United States

Background (until the mid-1980s)

During World War II, the Federal Government transferred excess military bases and related properties to State and local Governments under the Surplus Property Act of 1944. These lands were provided on condition that they be used as public airports. As a result, most owners of the nation's public airports became local Governments (cities and counties), which often formed special governmental entities such as single-purpose airport authorities or port districts to manage airports as well as other transportation-related infrastructure. A principal example was the lease by the cities of New York and Newark of their three airports to the Port Authority of New York and New Jersey.

In 1946, the Federal Airport Act created a federal-aid program to fund airport development, which was administrated by the Civil Aeronautics Administration (CAA) and was comprised of the Government's general tax receipts. Under the Federal Aviation Act of 1958, CAA's role was overtaken by the Federal Aviation Agency (FAA), a new independent regulatory body. The Act gave FAA sole responsibility for developing and maintaining a common civil-military system of air navigation and air traffic control, as well as administering the federal-aid airport program. In 1966, Congress authorized the creation of a cabinet department that would combine major federal transportation responsibilities. In April 1967, when the Department of Transportation (DOT) began full operations, FAA became one of modal organizations within DOT and changed its name to the Federal Aviation Administration.

The Airport and Airway Revenue Act of 1970 placed FAA in charge of a new aid program for investments in the airport and airway system and, to the extent funds were available, to cover the operating costs of the airway system as well. For this new program, the Act established the Airport and Airway Trust Fund (AATF) in July 1970, and appropriated aviation-related exercise taxes towards it. The exercise taxes included taxes on domestic and international airline travel, domestic cargo transportation by air, and non-commercial aviation fuel. All the airports (over 3,300 airports including about 550 commercial service airports) in the national airport system were eligible for federal grants through AATF.

The Airport and Airway Improvement Act of 1982 (AAIA) reauthorized AATF and established two separate programs: the Airport Improvement Program (AIP) and the Airway Improvement Program. While the former continued the grants-in-aid for airport planning and development, the latter made monies available to FAA to operate and maintain the air navigation system. FAA allocates most AIP grants on the basis of a legislated apportionment formula (tied to the number of passengers an airport enplanes) and set aside categories earmarked for specific types of airports and projects. It has discretionary authority to allocate the remaining funds on the basis of "needs" identified by airports.

AAIA also imposed a "reasonableness" requirement on the fees charged to aeronautical users by airports. When an airport accepted a federal AIP grant for an airport improvement, it should give certain assurances, including the assurance that the airport be available for public use on fair and reasonable terms without unjust discrimination. This assurance includes an obligation to charge aeronautical users of the airport only reasonable fees. Similarly, the Federal Aviation Act and the Anti-Head Tax Act allowed a publicly-owned airport authority to collect only reasonable landing fees and charges from airlines using airport facilities. These statutes, however, did not authorize DOT and FAA to regulate the reasonableness of fees charged to non-aeronautical users.

Commercialization/privatization: Airports

Even though almost all the commercial service airports are owned by local Governments and, in a few instances, Federal or State Governments, they have been operating in partnership with the private sector (PPP). At large and medium hub airports, employees of private companies account for 90 per cent of all employees. The bulk of the services, including baggage handling, cleaning, retail concessions, and ground transportation, are provided by private contractors or tenants. For example, the airport authorities of Pittsburgh, Boston (Massport) and Baltimore entered into master concessionaire agreements, respectively, with BAA USA to manage commercial and retail operations at Pittsburgh Airport in 1992, at Boston Logan Airport's two main terminals in July 2000, and at the new concourse at Baltimore Airport in March 2004. In some cases, airlines and other tenants privately finance the construction of their terminals, hangars, and other facilities. Major terminals at Chicago O'Hare, Cincinnati Northern Kentucky, Detroit, New York's John F. Kennedy are a few examples privately financed.

Along with the progress of commercialization, private participation into public airports through management contracts has taken place in response to increased pressure to reduce costs, although such arrangements tended to be with smaller airports. For example, in 1994, the Indianapolis Airport Authority sought to bid to manage its airport system that included Indianapolis Airport and five general aviation airports. The winning bidder, BAA Indianapolis LLC, won a 10-year management contract until 2005 (the contract was extended to 2008 but was terminated at the end of 2007). Also, in addition to the Indianapolis Airport Authority's five general aviation airports, 10 such airports were privately managed under management contracts.

Another notable development was the transfer of federally-owned airports to a local public entity. In October 1986, the Metropolitan Washington Airports Act of 1986 provided for the lease of the federally-owned Dulles and Reagan National airports and the transfer of the operating responsibility from FAA to the Metropolitan Washington Airports Authority (MWAA). MWAA is an independent, non-federal, public entity created by the Commonwealth of Virginia and the District of Columbia. Since June 1987, the two airports have been operated by MWAA under a 50-year lease with DOT.

