FIXING FAA'S SAFETY CONFLICT

By Robert W. Poole, Jr. June 2026

The Federal Aviation Administration has two main functions: to operate and manage the U.S. air traffic control (ATC) system and to regulate all aspects of aviation safety. Both functions are essential for a safe and robust aviation system. But having both in the same organization creates an inherent conflict of interest. This analysis explains this conflict and shows how most other countries have resolved it.

HOW ARE AVIATION SAFETY REGULATION AND ATC OPERATION IN CONFLICT?

The federal government has numerous safety regulatory agencies, with a partial list including:

- Consumer Product Safety Commission
- Federal Motor Carrier Safety Administration
- Federal Railroad Administration
- Food and Drug Administration
- Food Safety and Inspection Service
- Mine Safety and Health Administration
- Nuclear Regulatory Commission
- Occupational Safety and Health Administration
- Pipeline and Hazardous Materials Safety Administration

These and nearly all other federal safety regulatory agencies are at arm's length from the industry they regulate. One historical example of an agency that both promoted an industry and regulated its safety was the Atomic Energy Commission, created in 1946. Its inherent conflict of interest was a key factor in Congress separating the AEC into the Department of Energy and the Nuclear Regulatory Commission in 1974. The FAA and its predecessor agencies were also charged with promoting air commerce, but that provision was removed in 1996. FAA still has a mandate to promote (as well as regulate) commercial space transportation.

The U.S. Department of Transportation (DOT) deals with every mode of transportation. Yet the only member agency that both regulates and operates a mode of transportation is FAA. As aviation safety expert Clinton Oster of Indiana University has pointed out:

> *No other agency within US DOT both operates and regulates a transportation service. For example, the Federal Railroad Administration regulates railways and issues grants but does not manage train dispatching. The National Highway Traffic Safety Administration regulates the safety of motor vehicles but does not set speed limits or control traffic lights. Separation allows each organization to focus on their own core mission and avoid potential conflicts of interest.*[1]

In 2010 this author coauthored with former FAA Administrator Langhorne Bond a journal article focused on the case for separating safety regulation and ATC operations.[2] An important thrust of the article was that, "In its safety regulatory activities, the FAA appears to use a different standard for its ATC staff than for outside parties that it regulates." One example was a 2009 Colgan Air commuter plane crash near Buffalo, New York, which led to a large-scale FAA effort to revise regulations on pilot fatigue and duty-time rules. By contrast, in a 2007 Comair regional jet crash at Lexington, Kentucky, in which the National Transportation Safety Board found controller fatigue to be a factor, there was no FAA effort to revise controller scheduling and duty time regulations.

Another example is a 2009 case in which a Northwest Airlines flight passed over its destination airport (Minneapolis-St. Paul International) and continued flying northward toward Canada. FAA immediately suspended the pilots' licenses, but it took no action regarding the controllers who allowed this overflight to take place. It took the controllers more than an hour to notify NORAD of the overflight that was headed

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1 Clinton V. Oster, "Cited Problems with the Current Air Traffic Control System and Concerns About Changing the Organizational Structure," Transportation Research Board, 2015 (onlinepubs.trb.org/onlinepubs/sp/Cited_Problems_6.10.2015.pdf)

2 Langhorne Bond and Robert Poole, "Separating the ATO From FAA Safety Regulation," *The Journal of Air Traffic Control*, 2010.

toward Canada, instead of the required 10 minutes, but there was no record of FAA taking any action on that, either.

In 1993, the National Transportation Safety Board (NTSB) reported on FAA's self-regulation shortcomings, stating that "FAA has allowed itself to shortchange safety in ways it would not tolerate in an air carrier or corporate flight operations."[3] In another report in the same time period, the DOT inspector general found that FAA's own fleet of 62 aircraft "contained as many suspected unapproved parts as any other U.S. certified fleet of airplanes."[4]

THE UNITED STATES IGNORES GLOBAL BEST PRACTICES

The International Civil Aviation Organization (ICAO) is a highly respected global aviation policy organization. Over the decades it has released many recommended practices for aviation, which most countries adopt and adhere to. In 2001 ICAO issued a recommended policy calling for organizational separation between aviation safety regulation and the provision of services such as airports and air traffic control.[5]

In the decades since then, the large majority of developed countries have adopted this practice by separating their ATC system from their aviation safety regulator. This is a key element in some 100 countries that now receive their ATC services from an ATC system that has been reformed as a self-funded air navigation service provider (ANSP). Data from the Civil Air Navigation Services Organization (CANSO) lists 70 countries with self-supporting ANSPs regulated at arm's length from each country's transport ministry plus another 30 countries that receive ATC services from four multi-country organizations:[6]

- Roberts Flight Information Region—three countries in Africa;
- Maastricht Upper Airspace Control Center (MUAC)—high-altitude traffic management for Belgium, Luxembourg, the Netherlands, and northwestern Germany;
- COCESNA—six Central American countries;
- ASECNA—17 countries in Africa and two overseas departments and regions of France, Reunion, and Mayotte.

