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# ENFORCEMENT OF AIR SAFETY REGULATIONS

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## I.

FOR the past two decades, from the enactment of the Air Commerce Act of 1926 until the present, the Executive Branch of the Federal Government has been charged, in addition to other duties, with the responsibility of prescribing and enforcing regulations designed to secure the maximum of safety in, as well as the encouragement and development of, civil aviation. This responsibility has included authority to prescribe and enforce air safety regulations. From 1926 until the passage of the Civil Aeronautics Act of 1938 when these functions and additional ones were given to the Civil Aeronautics Authority, the Bureau of Air Commerce of the Department of Commerce was charged with these responsibilities. In 1940, under authority of the Reorganization Act of 1939, the quasi-legislative function of prescribing regulations was separated from the function of enforcing air safety regulations. Since that time the power to prescribe air safety regulations has been held by the Civil Aeronautics Board, and the Civil Aeronautics Administration has been charged with the duty of enforcing such regulations. During these past 20 years, there has been evolved, within the statutory framework provided by Congress, a definite pattern of enforcement. It is the purpose of this paper to examine this pattern and to note the factors influencing its evolution with a view to ascertaining the trend of its future development.

## II. FEDERAL JURISDICTION OVER CIVIL AVIATION

With the enactment of the Air Commerce Act of 1926, Congress placed the Federal Government in the field of regulating safety in civil aviation. In 1938, by the passage of the Civil Aeronautics Act, the Congress reaffirmed its prior position and expanded the jurisdiction of the Federal Government over the regulation of civil aeronautics. We are here concerned, however, with the regulation and enforcement of civil aeronautics from the safety point of view and, in particular, the enforcement of air safety regulations, which is the primary responsibility of the Civil Aeronautics Administration. We are not considering here the responsibility for economic regulation of civil aviation which, under the Civil Aeronautics Act of 1938, as amended, is the primary duty of the Civil Aeronautics Board.

The basic statutory provisions of the Civil Aeronautics Act of 1938, as amended, which establish the jurisdiction for air safety regulation,

are found in Title VI of the Act.<sup>1</sup> Section 610 (a) of that Title makes it unlawful "For any person to serve in any capacity as an airman in connection with any civil aircraft used in air commerce without an airman certificate authorizing him to serve in such capacity" or "For any person to operate aircraft in air commerce in violation of any . . . rule, regulation or certificate of the Authority." This particular provision, coupled with the definition of the term "air commerce" in the Act gives broad jurisdiction to the Federal Government over airmen. The extent of this jurisdiction is indicated in the definition of "air commerce" contained in the Act<sup>2</sup> which includes (1) interstate, overseas or foreign air commerce, (2) transportation of mail by aircraft, (3) any operation or navigation of aircraft within the limits of *any civil airway*, (4) any operation or navigation of aircraft which directly affects interstate, overseas or foreign air commerce, or (5) any operation which may endanger safety in interstate, overseas, or foreign air commerce. It should be noted that although Section 1 (3) of the Civil Aeronautics Act of 1938 provides, "There is hereby recognized and declared to exist in behalf of any citizen of the United States a public right of freedom of transit in air commerce through the navigable air space of the United States" the enjoyment of this right is predicated upon Federal certification of airmen and aircraft.<sup>3</sup>

In accordance with the mandate of Congress, there has been established over the United States an extensive civil airways system to the extent that it is now virtually impossible to operate an aircraft anywhere in the country, except in a few sparsely populated regions, without traversing a civil airway. This at once brings the aircraft and its operator within the jurisdiction of the Federal Government under the "Air Commerce" definition contained in Section 3 of the Act. In addition, the nature of civil aviation makes it difficult, if not impossible, to avoid the conclusion that any aircraft operating in the United States may "directly affect, or endanger safety in . . . air commerce." A finding to this effect was made by the Civil Aeronautics Board on October 10, 1941, in connection with certain amendments to Part 60 of the Civil Air Regulations. Thus, it appears evident that, with respect to the safety regulation of civil aviation, the Federal Government has preempted the field.

The majority of States have recognized the desirability of having matters relating to safety in civil aviation regulated by the Federal Government and have limited their own jurisdiction by enacting legislation requiring that all aircraft and pilots within the State conform to the Federal requirements of safety certification. It is reported that only two States require State certification of airmen and aircraft and ignore the principle favored by the majority.<sup>4</sup> In the field of air traffic

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<sup>1</sup> 49 U.S.C. §551-560 (1940).

<sup>2</sup> 49 U.S.C. §401 (3) (1940).

