

The Origins of the FAA and the First “AGC-1”

On May 20, 1926, President Calvin Coolidge signed the Air Commerce Act of 1926 into law at the urging of aviation industry leaders who believed the airplane could not reach its full commercial potential without federal action. The new legislation, for the first time, created an organization responsible for regulating the fledgling civil aviation industry. The act instructed the Secretary of Commerce to foster air commerce; designate and establish airways; establish, operate, and maintain aids to air navigation; arrange for research and development to improve such aids; license pilots; issue airworthiness certificates for aircraft and major aircraft components; and investigate accidents.

Secretary of Commerce Herbert Hoover believed that the duties imposed by the Air Commerce Act should be carried out by existing Department of Commerce components. Although five principal units made up the Aeronautics Branch, only two were structurally part of the new Branch – the Air Regulations Division and the Air Information Division. The other three units followed direction from the Branch concerning work to be undertaken, but received detailed guidance and administrative support from other bureau-level components of the Department. Thus, the Airways Division was organized within the Bureau of Lighthouses, the Aeronautical Research Division within the Bureau of Standards, and the Air Mapping Section within the Coast and Geodetic Survey.



William P. MacCracken, Jr.
Courtesy: Wikipedia

In August 1926, Hoover selected William P. MacCracken, Jr., who had played a key role in convincing Congress of the need for this new governmental role, as the first head of the Aeronautics Branch, with the title of Assistant Secretary of Commerce for Aeronautics. Almost immediately MacCracken held a series of meetings with representatives of the aviation community, including civil and military organizations, to draft the first air commerce

regulations. He issued those on December 31, 1926. The regulations prescribed operational and air traffic safety rules. They also required all aircraft engaged in interstate or foreign commerce to be licensed and marked with an assigned identification number. Pilots of licensed aircraft were required to hold private or commercial licenses.

The last chapter of the booklet outlining the new regulations, titled "Miscellaneous," focused on how the new agency would enforce its rules and assess civil penalties. In particular, it stated that any person who violated a provision of the air commerce regulation "shall be subject to a civil penalty of \$500." The Secretary of Commerce, however, had the power to remit the penalty in its entirety or in part. The branch would not take any enforcement actions until March 22, 1927, to give pilots and operators a chance to acquaint themselves with the new rules. Under that Air Commerce Act, the Department of Commerce only had jurisdiction to regulate interstate flights, not flights wholly intrastate. Air Traffic rules, however, applied to intra-and interstate flights.

CHAPTER 6

MISCELLANEOUS

*Sec. 89. Civil penalties.

"Any person who (1) violates any provision or subdivision (a) of this section or any entry or clearance regulation made under section 7, or (2) any customs or public health regulation made under such section, or (3) any immigration regulation made under such section, shall be subject to a civil penalty of \$500, which may be remitted or mitigated by the Secretary of Commerce, the Secretary of the Treasury, or the Secretary of Labor, respectively, in accordance with such proceedings as the Secretary shall by regulation prescribe." * * * (Air commerce act, sec. 11 (b).)

*Sec. 90. Penalty proceedings.

The Secretary of Commerce will notify all persons of the incursion of penalties subject to mitigation or remission by him and any person charged with the same may transmit to the Secretary of Commerce two copies of an affidavit stating the facts upon which the penalty was incurred, with a request for mitigation or remission. The Secretary of Commerce will then determine whether or not the penalty will be mitigated or remitted, and the person making the request will be notified accordingly.

Sec. 91. Waiver of regulations.

The Secretary of Commerce may waive any of the requirements of these regulations when, in his discretion, the particular facts justify such waiver.

*Sec. 92. Savings clause.

These regulations as amended shall take effect midnight, March 22, 1927. An aircraft required to be licensed under the air commerce act of 1926 may

In 1927, MacCracken selected Elmer MacDonald Kintz as his legal counsel. Kintz had represented the Army Air Services on the committee MacCracken had established to write the air commerce regulations. Initially, the Aeronautics Branch paid little attention to enforcement. It fell to the field inspectors in the Division of Air Regulation license section to enforce the rules. Those inspectors, however, had responsibility for myriad duties, including:

- Examine application for pilot's licenses, not only as to their mental and theoretical qualifications, but as to their actual flying ability
- Inspect aircraft to determine if they meet airworthiness standards and are kept in suitable flying condition
- Investigate accidents⁹
- Enforce air traffic rules¹

By late 1928, the branch created an enforcement section within the regulation division, and Kintz became the chief of the new office.² Called "Shorty" by his friends – he was five feet three inches tall – Kintz was born on November 20, 1892, in Alexandria, Virginia. His father, a steamboat captain, subsequently moved the family to Washington, DC. Kintz graduated from Eastern High School in Washington, DC. After high school he worked as a clerk in a patent law firm.³ He earned his L.L.B., or Bachelor of Laws, from Georgetown University in 1915.



