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

Policy Statements Part 399
Effective: May 25, 1955
Adopted: May 25, 1955

STATEMENTS OF GENERAL POLICY

Section 3(a) of the Administrative Procedure Act requires every agency to state separately and publish currently in the Federal Register its statements of general policy. The purpose of this regulation is to provide a standardized form and procedure for carrying out this requirement and for codifying any future statements of policy which may be issued.

In a certain sense every decision of the Board in its quasi-judicial capacity represents a statement of policy. Similarly, the promulgation of a regulation under its quasi-legislative authority may be the only express manifestation of a policy. It would be impractical to restate each of the policies so enunciated and print them separately in this part, and indeed such a procedure would be contrary to the intent of Congress as expressed in the Administrative Procedure Act, since in the one case that Act specifically excludes from this requirement rules addressed to and served upon named persons in accordance with law, and in the other, the policy is embedded in and inseparable from a general substantive rule. Thus, policies which have been expressed wholly in connection with the taking of a decision or through the enactment of a substantive or procedural rule will not be restated as statements of policy in this Part.

In addition to the foregoing, the Board's basic policies have already been laid down for it by the Congress in the Civil Aeronautics Act. Not only have the Board's authority, powers and duties been set forth at length in that Act, but the general policies which it must follow have been prescribed in section 2. A repetition or restatement of these policies is therefore unnecessary. Moreover, the Board's power to prescribe policy is limited by the necessity for complete compatability between its general policies and the policies laid down in the Civil Aeronautics Act of 1938. In this connection it should be noted that a statement of policy issued by the Board is merely an agency rule under the Administrative Procedure Act, and as such cannot contravene or override statute, including the statement of policy contained in the Civil Aeronautics Act. Consequently, if as a result of its consideration in any given case, the Board finds that the statement of policy set down in the Civil Aeronautics Act runs counter to any statement of policy published in this part, the latter must obviously give way to the former.

Part 399 has been divided into two subparts, subpart A dealing with the applicability, arrangement, and effect of the policy statements, which are included in subpart B. It should be noted that no attempt has been made to arrange the policy statements in any order other than chronological. Each new policy statement issued hereunder by the Board will receive the next consecutive number in sequence. Except for deletions of policy statements no longer in effect, no attempt will be made as a general rule to amend any policy statement, but a new policy statement will be issued bearing a new number, and the old one which it supersedes will be repealed.

Since this rule relates only to statements of policy, notice and public procedure hereon are unnecessary, and the regulation may be made effective upon less than 30 days' notice.

In consideration of the foregoing, the Civil Aeronautics Board hereby enacts Part 399 of its regulations, effective May 25, 1955, to read as follows:

PART 399 - STATEMENTS OF POLICY

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(a) Policies relating solely to the internal management of the Board;

(b) Policies requiring secrecy in the public interest, or the interest of national defense.

(c) Policies which are repetitive or duplicative of ss 2 of the Civil Aeronautics Act of 1938, as amended;

(d) Policies the complete expression of which is found in a procedural or substantive rule of the Board, or in any opinion, decision, order, certificate, permit, exemption, rule, regulation or waiver of the Board;

(e) Expressions of hope, admonition, or encouragement to industry to follow a certain course of action.

(f) Positions on legislative items and other matters which are outside the scope of the Board's current statutory powers and duties.

Sec. 399.2 - Statements in other Board Documents - No statement contained in any Board opinion, decision, order, certificate, permit, exemption, or waiver, shall be considered a statement of policy within the meaning of this Part, even though such statements may constitute a precedent in future cases or declare future policy to be followed in like cases. Similarly, a denial by the Board of relief sought, and statements of the Board's reasons for failure to issue a rule upon which rule-making proceedings have been commenced shall not be considered to be statements of policy except to the extent that it is specifically stated that such denial or failure is based upon a policy thereafter to be followed.

Sec. 399.3 - Arrangement - All policies which are subject to inclusion in this Part, and in effect on the effective date of this Part, are included in subpart (B), chronologically arranged in the order of their adoption. Future policies will be issued as statements of policies, and will be assigned the next consecutive number in sequence. Except in the case of policies which cease to be applicable by reason of the expiration of the period of effectiveness specifically stated therein, policies will be rescinded by a subsequent statement of policy when the earlier policy is amended or ceases to apply.

