Regulation Policy Statement No. 3

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

Policy Statements - Part 399

Effective: January 7 1958
Adopted: January 7, 1958

EXPLANATORY STATEMENT - 1958 TRANSATLANTIC CHARTER POLICY

Having received written comments and heard oral argument from interested persons concerning the Board's 1957 Transatlantic Charter Policy, the Board hereby promulgates its 1958 Transatlantic Charter Policy.

The Board believes that in its broad aspects the existing Charter Policy should be continued but that certain changes are warranted, most of which are for purposes of clarification and more ready administration. These changes are reflected in the substantive sections of 1958 charter policy which follow.

A primary objective of the Board in promulgating the 1958 policy is to recast and reorganize it so as more clearly to specify the rights and obligations of the various interested persons, i.e., the carrier applicant, the chartering group, the travel agent and the certificated carriers. With that objective in mind provision has also been made for a standardized questionnaire form and after-flight report. These are attached as Appendices A and B to the 1958 policy statement. These changes from the previous policy should permit the public, the carriers and the Board more readily to determine the charterworthiness of prospective charter groups and thus tend to avoid the difficulties caused by last-minute charter denials such as have occurred on occasion in the past. For this purpose, the new policy also

provides that the Board be notified by the carriers within five days of the names and addresses of groups who reserve flight dates. Thus, the Board may directly supply such groups with a copy of the charter policy and emphasize the availability of the advisory opinion procedures under which the Board's staff is authorized to give advice to prospective charter groups as to their charter eligibility prior to the time that they commit themselves to a course of action. The names and addresses of groups supplied to the Board under this procedure will, of course, be kept in strict confidence by the Board.

Recognizing that rapid Board action on charters is highly important to an efficient conduct of charters by both prospective charter groups and the air carriers, the Board intends, where complete and proper applications are filed, to process such applications within thirty days. As a further step in processing charter applications rapidly, the Board has granted certain delegations of authority to the Director, Bureau of Air Operations, with respect to approval of such matters as single entity charters, minor changes in operations after Board approval but prior to flight date, pro rata charters for groups approved in prior years where no objections are filed, and requests for one-way passengers or intermingling.

The 1958 policy requires that certain new data be supplied and procedures be followed which have not been required in previous years. These requirements, as noted above, have been designed by the Board to permit all interested persons more readily to determine charter eligibility of groups. Comments received by the Board indicate some apprehension over the possibility that the burden of the new requirements may impede the development of charter business by carriers operating under the charter policy. The Board wishes to make clear at this time that, should experience during 1958 indicate that

the new procedural provisions of the policy prove to be impediments of significance, the Board will give full consideration to the question of whether revisions in such requirements are in order.

The Board desires to advise all interested persons that it has under consideration a proposal to convert the Transatlantic Charter Policy from the form of a policy statement to the form of a regulation. The conversion of the charter policy to regulation form should lend more stability to this area of activity and provide a more convenient administrative form for the handling of the problems involved. In addition, it would provide a more effective basis for compliance action where such action may be necessary.

The following sections of this explanatory statement deal with the more significant factors involved in the adoption of the new policy as they affect the applicant carrier, the travel agent, the chartering group and the certificated carriers:

Applicant Carriers:

The policy clarifies the extent to which carriers can utilize paid advertising in media of mass circulation. "Institutional-type" advertising is permitted to the effect that the carrier conducts transatlantic charters pursuant to CAB procedures. However, the carrier may not directly or indirectly advertise rates on an individual fare basis. Thus advertisements in mass media which would indicate, for example, both the round-trip charter price between New York and London, on the one hand, and the number of passenger seats, on the other, would be prohibited under the policy.

In those cases where carriers utilize tariffs showing live and ferry mileages, the policy requires a refund to the charterer if in fact the

amount of ferry mileage envisaged at the time the charter contract was signed does not in fact materialize. However, as to ferrying performed in excess of that contracted for (except where requested by the charterer) the policy provides that the burden should be on the carrier -- since it, rather than the charterer, is knowledgeable as to its aircraft utilization and positioning problems -- to foresee the ferrying that will be necessary and to contract accordingly.