Elmer MacDonald Kintz

After graduation, he worked for a short time in private practice. After the United States entered World War I on April 6, 1917, Kintz decided to enlist. He joined the Army in June and sailed for France on July 2,⁴ as part of the medical enlisted reserve corps from Walter Reed hospital.⁵ He first served as a sergeant in a base medical supply depot, before later becoming a purchasing agent and legal adviser to the Army Air Service.⁶

On August 28, 1917, the *Evening Star* reported that Kintz was one of three draftees in Washington, DC, who had failed to report for duty. This elicited a lengthy letter from Kintz to the newspaper. He reported that he had enlisted and had left the U.S. for Europe within two weeks of his enlistment "before many of his friends knew that he had any such intention." He wrote the letter because he was "concerned that someone had intimated that he may be a draft

¹ *The United States Department of Commerce: Organization and Activities* (Washington, DC: US Government Printing Office, 1928).

² *Congressional Directory*, 70th Cong, 2d sess. (Washington, DC: US Government Printing Office, 192), 312.

³ *U.S. Census 1910, District of Columbia, Precinct 5*, District 0100, accessed at ancestry.com.

⁴ "Division No. 5," *Evening Star*, August 28, 1917.

⁵ "Georgetown Law Men in France," *Georgetown Law Journal*, volume 6, no. 1 (December 1917).

⁶ The U.S. Army Air Service became the U.S. Army Air Corps in 1926, and the U.S. Air Force in 1947.

slacker, and because his mother has been embarrassed by such suggestion.” Setting the record straight, Kintz detailed his work in France and his impressions of life in the military.⁷

After the war, Kintz joined the Army Air Service reserves where he was commissioned in 1923 as a captain.⁸ The Army activated him the following year for temporary duty.⁹ After his recall to the Army ended, Kintz returned to private law practice. He was admitted to practice before the U.S. Supreme Court on June 6, 1921,¹⁰ although it is unclear if he ever argued any cases at that level.

After joining the Aeronautics Branch, and following direction from William MacCracken, Kintz largely ignored violations of the air commerce regulations during the first two years of his work. For example, during fiscal year 1928, 54% of violators received no penalties; 29% fined; 22% had their license suspended. The normal fine for a violation was \$25.00, and most of the fines were assessed against drunk pilots.

In one of his early enforcement cases, Kintz travelled to Boston to interview the head of a flying school after the Better Business Bureau lodged a complaint with the Aeronautics Branch. Apparently the owner of the school, who went by the title of “commander,” claimed he had a transport license. When Kintz asked the commander what he taught at his flying school, he replied he taught the theory of aviation and science, including meteorology. When asked what he meant by meteorology, the commander answered, “Why, meteorology is the science of instruments, because aircraft instruments use a meter.” Kintz immediately pulled the school’s license and the next day learned that the school’s owner did not have a pilot license, but had worked as an airplane mechanic.¹¹

⁷ “District Boy Tells of Life in War Zone,” *Evening Star*, October 22, 1917.

