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John M. Lindsey

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# THE LEGISLATIVE DEVELOPMENT OF CIVIL AVIATION 1938-1958\*

BY JOHN M. LINDSEY†

## PART I TWENTY YEARS 1938-1958

A NEW era for commercial aviation emerged with the passage of the Civil Aeronautics Act of 1938:<sup>1</sup>

"... the Civil Aeronautics Act is the Magna Charta of aviation. With some defects and some uncertainties, it is nevertheless the finest thing that has happened to aviation since the World War conclusively proved its practicality."<sup>2</sup>

With its passage, one federal statute and agency were substituted for the several which had been regulating the industry. This one agency, the Civil Aeronautics Authority consisted of three practically autonomous groups: a five-man Authority, which exercised quasi-judicial and quasi-legislative functions covering economic and safety regulations; a three-man Air Safety Board, for the investigation of accidents; and an Administrator who exercised executive functions covering development, operation, etc. of air navigation facilities and general development and promotional work. In the early stages of the Authority's existence relationships among the three divisions seemed quite good, the industry content. This period, however, was short-lived. Organizational difficulties, duplication of activity,<sup>3</sup> and dissension within the ranks of the Safety Board<sup>4</sup> brought about the first change to the new Act.

In April, 1940, President Roosevelt submitted two plans to Congress for the reorganization of the Civil Aeronautics Authority.<sup>5</sup> Reorganization Plan III, Section 7 was proposed:

"... to clarify the relations of the Administrator of the Civil Aeronautics Authority and the five-member Board of the Civil Aeronautics Authority. The Administrator is made the Chief Administrative Officer of the Authority with respect to all functions other than those relating to economic regulation and certain other activities primarily of a rule-making and adjudicative character, which are entrusted to the Board. This will eliminate the confusion of responsibilities existing under the Civil Aeronautics Act and provide a more clear cut and effective plan of organization for the agency."<sup>6</sup>

Though the industry was startled,<sup>7</sup> it was more fully stunned and bewildered upon the submission by the President of his Reorganization Plan No. IV transferring the Civil Aeronautics Authority and the U.S. Weather Bureau to the Department of Commerce and abolishing the Air Safety Board.<sup>8</sup> President Roosevelt explaining the need for such change stated:

\* This article is condensed from a paper, similarly titled, containing an index, presently available at the Civil Aeronautics Board's Public Information Office.

† Duke University, A.B., 1951; University of Denver, LL.B., 1957; admitted to Colorado Bar, 1958; presently trial attorney, Civil Aeronautics Board.

"One of the purposes of the Reorganization Act is to reduce the number of administrative agencies and thereby simplify the task of executive management. We have made substantial progress toward this objective under previous reorganization plans. I am now proposing another step in this direction by placing the Civil Aeronautics Authority within the framework of the Department of Commerce. Reorganization Plan No. III, which deals with interdepartmental changes, draws a more practical separation between the functions of the Administrator and the Civil Aeronautics Board. In plan IV, which is concerned with interdepartmental reorganization, I am bringing the Authority into the departmental structure. The Administrator will report to the Secretary of Commerce. The five-member board, however, will perform its rule-making, adjudicative, and investigative functions independent of the Department. In the interest of efficiency it will be supplied by the Department with budgeting, accounting, procurement, and other office service. As a result of the adjustments provided in plans III and IV, I believe the Civil Aeronautics Board will be able effectively to carry forward the important work of accident investigation heretofore performed by the Air Safety Board. In addition to the effective and co-ordinated discharge of accident investigation work which this transfer will facilitate, economics in administration will be possible.

The importance of the Weather Bureau's functions to the Nation's Commerce has also led to the decision to transfer the Bureau to the Department of Commerce. The development of the aviation industry has imposed upon the Weather Bureau a major responsibility in the field of air transportation. The transfer to the Department of Commerce, as provided in this plan, will permit better coordination of Government activities relating to aviation and to commerce generally—without in any way lessening the Bureau's contribution to agriculture."<sup>9</sup>

Both plans were to become effective sixty days from the time of their submission to Congress unless both Houses of Congress disapproved the orders by majority vote.<sup>10</sup>

Neither branch of Congress took any step to vote disapproval of Reorganization Plan III. Reorganization Plan IV, however, had stirred the Congress. On May 8, 1940 the House of Representatives voted down the plan by the heavy majority of 232 to 153. Following this defeat in the House, the Administration rallied from what would have been the first defeat suffered by a Presidential reorganization plan with the exception of the Supreme Court enlargement proposal and obtained a 46 to 34 vote in the Senate thereby effectuating Reorganization Plan IV.

By May 1940, therefore, the two year old infant had been fitted in a new suit. Reorganization Plan III created the office of Administrator of Civil Aeronautics. It had transferred from the Authority to the Administrator the functions of aircraft registration and of safety regulation, (except the functions of prescribing safety standards, rules, and regulations and of suspending and revoking certificates after hearing), the functions provided for by Section 1101 of the Civil Aeronautics Act of 1938 relating to notices concerning hazards to air commerce, and the function of appointing such officers and employees and of authorizing such expenditures and travel as may be necessary for the performance of all functions vested in the Administrator.<sup>11</sup>

Reorganization Plan IV transferred the functions of the Office of the Administrator to the Department of Commerce and these functions were

to be exercised by the Administrator under the direction and supervision of the Secretary of Commerce. The Air Safety Board was abolished and its functions consolidated with those of the Authority. The Authority in turn was abolished and all of its functions were transferred to a Civil Aeronautics Board. The Board was placed within the framework of the Department of Commerce for purposes of "administrative housekeeping." The Board was to appoint and control its own staff, authorize its own expenditures, determine and support its own budget estimates and promulgate its policies and decisions as an independent agency.<sup>12</sup>

The changes brought about by Reorganization Plans III and IV were in general language and not by specific amendment to the Civil Aeronautics Act. The first amendment *per se* occurred on July 2, 1940 with the extension of jurisdiction of the Civil Aeronautics Authority over certain air mail services formerly controlled by the Postmaster General.<sup>13</sup> This enactment amended subsection (1) of Section 405 of the Civil Aeronautics Act by repealing Sections 1 and 2 of the Experimental Air Mail Act of 1938<sup>14</sup> mentioned therein providing, in essence, that the Authority (Board) would determine, by the issuance or denial of a certificate of public convenience and necessity who might transport the mail by air, in practically all cases, instead of under the contract method used by the Postmaster General.<sup>15</sup>

World War II brought about the next phase in civil aviation and pointed up the vital part that it plays in the national defense picture. The legislative changes to the Civil Aeronautics Act during the war period were slight. The first simply reflected a wartime need. The Act of April 20, 1942 (56 Stat. 265) increased the monthly maximum number of flying hours of air pilots from 85 hours<sup>16</sup> to 100 hours because of the military needs arising out of the war.<sup>17</sup> 1942 also saw provisions made concerning the regulation of freight forwarders.<sup>18</sup>

Though not an amendment to the Civil Aeronautics Act, the Federal Airport Act, enacted May 13, 1946 (60 Stat. 170, 49 U.S.C. 1101), providing Federal aid for the development of public airports certainly warrants mention here. See: *Legislative History of the Federal Airport Act*, a two volume work published by the Department of Commerce in April, 1948.

The Act of August 8, 1946 (60 Stat. 944) amended the Act so as to improve international collaboration with respect to meteorology.<sup>19</sup> As reported in the House Report,<sup>20</sup> the purpose of the bill was to modernize,

"Section 803 of the Civil Aeronautics Act of 1938, as amended, the provision which now governs the relationship between the Chief of the Weather Bureau, the Civil Aeronautics Administration, and the Civil Aeronautics Board. The major effect of the proposed amendment is to facilitate the participation by the United States Weather Bureau in international meteorology, but of almost equal significance are those changes which impose upon the Weather Bureau the responsibility for acting as a clearing house for research in aeronautical meteorology and provide for the collection and dissemination by the Weather Bureau of weather observations made by pilots in flight."

A joint Resolution terminating certain emergency and war powers<sup>21</sup> removed the increased monthly maximum number of flying hours for pilots of 100 hours,<sup>22</sup> returning it to 85 hours.

The Act of August 4, 1947 (61 Stat. 743) was a technical amendment to Section 1003 (b) of the Act. In the words of the Senate Report,

"This bill is intended to correct what appears to be a technical defect in Section 1003 of the Civil Aeronautics Act which interferes with the establishment of through service by air carriers and surface carriers.

Under Section 1003 (b) of the Civil Aeronautics Act, where an air carrier provides through service with a common carrier subject to the Interstate Commerce Act, the carriers are required to establish joint rates for such through service. This bill eliminates the mandatory requirement that 'joint' rates be established in such a case and substitutes a requirement simply that just and reasonable rates be established."<sup>23</sup>

The House report added,

"The present law appears to require that if through service is established between an air carrier and any surface carrier, joint rates must be established for that service. Joint rates are not essential to the establishment of through service. In fact, a combination of local rates or proportional rates is more common. The sheer mechanics of agreeing upon joint rates and the division thereof, and the duplicate publication of such rates in the tariffs of each of the carriers party to them, will have the effect of preventing the establishment of through service between air carriers and surface carriers on a wide scale. No other Federal transportation statute includes a requirement similar to that contained in Section 1003. It is the purpose of this bill to change this requirement so as to permit air carriers and surface carriers to establish through service without at the same time establishing joint rates."<sup>24</sup>

Two amendments were enacted in 1948 to aid in the financing of aircraft purchases. In the first, Section 504, limiting the liability of certain persons not in possession of the aircraft, was added to the Civil Aeronautics Act.<sup>25</sup> The Senate report stated,

"Present law might be construed to impose upon persons who are owners of aircraft for security purposes only, or who are lessors of aircraft, liability for damages caused by the operation of such aircraft even though they have no control over the operations of the aircraft. This bill would remove this doubt by providing clearly that such persons have no liability under such circumstances.

The relief thus provided from potential unjust and discriminatory liability is necessary to encourage such persons to participate in the financing of aircraft purchases."<sup>26</sup>

The second amendment provided a system for the recordation of liens on large aircraft engines and on spare parts used by air carriers.<sup>27</sup> In recommending enactment of this proposal, the House Report stated:

"The Civil Aeronautics Act now provides that the Administrator maintain a system for the recordation of all conveyances affecting title to, or interest in, aircraft of the United States. That system has been in operation successfully for 10 years, but does not permit the recordation of liens on aircraft engines or spare parts maintained for installation in aircraft. This bill would broaden the present provisions to permit that type of recordation.

