[Reg. ER-735, Amdt. 5]

PART 208—TERMS, CONDITIONS, AND LIMITATIONS OF CERTIFICATES TO ENAGE IN SUPPLEMENTAL AIR TRANSPORTATION

Performance of Overseas Military Personnel Charters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of May 1972.

By supplemental notice of proposed rule making EDR-173C/SPDR-25,[1] the Board proposed, inter alia, certain amendments to Part 208. For the reasons set forth in SPR-54 (Part 372), published contemporaneously herewith, the Board hereby amends Part 208 of the Economic Regulations (14 CFR Part 208), effective June 3, 1972, as follows:

1. Amend § 208.3 by revising the definition of "Indirect air carrier" in paragraph (u) to read as follows:

§ 208.3 Definitions.

* * * * *

(u) "Indirect air carrier" means any citizen of the United States who engages indirectly in air transportation including air freight forwarders, persons authorized by the Board to transport by air used household goods of personnel of the Department of Defense, tour operators, study group charterers, and overseas military personnel charter operators.

* * * * *

2. Amend § 208.6 to read as follows:

§ 208.6 Charter flight limitations.

* * * * *

(b) * * *

(4) By a tour operator or a foreign tour operator as defined in Part 378 of this chapter;

(5) By a study group charterer or foreign study group charterer as defined in Part 373 of this chapter; or

(6) By an overseas military personnel charter operator as defined in Part 372 of this chapter.

(c) * * *

(3) By a tour operator or a foreign tour operator as defined in Part 378 of this chapter;

(4) By a study group charterer or a foreign study group charterer as defined in Part 373 of this chapter; or

(5) By an overseas military personnel charter operator as defined in Part 372 of this chapter:

Provided, That with respect to paragraph (c) of this section each person engaging less than the entire capacity of an aircraft shall contract and pay for 40 or more seats: *And provided further*, That paragraph (c) of this section shall not be construed to apply to movements of property.

(Secs. 204(a), 401, Federal Aviation Act of 1958, as amended, 72 Stat. 743 and 754, as amended; 49 U.S.C. 1324 and 1371)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.72-8439 Filed 6-2-72;8:50 am]

[1] Issued Aug. 27, 1971, 36 F.R. 17655 (Docket 21666).

[Reg. ER-736, Amdt. 3]

PART 212—CHARTER TRIPS BY FOREIGN AIR CARRIERS

Performance of Overseas Military Personnel Charters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of May 1972.

By supplemental notice of proposed rule making EDR 173C/SPDR-25,[1] the Board proposed, inter alia, certain amendments to Part 212. For the reasons set forth in SPR-54 (Part 372), published contemporaneously herewith, the Board hereby amends Part 212 of the Economic Regulations (14 CFR Part 212) effective June 3, 1972, as follows:

Amend § 212.8 by adding new paragraphs (a)(6) and (b)(4), the section as amended to read as follows:

§ 212.8 Charter flight limitations.

* * * * *

(a) * * *

(6) Until October 1, 1972, by an overseas military personnel charter operator as defined in Part 372 of this chapter; or

(b) * * *

(3) By a study group charterer or foreign study group charterer as defined in Part 373 of this chapter;

(4) Until October 1, 1972, by an overseas military personnel charter operator as defined in Part 372 of this chapter: *Provided, however*, That with respect to paragraph (b) of this section each person engaging less than the entire capacity of an aircraft shall contract and pay for 40 or more seats: *And provided further*, That paragraph (c) of this section shall not be construed to apply to movements of property.

(Secs. 204(a), 402, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 757; 49 U.S.C. 1324, 1372)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.72-8440 Filed 6-2-72;8:50 am]

[1] Issued Aug. 27, 1971, 36 F.R. 17655 (Docket 21666).

[Reg. ER-737, Amdt. 6]

PART 214—TERMS, CONDITIONS, AND LIMITATIONS OF FOREIGN AIR CARRIER PERMITS AUTHORIZING CHARTER TRANSPORTATION ONLY

Performance of Overseas Military Personnel Charters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of May 1972.

By supplemental notice of proposed rule making EDR-173C/SPDR-25,[1] the Board proposed, inter alia, certain amendments to Part 214. For the reasons set forth in SPR-54 (Part 372), published contemporaneously herewith, the Board hereby amends Part 214 of the Economic Regulations (14 CFR Part 214), effective June 3, 1972, as follows:

Amend § 214.7 by adding new subparagraphs (a)(4) and (b)(4), the section as amended to read as follows:

§ 214.7 Charter flight limitations.

