Regulation Policy Statement No. 2

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

Policy Statements - Part 399
Effective: April 4, 1957
Adopted: March 28, 1957

STATEMENTS OF GENERAL POLICY - TRANSATLANTIC CHARTER POLICY

Having gained substantial experience in the administration of its 1955 Transatlantic Charter Policy, first promulgated in an opinion (Order No. E-9221, Docket No. 7099) issued on May 20, 1955, the Board believes that it is now appropriate to make this policy applicable to 1957.[1] The Board also believes that certain modifications and clarifications of this policy are desirable.

This policy prescribes the general standards which will be used in processing and deciding applications for § 416 (b) exemptions permitting otherwise unauthorized air carriers to engage in transatlantic passenger charter operations. However, air carriers holding certificates of public convenience and necessity, issued under Section 401 of the Act, need not apply for such specific exemptions because they may perform overseas or foreign charters under the authority conferred by Sections 207.8 (a) and (b) of the Economic Regulations.[2]

The Board will neither grant blanket exemptions to an entire class of carriers to engage in such charter operations nor exempt all charter flights performed, during an entire season, by a particular air carrier. Thus, an application for a specific exemption must be filed for each proposed charter movement.

Such applications will be processed in accordance with the special Rules of Practice applicable to exemption proceedings contained in Subpart 3 of Part 302, the Rules of Practice in Economic Proceedings. It is believed that this procedure will enable the Board to retain plenary control over such charter services by permitting it to pass upon the individual merits of each application for exemption and will also enable it to render its decisions in the light of the views of opposing parties filing answers to such applications for exemption.

1/ Accordingly, the Board plans to invite all interested persons to submit written comments concerning the need for revision or modification of this policy at the end of the 1957 summer charter season.

2/ It should be noted that the authority conferred by Section 207.8 to engage in air transportation is limited to air transportation of the classes of traffic specified in the operating certificates of such air carriers. Consequently, an air carrier holding a certificate of public convenience and necessity authorizing only cargo operations cannot perform passenger charter operations under the authority of Section 207.8 (Charter Flight Tariff Investigation, 15 C. A. B. 921).

In processing individual exemption applications, it will generally be the Board's policy to favor the granting of only those applications which comply fully with the various terms and conditions comprising its Transatlantic Charter Policy as herein defined. However, the determination of whether or not a particular exemption should be granted will be made on a case-to-case basis in the light of the statutory standard contained in § 416 (b). Thus, the Board is necessarily reserving its discretion to waive any of the requirements of this Transatlantic Charter Policy in appropriate cases. However, it will be the Board's policy to make such waivers only where the applicant demonstrates that compliance with a particular provision would either be unduly burdensome or is unnecessary to the protection of the public interest because of unusual circumstances. Mere delay in filing an application for such an exemption will not be regarded as a satisfactory demonstration of the need for waiver of any term or condition.

Experience has demonstrated that on numerous occasions airlines engaged in transatlantic charter service have not complied with various aspects of the Board's transatlantic policy. Accordingly, the Board has decided to incorporate the various provisions of that policy as express conditions upon each individual exemption granted to particular air carriers. Consequently, future violations of these requirements will be referred to the Office of Compliance for appropriate enforcement action. In addition, the Board may also consider the past conduct of nonconforming carriers in determining whether it is in the public interest to grant additional exemptions to such carriers.

Essentially, there are two distinct classes of charters. "Entity charters" are those where the entire transportation cost is borne by the chartering organization and none of the cost is paid by the individual passenger. "Pro rata charters" are those where the passengers transported share the cost of transportation on an equal basis.

The present policy requires all applications for such authority to be filed at least 30 days in advance of the scheduled date of the first flight contemplated under the specific charter authorization. This requirement appears to be adequate with respect to single "entity charters." Generally speaking, such charters do not present complex and novel questions of policy or law. However, "pro rata charter" applications are frequently opposed and the filing of additional data is often necessary to clarify doubtful questions. Experience has revealed that a 30-day period does not afford sufficient time to process such applications. Furthermore, it also appears that arrangements for pro rata charters are generally consummated well in advance of a particular season in order to enable individual passengers to plan for their foreign vacations. Consequently, the Board does not believe that any significant burden will be imposed upon either the charterers or the air carriers concerned by increasing the time interval to 60 days.

