

1940

Federal

Follow this and additional works at: <https://scholar.smu.edu/jalc>

Recommended Citation

Federal, 11 J. AIR L. & COM. 281 (1940)
<https://scholar.smu.edu/jalc/vol11/iss3/5>

This Current Legislation and Decisions is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

FEDERAL

OFFICIAL INTERPRETATIONS OF REORGANIZATION

PLAN IV

So much has been said and so much written about the effect of Plan IV on the Civil Aeronautics Authority (now the all-inclusive name for the Civil Aeronautics Board and the Administrator of Civil Aeronautics) that the three official documents released in connection with Plan IV have historical, legal and practical significance. They are as follows:

President's Press Release¹

APRIL 30, 1940.

Since the transmittal of Reorganization Plans Nos. III and IV, a flood of misinformation has engulfed those sections dealing with the Civil Aeronautics Authority. Much of this has fallen of its own absurdity and needs no comment. This morning, however, we saw a group of well-intentioned people staking out an exclusive claim to a so-called lobby to save lives.

The implication that we are not interested in saving lives, which is certainly contradicted by the record of our progress in civil aviation during recent years, compels me to restate in simple terms the basic features of the reorganization plans affecting the Civil Aeronautics Authority.

I might say here that everybody is for the abstract idea of reorganization in the interest of increased efficiency and economy. However, there is a rather discouraging collapse of enthusiasm when concrete proposals are made. In selfish protection of their own special interests we always find particular groups who hitherto favored reorganization arising in protest.

As it now stands there are three agencies—the Civil Aeronautics (five members) Authority, the Administrator, and the Air Safety Board—all autonomous groups, none of them represented at the Cabinet table. The inherent problems confronting them were intensified by friction, particularly within the Air Safety Board. For 5 months the Administrative Management Division of the Budget Bureau made a study, at my request, of the operation of the Authority. It became obvious that a change was imperative if we were to continue to move forward in civil aviation. Here, in simple summary, is the proposal:

1. Despite handicaps, the Federal program for civil aeronautics has now achieved a stature and an importance which justify bringing this program more closely into the Federal family. The proposal will place it within the framework of the Department of Commerce where it will have a closer relationship with the important reporting services of the Weather Bureau and the essential air navigation chart service of the Coast and Geodetic Survey. More than that, it will provide representation at the Cabinet table for a program of basic significance to our national transportation and our national defense. Present

1. Printed at page 8636 Congressional Record (Appendix) of May 6, 1940 upon unanimous consent obtained by Senator James F. Byrnes of South Carolina. Mr. Byrnes is chairman of the Senate Select Committee on Government Reorganization.

world conditions make the merit of this phase of the proposal obvious.

2. The present five-member Authority, which has received such widespread praise, remains as an independent Civil Aeronautics Board performing the basic regulatory functions. It will continue to appoint and control its own personnel and submit its own budget.

3. Certain of the Authority's functions are transferred to the Administrator to eliminate a blind spot created by the failure of the Civil Aeronautics Act of 1938 to carry out the intention of Congress to distinguish clearly between the functions of the Administrator and the Authority.

4. The function of investigating accidents is transferred to the Civil Aeronautics Board which, unlike the present Air Safety Board, will not be helpless to take positive steps toward preventing the recurrence of accidents. Unlike the Air Safety Board, the Civil Aeronautics Board will have the power to prescribe air-safety rules, regulations, and standards, and to suspend or revoke certificates after hearing. Not only does this continue the present independence of accident investigation, but it also makes possible prompt translation of findings into corrective action.

5. Not only are we advancing the cause of air safety by these changes but we will also realize appreciable savings. Several highly paid positions on the Air Safety Board will be eliminated and other economies made possible.

Letter of the Director of the Bureau of the Budget to the Chairman and Administrator of the Civil Aeronautics Authority and to the Secretary of Commerce, and the Opinion of the Attorney General.²

EXECUTIVE OFFICE OF THE PRESIDENT,
BUREAU OF THE BUDGET,
Washington, D. C., May 2, 1940.

HON. ROBERT H. HINCKLEY,
Chairman, Civil Aeronautics Authority,
Washington, D. C.

