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SAFETY REGULATIONS AND ACCIDENT INVESTIGATION: JURISDICTIONAL CONFLICTS OF C.A.B. AND C.A.A.— PART II*

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REORGANIZATION PLANS OF 1950

THE statutory responsibilities of the Civil Aeronautics Board and the Administrator of Civil Aeronautics were reviewed in Part one. On May 24, 1950, Reorganization Plans Numbers 5, 13 and 21 of 1950 became effective. Plan No. 13 was designed to strengthen the internal administration of the Board by making the Chairman, rather than the five-man Board as a whole, responsible for its day-to-day administration.¹ Plan No. 5 transferred to the Secretary of Commerce all functions of the Administrator of Civil Aeronautics and of the Civil Aeronautics Administration, thus centralizing in the Secretary full respon-

* Continued from Spring issue of JOURNAL, 17 J. Air L. & Com. 141 (1950). 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.

¹ Reorganization Plan No. 13 of 1950 reads: "SECTION 1. *Transfer of functions to the Chairman.*—(a) Subject to the provisions of subsection (b) of this section, there are hereby transferred from the Civil Aeronautics Board, hereinafter referred to as the Board, to the Chairman of the Board, hereinafter referred to as the Chairman, the executive and administrative functions of the Board, including functions of the Board with respect to (1) the appointment and supervision of personnel employed under the Board, (2) the distribution of business among such personnel and among administrative units of the Board, and (3) the use and expenditure of funds.

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

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

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

"(4) There are hereby reserved to the Board its functions with respect to

sibility for all the activities of the CAA.² Reorganization Plan No. 21 effected a basic reorganization of the United States Maritime Commission and established an Under Secretary of Commerce for Transportation, to perform such duties as the Secretary of Commerce shall prescribe.^{2a} This plan created a new three-man Federal Maritime Board within the Department of Commerce for housekeeping purposes, stripped of most administrative responsibility, but with specified regulatory powers to be exercised "independent of the Secretary." The CAB and the Department have had this relationship since the Reorganization Plans of 1940.^{2b} Plan 21 also created a new Maritime Administrator, responsible to the Secretary of Commerce, like the Administrator of Civil Aeronautics, but provided that he would also be the Chairman of the new Federal Maritime Board. As this is the most recent and drastic reorganization of an independent regulatory commission, the precise relationship between the new Maritime Board and the Secretary of Commerce, especially the division of responsibilities relating to the award of subsidies for ship construction and operation, are being watched closely by aviation interests.^{2c}

revising budget estimates and with respect to determining upon the distribution of appropriated funds according to major programs and purposes.

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

² Reorganization Plan No. 5 of 1950—Department of Commerce: "SECTION 1. *Transfer of functions to the Secretary.*—(a) Except as otherwise provided in subsection (b) of this section, there are hereby transferred to the Secretary of Commerce all functions of all other officers of the Department of Commerce and all functions of all agencies and employees of such Department.

(b) This section shall not apply to the functions vested by the Administrative Procedure Act (60 Stat. 237) in hearing examiners employed by the Department of Commerce, nor to the functions of the Civil Aeronautics Board, of the Inland Waterways Corporation, or of the Advisory Board of the Inland Waterways Corporation."

^{2a} Reorganization Plan No. 21 of 1950, Section 301.

^{2b} See page 142 of Part one, 17 J. Air L. & Com. 144 (1950).

^{2c} In response to an inquiry of Senator Warren G. Magnuson, Chairman of the Subcommittee on Merchant Marine and Maritime Matters of the Interstate and Foreign Commerce Committee, the Secretary of Commerce, Charles Sawyer, went into significant detail in a letter of April 14, 1950. He wrote:

"In your letter you asked for my views on certain aspects of the transfer of the functions of the Maritime Commission under Reorganization Plan No. 21 1950. This Plan establishes a Federal Maritime Board and a Maritime Administration in the Department of Commerce.