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3 Clinton V. Oster and John S. Strong, *Managing the Skies*, Ashgate, 2007, 154.

4 Ibid.

5 International Civil Aviation Organization, *Safety Oversight Manual*, Annex 17, Standard 3-5-7.

6 Marc Scribner, "Annual Aviation Infrastructure Report: 2026," Table 5, Reason Foundation, 2026.

PREVIOUS U.S. ATC REFORM EFFORTS EMBRACED INDEPENDENT SAFETY REGULATION

This author was among the first to propose a private nonprofit corporation to finance and manage the U.S. ATC system, using competitive contracts for portions of airspace sectors. The FAA would remain, but as the safety regulator rather than being a developer or operator. His 1982 policy paper[7] was adapted as his first paper in the Transportation Research Board's journal, *Transportation Research Record*.[8]

Several organizations and researchers proposed ATC corporations in the 1980s and 1990s, but the first major U.S. proposal originated in Vice President Al Gore's National Partnership for Reinventing Government. It was inspired by the 1987 separation of New Zealand's ATC system from its transport ministry and its conversion into a user-funded ATC provider. This was the first of what we now call user-funded air navigation service providers (ANSPs).[9]

The Clinton administration's Department of Transportation launched a major study on adapting the New Zealand model to the U.S. ATC system. The result was a two-volume study detailing the proposed U.S. Air Traffic Services (USATS) corporation.[10] The two volumes were released by the U.S. Department of Transportation in May 1994: "Air Traffic Control Corporation Study" and "Air Traffic Control: Analysis of Illustrative Corporate Financial Scenarios." The proposed nonprofit, government utility would have a bondable aviation user fee revenue stream. It was to be safety-regulated at arm's length by FAA. The study was widely discussed in aviation and national news media, but lack of airline support and opposition from general aviation and business aviation groups led to only a single House committee hearing, after which Congress paid no further attention.

Twenty years later, a coalition organized by the Business Roundtable developed a detailed proposal for a nonprofit ATC corporation modeled after Nav Canada, which took over ATC in that country in 1994 and began user-fee-funded operations in 1996. This proposal was embraced by Rep. Bill Shuster, who was chairman of the House Transportation and Infrastructure Committee.[11] It gained support from controllers'

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7 Robert W. Poole, Jr., "Air Traffic Control: The Private Sector Option," Heritage Foundation, October 1982.

8 R. W. Poole, Jr., "Privatizing Air Traffic Control," *Transportation Research Record*, Issue Number 912, 1983.

9 Rui Neiva, *Institutional Reform of Air Navigation Service Providers*, Edward Elgar Publishing, 2015, 35.

10 Richard M. Weintraub, "Reinventors Turning To Air Traffic Control," *Washington Post*, 4 February 1994.

11 Poole, Jr, "Air Traffic Control as a Public Utility," 29-30.

union NATCA and from all major airlines except Delta, and it was also supported by the FAA's own Management Advisory Council in 2014.[12] The bill was passed by the T&I Committee in 2016 but went no further. A revised and improved bill again cleared the T&I Committee in 2018, but again went no further, due to significant opposition from business-aviation and general-aviation groups.[13]

WHAT AVIATION SAFETY EXPERTS SAY

One of the most respected aviation safety experts is Indiana University Emeritus Professor Clinton Oster. In his book *Managing the Skies,* co-authored by John S. Strong, they wrote:

> *Self-regulation of air traffic control creates long-recognized potential conflicts of interest when there are decisions to be made about trade-offs between safety and capacity. . . .The trade-offs between safety and capacity are inherent in air traffic control, and they are often subtle. To be sure, many forms of capacity enhancements do not reduce safety; others may even increase safety. . . .However, other capacity-related decisions, such as aircraft separation standards and the conditions under which various runway configurations are used can pose a trade-off between safety and capacity that FAA must make. . . . Were the ATC system to be reorganized to place air traffic control operations into one organization and ATC regulations into a separate organization, the situation would change. The same trade-offs between safety and capacity would remain and be just as technically difficult, but the regulatory tensions that are now internal to one organization would become external and between two different organizations. . . . The debate about trade-offs between safety and capacity would be more public and open to outside scrutiny.*[14]

In 2007 when there was considerable discussion of ATC reform, a group of mostly retired aviation officials issued a call for reform. They called for reviving the idea of separating the ATO from FAA and making it self-supporting via bondable user-paid fees, consistent with ICAO funding principles that are adhered to by nearly all the world's ATC providers.