The Board believes that it is desirable to continue the present policy of denying applications for exemptions where the certificated air carrier serving the route over which a proposed pro rata charter is to be flown is itself willing to adequately perform such charter service at reasonable rates. It will be the policy of the Board in evaluating the sufficiency of any such offer made by the certificated carrier to consider the disparity between the individual passenger rate respectively proposed by the applicant and the certificated carrier serving the route. Where the applicant's offer is based on a plane-mile rate which is

not unreasonably low and a seating density which is not so high as to render the service inadequate, an alternative offer by the certificated carrier serving the route will serve to justify preemption only if its proposed rate does not exceed that of the applicant by more than 5 percent in the case of similar equipment or by more than 10 percent in the case of superior equipment. An offer to perform the charter with pressurized aircraft will be regarded as providing superior equipment when the applicant proposes to fly unpressurized aircraft.

Applications for exemption authority to conduct single entity charters, however, are not subject to such a right of reasonable first refusal by the certificated air carrier serving the route. Such charters are less comparable to the individual fare services of the certificated air carriers than are pro rata charters. Consequently, they tend to have a lesser diversionary effect. Likewise, applications for exemption authority to conduct pro rata military furlough charters, which comprise the movement by charter aircraft of a passenger group exclusively composed of military personnel of the U. S. Armed Forces traveling while on furlough, leave, or pass, are also not subject to such a right of reasonable first refusal. Such charters appear to differ from other types of pro rata charters insofar as the class of passengers concerned represents only a limited traffic potential for individual fare services in terms of the volume of such scheduled transportation. Furthermore, in enacting Part 227 of the Economic Regulations, the Board has expressly found that the public interest and the national defense will be served by the availability of low-rate air transportation to personnel of the armed forces desiring to visit their homes and families when stationed abroad. These considerations appear to outweigh the limited diversionary impact of this class of pro rata charters upon the scheduled passenger traffic of certificated air carriers. Consequently, it does not appear that they should be accorded any right of first refusal concerning such charters.

Under the 1955 Transatlantic Charter Policy, unauthorized carriers planning to participate in transatlantic charters, both single entity and pro rata, were required to file with the Board a statement showing rates and conditions which would be the basis for the offering and selling of transatlantic passenger service, and it was made a condition that exemption applications would not be considered unless the rates to be charged conformed to the applicable statement on file. It was also required that the statement contain no separate statement of ferry mileage charges, but that such charges be built into the live mileage rate. Experience under this policy indicates that the restriction against separate statement of ferry charges in some cases may not be feasible since it is impossible for a carrier who operates only limited transatlantic charters to develop the experience upon which he can predicate a reasonable, yet adequate, built-in allowance for ferry mileage. Moreover, experience further indicates that many single entity charters are of an emergency nature, or, as in the case of ICBM or military charters, involve a substantial number of related flights. Either case gives rise to special cost and operational factors which make it extremely difficult to price the service under a pre-filed tariff or statement of rates.

Accordingly, we will now permit carriers to separately state charges for ferry mileage in their tariffs and we are eliminating the previous requirement that a statement of rates be filed with the Board.

With respect to pro rata charters, however, where cost and operational factors make a pre-filed rate more feasible, and where adherence to such a rate is important to insure non-discriminatory treatment of charterers and restrain any tendency to charge excessive rates, especially in periods of peak demand, the existing requirement for filing and adherence to a statement of rates should, we believe, be continued and strengthened by having the filing made in the form of a tariff. Part 221 of the Board's Economic Regulations has been concurrently amended to permit such filing. While this is a departure from the general past practice of the Board in not accepting tariff filings for services which the filing carrier is not authorized to provide, we consider that the situation with respect to transatlantic charter services is sufficiently distinguishable from other areas that the filing of tariffs for pro rata transatlantic charters should be included as a condition of granting exemptions. The primary distinction is that, subject to compliance with certain specified conditions, the Board's transatlantic charter policy clearly contemplates the general holding out by the air carrier of such charter services and under such circumstances it is clearly consistent with Section 403 of the Act that it be accomplished through a tariff filing.

