

41st Annual AAEE
Airport Law Workshop
Washington, D.C.

Session #16

Enforcement of Federal Obligations: The Airport Compliance Program



Speakers

Eric Pilsk



Partner
Kaplan Kirsch

What goes where

This session

Administrative Enforcement of Airport Sponsor Federal Obligations

- Grant Assurances
- Anti-Head Tax Act
- Surplus Property Act
- Airport Noise and Capacity Act
- No private right of action to enforce federal obligations in courts

NOT this session

Judicial Enforcement in State and Federal Courts

- U.S. and State constitutions
- Other federal and state statutes
- Contracts
- False Claims Act
- Criminal enforcement (e.g. harboring aliens)

Federal enforcement procedures



14 C.F.R. Part 13.1

- Informal process for all airport obligations

14 C.F.R. Part 16

- Formal process for Grant Assurances, AHTA, and Surplus Property Act
- Initiated by airport users or FAA
- Can result in loss of grant eligibility

14 C.F.R. Part 302

- Fast track process for airport rates and charges

14 C.F.R. Part Subpart F

- Enforcement process for Airport Noise and Capacity Act

49 U.S.C. §§46105 & 47111(f)

- Cease and desist order and federal court injunction



FAA compliance principles



- Achieving current and future compliance
- Not punitive
 - × No damages
 - \$ *Except revenue diversion*
 - × No attorney's fees
 - × No “award” to complainant
- Primary remedy is corrective action plan
- Loss of entitlement grant eligibility or judicial injunction are last resorts

PART 13

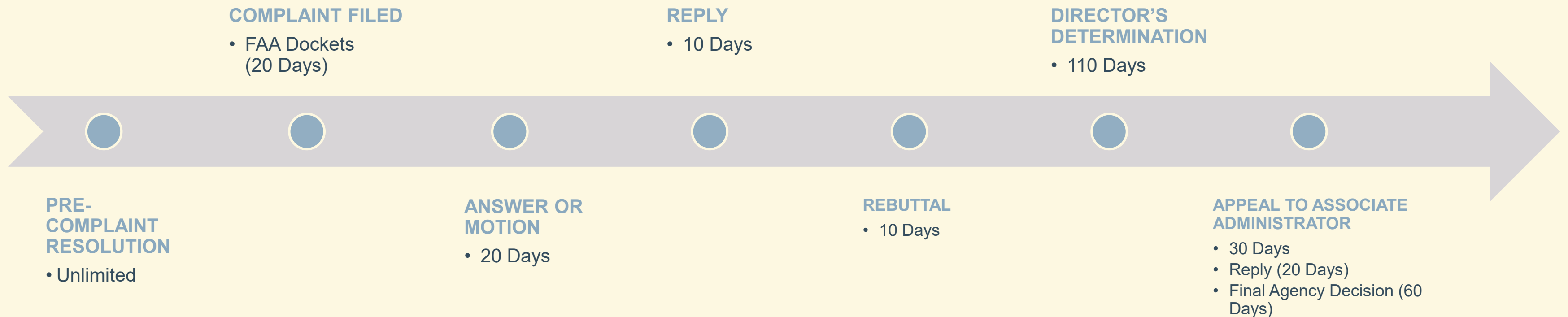
Informal complaint

- Informal complaint by “anyone who knows of a violation”
 - No procedures or format
 - Letter, email, or pleading
- Handled at FAA regional and district level
- Sponsor response required ONLY if FAA Asks
- Letter decision with advisory resolution
 - Not binding on agency, complainant, or sponsor
 - But,
 - Not preclude a Part 16



PART 16

Overview



- Initially handled by FAA HQ, Office of Airport and Compliance and Management Analysis (Director: Michael Helvey)
- Adverse decision can lead to loss of grant eligibility
- Process at FAA takes 1-3 years

PART 16

Complain



May be filed by a party “directly and substantially affected by any alleged noncompliance” (Sec. 16.23)



May be initiated by the FAA through Notice of Investigation (Sec. 16.103)