<sup>3</sup> Title VI, Civil Aeronautics Act, 1938, 49 U.S.C. §551-560 (1940).

<sup>4</sup> *Current Status of Aviation Law*, Committee on Aeronautical Law, American Bar Association, 1947, p. 13-19; 14 JOURNAL OF AIR LAW AND COMMERCE 217, at 222.

regulation there has been some failure to recognize the desirability of having one uniform set of regulations for safety in civil aviation. However, an examination of the decided cases establishes that the jurisdiction and authority of the Federal Government with respect to the regulation and enforcement of safety in civil aeronautics has never been seriously challenged. Two cases on this point have been decided which deserve close examination — *United States v. Drumm*, decided May 1, 1944 by the Federal District Court in Nevada,<sup>5</sup> and *Rosenhan v. United States*, decided by the U.S. Circuit Court of Appeals, Tenth Circuit, November 16, 1942.<sup>6</sup>

In the District Court case a libel was brought against Drumm and his airplane because of Drumm's operation of the craft without a pilot certificate, without an airworthiness certificate, and in violation of the Civil Air Regulations governing the operation of aircraft. Two flights were involved; one from Fallon, Nevada, to Bishop, California, and the other from Bishop, California to Independence, California. It should be noted that one flight crossed a State line; the other was wholly within the State of California. There was no showing that Drumm operated the aircraft within the limits of a civil airway. The court concluded as a matter of law:

"And as CONCLUSIONS OF LAW from the foregoing facts, the Court finds that the respective Civil Air Regulations applicable to the conduct of Andrew D. Drumm, Jr. on his said flights from Fallon, Nevada, to Bishop, California, on February 11, 1942, and from Bishop, California, to Independence, California, on February 15, 1942, as alleged to have been violated by him on said flights, are valid regulations and are applicable to, and govern the conduct of, said Andrew D. Drumm, Jr., on said flights; that the actions and conduct of said Andrew D. Drumm, Jr., on said flights, as set forth in the foregoing Findings of Fact, were in violation of said Civil Air Regulations; that by reason of said violations, said Andrew D. Drumm, Jr. has rendered himself liable to the United States for penalties; that penalties should be assessed against said Andrew D. Drumm, Jr. in the aggregate sum of Two Thousand Five Hundred Dollars (\$2500.00), for said violations; that the cash bail in the sum of Two Thousand Dollars (\$2000.00), deposited by said Andrew D. Drumm, Jr., should be applied in partial satisfaction of said judgment; and libelant should recover its costs of suit herein incurred." (Findings of Fact and Conclusions of Law. Filed May 11, 1944, unpublished.)

The *Rosenhan* case involved the operation of a civil aircraft within a designated airway without an airworthiness certificate issued by the Federal Government. An airworthiness certificate had been issued by the State in which the aircraft was being flown. Holding that the Federal Government, in requiring a Federal airworthiness certificate, was operating within its constitutional powers, the court held:

"... The Act does not textually recognize a state certificate of airworthiness as a compliance with its requirements, and we cannot presume a congressional intent to do so.

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<sup>5</sup> 55 F. Supp. 151, summary of decision in 1944 USAvR 51.

<sup>6</sup> 131 F. 2d 932, 1944 USAvR 30.

"Congressional regulation of interstate air commerce in the interest of safety and efficiency is new and modern, but the law applicable thereto is of another generation. To sustain the broad and plenary power of the Congress to regulate interstate air commerce in the interest of safety and efficiency, we need but recur to the prophetic pronouncement of the Supreme Court of the United States, long before the skies were considered aeronautical highways, when it said: 'Constitutional provisions do not change, but their operation extends to new matters, as the modes of business and the habits of life of the people vary with each succeeding generation. The law of the common carrier is the same today as when transportation on land was by coach and wagon, and on water by canal boat and sailing vessel; yet in its actual operation it touches and regulates transportation by modes then unknown — the railroad train and the steamship. Just so is it with the grant to the national government of power over interstate commerce. The constitution has not changed. The power is the same. But it operates today upon modes of interstate commerce unknown to the fathers, and it will operate with equal force upon any new modes of such commerce which the future may develop.' In *re Debs, Petitioner*, 158 U.S. 564, 595. . . .

