

Final Rule: The final rule is only slightly changed from the NPRM. The rule does not provide for returning apportioned funds to airports in the same state or area or for a hearing procedure. The Aviation Safety and Capacity Expansion Act, in sections 9111 and 9112, clearly states that apportioned funds will be reduced if a large or medium hub airport imposes a PFC and specifies how these funds will be made available for other airports.

The final rule retains the concept of reducing apportionments in the fiscal year immediately following the year in which the Administrator approves authority to impose a PFC. This eliminates the requirement to adjust apportioned levels throughout the year and to readjust the amount of foregone apportioned funds available to the categories of airports.

Appendix A—Assurances (Proposed: Appendix B Assurances)

The NPRM included a list of 12 numbered assurances to which a public agency would have been required to agree for approval of a PFC application. The assurances addressed a number of issues, ranging from the public agency's authority to impose a PFC to restrictions on airport rates, fees and charges. The FAA intended them to function much like conditions of approval. The use of assurances was proposed because of public agency familiarity with the use of assurances under the AIP. The assurances were intended to ensure that implementation of approved PFC projects would be consistent with the PFC statute and this regulation and that approval of the use of PFC revenue would not conflict with other FAA responsibilities related to airports.

The proposed assurances generated numerous comments. A few commenters suggest assurances are unnecessary, while several others believe the assurances should only include those directly referenced in the PFC legislation. Other commenters propose deletion or modification of specific assurances. Other comments request additional assurances on a variety of topics ranging from procedures for consultant selection to compliance with sections 9304 and 9307 of the ANCA.

The final rule retains the requirement for signed public agency assurances as part of the application process. This approach has worked well in the AIP context, and is consistent with the statutory authority to impose establish terms and conditions for approval. However, the FAA has modified a number of the individual assurances and deleted some in response to the comments. In addition, one new assurance has been added. The FAA's intent in the final rule has been to limit the assurances to subjects directly related to compliance with the PFC statute and this regulation, or to the safe and efficient use of the national airspace. The FAA agrees with the views expressed in many comments that the PFC regulation or assurances should not be used to address wholly unrelated airport practices.

For ease of understanding, each assurance proposed in the NPRM is discussed separately and identified by the assurance number listed in the NPRM. The final assurance number and reference is also given. Following this discussion, new assurances are addressed.

Assurance No. 1 Responsibility and Authority of Public Agency. (Proposed Assurance No. 2)

As proposed, the public agency would certify through this assurance that it has legal authority to impose a PFC and carry out a project, that the governing body has properly authorized the filing of the application, and that the official submitting the application has been authorized to provide such additional information as may be required.

Some commenters believe it unnecessary to assure that future requirements for information will be complied with.

The final rule omits the reference to providing additional information. The regulation allows the Administrator to request this information without a separate assurance.

Assurance No. 2 Compliance with 14 CFR. (Proposed: Assurance No. 1)

As proposed, the public agency would agree to comply with the PFC regulation through this assurance. The assurance is unchanged in the final rule.

Assurance No. 3 Compliance with local law and regulations.

As proposed, this assurance would have required the public agency to certify that it has complied with applicable local laws and regulations. In the final rule, the wording has been modified to allow a public agency to certify prospectively that it will comply. The latter assurance would be made in the case of an application for authority to impose a PFC when project implementation is not imminent.

Proposed Assurance No. 4 Fund availability (Deleted).

As proposed, this assurance would have required the public agency to certify it had funds to pay for the non-PFC share of project costs and to pay for operations and maintenance of the project. Many

commenters say an assurance that funds are currently available for future operation and maintenance of facilities is unrealistic, especially when approval is sought only to impose a PFC. Upon consideration of the comments, this assurance has been deleted from the final rule. The FAA agrees it is not realistic to ask public agencies to certify as to their financial condition many years in the future.

Assurance No. 4 Environmental, airspace and airport layout plan requirements. (Proposed Assurance No. 5).

As proposed, this assurance would have required the public agency to commit to comply with applicable regulations of the Council on Environmental Quality (CEQ) implementing NEPA. Some comments suggest Assurance 5 be deleted in its entirety as it is not necessary to ensure CEQ requirements are met.

In the final rule, the assurance has been substantially revised. The reference to CEQ regulations is eliminated. However, as revised, this assurance requires public agencies to have approved environmental and airspace studies and an approved ALP before using PFC revenue to implement a project. The assurance is particularly applicable when a public agency has received authority to impose a PFC without concurrent authority to use revenue. It provides additional notice to the public agency on the limits of its authority to use PFC revenue without obtaining necessary Federal approvals and provides a means for the public agency to expressly acknowledge those limitations.

