Part V: Financial Responsibilities

Chapter 18. Airport Rates and Charges

18.1 Introduction.

For convenience, this chapter summarizes the provisions of the FAA *Policy Regarding Airport Rates and Charges*, (78 Fed Reg. 55330, September 10, 2013) (Rates and Charges Policy). The Rates and Charges Policy is the official FAA policy on airport rates and charges, and should be consulted in any case where an agency opinion or determination on an airport fee is required.

18.2 Background.

The Rates and Charges Policy provides comprehensive guidance on the legal requirement that airport fees be fair, reasonable, and not unjustly discriminatory. The reasonableness requirement is set forth in three different statutory provisions:

(1) the Anti-Head Tax Act (codified at 49 U.S.C. § 40116(d)(2)(A)[1]),

(2) the Airport and Airway Improvement Act of 1982 (AAIA), as amended (codified at 49 U.S.C. § 47107(a)(1), (2), and (13)), and

(3) 49 U.S.C. § 47129 (implemented by 14 CFR part 302, subpart F).

Additionally, Section 113 of the FAA Authorization Act of 1994 (codified at 49 U.S.C. § 47129(b)) required the Department of Transportation (DOT) to issue a policy statement establishing standards or guidelines for determining whether an airport fee is reasonable.

a. 1996 Policy.

DOT and FAA published FAA's *Policy Regarding Airport Rates and Charges* (61 Fed. Reg. 31994, June 21, 1996)(Rates and Charges Policy). The Rates and Charges Policy, provides guidance to airport proprietors and aeronautical users, encourages direct negotiation between parties, minimizes the need for direct federal intervention,

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[1] As amended by the FAA Reauthorization Act of 2018, Pub. L. 115-254, and codified at 49 U.S.C. § 40116(d)(2)(A)(v), a state or political subdivision of a state or an authority acting for a state may not levy or collect a tax, fee, or charge, first taking effect after the date of enactment of this clause, upon any business located at a commercial service airport or operating as a permittee of such an airport that is not generally imposed on sales or services by that state, political subdivision, or authority unless wholly utilized for airport or aeronautical purposes.

and establishes standards that the FAA applies in addressing airport fee disputes and compliance issues.

b. U.S. Court of Appeals Decision.

On August 1, 1997, the U.S. Court of Appeals for the District of Columbia Circuit vacated the Rates and Charges Policy on the grounds that the DOT established separate policies for airfield and nonairfield aeronautical uses without sufficient justification. In a subsequent order issued on October 15, 1997, the Court clarified that only the following paragraphs of the Rates and Charges Policy were vacated: 2.4, 2.4.1(a), 2.5.1, 2.5.1(a-e), 2.5.3, 2.5.2(a), and 2.6. On August 7, 2009, in *Alaska Airlines Inc.* v. *DOT*, 575 F.3d 750 (D.C. Cir. 2009), the Court remanded another matter to DOT to justify or abandon the portion of the policy statement that permits an airport to consider opportunity cost as a measure of fair market value when setting terminal but not airfield costs.

c. 2008 Amendments.

On July 8, 2008, DOT and FAA issued an amendment to the Rates and Charges Policy, clarifying that certain practices were permitted and establishing exceptions to the general policy to facilitate use of alternative airfield pricing at highly congested airports. *See* 73 Fed. Reg. 40430 (July 14, 2008). Specifically, the amendment

(1) clarified the Rates and Charges Policy by explicitly acknowledging that airport operators are authorized to establish a two-part landing fee structure consisting of both an operational charge and a weight-based charge in lieu of the standard weight-based charge;

(2) expanded the ability of the operator to include in the airfield fees of a congested airport a portion of the airfield costs of other, underutilized airports owned and operated by the same proprietor; and

(3) permits the operator to charge users of a congested airport a portion of the cost of airfield projects under construction. The United States Court of Appeals for the D.C. Circuit upheld the amendments in the court's decision in *ATA* v. *DOT*, 613 F.3d 206 (D.C. Cir 2010).

d. 2013 Rates and Charges Policy Full Text Publication.

As a convenience for the public and for regulated entities, the FAA published the full text of the *Policy Regarding Airport Rates and Charges* in a single document in 78 Fed. Reg. 55330 (September 10, 2013). This policy has been in effect since the most recent amendment of the policy on July 14, 2008.

