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United States Government Policy on ICAO Standards and Recommended Practices

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UNITED STATES GOVERNMENT POLICY ON ICAO STANDARDS AND RECOMMENDED PRACTICES

Letter from the Chairman of the Air Coordinating Committee, dated October 6, 1949, to the Chairman of the Aviation Industry Advisory Panel of the ACC

THIS letter refers to the paper filed by the Aviation Industry Advisory Panel, Document ACC 54/3, "U.S. — ICAO Matters — Aviation Industry Advisory Panel Comments regarding U. S. Policy on ICAO Standards and Recommended Practices (SARPS)"[1] and the appearance before the Air Coordinating Committee at its meeting of July 20, 1949, of representatives of the Panel in support of that paper.

The Air Coordinating Committee welcomes this presentation of the views of the industry. Through the medium of the Panel industry is able to perform an important function, and it is hoped that the Panel will increase its activities in the field of constructive participation in the development of Government policies and procedures. Through such activities the Air Coordinating Committee can be kept continuously informed of the industry viewpoint, and it is highly important that the Committee have the benefit of that viewpoint. Industry's cooperation in the international field is deeply appreciated, and we feel sure that through our mutual cooperation and understanding the United States can continue its contribution and leadership in ICAO.

We have given careful consideration both to the detailed material and to the broad implications of the paper which you presented. We are pleased, of course, to receive your endorsement of those Annexes concerned with facilities and services: Annex 3, Aviation Meteorology; Annex 4, Aeronautical Maps and Charts; Annex 10 (Communications); Proposed Annex ... (Aerodromes and Ground Aids); Proposed Annex... (Navigation aids), Proposed Annex... (Search and Rescue). While you comment that Annex 9, Facilitation of International Air Transport, was not given detailed study by the Subcommittee, it is our understanding that both industry and Government have expended a great deal of time, energy, and funds in developing this Annex and that the affected portions of the industry share the Government's view that the acceptance and implementation of this Annex will constitute a tremendous step forward in the progress of aviation.

As we interpret your paper and the oral presentation made at the time of our meeting on July 20, your principal concern centers around your opinion that ICAO frequently promulgates detailed regulations beyond the scope desired by industry, that such trend is increasing, that the intent of the Chicago Convention has been exceeded in many respects, particularly in the matter of applying international standards to purely domestic operation, and that if appropriate relief is to be afforded to the United States aviation industry, prompt action should be taken by the United States to repudiate certain ICAO Annexes. We are attaching detailed comments on Annex 1, Personnel Licensing; Annex 6, Operation of Aircraft, Scheduled International Air Services; and Annex 8, Airworthiness of Aircraft, which

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[1] 16 J. Air L. & C. 360 (1949).

Annexes you believe should be repudiated, and on Annex 2, Rules of the Air; Annex 5, Dimensional Standardization; and Annex 7, Aircraft Nationality and Registration Marks, upon which you make specific comment in your paper.

The detailed comment supplied by the enclosure affords some of the background for our view that the position taken by industry in the paper and the oral presentation may have been developed without a full consideration of all the detailed factors involved. There in addition are certain broad and extremely important considerations which the United States adheres to and which we believe support the position which we feel must be taken with respect to specific Annexes and the approach made to ICAO matters of this character. We find it difficult, for example, to determine precisely from what injury — real or anticipated — the industry pleads relief. These Annexes are uniform standards intended to serve as a guarantee of international recognition of United States' and other nations' international air operations. As such the International Standards are designed to protect the aviation industry from arbitrary unilateral action by individual states within whose jurisdictions they may operate. No alternative has been suggested by the industry as a basis upon which international recognition may be assured United States operators and, conversely, a basis upon which the United States may extend its recognition to include foreign aircraft operations within its boundaries. The foregoing is a very real, practical consideration. Of equal importance, in our view, is the position in which the United States finds itself with respect to the International Civil Aviation Organization.

The Convention on International Civil Aviation is a result largely of United States effort. As a member of the International Civil Aviation Organization we are committed to a policy of international cooperation in aviation through ICAO. In our activity in ICAO we have the responsibility to protect the United States public interest, and in so doing must take into account balanced requirements of all aviation interests and the general public. We have an obligation also to other governments to insure the safe conduct of flight operations of United States aircraft within the air space of such other governments. Our control and regulation apply not only to aviation activities in the United States but also, to the extent possible, to the flight of United States aircraft over non-United States territory. Other governments, of course, have similar responsibilities with respect to their nationals. In meeting these responsibilities and achieving these objectives in ICAO, some compromise upon occasion is inevitable, not alone for the purpose of promoting the advantages of true international cooperation but also to preserve United States leadership and accomplishment on important matters crucial to our best interests. We know of no other way presently available or likely to be available in the future by which the United States can achieve the benefits so necessary for its aviation interests throughout the world.