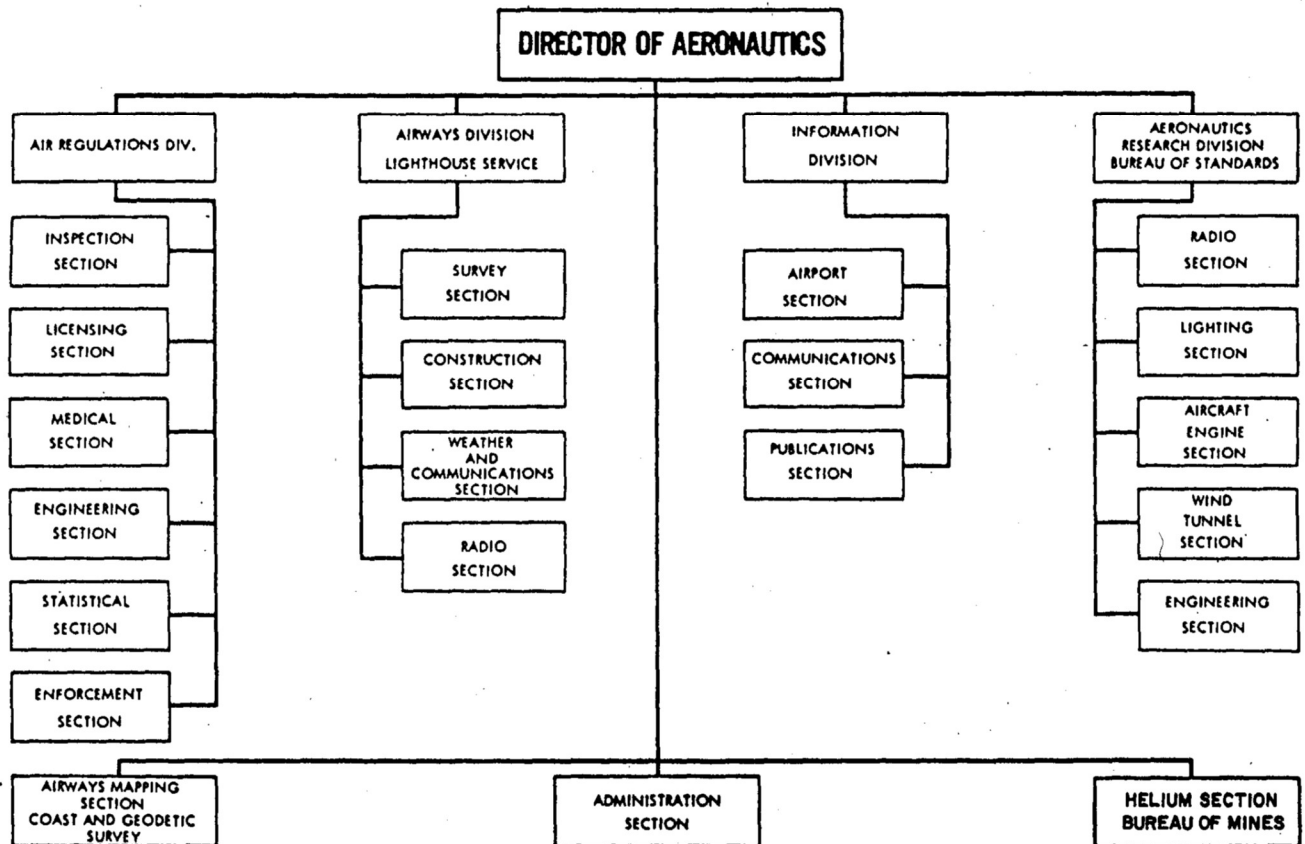
⁸ “New O.R.C. Commissions,” *Evening Star*, October 17, 1923.

⁹ “Changes in Stations of Army and Navy Officers of Interest to Capital,” *Evening Star*, July 7, 1924.

¹⁰ US Supreme Court, *Journal of the Supreme Court* (June 6, 1921): 259.

¹¹ A. G. West, “Air Inspectors,” *Evening Star*, April 8, 1928.

**DEPARTMENT OF COMMERCE
AERONAUTICS BRANCH
1928**



In a fiscal year 1930 (July 1, 1928-June 30, 1929) Aeronautics Branch reorganization, MacCracken divided the regulations division into two divisions, and created an enforcement section under the new licensing division.¹² Kintz became the chief of the enforcement section. The section comprised the chief, an assistant chief, and a clerk. The chief earned \$4,000 per year, the assistant, \$2,500 per year, and the clerk \$1,800 per year.¹³

Another reorganization the following fiscal year, created the Regulation Service and placed three divisions into the new service: inspection, licensing, and engine testing. The enforcement section, now unofficially being called the legal section, remained under the licensing service.¹⁴ The section had responsibility for handling the legal phases of enforcement

¹² Department of Commerce, *Annual Report of the Assistant Secretary of Commerce for Aeronautics to the Secretary of Commerce for the Fiscal Year Ended June 30, 1930* (Washington, DC: US Government Printing Office, 1930), 1, 4.

¹³ Ibid, 113.

