

FEDERAL AVIATION ADMINISTRATION REAUTHORIZATION

The Airline Deregulation Act of 1978 eliminated much of the economic regulation of airlines. Since then, the airline industry has rationalized, airfares have fallen dramatically, and airline travel has been democratized. Unfortunately, airspace management was not reformed in a similar direction. Limits on airport user funding have reduced investment and competition at U.S. airports. The United States remains one of the few developed economies to have its air navigation service provider integrated into its aviation safety regulation—in this case, the Air Traffic Organization (ATO) within the Federal Aviation Administration (FAA). That failure is reducing the efficiency of the National Airspace System while inhibiting the integration of new technologies, such as unmanned aircraft systems (UAS).

Congress should:

- ◆ Raise the cap on passenger facility charges.
- ◆ Commercialize air traffic control.
- ◆ Provide more stringent oversight of the Federal Aviation Administration’s ongoing attempt to integrate UAS into the National Airspace System.

Just as tolling offers benefits over general revenue funding in surface transportation, aviation user charges offer significant advantages to nonuser funding. Since 1991, Congress has allowed airports to collect per-head charges on passenger enplanements, known as passenger facility charges (PFCs), to be spent on eligible airport-related projects under 49 USC § 40117. Currently, the maximum PFC is capped at \$4.50 (49 USC § 40117[b][4]). That cap was last raised in 2000, and inflation has eroded its buying power by nearly half. Given the advantages of user charges over general revenue, Congress should strengthen the PFC by raising the cap to \$8.50 and indexing it to inflation.

Most developed economies have independent air navigation surface providers. Going further, Canada privatized its air navigation service provider in 1996, creating a private nonprofit called Nav Canada to take over airspace management responsibilities. Unfortunately, the United States’ National Airspace System is managed by the Air Traffic Organization, an agency within the Federal Aviation Administration. The ongoing problems facing the air traffic modernization program known

as NextGen are largely attributable to obsolete government institutions.

The main obstacle preventing us from realizing those benefits is the fundamental conflict between the FAA’s role as safety regulator and its role as air traffic control provider, which has led to an overcautious culture within the ATO. That conflict is compounded by the fact that the ATO faces a number of political oversight constraints, leading to its treating politicians and bureaucrats as its customers, rather than the airports and aircraft that rely on its services.

A recent study from the Reason Foundation’s Robert Poole recommends three actions to bring U.S. air traffic management into the 21st century.

- ◆ The ATO should be separated from the FAA, with the FAA becoming exclusively an aviation safety regulator.
- ◆ That new air traffic manager should be funded through customer charges, rather than through aviation user taxes subject to annual appropriations.
- ◆ A newly independent air traffic control organization should be governed by a board of stakeholders in a manner similar to Nav Canada’s governance structure, where airlines, general aviation, and air traffic controllers are represented.

In the forthcoming FAA reauthorization debates, Congress should hold hearings on and seriously consider Poole’s proposal. Not doing so risks forgoing the benefits that other developed nations have already experienced. Air traffic control modernization will allow airspace users and managers to harness new navigation technologies. Those reforms are critical to emerging aircraft technologies, such as unmanned aircraft systems.

In the 2012 FAA reauthorization, Congress ordered the agency to “provide for the safe integration of civil unmanned aircraft systems into the national airspace system as soon as practicable, but not later than September 30, 2015” (Public Law 112-95, 126 Stat. 73). Unfortunately, little progress has been made in meeting that deadline. In June 2014, the Department of Transportation’s Office of Inspector General issued a scathing audit

report that found that the FAA's airspace integration progress is going so poorly that the agency will miss its September 2015 integration deadline, and that "it is uncertain when and if full integration of UAS into the [National Airspace System] will occur" (Office of Inspector General, U.S. Department of Transportation, "FAA Faces Significant Barriers to Safely Integrate Unmanned Aircraft Systems into the National Airspace System," AV-2014-061, June 26, 2014, 3, <https://www.oig.dot.gov/sites/default/files/FAA%20Oversight%20of%20Unmanned%20Aircraft%20Systems%5E6-26-14.pdf>).

UAS technology could provide large mobility benefits in the future. Although safety, tort liability, and privacy concerns remain, the United States risks falling behind other nations in integrating UAS into the civil airspace. Congress should increase its level of oversight over the FAA's UAS integration progress and examine current statutory and regulatory barriers. For instance, the current right-of-way rules have long been interpreted by the FAA as authority to prohibit virtually all UAS flights (FAA, "Unmanned Aircraft Systems Operation in the U.S. National Airspace System: Interim Operational Approval Guidance," memorandum, AFS-400 UAS Policy 05-01, September, 16, 2005, http://www.uavm.com/images/AFS-400_05-01_faa_uas_policy.pdf).

In addition, no process exists for certifying commercial UAS operations. Given the "see-and-avoid" requirements contained

in the right-of-way rules (14 CFR § 91.113[b]), currently the only way for private UAS owners to obtain operating permission is through the FAA's Certificate of Waiver or Authorization (COA), which the FAA is currently issuing only to those UAS operators in its experimental category. Current regulations explicitly prohibit experimental COA holders from "[c]arrying persons or property for compensation or hire" (14 CFR § 91.319[a][2]). One additional benefit of air traffic control commercialization, assuming it reduced the overcaution caused by the FAA's incentives as a safety regulator, could be a more rapid integration of UAS into the National Airspace System.

Experts: Marc Scribner

For Further Reading

- Glen McDougall and Alasdair Roberts, "Commercializing Air Traffic Control: Have the Reforms Worked?" *Canadian Public Administration*, Vol. 51, No. 1 (March 2008): 45–69.
- Robert W. Poole Jr., "Organization and Innovation in Air Traffic Control," Hudson Institute, November 2013, http://www.hudson.org/content/researchattachments/attachment/1199/poole_hi_res.pdf.
- Marc Scribner, "Commercial Drones Face Sky-High Regulatory Barriers," 1776, July 11, 2014, <https://cei.org/content/commercial-drones-face-sky-high-regulatory-barriers>.