



**PRACTICAL  
AVIATION  
LAW**



Third Edition

**J. SCOTT HAMILTON**

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**J. Scott Hamilton** is an executive with the Civil Air Patrol at its national headquarters at Maxwell AFB, Alabama. He has served as senior assistant attorney general for the State of Wyoming and was an aviation attorney in Colorado. He was a member of the adjunct faculty of the University of Denver College of Law, of Embry-Riddle Aeronautical University, and of Metropolitan State College of Denver. An aircraft owner, pilot, skydiver, and former parachuting instructor in the Green Berets, Hamilton has published widely on aviation law.

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# P R E F A C E

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**P**RACTICAL AVIATION LAW is designed to be used in conjunction with the *Practical Aviation Law Workbook* as a college text for aviation law courses at the undergraduate level and, standing alone, as a reference guide for aviation managers, pilots, mechanics, aircraft owners, and others involved in aviation by vocation or avocation.

Except for certain treaties having worldwide or at least international effect, the scope of the book is limited to the law of the United States and may have little relevance to the domestic laws of other nations. Neither does it attempt to explore the entire seamless web of law—only those areas unique to aviation. I recommend that students considering a career in aviation management also take a business law course. While there is some slight overlap between the courses (principally in the area of buying and selling aircraft), the business law course gives broader coverage of legal principles that are applicable to all businesses.

As the title suggests, this book takes a practical viewpoint. It aims at providing the reader with the basic legal knowledge and perspective to understand how the legal system works in relation to aviation activities, to help you recognize and avoid common aviation legal pitfalls, and to enable you to recognize when the moment has come to stop what you are doing and call your lawyer. If this book had a subtitle, it would be *How to Avoid Aviation Lawyers and When to Break Down and Call One*.

No book can hope to advise you what to do in every conceivable situation. In advising our clients, lawyers must take into consideration not only the law but also the facts and circumstances. In over thirty years of practicing law, I have represented clients in over three thousand aviation matters, and I've never seen two identical cases. While similar cases give

rise to similar considerations, slight differences in the facts and circumstances often lead to major differences in the best approach to solving the problem. The law is also in a constant state of change. Even as I write, the Congress of the United States, fifty state legislatures, and a vast number of administrative agencies are daily making changes to statutory and regulatory law, and hundreds of federal and state courts are writing decisions which modify, clarify, or sometimes confuse the common law. Indeed, such changes which have occurred in the few years since the second edition of this book was published are a large part of the reason for this expanded third edition.

While this process of continual change keeps the lawyer's work from becoming routine to the point of boredom, it also means that what was good advice yesterday (or the day this book went to press) may no longer be good advice today. While the fundamental legal principles discussed in this book are less susceptible to sudden obsolescence than, say, a text on the Internal Revenue Code, *you are cautioned not to attempt to solve actual individual legal problems upon the basis of information contained in this book*. That is one of those times when you should break down and call your lawyer.

I would like to thank the following people for their encouragement, without which I would not have undertaken and persevered with the writing and updating of this text and the related workbook and teacher's manual. These acknowledgements should not be construed as an endorsement of this teaching system by any of the persons or organizations mentioned:

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She deserves particular credit for encouraging me to avoid “legalese” jargon and write plainly to make the book as clear and understandable as possible to students and to professors who may not be trained in the law.

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The Lawyer-Pilots Bar Association and the *Journal of Air Law and Commerce*, both of which have consistently afforded wonderful forums and opportunities for attorneys interested in aviation law to share knowledge and ideas in print and in person in an atmosphere of professional collegiality. They have advanced our profession and the quality of our services to our clients.

My students at the University of Denver College of Law, the Aerospace Science Department at Metropolitan State College of Denver, and Embry-Riddle Aeronautical University’s Denver and Cheyenne Centers, who over the years relentlessly questioned, challenged, demanded clear explanation and sound reasoning, and refused to settle for less.

The editors of Iowa State Press, who recognized the need for this teaching system and the appropriateness of periodic updates, turning this vision into the reality you are now holding in your hand.

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The credit is theirs, the errors are mine. All opinions expressed herein are entirely my own, and not necessarily those of my employers, past or present.

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P A R T

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Administrative Law



# Regulatory Agencies and International Organizations

**S**INCE THE 1920s, Congress has created a variety of regulatory agencies to administer the many federal programs it has initiated. If you are embarking upon a career in the aviation industry, whether in the private sector or as a government employee, you will deal with administrative agency regulations far more frequently than any other area of the law. Indeed, you will probably be confronted with making decisions based upon the Federal Aviation Regulations (FARs) on a daily basis. These regulations also establish standards of legal behavior by which a judge or jury may later decide whether you or your business are liable for negligence in the event of an aircraft accident. Hardly any aspect of the aviation industry today is unaffected by these regulations. That is why we begin this study with an examination of administrative law, with particular attention to the role of the Federal Aviation Administration in administering the federal program of air safety regulation.