¹⁴ Department of Commerce, *Annual Report of the Assistant Secretary of Commerce for Aeronautics to the Secretary of Commerce for the Fiscal Year Ended June 30, 1931* (Washington, DC: US Government Printing Office, 1931), 1, 4.

activities, as well as the investigations of violations of the air commerce act, the air commerce regulations, and the air traffic rules. It also prepared the assessment of penalties, and acted in a general advisory capacity in all matters pertaining to air law.¹⁵ Kintz remained head of the enforcement section, and also served on the branch's accident investigation board.¹⁶

Kintz understood the significance of his job as enforcer of the new aviation regulations. "Practically no precedent has been established in Air Law," he explained. "Consequently, legislators, lawyers, and judges will be pioneering in this field without an established background of legal precedent. Unless all are 'air minded' and recognize the infancy of this great new industry and its rapidly changing conditions, the advancement of aeronautics may be irreparably retarded."¹⁷

He continued, "True enforcement [of the civil aviation regulations], however, is accomplished through the diplomacy and tact of the field inspectors operating throughout the United States. Many of the violations never reach the Washington Office but are covered in such a manner by the field force that there is no necessity for any other action." According to Kintz, many of the complaints received by the inspectors focused on noise, something his office had no jurisdiction over.¹⁸

Kintz seemed amused by some of the public complaints received by the inspectors. He reported, "Among the unusual complaints received are some to the effect that planes of a certain company are continually flying over and spraying the complainant with acid." In another odd complaint, Kintz said, "aviators flying over the house are causing electric currents to enter the body of the complainant and this is inflicting considerable pain, burning the clothes and filling the house with electric sparks." Someone else reported, "Certain pilots were flying close to the bathroom window during the bathing hour and acting as 'Aerial Peeping Toms.'" Kintz said that in the latter case, "the bather did not obtain the number of the plane and there was nothing we could do." He suggested, however, "It would seem in order to suggest that a little forethought in pulling down the shade would suffice and obviate the necessity of an official investigation which might become embarrassing to all concerned."¹⁹

Kintz left the Aeronautics Branch in November 1931 to join a New York-based law firm, Loucks and Cullen.²⁰ By 1934, Kintz returned to the federal government, serving as the principal attorney in the Federal Alcohol Control Administration's New York office.²¹ While in that position, his supervisor sent him on an inspection trip to Puerto Rico, Martinique, Virgin Islands, Haiti, Jamaica, and Cuba to study how rum was made.²² By the end of the decade, he had moved

¹⁵ Aeronautic Licensing and Inspection Service, *Air Commerce Bulletin* 1, no. 12 (December 16, 1929): 4.

¹⁶ "Cause of Air Crashes May be Investigated," *Dayton Herald*, June 12, 1928.

¹⁷ E. McD. Kintz, "Regulating Air Commerce, Article IV – Enforcement," *Aviation* (February 22, 1930), 379.

¹⁸ *Ibid.*, 376.

¹⁹ *Ibid.*, 379.

²⁰ "Kintz, Section Chief, Quits Commerce Post," *Evening Star* (November 28, 1931); "Kintz Resigns Post," *Los Angeles Times* (December 20, 1931).

²¹ United States Civil Service Commission, *Official Register of the United States, 1934* (Washington, DC: US Government Printing Office, 1935), 145.

²² "FACA Tracks Down Rum, Studies it in West Indies," *Tipton Daily Tribune* (Indiana) (November 20, 1934).

back to the Department of Commerce, this time as chief of the regulations section in the Civil Aeronautics Administration's Office of the General Counsel and Director of Compliance (Aeronautics Branch successor agency) working under General Counsel Richard Elwell.²³

On April 20, 1942, at the age of 49, Kintz registered for the World War II draft. He subsequently joined the Army Air Corps where he served as a liaison officer to the Air Force's small war plant control division. He attained the rank of Lieutenant Colonel before retiring on July 2, 1944.²⁴

Elmer McDonald Kintz died on July 30, 1954, and is buried in Arlington National Cemetery. He was survived by his widow, Margaret and one step-daughter Mrs. Franklin (Margaret Claire) Green.

²³ *US Census, 1940*, District of Columbia; United States Civil Service Commission, *Official Register of the United States, 1941* (Washington, DC: US Government Printing Office, 1942), 168; *U.S. Register of Civil, Military, and Naval Service*, 1, 1941, 168.

²⁴ United States Air Force, *Air Force Register*, 1954, 592.