Proposed Assurance No. 6 Safety and security prerequisites (Deleted).

As proposed, this assurance would have required the public agency to commit to provide all safety and security equipment required by regulation at each of the airports under its control before imposing a PFC.

Some commenters suggest the deletion of Assurance 6 or at least rewriting it to require airports to meet current standards, not just minimum regulations.

This assurance has been deleted from the final rule. The FAA encourages public agencies to focus their use of PFC revenue, AIP grants and other funding sources on projects to improve airport safety and security, whether by construction or acquisition of up-to-date facilities and equipment. However, the FAA recognizes PFC revenue is local money and that under the statute PFC revenue may be used to finance projects that accomplish a number of objectives. The assurance has been deleted so as not to interfere with the flexibility provided by statute.

Assurance No. 5 Nonexclusivity of contractual agreements. (Proposed Assurance No. 7).

As proposed, this assurance required the public agency to commit not to enter into long-term exclusive lease and use agreements for PFC-financed projects. The assurance also would have specified that such leases not preclude the funding, developing or assigning of new PFC-financed capacity. This assurance was intended to carry out the statutory prohibitions on such long-term leases and lease agreements.

As discussed above, some commenters argue for prohibiting all exclusive lease and use agreements. However, the statute itself prohibits exclusive agreements only when they are long-term. Therefore, this assurance is unchanged in the final rule.

Assurance No. 6 Carryover provision. (Proposed Assurance No. 8a).

As proposed, this assurance would have required the public agency to refrain from entering into a lease or use agreement for PFC-financed facilities that would automatically extend the term of the agreement in preference to a potentially competing carrier trying to negotiate for the use of those facilities. It was proposed to ensure lease and use agreements did not operate to limit the procompetitive effects of new facilities. In particular, it was intended to prevent short-term leases from effectively becoming long-term leases during extended negotiations with carriers over lease renewals. The proposed provision was part of a two-element assurance on competitive access.

The FAA did not receive significant comment on this element of proposed assurance 8. It is retained without change in the final rule, but it has been designated as a separate assurance to facilitate a clearer understanding of the requirement.

Assurance No. 7 Competitive access. (Proposed Assurance 8b).

As proposed, this assurance would have required a public agency to commit that any agreement for the use of a PFC-financed facility would prevent the carrier from using the PFC-financed facility if that carrier's existing exclusive-use facilities were not fully utilized or were not made available to other carriers.

Some commenters ask for a better definition of "fully utilized." Others ask that the assurance be deleted altogether.

Subject to technical, clarifying language changes, the assurance is retained in the final rule. It is intended to prevent tenant airlines from locking up new facilities, as well as those they may already lease under exclusive use provisions, and then leaving the latter facilities idle. It is thus retained to ensure that new PFC-financed facilities are actually available to foster competition.

The term "fully utilized" is retained in the assurances. If a different carrier could be accommodated at a facility without disrupting the incumbent carrier's operation at the facility, then the facility is not fully utilized.

Assurance No. 8 Rates, fees and charges. (Proposed Assurance No. 9).

As proposed, this assurance requires the public agency to make three commitments with respect to rates and charges. 1) It would not treat PFC revenue as airport revenue when establishing a rate, fee or charge pursuant to contracts with carriers; 2) It would not include in the airport's rate base, for purposes of establishing rates, fees or charges, that portion of the capital costs of projects funded by PFC revenue; 3) It would not charge less for exclusive- or preferential-use terminal facilities, including gates, financed with PFC revenue than it charges for similar facilities financed by other means. This assurance was intended to conform to statutory requirements for public agency policies on rates, fees and charges if a PFC is imposed.

Some commenters ask for clarification of this assurance. They noted a potential conflict between the language of the second and third provision. The language of the third provision has been modified to indicate that it is applicable, notwithstanding the limitation provided in the preceding paragraph.

Assurance No. 9 Standards and specifications. (Proposed Assurance No. 10).

As proposed, this assurance would have required the public agency to commit to follow design, construction and equipment standards and specifications contained in FAA advisory circulars in effect on the application date. It was proposed to help ensure system-wide uniformity in the design and construction of airports.

Comments on this assurance range from proposals for complete deletion to modification of the assurance to permit use of state or local specifications and standards. One commenter requests using standards and specifications exceeding the FAA's.