"The Board would have two principal functions: regulatory powers relating generally to rates and services, to agreements among carriers, and to trade practices; and powers to award subsidies for the construction and operation of ships. The other functions now lodged in the Maritime Commission would be transferred to the Secretary of Commerce, subject to delegation to the Maritime Administrator, who would also be the Chairman of the Board.

"In the exercise of its regulatory powers over rates and services, over agreements between carriers, and over trade practices, the Board would, under Section 106 of the Plan, be independent of the Secretary of Commerce and would be free to report directly to the Congress. The present independence of decision enjoyed by the Maritime Commission would, therefore, in all respects be continued in the Board, with respect to these quasi-legislative or quasi-judicial regulatory functions.

"If, in the exercise of these functions, the Board should wish to avail itself of any of the facilities of the Department, I should of course be glad to see that the Board is accorded full cooperation. However, such cooperation would not, in my opinion, interfere with the independence of the Board in the exercise of

SHOULD RESPONSIBILITY FOR ISSUANCE OF SAFETY REGULATIONS BE TRANSFERRED TO CAA?

It has been shown in Part one that the Civil Aeronautics Board promulgates the Civil Air Regulations. The Administrator of Civil Aeronautics implements Board action by carrying out the primary duties of administration and enforcement. Aircraft safety regulations are voluminous and technical and include safety standards of all kinds. They are designed to insure safety for aircraft, airmen and air navigation.

its regulatory functions. On the contrary, the decisions of the Board on regulatory matters would be made with complete independence, on the basis of the facts before the Board, subject only to court review. Its consideration of regulatory problems would not be subject to supervision or control by the Department, and its decisions would not be subject to review, or approval, or reversal by the Secretary or the Department. This method of operation has been found satisfactory in the case of the CAB, and I foresee no difficulty in applying the same principle to the regulatory functions of the Federal Maritime Board.

"In the exercise of the powers with respect to the award of subsidies which are delegated to the Board by the Plan, the Board is to be guided by the *general policies* of the Secretary of Commerce, under Section 106 of the Plan, but its actions with respect to making, amending, and terminating subsidy contracts under Section 105(1) are to be final.

"This aspect of the Plan appears to me to be both appropriate and practicable. This arrangement facilitates and ensures coordinating the subsidy program with the programs and general policies of the Executive Branch relating to national defense and the national transportation program. At the same time, it leaves to the independent judgment of the Board the determination of the individual concerns which are to receive the subsidy contracts and the amounts of the individual subsidies.

"I should like to make it clear that under the Plan the Secretary has no authority either to award a subsidy or to direct the action of the Board on a subsidy application. Here again, I would expect full cooperation between the Board and the department: The Department will need the views of the Board in establishing general policies for the subsidy program, to ensure that the general policies will be workable and realistic; the Board may, on occasion, wish the views of the Department with respect to the application of the general policies. Cooperation and consultation of this sort need not, and I am convinced will not, affect the ability of the Board to make final decisions with respect to making, awarding and terminating individual subsidy contracts, decisions which will not, under the Plan, be subject to review or reversal by the Secretary.

"Under the Plan, the Federal Maritime Board is to be an agency within the Department of Commerce. This status does not, in my view, give the Secretary or Department any authority over the regulatory functions which the Board is to exercise independently, nor does it give the Secretary or the Department authority to alter or reverse the actions of the Board with respect to those subsidy functions as to which its actions are final."

"At the present time I am not prepared to make any proposals for fundamental revisions of the basic shipping legislation. I propose, if the Plan takes effect, to make a thorough review of the present merchant marine program, and if it appears from this review that changes in legislation would make the program more effective, I would submit for Congressional consideration recommendations for appropriate changes in the present laws.