18.3 Responsibilities.

The FAA headquarters Office of Airport Compliance and Management Analysis (ACO) adjudicates rates and charges disputes filed in accordance with 14 CFR part 16. The Secretary of Transportation (DOT) adjudicates rates and charges disputes filed in accordance with the special procedures for air carrier rate complaints, 49 U.S.C. § 47129 and 14 CFR part 302. Neither the FAA nor the Secretary of Transportation sets the fees imposed on air carriers.

The FAA Regional Airports Divisions (Regions) and Airports District Offices (ADOs) advise the aviation community with regard to the Rates and Charges Policy meet with parties to resolve disagreements informally, answer correspondence and inquiries, and resolve disputes that are filed (or fall) under 14 CFR § 13.2. In general, the FAA encourages sponsors and users to negotiate rates and charges agreements and to resolve disputes through alternative dispute resolution processes.

18.4 Definitions.

The following definitions are found in the Rates and Charges Policy:

a. Aeronautical Use.

The FAA defines “aeronautical use” as any activity that involves, makes possible, is required for the safety of, or is 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. While many of the provisions of the Rates and Charges Policy are oriented toward air carrier fees, the principles of this policy apply to all aeronautical uses of the airport.[2] Aeronautical Activity is further defined in Appendix G, *Explanation of Terms*, under “Aeronautical Activity”.

b. Aeronautical Users.

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 aeronautical users.[3]

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[2] *See* FAA's *Policy Regarding Rates and Charges*, 78 Fed. Reg. 55330 (September 10, 2013).

[3] *See* FAA's *Policy Regarding Rates and Charges*, 78 Fed. Reg. 55330 (September 10, 2013).

c. Nonaeronautical Use of the Airport.

All other uses of the airport are considered nonaeronautical. Aviation-related uses that do not need to be located on an airport, such as flight kitchens and airline reservation centers, are considered nonaeronautical uses. Nonaeronautical uses include public parking, rental cars, ground transportation, as well as terminal concessions such as food and beverage and news and gift shops. Federal law and policy on reasonableness of fees and other terms of airport access do not apply to nonaeronautical uses.[4]

d. Airfield.

For purposes of the Rates and Charges Policy, the airfield includes runways and taxiways, public aircraft parking ramps and aprons, and associated aeronautical land, such as land used for navigational aids.

e. Congested Airport.

Section 6 of the 2008 amendments to the Rates and Charges Policy applies only to congested airports. These amendments define an airport as currently congested if it has more than one percent (1%) of national system delays, or if it is determined to be congested in the FAA's Airport Capacity Benchmark Report for 2004. An airport was considered a "future congested airport" if it met the defined threshold in the FAA Future Airport Capacity Task 3 (FACT 3, January 2015) report, or any update to it that the FAA may publish. The capacity profiles replace the Airport Capacity Benchmark Report, first published in 2001 and revised in 2004. This 2014 update was necessitated by changes in aviation trends, new runways that have been added to the National Airspace System (NAS), and improved modeling techniques.

Some of the reference documents cited in the 2008 amendments are no longer available for the same purpose cited. The FAA currently considers a congested airport to be an airport identified by the FAA as a Level 2 or Level 3 airport under the International Air Transportation Association (IATA) Worldwide Airport Slot Guidelines (WASG), or otherwise as a slot-controlled or capacity-constrained airport, through a Federal Register Notice.

18.5 Key Concepts.

The Rates and Charges Policy discusses some key concepts listed here and summarized in the sections below.

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[4] *See* FAA's *Policy Regarding Rates and Charges*, 78 Fed. Reg. 55330 (September 10, 2013).

a. Fair and Reasonable.

Federal law, as implemented by the Rates and Charges Policy, requires that the rates, rentals, landing fees, and other charges that airports impose on aeronautical users for aeronautical use be fair and reasonable. Guidance on what constitutes fair and reasonable fees can be found in the Rates and Charges Policy. This is further discussed in section 18.6, *Fair and Reasonable*.

b. Not Unjustly Discriminatory.

Aeronautical fees may not unjustly discriminate against aeronautical users. This is further discussed in section 18.18, *Prohibition on Unjust Discrimination*.

c. Self-Sustaining.

Sponsors must maintain a fee and rental structure that – in the circumstances of the airport – makes the airport as financially self-sustaining as possible. This is further discussed in section 18.19, *Self-Sustaining Rate Structure*, and chapter 17, *Self-Sustainability*.

d. Allowable Use.

A sponsor may only use its airport revenue for airport capital and operating costs and certain other facilities directly and substantially related to air transportation, as permitted by 49 U.S.C. §§ 47107(b) and 47133.[5]

e. International Operations.

Fees imposed on international operations must comply with the international obligations of the United States Government under international agreements.