MY DEAR MR. HINCKLEY: If Congress takes no adverse action on Reorganization Plans III and IV, the effectuation of these plans will require that the Director of the Bureau of the Budget, subject to the approval of the President, determine the necessary transfers of funds. In view of the limited time available and because of certain questions arising out of the complexity of the Civil Aeronautics Act, the Bureau of the Budget has consulted with the Department of Justice in order to establish a sound basis for the distribution of the available appropriation balances of the Civil Aeronautics Authority. The Attorney General has agreed to the following interpretive statements concerning the civil aeronautics provisions of the two plans:

1. Plan III centralizes in the Administrator, who is hereafter to be known as the Administrator of Civil Aeronautics, those functions that are essentially of an administrative character as distinguished from those relating to economic regulation; the prescription of safety standards, rules, and regulations; and the suspension and revocation of certificates after hearing. Thus, in addition to the functions now vested in the Administrator by the Civil Aeronautics Act of 1938, he will be responsible for the administration of the Civilian Pilot Training Act of 1939; the issuance and amendment of airman, aircraft, and

2. Printed at page 8638 Congressional Record (Appendix) of May 6, 1940 upon unanimous consent obtained by Senator James F. Brynes of South Carolina. Also to be found at pages 12-12 of the pamphlet copy of the Senate hearings on the Resolution disapproving Plan IV.

air-carrier certificates; emergency suspension of certificates; the registration of aircraft including the recordation of conveyances; the enforcement of safety rules, regulations, and standards; and the control of notification as to hazards to air commerce.

2. Plan III divests the Authority of all control it now has over the personnel and expenditures of the Administrator.

3. Plan III leaves the Authority with all the functions described in title 4 (Air carrier economic regulation) of the Civil Aeronautics Act; such of those functions described in title 5 (nationality and ownership of aircraft), and title 6 (civil aeronautics safety regulation) as relate to the prescription of safety standards, rules, and regulations, and the suspension and revocation of certificates after hearing; and the functions vested in the Authority by section 205 (a) and title 10. In connection with the suspension and revocation of certificates, it should be noted that a waiver of a hearing would not operate to deprive the Authority of its jurisdiction.

4. In performing air-safety work, the Administrator will be bound by the rules of the Authority and the extent of his administrative discretion will be entirely dependent upon the rules so prescribed.

5. While the Administrator may submit recommendations to the Board as to safety rules, regulations, and standards, it is anticipated that the Board will have adequate technical facilities for arriving at its own independent determination as to the soundness of such recommendations, and for developing such material on its own initiative.

6. In order to eliminate the existing confusion in terminology, Plan IV provides that the present 5-member Authority shall hereafter be known as the Civil Aeronautics Board, and employs the term Civil Aeronautics Authority, merely as an over-all designation for the Administrator of Civil Aeronautics and the Civil Aeronautics Board.

7. Plan IV transfers to the Civil Aeronautics Board all functions now performed by the Air Safety Board.

8. In performing its functions, including those mentioned above, the Civil Aeronautics Board will be entirely independent of and in no way subject to control by the Department of Commerce or the Secretary thereof. This independence is specifically referred to in two separate paragraphs of plan IV.

9. The requirement in plan IV that the Board report to Congress and the President through the Secretary of Commerce provides for the routing of such documents through the Secretary so that he may have an opportunity to examine them and append such comments as he may wish to make. This provision does not imply that the Secretary may in any way delete or revise the reports and recommendations of the Civil Aeronautics Board.

10. In providing that the routine management functions of the Board shall be performed under the direction and supervision of the Secretary of Commerce through such facilities as he shall designate or establish, plan IV is designed to prevent the uneconomical duplication of such facilities by the Board, the personnel of which will be relatively small. This provision is not intended to divest the Board of its authority to appoint and control all of its personnel, to authorize expenditures, or to determine and support the Budget estimates that are submitted to the Bureau of the Budget. As stated in the President's message, its purpose is to make available to the Board, in the interest of efficiency, departmental services in connection with these functions.

11. The Board is left with full authority to make its contacts with other

agencies of the Federal Government and with State and foreign governments. It is reasonable to assume that the Board will make the necessary arrangements with the Secretary of Commerce so as to coordinate such contacts with those made by the Administrator and thereby minimize duplication of effort.