Sec. 399.4 - Nature and Effect of Policy Statements - Policy statements published in this Part will remain in effect and be observed by the Board until rescinded or repealed, or in the case of a policy of specified duration, until the expiration date, if not sooner rescinded or repealed. Changes in policy may be made without advance notice to the public and will become effective upon publication in the Federal Register. Moreover, should it appear to the Board in its consideration of any matter before it that the application of a published policy as set forth in this Part would run counter to an express provision of law or policy enunciated by Congress in the Civil Aeronautics Act of 1938, as amended, such published policy shall not be applicable to such matter.

SUBPART B - STATEMENTS OF POLICY

Sec. 399.10 - Airworthiness Revisions to be on Annual Basis - It is the policy of the Board that, except for rules of an emergency nature the immediate adoption of which is necessary in the interest of safety, airworthiness rules and revisions to the airworthiness parts will be on an annual basis. The cycle will commence on or about the first of January in each year through the issuance of a general release by the Board's Bureau of Safety Regulation, requesting comments and specific proposals for deletions, additions, or amendments to any of the airworthiness parts. In the Spring of each year the Board's staff will conduct a study of all the comments and proposals received, together with its own proposals and those received from the Administrator of Civil Aeronautics. All proposals will be assembled in the form of a tentative agenda for

an annual airworthiness meeting of all concerned. A second release will be circulated to the public, announcing the annual meeting and presenting the agenda. Thereafter, the meeting with all interested persons will be held usually during the month of September, and will cover, in most cases, a period of several days. Thereafter, all items which are considered necessary and sufficiently developed for regulatory action will be published in the form of a notice of proposed rule-making, setting forth specific proposed amendments to the Civil Air Regulations. Comments thereafter received as a result of the publication of the proposed annual revision will be given careful consideration and will be adopted and made generally effective by January 1.

Sec. 399.11 - Promulgation of Airworthiness Requirements - It is the policy of the Board, in promulgating Civil Air Regulations dealing with airworthiness requirements for aircraft and components, to follow the principles set forth hereafter in this section.

(a) The technical rules in the airworthiness regulations should confine themselves to material which has been substantiated as being essential to safety.

(b) The administrative rules in the airworthiness regulations should be minimized in scope to the extent commensurate with their effect on safety.

(c) The individual provisions in the airworthiness regulations should not impede new design development, should reflect the latest

state of the art, and should require only such techniques and equipment as are available and proven reliable.

(d) The airworthiness regulations should not include rules to attain safety objectives which can be attained more effectively by means other than regulations.

(e) If an accident or other service experience with a certain aircraft or component type suggests a change in the airworthiness regulations, caution should be exercised in making the new rule applicable to all aircraft or component types, lest it be inappropriate for general application.

(f) Detail design practices which have been generally adopted by the industry should not for that reason alone be included in the airworthiness regulations.

(g) Changes in the airworthiness regulations should be promulgated only periodically through a procedure such as the annual review, except in those instances where safety considerations dictate urgency of implementation.

Sec. 399.12 - Transatlantic Charter Policy. It is the policy of the Board, applicable to the 1955 summer season, not to grant broad or general exemptions for transatlantic charter operations, but to consider only exemption applications filed by air carriers covering specific proposed charter movements. The basis on which such charter applications will be granted has been liberalized over past practice, and all such applications which conform to the conditions set forth

in the Board's Opinion dated May 20, 1955 in Docket No. 7099 will be processed and decided in accordance with the standards set forth in such opinion. All exemption orders issued will be made subject to the terms, conditions and limitations therein expressed.

Sec. 399.13 - Temporary Mail Rates Involving Subsidy - It is the policy of the Board to fix temporary mail rates involving subsidy at a level designed to provide only such amounts as are deemed necessary for operations prior to the establishment of a final rate but in no case less than the service mail rate. In most cases, this objective may be attained by providing an amount of mail pay equivalent to the breakeven need - i.e., the excess of operating expenses over non-mail revenues.