"The appellant contends that on a trial of the case he could have shown that the flight of his aircraft in the designated civil airway did not in any way endanger or interfere with safety in interstate commerce. We may concede that he could have shown that at the time the aircraft in question was in flight through, or upon, the designated airway no other aircraft was within dangerous range, but he cannot avoid the incidence of the Act by showing that these particular flights did not actually endanger interstate commerce. Congress has not seen fit to limit the question of safety in these circumstances to a manifestation of actual danger, rather it has sought to eliminate all potential elements of danger. The declaration that no aircraft shall operate in a designated civil airway, without having currently in effect an airworthiness certificate, evinces congressional judgment that such an operation is detrimental to the safety of those engaged in interstate commerce, or those who make use of its facilities. We cannot say that this exerted regulation does not have any reasonable relationship to the promotion of safety in air commerce, or that it does not rest upon any rational basis, when considered in the light of the broad legislative purpose. We conclude that such statutory precautions do not transcend the powers granted to the Congress over interstate commerce, or unduly encroach upon the powers reserved to the sovereign states."

Under the Civil Aeronautics Act, the Civil Aeronautics Board is authorized to promulgate Civil Air Regulations governing the operation of aircraft within the airspace of the United States. Such regulations apply whether or not the aircraft is operated on, or traverses, a civil airway. It is important to note that the aircraft so operated need not be engaged in interstate, overseas, or foreign air commerce. Moreover, the Civil Aeronautics Board is authorized to prescribe and has adopted, regulations specifying the minimum standards which must be met in order for an aircraft or an airman to be eligible for the certification which is a prerequisite to the exercise of the right of operating aircraft in the navigable airspace of the United States. The Act

further controls the operation of aircraft by providing that no aircraft shall operate over the United States unless it has been registered in accordance with certain statutory requirements contained in Section 501, which reads as follows:

"(a) It shall be unlawful for any person to operate or navigate any aircraft eligible for registration if such aircraft is not registered by its owner as provided in this section, or (except as provided in Section 6 of the Air Commerce Act of 1926, as amended) to operate or navigate within the United States any aircraft not eligible for registration: *Provided:* That aircraft of the national-defense forces of the United States may be operated and navigated without being so registered if such aircraft are identified, by the agency having jurisdiction over them, in a manner satisfactory to the Authority. The Authority may, by regulation, permit the operation and navigation of aircraft without registration by the owner for such reasonable periods after transfer of ownership thereof as the Authority may prescribe."<sup>7</sup>

It is important to note that this registration requirement is not based upon the "air commerce" definition in the Act.<sup>8</sup> It is apparent that this power comes into being by reason of the commitments made by the United States in the ratification of the Havana Convention.<sup>9</sup>

The Federal power to regulate the right to participate in civil aeronautics extends beyond the requirement for registration of aircraft, the use of civil airways, or operations in or affecting air commerce. The Civil Aeronautics Board is authorized to specify the extent to which the airmen and air agencies may so participate. Section 602 of the Act provides:

"(a) The authority is empowered to issue airman certificates specifying the capacity in which the holders thereof are authorized to serve as airmen in connection with aircraft."<sup>10</sup>

The term "airman" as used in this Section is defined as any individual who engages in the navigation of aircraft while underway (1) as the person in command of an aircraft, (2) as pilot, (3) as mechanic, (4) as member of a crew; or who is directly in charge of (1) inspection, (2) maintenance, (3) overhaul, or (4) repair of aircraft; and any individual who serves as (1) dispatcher or (2) air traffic control tower operator.<sup>11</sup>

The foregoing clearly establishes that from the enactment of the Air Commerce Act of 1926 until the present the Federal Government has assumed jurisdiction to regulate civil aeronautics in order to secure

<sup>7</sup> 49 U.S.C. §521(a) (1940).

<sup>8</sup> "(b) An Aircraft shall be eligible for registration if, but only if—

"(1) It is owned by a citizen of the United States and is not registered under the laws of any foreign country; or

"(2) It is an aircraft of the Federal Government, or of a State, Territory, or possession of the United States, or the District of Columbia, or of a political subdivision thereof." 49 U.S.C. §521(b) (1940).

<sup>9</sup> International Convention on Commercial Aviation, signed Habana, Feb. 20, 1928. Ratification by U.S. deposited with Government of Cuba, July 17, 1931. U.S. Treaty Ser. No. 840, 47 Stat. at L. 1901, 1932 USAvR 298, for status see 1944 USAvR 87.

<sup>10</sup> 49 U.S.C. §552 (1940).