Until the mid-1990s, however, only one of the ten attempts by public owners to sell or lease commercial service airports to a private entity has been implemented. The one successful case is Atlantic City Airport. In 1986, Atlantic City leased the terminal of its airport to a private company until 1992, when the city subsequently sold the terminal to a newly-created public transportation authority. As for general aviation airports, three airports (Addison, Morristown, and Teterboro) have been privately managed under lease.

Under federal grant agreements, FAA's approval is required before a commercial service airport can be sold or leased, regardless of whether the transfer is to a public or private entity. Very few of the privatizations under consideration were formally proposed to FAA for approval, and some were rejected as infeasible because of legal impediments (those concerning the use of airport revenue and reimbursement of federal assets) and economic impediments (such as loss of federal grants and tax-exempt financing). FAA considers that airport revenue includes any sale or lease proceeds that local and State Governments may obtain, and thus that those Governments are only entitled to recover their reimbursed capital and operating costs from such proceeds (the rest has to be invested in the airport). This removes financial benefits associated with the airport sale or lease.

In October 1996, Congress, as part of the Federal Aviation Reauthorization Act of 1996, created an airport privatization pilot program to determine if, once certain economic and legal impediments were removed, privatization could produce alternative sources of capital for airport development and provide benefits such as improvements in service. FAA was authorized to permit up to five public airports, at least one of which must be a general aviation airport. The participation of large hub commercial service airports was limited to one. Additionally, Congress prohibited the sale of any commercial service airport participating in the program, limiting those airports to privatization under a lease agreement only.

Since September 1997 when the pilot program began, FAA has received applications from six airports (three later withdrew). Among them, Stewart Airport received an exemption under the program in March 2000 and U.K.-based National Express Group was awarded a 99-year lease by the New York State Department of Transportation. In October 2007, however, the Port Authority of New York and New Jersey acquired the remaining 93 years of the lease, effectively ending the privatization experiment. The application of New Orleans Lakefront Airport was dismissed by FAA in April 2008 in view of the Orleans Levee District's diminished responsibility under the revised State law. The application of Chicago Midway Airport (owned and operated by the City of Chicago, classified as a large hub commercial service airport) was approved in 2008, but the privatization process fell through when the consortium that would have taken over the airport did not put together financing. A new privatization process was launched in 2013. Finally, FAA is currently reviewing the final application to privatize Muñoz Marín International Airport in San Juan, Puerto Rico (the winning bidder is a holding owned by Mexican airports operator ASUR and Highstar Capital).

Commercialization/privatization: ANSP

The air traffic services organization of FAA was neither privatized nor commercialized, but reorganized as a semi-autonomous performance based organization (PBO). Since 1997, the need for FAA to better control the growth in its operating costs has been advocated with a particular focus on controlling the costs of the air traffic services operations, which accounted for over 80 per cent of FAA's operating costs. In April 2000, Congress passed legislation (known as AIR-21), authorizing a chief operating officer for FAA who would be responsible for, *inter alia*, overseeing day-to-day air traffic control operations, modernizing the air traffic control system, increasing productivity and implementing cost saving measures. In December 2000, a Presidential Executive Order 13180 called for a new PBO to be known as the Air Traffic Organization (ATO) with responsibility for air traffic services within FAA. In February 2004, FAA established ATO to take over its entire air traffic operations and management of the investments.

Economic oversight: Airports

FAA's main role is in policy making, and its focus and scope of economic oversight is limited to airport financing including setting the principles of airport charges. Besides federal AIP grants and grants by States (as matching funds for AIP grants or as separate State grants), funding for airport development comes from passenger facility charges (PFCs), airport and special facility bonds, and net income from airport revenues, all of which are subject to federal regulatory control with a varying extent.

PFC is a per-passenger fee levied on each passenger enplaning at the airport. In 1990, Congress gave commercial service airports the option to impose a PFC as an additional means to raise funds under the Aviation Safety and Capacity Expansion Act of 1990. Beginning in July 1992, authorized airports were able to collect up to $3 ($4.5 since 2000 by AIR-2000) per enplaned passenger to use for projects that are eligible for AIP and for certain other types of costs that are not, such as debt financing costs. Airports must apply to FAA for the authority to collect the charges.

Bonds are the largest single source of capital for large and medium hub airports. Tax-exempt status enables airports to issue bonds at a lower interest rate than taxable bonds. Most airport bonds, especially those issued by larger airports, are secured by airport's general revenue, while special facility bonds are secured by the revenue from the indebted facilities such as terminal, hangar, or maintenance facility.

Airports generate revenue internally from landing fees and terminal leases (both paid by airlines), concessions (such as parking fees), and other income (such as advertising and fuel sales). Airport proprietors receiving federal AIP grants should use their revenues exclusively to pay for the airports' capital and operating costs and cannot divert for non-airport purposes. Beginning in 1996, FAA required federally-assisted commercial service airports to report financial statement information.