This bill will facilitate the financing of new aircraft. Whenever new aircraft are purchased there must also be secured additional aircraft engines and spare parts to permit overhaul and replacement. The cost of these spares often amounts to 25 percent of the total purchase price.

Under existing law, since a lien cannot be recorded on the separate engines and spare parts with the Civil Aeronautics Administrator, it is extremely difficult to finance the purchase by giving a mortgage or other lien on such engines and parts. This compels the purchaser to pay a greater percentage of the price in cash than would otherwise be necessary. This requirement for additional cash can be sufficient to deter the purchase of new aircraft. Postponing the acquisition of new and improved aircraft by air carriers delays more economical and profitable operation."<sup>28</sup>

The 80th Congress also authorized a training program for air-traffic control-tower operators, both civilian and governmental.<sup>29</sup> The authorization was provided in a new subsection (d) to Section 302 of the Act. It authorized the Civil Aeronautics Administrator to conduct studies and researches as to the most desirable qualifications for these operators. It also authorized cooperation between departments and agencies of the Government in connection with the training program and provided means for cooperation by States and their political subdivisions, by educational institutions and by private persons in carrying out the educational program.

The Act was amended July 1, 1948<sup>30</sup> by redefining and clarifying certain powers of the Administrator and by authorizing delegation of certain powers by the Civil Aeronautics Board to the Administrator. The legislation consisted of extracts from a series of amendments to the Act submitted to the Committee on Interstate and Foreign Commerce by the Administrator of Civil Aeronautics at the conclusion of hearings held by that Committee in January of 1947 in connection with the investigation of certain air accidents.<sup>31</sup> The new Act made four amendments upon the Civil Aeronautics Act. First, it amended Section 302(a) by removing two limitations on the authority of the Administrator. As explained in the House Report,<sup>32</sup>

"Under the present legislation the Administrator can acquire, establish, and improve air navigation facilities only along civil airways and at and upon municipally owned or other landing areas . . . The development of the omnidirectional high frequency radio range will render obsolete the use of civil airways. These new type ranges will project courses for use in air navigation in all directions, rather than in a limited number of directions, making all of the air space adjacent to the air navigation facility usable in air navigation. This means that the concept of the civil airway as a narrow pathway through the air extending rough on a straight line between radio ranges will become obsolete as omnidirectional high-frequency radio ranges are installed. Consequently, the Administrator should no longer be bound by the requirement that air-navigation facilities be installed only along civil airways.

New developments in other types of air-navigation facilities also require that the Administrator be given authority to install air-navigation facilities serving airports at some distance away from the airport itself and not be restricted to installation in the airport proper . . .

The last sentence of Section 302(a), as proposed to be amended by the bill<sup>33</sup> is considered necessary in order to insure that the airways system developed by the Administrator under the authority of the whole section is adequate not only for the needs of civil aviation, but also for the requirements of national defense. By this sentence, the Administrator will be required in the development of the air navigation facility system, to take into consideration the requirements of national defense, and so develop the air navigation

facilities system of the United States that it will be usable by both military and civil aviation."

The second amendment deleted the contents of an obsolete section in the Act<sup>34</sup> and inserted in lieu thereof legislation authorizing the Administrator to discharge three additional functions. These were: First, to accept any gifts or donations of money or other real or personal property or services;<sup>35</sup> second, to acquire by purchase, condemnation, lease, or otherwise, real property or interests therein, including, in certain cases, easements through or other interests in air space;<sup>36</sup> and third, to dispose of real or personal property acquired by the Administrator in the discharge of his duties by sale, lease or otherwise.<sup>37</sup>

The third amendment merely corrected an oversight which existed in Reorganization Plans III and IV<sup>38</sup> by making it clear that the Administrator or his duly authorized examiners had all powers necessary to the proper conduct of formal hearings.<sup>39</sup> The Civil Aeronautics Act, the Federal Airport Act<sup>40</sup> and Reorganization Plans III and IV<sup>41</sup> made it clear that the Administrator was to perform certain acts which required the conduct of formal hearings. However, through some oversight, under the terms of Reorganization Plans III and IV, the hearing powers contained in the Civil Aeronautics Act of 1938 were not expressly given to the Administrator. This amendment merely made it clear that in all public hearings or investigations authorized by the then existing law, the Administrator was authorized to exercise all the powers relative to the conduct of formal public hearings otherwise vested in the Civil Aeronautics Board by the Civil Aeronautics Act.<sup>42</sup>

The fourth amendment gave to the Civil Aeronautics Board (under new subsection (c) of Section 601 of the Act) under such terms, conditions and limitations as it might specify, authority to delegate to the Administrator the power to prescribe some of the safety rules, regulations and standards issued under Title VI of the Civil Aeronautics Act and to perform some of the accident investigation functions authorized under Section 702 of that Act.<sup>43</sup>

An act amending Title 28 of the United States Code,<sup>44</sup> amended all laws in force on September 1, 1948 which contained the phrase "circuit court of appeals" to be read "court of appeals," thus amending Section 1006 of the Civil Aeronautics Act.

The Reorganization Act of 1949,<sup>45</sup> authorizing the President to examine all agencies of the Government to determine what changes were necessary to effect a more efficient, economic management, led to the introduction and the adoption of Reorganization Plans No. 5 and No. 13 of 1950.<sup>46</sup> The remainder of 1949 saw the passage of an Act to regulate the transportation of explosives and other dangerous articles,<sup>47</sup> and an act which facilitated the purchase and transportation of supplies and materials to the interior of Alaska during the short season when it was possible to move such supplies to interior stations of the C.A.A. and the Weather Bureau.<sup>48</sup>

Reorganization Plan No. 5 of 1950,<sup>49</sup> transferred to the Secretary of Commerce all functions of all other officers of the Department of Commerce and all functions of all agencies and employees of such Department. This did not apply, however, to the functions vested by the Admin-

istrative Procedure Act<sup>50</sup> in hearing examiners employed by the Department of Commerce, nor to the functions of the Civil Aeronautics Board, of the Inland Waterways Corporation, or of the Advisory Board of the Inland Waterways Corporation. Prior to Reorganization Plan No. 5, virtually all of the functions of the Civil Aeronautics Administration had been vested in the Administrator of Civil Aeronautics, to be "administered under the direction and supervision of the Secretary of Commerce."<sup>51</sup> Reorganization Plan No. 5 transferred these functions to the direct control of the Secretary of Commerce.

Reorganization Plan No. 13 of 1950,<sup>52</sup> transferred executive and administrative functions theretofore held by the Civil Aeronautics Board to the Chairman of the Board, including:

"functions of the Board with respect to (1) the appointment and supervision of personnel employed under the Board, (2) the distribution of business among such personnel and among administrative units of the Board, and (3) the use and expenditure of funds."<sup>53</sup>

It further provided that:

"(b) (1) In carrying out any of his functions under the provisions of this section the Chairman shall be governed by general policies of the Board and by such regulatory decisions, findings, and determinations as the Board may by law be authorized to make.

(2) The appointment by the Chairman of the heads of major administrative units under the Board shall be subject to the approval of the Board.

(3) Personnel employed regularly and full time in the immediate offices of members of the Board other than the Chairman shall not be affected by the provisions of this reorganization plan.

(4) There are hereby reserved to the Board its functions with respect to revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

Sec. 2. *Performance of Transferred functions.* The chairman may from time to time make such provisions as he shall deem appropriate authorizing the performance by any officer, employee, or administrative unit under his jurisdiction of any function transferred to the Chairman by the provisions of this reorganization plan."<sup>54</sup>

On August 3, 1950, Section 902(b) of the Civil Aeronautics Act was amended to provide criminal sanctions for knowingly and willfully displaying or causing to be displayed on any aircraft any marks that are false or misleading as to the nationality or registration of the aircraft. Persons convicted of such offenses would be liable to a fine not exceeding \$1,000 or to imprisonment not exceeding 3 years, or to both fine and imprisonment.<sup>55</sup> The necessity for such provisions was pointed out in the House Report accompanying the legislation:

"Under existing statutes there is no authority for the Federal Government to bring criminal actions against persons displaying false markings on aircraft. Such authority is deemed necessary to assist Government law-enforcement officials charged with preventing clandestine air-transport operations, since the use of false identification numbers and false markings as to the nationality of an aircraft are common devices used by persons engaged in such operations to avoid recognition and detection.

The use of aircraft for illegal export, import, and immigration has greatly complicated the task of Federal law-enforcement agencies. The transportation



of munitions by air, as well as the delivery of civilian and military type aircraft from the United States into foreign areas of political sensitivity has become a particularly severe problem. Although the Department of State is charged with issuing export and import licenses for arms and other military supplies, including aircraft, it is extremely difficult to control the operations of people who fly out of the country without obtaining a license. Not only do such operations increase international tension, they result in a major customs problem, possibly involving smuggling, and are a threat to effective export control of other exports by the Department of Commerce."<sup>56</sup>

In order that C.A.A. personnel would be able to keep in step with the latest advances in aeronautical science, Section 307 of the Civil Aeronautics Act was amended on August 8, 1950, allowing the Secretary of Commerce to provide advanced training for C.A.A. personnel by detailing them to civilian or other institutions or to schools which the Secretary was empowered to conduct.<sup>57</sup>

"Title XII—Security Provisions" was added to the Civil Aeronautics Act on September 9, 1950.<sup>58</sup> The purpose of the enactment was to grant authority to the Secretary of Commerce and the Civil Aeronautics Board as directed by the President, for the development and implementation of a plan for the security control of air traffic in time of war or when the national security was endangered. The purpose of the plan was to promote the maximum flow of civil air traffic by utilizing to the extent possible all existing civil air traffic control facilities while still effectuating necessary security control of such air traffic.<sup>59</sup> More specifically, Section 1201 authorized the President, whenever he determined such action to be required in the interest of national security, to direct the C.A.B. and the Secretary of Commerce to exercise the powers, duties and responsibilities granted under the enactment (i.e., Sections 1202 and 1203 respectively), under such limitations as the President considered necessary. Section 1202 enlarged the authority of the C.A.B. to include the element of national security as well as safety of flight for air commerce in the exercise of its powers in carrying out its responsibilities under Title VI of the Civil Aeronautics Act. Section 1203 authorized the Secretary of Commerce to establish zones or areas in the air space and in consultation with the Department of Defense, the Department of State, and the C.A.B., to promulgate rules and regulations governing the flight operations in such areas as would effectively assist him in identifying, locating and controlling aircraft in such areas in the interest of national security. Although the Act is not specific, the Senate Report<sup>60</sup> stated that this authority included both civil and military air traffic in any such zone or area. Section 1204 provided a penalty, \$10,000 and/or no more than one year imprisonment, for knowing and willful violation of the Act. Section 1205 provided for termination of the title by concurrent resolution of both Houses if they so specified.