* * * * *

(a) * * *

(4) Until October 1, 1972, by an overseas military personnel charter operator as defined in Part 372 of this chapter; or

(b) * * *

(3) By a study group charterer or foreign study group charterer as defined in Part 373 of this chapter;

(4) Until October 1, 1972, by an overseas military personnel charter operator as defined in Part 372 of this chapter:

Provided, however, That paragraph (b) of this section shall not apply with respect to any foreign air carrier to the extent that its permit authorizes it to engage in "planeload" charter foreign air transportation of persons:

And provided, further, That with respect to paragraph (b) of this section each person engaging less than the entire capacity of the aircraft shall contract and pay for 40 or more seats.

(Secs. 204(a), 402, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 757; 49 U.S.C. 1324, 1372)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.72-8441 Filed 6-2-72;8:50 am]

[1] Issued Aug. 27, 1971, 36 F.R. 17655 (Docket 21666).

[Reg. ER-738, Amdt. 41]

PART 241—UNIFORM SYSTEM OF ACCOUNTS AND REPORTS FOR CERTIFICATED AIR CARRIERS

Amendment of Reporting Requirements

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of May 1972.

By SPR–54 (Part 372), ER–734 (Part 207), and ER–735 (Part 208), published contemporaneously herewith, the Board is establishing a new class of charters, to be called overseas military personnel charters, and is authorizing direct air carriers to perform flights in connection with such charters.

The instructions for Schedule T–6—Summary of Civil Aircraft Charters—in sections 25 and 35 of Part 241 presently require that data shall be reported for all civil charter flights performed by the route and supplemental air carriers, respectively. It is thus necessary to amend Schedule T–6 itself in order to provide for the reporting of this newly established class of civil charters.[1] The amendments being editorial in nature, in that they merely reflect the establishment in Part 372 of a new class of civil charters, and since they impose no significant burden on anyone, the Board finds notice and public procedure thereon are unnecessary, and they may be made effective immediately.

Accordingly, the Civil Aeronautics Board hereby amends Part 241 of the Economic Regulations (14 CFR Part 241) effective June 3, 1972, as follows:

1. Amend Section 25, Schedule T–6 by adding a new subparagraph (6) to paragraph (c), the section as amended to read as follows:

Section 25—Traffic and Capacity Elements

* * * * *

SCHEDULE T–6—SUMMARY OF CIVIL AIRCRAFT CHARTERS

* * * * *

(c) * * *

(6) Overseas military personnel charter, as defined in Part 372 of this chapter (Board's Special Regulations).

* * * * *

2. Amend Section 35, Schedule T–6 by adding a new subparagraph (7) to paragraph (b), the section as amended to read as follows:

Section 35—Traffic and Capacity Elements

* * * * *

SCHEDULE T–6—SUMMARY OF CIVIL AIRCRAFT CHARTERS

* * * * *

(b) * * *

(7) Overseas military personnel charter, as defined in Part 372 of this chapter (Board's Special Regulations).

(Secs. 204(a), 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766; 49 U.S.C. 1324, 1377)

NOTE: The reporting requirements herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.72–8442 Filed 6–2–72;8:51 am]

[1] It should be noted that the new class of overseas military personnel charters are civil charters, as distinguished from the "military charters" presently referred to in Schedule T–6, which are not civil charters since they are performed for the Military Airlift Command.

[Reg. ER–739; Amdt. 18]

PART 249—PRESERVATION OF AIR CARRIER ACCOUNTS, RECORDS AND MEMORANDA

Preservation of Records by Overseas Military Personnel Charter Operators

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of May 1972.

By SPR–54 (Part 372), published contemporaneously herewith, the Board is establishing a new class of charters, to be called overseas military personnel charters, and is authorizing a new class of charter operators to act as indirect air carriers with respect to such charters. The rule being adopted in SPR–54 contains certain record retention requirements for the overseas military personnel charter operators. Specifically, they are being required to retain documents reflecting deposits made by, or refunds made to, each charter participant and statements, bills, and receipts from vendors of goods and services furnished in connection with the overseas military personnel charters. In the interest of uniformity, we are herein amending Part 249 so as to reflect the new record retention.

Since the amendments contained herein impose no significant burden upon any person, and are needed to reflect the record retention requirements imposed by Part 372, the Board finds that notice and public procedure thereon are unnecessary and they may be made effective immediately.