Airport fees are specifically addressed by the FAA Authorization Act of 1994, which was signed into law in August 1994. The Act directs the Secretary of Transportation to determine whether an airport fee imposed on an airline is reasonable, upon request by the airport proprietor or upon a complaint filed by an airline. An airport fee may be calculated pursuant to either a compensatory (dual till) or residual-cost (single till) methodology or a combination thereof. DOT may determine whether the fee is reasonable or unreasonable but shall not set the level of the fee. The Act also directed the Secretary to publish a final policy establishing procedures for acting on written requests or complaints and the guidelines that shall be used in determining whether an airport fee is reasonable.

In June 1996, DOT and FAA announced a final policy on the fees charged by federally-assisted airports to airlines and other aeronautical users. In principle, the policy requires the cost-of-service approach that fees for the use of the airfield and public-use roadways be established on the basis of costs. Airfield assets must be valued at their historic cost to the original airport proprietor (HCA value, generally the cost to acquire land and develop the airfield), and landing fees must be based on formulas which only permit an airport to recover the historic costs of its airfield assets including debt-related expenses. An airport may not revalue airfield assets in the absence of modifications or improvements to those assets. Also, that portion of assets acquired with AIP or PFC funds is not considered airport assets for the purpose of cost recovery through airport fees.

The 1996 policy is organized into five general principles. The first principle is DOT's preference for direct local negotiation between airport proprietors and aeronautical users through airport use agreements. DOT encourages direct resolution of differences at the local level. The second principle is the legal requirement that rates, fees and charges to aeronautical users must be fair and reasonable, while the third principle restates the prohibition on unjustly discriminatory rates and charges. The fourth principle restates the obligation to maintain a fee and rental structure that makes the airport as self-sustaining as possible. The fifth principle is the basic legal requirement for the application and use of airport revenues.

In July 2008, DOT and FAA amended its policy in order to provide greater flexibility to operators of congested airports to vary landing fees based on the time of day and the volume of traffic. Specifically, the amended policy clarified that airport operators may impose a landing fee that incorporates both weight-based and per-operation elements in lieu of standard weight-based charge; it also expanded the ability of an operator of a congested airport to include in its airfield fees a portion of the airfield costs of other, underutilized airports owned and operated by the same proprietor; and to permit the operator of a congested airport to charge its users a portion of the cost of airfield projects under construction. This decision was challenged by the Air Transport Association of America, but a judicial decision of July 2010 rejected the appeal, uphold the DOT's amendments, and established that a variation in the level and structure of landing fees is lawful as long as airports' rates and charges are reasonable and not unjustly discriminatory.

Economic oversight: ANSP

FAA does not charge for the use of federal air navigation facilities or telecommunications services. FAA's air traffic services organization (currently ATO) has been supported from the Government's general fund, derived from national taxation, plus federal grants through the Airway Improvement Program, a part of AATF. Under the latter program, monies have been appropriated for facilities and equipment (F&E); research, engineering, and development (RE&D); and operations of air navigation facilities. The proposed budget for 2009 established two new appropriations for ATO and "safety & operations", instead of F&E and operations, in line with proposed FAA reauthorization legislation that would reform the financing structure of the air traffic control system.

For over the past two decades, there has been a debate over shifting the funding of air traffic control from excise taxes to user charges to better match funding needs. Recent ATO's presentations, based on flat-line five-year budget projection, show that without fundamental changes, there would be a cumulative $8.2 billion difference between costs and available funding. This shortfall arises due to, *inter alia*, the increase of operating costs and the reduction in proceeds from the 7.5 per cent tax on the value of domestic passenger tickets, which have declined due to the competition in the low-fare market.

Although the United States has not charged for air navigation services, the Federal Aviation Reauthorization Act of 1996 authorized FAA to charge overflight fees, which should be "directly related" to the cost of the air traffic control services provided. In May 1997, FAA put these fees into effect. The Air Transport Association of Canada and seven foreign airlines challenged them in Court on several counts. In January 1998, the Court of Appeals vacated FAA's fee rule because its methodology violated the statute by using a measure of value (elasticity of demand) rather than cost-based. FAA suspended the billing and refunded previous fees collected. In August 2000, it resumed charging overflight fees based on a new formula, which was revised in August 2001. The airlines again challenged the fee rules in Court. In April 2003, the Court ruled against FAA, which immediately suspended the billing and appealed (the appeal was subsequently denied).

In December 2003, the Vision 100 - Century of Aviation Reauthorization Act was signed into law. The Vision 100 changed to authorize overflight fees that are "reasonable" as determined by FAA

Last update: 18 February 2013