The importance of this concept is illustrated in the comment which we should like to make with respect to your observation concerning the "trend" toward increasingly detailed international standards. No revision of existing Annexes has been accomplished to date and we presume that reference is made to the recommendations of the Technical Division of the Air Navigation Commission in certain matters not presently contained in such Annexes. Experience has demonstrated that the numerical addition to existing International Standards is largely a measure of the International agreement progressively achieved. With few exceptions, the substantive additions proposed by certain Divisional meetings are presently being considered

toward amendment of existing Annexes only because such agreement was not possible at an earlier date; in most instances, such proposals have served to improve materially the acceptability of the Annexes concerned. The addition, for instance, of certain Standards and Recommended Practices proposed by the OPS Division concerning Temperature Accountability resulted in the deletion of certain objectionable Standards concerning the designation of aerodrome "equivalent altitudes" by the States of location. Other additions have been proposed which augment the international recognition of principles upon which the operation of United States' air carriers are largely predicated, such as, the designation of operational control and the protection of current airplane flight manual documentation.

We recognize, however, that the United States has not been able to avoid entirely the inclusion of certain detail, the effect of which would not, in our opinion, justify its existence in the form of International Standards. We would hope that government and industry might be able to develop a mutuality of view with respect to the over-all advantage to be gained by our efforts in ICAO and work even more intensively together to overcome some of the difficulties which press upon government and industry alike in the achievement of beneficial results. We believe that the industry may do much to assist in avoiding the proposal of such detail as will clearly militate against the best interests of international aviation and unduly penalize United States flag carriers. We can give every assurance that in such a program government will cooperate vigorously with industry.

You state in your paper that it is important that the views of the various segments of the United States aviation industry be recognized in preparing the United States position on these subjects and in presenting these subjects to ICAO. With this view we heartily agree.

The history of each of the Annexes with which the industry has indicated particular concern demonstrates that the procedures followed in the development of United States positions insures a continuous hearing of the industry by those agencies responsible for the handling of the matters involved. The original development of United States position is accomplished with the assistance of industry representatives. Review and approval of these positions prior to their presentation in ICAO have, in no instance, been accomplished without the benefit of industry consultation.

Presentation of United States positions before ICAO has likewise been accomplished only through the continued assistance of industry representatives. Provision is consistently made for industry representation on United States Delegations to ICAO meetings. The functioning of the United States Delegation is such that compromises or modification in United States positions is generally not accomplished without prior consultation with the industry representatives.

The procedures followed in the ACC and by the agencies of primary jurisdiction concerning the review of International Standards for purposes of notifying the Council of any disapprovals or differences which may be necessary are also accomplished with due regard for industry opinion. The Government has established a policy of publishing the entire proposed ICAO Annex when it involves rule making and affording industry an opportunity to coordinate its views and advise the agencies concerned of any undue hardships which in its opinion may follow as a result of acceptance of any particular Standard. Where regulatory action becomes necessary, such action is accomplished only in accordance with the provision of the Administrative Procedure Act. An adequate opportunity is provided to

hear all interested segments of the industry prior to the promulgation of any Civil Air Regulation related to or arising from International Standards.

The procedures outlined above have been followed in respect of Annexes 1, 6 and 8, and although the ACC is aware that some differences of opinion between industry and Government agencies have arisen in the course of adoption, it has not come to the attention of the ACC that undue hardship or serious economic disadvantage has accrued to industry as a consequence of United States acceptance of such Standards. Therefore, it does not appear that the United States would be justified in repudiating Annexes 1, 6 and 8.

If, however, you perceive some defect in the procedures which have been established to permit industry to be heard on these matters or will cite specifically where the industry is suffering undue hardship or serious economic disadvantage arising from the establishment of any particular Annex, we shall be glad to give consideration to any further remedial suggestions you wish to make.

We hope that the exchange of views which has taken place thus far will afford a more thorough understanding of the position of government and industry, a better appreciation of the government's viewpoint, and lead to even more fruitful cooperation between Government and industry in the presentation and maintenance of the United States viewpoint in ICAO.

DETAILED ANALYSIS OF COMMENTS ON ANNEXES

This enclosure presents a more detailed analysis of the comments in ACC 54/3 and our position on the Annexes. These are individually discussed below.

