Chapter 18. Airport Rates and Charges

18.1. Responsibilities.

The FAA headquarters Airport Compliance Division (ACO-100) will adjudicate rates and charges disputes filed in accordance with 49 Code of Federal Regulations (CFR) Part 16. The Office of the Secretary of Transportation (OST) adjudicates rates and charges disputes filed in accordance with the special procedures for air carrier rate complaints, 49 United States Code (U.S.C.) § 47129 and 49 CFR Part 302. Neither the Secretary nor the FAA set the fees.

The airports district offices (ADOs) and regional airports divisions will advise the aviation community with regard to the *Policy Regarding Airport Rates and Charges* (*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 Part 13.1. In general, the FAA encourages sponsors and users to negotiate rates and charges agreements and to resolve disputes through alternative dispute resolution processes.

18.2. Policy Regarding Airport Rates and Charges.

a. 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 (49 U.S.C. § 40116(e)(2)), (2) the Airport and Airway Improvement Act of 1982 (AAIA), as amended (49 U.S.C. 47107(a)(1)(2)(13), and (3) 49 U.S.C. 47129, "Resolution of Airport-Air Carrier Disputes Concerning Airport Fees" (rules at 14 CFR Part 302, Subpart F).

b. The *Rates and Charges Policy* is intended to provide guidance to airport proprietors and aeronautical users, encourage direct negotiation between parties, minimize need for direct federal intervention, and establish standards that FAA will apply in addressing airport fee disputes and compliance issues.

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

d. Final Policy. OST and FAA published the *Rates and Charges Policy* in the *Federal Register* on June 21 1996 (61 Fed. Reg. 31994).

e. 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 Department of Transportation (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 policy were vacated: 2.4, 2.4.1(a), 2.5.1, 2.5.1(a), 2.5.1(b), 2.5.1(c), 2.5.1(d), 2.5.1(e), 2.5.3, 2.5.3(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.

f. 2008 Amendments. On July 8, 2008, OST 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. (73 Fed. Reg. 40430; July 14, 2008.) Specifically, the amendment (1) clarifies the 1996 *Rates and Charges Policy* by explicitly acknowledging that airport operators are authorized to establish a two-part landing fee structure consisting of both an operation charge and a weight-based charge in lieu of the standard weight-based charge; (2) expands the ability of the operator of a congested airport 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 of a congested airport to charge users of a congested airport a portion of the cost of airfield projects under construction.

g. Availability. The *Rates and Charges Policy*, updated to reflect the 1997 Court of Appeals decision and the 2008 amendments, is available online.

h. Use of the *Rates and Charges Policy*. This chapter summarizes the provisions of the *Rates and Charges Policy* for convenience. The *Rates and Charges Policy* is the official FAA policy on airport rates and charges, and the *Policy* itself should be consulted in any case where an agency opinion or determination on an airport fee is required.

18.3. Aeronautical Use and Users.

a. Aeronautical Use. The FAA defines "aeronautical use" as all activities that involve or are directly related to the operation of aircraft, including activities that make the operation of aircraft possible and safe. Services located on the airport that are directly and substantially related to the movement of passengers, baggage, mail, and cargo are considered aeronautical uses. While many of the provisions of the *Rates and Charges Policy* are oriented toward air carrier fees, the principles of the *Policy* apply to all aeronautical uses of the airport.

b. Aeronautical Users. Individuals or businesses providing services involving operation of aircraft or flight support directly related to aircraft operation are considered to be aeronautical users.

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.

18.4. Definitions.

a. 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.

b. Congested airport. Two appeals of the 2008 amendments to the *Rates and Charges Policy* apply only to congested airports. The 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 or a later version of that report. An airport is considered a "future congested airport" if it meets the defined threshold in the FAA Future Airport Capacity Task 2 (FACT 2) report, or a later FACT report when issued.

18.5. Principles.

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.

b. Not Discriminatory. Aeronautical fees may not unjustly discriminate against aeronautical users.

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. (See chapter 17 of this Order, *Self-sustainability*, for guidance on the self-sustaining requirement.)