A new section (Sec. 310) was added to Title III in September of 1950 which authorized the Secretary of Commerce and the Administrator to delegate certain functions to qualified private persons.<sup>61</sup> The functions which could be delegated were those (1) respecting the examination, inspection, and testing necessary to the issuance of certificates under Title VI (dealing with safety regulations) of the Civil Aeronautics Act and (2) the issuance of such certificates in accordance with properly established

standards. The purpose and need for this legislation is best expressed by the House Report covering this legislation:<sup>62</sup>

"The Secretary of Commerce has authority under Section 602 of the Civil Aeronautics Act to accept examinations and reports of properly qualified private persons with regard to inspection, servicing, and overhaul of aircraft and accessories and may accept those reports in lieu of those made by officers or employees of the Department. Congress, in this manner, early recognized the desirability of delegating to private individuals certain of the safety functions relating to inspection. In recent years the Administrator of Civil Aeronautics has expanded the program of accepting inspections by private persons in order to conserve manpower and to implement other phases of the administration of safety regulations. This has been due to the tremendous increase in the number of pilots and aircraft in use since World War II and the resulting growth in need for safety inspection services."

"Title XIII—War Risk Insurance" was added to the Act in June 1951.<sup>63</sup> The purpose of the legislation was:

"to authorize the Secretary of Commerce to provide war-risk insurance adequate to the needs of air commerce of the United States, and, in addition, on request of any department or agency of the United States and with the approval of the President, to provide it such war-risk insurance coverage as it may require."<sup>64</sup>

The Secretary of Commerce was authorized to provide such insurance only when it appeared that it could not be obtained on reasonable terms and conditions from companies authorized to do an insurance business in any State in the United States. The legislation provided that no such insurance could be issued to cover war risks on persons or property engaged or transported exclusively in air commerce within the area comprising the several States and the District of Columbia.

The need for such legislation was fully explained in the House Report:<sup>65</sup>

"The ordinary aviation insurance policy now in effect covers the usual perils of fire, damage, and other risks, but excepts certain named 'war risks' from coverage. These exclusions, known as free from capture and seizure, or analogous clauses, are generally standard in content and exclude from coverage under the policy covering usual hazards any claim for loss, damage, or expense arising out of incidents of war.

. . . In addition to the war-risk exclusive clause, a compelling reason why this legislation is needed is that commercial war-risk insurance, available to aircraft operators, is subject to cancellation on 48 hours' notice. The problems faced by aircraft operators have recently been illustrated in the Korean airlift. Aircraft were made available to the United States Government subject to contract, and war-risk insurance was purchased in the commercial market, but such insurance was subject to cancellation on 48 hours' notice. It is important to bear in mind that under such conditions commercial war-risk insurance coverage is virtually useless because it permits the assessment of high premiums but is subject to cancellation at the time insurance is needed most.

. . . While the commercial markets may be able to provide all or a major part of the insurance that may be required, it is most essential that the Secretary of Commerce be authorized to provide war-risk insurance if a situation arises bringing into effect termination clauses in the war-risk policies.

. . . Conditions during past wars demonstrated that international transportation conditions can change so rapidly that, almost without warning, international carriers are threatened with such great hazards that the usual insurance markets cannot undertake to supply the required protection for transportation against war perils.

. . . The need for this legislation is not lessened by the fact that some aircraft are operated under contract between the carriers and the United States Government. The aircraft under such contracts are insured by the Government because the Government agrees to indemnify the operator for special losses.

. . . This legislation is needed to make insurance available for the commercial operations apart and aside from those carried on under contract."

On October 11, 1951 an Act was passed which authorized the President to proclaim regulations for preventing collisions at sea.<sup>66</sup> The legislation amended Section 610(a) of the Civil Aeronautics Act by adding a new paragraph (6) which read as follows:

"(6) For any person to operate a seaplane or other aircraft of United States registry upon the high seas in contravention of the regulations proclaimed by the President pursuant to section 1 of the Act entitled 'An Act to authorize the President to proclaim regulations for preventing collisions at sea.'"

The purpose of the bill was to authorize the President to proclaim regulations for preventing collisions involving water-borne craft upon the high seas and in all waters connected therewith, except certain designated inland water areas and aircraft in territorial waters of the United States where other appropriate and adequate sets of rules, regulations, and laws were already in effect. The CAB in approving this legislation commented that,

"The legislation retains those provisions in which the Board has a primary interest, particularly those which exempt aircraft operating on the inland and territorial waters of the United States thus assuring that the new regulations will leave undisturbed the jurisdiction of the Board with respect to aircraft operating on those waters."<sup>67</sup>

In June 1952, legislation was passed which eliminated the need for evidence of the performance of mail service to be submitted to the Post Office under oath.<sup>68</sup> The substitution of a certificate signed by a duly authorized official became sufficient for the purposes of receiving compensation for mail carried. This was accomplished in the Civil Aeronautics Act by amending subsection (j) of Section 405 reflecting the change.

Until July 1952 the CAB had jurisdiction only over air carriers to require them to desist from engaging in unfair and deceptive methods of competition in air transportation. The law also provided that it was a misdemeanor for an air carrier knowingly and willfully to furnish transportation at less than the lawful rates, or to grant rebates or other concessions. Due to the fact that a number of ticket agents engaged in flagrant abuses and deception in the sale of air transportation they too were brought within the scope of these provisions at that time.<sup>69</sup>

In accordance with the provisions of the Reorganization Act of 1949, President Eisenhower, on June 1, 1953 submitted Reorganization Plan No. 10 of 1953 to the Congress. This plan, which became effective October

1, 1953 provided for the separate payment of airline subsidies which had been merged with payments by the Post Office for the transportation of airmail. As explained in the President's message to Congress:<sup>70</sup>

"At present airline subsidies are provided by means of mail transportation rates established by the Civil Aeronautics Board and paid by the Post Office Department. In essence, the Civil Aeronautics Act provides that such mail rates may be set at a level sufficiently high to overcome deficits incurred by the airlines on their total operations, including passenger and freight traffic. Total mail payments by the Post Office Department thus include, not only a reasonable compensation for the service of transporting the mail, but also a subsidy element where required to support the general program of airline development. This method of furnishing subsidy restricts the opportunity for congressional and public review and substantially inflates the reported cost of the postal service.

Under the reorganization plan the Aeronautics Board will continue to determine the overall level of payments to be made to the airlines, and will do so in accordance with the existing policy standards of the Civil Aeronautics Act. However, the Post Office Department will pay only that portion which represents compensation for carrying the mail on the basis of fair and reasonable rates determined by the Board without regard to the need for Federal Aid. The plan will transfer to the Board the responsibility for paying any amounts in excess of such compensation, this excess being the subsidy element of the aggregate Federal Payment."

A milestone in civil aviation was reached on May 19, 1955 when provision was made for the issuance of permanent certificates of public convenience and necessity to local service air carriers.<sup>71</sup>

The purpose of the legislation was to:

"enact 'grandfather certificate rights' by requiring the Civil Aeronautics Board to issue permanent certificates of public convenience and necessity to the 13 local service air carriers—a 14th local service carrier will cease to be such a carrier on March 31, 1955, when its merger into Continental Air Lines, a trunk airline, becomes effective.

These carriers are: Allegheny Airlines, Bonanza Air Lines, Central Airlines, Frontier Airlines, Lake Central Airlines, Mohawk Airlines, North Central Airlines, Ozark Air Lines, Piedmont Airlines, Pioneer Air Lines, Southern Airways, Southwest Airways, Trans-Texas Airways, and West Coast Airlines.

These local service or feeder airlines presently operate under renewals of temporary certificates, the bill will enable them more economically, efficiently, and satisfactorily to provide air service to the 366 small and intermediate-size communities in the United States presently served by these carriers—of these communities 216 would have no air service without them."<sup>72</sup>

The Civil Aeronautics Board had been opposed to this legislation and its earlier counterpart.<sup>73</sup> The Board's reasons for this position was that it believed: (1) permanent certification would lessen the incentive of the carriers to increase their revenues and hold down their costs; (2) it would make more difficult the improvement of the route systems of the several carriers; (3) it would saddle the Government with an annual subsidy bill of over \$20 million for the indefinite future; and (4) the proportion of subsidy to total revenues was still too high to warrant permanent certification of all carriers of its group.<sup>74</sup> However, once the legislation was enacted, the Board moved swiftly to grant permanent certificates and pave

the way for the next era in another phase of civil aviation, the local service program.

The same provision, authorizing permanent certification, was made for local service carriers of Alaska and Hawaii on July 20, 1956.<sup>75</sup>

On July 20, 1956 the provisions of Title XIII of the Civil Aeronautics Act relating to war risk insurance were extended for an additional five years.<sup>76</sup>

(By Act of July 31, 1956 (70 Stat. 737, 738) basic compensation was fixed at \$20,000 per annum for Board Members and the Administrator, \$20,500 for the Chairman. Under the Civil Aeronautics Act, since its enactment, all had received \$12,000 per annum.)

On August 1, 1956 subsection (b) of Section 403 of the Act was amended in order to permit air carriers to grant reduced rate transportation to ministers of religion.<sup>77</sup>

Permanent certification for certain air carriers operating between the United States and Alaska was provided in August, 1957.<sup>78</sup>

Though not an amendment to the Civil Aeronautics Act, the Government Guaranty of Equipment Loans, Public Law 85-307, 85th Congress, S. 2229, enacted September 7, 1957 (71 Stat. 629) warrants mention here. Under sponsorship of the Civil Aeronautics Board, Congress passed this legislation designed to aid local service and territorial carriers in obtaining private loans to purchase new and modern equipment. The Act authorizes the Board to guarantee loans of up to \$5 million on an airline providing that the airline is unable to secure satisfactory financing elsewhere. The Government will guarantee private loans made by lending institutions up to 90% of the loan on the purchase of the new equipment.