18.6 Fair and Reasonable.

Rates, fees, rentals, landing fees, and other service charges imposed on aeronautical users for the aeronautical use of the airport must be fair and reasonable (*see* section 18.5(a), *Fair and Reasonable*).

[5] See chapter 15, *Permitted and Prohibited Uses of Airport Revenue*, for guidance on revenue use requirements.

a. Type.

Federal law does not require a single rate-setting approach. Accordingly, sponsors may use a residual, compensatory, hybrid, or any other rate-setting methodology. Sponsors may set fees by ordinance, statute, resolution, regulation, or agreement. The methodology and implementation must be consistent for similarly situated aeronautical users and must conform to the Rates and Charges Policy.

b. Residual.

Agreements that permit aeronautical users to receive a cross-credit of nonaeronautical revenues are generally referred to as residual agreements. In a residual agreement, the airport applies excess nonaeronautical revenue to the airfield costs to reduce air carrier fees; in exchange, the air carriers agree to cover any shortfalls if the nonaeronautical revenue is insufficient to cover airport costs. In a residual agreement, aeronautical users may assume part or all of the liability for nonaeronautical costs.

A sponsor may cross-credit nonaeronautical revenues to aeronautical users even in the absence of an agreement. Cross-credits without written agreements are permissible as long as adequate transparency is provided. However, except by agreement, a sponsor may not require aeronautical users to cover losses generated by nonaeronautical facilities.

A residual rate structure may be accomplished only with agreement of the users.

c. Compensatory.

A compensatory rate setting approach is one in which a sponsor assumes all liability for airport costs and retains all airport revenue for its own use in accordance with federal requirements. Aeronautical users are charged only for the costs of the aeronautical facilities they use. Compensatory rate structures may be imposed on users by ordinance, statute or resolution, regulation, or agreement (*see* Rates and Charges Policy, Section D (2.1)).

A compensatory rate structure may be imposed on users by ordinance.

d. Hybrid.

Sponsors frequently adopt a rate structure that employs elements of both residual and compensatory approaches. Such agreements may charge aeronautical users for the use of aeronautical facilities with aeronautical users assuming additional responsibility for airport costs in return for a sharing of nonaeronautical revenues that offset aeronautical costs.

e. Two-Part Landing Fees.

An airport proprietor may impose a two-part landing fee consisting of a combination of a per-operation charge and a weight-based charge provided that (1) the two-part fee reasonably allocates costs to users on a rational and economically justified basis; and (2) the total revenues from the two-part landing fee do not exceed the allowable costs of the airfield.

f. Airfield Revenue.

Unless users agree otherwise, airfield fees generally may not exceed the airfield capital and operating costs of existing airfield facilities and services. Limited exceptions apply at a congested airport, where fees may include the airfield costs of another airport in the system or the costs of airfield facilities under construction. In each case, total system charges are limited to system costs, even though current fees may exceed airfield costs at the congested airport itself.

g. Rate Base.

The sponsor allocates capital and operating costs to airport cost centers and formulates rates to recover costs. The base rate is the list of costs allocated to a cost center, which are recovered from aeronautical users in aeronautical rates.

18.7 Permitted Airfield Costs.

Costs properly included in the rate base for an airfield cost center are generally limited to the following:

a. Operating Costs.

All operating and maintenance expenses directly and indirectly associated with providing airfield aeronautical facilities and services are operating costs. This includes direct personnel, maintenance, equipment, and utility costs, as well as indirect allocated costs such as police, airport rescue and firefighting, administrative and managerial overhead, roads and grounds, and utility infrastructure.

b. Capital Costs.

Capital costs consist of costs to service debt and debt coverage for the airfield direct and indirect capital costs, including reserve and contingency funds.

18.8 Environmental Costs.

Sponsors may include reasonable environmental costs in the rate base to the extent that the airport incurs a corresponding actual expense. The resulting revenues are subject to the requirements on the use of airport revenue.

18.9 Noise.

Reasonable environmental costs include sponsor costs for aircraft noise abatement and mitigation measures, both on and off the airport. This includes land acquisition and acoustical insulation expenses to the extent that such measures are undertaken as part of a comprehensive aircraft noise compatibility program.

18.10 Insurance.

Reasonable costs of insuring against liability, including environmental contamination. The airport may include the cost of self-insurance in the rate base to the extent that such costs are incurred pursuant to a self-insurance program that conforms to applicable standards for self-insurance practices.