12. Those functions of the secretary of the Authority which relate to the maintenance of dockets and the keeping of minutes cannot be regarded as routine management functions and will, therefore, remain directly under the Board.

13. Plan IV obviously contemplates that the Board will have its own legal and other technical facilities. Any other interpretation would be in direct conflict with the independence which is to surround the Board's determinations.

14. In connection with the investigation of air accidents, the Board, pursuant to the statutory prescription of the duties of the present Air Safety Board, will furnish the Administrator of Civil Aeronautics with copies of any reports or recommendations that relate to the functions vested in the Administrator.

15. The compromise of civil penalties for violations of titles 5 and 6 becomes a function of the Administrator, since it must be regarded as an integral part of the responsibility for the enforcement of these provisions. On the other hand, the Board will have the power to make compromises involving violations of title 7.

16. As contrasted with the Civil Aeronautics Board, the Administrator will be under the direction and supervision of the Secretary of Commerce.

I feel certain that this interpretation is in full accord with what was envisaged by the President in submitting the reorganization proposals to Congress. Identical copies of this letter are being sent to the Secretary of Commerce and the Administrator of the Civil Aeronautics Authority.

Yours sincerely,

HAROLD D. SMITH, *Director*.

OFFICE OF THE ATTORNEY GENERAL,
Washington, D. C., May 2, 1940.

HON. HAROLD D. SMITH,
Director of the Bureau of the Budget,
Washington, D. C.

MY DEAR MR. DIRECTOR: I have examined your letter of this date to the Secretary of Commerce in which you set forth your interpretation of the provisions of Reorganization Plans III and IV relating to the Civil Aeronautics Authority, and I agree with the conclusions reached by you.

Respectfully,

ROBERT H. JACKSON, *Attorney General*.

Report of Bureau of the Budget³ Recommending Plan IV After a Study Made at the Request of the President.

Summary of Civil Aeronautics Study

This memorandum summarizes the major findings of the study made by the Division of Administrative Management relative to the Civil Aeronautics Au-

3. Printed at pages 8665-8667 Congressional Record (Appendix) of May 6, 1940 upon unanimous consent obtained by Representative John J. Cochran of Missouri. Mr. Cochran is Chairman of the House Select Committee on Government Reorganization. This report was also published in the New York Times of Saturday, May 4, 1940 at page 8. The Report bears no date. The report seems to use the term "Authority" to designate the 5-member board, unless otherwise specifically indicated.

thority. This study, which began on December 4, 1939, was undertaken at the request of the President, who was anxious to ascertain the basic causes of certain administrative problems that had manifested themselves in connection with the operations of the Authority. As the study progressed, it became evident that there were several structural inadequacies in the framework established by the Civil Aeronautics Act of 1938 which could be remedied only by legislative action or through the exercise of the authority conferred by the Reorganization Act of 1939. The following discussion is arranged according to the three major changes recommended for inclusion in reorganization plans.

Redefinition of Responsibilities Between Authority and Administrator

The Civil Aeronautics Act of 1938 established an Authority consisting of three agencies that are basically autonomous: A five-member board known as the Civil Aeronautics Authority, an Administrator, and the Air Safety Board consisting of three members. In defining the relative jurisdiction of the Authority and the Administrator, the act very definitely attempted to draw a sharp line of demarcation between administrative functions and those of a quasi-legislative and quasi-judicial character. However, certain inconsistencies and ambiguities were inadvertently included within the act.

More specifically, the following are some of the statutory flaws that have tended to impede the administration of the functions vested in the Administrator and the Authority. In the first place, the act is confusing because of the fact that the term "Civil Aeronautics Authority" is employed in two conflicting senses. (In order to avoid confusion, this memorandum uses the term "Authority" to designate the five-member Board, unless otherwise specifically indicated.) In certain paragraphs it means the five-member Board, while in others it denotes the over-all agency, consisting of this Board, the Administrator, and the Air Safety Board. Of much more significance is the fact that the act falls far short of delineating functions according to the theory upon which this legislation is predicated. Furthermore, the law creates an overlapping of administrative responsibilities that cannot be reconciled with any sound separation of rule-making and adjudicative functions from those of an administrative nature.