Accordingly, the Board will consider an exemption application by an unauthorized carrier with respect to a pro rata transatlantic charter only if there is on file with the Board a tariff which provides the basis for the holding-out of pro rata transatlantic charter services by that carrier. This tariff shall be filed not later than the date upon which the first application for exemption authority is filed with the Board, and shall be applicable to all transatlantic pro rata charter services. The tariff may be amended upon 30 days' statutory notice, consistent with the Board's normal tariff procedures.

However, the Board intends to adhere strictly to the policy that exemptions for pro rata charters shall be granted only where the charter price set forth in the exemption application is consistent with the terms of the applicable tariff on file with the Board and in effect at the time the exemption application is filed, and each exemption application must set forth sufficient facts to establish this.

The elimination of the requirement that statements of rates be filed with the Board and the condition that tariffs be filed in advance of proposed pro rata charters, is not intended to effectuate any modification of the previous policy that the reasonableness of the charge for the charter will be a factor in determining whether an exemption should be granted.

The Board believes it desirable to clarify the extent to which the air carrier or its agent can appropriately contact individual members of a prospective charter group, and also to clarify the extent to which the group itself can engage in the solicitation of charter passengers. It is the Board's policy to retain the basic charter concept presently found in Section 207.1 of the Economic Regulations and to further amplify that concept in order to preclude the entry of persons acting as indirect air carriers in this field. The Board hereby reaffirms its established policy against the authorization of indirect air carriers engaged in arranging consolidated travel, on chartered flights, by air passengers. An application for exemption authority filed by a direct air carrier which has solicited individual members of the public itself or through an authorized agent will not be granted. In this connection, it will be the Board's policy to view as one evidence of such solicitation any advertising of individual charter fares or individual pro rata portions of the total

charter price conducted by the direct air carrier or its agent. Such advertising, whether conducted through the mailing of circulars, the distribution of hand bills, the insertion of advertising material in publications or any other form of public advertising will be considered as an offer of transportation service to individual members of the general public which is contrary to this charter policy. However, either the air carrier or its agent may solicit prospective charter groups by contacting officers of the chartering club or other organization.

It will also be considered evidence of solicitation of individual members of the public if the air carrier or its agent employs, directly or indirectly, any person for the purpose of organizing or assembling members of the chartering party into a charter group. Where the agent of the air carrier selling the charter is a travel agent generally engaged in the business of selling transportation, he shall be permitted to solicit individual members of the charter group for other services such as conducted tours or hotel accommodations abroad, when such solicitation occurs after the individual concerned has previously made arrangements with his group or other chartering organization to participate in the charter. But any activity by such travel agent in either organizing and assembling the charter group or selling and ticketing individual members of the group for the charter flights will be a basis for denial of the application.

These restrictions, which it is the Board's policy to impose upon the activities of the chartering group itself in soliciting its members for transportation, are designed to preserve the bona fide character of such groups. The Board will follow the policy of disapproving any application for exemption of a proposed charter flight chartered by a group which has exceeded the prescribed scope of solicitation activities. An organized club or group may solicit only its members and their immediate families. The distribution of circulars to persons not members of the organization, the posting of notices outside the premises of the organization, and the placing of advertisements in publications or other media of mass communications shall be regarded as evidence of solicitation of the general public. Furthermore, only those members of the chartering organization who have been members for a minimum period of six months prior to the date when a contract is signed may be solicited. If other members of the organization are solicited, the applicant must affirmatively prove that it has not actually engaged in solicitation of the general public for the charter flight. As a general rule, it will continue to be the policy of the Board that national organizations or state-wide organizations of substantial size are not eligible as charterers because their membership comprises a significant segment of the general public.