(*a*) *Annex* 1 (*Personnel Licensing*) ACC 54/3 cites this as a "classic example of unnecessary ICAO regulation" and recommends it be rescinded leaving personnel licensing standards up to each state.

This recommendation is apparently made in the belief that each State would continue to recognize the licenses of other States. The Standards set up in Annex 1 are substantially the United States' own national requirements for the certification of various classes of airmen. It is in this field that the U.S. proposals have necessitated the most drastic changes by other countries and it is in this field that the U.S. has had the most difficulty in selling the United States' viewpoint. Involved in this situation, among other things, was the widely different terminology used in this country as compared to that accepted abroad. While the United States has obtained complete acceptance of almost all the major points at issue, certain compromises were necessary. As a result the United States has accepted some different definitions, some new terminology, a different method of crediting flight time for higher grades of licenses and a more restrictive rating requirement in the case of aircraft of more than 12,500 pounds gross weight. In addition, some changes have been made in the requirements for the certification of non-pilot flight personnel. Before these changes were accepted and incorporated in the U.S. Civil Air Regulations, every reasonable effort was made by the Civil Aeronautics Board to secure the comment of interested persons in the industry. The proposals were published in the Federal Register and a Draft Release fully explaining the proposals was mailed to over 4,000 airports and individuals. While response to the request for comment was small, a large majority of the comment indicated a willingness to accept the proposals to amend the Civil Air Regulations in accordance with the

International Standards. Included in the majority is the Air Line Pilots Association. This organization endorsed the proposed changes without reservation.

Despite acceptance by the government and the majority of industry of some changes in United States' practice, ICAO has been notified that in certain instances the United States would not amend its requirements. In such cases the United States will continue to issue licenses (certificates) which do not meet the International Standards. While the great mass of U.S. domestic pilots will not be affected, it is true that if such pilots wish to operate internationally it will be necessary for them to have met the higher International Standards before operating into a foreign country.

In this connection, it should be noted that the United States has succeeded in raising the very low standards established by the International Commission for Air Navigation (ICAN) to a level commensurate with standards considered acceptable to this country. It is also worthwhile to compare the price paid in terms of changes in the U.S. Civil Air Regulations with the price other countries are paying for their cooperation in the international effort. The ICAN countries having denounced that organization were left with the problem of completely *revising their regulatory laws*. Many of them incorporated the original recommendations made by ICAO Revisions. As a result of changes made at subsequent meetings these countries have been obliged to go through a process of amendment to keep their standards up to date. Largely this has been done with little protest.

The AOPA representative at the July 20 meeting commented to the effect that the U.S. private pilot is faced with an intolerable burden of meeting International Medical Standards. This comment is not understood. There are no International Medical Standards. The medical provisions of the Annex are recommendations only. It is true that proposed International Medical Standards have been under consideration ever since the Chicago Conference and that a considerable number of countries, largely due to the military influence, have advocated far more restrictive requirements than would be acceptable to the United States. However, the United States has taken a strong position in this matter and has been able to prevent action adverse to its interests up to the present time. Indications now are that if and when International Medical Standards are finally agreed upon and adopted they will not be more restrictive than U.S. standards and in some cases will be less restrictive.

(b) *Annex* 2 (*Rules of the Air*). ACC 54/3 claims "complete confusion exists" stating that clarification and simplification are absolutely necessary. The paper recommends that ICAO devote its entire time, if need be, toward standardizing the rules of the air and air traffic procedures throughout the world.

The Rules of the Air in Annex 2 are essentially the same as the Air Traffic Rules in Part 60 of the U.S. Civil Air Regulations. They were agreed to after long discussions in two Division meetings. It is true that the ICAO Council amended the document proposed by the Division and the Air Navigation Commission and that these amendments made parts of the Annex confusing and open to widely divergent interpretations. However, a Council interpretation requested by the United States found the controversial items to have the same meaning as the U. S. Air Traffic Rules. With that question out of the way, the United States is in a position of differing from the International Rules of the Air with respect to only two or three items of small consequence and with respect to a number of additional rules which

it is believed are necessary in the United States because of U. S. traffic problems. Only one other country (France) has filed a notice of differences in its national practices. Only one of these is of sufficient importance to require that it be understood by U. S. pilots flying in France and steps are being taken to make this information available to them. A study of the Annex indicates that with this one exception, U. S. pilots flying in accordance with Part 60 of the Civil Air Regulations would not be in violation of the laws of any other country adopting the Annex. We do not believe, therefore, that U. S. pilots are being hampered by the Annex as now written.