Thus, the authority is made responsible, not only for the prescription of safety rules, regulations, and standards but also for their actual enforcement. It could hardly be contended that inspectional and related enforcement activities properly come within the purview of an agency designed to function solely in a quasi-legislative and quasi-judicial capacity. The confusion is accentuated by provisions requiring that the Authority approve purchases and expenditures of the Administrator, that the Administrator consult with the Authority as to plans regarding air-navigation facilities, and that the Administrator report to Congress through the Authority. In view of this confusion, it is not surprising that the Civilian Pilot Training Act of 1939 completely disregards the attempted segregation of administrative functions and designates the Authority as the agency for carrying out this extensive training program. This activity manifestly has no aspects that even remotely impinge on the rule-making and adjudicative processes.

Fortunately the Authority has recognized the administrative weaknesses inherent in these statutory provisions and has taken full advantage of the authority vested in it to assign certain of its functions to the Administrator

In fact, it has found it necessary to circumvent the prohibition against the delegation of any safety work to the Administrator and has accomplished this by setting up the separate position of Supervisor and having the Administrator also serve in that capacity. While such an arrangement may be satisfactory as a temporary palliative, it is entirely too tenuous to be continued for any extended period of time. Indicative of the absence of any substantial foundation for a truly sound organization is the fact that during its existence of less than 2 years the Authority has adopted at least five different organization plans.

It is essential to reallocate the functions of the Administrator and Authority so as to carry out the original intent of Congress, eliminate organizational defects which have tremendous potentialities for friction and inefficiency, and afford a more stable basis for organizational planning than the existing understanding between the Authority and the Administrator. It is recommended that plan III transfer to the Administrator the following functions now vested in the Civil Aeronautics Authority:

- (a) Administration of the Civilian Pilot Training Act of 1939.
- (b) Aircraft registration and safety regulation as described in titles V and VI of the Civil Aeronautics Act, except the functions of prescribing safety standards, rules and regulations, and of suspending and revoking certificates after hearing.
- (c) The authority to require notices as to hazards to air commerce; and
- (d) The appointment of officers and employees and the authorization of such expenditures and travel as may be necessary for the performance of all functions vested in the Administrator.

Such a redefinition of functions would eliminate jurisdictional questions, would make the Authority and Administrator truly independent of each other, and would establish the Authority as a real rule-making and adjudicative agency entirely free of functions extraneous to and in conflict with these two responsibilities.

Reorganization of Air Safety Functions

In establishing the Air Safety Board, the Civil Aeronautics Act recognized the desirability of providing for the independent investigation of air accidents so that findings would not be colored by attempts to cover up administrative shortcomings. As established by the act, the Air Safety Board merely investigates accidents and formulates recommendations, but can take no positive remedial steps.

This arrangement is not conducive to the ready translation of accident investigation findings into real action. On the contrary, such an agency over a period of years might well become extremely captious in its attitude and be much more interested in developing an extensive paper record of recommendations than in actual promotion of safety. It has already been demonstrated that such a device has definite potentialities for friction and leaves the investigative agency without an adequate incentive for the speedy investigation of accidents and the development of recommendations. Such an agency would have a much more challenging task if it were required to go beyond the mere investigation and take positive steps toward preventing the recurrence of such accidents. The investigative agency could make a much more substantial contribution to the advancement of air safety if it were implemented with authority to prescribe and revise safety rules and with the power to suspend and rescind certificates issued to carriers and aircraft personnel. Armed with these addi-

tional prerogatives, the agency could constantly improve the air-safety rules on the basis of its investigations and could take necessary disciplinary action, thus making its recommendations much more than mere expressions as to what should be done.

If the Civil Aeronautics Authority is established as a purely rule-making and adjudicative agency, and if its independent status is maintained, it seems entirely logical and highly desirable that the Authority and the Air Safety Board be combined. This would place real power at the disposal of the investigative agency and at the same time keep the investigations completely separate from the Administrator, who would be responsible for the enforcement of air-safety regulations. As it is pointed out in the next section, such a rule-making, adjudicative, and investigative agency can be placed within the framework of one of the executive departments simply to make available the usual departmental service facilities without in any way impairing the independent exercise of the agency's substantive functions. It is recommended that plan IV embody a provision consolidating the functions of the Air Safety Board with those of the Civil Aeronautics Authority and changing the title of the latter to the Civil Aeronautics Board. Such a change should facilitate still further progress in the advancement of air safety, which is the basic factor in the development of air transportation.

