

SUBJECT: Analysis of ALPA Comment on Civil Air Regulations Draft Releases 59-4, 59-5, and 59-6

OBJECT: Legal Considerations

INTRODUCTION:

The Airline Pilots Association submitted a comprehensive brief outlining their position. They oppose the promulgation of these proposed regulations on the grounds, among other things, that (1) The Administrator does not have the power or authority to promulgate the proposed regulations, and (2) The Regulations attempt to impose a limitation on existing airman certificates to the detriment of a pilot's professional and property rights without opportunity for a full hearing at which evidence in support, as well as in opposition to the Regulations is received and examined; and that the Administrator's action is in violation of due process of law.

DISCUSSION:

The ALPA contends that the Administrator is without power to promulgate this proposed rule. In support of this contention, they pointed out that sections 602 and 609 of the Federal Aviation Act provide exclusively the statutory means by which safety standards shall be applied to airman certificates and that each and every denial, amendment, modification, suspension or revocation of an airman certificate is to be preceded by investigation into the qualifications of the person affected, or by re-inspection, reexamination and opportunity for a hearing. By implication then, they claim that there is no specific grant of authority to the Administrator to promulgate the proposed regulations.

An examination of these two sections reveals that basically they deal with the initial issuance of an airman certificate and amendment, suspension and revocation of such certificate. The power and authority of the Administrator to promulgate regulations pertaining to medical certificates or other matters are, as pointed out hereinafter, provided in other section of the Act.

Section 602(b) is quoted below for further examination:

"Any person may file with the Administrator an application for an airman certificate. If the Administrator finds, after investigation, that such person possesses proper qualifications for, and is physically able to perform the duties pertaining to, the position for which the airman certificate is sought, he shall issue such certificate, containing such terms, conditions, and limitations as to duration thereof, periodic or special examinations, tests of physical fitness, and other matters as the Administrator may determine to be necessary to assure safety in air commerce." (Underscoring supplied)

If not expressed, there is an implied power vested in the Administrator by the foregoing section, to promulgate regulations governing or determining the proper qualifications for airmen. The underscored portions thereof are expressive of the intent of Congress that airmen should possess proper qualifications, in addition to physical ability, before they may be issued a certificate. With continually changing designs and performance of aircraft, it is inconceivable that Congress could have meant for such proper qualifications possessed by airmen to remain static.

Since the passage of the Air Commerce Act of 1926, there has always been a regulation fixing the lower age limit of airline transport pilots. Air Commerce Regulations (1926), Government Printing Office, Section 64; Civil Air Regulations (1958), Government Printing Office, Section 21.10. It is significant to note that in 1926 the minimum age requirement for transport pilots was 18 years, and following the enactment of the Civil Aeronautics Act of 1938, this requirement was raised to 23 years. Civil Air Regulations (1938) Government Printing Office, Part 21.10. Through acquiescence, if not active support, all segments of industry gave approval and willingly cooperated in the enforcement of the change as being necessary to keep pace with the more modern aircraft designs and increased performance of the same. This is specifically pointed out to show that aside from statutory basis, it seems that if the Government has the power and authority to promulgate and amend a regulation defining the lower age limit for airline transport pilots, there could be no logical reason why it now, as contended, lacks the same power and authority to promulgate a corollary regulation defining the upper age limit for such pilots. One is just as much a part of the "proper qualification possessed by airmen" as the other.

Statutory Basis for Power to Promulgate Regulations re Age Limit

The question appears to be much broader than what is posed by ALPA, for if they challenge the authority or power of the Administrator to promulgate the proposed regulations, they are in fact questioning the power and authority of the Federal Government to promulgate such regulations. Since airlines are engaged in interstate air transportation, overseas air transportation and foreign air transportation, they are constitutionally subject to such rules and regulations as the Federal Government may promulgate. Southern Railway Co. vs. United States, 222 U.S. 20; Houston East and West Texas Railway Co. vs. United States, 234 U.S. 342; Weiss vs. United States, 308 U.S. 321.

The FAA Act of 1958 vests the power and authority to promulgate all civil air regulations in either the Administrator or the Civil Aeronautics Board, the latter being limited to the area of economic regulations. In summarizing the then S. 3880 which became the Federal Aviation Act of 1958, the Senate Committee on Interstate and Foreign Commerce (Report No. 1811, 85th Congress, 2nd Session) said in part:

"The Administrator of the new Agency (1) would be given full responsibility and authority for the advancement and promotion of civil aeronautics generally, including the promulgation and enforcement of safety regulations * * * *" (Underscoring supplied).

In analyzing the different titles, the same committee said of Title VI as follows:

"In addition to CAA's present certification, rating and inspection authority, all safety rulemaking powers are transferred to the Administrator from the Board."

Section 601(a) (3) of the Federal Aviation Act of 1958 follows:

"The Administrator is empowered and it shall be his duty to promote safety of flight of civil aircraft in air commerce by prescribing and revising from time to time: Reasonable rules and regulations governing, in the interest of safety, the maximum hours or periods of service of airmen, and other employees of air carriers; * * * *" (Underscoring supplied).

It is clear that Congress intended for the Administrator to regulate the maximum hours or periods of service of airmen. Since the age at which an airline pilot may commence to serve as such is by regulation prescribed, the only other manner to effectively regulate the period of service is to set the maximum age at which they should terminate such service.

The Declaration of Policy pertaining to the Administrator follows:

"In the exercise and performance of his powers and duties under this Act, the Administrator shall consider the following, among other things, as being in the public interest: (a) The regulation of air commerce in such manner as to best promote its development and safety and fulfill the requirements of national defense.

Here again, in broad terms is the explicit mandate by Congress to the Administrator to regulate air commerce in order to promote its development and safety.

Section 313(a) of the FAA Act provides:

"The Administrator is empowered to perform such acts, to conduct such investigations, to issue and amend such orders and to make and amend such general or special rules, regulations, and procedures, pursuant to and consistent with the provisions of this Act, as he shall deem necessary to carry out the provisions of, and to exercise and perform his powers and duties under this Act." (Underscoring supplied)

It should be pointed out that Title III deals with the organization of the agency and powers and duties of the Administrator. While it is generally accepted that the power to make regulations carries with it the authority to amend, Congress made it doubly clear that this principle applies to the Administrator, and vests him both the power to make and amend such general or special rules, regulations and procedures as he shall deem necessary to carry out the provisions of this Act.

Objection Based on Violation of Due Process of Law

The other objection to the proposed regulations raised by ALPA which will be briefly discussed here is that the regulations attempt to impose a limitation on existing airmen certificates to the detriment of a pilot's professional and property rights without opportunity for a full hearing at which evidence in support, as well as in opposition to the Regulations is received and examined; and that the Administrator's action is in violation of due process of law.

Attention is invited to the fact that the proposed regulations, if adopted, would in no way deprive an airman of his certificate without due process of law. Under current procedures, once a man obtains his rating as an airline transport pilot, he would stand to retain it indefinitely. The conditions under which he may exercise his privileges under such airman certificate are believed not to be property rights, and these may be changed or amended if the requirements of safety or the promotion of air commerce dictate. That is why such conditions such as medical certificates do have a period of validity. Age limitation is another such condition which does not deprive an airman of his certificate; it merely sets a boundary within which the airman's privileges may be exercised.

CONCLUSION

Assuming that the proposed regulations dealing with the age limit for airline transport pilots are reasonable, the Administrator has the power and authority to promulgate them, based on several provisions of the Federal Aviation Act of 1958.