"Until careful studies have been made it would not be possible to indicate the precise place which promotion of the merchant marine should have in an overall Federal program for transportation. As I indicated in my report to the President, I am strongly in favor of the national transportation policy set forth in the Transportation Act of 1940, which provides for the recognition and preservation of the inherent advantage of each form of transportation and the promotion of safe, adequate, economical, and efficient service as well as the fostering of sound economic conditions in the field of transportation. I am convinced that adherence to this policy in domestic transportation will result in a flourishing domestic fleet available for use by the commerce of the United States. I also recognize that, because of our higher costs, subsidies are necessary for merchant shipping operating in international trade, if we are to remain a major

Whenever one agency must take a comprehensive set of technical regulations issued by another and implement and enforce them, there are bound to be constructions placed upon the regulations not intended by the promulgating agency. Enforcement policies ultimately determine what regulations really mean in practice. These differences have occurred and given rise to friction and misunderstanding among the staffs of the CAB, the CAA, and representatives of the aviation industry.

To minimize misunderstandings in interpretations and to facilitate amendments to the Civil Air Regulations, a special CAA-CAB Coordinating Committee was established in 1946. It has helped to bring the staffs together and resolve differences of opinion. Techniques of working together have now become acceptable and the committee machinery is coming into disuse.

It has been mentioned that the aviation industry and the Administrator have stated that they consider the present Civil Air Regulations too voluminous and too detailed and recommend that they be revised and simplified. What is needed, it is stated, is for the Board to change drastically its basic approach towards safety regulation and restrict its regulation to major policies affecting safety. It is not entirely clear from the representations made by the Administrator to the Board in 1948 whether his supplemental rules and Operations Manuals are to be simplified and generalized as well as the Board's Civil Air Regulations. To give genuine recognition to self-regulation by manufacturers, airlines and other parts of the industry, the CAA should also relax many detailed regulations and procedures.

The Board is not opposed to simplification and has for some time announced a policy of permitting industry greater self-regulation and participation in formulating improved operational practices. Progress along this line appears intolerably slow. The Board has stated its intentions to revise extensively many of the Parts of the CAR's. The delay may in part be due to the great size of the undertaking and to the extremely small staff undertaking to plan, study and draft the revisions, as well as an attitude that speed should always be sacrificed to accuracy.

shipping power and if our merchant fleet is to make an adequate contribution to national defense.

"Your letter also inquired as to the general policy contemplated as regards the respective spheres of authority of the proposed Maritime Administrator, the Under Secretary for Transportation, and myself.

"The Maritime Administrator would be responsible for the operations of his agency and would be vested with suitable authority to fulfill that responsibility. While the Department requires adherence to certain administrative standards and practices in the interests of economy and progressive management, it is my policy to give operating bureau wide operating latitude. This policy would apply to the Maritime Administration, in conformance with the administrative pattern of the Department prevailing with respect to the Bureau of Public Roads, Civil Aeronautics Administration, and other major agencies."

Proposals to Concentrate Authority in One Agency

Opinions differ widely as to the need for organizational changes in the safety regulation field. The Department of Commerce has urged that promulgation of rules should be transferred to the CAA so that the single agency in daily touch with the problem could make, interpret and enforce the regulations and keep them up to date.³ It is asserted that this method will promote efficiency and recognize the primary technical nature of the Civil Air Regulations. The President's Air Policy Commission sponsored this recommendation (Report page 135).

The Congressional Aviation Policy Board, on the other hand, recommended that the CAB should administer and enforce the safety regulations as well as make them, and that the staff of the CAA administering the regulations should be transferred to the CAB and placed under the supervision of an Executive Director who would be subject only to policy supervision by the Board (Recommendations, Nos. 82, 84 and 89).

The CAB concurred generally in this recommendation and points out that the Civil Air Regulations often have far reaching economic affects and should therefore, be made by the agency primarily responsible for the financial welfare of air carriers.⁴ Since many safety regulations involve flight restrictions or add weight to the aircraft, their economic effect is evident. For example, if the Board amends the regulations to require a third crew member on large 4-engine equipment, the payroll weight and engineering expense will be substantial. Since, in the last analysis all aircraft safety is relative, the expense of safety requirements plays an important role with carrier management.