Transfer to Department of Commerce

The existing arrangement which places promotion and regulation of aviation entirely outside of the regular executive establishment can be looked upon only as a temporary device to be used during a transitional period. The defense and commercial implications of civil aviation make it imperative that the President be currently apprised of any significant developments and that he at all times be in a position to integrate this function with related governmental activities. The need for establishing and maintaining such a relationship may be better appreciated if it is realized that the estimated Federal expenditures which will be incurred during the current fiscal year for civil aviation total more than \$108,000,000, which total is made up of the following items:

1940 Estimated Expenditures

Civil Aeronautics Authority	1\$25,518,000
W. P. A. and P. W. A. funds for airport construction; and for C. A. A. emergency relief administration expenses.....	43,901,992
Total C. A. A., W. P. A., and P. W. A.....	69,419,922
Domestic air-mail deficiency.....	8,260,000
Foreign air-mail deficiency.....	6,293,000
Weather Bureau: airway weather service and research.....	\$3,469,000
Total net expenditures ²	87,441,992
Air-mail expenditures offset by revenues.....	20,600,000
Total gross expenditures.....	108,041,992

¹Includes \$4,000,000, Civilian Pilot Training program.

²Excludes National Advisory Committee for Aeronautics and Army, Navy, and Coast Guard.

This vast sum definitely negates the thought that in dealing with civil aviation the Federal Government is concerned with a purely private endeavor. On the contrary, air commerce is vitally dependent upon the tremendous financial assistance given by the Federal Government. If the Federal Government's financial participation is to reflect a proper balance between the public and private interests in air commerce facilities, it is essential that the program be continually reviewed on behalf of the President by a Cabinet officer, who would have a broader perspective than can be expected of officers who are focusing their entire attention on the one industry. Such an official could also serve as the instrumentality for expediting the flow of aviation data to the President, whose contacts with the Authority are now necessarily of an intermittent character.

The survey findings point to the desirability of transferring the aviation function to the Department of Commerce, while at the same time keeping the rule-making, adjudicative, and investigative work of the Civil Aeronautics Board entirely free of any control by the Secretary of Commerce. In fact, the Board would be placed within the Department merely so that the Secretary of Commerce might serve as a contact point between the Board and the Administrator of Civil Aeronautics and in order that the Department can act as a service agency in handling the accounting, budgeting, personnel, and other routine management functions of the Board. It would be distinctly advantageous for the Department to function in this capacity for the Board since the latter will be a relatively small establishment in terms of personnel and could not economically afford to maintain its own facilities for handling those administrative details that in no way involve policy or other determinations.

The Administrator of Civil Aeronautics, whose functions are entirely administrative in character, should be subject to direction and supervision by the Secretary of Commerce. The latter will thus be in a position to inform and advise the President as to the establishment and maintenance of airway facilities and the enforcement of safety regulations. Furthermore, the transfer of the Weather Bureau to the Department of Commerce, which has been recommended as the result of a separate study, will facilitate the integration of the work of that Bureau with the airway facility activity. It need hardly be pointed out that the services rendered by the Weather Bureau are indispensable to airway operations. It is to be further noted that the Coast and Geodetic Survey of the Department of Commerce makes a vital contribution to the field of aeronautics through the preparation of aeronautical charts.

On the other hand, the Secretary of Commerce will have no jurisdiction over air-carrier economic regulation, the prescription of air safety rules, regulations, and standards, the investigation of air accidents, and the suspension or revocation of certificates after hearing. This division of responsibilities will surround the civil aviation program with adequate checks and balances and at the same time eliminate certain features which serve no purpose other than to inject confusion into the administration of this highly important function of the Government.