Airport sponsor is the only respondent



Complaint must include supporting evidence

- Documents and affidavits
- Show attempt at pre-complaint resolution

Pleadings/briefing



Sponsor has 20 days to respond after docketing

- Answer
- Motion to Dismiss or Motion for Summary Judgment

Response must include all supporting documents and affidavits

- Very similar to a summary judgment brief

Extension commonly sought and granted

PART 16

Pleadings/briefing



Complainant's reply due 10 days after Response

Sponsor's rebuttal due 10 days after Response

No new issues in Reply or Rebuttal

Extensions commonly sought and granted

No Discovery

14 C.F.R. 16.23, 16.25, 16.27

Dispositive motions



Motions to Dismiss

- Jurisdictional issues, failure to state a claim, or standing

Motions for Summary Judgment

- No genuine issue of material fact for adjudication
- Entitled to judgment as a matter of law

10 days for response, no reply

If no determination with 30 days, must answer complaint

Rarely granted before merits decision

PART 16

FAA investigation



- FAA may look beyond material in pleadings
 - Interviews, requests for information
 - Critical to provide supporting evidence in papers
- FAA has 110 days from rebuttal to issue Director's Determination
 - FAA routinely grants itself extensions of time
 - Current cases taking 1-2 years



PART 16

Initial decision: Director's Determination

- Director's Determination issued after investigation (Sec. 16.31)
 - Detailed examination of law and facts
 - Not final order; Not appealable to federal court
- FAA has 110 days from rebuttal to issue Director's Determination
 - FAA routinely grants itself extensions of time
 - Current cases taking ~2 years



PART 16

Corrective Action Plan (CAP)



- Detailed explanation to director of how sponsor will comply with Director's Determination
 - No set format - Letter or Pleading
- Typically due 30 days after Director's Determination
 - Filing appeal does NOT toll time to file CAP
 - File motion to suspend CAP pending appeal
 - Compliance is between sponsor and director



Appeal rights at agency



Director's Determination adverse to sponsor:

- No appeal – Submit CAP
- Evidentiary hearing (not always available)
- Appeal to associate administrator (30 days) (move to suspend CAP)

Director's Determination favorable to sponsor

- Complainant can appeal to associate administrator (30 days)
- Sponsor can reply (20 days)

Associate administrator decision within 60 days (usually extended)

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Judicial review



- Losing party can appeal associate administrator's final agency decision to U.S. Courts of Appeal (Sec. 16.247)
 - D.C. Circuit
 - Sponsor's home circuit
- FAA's decision still receives deference
- New evidence **cannot** be presented
- Sponsor may intervene if complainant appeals



Practice tips

- Request extensions of time at least 5 days before deadline
 - Request does **NOT** stay deadline, so move early
- FAA prefers voluntary compliance
 - ✓ Demonstrate that sponsor understands federal obligations
 - ✓ Consider proposing corrective action when violation is obvious
- Motions usually not acted on until Director's Determination
- Amendments or supplements to the pleadings require showing good cause



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Trends



Director now recommending withholding discretionary grants pending corrective action in adverse Director's Determinations

FAA staffing and personnel changes

More aggressive use of revenue diversion, Assurance 5, and other less common grant assurances by complainants

Fast responses on extension requests

PART 16

Resources



- **FAA Compliance Manual, ORDER 5190.6B**
 - Includes key Advisory Circulars and policies
 - FAA's Part 16 web Page:
<https://part16.airports.faa.gov/>
- **Part 16 decisions**
 - ACRP database: <https://crp.trb.org/acrplrd21/>
 - FAA Part 16 decisions:
<https://part16.airports.faa.gov/index.cfm?page=CaseFileSearch>
 - www.regulations.gov
 - LEXIS: Administrative Materials / Department of Transportation
 - LEXIS and Westlaw are not current



Enforcement by judicial injunction



49 U.S.C. §47111(f):
Authorizes the FAA to
seek an injunction or other
writ from courts to enforce
grant obligations



49 U.S.C. § 47105:
Authorizes the FAA to
issue orders to enforce
safety and certain other
standards and to obtain an
injunction from a court