The Congressional Policy Board suggested, however, that the Federal Airway Service in the Department of Commerce should make the rules for the operation of the airways and airport traffic control facilities as distinguished from all other rules related to the economic operation of aircraft and air services in flight and on the ground. This distinction appears to be too nebulous and would certainly lead to frictions between the CAB and the Federal Airway Service.

Either of these would concentrate the rule-making power in one agency. Through day-to-day administrative experience this agency would acquire an intimate knowledge of the technical aspects of regulations and their important economic implications. Thus, both proposals would cure the evil of the present duality and permit one responsible agency to simplify and modernize the CAR's.

In passing, it should be mentioned that when the Civil Aeronautics Act was under consideration in 1937 one of the proposals seriously considered was to give the ICC safety as well as economic regulation of

³ See Hearings on H.R. 6144 before House Interstate and Foreign Commerce Committee, 80th Cong., 2d Sess., April 20, 1948, especially statement of Wm. C. Foster, Under-Secretary of Commerce, page 28, *et seq.*

⁴ See Hearings on H.R. 6144, statement of Joseph J. O'Connell, CAB Chairman, page 71, *et seq.*

commercial carriers, with the Department of Commerce retaining safety regulation of private fliers. In practice, air carrier and private flying regulation are separated in form in the Civil Air Regulations and the administration and enforcement of the two areas of regulation are handled by different CAA personnel. As non-commercial flying increases in volume its problem will require greater decentralization and administration at the state level, but at this time this proposal would not seem desirable with the common use of airports, airway facilities and traffic control by all classes of aviation and the need for uniform traffic control.

The aviation industry and witnesses before the two policy committees and on the legislation considered by Congress appear to be divided upon the merits of whether the CAB or the CAA should be the agency to be given the entire responsibility for promulgating and administering safety regulations. While there is general concurrence that one agency should handle both the rule-making and administration of safety regulations, there is also recognition of the need for a disinterested body representing the public to pass upon proposed regulations about which government engineers and the industry are not in agreement.

Public Law No. 872, approved July 1, 1948, is a step in this direction. It provides that the CAB may authorize the Administrator to make such safety regulations as the Board deems desirable and that the Board may provide for discretionary review of CAA proposed regulations.

The law does not specify what responsibility CAB retains after delegating rule-making authority to the Administrator, i.e., whether it is obligated to retain a staff to judge the adequacy of CAA's rule-making and to withdraw the delegation when it disagrees with CAA policy.

*Recommendations to Hoover Commission's Committee on
Regulatory Commissions*

The foregoing discussion appears to establish the desirability of centralizing responsibility of both the rule-making and administration functions of safety regulations in one agency. This is because of their technical nature, the need for daily intimacy with changing industry techniques, facility for prompt amendments and centralization of responsibility. To require two agencies to work so closely together as is necessary for a rule-making agency dependent upon a second agency for a great share of its technical advice and competency invites clashes which impede progress. This should be avoided if possible. This objective can be accomplished by transferring the responsibility for promulgating all Civil Air Regulations to the CAA.

Secondly, when industry and the CAA do not agree, provision should be made for final decision by a disinterested competent body which can balance safety and economic responsibilities. This appears

body would need only a small staff of technical advisors. While industry may tend to appeal any proposed regulation which imposes greater financial and technical burdens, if only to delay enactment, it is believed that this provision for appeal to a separate agency is preferable to merely leaving the matter to publication and hearing pursuant to the Administrative Procedure Act. While every appeal may be interpreted as an attack on a safety measure on economic grounds, this must be recognized as a real issue involved in most new regulations that cannot be avoided or concealed by government.

This second objective can therefore best be achieved by a provision that when a proposed regulation is published by CAA in accordance with the Administrative Procedure Act, interested parties may petition for discretionary review by the CAB.

These changes may be accomplished under Public Law 872 with the full cooperation of CAB, or better, by specific amendment to the Civil Aeronautics Act.

Finally, it is recommended that the philosophy of safety regulation for civil aviation by all agencies of the Federal Government be drastically changed by revising the Civil Air Regulations both as to form and scope in order to begin a gradual generalization of safety regulations with the ultimate objective of placing responsibility for detailed operating procedures and practices directly on the aviation industry.

