

1950

## Safety Regulations and Accident Investigation: Jurisdictional Conflicts of C.A.B. and C.A.A.

Edward C. Sweeney

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

---

### Recommended Citation

Edward C. Sweeney, *Safety Regulations and Accident Investigation: Jurisdictional Conflicts of C.A.B. and C.A.A.*, 17 J. Air L. & Com. 141 (1950)  
<https://scholar.smu.edu/jalc/vol17/iss2/2>

This Article 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>.

# SAFETY REGULATIONS AND ACCIDENT INVESTIGATION: JURISDICTIONAL CONFLICTS OF C.A.B. AND C.A.A.\*

By EDWARD C. SWEENEY

Professor of Law, Northwestern University, and Editor of the JOURNAL; Williams College, B.A., Northwestern Law School, J.D. and LL.M. On leave of absence to U.S. Senate Committee on Interstate and Foreign Commerce as Professional Staff Member in charge of staff investigation of the operational efficiency of the airline industry, pursuant to S. Res. 50; Vice-President, Youth Activities, National Aeronautics Association; Commander, USNR. *Formerly*, Survey Officer for Committee on Independent Regulatory Commissions of the (Hoover) Commission on Organization of the Executive Branch of the Government, 1948; Staff Consultant on Government Organization to Joint Congressional Aviation Policy Board, 1948; Legal Adviser to President's Air Policy Commission, 1947.

## DEVELOPMENT OF STATUTES

THE initial federal statute providing for regulation of civil aviation was the Air Commerce Act of 1926. This Act directed the Secretary of Commerce to foster air transportation by encouraging the establishment of airports, civil airways and other air navigation facilities. The Act primarily provided for safety regulations. The Secretary was authorized to require registration of civil aircraft; certification of their airworthiness; rating of airmen and air navigation facilities. The Secretary was also authorized to issue, suspend and revoke certificates for aircraft and airmen and to establish rules for the navigation, and identification of aircraft.

Before 1934 the Post Office Department exercised what little economic regulation of commercial air transportation there was through the publication of equipment and operating requirements for the award of contracts to carry the mail. But following cancellation of the Post Office air mail contracts in 1934, air transportation was subject to the dictates of three masters. The Secretary of Commerce, through the Bureau of Air Commerce, regulated aviation safety matters and promoted the installation of facilities; the Post Office Department awarded contracts for the carriage of air mail; and the Interstate Commerce Commission determined the compensation to be paid for carriage of air mail under these contracts.

### *Civil Aeronautics Act*

The Civil Aeronautics Act of 1938 placed all these functions in one agency and greatly expanded federal control in the economic field.

---

\* Portions of Staff Report on the Civil Aeronautics Board submitted to the Commission on Organization of the Executive Branch of the Government, September-November, 1948.

This agency, the Civil Aeronautics Authority, was a quasi-judicial, quasi-legislative commission composed of five members, plus an Administrator and an Air Safety Board of three members.

The Administrator was an independent executive official responsible directly to the President. He exercised no quasi-judicial or quasi-legislative powers. His functions involved the construction, maintenance, and operation of civil airways and other air navigation facilities and the conduct of developmental and promotional work.

The Air Safety Board was an independent accident investigatory body specifically charged with the duty of investigating accidents involving aircraft, reporting to the Authority the circumstances and probable causes thereof, and making such recommendations to the Authority as, in its opinion, tended to prevent similar accidents in the future.

Both the Administrator<sup>1</sup> and the Air Safety Board were authorized to appoint and control their own officers and employees, and were directed to exercise their statutory powers independently of the Authority. Both were required to cooperate with the Authority in the administration of the act.

During the first year under the Civil Aviation Authority (1938-39) considerable feeling developed between the five-member board (Authority) and the Administrator regarding the latter's independence. This was resolved in 1939 by the Administrator's reluctant consent to having the Board control his budget. Thus, the Administrator was speedily deprived of his independence. The Safety Board, on the other hand, submitted its own budget independently, freely criticized the Authority and the Administrator in its accident reports, and in several instances disputes among its members and between it and other agencies of the Authority were carried to the President. This organization lasted less than two years.