In the past, various airlines and groups desiring to arrange charters of aircraft for transatlantic flights have been plagued by uncertainties concerning the eligibility of the proposed charter movement for exemption under this policy. In order to avoid hardships resulting from the consummation of such travel arrangements and their subsequent disapproval and cancellation shortly before the scheduled flight time, the Board has instructed the Director of the Bureau of Air Operations to render advisory opinions concerning the eligibility of a particular group pursuant to a request by either the charterer or the applicant air carrier. Such prior clearance of proposed charter movements will be given, of course, upon the basis of the representations submitted by the

requesting parties and cannot be considered a valid indication of the Board's probable position unless the charter actually conforms thereto. Furthermore, it should be clearly understood that the advisory opinions given by the Director of the Bureau of Air Operations will not bind the Board as they are not issued pursuant to a published delegation of final authority. Where the Board ultimately grants the application of an air carrier for specific exemption, it will serve a copy of its order upon the chartering group.

Since the purpose of this procedure is to afford timely notice of possible denials of the applications for exemption, to the maximum feasible extent, the Board is anxious to assure that prospective charterers are informed of the availability of this prior clearance procedure. Consequently, this policy requires carrier applicants to certify that they have informed prospective charterers of the availability of these procedures.

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 repeals Section 399.12 and enacts Regulation Policy Statement No. 2 comprising new Section 399.28 of subpart (b) of Part 399, effective April 4, 1957, to read as follows:

PART 399 - STATEMENTS OF GENERAL POLICY

SUBPART B - STATEMENTS OF POLICY

REVISED TRANSATLANTIC CHARTER POLICY

Section 399.28 - Transatlantic Charter Policy - It is the policy of the Board to regard any of the following enumerated practices or circumstances (among others) concerning the application of an otherwise unauthorized air carrier seeking a section 416 (b) (1) exemption permitting it to perform transatlantic charter services as factors tending to establish that the granting of the requested exemption would not be in the public interest:

(a) Failure of an applicant seeking authority to perform a pro rata charter to file such an application at least sixty days prior to the scheduled date of the first charter flight to be performed under such authority.

(b) Failure of an applicant seeking authority to perform an entity charter to file such an application at least thirty days prior to the scheduled date of the first charter flight to be performed under such authority unless an emergency situation is shown to exist.

(c) An offer by a certificated air carrier regularly authorized to serve the route over which a proposed pro rata charter flight would be operated to perform such charter service at a reasonable rate which does not exceed the applicant's seat mile rate by five percent when the services respectively proposed by the applicant and the certificated air carrier are to be performed with similar equipment or by ten percent when the services of the latter carrier are to be performed with superior equipment.

(d) Failure of an applicant seeking authority to provide pro rata charter services to have previously or concurrently filed with the Board a tariff specifying its rates, fares and charges for air transportation and all classifications, rules, regulations, practices and services in connection with all transatlantic pro rata charter services which it offers to perform.

(e) Any departure in the terms of the proposed charter application from the total charter price or other terms of service set forth in the applicable tariff of the applicant on file with the Board and in effect at the time the exemption application is filed.

(f) Any solicitation of individual members of the chartering organization by a direct air carrier or its agent, whether performed through personal contact, the placing of advertisements in newspapers, magazines, other publications, billboards or radio and television stations, or otherwise. Provided, however, that an air carrier or its agent may solicit prospective charter groups by contacting officers of a club or other group.

(g) Employment, whether directly or indirectly, of any person for the purpose of organizing and assembling members of the chartering party into a chartering group.

(h) Use of a travel agent to assist in the organization and assembly of the charter group or to handle the sale or ticketing of any individual members of the group. Provided, however, that the direct air carrier may

employ a travel agent generally engaged in the business of selling transportation for the purpose of inducing the charter group to use its transportation services and such agent may also solicit individual members of the chartering group in order to sell them other services, such as conducted tours and hotel accommodations abroad after the individual thus solicited has independently become a member of the chartering group.

(i) Solicitation of persons other than the members of an organized club or group and their immediate families or the proposed transportation of a chartering group which has distributed circulars to persons not members of the organization, or placed advertisements in publications, radio or television stations, or public places or used any other method of public advertising. Solicitation of persons who have not been members of the chartering organization for at least six months before the execution of the contract of charter will be regarded as prima facie evidence of solicitation of the general public for the chartered flight. Likewise, it will be rebuttably presumed that national organizations or state-wide organizations of substantial size are not bona fide charterers because their membership includes a significant segment of the general public.