SHOULD RESPONSIBILITY FOR ENFORCEMENT OF CIVIL AIR REGULATIONS BE TRANSFERRED TO CAA?

The Reorganization Plans of 1940 left an unsatisfactory division of responsibility between the Board and the Administrator in regard to enforcing Civil Air Regulations. Briefly, the Administrator is the primary enforcing agency with a field staff charged with apprehending and reporting violations and acts as prosecuting agent before a CAB Hearing Examiner in suspension and revocation cases. He is invested with power to reprimand a violator, to compromise a civil penalty or to deny an application for renewal of a certificate, while the Board is vested with the power to suspend or revoke the violator's certificate of competency.

In a given case the Administrator may consider that the violator's certificate should be suspended and when it reaches the Board for decision on the suspension it may consider that a civil penalty was more appropriate. Theoretically, proceedings to suspend a certificate do not prevent the Administrator from also threatening to collect a civil penalty, or on the other hand, to issue a new certificate to a violator as soon as the Board has suspended a previous one, thus nullifying the action of the Board.

Delay: In practice the most serious objection of the Board's handling of suspension and revocation cases is the undue length of time it

takes the Board to process decisions, and the complete lack of personal interest shown in such proceedings by Board members. Many of the airmen suspension cases, such as a student pilot carrying a passenger contrary to regulations, are minor in nature. In many such cases the Examiner has recommended a suspension of the pilot's privileges for 30 to 60 days, but the decision usually does not become effective until a year or more after the offense occurred. This is inexcusable.

Dual Authority: In addition to delays, experience indicates two fundamental difficulties in the present enforcement procedure. The first is that two separate groups of hearing officers (the Board's Examiners and CAA staff) are authorized to hear and impose different sanctions: neither is bound by the other's decision and each has jurisdiction over only one sanction.

Denial of Hearing: The second is that in practice the violator is denied an opportunity of having the civil penalty heard and determined by an independent tribunal. The choice presented to the alleged violator is either to pay the compromise penalty offered by the CAA, usually in an amount under \$100, or to have the issue tried before a United States District Court in a \$1,000 civil penalty action. Since to defend the action would cost the alleged violator more in time, attorney fees and costs, than to pay the compromise, an innocent airman may be forced to accede to the Administrator's suggested compromise. This procedure has been the basis of complaints by airmen and aeronautical associations.

Proposals for Local Enforcement of Safety Regulations

Both CAB and CAA recognize that enforcement of Civil Air Regulations with respect to flight activities of non-commercial pilots and local operators is essentially a local problem and that as much as possible of the enforcement responsibility for this class of flight activity should be turned over to local and State officials as soon as possible.

The President's Air Policy Commission (Report, page 126) and the Congressional Aviation Policy Board (Recommendation 24 (b)) recommended that federal statutes be amended to give State Courts and agencies concurrent jurisdiction to adjudicate violations of the Civil Air Regulation which did not involve certificated air carriers.⁶

Hearings were held in May, 1948, on legislation to carry out this recommendation. Serious differences of opinion were brought out at these hearings as to how far the State courts should be authorized to go and as to the best methods of meeting procedural problems.⁷ Should State jurisdiction be extended to revocation of federal certificates as

⁶ See comprehensive discussion of this problem by Louis E. Black, Jr., "Uniformity in Air Safety Regulation; Cooperative Federalism Applied," 15 JOUR. AIR LAW & COM. 181 (1948).

⁷ See Hearings on H.R. 6147, "Local Enforcement of Safety Regulations" before House Interstate and Foreign Commerce Committee, May 4, 1948, and hearings on S. 2452 before Senate Committee on Interstate and Foreign Commerce on May 17, 1948.

well as civil penalties? State officials asserted that criminal procedure would be the only effective procedure for them to follow. That basically the only additional authority they need would be authority to suspend the exercise of federal pilot certificates of competency for limited periods of time for violations involving "stunt" or reckless flying.⁸ The entire subject is undergoing further study by interested groups under the sponsorship of the CAA and State aviation officials.