The last amendment to be accorded the Civil Aeronautics Act was enacted in April, 1958. The legislation amended Section 406(b) of the Act by providing that in determining the need for an air carrier for mail pay, the Civil Aeronautics Board should not take into account gains derived from the sale or other disposition of flight equipment if (1) the carrier notified the Board in writing that it intended to invest or had invested such gains in flight equipment, and (2) submitted evidence as may be required by the Board showing that it had invested an amount equal to such gains in the purchase of other flight equipment or had deposited those gains in a special reequipment fund. In order to obtain these benefits, such funds would have to be used within a reasonable time for the purchase of flight equipment or in retirement of debt contracted for the purchase or construction of flight equipment.<sup>79</sup>

The amendment was effective as to all capital gains realized on or after April 6, 1956 with respect to the sale or other disposition of flight equipment irrespective of any Board orders which may have taken into account such gains in the determination of "all other revenue" of air carriers.<sup>80</sup>

The need for this legislation was described in Senate Report No. 1144:<sup>81</sup>

"Section 406(b) of the Civil Aeronautics Act of 1938, as amended, provides in pertinent part, that the Board, in fixing the amount of subsidy for mail transportation is to consider:

. . . the need of each . . . air carrier for compensation for the transportation of mail sufficient to insure the performance of such service, and,

together with *all other revenue* of the air carrier, to enable such air carrier, under honest, economical, and efficient management, to maintain and continue the development of air transportation to the extent and of the character and quality required for the commerce of the United States, the postal service, and the national defense. (*Italic supplied*).

The words 'all other revenue' has been construed by the Board to apply to capital gains realized on the sale of flight equipment as well as operating revenue and gains from other tangible assets sold by the carrier. The Board, therefore, has deducted from mail subsidy, otherwise payable, the amount of net capital gain in computing the 'need' of any carrier during an open-rate period. If realized during a closed rate period, the subsidized carrier was not so penalized.

This policy, the Board claims, was upheld by the Supreme Court in *Western Air Lines v. CAB* (347 U.S. 67, 74 S. Ct. 347, 94 L. Ed. 353 (1954)). However, the Board also claims certain language in this decision raised the question as to whether the Board is legally entitled to allow even those carriers on a closed rate to retain their capital gains. Formal proceedings to finally determine its powers in this respect are now being conducted by the Board (CAB Docket 7902). In connection therewith the Board, on April 16, 1956, 'opened' all subsidized carrier rates with respect to capital gains disposition pending its determination of the matter. If the Board should decide it has no power under the law to allow the retention of capital gains, no carrier whose mail compensation is computed under 406(b) could hope to apply a gain realized on the sale of old flight equipment to the purchase of new and more costly replacements without suffering a loss equal to the amount of the 'gain' in its mail payment from the Government. This would be the case whether the capital gains were realized during an open-rate or closed-rate period.

Such a policy would seem inevitable to discourage the disposition of obsolete and uneconomic flight equipment and to delay the acquisition of modern, efficient aircraft which would enable the carrier to reduce costs and thus hasten the day when it could operate without subsidy. This unfortunate result is compounded in the case of feeder lines and non-profitable but necessary territorial air services which are doing a great job under difficult circumstances . . . .

Your committee feels that it will be impossible for a local airline to make itself subsidy free so long as its fleet consists principally or entirely of DC-3 type aircraft. The overhead costs of such craft is expensive in comparison to the income which it can yield. A reequipment program, therefore, is vital to economic self-sufficiency of all airlines, but particularly to the local service airlines which numerically constitute the Chief dependents upon special mail subsidy. Your committee is satisfied that a reequipment program would reduce flight-mile costs considerably and make additional revenue available."

Thus ends the chronological story of amendments to the Civil Aeronautics Act of 1938.

PART II  
THE FEDERAL AVIATION ACT OF 1958—  
A DETAILED DISCUSSION OF ITS PROVISIONS

Senate Bill 3880 was first introduced in the form of amendments to the Civil Aeronautics Act of 1938. It was decided that due to the extensive nature of such amendments it was better to recast the bill in the form of a complete revision of that Act, reenacting those portions which remained unchanged.<sup>82</sup> It was made clear, however, that reenactment of such portions was not to constitute legislative adoption or rejection of administrative interpretations or practices, or judicial decisions under the Civil Aeronautics Act of 1938.<sup>83</sup> One of the reasons for the complete revision of the old Act, rather than the use of amendment to it, was the fact that over the twenty-year period since its enactment in 1938, many provisions of the Act had become obsolete. Moreover, Presidential reorganization plans had abolished and transferred functions, abolished the Air Safety Board, had in effect modified certain provisions of the Act and changed the names of agencies; and these changes had been made without actual changes having been made in the text of the law.<sup>84</sup> In addition, the new Act repealed the Air Commerce Act of 1926 but integrated the necessary parts of that Act in the new Act.<sup>85</sup> The new Act also repealed the Airways Modernization Act of 1957, transferring the function of that Board to the new agency.<sup>86</sup> Thus it can be seen that the Civil Aeronautics Act, in need of a great deal of revision just from the technical standpoint, was more easily "reenacted" with new provisions added, than amended.

The following consists of a detailed discussion of the provisions of the new Act, title-by-title, comparing the new provision with those of the Civil Aeronautics Act of 1938 where applicable.<sup>87</sup>

TITLE I—GENERAL PROVISIONS

The list of definitions<sup>88</sup> was amended in several respects to "accommodate substantive changes made by the . . . (new) Act, to reflect current judicial interpretations, or to delete obsolete material."<sup>89</sup> The following terms were deleted from the old Act: "Air-space reservation," "Authority," and "Civil Airway." Added in the new Act were "Administrator," "Board," and "Federal Airway." The definition of the term "navigable airspace" was amended to include airspace needed to insure safety in takeoff and landing of aircraft. The definition of the term "possessions of the United States" was amended to recognize the Commonwealth status of Puerto Rico approved by Congress in 1952.<sup>90</sup> The House had included, within the definition of the term "airman," any individual who makes test, exhibition, or practice parachute jumps from aircraft, whether for sport or for monetary consideration.<sup>91</sup> The bill as agreed to in conference, and as finally enacted, omits the House provision as to parachute jumpers.<sup>92</sup>

The declaration of congressional policy is divided into two sections, one addressed to the Civil Aeronautics Board<sup>93</sup> and the other to the Administrator.<sup>94</sup> This is followed by a reaffirmation of the public right of freedom of transit through the navigable airspace.<sup>95</sup> The declaration of policy directed to the Civil Aeronautics Board is practically the same as that under the old Act. However, a slight change was made in that "promotion" of civil aeronautics was added to subsection (f) of Section 102 as

a public interest factor to be considered by the Board. Such supposedly innocuous additions always seem to attract speculation.<sup>96</sup> The Conference Report makes reference to this change:<sup>97</sup>

"Some fear has been expressed, . . . , that the addition of this word ("promotion") may be regarded as evidencing an intent that Congress wishes the Board to change in some way the economic regulatory policies or interpretations developed during the past 20 years under the existing law. The addition of this word is not intended to have any such effect."

## TITLE II—CIVIL AERONAUTICS BOARD; GENERAL POWERS OF BOARD

The new Title II created a statutory Civil Aeronautics Board and retained provisions from the old Act regarding membership, appointment, qualifications and tenure.<sup>98</sup> The new Act severed the connection between the Department of Commerce and the Board, establishing the Board as a completely independent agency.<sup>99</sup> A provision was added which provides that Board members shall serve after expiration of their terms until their successors are appointed and have qualified.<sup>100</sup> The Board's powers in respect to appointment of certain officers was somewhat broadened to the effect that appointments of a "Secretary of the Board" as well as determination of the compensation of that Secretary and of "a secretary and an administrative assistant for each member" may be made "without regard to the civil service and classification laws."<sup>101</sup> The Board also received authorization to place, subject to the standards and procedures of Section 505 of the Classification Act of 1949, 5 U.S.C. 1105, up to 8 positions "in grades 16, 17, and 18," in addition to the 5 positions already authorized under said Section 505, and 10 positions authorized in the fiscal 1959 Appropriations Act (Public Law 85-469).<sup>102</sup> A new provision relating to cooperation with other Federal agencies was added to Section 202 in order to enable the Board effectively to carry out its powers and duties.<sup>103</sup>

Omission of old Section 203 which was *functus officio* caused remembering of all following sections of Title II. The frequently cited grant of "general powers," formerly in Section 205(a), is now in Section 204(a), without any change in language.

## TITLE III—ORGANIZATION OF AGENCY AND POWERS AND DUTIES OF ADMINISTRATOR

This Title is almost entirely new. It establishes a new Federal Agency under the direction of a civilian Administrator and a Deputy Administrator who may be a member of the Armed Forces.<sup>104</sup> Both shall be appointed by the President, by and with the advice of the Senate.<sup>105</sup>

The Administrator is empowered to regulate the use of the navigable air space;<sup>106</sup> to acquire, establish, operate, and improve air navigation facilities;<sup>107</sup> to prescribe air traffic rules for all aircraft;<sup>108</sup> and to conduct related research and development activities.<sup>109</sup> In addition, his approval would be required for the location or substantial alteration of any military or civilian airport, or rocket or missile site, involving the expenditure of Federal funds.<sup>110</sup> Prior notice to him would also be required for the construction of any other landing area.<sup>111</sup> Provision is made for exceptions and for a general exemption from the Administrator's air traffic control



powers in the case of a military emergency.<sup>112</sup> To accomplish the many tasks set forth in this Title the Administrator has been given broad powers of delegation to officers, employees and other Federal agencies (Sec. 303(d)) and to private persons (Sec. 314).

In the exercise of these functions the Administrator is to be assisted by a staff of military personnel.<sup>113</sup> The President may also transfer military air traffic control functions and personnel to the Agency.<sup>114</sup> Commenting on this Section, the Senate Report states:

"Through the wise exercise of this authority, the President could eventually accomplish a unified air-traffic-control service for both civil and military operations as circumstances would, in his discretion, permit. While such unified service may be desirable, the Committee wishes to note that some 18,000 military personnel are now assigned to air-traffic-control duties at more than 300 military airbases and, therefore, a major problem of appropriate assimilation of such personnel is inherent in such an undertaking . . . .

"In addition to this major management problem, the Committee is also aware of important personnel problems which such transfer might entail, particularly with respect to security and disciplinary considerations at military installations. It has been suggested, at least from one quarter, that this special personnel problem can be met only by making the air-traffic-control service a quasi-military organization. Your Committee does not agree that this would be a necessary or desirable solution but genuinely believes that the air-traffic-control service should be essentially a civilian service. Appropriate protection for military needs can be accomplished without the militarizing of this essential core of the Agency personnel."<sup>115</sup>

When viewing the entire Federal Aviation Act, it is essential to remember the basic reason for its inception, the need to vest unquestionable authority for all aspects of *air space management* in one body. For this reason the so-called "heart" of the Act is found in Section 307(a) which places such authority under the power of the Administrator. In order to prevent a future fractionalization of such authority,<sup>116</sup> the Act contains the following sentence in Section 301(a):

"In the exercise of his duties and the discharge of his responsibilities under this Act, the Administrator shall not submit his decisions for the approval of, nor be bound by the decisions or recommendations of, any committee, board, or other organization created by Executive order."