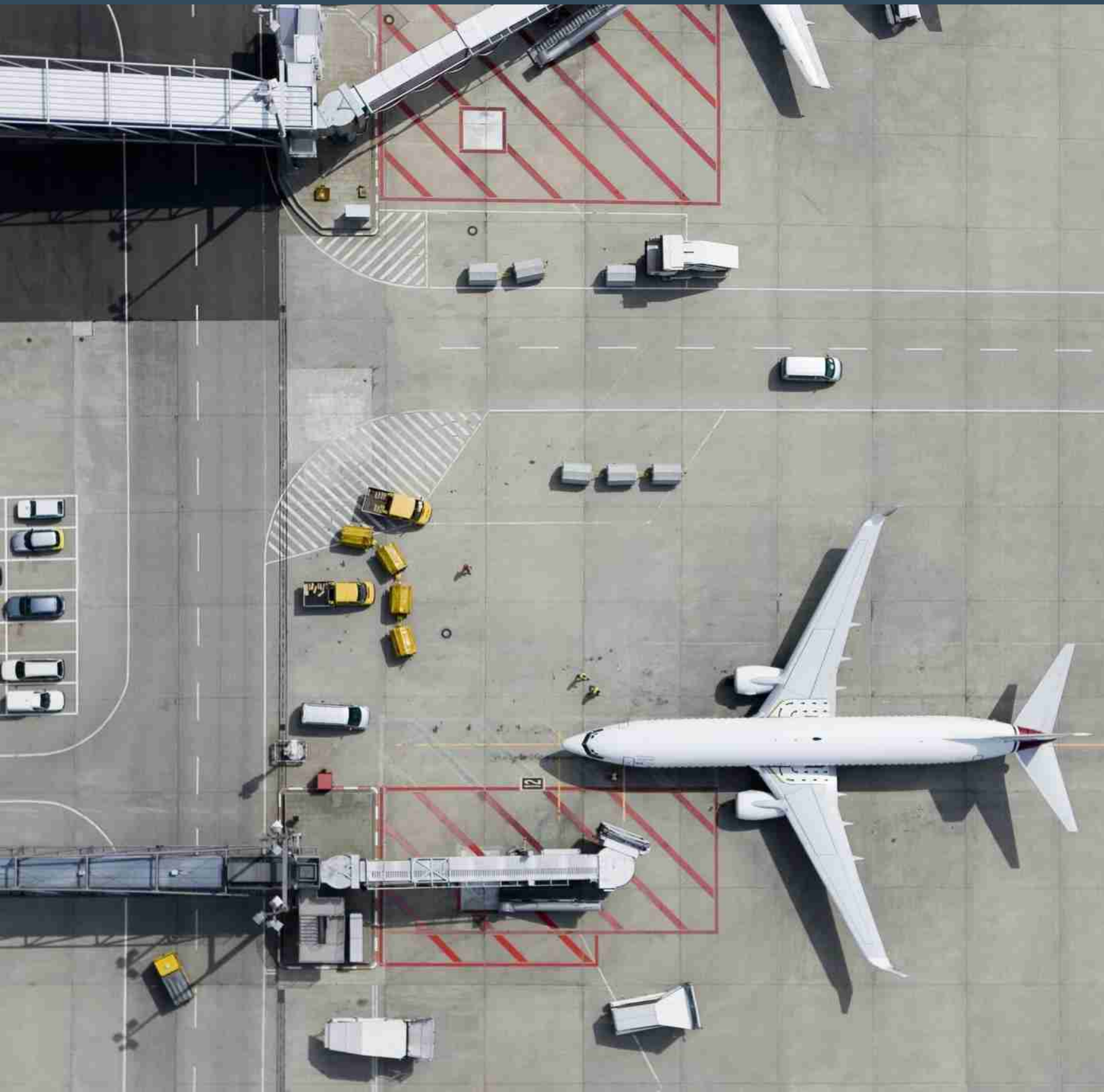
Rarely invoked



Includes preliminary relief
pending resolution of a
Part 16 proceeding



Reasonableness of air carrier airport fees

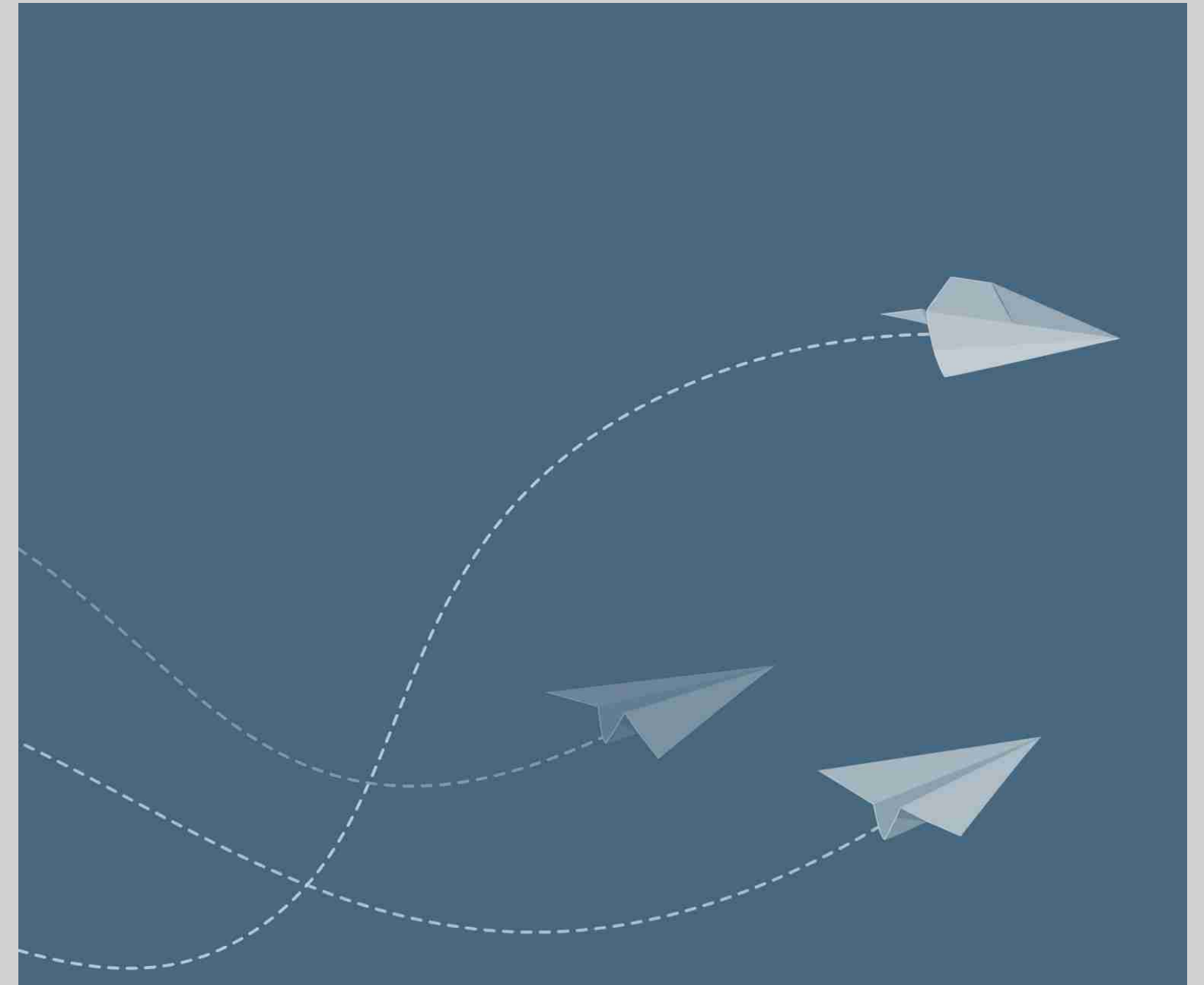


- An air carrier may file a complaint “for a determination as to the reasonableness of any fee imposed on the carrier by the owner or operator of an airport.” (14 CFR §302.602(a))
- Sponsor may file a request for determination seeking a similar determination
- Cannot seek relief as to fees imposed by agreement
- Part 302 is an alternative to Part 13 and/or Part 16 complaint
- Part 302 cases decided by Office of the Secretary of Transportation; NOT the FAA



Fast track process - pleadings

- Complaint or request for determination
 - Filed within 60 days of new fee
 - Include all evidence, testimony, and legal argument
- Answer
 - Due in 14 days
 - Include all evidence, testimony, and legal argument
- Reply
 - Due in 2 days
- Extensions not likely



Fast track process – DOT decision



30 days after initial filing : DOT decides if case has merit and meets procedural requirements (14 CFR §302.606)

- If DOT finds that a significant dispute exists, case assigned to ALJ
- IF DOT finds that complaint/request does not meet procedural requirements, dismiss without prejudice
- If DOT finds that NO significant dispute exists, dismiss case or issued final order