Proposals to Improve Federal Enforcement

A number of proposals have been made to better correlate enforcement procedures between CAB and CAA if the entire responsibility for safety rule-making and enforcement is not assigned to one or the other of the agencies.

The Board has recommended that both civil penalty and suspension proceedings be handled by the Board's Examiners with a right of appeal to the Board in suspension or revocation cases as at present, and to the District Court in civil penalty cases. This procedure would relieve the CAA from passing judgment on violations it uncovers and prosecutes, but would greatly increase the responsibility of the Board and might further delay the handling of cases.

The Administrator has refined this proposal by recommending that CAB safety Examiners should be designated as commissioners of the Federal District Courts like the commissioners designated to hear petty crimes in the National Parks and federal territories (18 USCA 576a). This would give the Examiner power to determine civil penalties in a judicial manner and would provide a more expeditious appeal procedure to the Federal Courts.

Recommendations to Hoover Commission's Committee on Regulatory Commissions

It is suggested that the proposal recommended by the Administrator be adopted; that each United States District Court appoint an Aviation Commissioner from among the Safety Hearing Examiners employed by the CAB. Depending on the work load the same Examiner might be designated to act as commissioner in two or more districts. He should have jurisdiction to hear and act upon all actions for monetary penalties and actions to suspend or revoke all classes of safety certificates.

In the event of finding of a violation the Commissioner could impose a civil penalty up to \$1,000, or suspend any air safety certificate issued to the violator, or both. An appeal would lie from his judgment imposing a civil penalty to the District Court, and from his judgment suspending or revoking a certificate to the CAB from whose decision

⁸ See Statement of National Association of State Aviation Officials in regard to H.R. 6147, reprinted in 15 JOURNAL OF AIR LAW AND COMMERCE 325 (Summer issue, 1948).

an appeal could ultimately be taken to the Circuit Court of Appeals. The right of an accused to demand a trial by jury of any issue of fact, if the value in controversy exceeds \$20, must be recognized and provision made for such trials before the District Court.

The proposal should provide for bringing complaints in two ways: (1) they would be brought in the name of the United States and prosecuted by the Administrator under the direction of the Attorney General, (2) the law enforcement officers of any State could file and prosecute complaints arising out of violations within that State of the federal Air Traffic rules governing the navigation of aircraft, safe altitude of flight, and the prevention of collisions, unless the alleged violator is operating an aircraft under the terms of an air carrier operating certificate. With respect to the specific violations mentioned in (2) above, consideration should be given to amending federal laws so as to authorize state aviation authorities and courts of record to suspend federal airmen's certificates of competency for periods from 30 to 60 days.

This recommendation meets the basic difficulties outlined above. It concentrates responsibility in one set of Examiners upon whom responsibility for delays may be fixed. It provides for an impartial tribunal to impose a fixed monetary penalty, civil in nature, about which there would be no negotiation or bargaining. In addition, the proposal realizes the objective of utilizing state enforcement personnel in the handling of violation cases of local concern to reduce the number of federal employees and widen the base of violation detection.

SHOULD RESPONSIBILITY FOR AIRCRAFT ACCIDENT INVESTIGATION BE TRANSFERRED TO AN INDEPENDENT AIR SAFETY BOARD?

Importance of Air Safety

No activity of the federal government with respect to civil aviation attracts more public interest than the investigation of aircraft disasters and the publication of the causes thereof. Fear of injury in aircraft accidents, which is both real and exaggerated, is one of the serious deterrents to wide-spread public acceptance of air transportation. The public appears to be more interested in commercial aircraft safety than they are in the regularity, frequency or comfort of the service.

Accident-free operations are fundamentally the result of careful operating practices on all levels — this includes aircraft construction, maintenance, ground dispatching and pilot technique — all operating personnel on every air carrier must vigilantly promote safety.