(j) Payment of a commission to an agent, or other benefits received by such agent from the direct air carrier, whether directly or indirectly, which exceed five percent of the total charter price specified in the direct air carrier's charter tariff on file with the Board or payment of a commission to such agents by both the direct air carrier and the charterer for services performed in connection with the charter agreement or for other services rendered on behalf of the charterer.

(k) Failure of the charterer to require full payment of the total round trip charter price or the posting of a satisfactory bond for full payment prior to the commencement of the air transportation.

(l) Failure of a pro rata charterer dealing with a group which has contracted for more than one round trip flight to transport each plane-load group of passengers as a unit in both directions.

(m) Failure of the charterer or other person signing the charter contract on behalf of the organization or group concerned, to supply each person participating in a pro rata charter with a complete and detailed statement of the total and prorated amounts respectively collected from passengers and paid to the direct air carrier together with an itemization and justification of all charges made in addition to the pro rata share of the total charter transportation charge. Such statement shall also include the names of all persons receiving payment for their services and the amounts paid to each. It will be the Board's policy to scrutinize carefully the nature and amount of all charges in excess of the direct air carrier's charter fee in determining eligibility for a charter exemption.

(n) The making of charges exceeding actual out-of-pocket or added costs incurred in consummating charter arrangements.

(o) Failure to incorporate, in an application for exemption filed pursuant to Subpart D of Part 302 of the Procedural Regulations, the supporting evidence specified in Appendix A[1] attached to this statement of policy.

(p) Failure to submit the information concerning pro rata charters specified in Appendix B 1/, attached to this statement of policy in accordance with the time schedule therein contained for the submission of such information.

(q) Failure to inform prospective charterers of the availability of the prior clearance procedures established by the Board.

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

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan
Secretary

(SEAL)

1/ This appendix is annexed to the original and certified copies of this document on file with the Federal Register Division of the National Archives. Interested persons may obtain individual copies from the Publications Section of the Board.

NOTE: Part 399 - Statements of General Policy (Regulation Policy Statement No. 1) issued May 25, 1955.

APPENDIX A

1. Name of transporting carrier.

2. Date of proposed flight (all information herein should relate to both going and return flights).

3. Routing of each aircraft to be used in the proposed flight(s).

4. Type of aircraft to be used, available seating capacity, and number of persons to be transported.

5. Amount to be received by the carrier for the charter, and from whom.

6. Is charter on complete plane-load basis?

7. Can the carrier applicant transport revenue passengers or property on the chartered aircraft not moving on behalf of or belonging to the charterer? Explain fully.

8. Has the carrier paid or does it contemplate the payment of commissions or other compensation, direct or indirect, in connection with the proposed charter flight? If so, indicate amount thereof and give names and addresses of such recipients and a full description of the services which they have or are to perform in connection with the flight.

9. Has the carrier provided, or does it contemplate the provision of any services or performance of any functions in addition to the actual air transportation? Explain fully.

10. Name and address of the charterer.

11. Indicate whether charterer is an individual, a group, a company, a corporation or a Government agency.

12. If a group, description of charter group; when, where, why and how it was formed, and the requirements for membership; indicate requirements for participation in charter trip.

13. Give a full description of the manner of solicitation of the persons comprising the chartering group. Has or will charter trip be advertised or publicized to general public at a fixed or prorated charge per passenger? Supply copies of advertising matter used, and contemplated.

14. Is charterer paying for charter by lump sum out of its treasury or by selling individual passages to members of groups on a fixed charge or pro rata basis?

15. If charter passengers contribute a pro rata portion of the charter fee, what is the reason for group traveling together, i.e., club members, convention delegates, employees of charterer, etc.?