Specifically on the subject of separating safety regulation from ATC operations, they set forth the following:

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12 Stephen D. Van Beek, et al, "FAA and Aviation Policy Reform: Now Is the Time," FAA Management Advisory Council, January 2014.

13 Poole, Jr., "Air Traffic Control as a Public Utility," 32.

14 Oster and Strong, *Managing the Skies*, 152.

> *There should be arm's length separation of aviation safety regulation from the delivery of ATC services. This is especially important as the ATO moves forward to implement the dramatic changes in technology and procedures inherent in the NextGen concept. Many decisions about increasing capacity by reducing aircraft spacing (thanks to new technologies and procedures) have important safety implications and should be arrived at in a transparent manner. Arm's length separation cannot be accomplished as long as ATO operations and safety regulation reside in the same governmental unit. Hence, the ATO should be organizationally separate from, rather than a part of, the FAA. This change would also put the United States in compliance with International Civil Aviation Organization principles and with the global practice other OECD countries.*[15]

The aviation pioneers who presented this policy statement were:

- Langhorne Bond, former FAA administrator
- Jim Burnley, former U.S secretary of transportation
- Aaron Gellman, founder, GRA, Inc.
- Jim Haynes, former chairman National Air Transportation Association
- Jonathan Howe, former president, National Business Aviation Association
- Alfred Kahn, former chairman, Civil Aeronautics Board
- Clint Oster, Indiana University, former research director, Aviation Safety Commission
- David Plavin, former president, Airports Council International-North America
- James Wilding, former president, Metropolitan Washington Airports Authority

RELOCATING THE AIR TRAFFIC ORGANIZATION

The U.S. DOT plans to move most or all FAA staff currently housed in the Orville and Wilbur Wright office buildings on the Mall in Washington, D.C. to the Department of Transportation headquarters in the Navy Yard area of the District of Columbia.[16] This relocation is planned to take place in 2026-2028. If a decision were made to organizationally separate the Air Traffic Organization from FAA, relocating the ATO staff to a location outside the District of Columbia would reinforce the arm's-length nature of the intended separation of functions. Among possible sites might be adjacent to the FAA (ATC) command center and Potomac TRACON in Warrenton, Virginia.

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15 "The Need for Fundamental Reform of Air Traffic Control," Reason Foundation, 19 September 2007.

16 Sam Ogozalek, "FAA Move Faces Big Hurdle: Insufficient Space in New Home," *Politico Pro*, 19 March 2026.

ABOUT THE AUTHOR

Robert W. Poole, Jr. is director of transportation policy and the Searle Freedom Trust Transportation Fellow at Reason Foundation, a public policy think tank based in Los Angeles and Washington, D.C.

He was among the first to propose the commercialization of the U.S. air traffic control system, and his work in this field has helped shape proposals for a U.S. ATC corporation. A version of his nonprofit corporation concept was implemented in Canada in 1996. He has advised the Office of the Secretary of Transportation, the White House Office of Policy Development, the National Performance Review, the National Economic Council, and the National Civil Aviation Review Commission on ATC commercialization. He is a member of the Air Traffic Control Association and of the GAO's National Aviation Studies Advisory Panel. In 2012-13 he was a member of the Business Roundtable task force on ATC reform, and in 2014-15 he was part of the Eno Center for Transportation working group on ATC reform. In 2018 he received the Eno Center's Thought Leader Award for his work on ATC corporatization.

Poole's Reason studies helped launch a national debate on airport privatization in the United States. He advised both the FAA and local officials during the 1989-90 controversy over the proposed privatization of Albany (NY) Airport. His policy research on this issue helped inspire the privatization of Indianapolis airport management under Mayor Steve Goldsmith and Congress' 1996 enactment of the Airport Privatization Pilot Program.

In aviation security, Poole advised the White House and House Republican leaders on what became the Aviation & Transportation Security Act of 2001, enacted in response to the 9/11 attacks. He has authored a number of Reason policy studies on aviation security and is the author of a paper on risk-based aviation security for the OECD's International Transport Forum.

Poole has testified on airports, aviation security, and air traffic control on a number of occasions before House and Senate aviation and homeland security subcommittees, and he has spoken on these subjects before numerous conferences. He has also done consulting work on several airport privatization feasibility studies. Poole also edits a monthly Reason Foundation e-newsletter on aviation policy issues. He received his B.S. and M.S. in mechanical engineering at MIT and did graduate work in operations research at NYU.