The assurance is retained in the final rule with some modification. The FAA has concluded that the assurance is appropriate to further the objective of system-wide uniformity. The FAA will interpret the assurance to require that minimum standards be met, but not to preclude airports from exceeding these requirements where local policies call for such.

The advisory circulars covered by the assurance will be only those related to design, construction and equipment standards and specifications and will not include those related to such other areas as planning or consultant selection. Considering that PFC revenue is local money, the FAA has determined not to require compliance with standards that do not directly relate to achieving uniformity in airport design and construction. The FAA will develop and make available a list of the applicable advisory circulars.

The assurance has been changed to indicate that a project is to be carried out in accordance with standards and specifications in effect on the date of project approval rather than on the date of application submission. This change is necessary to accommodate the new provision in the rule that permits a public agency to apply for approval only to impose a PFC. In addition, the title has been changed to more accurately reflect the contents of the assurance.

Assurance No. 10 Recordkeeping and audit. (Proposed Assurance No. 11)

As proposed, this assurance would have required the public agency to commit to maintain an accounting record until 3 years after completion of a project or as long as PFC revenue is collected to finance the project. It was intended to help ensure that adequate financial records would be available to the Administrator throughout the period a PFC is imposed.

Some commenters suggest accounting records under this assurance be kept until the completion of the project, not for the duration of the PFC.

The assurance is modified in the final rule to require retention of records only for 3 years after completion of the project. Once the project is completed and its final costs are known, the public agency's compliance with the periodic reporting and auditing requirements should provide sufficient information to the FAA. A separate accounting record would be unnecessary.

Assurance No. 11 Reports. (Proposed Assurance No. 12).

As proposed, this assurance would have required the public agency to commit to comply with the reporting requirements of subpart D of the rule, including the Administrator's reasonable requests for special reports. It was intended to provide clear notice and evidence of the public agency's acceptance of reporting obligations under the rule.

This assurance did not generate significant specific comment, and it is retained unchanged from the NPRM.

Assurance No. 12 Airport Noise and Capacity Expansion Act of 1990.

This new assurance had no counterpart in the NPRM. The FAA has added it following consideration of the comments. Under the assurance, the public agency must acknowledge that it understands that provisions of the Airport Noise and Capacity Act require the Administrator to terminate authority to impose a PFC if the Administrator finds the public agency to be in violation of those provisions.

The assurance is intended to provide additional notice to the public agency of the link between compliance with the noise statute and the continued authority to impose a PFC. It also provides a ready means for the public agency to confirm it understands that linkage.

MISCELLANEOUS ISSUES:**Tax Status of PFC's.**

Seven respondents requested clarification of tax status of PFC's. All state that the PFC charges should not be subject to the 10 percent ticket tax, because PFC's are not part of the fare. The FAA agrees with this interpretation; however, the FAA had not been able to obtain a definitive interpretation from the Federal offices responsible for administering the tax.

Application of Department Policy on Price Advertising

To alleviate uncertainty about the application of the Department's price advertising policy to PFC's, the NPRM indicated that the Department tentatively had decided to allow carriers to state separately that "up to \$12 per round trip in local airport charges may be collected in addition to the advertised price" in order to satisfy 14 CFR § 399.84. The FAA received no negative comments on this issue. The Department has advised the FAA that it will make final its tentative decision.

Paperwork Reduction Act

The recordkeeping and reporting requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for approval. The information collection requirements in this rule will become effective when they are approved by OMB.

Environmental Issues

The FAA tentatively concluded in the NPRM that issuance of this final rule would not be a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA.

A final environmental assessment has concluded that issuance of this rule is not a major Federal action significantly affecting the quality of the human environment within the meaning of NEPA. A copy of this assessment has been placed in the docket.

Regulatory Evaluation Summary

This summary discusses the anticipated benefits and costs associated with implementing this final rule, which is based on Section 9110 of the Aviation Safety and Capacity Expansion Act of 1990 (the Act). The regulatory evaluation contained in the docket provides more detail on the economic consequences of this regulatory action. In addition to a summary of the regulatory evaluation, this summary also contains the regulatory flexibility determination required by the Regulatory Flexibility Act and an International Trade Impact assessment. It is available for review in the docket.

Executive Order 12291, dated February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweigh potential costs. The order also requires the preparation of a regulatory impact analysis of all "major" rules except those responding to emergency situations or other narrowly defined exigencies. A "major" rule is one that is likely to result in an effect on the economy of \$100 million or more; a major increase in costs or prices for consumers or for individual industries, government entities, or regions; or a significant adverse effect on competition, employment, or other significant determinants of economic growth.