In order to effectuate these recommendations, Reorganization Plan IV should place the Administrator of Civil Aeronautics under the direction and supervision of the Secretary of Commerce and should provide that the Administrator and the Civil Aeronautics Board shall constitute the Civil Aeronautics Authority within the Department of Commerce. This change in terminology would obviate the existing confusion as to the meaning of the term "Authority,"

since hereafter that would refer solely to the over-all function. It is further proposed that the plan maintain the complete independence of the Civil Aeronautics Board in the performance of its substantive functions and that, insofar as the Board is concerned, the Department of Commerce be restricted to furnishing routine management services. Finally, it is contemplated that the Civil Aeronautics Board report to Congress and the President through the Secretary of Commerce.

Desirability of Effecting Change at this Time

In view of the fact that the Civil Aeronautics Authority was established as recently as 1938, the question might be raised as to the desirability of effecting a change at this time, particularly since such a fine safety record has been achieved by the air lines. These facts lead one to the exclusion of theoretical considerations in formulating a plan of action. However, even after this is done, one is faced with the very realistic finding that the present organization structure of the Civil Aeronautics Authority has been productive of confusion and friction which have manifested themselves in problems presented to the President. This condition, although not readily discernible to an outsider, threatens to become increasingly serious.

The suggestions submitted herein do not represent a reversal of the Civil Aeronautics Act of 1938 but, on the contrary, are designed to correct certain deficiencies revealed by actual experience, and thus carry out more adequately the basic administrative concept upon which the act is premised. In other words, this will provide a much more efficient organization for the administration of all existing functions. The danger of deferring any revision of the Civil Aeronautics Authority reorganization is well demonstrated by the experience with the Civilian Pilot Training Act to which reference has already been made. This bears out the conclusion that the effects of these statutory inconsistencies and ambiguities will definitely cumulate rather than abate. Finally, the existing international situation makes it of all the more moment that everything be done to facilitate Presidential leadership in the administrative aspects of the civil aviation program. To regard civil aviation as something entirely apart from the aviation facilities of the Army and Navy would completely overlook the realities of the situation.

**NOTICE REQUIRED OF CONSTRUCTION OR ALTERATION
OF STRUCTURES ON OR NEAR CIVIL AIRWAYS***

To further insure the safe navigation of aircraft over the Federal Airways System, the Civil Aeronautics Authority on May 17 adopted regulation serial No. 76 requiring that notice be given of the construction or alteration of structures on or near civil airways, to become effective July 16, 1940.

The provisions of the regulation are as follows:

"SECTION 1. Any person who engages in the construction or alteration of any structure located within 3 miles of the nearest boundary of any landing area along or within 10 miles of a civil airway, which structure or any part thereof is already, or may become by reason of such construction or alteration, of a

*This is the first regulation to be issued under section 1101 of the Civil Aeronautics Act of 1938 which reads as follows:

HAZARDS TO AIR COMMERCE

SEC. 1101. The Authority shall, by rules and regulations, or by order where necessary, require all persons to give adequate public notice, in the form and manner prescribed by the Authority, of the construction, or alteration or of the proposed construction or alteration, of any structure along or near the civil airways where notice will promote safety in air commerce.

height, above the level of the landing area, greater than one-fiftieth of the distance of the structure from the nearest boundary of the landing area, shall, prior to the beginning of such construction or alteration, give written notice thereof to the Civil Aeronautics Authority and to the manager or person in charge of such landing area: *Provided*, That this regulation shall not apply to any structure which is less than 5 feet in height above the level of the landing area.

"SEC. 2. The notice shall be given at least 15 days prior to the date on which construction or alteration is to begin. The notice shall contain: (a) The approximate date upon which, by reason of the construction or alteration, the height of any part of the structure above the level of the landing area will exceed one-fiftieth of its distance from the nearest boundary of the landing area; (b) a detailed description of the location of the structure or the site thereof with reference to the landing area, including the direction and distance therefrom; and (c) a general description of the structure when completed, including a statement of maximum height above the level of the landing area: *Provided*, That in the case of an emergency requiring the immediate construction or alteration of any such structure such information may be given to the nearest inspector of the Authority and to the airport manager by telephone, telegraph, or in person, and the written notice submitted thereafter.

"SEC. 3. As used in these regulations the term 'landing area' shall mean any landing area, as defined in section 1 (22) of the Civil Aeronautics Act of 1938, which is equipped for the operation of aircraft at night or which has a landing surface at least 2,000 feet long and at least one permanent building devoted to aeronautical purposes.