18.11 Causation.

Unless otherwise agreed to by aeronautical users, the sponsor must allocate capital and operating costs among cost centers in accordance with the principle of cost causation. (*See* FAA Rates and Charges Policy, section 2.4.5).

Sponsors may include direct and indirect capital and operating costs of airfield facilities used by the aeronautical users in the rate base in a manner consistent with the Rates and Charges Policy.

18.12 Facilities under Construction.

Once the sponsor puts the facility into service, it may capitalize the sponsor's costs incurred during construction and amortize the resulting debt service and carrying costs. The general rule is that a sponsor may not begin to charge for the costs of facilities until they are in use, unless users agree. However, under a limited exception for congested airports, the sponsor may include costs of airfield facilities under construction in current fees if the charges would work to relieve or avoid current congestion. The charges are limited to recovery of construction costs with future charges reduced to reflect the costs paid for in advance.

18.13 Costs of Another Airport.

The costs of one airport may be combined with the costs of another airport, provided the following apply:

(a) Both airports have the same sponsor.

(b) Both airports are currently in use.

(c) The combination of costs is expected to provide aeronautical users with aviation benefits.

This third element is presumed satisfied if the other airport is a reliever airport. The test is also presumed satisfied if the first airport meets the test in the Rates and Charges Policy as a "congested airport," the second airport has been designated by the FAA as a secondary airport serving the same region, and the higher fees would help relieve or avoid congestion at the first airport. Fees at the second airport must be reduced so that total system fees do not exceed the sponsor's system airfield costs.

18.14 Airport System.

For airport system methodologies that were in place as of the effective date of the Rates and Charges Policy, the DOT will consider a sponsor's claim that those methodologies are reasonable.

18.15 Costs Related to Closing an Airport while Building a Replacement Airport.

If a sponsor closes an operating airport as part of an approved plan for the construction and opening of a new airport, reasonable costs for disposition of the closed airport may be included in the rate base of the new airport.

Pending reasonable disposition of the closed airport, the sponsor may charge aeronautical users at the new airport for reasonable maintenance costs of the old airport for a limited time. In some cases, the closing of an airport can have revenue diversion implications. Specifically, the FAA may examine information related to costs expended for the closure and site remediation of an airport that has been closed when no replacement airport has been opened. The primary concern is whether a sponsor has unlawfully diverted airport revenue for nonairport purposes, such as improving the property for the benefit of a future, nonairport use.

18.16 Project Costs.

The sponsor may not include in its rate-base costs paid from government grants or Passenger Facility Charges (PFCs).

18.17 Passenger Facility Charge (PFC) Projects.

Where the sponsor funds the development of terminal facilities with PFCs, the facilities rental may not be lower than rental fees charged for similar terminal facilities not funded with PFCs. (Rates and Charges Policy, section 2.7.2(a)).

18.18 Prohibition on Unjust Discrimination.

Aeronautical fees may not unjustly discriminate against aeronautical users or user groups.

a. Consistent Methodology.

The sponsor must apply a consistent methodology in establishing fees for comparable aeronautical users of the airport. When the sponsor uses a cost-based methodology, aeronautical fees imposed on any aeronautical user or group of aeronautical users may not exceed the costs allocated to that user or user group. A cost allocation methodology consistent with the Rates and Charges Policy must be adopted by the sponsor unless aeronautical users agree otherwise.

b. Reasonable Distinctions.

The prohibition on unjust discrimination does not prevent a sponsor from making reasonable distinctions among aeronautical users (such as signatory and nonsignatory air carriers) and assessing higher fees on certain categories of aeronautical users based on those distinctions (such as higher fees for nonsignatory versus signatory air carriers).

c. Foreign Air Carriers.

The Chicago Convention on International Civil Aviation and other bilateral aviation agreements prohibit unjust discrimination against foreign air carriers. When domestic air carriers are engaged in similar international service, these agreements prohibit airports from imposing fees on foreign air carriers that are higher than fees imposed on domestic air carriers. When charges to foreign air carriers for aeronautical use are inconsistent with these principles, the DOT considers such charges unjustly discriminatory or unfair and unreasonable.

d. Allocation.

Sponsors must allocate rate-base costs to their aeronautical users by a transparent, reasonable, and not unjustly discriminatory rate-setting methodology. Sponsors must apply the methodology consistently and, when practical, they must quantitatively determine cost differences.

18.19 Self-Sustaining Rate Structure.

Sponsors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. (*See* chapter 17, *Self-Sustainability*).

a. Revenue Surpluses.