<sup>11</sup> 49 U.S.C. §401 (6) (1940).

the maximum of safety. Even though there has been a declaration by Congress of the right of every person to enjoy freedom of operation in the navigable airspace over the United States, this right is limited by the other provisions of the Act, and before it can be fully enjoyed, specific statutory requirements must be met, including registration of the aircraft, certification of aircraft as to airworthiness, and certification of the airman as to competency. Moreover, it is important to emphasize that such use must be in conformity with the air traffic regulations.

### III. FEDERAL STATUTORY REMEDIES AND PROCEDURES

To aid in the enforcement of the air safety requirements of the Act and the regulations promulgated by the Civil Aeronautics Board, the Administrator of Civil Aeronautics is provided with certain statutory authority and procedures. These provided remedies and procedures are in nature both civil and criminal. However, as will be presently explained, inasmuch as the criminal provisions of the Act have little, if any, relation to air safety, these provisions will receive little attention in this paper except to note that they are available for use in certain specific cases.

At the outset, it is important to explain the concept of the term "enforcement" as used by the Civil Aeronautics Administration. The Civil Aeronautics Administration regards it as essential that its enforcement program be a positive and not a negative procedure. Its objective is to insure the fullest possible utilization of aircraft consistent with the requirements of competency and airworthiness prescribed by the Act and the Civil Aeronautics Board. With this concept in mind, let us turn our attention to the remedies and procedures available to the Civil Aeronautics Administration in pursuance of its enforcement program. Attention is directed to Title VI of the Civil Aeronautics Act of 1938, as amended, and in particular to Sections 602 to 608 inclusive.<sup>12</sup> These Sections cover the terms and conditions which must be met by applicants for airman certificates, aircraft certificates, air carrier operating certificates, and air agency ratings. It should be noted that in each instance the applicant is required to meet certain prescribed minimum standards before such certificates or ratings are issued.

The Administrator is charged with the responsibility of making an initial determination in each one of these types of cases and if the applicant does not measure up to the standards and requirements specified by the Act and the Civil Aeronautics Board, no certificate or rating is issued. It is also curious to discover that except in the case of the applicant for an airman certificate as provided for in Section 602 (b), the refusal by the Administrator to issue the certificate is reviewable only by the courts. In the case of an applicant for an airman certificate, however, if the Administrator denies such application, the

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<sup>12</sup> 49 U.S.C. §552-558 (1940).

Act provides that the applicant is entitled to a hearing before the Civil Aeronautics Board.<sup>13</sup>

The significance in the enforcement program of the procedures enumerated in the above-mentioned sections of the Act will be realized when it is recognized that at the time applications are made for such certifications, and even before, the positive program of enforcement carried out by the Civil Aeronautics Administration commences. In other words, the effort is here made to insure that the persons, aircraft, and air agencies certificated are properly equipped to comply with the safety requirements of the Act and the regulations promulgated pursuant thereto. However, even prior to the time of application for certification, there is a positive program of enforcement being conducted by the Civil Aeronautics Administration. Through its technical and training experts and its Information Service every effort is made to inculcate in potential airmen and air agencies an appreciation of the value of safety practices in civil aeronautics. This service is continued with the holders of certificates to the end that instead of retrogression there is progress toward even higher standards of safety than called for in meeting the minimum prescribed standards.

Though great reliance is placed on this educational program and the control present at the time of application for certification, there still remains the necessity of further positive action in the event that individuals or agencies, whether certified or not, fail to comply with the prescribed safety requirements and regulations. To carry out such a program there are available for use by the Administrator, remedies and procedures which may be summarized as follows:

- (a) Action to modify, alter, suspend or revoke a certificate.
- (b) Action to impose a civil penalty.
- (c) A proceeding before the Civil Aeronautics Board for an order directing compliance.
- (d) A proceeding before the court to secure an injunction.
- (e) In certain instances of a criminal nature, action under criminal sections of the Act.

The remedies and proceedings used in the majority of cases in enforcement by the Civil Aeronautics Administration are those contained in Sections 609 and 901 of the Act.<sup>14</sup>

Section 609 provides:

"The Authority may, from time to time, reinspect any aircraft, aircraft engine, propeller, appliance, air navigation facility, or air agency, may reexamine any airman, and, after investigation, and upon notice and hearing, may alter, amend, modify, or suspend, in whole or in part, any type certificate, production certificate, airworthiness certificate, airman certificate, air carrier operating certificate, air navigation facility certificate, or air agency certificate if the interest of the public so requires, or may revoke, in whole or in part, any such certificate for any cause which, at the

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<sup>13</sup> Section 602(b), 49 U.S.C. §552 (1940).