Accordingly, the Civil Aeronautics Board hereby amends Part 249 of the Economic Regulations (14 CFR Part 249), effective June 3, 1972, as follows:

1. Amend the Table of Contents by revising the title of § 249.9, the table as amended to read, in pertinent part, as follows:

Sec.
249.9 Period of preservation of records by tour operators, study group charterers, and oversea military personnel charter operators.

2. Amend § 249.1 to read as follows:

§ 249.1 Applicability.

Except as otherwise provided in this subpart or other parts of this subchapter, the provisions of this subpart shall apply to (a) air carriers, as defined in section 101(3) of the Act, which hold certificates of public convenience and necessity, supplemental air carriers, subject to the reporting requirements of Part 241 of this subchapter and former Part 242 of this subchapter, (b) holders of a permit authorizing the navigation in the United States of foreign civil aircraft pursuant to Part 375 of this chapter (Board's Special Regulations), (c) foreign air carriers, as defined in section 101(19) of the Act, (d) tour operators as defined in § 378.2(d) of this chapter, (e) study group charterers, as defined in § 373.2 of this chapter, and (f) overseas military personnel charter operators, as defined in § 372.2 of this chapter.

3. Amend § 249.2 by inserting therein, in alphabetical sequence, the definition of "overseas military personnel charter operator," as follows:

§ 249.2 Definitions.

For purposes of this part:

* * * * *

"Overseas military personnel charter operator" means any citizen of the United States, as defined in section 101(13) of the Federal Aviation Act, authorized under the provisions of Part 372 of this chapter (14 CFR Part 372) to engage in the formation of overseas military personnel charter groups and who complies with the provisions of Part 372 of this chapter.

* * * * *

4. Amend § 249.9 by revising the title and adding a new paragraph (c), the section as amended to read as follows:

§ 249.9 Period of preservation of records by tour operators, study group charterers, and overseas military personnel charter operators.

* * * * *

(c) Every overseas military personnel charter operator conducting an overseas military personnel charter pursuant to Part 372 of this chapter shall retain for 2 years after completion of the overseas military personnel charter or series of overseas military personnel charters true copies of the following documents at its principal or general office in the United States and shall make them available upon request by an authorized representative of the Board.

(1) All documents which evidence or reflect deposits made by, and refunds made to, each charter participant; and

(2) All statements, invoices, bills, and receipts from suppliers or furnishers of goods and services in connection with the overseas military personnel charter or series of overseas military personnel charters.

(Secs. 204(a), 407, Federal Aviation Act of 1958, as amended, 72 Stat. 743, 766; 49 U.S.C. 1324, 1377)

NOTE: The record-retention requirements herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK, *Secretary.*

[FR Doc.72–8443 Filed 6–2–72;8:51 am]

SUBCHAPTER D—SPECIAL REGULATIONS

[Reg. SPR-54]

PART 372—OVERSEAS MILITARY PERSONNEL CHARTERS

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of May 1972.

By supplemental notice of proposed rule making EDR-173C/SPDR-25,[1] the Board proposed to establish a new class of charter for overseas military personnel and their immediate families, enable air carriers and foreign air carriers to perform such charters, and relieve charter operators from certain provisions of the Federal Aviation Act in order to authorize them to act as indirect air carriers with respect to such charters.

Comments in response to the supplemental notice were filed by American Express Co. (AMEXCO), American Institute of Foreign Study, Inc. (AIFS), Capitol International Airways, Inc. (Capitol), the Davis Agency (Davis), the Department of Defense (DOD), Pan American World Airways, Inc. (Pan American), Saturn Airways, Inc., Shoftour Charters, Inc. (Shoftour), Trans International Airlines, Inc. (TIA), Trans World Airlines, Inc., the United Service Club (USC), Universal Airlines, Inc., Vacations Unlimited, Inc. (Vacations), and a large number of individual members of the public, groups of individuals, and organizations.[2]

Additionally, the Airlift Panel of the Special Subcommittee on Transportation of the House Committee on Armed Services has issued a report, including its recommendations,[3] following its own hearings on the subject of this rule making proceeding.[4]

Upon consideration of the foregoing, we have determined to adopt Part 372 as proposed, but with the modifications discussed hereinbelow.[5] Moreover, except as otherwise indicated, the tentative findings and conclusions set forth in EDR-173C are adopted and made a part hereof, including specifically the finding and conclusion that overseas military charter operators are indirect air carriers and that pursuant to section 101(3) of the Act it is in the public interest to relieve them from the provisions of section 401 of the Act. In reaching this conclusion and in creating a special class of charter for the benefit of military personnel stationed overseas on official orders, we are applying section 102 of the Act, which enjoins us to consider as an element of the public interest the "encouragement of an air-transportation system properly adopted to the present and future needs * * * of the national defense."