The Senate Report<sup>117</sup> states that:

"This Section (301) . . . is designed not to encourage arbitrary action but rather to prevent the abdication or the frustration of the special power which the Congress proposes to entrust to an informal Administrator."

#### TITLE IV—AIR CARRIER ECONOMIC REGULATION

This title provides for air carrier "economic regulation," and is a re-enactment, virtually without substantive change, of Title IV of the Civil Aeronautics Act of 1938, as amended. Certain obsolete provisions were omitted, causing redesignation of some subsections.<sup>118</sup>

Reorganization Plan No. 10 of 1953, which became effective on October 1, 1953<sup>119</sup> modified the operation of Section 406 so as to provide, in effect, that so much of the total air mail rate payable to an air carrier under such

Section as was determined to be payable without regard to the "need" clause of Subsection (b) thereof should be paid by the Postmaster General and that the remainder should be paid by the Civil Aeronautics Board. Although Reorganization Plan No. 10 thus modified the operation of the law no actual change was then made. Section 406 of the Federal Aviation Act incorporates language reflecting this change thus rendering it possible to repeal said Reorganization Plan which is done in Section 1401(c).

#### TITLE V—NATIONALITY AND OWNERSHIP OF AIRCRAFT

The provisions of this title reenacted the existing law (Title V of the Civil Aeronautics Act of 1938) relating to the registration of aircraft without substantial change except as follows:

The functions under this title formerly performed by the Administrator of the CAA are now exercised by the Administrator of the FAA.

A new section (Sec. 505) has been added concerning dealers' aircraft registration certificates. The substance of this Section was contained in a bill<sup>120</sup> passed by the Senate on March 3, 1958 and provides specific statutory authority for the issuance of such certificates by the Administrator of the FAA.

#### TITLE VI—SAFETY REGULATION OF CIVIL AERONAUTICS

The question of transferring the power to prescribe rules and standards for civil aviation safety to the Federal Aviation Agency, those powers enumerated in Title VI, proved to be one of the most controversial of the entire piece of legislation. This transfer of a power formerly held by the Civil Aeronautics Board was supported by the Executive representatives<sup>121</sup> and by a large segment of private industry.<sup>122</sup> It was specifically opposed by the Civil Aeronautics Board. The basis of the Board's argument for retaining these powers in the Board was that they involved quasi-legislative functions which should not be controlled by an agency in the executive branch of the government but rather should be handled by an independent agency—an arm of the Congress.<sup>123</sup>

The rejection of the Board's argument is best illustrated in the Senate Report:<sup>124</sup>

"The theory that rule making is to be done only by a body of judicially minded, disinterested laymen applies well in the field of economic regulation. There the problem is one of balancing competing business interests; technical problems, if existent, are largely incidental. The theory tends to break down, however, when applied to the promulgation of minimum aviation safety standards. Here, the competition, if any, is between men and machines; the standard to be applied being principally determined by existing technical considerations. Competing economic interests may indeed be involved, but here it is they that are incidental.

... In the belief that aviation safety is essentially indivisible, ... your committee recommends the provisions of S. 3880 transferring these functions to the new Agency."

Thus the Board's powers to make air safety rules were transferred to the Administrator. The only vestige of that power which remains in the Board is that provided in a new Section 1001 which permits the Board to enter as an interested party in safety rule making proceedings conducted

by the Administrator. As originally introduced, Section 601(c) of the proposed bill, S. 3880, would have authorized the Board on its own initiative, or upon the request of an affected person, to suspend for review any rule, regulation, or minimum standards issued by the Administrator if the Board found that substantial economic hardship existed. This provision was deleted in the final enactment however, as explained in the Senate Report:<sup>125</sup>

"Your committee has deleted this provision, however, since in practical effect it would have allowed virtually all such rules to be appealed, thus frustrating and inhibiting the efficient discharge of this vital function by the Administrator, and continuing the present dichotomy in rule making."<sup>126</sup>

The Board retains the adjudicatory functions under Title VI. As before, it will hear petitions for review of the Administrator's denial of applications for airman certificates.<sup>127</sup> However, persons whose certificates are, at the time of denial, under order of suspension or have been revoked within one year of the date of such denial will lack standing to petition for review.<sup>128</sup> Section 609 which relates to modification, suspension and revocation of certificates is amended to make the Board's function quasi-appellate in nature. The Administrator will, in the first place, issue orders amending, modifying, suspending, or revoking certificates after giving the holder an opportunity to answer charges and be heard.<sup>129</sup> However, upon the holder's appeal the Board will hold an evidentiary hearing *de novo* with the burden of proof on the Administrator, and may amend, modify, or reverse the Administrator's order.<sup>130</sup> Note that in this way the Board has unequivocal jurisdiction not only over suspension and revocation, but also over amendment and modification of any and all air safety certificates. The filing of such appeal to the Board will stay the Administrator's order except where he advises the Board that an emergency exists. In such cases the Board is directed to dispose of the appeal within sixty days after being so advised by the Administrator.

#### TITLE VII—AIRCRAFT ACCIDENT INVESTIGATION

Under Title VII, full responsibility for the investigation of accidents involving civil aircraft and for the determination of probable cause is retained by the Civil Aeronautics Board.<sup>131</sup> The Board's former power<sup>132</sup> to delegate the performance of accident investigation functions, including determination of probable cause, to the Administrator is abolished. Instead, the Board may now only request the Administrator to conduct any investigation and report the facts to the Board, but only the Board may make the determination of the probable cause of the accident.<sup>133</sup> Section 701(g) states that the Board shall provide for the appropriate participation of the Administrator in accident investigations. As explained in the Senate Report:<sup>134</sup>

"The intent of this section is that the Board should allow full participation by the Administrator consistent with the proper discharge of his functions and responsibilities. Though the section refers only to investigations, this is not meant to preclude participation by the agency in public hearings as well, if the Board believes that such participation would be in the public interest."

Accidents involving solely military aircraft are to be investigated by the military, except that if functions of the Administrator are involved

the military shall provide for the Administrator's participation in the investigation.<sup>135</sup> With respect to other accidents involving solely military aircraft the military authorities shall provide the Board and Administrator with any information pertaining thereto which in their judgment would contribute to the promotion of air safety.<sup>136</sup>

Section 703 makes provision for the establishment of a Special Board of Inquiry to conduct investigations of accidents of a major or specially disastrous nature where a public inquiry might be demanded or otherwise in order. The three-man Special Board would be convened by the Civil Aeronautics Board and would include 2 public members appointed by the President in addition to one member of the Civil Aeronautics Board who would act as chairman.<sup>137</sup>

#### TITLE VIII—OTHER ADMINISTRATIVE AGENCIES

This title was substantially a reenactment of the then existing law. It continues the requirement of Presidential approval of Board orders involving overseas or foreign air transportation<sup>138</sup> and provides for appropriate consultation and coordination by the Secretary of State<sup>139</sup> and Weather Bureau<sup>140</sup> with the Board and Agency.

#### TITLE IX—PENALTIES

Title IX varies little from that of the Civil Aeronautics Act. Its changes are primarily those of adopting its terms to the changed requirements under the Federal Aviation Act. Civil penalties were substituted for criminal penalties for violations of titles III and XII. Except as just noted, criminal penalties remained the same. However, Section 902(f) dealing with the divulging of information (i.e. that the Administrator, Board Member or any offices or employees should not divulge information) was amended to provide that "nothing in this section shall authorize the withholding of information by the Administrator or Board from the duly authorized committees of the Congress." In addition, a new section (Sec. 904) was added incorporating the provisions of Sections 11(b) and (c) of the Air Commerce Act<sup>141</sup> relating to violations of customs and quarantine regulations.

#### TITLE X—PROCEDURE

This title was also amended primarily to reflect changes made elsewhere in the then existing law. However, Section 1001 was amended to provide specifically for the participation of the Board as an interested party in rule making proceedings by the Administrator. Moreover, Section 1002(a), relating to the filing of complaints in connection with violations, was amended to provide that the Secretary of the military department concerned will have authority to take disciplinary action against persons subject to the Uniform Code of Military Justice in cases where the complaint against any of such persons arises out of something done or omitted to be done while acting in the performance of official duties.

#### TITLE XI—MISCELLANEOUS

This title substantially reenacted the sections dealing with hazards to air commerce (Sec. 1101), the applicability of international agreements (Sec. 1102), and the use of documents filed (Sec. 1103). Section 1104,

relating to private requests to withhold information, was made inapplicable to information sought by committees of Congress.<sup>142</sup> Former Sections 1107 through 1110, containing repealing and amendatory matter, were deleted as obsolete and replaced by the provisions of the Air Commerce Act<sup>143</sup> dealing with the public use of facilities (Sec. 1107), foreign aircraft (Sec. 1108), and the application of certain shipping, customs, and quarantine laws (Sec. 1109). Section 1110 is a significant addition to prior law. It authorizes the President to extend the application of the entire Federal Aviation Act to any areas of land or water and the overlying airspace thereof in which this nation, by treaty or "other lawful arrangement," has legal authority to do so.

#### TITLE XII—SECURITY PROVISIONS

Section 1201 was amended to omit the provision granting the President authority to prescribe the manner and extent of exercising the powers and duties granted under this title, and the period of time during which such powers and duties should be exercised as prescribed by him. This was done in further recognition of the fact that responsibilities for regulating airspace use is imposed upon the Administrator.<sup>144</sup> Section 1202 authorizes the Administrator to designate prohibited security zones without necessity for Presidential direction, but after consultation with the Department of Defense. Section 1202 of the Civil Aeronautics Act was deleted inasmuch as it related to the requirement that the Civil Aeronautics Board consider national security as well as safety in carrying out its responsibilities under Title VI. However, since Title VI functions were transferred to the Administrator it should be noted that the language contained in Section 601(a)(6) is intended to require the Administrator to issue such rules and regulations as he may find necessary to provide adequately for national security and safety in air commerce, in carrying out his responsibilities with respect to safety regulation under Title VI.<sup>145</sup> Section 1205 of the Civil Aeronautics Act, relating to the termination of this title on such date as may be specified by concurrent resolution of the two Houses of Congress was omitted thus making this title a permanent feature in the new Federal Aviation Act.