Public accident investigation hearings tend to take the mystery out of aircraft accidents and to let the public know what really happened and that effective measures can and are being taken to prevent recurrence. Investigations focus attention upon the breaks in safe operating procedure so that corrective steps may be taken to prevent future accidents.

Defects of Present Organization

In the field of aircraft investigation there are two organizational problems that require attention. The first involves duplication in field investigations between the Board and the Administrator, and the second involves securing impartiality of accident investigation and determination.

Duplication: As has been shown, as part of the Administrator's normal enforcement duties, his field staff investigates more than 90 per cent of all aircraft accidents to determine whether there have been violations of the Civil Air Regulations. The Board, on the other hand, has the specific statutory duty of both investigating and determining the causes of these same accidents. The Board has never had the appropriations to investigate all accidents and has never considered that this was necessary in order to ascertain the probable cause of many accidents. In order to accomplish the most with its staff the Board investigates and reports on only the more disastrous accidents and those for which the cause of the accident is obscure and therefore show a likelihood of revealing possible corrective measures. It usually invites the CAA to participate in its field investigations.

This arrangement has caused duplication and at times friction between the staffs with regard to their respective duties at the scene of accidents and at hearings. It is undesirable for two groups of technicians representing the federal government performing similar investigation services in the field at the same time. However, the investigation of an accident and the public hearing to determine the cause thereof are inseparably a part of the same inquiry. Should the Board hold public hearings to determine the causes of aircraft accidents without making its own investigation, it would have to rely solely upon the facts developed by the CAA. Thus, the Board would be limited in its findings to that evidence developed solely by that agency; and by virtue of the Administrator's responsibilities, it is possible that essential evidence pertinent to the investigation of an accident might not become available.

Should the CAA be assigned the responsibility for on the spot investigations of aircraft accidents, that agency would be placed in the position of investigating itself, reporting itself, and making recommendations to itself for corrective or preventive action wherever the CAA was the responsible agency for approving the matter under investigation. For example, since World War II, in the air carrier field, four new types of transport aircraft have been placed in scheduled air carrier service. Three of these types developed major defects, which resulted in several disasters in which many lives were lost. Each of these aircraft were certificated as airworthy by the CAA. Defects in the aircraft were not disclosed until after a disaster had occurred and were then brought out and made public by a thorough investigation of the accidents by the CAB acting independently.

Regardless of whether CAA or CAB conducted these investigations, it is desirable that technical specialists and others who have extensive experience in organizing necessary custodial, search and research facilities be available. For this reason, at least so far as the major air carrier accidents go, it is unlikely that the investigation can ever be completely decentralized. While some decentralization is now in effect, the Board's area staffs are supplemented by specialists and others from Washington, and presumably the CAA would have to follow this same technique to obtain the same competence even with its large field force and, accordingly, there do not appear to be any savings which might be derived from a transfer of on the spot investigation to the Administration.

Impartiality. The proper agency to make the field investigations raises the second question of impartiality. Since the abolition of the independent Air Safety Board in 1940 the Air Line Pilot's Association has advocated re-establishment of an independent three-man Air Safety Board.⁹ The Association contends that neither the CAB, making the operating regulations, nor the CAA, administering the regulations, can be expected to impartially determine the cause of accidents.

The Association points out that accidents may occasionally be due to faulty regulations, faulty inspection, certification or operation of federal facilities, and that no Government agency will involuntarily place blame for an accident upon itself by criticizing its own judgment in performing its regulatory duties or in installing or operating air navigation facilities.

Extensive inquiries into these charges have failed to uncover any specific instance of withholding blame from itself, but the general logic of the ALPA contention cannot be refuted, but complete impartiality of the investigating agency would be desirable if consistent with other organizational problems.

Proposals for Handling Aircraft Accident Investigations

The President's Air Policy Commission recommended re-establishment of an independent Air Safety Board (Report page 138) and the Congressional Aviation Policy Board recommended appointment of an independent Director of Air Safety Investigation (Recommendation No. 2). The two recommendations differ principally in that the Congressional Board felt that accident investigation and analysis could best be handled by a single responsible individual, but each report stressed the need for impartial and thorough investigations.