#### *Reorganization Plans of 1940*

Pursuant to the Reorganization Act of 1938, the President transmitted to Congress Reorganization Plans III and IV, effective June 30, 1940. These plans abolished the Air Safety Board and transferred its functions to the Civil Aeronautics Board, and placed the Administrator in the Department of Commerce. All major civil aviation activities are now regulated by either the Civil Aeronautics Board or the Administrator of Civil Aeronautics, in accordance with the statutory authorization of the Civil Aeronautics Act of 1938 and the Air Commerce Act of 1926, as amended by Reorganization Plans III and IV of 1940.

---

<sup>1</sup> The Administrator's staff originally embraced a Bureau of Federal Airways which handled work relating to air-navigation facilities; a Bureau of Safety Regulation; and a Bureau of Economic Regulation. The Air Safety Board's staff included an Investigation Division. A General Counsel and a Secretary were appointed as provided by the Act, and an Office of Director of Statistics and Information was established. The First Secretary was designated coordinator and was directed to provide joint facilities which served the Authority, the Administrator and the Air Safety Board.

More specifically, Reorganization Plan III created the office of Administrator of Civil Aeronautics and transferred from the Authority to the Administrator the functions of aircraft registration and of safety regulation described in Titles V and VI of the Civil Aeronautics Act of 1938 (except the functions of prescribing safety standards, rules, and regulations and of suspending and revoking certificates after hearing), the functions provided for by Section 1101 of the Civil Aeronautics Act of 1938 relating to notices concerning hazards to air commerce, and the function of appointing such officers and employees and of authorizing such expenditures and travel as may be necessary for the performance of all functions vested in the Administrator.

Reorganization Plan IV transferred the functions of the office of the Administrator to the Department of Commerce and these functions were to be exercised by the Administrator under the direction and supervision of the Secretary of Commerce. The Air Safety Board was abolished and its functions consolidated with those of the Authority. The Authority in turn was abolished and all its functions transferred to a Civil Aeronautics Board. The Board was placed within the framework of the Department of Commerce for purposes of "administrative housekeeping." The Board appoints and controls its own staff, authorizes its own expenditures, determines and supports its own budget estimates and promulgates its policies and decisions as an independent agency.

#### *Statutory Responsibilities of the Civil Aeronautics Administration*

The CAA has three major functions based upon Congressional policy to encourage and foster the development of civil aeronautics and air commerce in the United States and abroad.

The first major function of the CAA is the advancement of safety in flight through the administration and enforcement of the standards and regulations promulgated by the CAB in the Civil Air Regulations. This is accomplished by the registration of United States aircraft as to nationality and recording of aircraft ownership;<sup>1</sup> inspection and certification of aircraft, airmen and air agencies, and air carriers in accordance with the standards prescribed by the CAR's; implementation of CAR's by interpretative manuals, and enforcement of CAR's and regulations of the Administrator; preparation of recommendations to CAB for revisions and additions to CAR's; issuance of emergency suspension of safety certificates; and issuance of permits for operation of foreign civil aircraft into the United States under the provisions of the Air Commerce Act of 1926, as amended.

The second major function is the development and operation of a system of federal airways within the United States. This is accomplished by the operation of air navigation facilities for day and night

---

<sup>1</sup> Public Law 692, 80th Congress (approved June 19, 1948) provides for the CAA recording of loans on engines and spare parts used by airlines.

contact and instrument flight operations; the operation of airway and airport traffic control services, and the planning, purchases and installation of these facilities.

The third function is the administration of the Federal Aid Program for the construction of civil airports under the Federal Airport Act of 1946. This is accomplished by planning and coordinating the construction of a nation-wide system of airports, including the granting of federal funds to state and local governments to assist in building and improving airports; and the operation of the Washington National Airport and certain airports in Alaska.

In addition, the CAA conducts research projects designed to benefit civil aviation in general. These fall in two main groups. One is concerned with the human element in flying and deals with such matters as pilot selection standards, physical qualifications of airmen and flight instruction methods. The other relates to mechanical matters and deals with the technical development of aircraft, new navigational aids, aircraft instruments, airport devices, aeronautical charts, etc.

The CAA carries out its functions as an agency of the Department of Commerce under the mandate of the policy section of the Civil Aeronautics Act (Section 2) which directs the Administrator, as well as the Board, to develop and encourage aviation.

The Board is exclusively responsible for the economic regulation of air transportation. The Administrator is responsible for the development of physical facilities for air navigation. *Both are charged with responsibility in the safety or operational field and most of the confusion that unfortunately exists today is due to this sharing of responsibility.*

#### CAB RELATIONS WITH CAA CONCERNING SAFETY STANDARDS AND REGULATIONS

Under Reorganization Plans III and IV of 1940 the responsibility for the promulgation of Civil Air Regulations continued in the Civil Aeronautics Board. The Administrator of Civil Aeronautics, placed under the Secretary of Commerce, was given the responsibility of implementing and enforcing the regulations made by the Board.