Virtually all the comments which have been received since the inception of this proceeding oppose adoption of the proposal. However, we think it is equally fair to say that virtually all the opposition from the public has been based upon misapprehension of the purpose of the proposal and of the legal status of the present so-called military charters. Thus, before discussing specific policy issues involved in this proceeding, we think it appropriate to set forth a brief general description of the legal framework within which this rule is being adopted.

The Board's proposal had its origin in a rule making proceeding which was instituted in December 1969,[6] because it was apparent to the Board that certain so-called charters for military personnel were not being conducted in accordance with statutory requirements. Under the Federal Aviation Act, as interpreted by the courts, a distinction must be maintained between charter service and individually ticketed scheduled service.[7] Charter service may not be used as a subterfuge for the provision of individually ticketed service. The Board, in its continuing efforts to reconcile the desire for charter services within the requirements of the law, has from time to time issued rules providing for various types of charter travel, such as: Pro rata, inclusive tours, single entity, and study groups.[8] Only charters operated in accordance with the Board's rules are lawful.

Over the past several years the traffic in military charters between Europe and the United States has been steadily enlarging. At first, it was composed mainly of U.S. military personnel but recently has included more and more civilian employees of the Department of Defense (DOD), retired military personnel and dependents. These charters are supposed to be conducted pursuant to the Board's general rules for pro rata charters since there are no special provisions governing military charters of this type. By the end of 1969, it had become apparent to the Board that the charters were being operated in violation of the Board's rules and raised serious regulatory problems. For example, participants were being solicited by travel agents through widespread advertising of a series of flight dates, flights were being advertised at flat one-way and round-trip fares rather than at the prorated share of the total charter price, and subterfuges were being employed by certain travel agents to avoid the prohibition against chartering to travel agents.

These practices, together with the charter operators' acceptance and solicitation of ever-enlarging categories of civilian groups which had none of the burdens and obligations of overseas military service, tended to make these charters less and less distinguishable from individually ticketed services, and thus violative of the distinction which the Board by law has to maintain. In addition, the acceptance of essentially civilian traffic on charters ostensibly conducted for the benefit of active-duty military personnel overseas was unfair to those civilian groups who remained ineligible for those charters.

At the same time, it had become clear that the general charter rules do not adequately meet the special needs of military personnel stationed overseas. For example, the restrictions on one-way passengers and on intermingling passengers tend to curtail the availability of lawfully operated pro rata charters for stateside visits by military personnel.

It was to deal with these various problems that the Board proposed the new rule set out in EDR-173C, and we turn now to discuss the specific features of the proposed rule, the comments received thereon, and our conclusions.

I. Modifications of Eligibility Classification

Many commenting parties have urged enlargement of the class of persons who would be eligible for the new class of charter. It has been suggested, variously, that eligibility be extended to such additional categories as military personnel stationed in the United States, retired military personnel, DOD civilian employees (or at least those who are stationed abroad), National Guardsmen, reservists, all veterans of the armed services, and the respective families of these persons.

The arguments against our proposed exclusion of these additional categories of persons from eligibility for participation in the new class of charters are of two kinds. First, it is argued that failure to include such persons would be an unfair curtailment of their own rights. It is said, for example, that

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[1] Issued Aug. 27, 1971, 36 F.R. 17655 (Docket 21666). The supplemental notice superseded EDR-173, issued Dec. 1, 1969 (34 F.R. 19297).

[2] In the main, the individuals are military personnel, retired military personnel, DOD civilian employees, and the families of such persons, while the groups and organizations are representative of such persons.

[3] H.A.S.C. No. 92-37, Jan. 25, 1972.

[4] H.A.S.C. No. 92-35, on hearings held Nov. 30, Dec. 1, 2, and 3, 1971. As noted in EDR-173C, the Board's initial proposal in EDR-173 had also been the subject of hearings conducted by the Subcommittee on Military Airlift of the House Committee on Armed Services, 91st Cong., second sess. (H.A.S.C. No. 91-51) and a report based thereon (H.A.S.C. 91-59).

[5] By ER-734, ER-735, ER-736, and ER-737, issued contemporaneously herewith, we are adopting amendments to Parts 207, 208, 212, and 214, consistent with our action herein. By the same token, in EDR-173F/SPDR-25C, also issued contemporaneously herewith, we are inviting public comments on the question whether foreign air carriers should be permanently authorized to carry the new class of overseas military charters. We are also adopting contemporaneously herewith various technical amendments to Parts 241, 249, and 389 which are necessitated by our action herein, as set forth in ER-738, ER-739, and OR-61.

