport using the expedited procedures proposed in the NPRM. If a complaint has already been filed with respect to a particular airport's fees, additional complaints are due seven days after the initial complaint. All complaints must be filed within 60 days after the carrier has received written notice of a new or increased fees.

The final rule retains the language that the filing carrier or airport would have to certify that it had previously attempted to resolve any fee dispute directly. In addition, as noted above, the filing party must certify that any submission on computer diskette is a true copy of the data file used to prepare the brief or exhibit.

Section 302.607 Answers to a Complaint or Request for Determination

As discussed above, the most significant change in this section involves the time for filing answers to complaints or requests for determination. Answers will be due 14 days after the first complaint is filed rather than seven days after each complaint. Answers are to respond to both the initiating complaint and any follow-on complaints, which will continue to be due seven days after the initial complaint. This will respond to requests that we make it possible for parties to submit a consolidated answer to all complaints, while still allowing the Department sufficient time to review complaints or requests and the answers submitted.

Under the final rule, therefore, upon receiving a copy of a complaint filed by another carrier, an air carrier or foreign air carrier could file its own complaint within seven days or an answer to the first complaint within 14 days. As noted in the preamble to the NPRM, it is technically permissible for a party to submit both its own complaint and an answer to the initiating complaint. However, because of the limited time available for the Department to review complaints and answers, parties are strongly urged to avoid duplicative filings. Naturally, answers, including answers in support of a complainant's position, do not give the answering party status as an additional complainant, nor may answers raise new objections to a fee or fees in dispute. A carrier that wants to raise any

new arguments in opposition to the fee should do so in a follow-on complaint under § 302.603.

Both the airport owner or operator and any carrier serving the airport may file an answer to a complaint under this subpart. In the case of an airport request for determination, any carrier serving the airport would be authorized to file an answer. While only carriers subject to a new or increased fee at the airport may submit a follow-on complaint under § 302.603, any carrier at the airport may submit an answer.

As stated above, answering parties would generally be expected to set out all of their responsive arguments, testimony and exhibits in their answer.

The answering party will serve the complaining carrier or carriers or the airport owner or operator requesting the determination by hand, by electronic transmission, or by overnight express delivery. The answering party must certify that the answer and accompanying documents will be received no later than the day the answer is due, and that any submission on computer diskette is a true copy of the data file used to prepare the brief or exhibit. Answers need only be served on the party to which the answer is directed.

Section 302.609 Replies

ACI-NA argued that we should eliminate the opportunity to file replies, claiming that they are unnecessary, and that the requirement that they be filed two calendar days after the answer makes the opportunity to reply illusory. We see no need to eliminate the opportunity to file replies, although we emphasize that replies are voluntary submissions.

While no other party suggested eliminating replies altogether, Massport, the Maryland Aviation Administration, and AAAE all recommended that we allow two business days rather than two calendar days. In part, it appears that this recommendation may stem from a misunderstanding of our procedures. AAAE, for example, states that "The rules as proposed would require that a party replying to an answer filed on a Friday file its reply on Sunday evening, when the agency is not even open for business." This is simply wrong. As provided in our rules of practice (14 CFR § 302.16), any filing that would be due on a Saturday, Sunday, or government holiday is automatically due instead on the next business day. Accordingly, when an answer is due on a Thursday or Friday, any reply to the answer would be due by close of business on the following Monday (or the first business day thereafter). In such

a case, the replying party would thus have at least three calendar days to prepare and submit its reply, although we recognize that two of those days are on the weekend.

In accordance with our proposal, only the carrier originating a complaint or the airport originating a request for determination would be authorized to file a reply. Except as provided in subpart A of 14 CFR Part 302, replies by any other party would not be accepted, nor would further responsive pleadings. For that reason, the NPRM did not propose to require that replies be served under the expedited procedures required for complaints, requests for determination, and answers. The NPRM specifically invited commenters to address whether expedited procedures were necessary for replies, but no party did so. We conclude that ordinary service as provided by 14 CFR § 302.8 (including service by mail) will suffice for replies. As with complaints, requests for determination, and answers, however, the replying party must certify that any submission on computer diskette is a true copy of the data file used to prepare the brief or exhibit.

Section 302.611 Review of Complaints

As was proposed, paragraph (a) of § 302.611 provides that the Secretary will determine within 30 days after a complaint is filed whether a significant dispute exists and whether the complaint meets the procedural requirements of subpart F. If the Secretary determines that there is no significant dispute, he or she will issue an order dismissing the complaint, as required by the FAA Authorization Act. The Secretary's order will include an explanation of the reasons for the determination. If the Secretary determines that the complaint does not meet the procedural requirements of this subpart (for example, the complaint was not properly served on the airport owner or operator), the Secretary will dismiss the complaint without prejudice. In this case, the order would explain any conditions necessary for the complaint to be re-filed.

When one or more properly filed complaints have been submitted, the Secretary will issue an instituting order consolidating all complaints that raise significant issues and any request for determination. The instituting order will assign the consolidated case to an administrative law judge and describe the issues to be considered and the parties that will participate.

In addition, § 302.611 now provides that the instituting order may contain special provisions for exchange or disclosure of information by the parties.