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. (See chapter 15 of this Order, *Permitted and Prohibited Uses of Airport Revenue*, for guidance on revenue use requirements.)

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

18.6. Local Negotiation and Resolution.

a. General. 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 fully consistent with the *Rates and Charges Policy*. The sponsor may adopt a fee that varies from the *Rates and Charges Policy* only if users agree.

b. Consultation. As provided for in the *Rates and Charges Policy*, DOT encourages 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, if practical, 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. The *Rates and Charges Policy* notes that the parties should make a good-faith effort to reach agreement, and encourages airports and aeronautical users to include alternative dispute resolution procedures in their lease and use agreements to facilitate resolution and reduce the need for direct federal intervention to resolve differences over aeronautical fees.

c. Unilateral Action. In the absence of an agreement, sponsors may act 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 OST under 49 U.S.C. § 47129. Any aeronautical user (including an air carrier) may file a complaint about a fee with FAA under Part 16.

d. Alternative Dispute Resolution. Sponsors and aeronautical users may include alternative dispute resolution procedures in their agreements.

18.7. Formal Complaints.

Formal complaints challenging the reasonableness of an airport fee may be challenged 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 OST. An air carrier may file a formal complaint with OST 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 49 CFR Part 302. While the OST is considering a dispute under 49 U.S.C. § 47129, the complainant must pay the contested amount under protest. In the event the DOT finds against the sponsor, the sponsor will ensure the prompt repayment of the disputed fee to the air carrier unless otherwise agreed. Pending issuance of the DOT 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 a formal complaint concerning the fee with the FAA under 14 CFR Part 16. Part 16 formal complaints are filed with the Office of Compliance and Field Operations (ACO) through the Office of Chief Counsel, and investigated by the Airports Compliance Division (ACO-100). The Director, Office of Compliance and Field Operations (ACO-1), will issue an initial determination on the reasonableness of the fee. The initial determination is appealable to the Associate Administrator for Airports. (See chapter 5 of this Order, *Complaint Resolution*, for additional information on Part 16 procedures.)

Served JUN 30 1995

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.

Issued by the Department of Transportation
on the 30th day of June, 1995

LOS ANGELES INTERNATIONAL AIRPORT RATES PROCEEDING	:	Docket 50176

FINAL DECISION

Where the parties are unable to resolve rate disputes, the DOT will issue determinations in accordance with 49 U.S.C. § 47129. Pursuant to this provision, the DOT may determine only whether a fee is reasonable or unreasonable; it may not set fee levels. This is a case involving the Los Angeles International Airport in 1995.

c. Agency Determination. Pursuant to 49 U.S.C. § 47129(a)(3), regardless of whether a complaint is filed under § 47129/Part 302 or Part 16, OST and FAA may only determine whether a fee is reasonable or unreasonable, and may not set the level of the fee.

18.8. Fair and Reasonable.

a. General. 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.

b. Method. Sponsors may set fees by ordinance, statute, resolution, regulation, or agreement.

c. 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 so long as the methodology is consistent for similarly situated aeronautical users and conforms to the *Rates and Charges Policy*.

d. 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 the 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. 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.

e. Compensatory. A compensatory agreement 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.

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

f. Hybrid. Sponsors frequently adopt rate-setting systems that employ 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.

g. 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.

h. 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.

i. 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.

18.9. 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, fire/crash rescue, 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.

18.10. 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.

18.11. 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.

18.12. Insurance. Reasonable costs of insuring against liability, including environmental contamination. Under this provision, 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.

18.13. Causation. Unless otherwise agreed to by aeronautical users, the sponsor must allocate direct and allocated indirect capital and operating costs among cost centers in accordance with the principle of causation.

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*.