<sup>14</sup> 49 U.S.C. §559 and 621 (1940).



time of revocation, would justify the Authority in refusing to issue to the holder of such certificate a like certificate. In cases of emergency, any such certificate may be suspended, in whole or in part, for a period not in excess of thirty days, without regard to any requirements as to notice and hearing. The Authority shall immediately give notice of such suspension to the holder of such certificate and shall enter upon a hearing which shall be disposed of as speedily as possible. During the pendency of the proceeding the Authority may further suspend such certificate, in whole or in part, for an additional period not in excess of thirty days."

Under Reorganization Plan III, the functions vested in the Authority by this Section, except the functions of prescribing safety standards, rules, and regulations and of suspending and revoking certificates after hearing, were transferred to the Administrator of Civil Aeronautics. It should be noted that this Section provides different remedies and procedures dependent upon the nature of the case. Under the first part of this Section, if the interest of the public so requires, after reexamination, etc., and upon notice and hearing, a certificate may be altered, amended, modified or suspended in whole or in part, whereas, under the latter part of the Section, a certificate may be revoked if the holder of the certificate fails to meet the requirements of competency prescribed for its issuance.

Attention is directed to Section 901 of the Act which provides:

"(a) Any person who violates (1) any provision of Titles V, VI, and VII of this Act, or any provision of subsection (a)(1) of Section II of the Air Commerce Act of 1926, as amended, or (2) any rule or regulation issued by the Postmaster General under this Act, shall be subject to a civil penalty of not to exceed \$1,000 for each such violation. Any such penalty may be compromised by the Authority or the Postmaster General, as the case may be. The amount of such penalty, when finally determined, or the amount agreed upon in compromise, may be deducted from any sums owing by the United States to the person charged." (The word "Administrator" should be substituted for the word "Authority," as a result of the Reorganization Plan referred to above.)

This Section provides that a civil penalty may be imposed for each violation of any of the titles specified. The remedies provided in these Sections are of particular significance in that they indicate three distinct sanctions. It should be observed that the remedy provided in Section 901 may not necessarily be available for a cause of action which involves non-compliance with the safety regulations by virtue of incompetency as does the remedy provided in the latter part of Section 609. Again, violation of the safety requirements of the Act or the regulations by the holder of a certificate may be justification for the application of both the remedies provided in Section 901 and the remedies provided in Section 609. An act might constitute a violation of the regulations and also indicate the necessity for reexamination, which in turn might show the necessity for taking action against the certificate in the public interest. It is clear, however, that in the case of a certificate holder who has not violated the safety provisions of the Act

or the regulations but who, for example, has acquired a physical deficiency and lacks the ability to meet the competency requirements, only those remedies provided in Section 609 are available.

In addition to the remedies hereinabove mentioned, attention is directed to other provisions of the Civil Aeronautics Act, as amended, which provide authority for action in enforcement cases. Section 1002 (c) of the Act<sup>15</sup> provides:

"If the Authority finds, after notice and hearing, in any investigation instituted upon complaint or upon its own initiative, that any person has failed to comply with any provision of this Act or any requirement established pursuant thereto, the Authority shall issue an appropriate order to compel such person to comply therewith."

This remedy is self-explanatory and even though its use is seldom necessary, it is a useful remedy to have available. Perhaps of even greater value is the authority contained in Section 1007<sup>16</sup> which provides procedure for invoking the injunctive process.

An additional remedy is provided by Section 903 (b) (1) of the Act<sup>17</sup> which permits the collection of a civil penalty by proceedings *in rem* against the aircraft, the owner or operator of which may have been involved in a violation of the safety requirements of the Act or the regulations issued pursuant thereto. It should be observed that a libel against the aircraft involved was used in the *Drumm* case, *supra*, with the desired result.

In addition to the foregoing the Act provides for criminal penalties in certain specified types of offenses. Section 902 (b) of the Act<sup>18</sup> provides for a fine of not to exceed \$1,000 or imprisonment not exceeding three years, or both, upon conviction of an individual for forging or altering a certificate. This Section reads:

"(b) Any person who knowingly and willfully forges, counterfeits, alters, or falsely makes any certificate authorized to be issued under this Act, or knowingly uses or attempts to use any such fraudulent certificate, shall be deemed guilty of a misdemeanor and upon conviction thereof shall be subject to a fine of not exceeding \$1,000 or to imprisonment not exceeding three years, or to both such fine and imprisonment."