#### TITLE XIII—WAR RISK INSURANCE

This title reenacted that of the Civil Aeronautics Act with the sole exception of a technical amendment in the final section (Sec. 1312) made necessary in order to retain the same expiration date.<sup>146</sup>

#### TITLE XIV—REPEALS AND AMENDMENTS

This title repealed the Air Commerce Act of 1926 (44 Stat. 568) as amended; the Civil Aeronautics Act of 1938 (52 Stat. 973) as amended; Section 7 of Reorganization Plan III; (54 Stat. 1233); Section 7 of Reorganization Plan IV, (54 Stat. 1235-1236) which became effective on June 30, 1940 (54 Stat. 231); and Reorganization Plan No. 10 which became effective October 1, 1953 (67 Stat. 644). It relates that no function vested in the Administrator by the Federal Aviation Act shall be subject to the provisions of Section 1(a) of Reorganization Plan No. 5 of 1950 (64 Stat. 1263). The Airways Modernization Act of 1957 (71 Stat. 349) was repealed along with all other acts or parts thereof incon-

sistent with provisions of the Federal Aviation Act. Title XIV also amended specific acts which had referred to terms and parts of the Civil Aeronautics Act of 1938.

#### TITLE XV—SAVING PROVISIONS AND EFFECTIVE DATE

This title contains "saving provisions" necessary because of the repeals of and changes in the law and the administrative changes being made by the new Act. It provides basically for the continuing effect of the then existing rules, regulations and orders of the then existing Civil Aeronautics Board and Civil Aeronautics Administrator. It also deals with the continuing effect of Administrative and judicial proceedings and the transfers of appropriations, personnel and property.

Section 1505 relates to the effective date of the Act. Section 1505 (1) provided that Sections 301; 302(a), (b), (f), (i), and (k); 303(a); 304 and 1502 were to become effective on the date of enactment of the Act. (August 23, 1958).

Section 1505(2) provided that the remaining provisions were to become effective on the 60th day following the date on which the Administrator first appointed under the Act qualified and took office. General Elwood (Pete) Quesada, the first Administrator assumed office on November 1, 1958. Thus the effective date for the remaining provisions of the Act was December 31, 1958.

#### FOOTNOTES

<sup>1</sup> Act of June 23, 1938, 52 Stat. 973 (codified: The Civil Aeronautics Act of 1938, its subsequent amendments, and the Federal Aviation Act of 1958 are codified in *United States Code* and *United States Code Annotated* in Title 49. No reference is made in this work to a particular edition of U.S.C. or U.S.C.A. in view of the fact that a twenty year period is covered in which any particular edition may prove to be the one most valuable to one conducting research on a particular point. However, an initial reference point should help: The Civil Aeronautics Act, and its subsequent amendments will be found in 49 U.S.C. (A.) Sections 401 and 722 up to and including the 1958 ed. of U.S.C. and the 1959 Cumulative Annual Pocket Part of U.S.C.A.; the Federal Aviation Act will be found in 49 U.S.C. Section 1301 to 1542 (1958) and 49 U.S.C.A. Section 1301 to 1542 (1959).

<sup>2</sup> Logan, *Aeronautical Law Developments*, 1939, 11 Jour. Air Law and Commerce 1-16, 16, (1940).

<sup>3</sup> See testimony of Harold P. Smith, Clinton M. Hester and Robert H. Henckley: *Hearings before Select Comm. on Government Organization*, U. S. Senate, 76th Cong., 3rd Sess. on S. Con. Res. 43, *Fourth Plan on Government Reorganization*, May 9, 10, 1940.

<sup>4</sup> See 4 Am. Aviation No. 1, June 1, 1940, P. 4.

<sup>5</sup> Pursuant to the powers set forth for the President in the Act of April 3, 1939, Reorganization Act of 1939, 53 Stat. 561.

<sup>6</sup> H.R. Doc. No. 681, 76th Cong., 1st session (1940), quoted in 86 Congress Rec. 3842 (daily ed. April 2, 1940).

<sup>7</sup> "Without advance knowledge by the Civil Aeronautics Authority or to the industry, President Roosevelt on February 2, transferred many functions of the Authority to the Administrator and re-named that officer as the Administrator of Civil Aeronautics with greatly increased power. The reorganization was included in the President's Reorganization Plan No. 3 and was similar to his other orders in that the agencies concerned were not consulted in advance." 3 AM. Aviation No. 22, April 15, 1940, P. 1.

<sup>8</sup> "Bombshell: The lightning invasion of Denmark and Norway by Germany a few weeks ago was no more startling to the civilized world than was the President's Reorganization Plan IV to Civil Aviation in the United States . . . There was a feeling of relief when the Civil Aeronautics Authority was created in that summer of 1938. Tension relaxed. The battle had been

won. At last civil aviation had come into its own with its own agency through what was hailed then as a model piece of legislation. But not for long. Two years to the month that Congress voted the new agency into existence the President would shift the Civil Aeronautics Authority back into the politically-ridden Department of Commerce." 3 AM. Aviation 23, May 1, 1940, P. 1.

<sup>9</sup> House Doc. No. 692, 76th Cong., 1st sess. (1940) quoted in 86th Cong. Rec. 4364 (daily ed. Apr. 14, 1940). For further study see "Official Interpretations of Reorganization Plan IV," 11 J. Air L. & Com. 1281 (1940) which includes: President's Press Release of April 30, 1940; Letter of the Director of the Bureau of the Budget to the Chairman and Administrator of the CAA and to the Secretary of Commerce, and the opinion of the Atty. General; Report of the Bureau of the Budget Recommending Plan IV after a study made at the request of the President.

<sup>10</sup> Reorganization Act of 1939, 53 Stat. 561, 562, "Sec. 5. The reorganizations specified in the plan shall take effect in accordance with the plan: (a) Upon the expiration of sixty calendar days after the date on which the plan is transmitted to the Congress, but only if during such sixty-day period there has not been passed by the two Houses a concurrent resolution stating in substance that the Congress does not favor the reorganization plan."

<sup>11</sup> Sweeney E. C., *Safety Regulations and Accident Investigation: Jurisdictional Conflicts of CAB and CAA*, 17 J. Air L. & Com. 141, 143 (1950).

<sup>12</sup> *Ibid.*

<sup>13</sup> Act of July 2, 1940, 54 Stat. 735, H.R. 9899, 76th Congress, 3rd sess. See H.R. Rep. No. 2505 and S. Rep. No. 1869, both 76th Cong., 3rd sess. (1940).

<sup>14</sup> Experimental Air Mail Act, Act of Apr. 15, 1938, 52 Stat. 218; as amended (39 U.S.C. 470) by Civil Aeronautics Act of 1938, 52 Stat. 978; Act of July 2, 1940, 54 Stat. 735 (see footnote 13); Act of August 30, 1949, 63 Stat. 680; and Federal Aviation Act of 1958, 72 Stat. 731.

<sup>15</sup> Even after enactment of the Civil Aviation Act of 1938, the Postmaster General continued to have jurisdiction over a portion of the transportation of mail by air. Under the Experimental Air Mail Act, the Postmaster General could let contracts for experimental air mail services (Sec. 1) and report the progress of same to Congress (Sec. 2). Thus by repealing Sections 1 and 2 of the Experimental Air Mail Act, the Act of July 2, 1940 placed the experimental services thus far developed, namely pick-up service (the delivery and pick-up of mail by a plane that remains in flight) and autogiro service, under the Authority's jurisdiction. Section 6 of the Experimental Air Mail Act was left intact, however, thus allowing the Postmaster General to continue contracting for airmail over so-called "star" routes—to areas unattainable by surface transportation etc.

<sup>16</sup> Under Decision No. 83 of the National Labor Board (See "Aeronautical Statutes and Related Materials," CAB publication, revised Feb. 15, 1959, p. 128).

<sup>17</sup> See H.R. Rep. No. 1944, 77th Cong., 2nd Sess. (1942).

<sup>18</sup> Act of May 16, 1942, 56 Stat. 300, amended the Interstate Commerce Act and the Civil Aeronautics Act (subsection (b) of Sec. 412 and subsection (b) of Sec. 1003). See S. Rep. 132, 77th Cong., 1st Sess. (1941) and H.R. Rep. No. 2066, 77th Cong., 2nd Sess. (1942). The Act provided that air freight forwarders could not establish joint rates with common carriers subject to Interstate Commerce Act and provided that the Authority could not approve any agreement between said parties governing the compensation to be received by said common carrier for transportation services performed by it.

<sup>19</sup> See H.R. Rep. No. 1938, 79th Cong., 2nd Sess. (1946) S. Rep. No. 1842, 79th Cong., 2nd Sess. (1946).

<sup>20</sup> *Ibid.*

<sup>21</sup> Act of July 25, 1947, 61 Stat. 449.

<sup>22</sup> Set forth in Act of April 20, 1942, 56 Stat. 265, footnote 16, 17 *supra*.

<sup>23</sup> S. Rep. No. 510, 80th Cong., 1st Sess. 1 (1947).

<sup>24</sup> H.R. Rep. No. 176, 80th Cong., 1st Sess. 1-2 (1947).

<sup>25</sup> Act of June 16, 1948, 62 Stat. 470.

<sup>26</sup> S. Rep. No. 1363, 80th Cong., 2nd Sess. 1 (1948); see also H.R. Rep. No. 2091, 80th Cong., 2nd Sess., (1948).

<sup>27</sup> Act of June 19, 1948, 62 Stat. 493. Amended Sections 1 and 503 of C.A.A. of 1938.

<sup>28</sup> H.R. Rep. No. 2165, 80th Cong., 2nd Sess. 1-2 (1948). See also S. Rep. No. 1362, 80th Cong., 2nd Sess. (1948).

<sup>29</sup> Act of June 29, 1948, 62 Stat. 1093; See H.R. Rep. No. 2207, 80th Cong., 2nd Sess. (1948) and S. Rep. No. 1209, 80th Cong., 2nd Sess. (1948).

<sup>30</sup> Act of July 1, 1948, 62 Stat. 1216.

<sup>31</sup> H.R. Rep. No. 2315, 80th Cong., 2nd Sess. (1948). Also see *Hearing on H.R. 4435 before the House Committee on Interstate and Foreign Commerce*, 80th Cong., 2nd Sess. May 20, 1948; *Hearings on S. 2466, before the Subcommittee of the Senate Committee on Interstate and Foreign Commerce*, 80th Cong., 2nd Sess., May 24, 1948 and S. Rep. No. 1460, 80th Cong., 2nd Sess. (1948).

<sup>32</sup> *Id.* at 2-3.

<sup>33</sup> "In exercising the authority granted in this subsection, the Administrator shall give full consideration to the requirements of National Defense."

<sup>34</sup> Section 302(c) requiring the Administrator to make a survey of airports and report thereon to Congress in 1939. This had been fully executed and no reason existed for retaining this language.