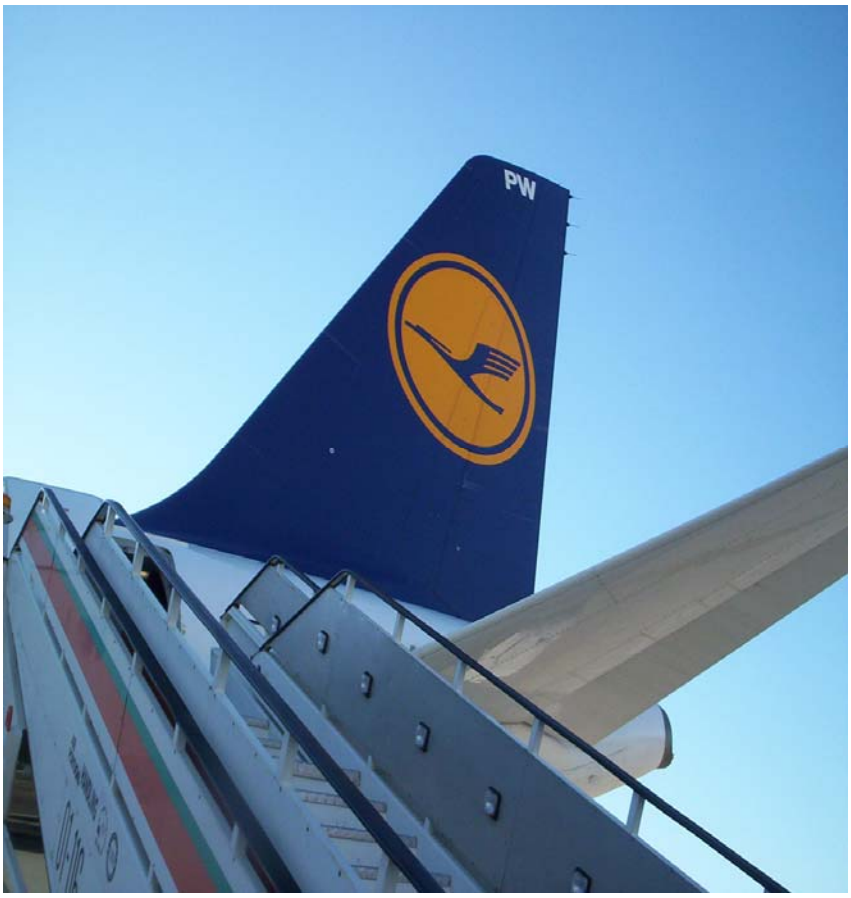
18.14. Facilities under Construction. Once the sponsor puts the facility into service, it may capitalize the sponsor costs incurred during construction and amortize the resulting debt service and carrying costs. The general rule is that a sponsor may not begin to charge for the costs of facilities until they are in use, unless users agree. However, the 2008 amendments to the *Rates and Charges Policy* established a limited exception for airports that experience a defined level of congestion: at a congested airport, 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.

18.15. 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.



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

18.16. Airport System. For airport system methodologies that were in place as of the effective date of the *Rates and Charges Policy* (June 21, 1996), the DOT will consider a sponsor's claim that those methodologies are reasonable.

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

18.18. Maintenance of Closed 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. 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

to replace it. The prime concern for the FAA is to determine whether a sponsor has unlawfully diverted airport revenue for nonairport purposes, such as improving the property for the benefit of a future, nonairport use.

18.19. Project Costs. The sponsor may not include in its rate-base costs paid from government grants or passenger facility charges (PFCs).

18.20. Passenger Facility Charge (PFC) Projects. Where the sponsor funds the development of terminal facilities with passenger facility charges (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).)

18.21. Prohibition on Unjust Discrimination.

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

b. 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.

c. 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).

d. 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 same 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 will consider such charges unjustly discriminatory or unfair and unreasonable.

e. 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.

18.22. Self-sustaining Rate Structure.

a. Requirement. Sponsors must maintain a fee and rental structure that in the circumstances of the airport makes the airport as financially self-sustaining as possible. (The policy on the self-sustaining requirement is discussed in chapter 17 of this Order, *Self-sustainability*.)

b. 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. While 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.

c. 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.

d. Surplus. 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.

18.23. through 18.28. reserved.