We will start with an overview of the administrative agencies most directly involved in aviation, distinguishing them from each other according to the specific role played by each in regulating the aviation industry.

The ease with which aircraft cross national borders has also made the regulation of aviation a subject of international concern. In the post-Cold War era, there is a new emphasis on developing and improving civil aviation, worldwide.

This chapter also introduces the International Civil Aviation Organization (ICAO) and the International Air Transport Association (IATA), which, although not technically regulatory agencies, play an important role in harmonizing technical standards for civil aviation worldwide.

## U.S. ADMINISTRATIVE AGENCIES

### **Federal Aviation Administration (FAA)**([www.faa.gov](http://www.faa.gov))

Congress has made the FAA the agency primarily responsible for the regulation of aviation safety in the United States, and the agency's influence on the entire aviation industry is pervasive.

For many years the FAA and its predecessor, the Civil Aeronautics Authority (CAA), enjoyed independent agency status within the federal bureaucracy. The FAA is now, however, one of several divisions of the Department of Transportation (DOT). Other DOT agencies having jurisdiction over various aspects of transportation include the Federal Highway Administration, National Highway Traffic Safety Administration, Urban Mass Transportation Association, Coast Guard, Maritime Administration, and St. Lawrence Seaway Development Corporation. The secretary of transportation is the sole voice for all of these agencies in the president's cabinet. Some aviation interests feel that the development of sound aviation policy has suffered as a result of this organizational structure, and a parade of proposals to liberate the FAA from the DOT has come before Congress but none has yet passed, as of this writing.

The FAA's activities cover a wide range, and include:

### **REGULATION**

The FAA regulates aviation safety and, to a certain extent, aircraft noise. The primary laws promulgated by the FAA are the Federal Aviation Regulations (FARs), which appear in Title 14 of the Code of Federal Regulations. This pervasive body of regulations addresses every conceivable aspect of aviation safety. Additionally, through those regulations prescribing airworthiness standards for the certification of new aircraft designs, the FAA has established aircraft noise limits. These latter regulations, developed in consultation with the Environmental Protection Agency (EPA), deserve credit as the primary incentive for the development of the quieter high-bypass-ratio fan-jet engines that came into use on the second generation of airline transport jets—the Boeing 747 and McDonnell Douglas DC-10. By comparison, the engines used on the first generation of airline transport jets, such as the Boeing 707, McDonnell Douglas DC-8, and Convair 880 were positively thunderous. Indeed, as will be seen in Chapter 13, the first generation of airline jets (whose noise was not regulated by the FAA) appear largely responsible for creating the widespread enmity that persists today between airports and their noise-sensitive neighbors. Although these noisy jets are now banned from flying in the United States unless retrofitted with the quieter new technology en-

gines or “hush kits,” the legacy of public hostility to airports created by their noise decades ago remains an effective obstacle to the development of new airports and the expansion of existing airports in this country.

In addition to the FARs, the FAA from time to time issues other mandatory orders having the force and effect of law on the subject of aviation safety. The primary examples are Airworthiness Directives (ADs), which are FAA orders requiring some inspection or modification of previously certified aircraft. These are generally issued when operating experience reveals the need to change some element of design of a particular type of aircraft or component to improve its operating safety. Such an improvement may be suggested by an accident or series of accidents, or by reports of difficulties experienced or observed by aircraft operators, inspectors, and mechanics in the field.

### CERTIFICATION

It is virtually impossible for an individual or a business to participate legally in any aspect of civil aviation in the United States without first obtaining one or more certificates from the FAA. The FAA certifies not only flight crew members, including pilots, flight engineers, and navigators, but also ground support personnel including air traffic controllers, aircraft dispatchers, aviation maintenance technicians and repair specialists, repair stations, inspectors, and parachute riggers. It also certifies domestic, flag, and supplemental air carriers, other commercial and noncommercial operators of large aircraft, air travel clubs, helicopter air carriers, foreign air carriers operating within the United States, air-taxi and commercial operators of small aircraft, operators of helicopters hoisting loads externally, agricultural aircraft operators, airports serving certificated air carriers, pilot training schools, aircraft repair stations, aviation maintenance schools, and ground and flight instructors. In addition to obtaining an operating certificate, each flight crew member and air traffic controller must also obtain an aviation medical certificate from the FAA.

Additionally, each civil aircraft of U.S. manufacture is the product of three separate FAA inspection and certification processes. The aircraft manufacturer who intends to introduce a new design into the marketplace must first produce prototype aircraft that are subject to an intense program of both flight and static testing to prove the design's conformity to certification standards contained in the FARs. Once this test program is completed to the satisfaction of the FAA, an FAA *Type Certificate* is issued on the design. Next, the manufacturer's production facilities and quality assurance program are submitted to FAA scrutiny. The agency must be convinced that the manufacturer's production and inspection methods are ad-

equate to ensure that each and every airplane produced will be a precise replica of the design for which the type certificate was issued. Once this is accomplished, the FAA issues a *Production Type Certificate* and manufacturing can begin. Then each airplane produced is inspected and tested for conformity with the original design and receives an FAA *Airworthiness Certificate* before being delivered to the customer. Subsequent modifications and improvements to the design require additional FAA certification, through amendments to the Type Certificate, by issuance of a *Supplemental Type Certificate*, or by a one-time field approval for modification of an individual aircraft under an FAA Form 337.