<sup>35</sup> "The lack of authority to accept gifts in donations of money or property has on occasion proved embarrassing. There have been instances in which foreign governments, municipalities, and others have been willing to donate money, property, and services to the Administration, which the Administration has been forced to reject due to its lack of authority to accept these gifts." H.R. Rep. No. 2315, 80th Cong., 2nd Sess. 3 (1948).

<sup>36</sup> *Ibid.* "Found necessary due to the fact that the Administrator is now required to install many air-navigation facilities serving public airports off the site of such public airport and on lands which the public agency owning the airport does not own."

<sup>37</sup> *Ibid.* "The rapid technological developments in the field of air navigation facilities renders rapidly obsolete equipment, lands, and other property which the Administrator formerly utilized in the civil airways system. An expeditious means for the disposal of these properties is essential."

<sup>38</sup> See footnote 5 *supra*.

<sup>39</sup> Accomplished by adding a new Section, Section 309.

<sup>40</sup> Act of May 13, 1946, 60 Stat. 170, as amended by Act of April 17, 1948, 62 Stat. 173 and Act of June 29, 1948, 62 Stat. 1111.

<sup>41</sup> See footnote 5 *supra*.

<sup>42</sup> H.R. Rep. No. 2315, 80th Cong., 2nd Sess. (1948).

<sup>43</sup> *Ibid.* Detailed comment on this amendment found on page 4 of this House Report.

<sup>44</sup> Act of May 24, 1949, 63 Stat. 107.

<sup>45</sup> Act of June 20, 1949, 63 Stat. 203; See S. Rep. No. 232, 81st Cong., 1st Sess. (1949), on Reorganization Act of 1949 which gives background leading up to formation of Commission on Organization of the Executive Branch of the Government (the so-called "Hoover Commission") whose 18 separate reports formed the backbone of the reorganization legislation which followed thereafter.

<sup>46</sup> See next paragraph.

<sup>47</sup> Act of July 26, 1949, 63 Stat. 480, inserted a new subsection (h) in Section 902 of the Civil Aeronautics Act of 1938. See S. Rep. No. 511, 81st Cong., 1st Sess. (1949).

<sup>48</sup> Act of August 30, 1949, 63 Stat. 678; added a new section (Sec. 207) to C.A.A. of 1938. See S. Rep. No. 512, 81st Cong., 1st Sess. (1949).

<sup>49</sup> Effective May 24, 1950, 64 Stat. 1263. See S. Rep. No. 1774, 81st Cong., 2nd Sess. (1950), and *Senate Hearings on S. Res. 259 in re Reorg. Plan No. 5 of 1950, Before the Committee on Expenditures in the Executive Departments*, 81st Cong., 2nd Sess., Apr. 27, 1950.

<sup>50</sup> Act of June 11, 1946, 60 Stat. 237, as amended by 60 Stat. 918, 60 Stat. 993, 61 Stat. 37, 61 Stat. 201 and 62 Stat. 99; 5 U.S.C. 1001.

<sup>51</sup> See discussion of Reorganization Plan IV *supra*.

<sup>52</sup> Effective May 24, 1950; 64 Stat. 1266. See S. Rep. No. 1686, 81st Cong., 2nd Sess. (1950).

<sup>53</sup> *Ibid.*

<sup>54</sup> *Ibid.*

<sup>55</sup> Act of August 3, 1950, 64 Stat. 395.

<sup>56</sup> H.R. Rep. No. 2710, 81st Cong., 2nd Sess. 1-2 (1950); see also S. Rep. No. 1481, 81st Cong., 2nd Sess. (1950).

<sup>57</sup> Act of August 8, 1950, 64 Stat. 417. Two new subsections, "(b)" and "(c)", were added to Sec. 307: "(b)" allowed the detailing of employees to civilian or other institutions, "(c)" empowered the Secretary of Commerce to conduct schools for training C.A.A. personnel. See S. Rep. No. 792, 81st Cong., 2nd Sess. (1949) and H.R. Rep. No. 2707, 81st Cong., 2nd Sess., (1950). Note the reference to "Secretary of Commerce" in conformance with Reorganization Plan No. 5 which had become effective May 24, 1950 vesting in the Secretary the powers previously exercised by the Administrator of Civil Aeronautics.

<sup>58</sup> Act of Sept. 9, 1950, 64 Stat. 825. Section S. Rep. No. 2359, 81st Cong., 2nd Sess. (1950) and H.R. Rep. No. 2981, 81st Cong., 2nd Sess. (1950).

<sup>59</sup> S. Rep. No. 2359, 81st Cong., 2nd Sess. (1950).

<sup>60</sup> *Ibid.*

<sup>61</sup> Act of September 29, 1950, 64 Stat. 1079. See also H.R. Rep. No. 3047, 81st Cong., 2nd Sess. (1950).

<sup>62</sup> *Ibid.*

<sup>63</sup> Act of June 14, 1951, 65 Stat. 65; See S. Rep. No. 128, 82nd Cong., 1st Sess. (1951) and H.R. Rep. No. 483, 82nd Cong., 1st Sess. (1951).

<sup>64</sup> H.R. Rep. No. 483, 82nd Cong., 1st Sess. 2 (1951).

<sup>65</sup> *Id.* at 2-4.

<sup>66</sup> Act of Oct. 11, 1951, 65 Stat. 406. See S. Rep. No. 838, 82nd Cong., 1st Sess. (1951) and H.R. Rep. No. 807, 82nd Cong., 1st Sess. (1951).

<sup>67</sup> Letter of Sept. 4, 1951 from CAB to Comm. on Interstate and Foreign Commerce, commenting on H.R. 5013, 82nd Cong., 1st Sess. found in U. S. Code Cong. & Ad. Service, 82nd Cong., 1st Sess. 1951, Vol. 2, p. 2339.

<sup>68</sup> Act of June 28, 1952, 66 Stat. 286; See S. Rep. No. 1788, 82nd Cong., 2nd Sess. (1952) and H.R. Rep. No. 1868, 82nd Cong., 2nd Sess. (1952).

<sup>69</sup> Act of July 14, 1952, 66 Stat. 628, 82nd Cong., 2nd Sess.; amending Sec. 411 and 902(d) of the C.A.A. of 1938 to include ticket agents therein, See H.R. Rep. No. 2420, 82nd Cong., 2nd Sess. (1952) and S. Rep. 1508, 82nd Cong., 2nd Sess. (1952).



<sup>70</sup> 99 Cong. Record 5992 (H.Doc. 160), 83rd Cong., 1st Sess., June 1, 1953. Also found in U.S. Code Cong. & Ad. News, 83rd Cong., 1st Sess., 1952, Vol. 1, p. 901.

<sup>71</sup> Act of May 19, 1955, 69 Stat. 49, 84th Cong., 1st Sess.; added paragraph (3) to Sec. 401(e) of the Act providing "grandfather clause" eligibility to the local service carriers. See S. Rep. No. 124, 84th Cong., 1st Sess. (1955), which contains thorough coverage on the purpose, amendments, need for legislation, and a brief history of the local service carriers. It also contains a detailed account of CAB opposition to the permanent certification of these carriers at that time (also discussed in this text, see next sentence *infra.*) H.R. Rep. No. 265, 84th Cong., 1st Sess. (1955), contains a list by States, of cities served by local service carriers at the time of this legislation and discusses the Defense Value of the Local Carriers. Also see Conference Rep. No. 486, 84th Cong., 1st Session, May 5, 1955. All three reports, Senate, House and Conference, are set forth in U.S. Code Cong. & Ad. News, 84th Cong., 1st Sess., 1955, Vol. 2 pp. 1902-1921.

<sup>72</sup> *Ibid.* Senate Report, see U. S. Code Cong. & Ad. News P. 1902.

<sup>73</sup> S. 2647, S. 3759 and H.R. 8898, bills introduced in 83rd Cong., 2nd Sess., 1954.

<sup>74</sup> These four points were presented in Statement of Chan Gurney, Chairman CAB, in *Hearings before House Comm. on Interstate and Foreign Commerce on H.R. 526 and H.R. 2225*, 84th Cong., 1st Sess., *Permanent Certificates for Local Service Air Carriers*, Feb. 23, 24, 25, 28 and Mar. 1, 1955, P. 135.

<sup>75</sup> Act of July 20, 1956, 70 Stat. 591, 84th Cong., 2nd Sess., adding paragraph (4) to Section 401(e) of the Act.

<sup>76</sup> Act of July 20, 1956, 70 Stat. 594, 84th Cong., 2nd Sess.; Title XIII was added June 14, 1951, 65 Stat. (See Footnote 63) and originally was to expire five years after enactment of the Title, thus the Title was extended for a total of ten years from original enactment placing the expiration date as June 14, 1961.

<sup>77</sup> Act of August 1, 1956, 70 Stat. 784, 84th Cong., 2nd Sess.; See S. Rep. No. 2013, H.R. Rep. No. 2183, Conference Rep. No. 2750, all 84th Cong., 2nd Sess. (1956).

<sup>78</sup> Act of August 26, 1957, 71 Stat. 415, 85th Cong., 1st Sess. See H.R. Rep. No. 610, 85th Cong., 1st Sess. (1957), which states reasons for legislation were similar to that granted earlier in the 84th Cong. to local service and territorial air carriers. Added Sec. 401 (e) (5) to Act.

<sup>79</sup> Act of April 9, 1958, 72 Stat. 84, See S. Rep. No. 1144, (1957); H.R. Rep. 980 (1957) and Conference Rep. No. 1548 (1958), all three reports 85th Cong., 2nd Sess.

<sup>80</sup> *Ibid.*

<sup>81</sup> *Ibid.*

<sup>82</sup> S. Rep. No. 1811, 85th Cong., 2nd Sess. 21-22, 33 (1958). Also see H.R. Rep. No. 2360, 85th Cong., 2nd Sess. 10-11 (1958) and H.R. Rep. No. 2556 (Conference Report), 85th Cong., 2nd Sess. 90 (1958).

<sup>83</sup> *Ibid.*

<sup>84</sup> *Id.* H.R. Rep. No. 2360 at 10.

<sup>85</sup> The power to permit the navigation of foreign aircraft in the United States, formerly in Section 6(b) of the Air Commerce Act of 1926 is found in Section 1108(b) of the FAA of 1958 without change.

<sup>86</sup> See Sections 312(c) and 1401(d) of FAA of 1958.

<sup>87</sup> Of value, in comparing these two Acts, from the standpoint of how comparable Sections differ as to the printed word, is a Committee Print, Senate Interstate and Foreign Commerce Committee, 85th Congress, 2nd Sess. (printed in 1959) entitled: *Federal Aviation Act of 1958, Comparative Print Showing Differences between the Civil Aeronautics Act of 1938 and the Federal Aviation Act of 1958*. What is meant by this is that the *Comparative Print* has no discussion whatsoever as to why these changes were made but simply shows what words were deleted, what words were added, etc.