16. Give an analysis of all of the charges which are being prorated by the charterer among the members of the group, showing total charges, number of passengers, and the resulting prorated charges per individual. Total charges and prorations thereof should be clearly itemized to show air transportation and other expenses. "Other Expenses" should be itemized to show all salaries, commissions and fees paid, and expenses for tuition, board and room, ground transportation, etc. To whom were the foregoing payments made and for what purposes? Every person obtaining a fee or salary should be listed together with an indication of his relationship to the person signing the charter contract. If any person of the group is to pay more or less to the charterer than another, justify fully the difference in charges. Has charterer received, or will charterer receive in connection with proposed charter movement any compensation other than the prorated contributions from members of the group? If so, from whom? Explain fully.

17. Are charterer and/or intermediaries engaged in the business of providing or soliciting passenger transportation? The charterer and any other intermediary organization involved should list all previous charters which it has arranged in the past, and those which it contemplates arranging in the future.

18. State relationship of charterer to individual passenger and intermediaries, if any.

19. Name of travel agent or ticket agent involved in transaction and the amount of his compensation.

20. Please supply copies of any contracts which have been executed covering the proposed charter, (a) between carrier and charterer; (b) between carrier and/or charterer and the following: ticket or travel agent, other intermediary organizations.

21. What form of receipt is, or will be given by the applicant carrier, charterer and intermediary as evidence of payment by individuals being transported?

22. Has the chartering group or charterer been informed by the applicant carrier of the availability of the prior clearance procedures established by the Board?

23. Has the applicant carrier held out, or does it plan to hold out, individual trip services to the general public in connection with the proposed charter trip, where such holding out is in the form of advertisement, course of conduct or other means?

24. Has the applicant carrier made, or does it plan to make, any reference in its public advertising or other forms of publicity to the amount or pro rata portion of the lump sum proposed to be charged to each passenger?1/

25. Has the applicant carrier sold, or does it plan to sell, either directly or indirectly, any of the chartered space except as permitted by the Civil Aeronautics Board?

1/ It should be noted that any such reference will be viewed as one indication that the carrier has held itself out as performing individual trip services.

26. Has the applicant carrier paid, or does it plan to pay, a commission in excess of five percent of such carrier's filed charter tariff rate (whether such commission takes the form of a direct payment or some indirect benefit) to any intermediary organization or travel agent involved in the proposed charter?

27. Has the applicant carrier paid, or does it plan to pay, a fee to any intermediary or travel agent involved in the proposed charter?

28. Does the applicant carrier have charter tariffs on file with the Civil Aeronautics Board? Are the rates quoted to the charterer in accordance with such tariffs?

29. What is the total dollar amount which the charterer has paid or will pay to the applicant air carrier for the proposed air transportation? How has this dollar amount been computed?

30. In the case of pro rata charters entailing the making of more than one round trip charter flight, does the applicant carrier plan to transport each plane-load group as a unit in both directions?

31. Has the applicant carrier required, or does it plan to require, either full payment in advance or satisfactory bond for full payment prior to commencement of charter flights pursuant to a contract for round trip charter transportation? Has the applicant carrier required, or does it plan to require, either full payment in advance or satisfactory bond for full payment prior to commencement of charter flights pursuant to a contract for only the return portion of a round trip?

32. Has the applicant carrier made its own independent investigation to verify that the chartering group and all intermediaries or travel agents involved in the proposed charter have not engaged in any practice which would result in a violation of the requirements, terms and conditions of the Board's Transatlantic Charter Policy?

APPENDIX B

Upon completion of each pro rata charter flight, a report giving the details surrounding the flight, as set forth hereinbelow, must be filed with the Bureau of Air Operations, Civil Aeronautics Board, Washington 25, D. C., by both the charterer and the direct air carrier which performed the charter pursuant to temporary Board authorization:

(1) Within five days after completion of each flight authorized, manifests of the flight in each direction showing names and addresses of the persons transported and the relationship of each such person to the charterer;

(2) Within thirty days after completion of each one-way or each round trip, whichever is authorized, the report showing separately all of the charges (including air transportation) prorated by the charterer among the members of the group, indicating the number of passengers, and resulting prorated charges per passenger. On round-trip charters, a statement that all persons on the return portion were the same as those who traveled together on the outbound portion of the flight.