This separation of promulgation of the Civil Air Regulations from their administration has required the establishment of the closest relationships between the Board and the Administrator. Discussion of problems and basic principles of safety regulation occur at all of the various staff levels between the two agencies. These relations have at times been marked by friction and rivalry at all staff levels. The Board's statutory responsibility to promulgate the CAR's has created impatience and annoyance in the CAA, particularly in those sections charged with advising CAB staff of current developments. The Bureau of Safety Regulation of the CAB reports that this jealousy on the part of

CAA does not offer serious impediment to the orderly development of regulations.

### *Civil Air Regulations Amendments*

The Civil Air Regulations are voluminous and technical regulations or standards for the construction, maintenance and operation of aircraft, pilot competency, operating practices for different classes of aircraft, and air traffic control rules. They require constant amendment in their many details as better techniques become known. It is the responsibility of the Bureau of Safety Regulation of the Board to prepare these amendments. The staff is far behind in drafting the specific amendments and the general amendments it has announced it would prepare.

The great majority of suggestions for amending the Civil Air Regulations come from the field staff of the Administrator which maintains daily contact with all phases of aircraft operations and particularly with air carrier organizations in the normal course of its responsibilities of implementing and enforcing the regulations. Amendments recommended by the CAA field staff are forwarded to the CAA Washington headquarters which transmits them to the Secretary of the CAA-CAB committee (hereinafter discussed) or directly to the Board.

Although the CAR's are involved and technical, the Board clearly recognizes that the wide variety of conditions which are inherent in many aeronautical operations makes it advisable generally to incorporate sufficient flexibility in the standards to take into account this variety of conditions. Consequently, this type of regulation is usually couched in general language.

### *CAA Operation Manuals and Technical Standard Orders*

This practice has led CAA to compile Instruction Books, Operation Manuals and Technical Standard Orders to assist pilots, carriers, manufacturers and others affected, in interpreting and complying with the general provisions of the Civil Air Regulations. These manuals and instructions may be long and technical and may specify various courses of conduct that will be accepted as compliance with the CAR's by the enforcement agents. Supplementing CAR's in this manner by CAA has been encouraged by CAB.

A device frequently used by CAB to delegate details to CAA is the incorporation in minimum safety standards of such phrases as:

"are deemed adequate by CAA for safe carrier operations"

"deemed suitable by the Administrator"

"be submitted for the approval of the Administrator"

"duly authorized by the Administrator"

Under the authority delegated to it by such phrases, the CAA has initiated a program of "Technical Standard Orders." In connection

with airworthiness requirements for aircraft components CAA arranges for manufacturers and engineering societies to prepare engineering specifications for its approval, and then authorizes manufacturers to warrant that their product complies. In this manner both the fixing of specifications and responsibility for compliance have been shifted to the manufacturer. The CAA has at present 4 series of TSO's.

An example of delegation dealing with air carrier operations is Part 40.221 of the CAR's which read, in part, as follows:

*"Airports. For day operation applicant shall show that the airport to be used . . . is deemed adequate by the Administrator for the service offered. For night operation applicant shall meet the foregoing requirements and, in addition, shall show that the proposed terminals . . . are provided with such lighting facilities as are deemed by the Administrator to be adequate for safe air carrier operation at night."*

To fulfill the responsibilities delegated to him by this section, the Administrator must consider many technical regulations and interpretations.<sup>2</sup>

The CAA interpretive manuals have caused considerable confusion on the part of the industry and some conflict of opinion between the staffs of CAA and CAB. In compiling the Operation Manuals the CAA occasionally gives a particular regulation a meaning which the CAB never intended. The intended interpretation of the CAB framers of the regulations is supposed to be established through policy discussions between the staffs of the two agencies or through the CAA-CAB committee, discussed below.

#### *Excessive Details in Civil Air Regulations*

The aviation industry complains that the Board has attempted to include in the Civil Air Regulations too many minor details, too much particularization and many merely good operating practices. The more than 240,000 words of regulations (estimated by CAB staff) are found by the aviation industry, and pilots in particular, to be literally impossible to comply with fully. The volume of regulation, indeed, creates inflexibility, and difficulties in administration, and impedes necessary amendments.