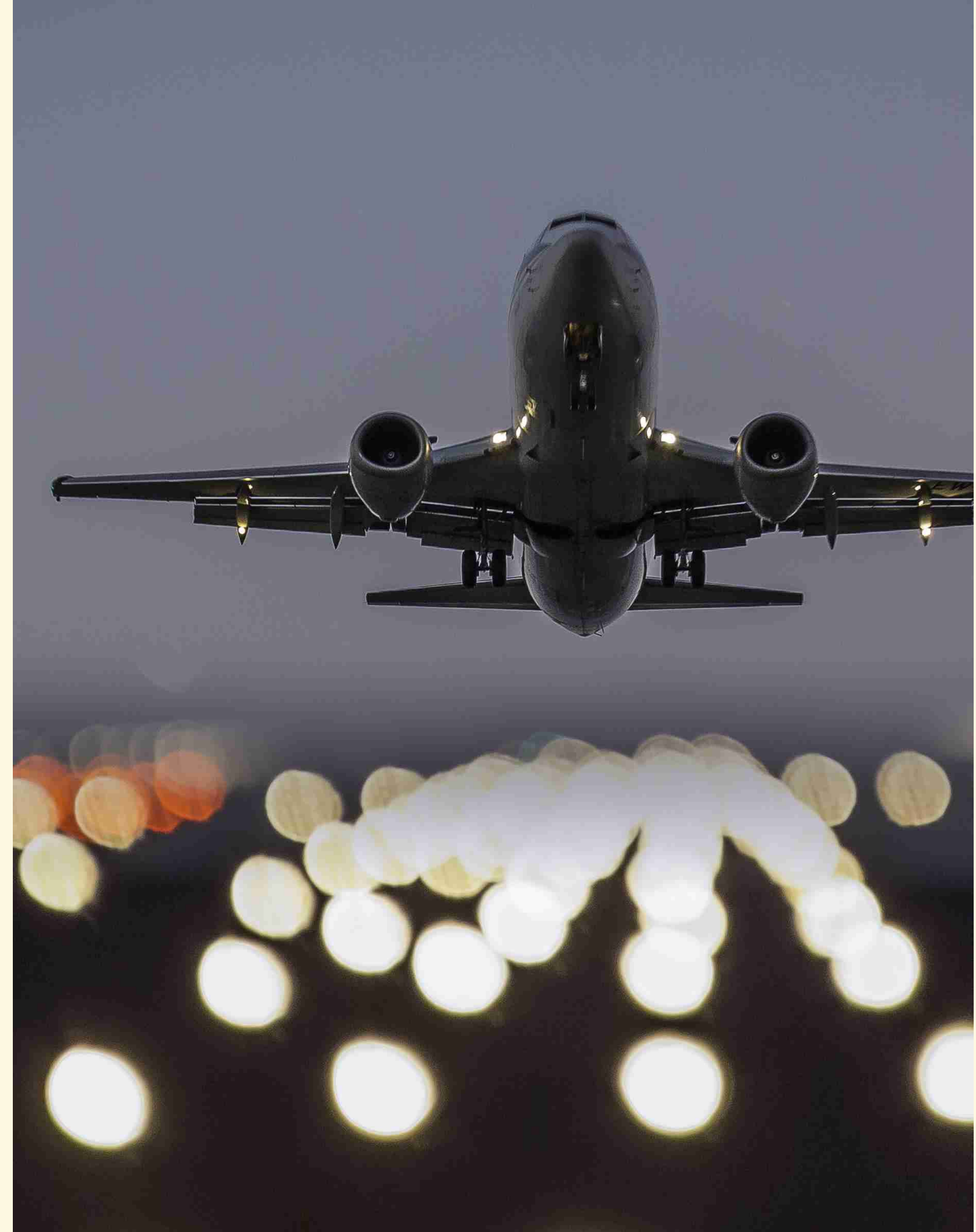
60 days after referral (90 days after filing): ALJ issues recommended decision

120 days after filing: Secretary issues final decision

PART 161

Airport Noise and Capacity Act

- Airport Noise Act regulates imposition of noise or access restrictions – curfews, noisy aircraft limits, etc.
- Failure to comply with Airport Noise Act can lead to loss of grant and PFC eligibility
- 14 CFR 161 Subpart F: eligibility termination procedures
 - Section 161.503: informal resolution
 - Section 161.505: formal procedures and notice
- Process initiated by FAA or complaint
 - No formal requirements
- Rarely used; often overlaps with Assurance 22 and Part 16



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Questions?

Eric Pilsk

Kaplan Kirsch LLP

epilsk@kaplankirsch.com

Thank You!