Sec. 399.14 - Rate Policy Applicable to Nonsubsidized Carriers - It is the policy of the Board that rate levels should reflect cyclical needs, rather than the needs of any particular year. In examining mail or commercial rate proposals, the Board will consider not only the conditions prevailing at the time the proposals are advanced, but also the future prospects and the abnormal earnings of prior years. Accordingly, if earnings should fall markedly after a period during which they have been at high levels, the carriers will be expected to absorb such losses without resort to mail or commercial rate adjustments, unless it can be demonstrated that such earnings are below the level necessary to provide a fair return over a reasonably extended period which includes the good years as well as the bad.

Sec. 399.15 - Rate Policy Applicable to Subsidized Carriers - It is the policy of the Board to permit subsidized carriers maximum freedom to experiment, in interstate and overseas air transportation, with commercial rate changes for the purpose of maximizing revenues and thereby minimizing subsidy requirements, provided that resulting rates are not otherwise unreasonable.

Sec. 399.16 - Local-Service Carrier Certificates to Indicate Nature of Operations Specifically - It is the policy of the Board to include a provision in the certificates of all local air service carriers to make it clear that their operations are definitely local air transportation, as distinguished from the service rendered by scheduled trunkline air carriers. The language which will be so included is as follows:

> "This certificate is issued pursuant to a determination of policy by the Civil Aeronautics Board that in the discharge of its obligation to encourage and develop air transportation under the Civil Aeronautics Act, as amended, it is in the public interest to establish certain air carriers who will be primarily engaged in short-haul air transportation as distinguished from the service rendered by trunkline air carriers. In accepting the certificate the holder acknowledges and agrees that the primary purpose of the certificate is to authorize it and require it to offer short-haul air transportation service of the character described above."

Sec. 399.17 - Issuance of Foreign Air Carrier Permits for Canadian Transborder Operations in Small Aircraft - It is the policy of the Board, in accordance with a reciprocal understanding with the Air Transport Board of Canada, published March 13, 1952, to facilitate so far as possible under existing law the issuance of foreign air carrier permits to Canadian operators of small aircraft for irregular transborder operations in common carriage. Authorizations granted under this procedure will be only for service of a casual, occasional, and infrequent nature

and will be limited to three years' duration. Where requested, permission will customarily be granted, if statutory standards are met, to serve more than one point in the United States on the same flight, provided that no cabotage traffic is carried.

Sec. 399.18 - Unfair and Deceptive Practices of Ticket Agents - It is the policy of the Board to regard any of the following enumerated practices (among others) by a ticket agent as an unfair or deceptive practice or unfair method of competition:

(a) Misrepresentations* which may induce members of the public to believe that the ticket agent is an air carrier.

(b) Using or displaying or permitting or suffering to be used or displayed the name, trade name, slogan or any abbreviation thereof, of the ticket agent, in advertisements, on or in places of business, or on aircraft in connection with the name of an air carrier with whom it does business, in such manner that it may mislead or confuse the traveling public with respect to the agency status of the ticket agent.

(c) Misrepresentations as to the quality or kind of service, type or size of aircraft, time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(d) Misrepresentation as to qualifications of pilots or safety record or certification of pilots, aircraft or air carriers.

(e) Misrepresentations that passengers are directly insured when they are not so insured; for example, where the only insurance in force is that protecting the air carrier in event of liability.

(f) Misrepresentations as to fares and charges for air transportation or services in connection therewith.

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* The word "Misrepresentation" used in this list includes any statement or representation made in advertising or made orally to members of the public which is false, fraudulent, deceptive or misleading, or which has the tendency or capacity to deceive or mislead.

(g) Misrepresentation that special discounts or reductions are available, when such discounts or reductions are not specified in the lawful tariffs of the air carrier which is to perform the transportation.

(h) Advertising or otherwise offering for sale or selling air transportation or services in connection therewith at less than the rates, fares and charges specified in the currently effective tariffs of the air carrier or air carriers who are engaged to perform such air transportation or services, or offering or giving rebates or other concessions thereon, or assisting, suffering or permitting persons to obtain such air transportation or services at less than such lawful rates, fares and charges.