<sup>88</sup> Sec. 101.

<sup>89</sup> S. Rep. No. 1811, 85th Cong., 2nd Sess. 1 (1958).

<sup>90</sup> Public Law 447, 82nd Congress, approved July 3, 1952, 66 Stat. 327.

<sup>91</sup> H.R. Rep. No. 2360, 85th Cong., 2nd Sess. 11 (1958).

<sup>92</sup> Following passage of the FAA of 1958, Congressman Roberts (Ala.) introduced a Bill, H.R. 13768, 85th Cong., 2nd Sess., on August 14, 1958 to include parachutists in the definition of "airman" but his effort failed.

<sup>93</sup> Sec. 102.

<sup>94</sup> Sec. 103.

<sup>95</sup> Sec. 104.

<sup>96</sup> "Though it remains to be seen how the CAB will take this new Congressional suggestion, there is already some speculation that this idea of 'promotion' might be interpreted as authorizing the Board, for example, to subsidize an all-cargo airplane, or to underwrite research and development work." *Aviation Daily*, Vol. 118, No. 15, Sept. 22, 1958, p. 181.

<sup>97</sup> H.R. Rep. No. 2556, 85th Cong., 2nd Sess. 90 (1958).

<sup>98</sup> Sec. 201.

<sup>99</sup> Sec. 201 and Sec. 1401(c).

<sup>100</sup> Sec. 201(a) (1).

<sup>101</sup> Sec. 202(a).

<sup>102</sup> Sec. 202(b).

<sup>103</sup> Sec. 202(d), See H.R. Rep. No. 2360, 85th Cong. 2nd Sess. 12 (1958).

<sup>104</sup> Sec. 301 and 302. The Conference Report, [H.R. Rep. No. 2556, 85th Cong., 2nd Sess. (1958)] p. 87, states: "The requirement in Section 301(b) that the Administrator be a civilian at the time of his nomination means that he shall be a civilian in the strictest sense of the word. Thus, at the time he is nominated he may not be in the active or retired list of any regular component of the armed services or be on extended active duty in or with the armed services." President Eisenhower, in appointing E. R. (Pete) Quesada as Administrator, referring to the fact that the newly appointed Administrator would have to resign his commission as a Lt. General on the retired list of the regular Air Force stated:

"The fact that a man of Mr. Quesada's qualifications is obligated to resign his retired status in the Regular Air Force to comply with the letter of the law so he can again serve his country does not, in my opinion, seem logical or desirable. I hope that the Congress, when it convenes in January, will adopt legislation which will restore him to the status he had prior to his resignation and, at the same time permit him to serve as Administrator." (Aviation Daily, Vol. 118, No. 22, Oct. 1, 1958, page 261).

Congress authorized the Pres. to restore Quesada's retirement pay and privileges when he left the agency by passing S. 2500 in the 86th Cong. 1st Sess. (Sept. 8, 1959). One major point of difference between the Senate Bill and the House Amendment concerned the matter of military status or background of the Deputy Administrator in any case where the Administrator is a former Regular Officer of one of the armed services. Section 302(b) of the Bill as passed by the Senate provided that nothing in the Act or other law should preclude appointment to the position of Deputy Administrator of an officer on active duty with the armed services. The House retained this provision, but added an exception, as follows:

"except that if the Administrator is a former regular officer of any one of the armed services, the Deputy Administrator shall not be an officer on active duty with one of the armed services or a retired or resigned regular officer of one of the armed services."

This exception is retained in the final Act with a slight clarifying change, so that it now reads:

"except that if the Administrator is a former regular officer of any one of the armed services, the Deputy Administrator shall not be an officer on active duty with one of the armed services or a retired regular officer or a former regular officer of one of the armed services." (H.R. Rep. 2556, 85th Cong., 2nd Sess. 86-87 (1958)).

<sup>105</sup> Sec. 301 and 302.

<sup>106</sup> Sec. 307(a). Note: The President's power to set apart airspace reservations which was found in Sec. 4 of the Air Commerce Act of 1926 (44 Stat. 568) is abolished since that Section is repealed (See Sec. 1401 of FAA of 1958). The repeal of Sec. 4 of the Air Commerce Act also deprives the States of their power to establish airspace reservations.

<sup>107</sup> Sec. 307(b).

<sup>108</sup> Sec. 307(c).

<sup>109</sup> Sec. 312.

<sup>110</sup> Sec. 308(b). For full discussion of airport site control see S. Rep. No. 1811, 85th Cong. 2nd Sess. 16-17 (1958).

<sup>111</sup> Sec. 309.

<sup>112</sup> Sec. 307(e) and (f).

<sup>113</sup> Sec. 302(c). Note comment in S. Rep. No. 1811, 85th Cong., 2nd Sess. 18 (1958): "Two aspects of military participation deserves particular comment here however. First, it is intended that the armed services personnel assigned or appointed to positions in the Agency should be an integral part thereof, subject to full supervision by the Administrator and responsible to him alone in the performance of their functions. Such personnel are not intended to act in a mere liaison capacity . . . Secondly, military participation is intended to be restricted to those functions involving true joint civil-military interests. It is not intended to apply to the Agency's essentially civil responsibilities under the safety regulatory provisions of Title VI, or with regard to the administration of Federal aid to civil airports under the Federal Airport Act, for example."

<sup>114</sup> Sec. 304.

<sup>115</sup> S. Rep. No. 1811, 85th Cong., 2nd Sess. 19 (1958).

<sup>116</sup> Witnesses at the hearings expressed the apprehension that with respect to his airspace functions the Administrator could be relegated to occupying just another chair on either existing or future aviation coordinating committees and panels. See S. Rep. No. 1811, 85th Cong., 2nd Sess. 15 (1958).

<sup>117</sup> *Ibid.*

<sup>118</sup> For example, the "grandfather clauses," Section 401(e) of the CAA of 1938 have been deleted.

<sup>119</sup> 99 Cong. Record 5992 (H. Doc. 160), 83rd Cong. 1st Sess., June 1, 1953. Also found in U.S. Code Cong. & Ad. News, 83rd Cong. 1st Sess, 1952, Vol. 1, p. 901.

<sup>120</sup> S. 3016, 85th Cong.

<sup>121</sup> E. R. Quesada, Special Assist. on Aviation Matters to the President and Chairman of Airways Modernization Board; Hon. Louis S. Rothschild, Under Secretary for Transportation, Dept. of Commerce; James T. Pyle, Administrator of Civil Aeronautics, Dept. of Commerce; and Hon. Malcolm A. MacIntyre, Under Sec. of the Air Force, Dept. of Defense.

<sup>122</sup> Though most of the industry supported this transfer, some, such as the Air Line Pilots Assn., called for a provision granting the Board power to review the rules made by Administrator. See testimony of C. Sayen, Pres. A.L.P.A., Hearings on S. 3880 before Subcommittee on Aviation of the Senate Comm. on Interstate and Foreign Commerce, 85th Cong., 2nd Sess. at 91-97 (1958).

<sup>123</sup> "In our judgment, rule making should not be a major responsibility of the agency charged with the management of facilities and services.

Only a regulatory commission responsible directly to the Congress is able to furnish the collective judgment which will best insure the protection of the rights and interests of all concerned. Within such a regulatory commission the responsibility for the making of regulatory policy should be vested.

It is difficult to believe that Congress would be willing to transfer to the executive branch the quasi-legislative rule making functions which it has seen fit to vest in the Civil Aeronautics Board. Let there be no mistake about this—the Federal Aviation Agency as proposed in S. 3880 is not an independent agency, answerable only to the Congress. Its only independence is from the Secretary of Commerce; it would be a part of the executive branch of the Government." Statement of James R. Durfee, Chairman, CAB, accompanied by Members G. Joseph Minetti, Harmar D. Denny, and Louis J. Hector, and Director of Bureau of Safety Oscar Bakke, and Assist. Gen. Counsel Ross Newmann in *Hearings before SubComm. on Aviation of Comm. on Interstate and Foreign Commerce, U.S. Senate, on S. 3880, 85th Cong., 2nd Sess., Fed. Aviation Agency Act*, May 22, 23, June 4, 5, 16, 17, and 18, 1958, P. 183.

<sup>124</sup> S. Rep. No. 1811, 85th Cong., 2nd Sess. 10-11 (1958).

<sup>125</sup> *Id.* at 11.

<sup>126</sup> A good discussion on this point is found on pages 33-38 of the Senate Hearings (*Hearings before Subcomm. on Aviation of Comm. on Interstate and Foreign Comm. U.S. Senate, 85th Cong., 2nd Sess. on S. 3880, Federal Aviation Act*, May 22, 23, June 4, 5, 16, 17, and 18, 1958, between Mr. Stuart G. Tipton, Pres. ATA and Sen. Monroney, Chairman of the Subcommittee.)

<sup>127</sup> Sec. 602(b).

<sup>128</sup> *Ibid.*

<sup>129</sup> Sec. 609. The Administrator also retains the power to impose civil penalties, Sec. 901.

<sup>130</sup> See H.R. Rep. No. 2360, 85th Cong., 2nd Sess. 8, 17 (1958).

<sup>131</sup> Sec. 701(a).

<sup>132</sup> Sec. 601(c) of the Civil Aeronautics Act of 1938.

<sup>133</sup> Sections 701(f), (g).

<sup>134</sup> S. Rep. No. 1811, 85th Cong., 2nd Sess. 12 (1958).

<sup>135</sup> Sec. 702 (a), (b).

<sup>136</sup> Sec. 702(c).

<sup>137</sup> For a general discussion of the sections of Title VII see *Senate Hearings on S. 3880, Fed. Avia. Agency Act*, 85th Cong., 2nd Sess., May 22, 23, June 4, 5, 16, 17, 18, 1958, pp. 156-163, primarily comments of Sen. Monroney and Mr. Quesada.

<sup>138</sup> Sec. 801.

<sup>139</sup> Sec. 802.

<sup>140</sup> Sec. 803.

<sup>141</sup> Air Commerce Act of 1926, 44 Stat. 568 as amended.

<sup>142</sup> Note similar provision in Sec. 902(f) discussed under Title IX.

<sup>143</sup> Air Commerce Act of 1926, 44 Stat. 568 as amended.

<sup>144</sup> See H.R. Rep. No. 2360, 85th Cong., 2nd Sess. 19 (1958).

<sup>145</sup> *Ibid.*

<sup>146</sup> June 13, 1961.