W-244

UNITED STATES OF AMERICA
CIVIL AERONAUTICS BOARD
WASHINGTON, D. C.

Civil Air Regulations Amendment 42-1
Effective: May 1, 1955
Adopted: April 29, 1955

IRREGULAR AIR CARRIER AND OFF ROUTE RULES

AUTHORITY OF ADMINISTRATOR TO PERMIT APPROPRIATELY CERTIFICATED OPERATORS UNDER CONTRACT TO THE MILITARY SERVICES TO DEVIATE FROM PART 42 OF THE CIVIL AIR REGULATIONS

Currently effective Special Civil Air Regulation SR-385D delegates to the Administrator authority to permit deviations from Part 42 of the Civil Air Regulations to air carriers conducting military contract operations or air carriers conducting emergency operations necessary for the protection of life or property. This regulation became effective February 1, 1955, and extended the expiration date of SR-385C until May 1, 1955, with respect to Part 42 operations only.

The substance of SR-385D was essentially that proposed by the Bureau of Safety Regulation in a notice of proposed rule making published in the Federal Register (19 F.R. 8783) and circulated as Civil Air Regulations Draft Release No. 54-26. The latter proposed to continue the basic authority of the Administrator to authorize deviations by incorporating the substance of SR-385C into Part 42 of the Civil Air Regulations, since all waivers granted pursuant to SR-385C and its predecessor regulations had been waivers of only the provisions of Part 42.

The Board was advised during its consideration of the comment received in response to Draft Release No. 54-26 that the military requirements concerning the contract carriage of personnel and goods by civil aircraft were being re-evaluated by the Department of Defense. Since defense requirements have a direct bearing on the question of continuing this deviation authority in the operating parts on a permanent basis, the Board could not make a final determination in this matter until it had received a restatement of defense requirements. Therefore, the Board issued SR-385D as a temporary regulation in order to permit continued operations in accordance with existing deviation authority until a final determination could be made as to the necessity of incorporating the deviation authority into the operating parts on a permanent basis.

The Board has now received the views of the Department of Defense relative to extending indefinitely the authority of the Administrator to grant deviations from the operating rules in Part 42 to air carriers conducting military contract operations. It is the stated desire of the Department of Defense that commercial carriers operating under military contracts should normally conduct their operations in accordance with the requirements of the Civil Air Regulations. However, the Department affirmed in all essential respects the Bureau of Safety Regulation's opinion, expressed in Draft Release No. 54-26, that world conditions are still such that an emergency requiring the immediate participation of the air carriers can develop without notice, and that operational problems also may arise in the conduct of "routine" military contract operations that can be met satisfactorily only by deviations from the normal air carrier regulations.

The Board believes that this deviation authority should be authorized only when the Department of Defense has certified to the Administrator that the operation for which a deviation is requested is essential to the national defense and requires a deviation from Part 42. Upon receipt of such certification, the Administrator may authorize such operation to be conducted subject to any terms and conditions that he considers appropriate in the interest of safety. In addition, it is the Board's view that the need for deviations shall not be based upon economic advantage or convenience to either the operator or the government, or both. These conditions have been incorporated into the amendment contained herein and should allay the fears expressed by interested persons that this authority might result in the unjustifiable lowering of the standard of safety in these operations.

With respect to the authority to deviate in operations under conditions of an emergency necessitating the transportation of persons or supplies for the protection of life or property, the Board envisages this authority being exercised in cases such as the Texas City explosion, Kansas City floods, Hurricane Hazel, etc., where a disaster of national significance has occurred, and where the use of an emergency airlift will be necessary. Since no deviations have been granted under the previous special regulations for such emergency operations, no substantial changes have been made in the provisions covering emergency operations.

Interested persons have been afforded an opportunity to participate in the making of this amendment, and due consideration has been given to all relevant matter presented. Since this amendment relieves a restriction and imposes no additional burden on any person, it may be made effective without prior notice.

In consideration of the foregoing, the Civil Aeronautics Board hereby amends Part 42, of the Civil Air Regulations (14 CFR Part 42, as amended) effective May 1, 1955:

By adding a new § 42.2 to read as follows:

42.2 Deviation authority.

(a) Contrary provisions of this part notwithstanding,

(1) The Administrator may, upon application by an appropriately certificated air carrier conducting, or intending to conduct, operations pursuant to a contract with the military services (primary contractor), or an appropriately certificated air carrier conducting operations for the military services pursuant to a subcontract with a primary contractor, authorize such air carrier to deviate from the applicable provisions of this part, subject to any terms and conditions that the Administrator shall find are necessary in the interest of safety: Provided, That the Department of Defense certifies to the Administrator that the subject operation is essential to the national defense and requires the requested deviation: And provided further, That the granting of a deviation shall not be based upon an economic advantage or convenience to either the air carrier or the government, or both.

(2) The Administrator may, upon application by an appropriately certificated air carrier, authorize an air carrier proposing to conduct operations under conditions of an emergency necessitating the transportation of persons or supplies for the protection of life or property, to deviate from any provision of this part to the extent that the Administrator finds that a deviation from this part is necessary for the expeditious conduct of such operations.

(b) Any deviation authority granted by the Administrator pursuant to this section shall be limited to those military contract operations certified by the Department of Defense as essential to the national defense, or operations conducted under conditions of an emergency as determined by the Administrator and shall not be applicable to any other type of operation.

(c) The Administrator shall, in any authorization granted pursuant to this section, specify the terms, conditions, and limitations of the authorization for the deviation and each air carrier shall, in the conduct of these operations, comply with such terms, conditions, and limitations.

(d) Grants of deviation authority issued pursuant to this section shall be subject to review by the Board and may be terminated at any time by the Board or the Administrator. The Administrator shall give prompt notice to the Board of any deviation authority issued hereunder.

(e) Authorized deviations now in existence shall be continued in effect in accordance with their terms and conditions until 90 days after the effective date of this amendment, or upon their stated expiration date, whichever shall first occur, unless reissued pursuant to this section.

(Sec. 205(a), 52 Stat. 984; 49 U.S.C. 425(a). Interpret or apply § §601, 604 52 Stat. 1007, 1010, as amended; 49 U.S.C. 551, 554)

By the Civil Aeronautics Board:

/s/M. C. Mulligan

M. C. Mulligan
Secretary

(SEAL)