Certain carriers have suggested that the present prohibition against "split charters" be modified to permit two bona fide groups to charter one aircraft. They allege that many small groups are deprived of the advantages of charter service and that the advent of larger aircraft has accentuated the problem. The Board does not believe that this is an adequate showing to warrant a relaxation of the Board's long-standing policy against split charters. The contracting for the exclusive use of an aircraft is basic to the concept of charter service. Among other things, relaxation of the policy would open an avenue to a breakdown between charter and individually-ticketed services, would complicate the Board's administrative problems (a) by dividing charterers' responsibilities between two charterers and (b) by giving rise to "hardship" cases where an eligible group would be injured if the Board found its partner group to be ineligible. It would also create a temptation to a group, a carrier, or a travel agent to seek out or "promote" a fill-up group.

The Independent Airlines Association has urged that supplemental air carriers be given first refusal rights over certificated cargo carriers. We do not feel that the propriety of such a proposal at this time has been established. First, no showing has been made by the proponents of such a priority that they are prevented under the present rules from obtaining all

the business that they can handle. Next, a showing has not been made that, should a priority be granted, the supplemental carriers would be able to handle the current charter services of the cargo carriers on a reasonably adequate basis. Finally, from a procedural point of view it would appear to be unsound to establish a priority system with such an apparent far-reaching effect on the certificated cargo carriers on the basis of the present record.

Travel Agents:

The new policy makes more explicit the permissible relationships between the travel agent and the chartering group. The only specific question raised after circulation of the tentative policy concerned the propriety of prohibiting the travel agent from, in the first instance, incurring expenses relating to solicitation of individuals within the group (e.g., printing of brochures) subject to later reimbursement by the charterer. It must be realized that the Board must determine on the basis of a written record whether or not the travel agent has participated unduly in the formation of the group. For this reason the lines of permissible activity must be sharply drawn. In this instance the prohibition appears clearly necessary for administrative purposes and would not appear to constitute any significant impediment to either the group or the agent.

One suggestion has been made that the agent's commission be raised from 5% to 7½%. There is no general allegation either by various carriers or by various agents that the commission rate is too low to attract business to the carriers or to permit the agents to profit from or be interested in charter business. Taking into account the normal IATA rate of 5%, the Board does not feel warranted at this time in taking any action to raise the permissible fee under the charter policy.

Chartering Groups

For the first time the charter policy attempts to describe the kinds of organizations which have been found charterworthy for purposes of guiding prospective charter groups. Size and geographic area are discussed as well as the matter of public solicitation.

The new policy also clarifies the rules with respect to length of membership in an organization (six-months rule), one-way passengers, intermingling of passengers in the case of two or more round-trip flights, definition of immediate family, and pro ration of charges among charter participants.

The new policy also permits payments to members of the organization for labor in administering the charter in amounts not to exceed $300.00 per round trip. Question has been raised as to whether this limitation is too low in relation to the task involved in administering a charter flight. Since the policy provides that where amounts in excess of $300.00 can be justified they may be permitted, the Board does not feel that any change in the policy is warranted at the present time. Along with permission to include payments to the organizers of the charters for labor, the policy specifically prohibits compensation to any member of the chartering organization, direct or indirect, from the carrier, the travel agent, or any organization providing any services to the chartering group whether of an air transportation or land tour nature or otherwise.

The new policy continues and makes more specific the requirement for after-flight reports by chartering groups. The Board wishes to point out that chartering groups should discharge their responsibility to file after-flight reports. Failure to do so will be taken into account by the Board in

determining whether it is in the public interest to grant charter applications for such groups in future years.

Certificated Carriers

The new policy provides that first refusal privileges for certificated carriers will apply only to the off-season (October through May, inclusive), and not to the peak season (June through September, inclusive). We have been urged to retain this requirement throughout the year, or that in the peak season we at least continue it in the off-peak direction. Taking into account the fact that this right has not been exercised during 1957, that certificated carriers have doubtful need for the artificial priority so provided in view of their other substantial competitive advantages over carriers operating under the charter policy, and that exercise of the privilege of first refusal could have a significant economic impact upon other carriers' charter flight patterns, we conclude that there should be no first refusal privileges during the peak season.

The 1958 Charter Policy which follows consists of three main parts: provisions of general applicability; provisions relating to "pro rata" charters (where the passengers transported share the cost of transportation); and provisions relating to "entity charters" (where the entire transportation cost is borne by the chartering organization and none of the cost is paid by the individual passenger).