In establishing new fees and generating revenues from all sources, sponsors should not seek to create revenue surpluses that exceed the amounts required for airport system purposes and for other purposes for which airport revenue may be spent under 49

U.S.C. §§ 47107(b)(1) and 47133. Reasonable reserves and other funds to facilitate financing and to cover contingencies are not surplus.

Fees charged to nonaeronautical users may exceed the costs of service to those users, the sponsor must use the surplus in accordance with the revenue use requirements of 49 U.S.C. §§ 47107(b) and 47133. For example, a nonaeronautical surplus may be used to offset aeronautical costs and result in lower fees for aeronautical users or may be used for nonaeronautical airport development purposes.

The progressive accumulation of substantial amounts of surplus airport revenue may warrant an FAA inquiry into whether aeronautical fees are consistent with the sponsor's federal obligations to make the airport available on fair and reasonable terms.

b. Market Discipline.

Over time, the DOT assumes that the limitations on airport revenue use, combined with effective market discipline for nonaeronautical services and facilities, will be effective in holding aeronautical costs to airport revenues while providing reasonable aeronautical fees for services and facilities.

18.20 Local Negotiation and Resolution.

Although federal law provides the DOT with authority to intervene in disputes over an airport fee or charge, the DOT primarily relies on the sponsor and its aeronautical users to reach consensus on airport rates and charges. The sponsor may impose a fee unilaterally, after consultation with users, if the fee is consistent with the Rates and Charges Policy. The sponsor may adopt a fee that varies from the Rates and Charges Policy only if all users agree.

a. Consultation.

As provided for in the Rates and Charges Policy, the FAA and DOT encourage adequate and timely consultation with users prior to implementing rate changes. To permit aeronautical users time to evaluate proposed rate changes, consultation should be well in advance of introducing significant changes in charging systems, procedures, or level of charges. Adequate information should be provided so users can evaluate the airport’s justification for the change and to assess its reasonableness. Due regard should be given to the views of both the aeronautical users and the airport and its financial needs.

b. Unilateral Action.

In the absence of an agreement, sponsors may propose and implement in accordance with their proposed rate changes without prior review or approval by FAA. An air carrier may bring a complaint about the fee to Secretary of Transportation under 49 U.S.C. §

47129, and under the procedures in 14 CFR part 302, *Rules of Practice in Proceedings*. Any aeronautical user (including an air carrier) may file a complaint about a fee with FAA under 14 CFR part 16.

c. Alternative Dispute Resolution.

As provided for in the Rates and Charges Policy, DOT encourages airport proprietors and aeronautical users to include alternative dispute resolution procedures in their lease and use agreement, in order to facilitate local resolution and reduce the need for direct Federal intervention to resolve differences over aeronautical fees.

18.21 Complaints.

Formal complaints challenging the reasonableness of an airport fee may be filed by an air carrier in a proceeding before the DOT under 49 U.S.C. § 47129, or in an FAA investigation under 14 CFR part 16.

a. Complaints Filed with the Secretary of Transportation (OST).

An air carrier or foreign air carrier may file a formal complaint under 49 U.S.C. § 47129, within 60 days after the carrier receives written notice of a new or increased airport fee. An airport owner or operator may file a written request for a determination as to whether a fee imposed upon one or more air carriers is reasonable. OST procedures for the adjudication of the complaints are found in 14 CFR part 302. While the OST is considering the dispute, the complainant must pay the contested amount under protest. If the OST finds against the sponsor, the sponsor would ensure the prompt repayment of the disputed fee to the air carrier unless otherwise agreed. Pending issuance of the final determination, the sponsor may not deny an air carrier currently providing air service reasonable access to the airport. Where the parties are unable to resolve their disputes, OST will issue determinations in accordance with 49 U.S.C. § 47129.

b. Complaints Filed with the FAA.

Any person subject to an airport fee can file an informal complaint with the FAA Region or ADO under 14 CFR § 13.2 or a formal complaint with the FAA under 14 CFR part 16 (Part 16) concerning the fee. Part 16 complaints are filed with the Office of Airport Compliance and Management Analysis (ACO), through the Office of Chief Counsel, and investigated by ACO. The Director of the Office of Airport Compliance and Management Analysis (ACO-1), will issue an initial determination on the reasonableness of the fee. That determination is appealable to the Associate Administrator for Airports. (*See* chapter 5, *Initiating, Accepting and Investigating Informal and Formal Complaints*).

c. Agency Determination.

Under 49 U.S.C. § 47129(a)(3), the OST or the FAA may determine only whether a fee is reasonable or unreasonable. They may not set the level of any airport fee.

18.22 through 18.26 Reserved.