The CAB claims, with some justification, that many of the details of the regulations have been included at the insistence of the CAA and that the Administrator sometimes objects to delegation of administrative interpretation by such general phrases as mentioned above. It is claimed there is no legal basis for this delegation.

---

<sup>2</sup> In respect to CAR 40.221 these include: Runway Surfaces (CAR 61.612 and Op. Spec.—Airports, Par. VIII & X); Airport Dimensions (CAR 04 and Op. Spec.—Airport, Preface pages, Par. VIII and sub-par. 1 of Par. X); Airport Obstructions (CAR 61.7124); Airport Lighting (CAR 40.211, 40.221 and Safety Reg. Instructions 284 and 298); Public Protection at Airports (CAR 40.202 and Letter to Regions, Jan. 28, 1947); and CAA Airport Inspection Procedure (Form 244).

Late in August, 1948, the Administrator questioned the Board as to whether it would not be desirable to initiate a program to revise and simplify the Civil Air Regulations, particularly in view of Public Law 872, enacted by the 80th Congress, authorizing the Board to delegate to the Administrator certain authority to prescribe rules, regulations and standards under Title VI of the Act.

It was suggested that in carrying out this program of revision the Board and Administrator should be guided by the following principles:

- (1) Eliminate the superfluous regulations which the advances in civil aviation have made either unnecessary or obsolete.
- (2) Eliminate from the regulations all things which are merely good practice.
- (3) Eliminate all regulations pertaining to merely minor items which, if they alone were made the subject of a violation report, would be considered technical and not result in enforcement action.
- (4) Remove from the regulations all details and insert in lieu thereof authority for the Administrator to issue specific regulations on such subjects when, as, and if necessary.

An additional principle was suggested with respect to the CAR's dealing with air carrier operations: "remove from the air carrier regulations all subject matters which are not common to all carriers and authorize the Administrator to cover such subjects by individual regulations applicable to the individual air carriers involved."

It should be mentioned that the Board had previously announced a policy of permitting industry greater self-regulation and participation in formulating improved operational practices. It also announced intentions to revise extensively many of the Parts of the Civil Air Regulations.

#### CAA-CAB COMMITTEE

On the suggestion of the Administrator of Civil Aeronautics, a CAA-CAB Committee was established in November, 1946, for the purpose of facilitating the efficient, expeditious, and coordinated processing of safety matters requiring coordinated action by the Board and the CAA. Included among the matters to be considered by the Committee were (1) proposed amendments to the Civil Air Regulations, (2) proposed Civil Aeronautics Manuals or amendments, and (3) matters involving major policies or objectives.

The CAA-CAB Committee is made up of a committee and a subcommittee. The Committee proper is composed of six members: the Administrator, the Assistant Administrator for Aviation Safety, and a representative of the Administrator's General Counsel's Office, a member of the CAB, the Director of the Bureau of Safety Regulation, and a representative of the Bureau of Law.

The subcommittee is composed of two members: the Assistant Administrator for Aviation Safety (CAA) and the Director of the Bu-



reau of Safety Regulation (CAB). They are supported by such other staff members of the CAA and CAB as may be designated on an *ad hoc* basis. The main committee meets only when the subcommittee cannot reach final agreement. Its first meeting was held September 12, 1948.

Recommendations are usually coordinated and discussed in advance by staff members of the two agencies. They are then discussed at a meeting. If agreement is not reached, a working committee of CAA and CAB personnel are assigned to work out the disagreement.

The CAA-CAB subcommittee has in general been effective in securing coordination of proposed safety regulations. One of its primary functions has been to reconcile discrepancies between the underlying policy of CAB regulations and the interpretation of policy as expressed in the CAA Operation Manuals.

Like the members of the Air Coordinating Committee, who show a reluctance to refer matters to the President for decision, the staff members of the CAA-CAB subcommittee hesitate to admit agreement cannot be reached without reference to the Board and the Administrator. This attitude delays decisions.

#### CAB SAFETY ENFORCEMENT PROCEDURES

The Civil Aeronautics Act provides two sanctions for violations of the safety regulation provisions of the Act. The first is a civil penalty up to \$1,000 which is imposed entirely by the staff of the CAA as a compromise penalty on threat of filing a civil suit for collection in a District Court. The second sanction is that of suspension or revocation of the airman's certificates of competency and of other types of safety certificates.