Since this rule relates only to statements of policy, notice and public procedures 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 399.28 and enacts Regulation Policy Statement No. 3 comprising new Section 399.29 of Subpart B of Part 399, effective January 7, 1958, to read as follows:

PART 399 - STATEMENTS OF GENERAL POLICY

SUBPART B - STATEMENTS OF POLICY

1958 TRANSATLANTIC CHARTER POLICY

Section 399.29 - Transatlantic Charter Policy

I. General Provisions

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

B. The Board's policy is to favor the granting of only those applications which comply fully with the terms and conditions of the charter policy. However, the determination of whether a particular exemption should be granted will be made on a case-to-case basis in the light of the statutory standard of section 416(b). Thus the Board is necessarily reserving its discretion to waive any of the requirements of this Transatlantic Charter Policy in appropriate cases.

C. It is the Board's policy to retain the basic charter concept presently found in Section 207.1 of the Economic Regulations as amplified and modified by this statement in order to preclude the entry of persons acting as indirect air carriers in this field.

II. Pro Rata Charters

A. Requirements Relating to Air Carrier Applicant

1. Within 5 days after a charter flight date is reserved by the carrier or its agent, the carrier must advise the Board in writing of the name and address of the prospective charterer in order that the Board may inform the

charterer of the requirements of the Transatlantic Charter Policy and the availability of the procedure for obtaining an advisory opinion from the Board's staff with respect to the eligibility of the group for charter service.

2. Within seven days after a charter contract has been executed a copy of the contract must be submitted to the Board.

3. The application for exemption authority to conduct the charter flight must be filed with the Board at least 60 days in advance of the first flight under the charter contract. It is the intention of the Board to process applications, properly submitted with the required data, within 30 days after filing.

4. The carrier must have a tariff on file with the Board at the time the application is filed disclosing all its rates and charges for the use of the entire capacity of one or more aircraft in air transportation and all its rules and regulations in connection with all transatlantic pro rata charter service which it offers to perform. The tariff may be amended upon 30 days statutory notice consistent with the Board's normal tariff procedures.

5. The total charter price or other terms of service set forth in the application must conform to those set forth in the applicable tariff on file with the Board at the time the exemption application is filed and the contract must be for the entire capacity of one or more aircraft. Where a carrier's charter charge computed according to a mileage tariff includes a charge for ferry mileage, the carrier shall refund to the charterer any sum charged for ferry mileage which is not in fact flown in the performance of the charter; provided that the carrier shall not charge the charterer for

ferry mileage flown in addition to that stated in the contract unless such mileage is flown for the convenience of and at the express direction of the charterer.

6. The carrier's application must contain the information required by the questionnaire attached as Appendix A hereto.

7. The carrier may not pay its agent a commission or any other benefits, directly or indirectly, in excess of five per cent of the total charter price as set forth in the carrier's charter tariff on file with the Board.

8. The carrier shall 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.

9. Without prior Board approval, upon good cause shown at the time the application is filed, the carrier shall not transport one-way passengers in the case of a round-trip charter. Similarly, in the case of a charter contract calling for two or more round trips, without prior Board approval upon good cause shown at the time of application, there shall be no intermingling and each plane-load group shall move as a unit in both directions.

10. Within 10 days after the completion of each one-way flight or each round trip, whichever is authorized, manifests shall be filed showing the names and addresses of the persons transported and the relationship of each such person to the charterer. 1/

11. Within 30 days after completion of each one-way, or each round trip, whichever is authorized, a report shall be filed showing separately all the charges (including air transportation) pro rated by the charterer among the members of the group, indicating the number of passengers, and resulting pro

1/ The carrier shall promptly notify the Board regarding any flights authorized by the Board that are later cancelled.

rated charge per passenger. (See Appendix B).

12. The carrier may not solicit individual members of the chartering organization either through personal contact, through the placing of advertisements in newspapers, magazines or billboards, or through radio or television stations, or otherwise. However, a carrier may solicit prospective charter groups, but may not engage in public advertising except the "institutional-type" provided for in paragraph 13.

13. A carrier is not prohibited from "institutional-type" advertising to the effect that it conducts transatlantic charters under procedures established by the Civil Aeronautics Board. However, the carrier may not, directly or indirectly, advertise rates on an individual passenger basis.

14. The carrier may not employ, directly or indirectly, any person for the purpose of organizing and assembling members of the chartering party into a chartering group.

15. The carrier or its agent shall at the time a charter flight date is tentatively reserved, advise the chartering group of the availability of prior clearance of the charterworthiness of the group by the staff of the Civil Aeronautics Board.

B. Requirements Relating to Travel Agent

1. A travel agent may not receive a commission from both the direct air carrier and the charterer for services performed in connection with the charter agreement or for services rendered on behalf of the charterer.

