What can we learn from airport law in the USA

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This morning’s presentation

- Introduction to aviation regulatory scheme in the USA – focus on airports
- Challenges posed by split authority
- Sources of FAA legal authority
- Hot topics in airport law in USA
Inherent statutory tension

• Federal Aviation Administration is an all-in-one agency charged with:
  – *Promoting* aviation, air commerce
  – *Regulating* aviation, air commerce
  – *Operating* air traffic control system
  – *Ensuring* safety of the entire system
Who the FAA regulates

- Pilots
- Aircraft
- Operators
- Airports
How the FAA operates

- FUNDS & REGULATES Airports
- CERTIFIES Aircraft
- OPERATES Air Traffic
- LICENSES Pilots
Dealing with the FAA
Silos - lines of business

Secretary of Transportation

Administrator of FAA

Airports
Air Traffic
Aviation Safety
NextGen and Operations Planning
Commercial Space

Staff Offices
Unique features of FAA

- Operator (air traffic system)
- Certification and regulation authority (pilots, aircraft manufacturing)
- Safety regulator
- Funder (airport capital improvements)
- Overseer of financial arrangements but limited role in business of aviation
- US model leads to considerable international confusion
  - ICAO, IATA, CAEP, EU don’t fully appreciate limited federal authority (and intensely local authority over airports)
Required cooperation

• Operation of national aviation system is a “cooperative scheme”
  – FAA (aircraft and airspace)
  – Airports (ground operations; airport operations)
  – Operators (private sector)
• Much cooperation defined by case law
  – Jurisprudence has evolved in the last 100 years; few bright lines
• Legal foundation: federal preemption
## FAA responsibilities

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<thead>
<tr>
<th>EXCLUSIVE - FAA</th>
<th>SHARED</th>
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<tbody>
<tr>
<td>Use of airspace</td>
<td>Airport operations</td>
</tr>
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<td>Aircraft certification</td>
<td>Aircraft operations</td>
</tr>
<tr>
<td>Pilot certification and regulation</td>
<td>Noise abatement, mitigation</td>
</tr>
<tr>
<td>Aircraft noise</td>
<td>Financial matters</td>
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<td>Aircraft safety</td>
<td>Airfield safety</td>
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<td>Financial accountability</td>
<td>Funding</td>
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- FAA responsibilities include exclusive and shared areas of responsibility in aviation management.
Principles of preemption

• Federal preemption is a continuum
  – Aircraft and flight (use of airspace) at one end
  – Non-operational, land-side airport matters at the other

• Source of preemption
  – Use of airspace
  – Federal aviation statutes
    • Express, implied and conflict preemption
    • Different for each FAA function
  – Congress has preserved “proprietary powers and rights” of airport operators (*not police powers*)
Airports
FAA role - airports

- Federal role *with respect to airports* derives primarily from power of the purse
  - Discretionary and entitlement funds
- FAA gives money and *regulates and authorizes* airport taxes, use of revenue
- Regulation tied to money
- FAA *wants* to give airports money
  - Inherent in agency mission to promote aviation
  - Source of influence over airport decisions
- Inherent (and deliberate) tension
Partnership – airports and FAA

- Airport Proprietor
- Adjudicator
- Inspector
- Funder
- Regulator
- Advocate
Three major sources of authority

- **Grant Assurances**
  - Receipt of federal grants
  - 20-year duration in most instances
- **Deeds**
  - Principally Surplus Property Act deeds (WW II surplus)
- **Part 139**
  - Commercial service airports only
  - Airport operating certificate (AOC)
Some regulation depends on type of airport

- General aviation vs. commercial service
  - Substantially different role
  - Source of authority is different
FAA as regulator
FAA as regulator

• While FAA role in airports is complex, other roles are far clearer: FAA is regulator
  – Certification of aircraft
  – Licensing of pilots
  – Design and operation of airspace system
• Only significant ambiguity concerns safety regulation
• Rather than regulating, FAA actually operates all air traffic functions
Safety regulation

- Evolving division of responsibilities
- FAA historically set safety standards, enforced compliance
- Safety Management Systems
  - ICAO-mandated shift
  - Change in philosophy to shared responsibility among operators, users, airports, pilots, air traffic
  - Still evolving because of liability, self-reporting, just culture issues
- National Transportation Safety Board tension
Economic regulation of operators

• Separate function within US Department of Transportation
  – FAA has only very limited responsibility

• Designed mostly to achieve national policy objectives
  – Competition
  – Domestic control of carriers
  – Taxation oversight
  – US control of US carriers
Sources of law
Sources of law

- Statutes
- Regulations
- Adjudications
  - Orders, policy papers and Guidance Letters
  - Advisory Circulars (& informal opinions)
Method of issuing regulations

• Formal notice-and-comment rulemaking (rate in airport realm)
  – Draft rule, comment, final rule
  – Widespread publication

• Not force of law (but equally important)
  – “Orders” that are not subject to public review
  – “Advisory Circulars” have significant practical value
  – Internal guidance documents
Hot topics – airport regulation

- Authority and responsibility for safety
  - SMS for airports; capital improvements for safety
- Economic regulation of carriers
- Regulation of airport revenue (and incentives for commercial service)
- Privatization of airports and related functions
- Taxes (passenger facility charges, security charges, ticket tax)
Questions

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