Again, Section 902 (c) permits the imposition of a fine not exceeding \$5,000 or imprisonment not exceeding five years or both for the intentional interference with air navigation by the display of a false light or signal or the removal or extinguishing of a true light or signal. Finally, in Section 902 (a) there is provided a criminal remedy which is limited to the case of a person convicted of intentional and willful violation of any of the provisions of the Act except Titles V, VI, and VII, or any order, rule, or regulation issued under any such provision, for which no penalty is otherwise provided. The Section provides that any such person shall be deemed guilty of a misdemeanor,

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<sup>15</sup> 49 U.S.C. §642 (1940).

<sup>16</sup> 49 U.S.C. §647 (1940).

<sup>17</sup> 49 U.S.C. §623 (1940).

<sup>18</sup> 49 U.S.C. §622 (1940).

and for the first offense shall be subject to a fine of \$500, with an increase in the amount of the fine for subsequent offenses up to \$2,000.

#### IV. PROGRAM AND POLICIES

There have been indicated *supra*, the jurisdiction, remedies, and procedures available to the CAA to aid it in carrying out its responsibility in enforcement. It might be well here to examine the various other factors which affect the enforcement program of the Civil Aeronautics Administration.

It is emphasized in Section 2 of the Civil Aeronautics Act of 1938 that in the exercise and performance of powers and duties under the Act, the encouragement and development of civil aeronautics shall be considered to be in the public interest. It is evident, therefore, that the CAA, as well as the CAB, has the broad responsibility of guiding its activities so that such activities will be in consonance with the policy so stated. This policy rightfully has an important impact upon the enforcement program of the CAA and instead of limiting such a program to the apprehension, conviction, and punishment of violators, the CAA has based its program of enforcement on a much broader front and one that is consistent with the established policy. This program is a positive one and is designed to keep all competent airmen flying and all airworthy aircraft and qualified air agencies fully operative to the end that civil aeronautics can be properly developed to the fullest possible extent. With this policy in view, individuals engaged in civil aviation are not regarded as potential misdemeanants or felons. On the contrary, it is assumed that every individual who has demonstrated his interest in civil aviation to the extent required in securing the necessary certification is desirous of complying with all safety requirements. This approach does not preclude a recognition that in any large group of individuals there will be a minority who, either because of deficiency in knowledge, competency, or attitude, are unable to conform to the specified safety standards. Thus, in carrying out its enforcement program, the CAA seeks, by the use of the remedies available to it, to prevent and eliminate deficiencies which will retard the full development of civil aeronautics with a maximum of safety.

To this end an effort is made to secure safety regulations that are simple and reasonable. Examinations are designed to insure that the successful candidates are fully competent. A continuous program of education is provided to advise those participating in civil aeronautics of the latest information on safety requirements. Inspections and re-examinations are made by inspectors of the CAA primarily for the same purpose. At all times the emphasis is on the positive program of education to insure compliance with safety standards rather than upon a program of detection and punishment. However, even with all of this effort there remains the task of taking remedial action against those who for one reason or another either fail to comply with the regulations or do not possess the degree of competency their certificates

demand. It is this latter phase of enforcement which calls for the application of legal sanctions.

In executing this phase of its enforcement program, the CAA receives reports of alleged violations through several channels.irate citizens make informal complaints. Inspectors of the CAA in the course of their official duties observe practices which are not in accord with the regulations. At times an investigation of an accident will disclose as its cause a failure to operate in accordance with the safety rules. In each of these instances it is the responsibility of the personnel of CAA to prepare a formal report, with evidence, if available, establishing a *prima facie* case. This report is then submitted to the Office of the General Counsel of the CAA and legal personnel are then charged with the duty of analyzing the case and determining what remedial action is proper.

It has been indicated above that there are three main remedies used in this phase of the enforcement program. They are:

- (a) Action looking toward the collection of a civil penalty.
- (b) Action to obtain suspension of a certificate.
- (c) Action to obtain revocation of a certificate.

In actions taken pursuant to the two latter remedies, the alleged violator is entitled to a hearing before the Civil Aeronautics Board. This is obtained under the existing practice by the Administrator of Civil Aeronautics, through his General Counsel, preparing and filing with the CAB a formal complaint in which specific charges are made. The alleged violator is served by the CAB with a copy of this complaint and given a reasonable time in which to make answer and to request a hearing. When a hearing is demanded, an attorney for the Administrator carries the burden of proving the acts complained of. An examiner designated by the Board after the hearing makes a finding of fact and recommendations as to the remedy which can be objected to by either party to the proceeding. Determination by the CAB is final unless there is an appeal to the United States Courts. It is important to note that seldom are such cases appealed.