(c) *Annex* 5 (*Dimensional Standardization*). The paper offers no comment other than the observation that some objection does exist respecting current proposals. Such industry objections are not specified. Various proposals are now under consideration in the Technical Division and proposed solutions should be presented in the near future.

(d) *Annex* 6 (*Operation of Aircraft — Scheduled International Air Services*). General industry complaint is of detailed regulation and entry of ICAO into the field of specific regulations even beyond domestic practices. Industry *recommends* the Annex be rescinded without delay. Industry states there is nothing in the Convention that requires the adoption of International Operating Standards. It is pointed out that Article 37 gives ICAO authority to adopt International Standards dealing with certain specified matters and "such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate." Article 37 in addition contains an undertaking on the part of each Contracting State "to collaborate in securing the highest practicable degree of uniformity in regulations, standards, procedures, and organization in relation to aircraft, personnel, airways and military services in all matters in which such uniformity will facilitate and improve air navigation."

More important, however, is the substantive benefit derived from the adoption of such an annex. The ICAN Annexes on Rules of the Air contained such International Operating Standards as were in existence prior to 1939. The United States proposal at Chicago for a Rules of the Air Annex eliminated the operating provisions. As a result of criticism offered by other States on this point, the United States agreed to submit an operations proposal later. Under the broad term "Rules of the Air" these could have been incorporated in that document. The United States, however, elected to support a separate set of Operating Standards following the pattern established in the Civil Air Regulations. These Standards, adopted by ICAO as Annex 6, are substantially the same as CAR Part 41 except that in most cases the International Standards are stated in more general and objective terms. It is true, however, that this is not the case in a few instances such as the detailed international equipment requirements and specific pilot route familiarization requirements and the requirement for reserve fuel.

Industry representatives are aware that every sovereign State has complete and exclusive sovereignty over the airspace above its territory and has the power to regulate the use of this airspace. ICAO Standards set certain mutually agreeable minimum operating rules which apply equally to all aircraft, whatever their nationality, without discrimination in favor of home aircraft. The operator is then called upon to comply with only one set of standards as contrasted with a potential 54[2] separate and differing sets.

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[2] As of August 1949, fifty-four States were members of ICAO.

(e) *Annex* 7 (*Aircraft Nationality and Registration Marks*). The paper objects to detail, citing specific dimensions of identification marks, and to the type registration certificate required. Industry states that aircraft registered before October 1, 1949, should be exempt from Annex 7. Annex 7 requires compliance by January 1, 1951. The U. S. has notified ICAO that it does not intend to comply with the standard for the identification plate, for the form of the type certificate, and for certain other details of Annex 7 as they may affect aircraft certified prior to October 1, 1949. The U. S. will probably press at a later date to amend Annex 7 so as to permit greater latitude with respect to the identification plate, and to eliminate the retroactive effect on aircraft registered before October 1, 1949.

(f) *Annex* 8 (*Airworthiness Standards*). The ACC is aware of the concern of the aviation industry insofar as the substance of the Airworthiness Annex is concerned. It is realized that an unrealistic approach to the formulation of Airworthiness Standards would prove a serious deterrent to both manufacturing and operating activities of the industry. The Government agencies concerned have consistently born in mind the impact upon the industry of Airworthiness Standards and have spared no effort in assuring that adequate consultation with appropriate representatives of the industry was had in their development and review. The United States has to date considered for presentation to ICAO as United States positions only those requirements which have been proved in domestic application. In this respect the policy has been followed that the Airworthiness Standards adopted by ICAO should establish a level of airworthiness approximating that which has been found to be practicable under the existing state of the art in the United States.

The foregoing positions are predicated on the advantages to U. S. aviation which follow the mandatory recognition by all ICAO States of certificates of airworthiness issued in conformity with applicable ICAO standards. This not only facilitates freedom of entry but is an unique advantage which did not pre-exist the Chicago Convention. The industry belief that "The terms of the present ICAO Convention, which encompasses only international navigation, are not sufficiently adequate to justify the Annex of Airworthiness" apparently overlooks direct references to aircraft airworthiness in the Convention, including the standards described in Article 37, and the above-recited mandatory recognition of airworthiness contained in Article 33.

In view of the foregoing the ACC cannot concur with the industry's recommendation for the repudiation of this Annex.

The question of export/import certificates is presently under study by the ACC Technical Division Airworthiness Subcommittee for the purpose of formulating instructions to the U. S. Representative to ICAO. Industry will be afforded an opportunity to participate in the formulation of the U. S. position. It is anticipated that this matter will be discussed by the ICAO Council during its 1949-1950 winter session.