### **REGISTRATION**

The FAA also operates a single centralized registry for all civil aircraft in the United States. At the FAA's Aircraft Registry in the FAA Aeronautical Center in Oklahoma City, the agency maintains files on every aircraft that has ever been issued an "N-number" signifying U.S. registry. These files include the entire history of the aircraft's ownership and other legal interests in the aircraft, such as liens and encumbrances. The utility and importance of this registry is discussed in greater detail in Chapter 11.

### **CARTOGRAPHY**

In a recent development, responsibility for production of government aeronautical charts was transferred from the Department of Commerce's National Ocean Service (NOS) to the FAA. Over 300 NOS employees were transferred to a new FAA office designated as the National Aeronautical Charting Office (NACO).

### **EDUCATION**

The FAA educates members of the aviation community on new developments and matters pertaining to aviation safety through a system of publications, such as the Advisory Circulars (AC), and through safety seminars and recertification programs for flight instructors, pilot examiners, mechanics holding Inspection Authorization, and others. (The agency also trains its own employees at the FAA Academy in the Aeronautical Center in Oklahoma City and numerous programs at its various facilities.)

### **FUNDING**

Under the Airports and Airways Improvement Program, the FAA distributes federal matching funds for the construction of new airports, the improvement of existing airports, and related airport planning. These

funds are appropriated by Congress from the Aviation Trust Fund comprising the proceeds of aviation fuel taxes paid by general aviation and passenger ticket taxes paid by persons traveling on U.S. commercial airlines. This funding program, which currently administers a \$14 billion trust fund, is discussed in greater detail in Chapter 13.

### INVESTIGATION

The FAA investigates virtually all civil aircraft accidents in the United States, as well as some accidents occurring outside the country involving U.S. built civil aircraft, in connection with the agency's air safety regulation and enforcement function. As more fully discussed in Chapter 10, the FAA also often performs the on-site investigation of general aviation aircraft accidents under delegated authority on behalf of the National Transportation Safety Board (NTSB). The NTSB, however, has exclusive authority to make the federal government's official finding of the "probable cause" of all civil aircraft accidents, regardless of whether the factual investigation was conducted by NTSB or FAA personnel.

The FAA also investigates incidents in which aviation safety may have been jeopardized but no accident occurred, as when two aircraft pass within such close proximity as to create a collision hazard. The FAA also investigates all reports of violations of the Federal Aviation Regulations. The process of investigation and enforcement of the FARs is described in detail in Chapter 2.

### OPERATIONS

The FAA operates a great variety of aviation facilities and equipment, including:

**The Air Traffic Control (ATC) System.** This system includes airport control towers, en route Air Route Traffic Control Centers (ARTCC or Centers), and Flight Service Stations (FSS), with their vast network of communication and radar systems. Although there are now some control towers operated by private enterprise and local governments at airports that do not meet activity-level criteria to qualify for a federally operated control tower, most control towers and all Centers and Flight Service Stations are FAA owned and operated (Fig. 1.1).

At this writing, there are proposals under discussion in Congress to take air traffic control out of the FAA and transfer the function to a government corporation organized along the lines of the U.S. Postal Service and Amtrak. Proponents of this move argue that cumbersome federal procurement law (applicable to the FAA, but not to a government corpora-





**Fig. 1.1.** Most ATC facilities, like this control tower at Cheyenne, WY, are operated by the FAA, though some towers are operated by private corporations under contract to local governments.

tion) has hamstrung the FAA's effort to update ATC computer equipment and that without state-of-the-art equipment, flight delays, which are quite costly to the airlines, will continue to be experienced. Opponents of such reorganization note that most flight delays (72 percent) are caused by weather, with airport and terminal airspace congestion the second largest cause (at 21 percent), leaving no more than 7 percent of the delays susceptible to avoidance through updated ATC computers. Opponents also argue that the experience with other government corporations has been less than satisfactory, with the Postal Service and Amtrak providing steadily deteriorating service at increasing cost to the consumer.

Under present proposals, such a government corporation's board of directors would be composed primarily of airline representatives. General aviation interests fear that their airspace and airport access needs would be sacrificed to airline demands under such a structure. There are also widespread concerns that such a reorganization would be the first step toward imposition of user fees for all services provided by such a corporation (weather briefings, flight plan filings, clearances, and other communications), resulting in increased costs to civil aviation and decreased safety as