When the Administrator's staff decides that the latter sanction is the proper penalty for the alleged offense, a complaint is filed with the CAB and the proceeding is assigned to a CAB Safety Examiner. If the accused requests a hearing, an attorney for the Administrator prepares evidence in support of the complaint and presents it as a prosecuting agent before the Board's Examiner. Hearings are marked by informality and the issue is whether the alleged violation took place and if proved, shows incompetence to continue to hold the certificate in question. The Examiner purports to see that the accused's side of the case is fairly presented. The relations between the CAB Examiner and the prosecuting staff of the CAA are well-defined and satisfactory to both agencies. The Sisto Airman's Certificate Enforcement case (Docket SR-1987, Order S-182) shows the relationship of the Board to the CAA and illustrates some of the confusion that may occur in these proceedings when the issue of competency involves the right to hold a valuable privilege, i.e., the airman's certificate of a transport pilot.

#### ACCIDENT INVESTIGATION RESPONSIBILITY OF THE CAB AND CAA

Since the abolition of the old Air Safety Board by the Reorganization Plans of 1940, responsibility for determining and publishing the probable cause of all aircraft accidents has been vested in the CAB.

The Board has never attempted to have its own staff investigate all of the more than 11,000 aircraft accidents per year. This has never been considered necessary in order to determine the probable cause of many non-fatal and non-carrier accidents for which the cause is apparent from the initial accident report. Consequently, in order to accomplish the most with its limited staff and appropriations, the Board has pursued a policy of investigating only those "accidents" which involve structural or power plant failure, fire or collision in the air, and such other accidents, usually carrier accidents, the cause of which is not apparent or which might provide useful information in prevention of future accidents.

The Civil Aeronautics Administration also makes on the spot investigations of aircraft accidents in order to discharge its administrative or enforcement duties. With its nation-wide field staff, the CAA investigates approximately 90 per cent of all aircraft accidents to determine (1) whether the accident was due to any unairworthy characteristics of the aircraft theretofore unknown, which should require immediate action to correct the defect in all other aircraft of the same kind; (2) whether the airman, air agency or air carrier involved in the accident is still competent to hold his or its certificate; and (3) whether the accident involved any violation of the Civil Air Regulation upon which enforcement proceedings should be instituted.

#### *CAA-CAB Cooperation*

Aircraft accidents are reported to the CAB and CAA field staffs by local and state police and aeronautical agencies. The CAA's communications facilities are used to notify CAB personnel of accidents in the CAA regions. The facilities of the United States Weather Bureau are used extensively in determining weather conditions that may be related to the causes of accident. The Bureau of Standards is frequently called upon to test aircraft parts for structural failures and the like.

In accidents in which the CAB decides to make a field investigation the Board's staff assumes control of the aircraft wreckage as well as the subsequent public hearing. In these accidents, if CAA personnel arrive at the scene of the accident first, they take charge until the CAB personnel arrive. CAA personnel participate in the subsequent investigation only as authorized by CAB. This is invariably arranged because of the latter's technical competence.

The staffs of the CAB and CAA maintain close relationships in investigation work, but there have at times been jurisdictional disputes between inexperienced field teams of the two agencies. On several occasions feelings have been stirred when action of CAA personnel has been interpreted as an attempt to shield CAA operating or certification personnel. At one public hearing the CAB Examiner was particularly vigorous in establishing blame on CAA for failing to take remedial action on receipt of certain information which if acted on might have prevented the accident.

When the CAB's investigation indicates potential violation or a need for corrective measures to be taken by the CAA, as in the case of structural failure or fire in flight due to faulty airworthiness certification by CAB or to mid-air collisions due to failure of traffic control, etc., the particular section of the CAA responsible for that activity is notified immediately by the CAB staff.

CAA prepares an accident report of all accidents it investigates and copies of these reports are furnished the Board for analysis and tabulation. The Board publishes comprehensive accident statistics.

The number of accidents in non-air carrier operations has increased to such an extent along with the accelerated growth of such policy that it is becoming impossible for either the CAA or the CAB to make on the spot investigations of all accidents which should be investigated to discharge their respective responsibilities. In some states competent organizations have been established with the assistance of state police to investigate and report on non-air carrier accidents. Procedures are being worked out by CAB and CAA to extend state participation in accident investigations, and for the mutual exchange of reports on accidents and the reliance of CAB and CAA on state reports.

(To be continued)