2. A travel agent may not assist in the organization and assembly of the charter group or handle the sale or ticketing of any individual members of the group except as hereinafter indicated.

3. In cases where the group has itself engaged the aircraft without intermediary, they may employ the services of a travel agent for the land tour who may solicit individual members of the group for such tours, receive deposits and conduct ticketing for such land tours. He may not, however, engage in any activities with or without compensation relating to the organization or assembly of the charter group itself or receive remuneration of any kind from the carrier in connection with the charter.

4. In cases where an agent, either singly or by agreement with others, acts as both the direct air carrier's agent and as agent for land tours, such agent may not directly handle the sale or ticketing of any individual members of the group either for the air transportation portion of their journey or for the land tour portion, except for charter participants who, on an individual basis, request land tour arrangements different from those made available to the charter group. The services of the travel agent may be utilized in the preparation of a brochure or other literature describing all the aspects of the whole trip; provided, however, that the distribution of such material, and the actual administration of the charter flight (which includes the collection and distribution of all pro rata shares of all the participants) be confined to the hands of the charterer.

5. The travel agent shall not incur any obligations on behalf of a chartering group relating to the expenses of solicitation or organization of the individual participants in the chartering group, whether or not it is intended for the group to assume ultimately the obligation incurred.

6. The travel agent shall make no payments or extend gratuities of any kind, directly or indirectly, to any member of the chartering organization in

relation either to the air transportation or land tour portions of the charter trip.

7. No travel agent, or officer, director or employee of such an agent, who may be a member of a charter group, shall participate in the charter activity of such group, if such travel agent, or officer, director or employee thereof, is receiving directly or indirectly any compensation either from the charter flight or the land tours.

C. Requirements Relating to Chartering Organization

1. An application for exemption to perform a charter flight in foreign air transportation where the participants are individually bearing all or a substantial part of the cost of such transportation will be granted only where such participants have not been brought together as a result of solicitation of the general public or a substantial portion thereof. In making this determination, the Board will consider both the size of the group and the area of residence of the group from which the participants have been solicited. The Board will also consider the relative ease of admission to membership and, where admission is on a casual or informal basis, may construe a charter solicited from such membership as being, in effect, held open to the general public.

As a rule of thumb, the Board has heretofore followed a policy of granting exemptions for charter parties solicited from organizations with substantial memberships only where the membership is located in a limited area. The Board has denied approval to charter parties solicited from groups of more limited size where these are organized on a state or nationwide basis. For example, the Board has approved charters drawn from universities and employees of business firms in a given locality open to more than 20,000 persons but has denied charters to statewide organizations with memberships in excess of 10,000 persons, and nationwide

groups having more than 5,000 members. In this connection, a charter open to statewide or nationwide membership of a religious denomination, a political party, or a profession or occupation would ordinarily be considered as drawn, in effect, from the general public and thus ineligible. But a charter open only to a subdivision of any of the foregoing might, in many circumstances, be found eligible. Furthermore, where a charter is desired to transport a limited number of members of a national or statewide organization who are to participate actively in a special project - e.g., as delegates to a scientific congress - and participation is on a selective basis so that the charter is not open to the membership in general, the size or geographic area of the whole organization may not be a bar to approval of the charter. The Board has found that parties organized by solicitations strictly limited to members of the following types of organizations are charterworthy:

a. Government agency recreational associations.
b. Employee groups of industrial and mercantile firms.
c. Local chapters of professional associations.
d. College campus charters and college study trips.
e. Local church groups.
f. Local social and fraternal clubs.

2. An organized club or group may solicit only its members and their immediate families for participation in the charter flight. Immediate family is construed by the Board to include the spouse, children and parents who are in the member's immediate household. Further, participation of immediate families should be limited to the immediate families of those members who will themselves participate in the charter flight as passengers. Only those members who are members at the time the application is filed and will have been members of the organization for a minimum period of six months prior to charter flight date may be solicited. If other members of the organization are solicited, the chartering group must overcome a presumption that these new members are not bona fide members of the organization but rather join the organization merely for the purpose of becoming members

of the charter party and that they did so as a result of a soliciation of a public character. This presumption is primarily directed toward social or fraternal clubs with only nominal entrance requirements. Conversely, where full-time employment in a given organization is a requirement for participation in a charter, for example, the six-month membership provision would appear to be inapplicable.