In the event that it is determined in the office of the General Counsel of CAA that action should be taken towards the levying of a civil penalty, the alleged violator is informed of the specific charges levied against him and he is advised of his rights under the law to have the case adjudicated by a United States District Court. However, he is given the option of submitting any evidence in extenuation, mitigation, or defense of the specified charges and if he so wishes may make an offer in compromise to the Administrator of CAA. Section 901 of the Act, previously discussed, permits the Administrator to compromise any case involving a civil penalty. Should the alleged violator fail to take any action looking toward a compromise, the case, with the evidence, is then presented, through the Department of Justice, to the United States Attorney in the district nearest to the alleged violator's residence, and the district attorney is then given the responsibility of proceeding with the action to its final conclusion.

Some indication of the extent of this phase of the enforcement program is disclosed by an examination of the records showing violation cases processed by the CAA. It is found that during the first year the Federal Government engaged in this phase of enforcement work under the Air Commerce Act of 1926, there were 224 violations filed. It is interesting to observe that during this same period there were registered 5,104 aircraft and 14,604 certificated airmen in the United States. Thus, the ratio of violation cases to the number of certificated airmen was 1% and the ratio to registered aircraft was 4% during this period. In 1946, there were 1,303 violation cases, and it is disclosed that there were in this same year 400,061 certificated airmen and 84,035 registered aircraft. The ratio of violations to airmen was .3 of 1% and to aircraft 1.5% during this period.

These figures establish the fact that even though there has been a great increase in the number of violations, such increase is less in proportion than the increase in the number of airmen and aircraft certificated and registered during the same period. Measured by this yardstick, it would appear that the enforcement program of the Federal Government is sound and is consistent with its objective.

It is believed, however, that to adopt a complacent attitude toward enforcement on the basis of such a finding would be both unwise and dangerous. Consideration of these figures, coupled with the expectation that the number of airmen and aircraft will increase rapidly each year, with a proportionate increase in the number of violations, indicates that if any further increase in the number of violations is to be prevented or a decrease is to be obtained, even more effective measures must be employed than have been used in the past. Moreover, there must be considered the effect an increase in the number of airmen and aircraft will have on the efficiency and effectiveness of the personnel of the CAA available to carry out the heavy burden of safety regulation and safety enforcement. Clearly, even though the techniques are important, unless the number of personnel assigned to carry out safety responsibilities is increased to meet the additional workload caused by the ever-increasing number of airmen and aircraft and the activity resulting therefrom, the success of the enforcement program will be seriously jeopardized.

It should be observed also that the phase of the enforcement program which deals with the use of sanctions has been adversely affected due to the time lag between the violation complained of and the final disposition of the case. In an effort to improve this situation the CAA has decentralized its enforcement activities so that violation reports can now be processed to completion in the field. It is expected that this arrangement will result in decreasing the time necessary to process a violation case requiring the use of sanctions from an average time of eight months to one month.

The CAA recognizes that any successful program for safety enforcement must be dynamic and sufficiently flexible to meet the rapid

changes which characterize the developments in civil aeronautics, and being keenly aware of the existing as well as anticipated problems indicated by the rapid increase in civil aviation activities, has moved forward toward their solution by entering on a program of cooperation with the States.

#### IV. FEDERAL-STATE COOPERATION ON CIVIL ENFORCEMENT

On February 6, 1946, following a series of conferences with representatives of the National Association of State Aviation Officials, the Administrator of Civil Aeronautics issued a statement which establishes for the first time a cooperative program for air safety enforcement between the Federal agency and the States. The Federal agency is not relieved of any of its statutory responsibilities, but the stated policy recognizes the right and obligation of the State authorities under the police power of the State to protect public safety. A program under this policy has been commenced. This program enlists the aid of the State authorities in dealing with violations of safety regulations which are peculiarly local in nature and which require immediate positive action. To this end there has been endorsed by the NASAO and the CAA, a draft of a statutory provision for enactment by the various States. This provision reads as follows:

##### "Section 13. *Reckless Operation of Aircraft*

"It shall be unlawful for any person to operate an aircraft in the air, or on the ground or water, while under the influence of intoxicating liquor, narcotics, or other habit-forming drug, or to operate an aircraft in the air, or on the ground or water, in a careless or reckless manner so as to endanger the life or property of another. In any proceeding charging careless or reckless operation of aircraft in violation of this section, *the court in determining whether the operation was careless or reckless shall consider the standards for safe operation of aircraft prescribed by federal statutes or regulations governing aeronautics.*' [Italics added.]