(i) Misrepresentations that special priorities for reservations are available when such special considerations are not in fact granted to members of the public generally.

(j) Selling air transportation to persons on a reservation or charter basis for a specified space, flight or time, or representing that such definite reservation or charter is or will be available or has been arranged, without a binding commitment with an air carrier for the furnishing of such definite reservation or charter as represented or sold.

(k) Selling or issuing tickets or other documents to passengers to be exchanged or used for air transportation knowing or having reason to know or believe that such tickets or other documents will not be or cannot be legally honored by air carriers for air transportation.

(l) Failing or refusing to make proper refunds promptly when service cannot be performed as contracted or representing that such refunds are obtainable only at some other point thus depriving persons of the immediate use of the money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale.

(m) Misrepresentations regarding the handling, forwarding or routing of baggage or other property, or the loss or tracing thereof, or failing or refusing to honor proper claims for loss or damage to baggage or other property.

Sec. 399.19 - Domestic Coach Policy - It is the policy of the Board to encourage regular coach service by the certificated air carriers as one means of achieving the maximum development of civil aviation in the

United States through placing air travel within the economic reach of the great majority of the traveling public. For the purpose of this policy, coach operations will be divided into two main classes: off-peak services and high density services.

(a) Off-peak services are reduced fare services which have as their primary objective the additional utilization of available equipment and facilities with flights departing at such times - particularly during the night hours - as would make their operation in first class service uneconomic because of the inconvenience of the departure time.

(b) High density services are reduced fare services which are conducted, without restriction as to flight departure time, in aircraft specifically equipped for and assigned to such service and having the applicable minimum seating capacity set forth below:

DC-4	64
DC-6	72
DC-6B	76
Constellation 049 to 749	79
Constellation 1049	88

Note: Maximum seating density is governed by the Civil Air Regulations.

(c) Food service - No free food service except for coffee or similar beverages will be permitted on either off-peak or high density service.

(d) Fare differentials - Both high density and off-peak services will be subject to a fare ceiling of 75 percent of the corresponding first class fare.

Sec. 399.20 - Negotiation by Air Carriers for Landing Rights in Foreign Countries -

(a) It is the policy of the Board (jointly with the Department of State) that, as a general rule, landing rights abroad for American air carriers will be acquired through U. S. government negotiation with foreign governments rather than by direct negotiation between a carrier and a foreign government.

(b) It is corollary to the foregoing policy that no United States air carrier may avail itself of representations by one foreign government to further its interest with another foreign government, especially with respect to landing rights, except insofar as such representations have been specifically authorized by the United States Government.

Sec. 399.21 - Standard Provisions in Foreign Air Carrier Permits - It is the policy of the Board to include provisions in the permits issued to foreign air carriers to provide:

(a) that the permit shall be subject to all applicable provisions of any agreement affecting international air transportation now in effect or which may become effective during the period of the agreement entered into by the U. S. and the foreign government concerned;

(b) that in accepting the permit, the holder waives any right it may possess to assert any defense of soverign immunity from suit in an action based on claims arising out of its operation.

Sec. 399.22 - Air Carrier Reporting Delinquencies - It is the policy of the Board to permit, under the Uniform System of Accounts prescribed by the Board, extensions of time for filing reports upon receipt of a written request setting forth good and sufficient reason to justify granting the requested extension, provided such request is submitted sufficiently in advance of the due date to permit proper consideration and communication to the carrier of the action taken. It is the policy of the Board that, in the absence of extensions in report filing dates, petitions for increased mail rates filed by carriers whose periodic reports are in arrears will not be processed until all overdue reports are filed.

Sec. 399.23 - Post-Capitalization and Amortization of Expenses - It is the policy of the Board for accounting and reporting purposes to adhere strictly to the principle that costs once charged to expense within one fiscal year shall not be reversed and capitalized in a subsequent fiscal year for amortization against operations of future periods.

