

judge's recommended decision is to be considered the Secretary's final order if the Secretary does not act within 120 days after a complaint is filed. Accordingly, we will adopt the proposed structure of providing for discretionary review of the recommended decision.

As we proposed, a party to the proceeding will be able to file a petition for discretionary review of the administrative law judge's decision within five days after the recommended decision is served. The petitioner will serve all parties by hand, electronic transmission or overnight express delivery, and will certify that all parties had received the petition or would receive it by the date of filing. Any other party could then submit an answer, which would be due four days after the petition is filed. AAAE and ACI-NA stated that answers should be subject to the same expedited service requirements as petitions, but they did not explain why this would be necessary. The Department does not anticipate permitting further pleadings at this stage of the proceeding, and we do not believe that the burden of expedited service is justified.

Section 302.619 Completion of Proceeding

This section sets out the completion dates for proceedings conducted under this subpart. No comments were submitted on it, and it is unchanged from the NPRM.

Paragraph (a) states that the Secretary will issue a final order determining whether the disputed fee is reasonable within 120 days after the filing of a complaint by an air carrier or foreign air carrier, unless the complaint is dismissed as provided in proposed § 302.611. This is the time limit for resolving air carrier complaints set forth in the FAA Authorization Act.

Paragraphs (b) and (c) address proceedings involving requests for determination by airport owners and operators. Although the FAA Authorization Act does not impose a time limit on such requests, § 302.619 provides a 120-day limit on these proceedings as well. When an airport has filed a request for determination but there are no carrier complaints with respect to the same fee, paragraph (b) states that the Secretary would issue a final order within 120 days of the request. However, as noted in § 302.613, the Department will consolidate proceedings concerning the same airport fee or fees that are the subject of both a carrier complaint and an airport request for determination. In this situation, paragraph (c) provides that

the timetable for resolving carrier complaints would control the schedule for action by the Department. Thus, if a carrier complaint is filed before the airport request, the Department would issue a final order in the consolidated proceeding in less than 120 days after the airport's request for determination. If one or more carriers file a complaint after the airport request, the 120-day period would begin on the day the first carrier complaint is filed.

Section 302.621 Final Order

Following review of the recommended decision, the Secretary will issue a final determination with respect to the reasonableness of an airport fee that is the subject of a complaint or a request under this subpart. The Secretary's order will set forth the reasoning underlying the determination, and, if a fee is determined to be unreasonable, the order will provide for a refund or credit of the unreasonable charge. As noted in the NPRM, the exact terms under which the refund or credit would be ordered would vary with the particular circumstances of each case, but the Department intends to ensure prompt action.

The FAA Authorization Act, in new 49 U.S.C. Section 47129 (a) (3), limits the Secretary's order to determining reasonableness, and the order would not set the level of the fee. The Maryland Aviation Administration expressed concern in its comments that disputes may not really be resolved within the 120-day limit unless the Department states what a reasonable fee would be. In the absence of such a statement, a revised fee would still be subject to challenge. Because the limitation on the Secretary's authority is a matter of statute, there is nothing we can do in this rulemaking to change it. However, the Secretary's order will attempt to set out the analysis underlying the decision as clearly as possible. If a fee is found unreasonable, we hope and expect that parties will be able to establish a reasonable fee after reviewing the decision and analysis.

The Maryland Aviation Administration also states that "the Department, or as may be required, the framers of the underlying statutory scheme, should consider whether the Department should award costs to airports" when a disputed fee is found reasonable. As the commenter appears to appreciate, the Department does not have authority to award costs to the prevailing party in a fee dispute under subpart F. Accordingly, the comment is beyond the scope of this rulemaking.

ACI-NA asks that the rule clarify that "any finding of unreasonableness resulting from a complaint filed by a non-signatory carrier does not affect the underlying rates for signatory carriers, since the signatory fees may not be challenged." No rule change is needed here. However, it is obvious that no fee will be found to be unreasonable under subpart F unless it is the subject of a complaint or a request for determination.

As stated above, the Department expects the Secretary to issue all final orders. However, if the Secretary fails to issue an order within 120 days after a complaint is filed, the FAA Authorization Act requires that the administrative law judge's decision be deemed the final order of the Secretary. Section 302.621(c) restates this requirement. There is no corresponding legislative requirement with respect to airport requests for determination. Therefore Section 302.621 does not contain any provision for automatic adoption of the administrative law judge's decision. The Department nevertheless intends to resolve airport requests for determination within 120 days after they are filed.

Justification for Immediate Effectiveness

Section 553 of the Administrative Procedure Act provides that the effective date of a new rule should be at least 30 days after it is published, unless the agency finds good cause for a shorter period.

In enacting the FAA Authorization Act, the Congress made it clear that it intends for fee disputes between carriers and airports to be resolved promptly. Congress required that the Department issue this rule within 90 days of enactment of the Authorization Act, and mandated that all proceedings brought under the new procedures lead to a final order within 120 days. The Department will be unable to process any carrier complaints under this subpart until the procedures are effective. Accordingly, the Department finds that good cause exists to make this rule effective on publication in the **Federal Register**.

Regulatory Evaluation Summary

This final rule contains new procedures for the filing and adjudication of complaints by air carriers and foreign air carriers alleging that an airport has imposed an unreasonable fee or charge on the complaining carrier. It also sets forth corresponding procedures under which an airport owner or operator may request and receive a determination of the reasonableness of a fee or charge it