Hearings held in April, 1948, on a bill to set up an independent Director of Air Safety, as recommended by the Congressional Aviation

⁹ Hearings on "Safety in Air Navigation" before House Committee on Interstate and Foreign Commerce, 80th Cong., 1st sess., Part 1, p. 453, Statement and testimony of David L. Behncke, President, ALPA. See also Hearings on H.R. 5561 before same committee, 81st Cong., 2nd sess. (February 1950).

Policy Board, brought out a number of different views as to the best organization to secure impartial accident investigation.¹⁰ The CAB Chairman did not oppose the proposal but considered it unnecessary. The Department of Commerce witness considered that the proposal showed a lack of faith in CAA and CAB officials charged with safety responsibilities and that it would create unnecessary duplication of personnel. Industry in general was indifferent except that the airline pilots strongly favor a Board of three to five specialists and consider air safety "too important to be trusted to one man."

Public Law 872, effective July 1, 1948, authorized the CAB to delegate to the CAA such duties as it sees fit with regard to accident investigation. This is intended to clarify and legalize the present role of the CAA in investigating the vast majority of accidents.

*Recommendations to Hoover Commission's Committee on
Regulatory Commissions*

The solution of the organizational problem of securing impartiality of accident investigation is tied up with the selection of the agency that should promulgate Civil Air Regulations. It has heretofore been recommended that this function be given to the Administrator with the right of discretionary appeal in the CAB. If this recommendation is accepted then the CAB will be freed from its primary responsibility for making safety regulations.

It is recommended that the Board retain responsibility for accident "investigation" and "determination." The principle of delegating accident investigation responsibility to the CAA, as authorized by Public Law 872, with respect to minor accidents should be encouraged. In a large portion of non-air carrier accidents, because of their relatively minor significance, the CAA would be in a position to determine readily the cause of the accident. In other cases, however, the report of the accident investigation would be forwarded simultaneously to the Board for accident determination and to the Administrator for necessary enforcement and administrative action.

In carrying out its responsibilities, the Board would hold public hearings before an Examiner specializing in accident investigations, hear the reports of its investigating team, the carriers, the manufacturer, the pilot, and the general public. Upon the basis of information thus assembled the Board would make public a finding as to the probable cause of the accident.

Reasons for Recommendation. It is recognized that this is not a perfect solution to the problem of securing impartiality of accident investigation, but appears to be the most desirable of available choices. The establishment of a separate government agency or director for

¹⁰ See hearings on "Independent Office of Air Safety," H.R. 6144, before Committee on Interstate and Foreign Commerce of the House of Representatives, 80th Cong., 2nd Sess., April 20, 1948.

the sole purpose of investigating and determining the cause of accidents would be very expensive and out of proportion to the benefits that may reasonably be expected. Such an agency would build up an extensive field staff of engineers and analysts and duplicate the field force of CAA.

Moreover, even an independent safety Board would tend to lose its impartiality in an inevitable endeavor to maintain consistency in its own recommendations. It would soon have the same interests as CAA and CAB to defend its earlier actions and to cast suspicion or blame in other directions. Finally, at times when public concern over aircraft accidents is aroused, an independent Board would be under tremendous pressure to recommend regulations which might be ultimately harmful to aviation safety.

Undoubtedly the CAB will occasionally find itself determining the cause of accidents involving regulations that it approved on appeal from the CAA. To this extent impartiality is sacrificed to avoid the expense, confusion and doubtful benefits of creating a new agency.

The emphasis in accident determinations, of course, should be less on fixing blame than on developing the chain of events leading up to the accident and on recommendations that will insure against their recurrence in the future.

Any Government agency holding public hearings and issuing accident reports should endeavor to keep the aircraft industry, CAA and the CAB alerted to criticism, and at the same time to retain public confidence that everything possible is being done for public safety. It is believed that the CAB can best do this by determining the causes of the most important and disastrous accidents by public hearings.