3. It shall be considered solicitation of the general public when the charter is described, announced or referred to in advertisements, whether paid or unpaid, in any media of mass communication such as newspapers, magazines, radio, or television. A news item carried on such media would be considered as solicitation if initiated or inspired by the charterer, carrier, or travel agent and, if reasonably construed, it is likely to induce travel on the charter. However, advertising or the initiation of an unpaid announcement in media the circulation of which is primarily restricted to an eligible group — e.g., the plant newspaper of a factory, the student newspaper of a college — would not ordinarily be considered as solicitation of the general public, particularly if it included a statement that the charter is limited to bona fide members of the organization and their immediate families. Distribution of circulars to persons not members of the organization or the posting of notices outside the premises of the organization will also be regarded as evidence of solicitation of the general public, as will campaigns by telephone, telegraph, or letter going beyond the bona fide membership.

4. In the case of a round-trip charter flight, one-way passengers are not permitted. Where more than one round trip is contracted for, intermingling

between flights or reforming of plane-load groups is not permitted, and each plane-load group must move as a unit in both directions. Waiver of these rules may be obtained where there is good cause shown at the time the charter application is filed.

5. The costs of the charter flight must be pro rated equally among all charter passengers, except to the extent that the charter application may indicate a lesser charge for children under 12. In the event there is any unequal division of charges, good cause therefor must be shown at the time the application is filed. Free transportation of a particular passenger (except children under 2 years) is not permitted.

6. Reasonable administrative costs of developing the charter may be pro rated among the charter participants. These may include a reasonable amount of compensation to members of the organization for labor in administering the charter. Any such charge should be clearly indicated and should not exceed in total the amount of $300.00 for the round-trip charter unless the additional amounts above $300.00 are justified at the time the application is filed. Neither the organizers of the charter, any member participating in the charter, nor any member of the chartering organization (non-participants) may receive any compensation, direct or indirect, from the carrier, the travel agent, or any organization providing any services to the chartering group whether of an air transportation or land tour nature or otherwise.

7. The chartering organization may not make charges to the charter participants which exceed the actual out-of-pocket or added costs incurred in consummating the charter arrangements. Any announcements to the prospective charter participants of the anticipated individual charge for the charter

shall clearly identify the portion of the charges to be separately paid for the air transportation, for the land tour, and for the administrative expenses of the charterer. Within 15 days after completion of the charter, the chartering organization must supply to each charter participant a detailed statement in the form shown in Appendix B hereof of the total and prorated amounts collected from each charter participant 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.

8. The chartering organization must prepare and submit to the direct air carrier, for purposes of filing with the Board, as outlined in A-11 above, the statement of pro rated charges in the form shown in Appendix B hereof. Failure on the part of the chartering organization to submit an adequate and timely report will be a factor in any future Board decision as to charters for such organization.

9. In order to avoid uncertainties on the part of the prospective groups concerning their eligibility for charters under the Board's policy and to prevent hardships resulting from consummation of travel arrangements and their subsequent disapproval and cancellation shortly before flight time, the Board has instructed the Bureau of Air Operations to render advisory opinions concerning the eligibility of a particular group to either the group or the applicant carrier. Whenever the chartering group has any doubts as to its eligibility, it is strongly urged that these advisory opinion procedures be utilized. The advisory opinion must, of course, be given on the basis of

representations made by the requesting parties and cannot be considered a valid indication of the Board's probable position unless the charter actually conforms thereto. Further, the opinions are not binding upon the Board.

D. Requirements Relating to Certificated Transatlantic Passenger Carriers.

During the winter season from October through May, the Board will follow the 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 adequately to perform such charter service at reasonable rates. The Board in evaluating the sufficiency of any offer made by the certificated carrier will 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 per cent in the case of similar equipment or by more than 10 per cent 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.

III. Single Entity Charters

1. Single entity charters must be filed at least 30 days before flight date. Later filings may be made if good cause is shown.

2. Single entity charters are not subject to first refusal rights on the part of certificated air carriers.

3. Commissions may not be paid to a travel agent in excess of 5 per cent of the total charter price.

4. Tariffs are not required to be on file at the time of application in the case of single entity charters, but must be on file prior to flight.

IV. Mixed Single Entity and Pro Rata Charters

The Board has approved several mixed single entity and pro rata charters in the past such as for an industrial concern where the employees have paid less than their pro rata share of the cost and the industrial concern has borne the residual costs. The pro rata rules in the Transatlantic Charter Policy apply in the case of such charters.

(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)

NOTE: Part 399 - Statements of General Policy (Regulation Policy Statement No. 1) issued May 25, 1955, and amended on April 4, 1957, by Regulation Policy Statement No. 2.