Sec. 399.24 - Exceptions for Rate-Making Purposes - It is the policy of the Board to permit retroactive accounting adjustments where necessary to conform books with adjustments required by the Board for rate-making purposes.

Sec. 399.25 - Confidential Treatment of Preliminary Year-End Reports - It is the policy of the Board to accord confidential treatment to preliminary year-end carrier reports upon request of individual carriers, with the proviso that such confidential treatment will be accorded the preliminary reports only until final reports are filed or until the date such reports are due, whichever occurs first.

Sec. 399.26 - Investigation of Accidents Involving Foreign Aircraft - It is the policy of the Board, in the case of accidents to aircraft of foreign air carriers that occur in this country, to investigate to the extent necessary to furnish the foreign government a full report of all facts, conditions, and circumstances, as well as the probable cause. This may or may not require a public hearing.

Sec. 399.27 - Procedures for Permanent Certification of Local Service Carriers (added June 1, 1955) - It is the policy of the Board, in implementing legislation relative to the permanent certification of the local service carriers (Public Law 38, 84th Congress) to apply the following procedures:

(a) These proceedings will be limited to the issues inherent in the grant of permanent certificates to the carriers and the determination of those intermediate points to be certificated on a temporary basis. Each local service air carrier must file an application under the new statute. Following the filing of such an application, the Board proposes to issue show cause orders indicating those stations which, on the basis of its preliminary judgment, warrant permanent certification, and those other stations which, because of their more marginal traffic record are tentatively believed to warrant temporary rather than permanent certification.

(b) The Board intends to rely largely on an industry-wide traffic standard, which will tend to assure equitable treatment among the cities involved. After analysis of the latest available data, the Board has concluded that an average of five or more passengers enplaned per day (approximately 300 per month on and off per station) should provide a reasonable basis for initial selection of the group of intermediate stations for permanent certification. In the absence of further evidence, those stations enplaning fewer than five per day would receive temporary designation. While the Board does not intend to restrict the right of any party to submit relevant evidentiary material, the Board believes that the record in the proceedings covering those points identified for permanent certification could be limited, largely, if not entirely, to stipulated data. Additional evidence, therefore, might be necessary only as to those points tentatively identified for temporary certification, thus speeding the

issuance of the permanent certificates. In regard to the latter group of stations the Board wishes to emphasize that no station which is eligible for either permanent or temporary certification will lose service as a result of these proceedings. Further, although any city listed in the show cause order as warranting temporary certification may, of course, submit evidence in support of permanent authorization, such a presentation is not essential at this time. Such cities will be afforded an opportunity to demonstrate their ability to generate a sufficient volume of traffic to warrant a continuation of scheduled service and to make a further presentation in a later proceeding.

(c) The permanent certificate proceedings will be scheduled for processing in the order in which the carriers' existing temporary certificates expire. They will be given priority over other local service cases.

(d) Under this schedule the permanent certificate proceedings covering Southwest Airways and Trans-Texas Airways will be among the first to be handled. It is not contemplated that show cause orders will be necessary for these two carriers, since there are formal proceedings now near completion concerned with the temporary or permanent renewal of these carriers' routes as well as certain route amendment proposals. It is presently hoped that the decisions in these two cases will be issued concurrently with decisions on permanent certification for Southwest and Trans-Texas.

(e) Because of the restriction of the issues to those largely non-controversial in nature, and in order to assure the most efficient use of available staff essential to the most rapid processing of these cases, public hearings in the permanent certificate proceedings will be held in Washington.

(f) Although consideration of proposed route extensions and modifications of local service routes must necessarily be delayed somewhat in order to give priority to the permanent certificate applications, the Board plans to consider such proposals as soon as possible in appropriate individual or consolidated proceedings.

(Sec. 205(a), 52 Stat. 984; 49 U.S.C. 425. Administrative Procedure Act, §3, 60 Stat. 238; 5 U.S.C. 1002)

§99.21 added by Order Statement No 2 replaced by Statement No. 3

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan
Secretary

§99.24 added by Statement No. 3
§99.30 added by Statement No. 5
§99.35 added by Statement No. 6

(SEAL)