##### "Section 14. *Federal Airman and Aircraft Certificates*

"(a) *Operation Without Unlawful.* It shall be unlawful for any person to operate or cause or authorize to be operated any civil aircraft within this state unless such aircraft has an appropriate effective certificate, permit or license issued by the United States, if such certificate, permit or license is required by the United States. It shall be unlawful for any person to engage in aeronautics as an airman in the state unless he has an appropriate effective airman certificate, permit, rating or license issued by the United States authorizing him to engage in the particular class of aeronautics in which he is engaged, if such certificate, permit, rating or license is required by the United States.

"(b) *Exhibition of Certificates.* Where a certificate, permit, rating or license is required for an airman by the United States, it shall be kept in his personal possession when he is operating within the state and shall be presented for inspection upon the demand of any peace officer, or any other officer of the state or of a municipality or member, official or employee of the commission authorized pursuant to Section 21 of this Act to enforce the aeronautics laws, or any official, manager or person in charge of any airport upon which the airman shall land, or upon the reasonable request of any other

person. Where a certificate, permit or license is required by the United States for an aircraft, it shall be carried in the aircraft at all times while the aircraft is operating in the state, shall be conspicuously posted in the aircraft where it may be readily seen by passengers or inspectors, and shall be presented for inspection upon the demand of any peace officer, or any other officer of the state or of a municipality or member, official or employee of the commission authorized pursuant to Section 21 of this Act to enforce the aeronautics laws, or any official, manager or person in charge of any airport upon which the aircraft shall land, or upon the reasonable request of any person."

After adoption of this provision, it is expected that the State authorities will be able to take immediate action against those violations which do not necessarily involve lack of competency but which involve dangerous and hazardous maneuvers and which affect the peace and safety of private citizens. In furtherance of this program of Federal-State cooperation in this particular phase of safety enforcement, the CAA, with the cooperation of the NASAO, prepared and published in January, 1947, an "Air Safety Enforcement Guide." This Guide is designed to aid the authorities of the several States in providing a uniform safety enforcement program coordinated with the Federal agency. The Guide contains samples of the type of maneuvers and actions which constitute dangerous or hazardous operations in violation of safety regulations.

To assist the State authorities in the training and indoctrination of their enforcement function in this new phase of enforcement work, the CAA is cooperating by furnishing consulting service for State training programs in air safety enforcement. An outline specifying the subject matter and methods to be employed in the training of State enforcement officers is contained in the "Air Safety Enforcement Guide."

At the present time it has been urged that the enforcement activities of the State officials be limited to the phase of enforcement consisting of the detection, apprehension, and conviction of violators and the application of remedies prescribed by the State in cases involving hazardous and dangerous operations described in the above proposed draft. It is not contemplated, and it is believed inadvisable, for the State authority to enter the field of certification of airmen or aircraft. The Federal-State program seeks to insure that the air safety regulations of the United States will be uniform. It recognizes that unless a single agency, namely the Federal Government, is charged with the responsibility for the promulgation of such regulations a chaotic condition will result with a consequent retardation instead of development of civil aeronautics.

#### V. CONCLUSION

There have been previously discussed, the growth and development of the air safety enforcement program for civil aeronautics. It has been observed that at the outset recognition was given to the principle

that if civil aeronautics in the United States is to be aided in its development and the maximum of safety in its operation is to be obtained, there must be a single uniform system of air safety regulations and standards. The Federal Government by congressional action in 1926 preempted this field. The position taken in 1926 was reaffirmed by the enactment of the Civil Aeronautics Act of 1938. The experience over these past 20 years has shown the wisdom of the congressional action. The policies and methods employed by the Federal agency charged with carrying out the responsibilities of the program directed by Congress have been positive and constructively designed to develop civil aviation. The program instituted by the State representatives and the Federal agency for cooperation in the enforcement of air safety regulations is a progressive step in an effort to solve a problem which will become ever increasingly delicate and difficult. The success of this effort will be measured by the conduct of those participating in civil aeronautics.

It appears evident that in the execution of the air safety program, the gains thus far made include a single uniform system of air safety regulations, and the continuing development of an enforcement program which can be executed uniformly in every State with ever-increasing State participation.

The progress thus far made indicates that there is a strong basis for the optimistic belief that through continued cooperation between State and Federal Government, the pattern set for the enforcement of air safety regulations will successfully aid in reaching the desired objective, namely, the maximum of safety with the fullest utilization of the benefits of civil aeronautics.