[6] EDR-173, issued Dec. 1, 1969 (34 F.R. 19297).

[7] Individually ticketed service refers essentially to the kind of air service which is available to any member of the general public who wishes to purchase a ticket, at a predetermined price, for a scheduled flight between one point and another.

[8] By notice of proposed rule making EDR-218/SPDR-22A, dated Dec. 30, 1971 (37 F.R. 222), the Board has proposed the establishment of a new class of charter, to be called Travel Group Charters, which would in essence enable any group of 50 or more persons to charter an aircraft on a pro rata basis, regardless of any prior affinity among themselves, so long as the charter complies with prescribed conditions.

reduced-rate travel has become a recognized fringe benefit of past and present military service and civilian employment with DOD, and that retired and active military personnel frequently cannot afford the cost of scheduled air fares. With regard to DOD civilian employees working overseas, in particular, it is pointed out that they have special transportation needs similar to those of overseas servicemen. Second, it is argued that the exclusion of such large numbers of potential charter participants would necessarily result in lower frequency of flights, and higher costs, for our intended beneficiaries—the overseas military personnel and their families. In support of this argument, it is urged that the low cost of military charters depends upon high load factors, high utilization, and minimization of ferrying charges.

Our reasons for proposing to limit eligibility for the new class of charter to military personnel stationed overseas, and their immediate families, were set forth in EDR–173C. We recognized that their special travel needs could not be satisfactorily met by our existing charter rules, and, out of concern for their morale, we sought to fashion a special class of charters for their benefit. But at the same time, we tentatively concluded that extending the privileges of this exceptional charter rule to additional classes of beneficiaries would compromise the legally required distinction between charter service and individually ticketed service, as discussed above. Moreover, we believed that extending to those additional classes of citizens the special privileges of participation in the proposed new charter would be unjustifiably discriminatory against other citizens. Accordingly, we proposed to limit the application of the new rule solely to military servicemen stationed in foreign countries, and their immediate families. Our present determination is to adhere to that basic view, but with the two following modifications.

1. *Expansion of eligibility to servicemen stationed outside of 48 contiguous States.* First, we have concluded that it would be needless and arbitrary to limit the rule to military personnel stationed in foreign countries, thereby excluding servicemen stationed in Alaska, Hawaii, and U.S. territories and possessions. The distance and cost of travel between such points and points within the contiguous 48 States is comparable, in many cases, to that of travel between foreign points and the United States.[9]

2. *Expansion of eligibility to U.S. citizen civilian DOD employees serving abroad.* Second, upon further consideration of our tentative conclusions, we are now inclined toward the view that this class of charter should be available to DOD civilian employees who are U.S. citizens serving side by side with U.S. military personnel in places which are far distant from their homes. We are therefore extending eligibility to DOD civilian employees who are U.S. citizens stationed with U.S. military personnel in foreign countries, or in a U.S. territory or possession, and to their immediate families. Unlike the other mentioned classes of persons, whom we have now finally decided to exclude, we find that these civilian DOD employees also have special travel needs—not substantially distinguishable from those of the military personnel alongside whom they serve abroad—for low-cost transportation to their homes in the United States, as well as the same difficulties in enjoying charters available under our existing regulations. Moreover, as the Airlift Panel has observed, the size of this class of DOD civilian employees is not so large as to jeopardize the fundamental concepts of our charter rules, as described above. However, we have determined not to extend eligibility to civilian DOD employees stationed in Hawaii or Alaska, since they—unlike military servicemen stationed in those States—may generally be expected to have their permanent homes near their places of employment.[10]

Nor can we find that the public interest warrants the extension of eligibility hereunder to any of the other aforementioned classes. Thus, we have determined not to depart from our tentative conclusion in EDR–173C, that U.S.-based military personnel and DOD civilian employees, or retired military personnel, and their respective families, are no more entitled to participate in this special class or charter than any other active or retired Government employees, or, for that matter, any other citizens. Indeed, the named classes of persons are more likely than most citizens to be able to arrange vacation travel with presently lawful pro rata charters organized through recreational clubs, military associations, and other charterworthy groups and organizations; and some may even travel on a space-available basis.[11] In this connection, we again emphasize that the rule being adopted herein will not affect any person's eligibility for charter transportation under the Board's general charter rules.[12]

3. *Effect of limited eligibility on service and price to eligible participants.* Nor can we accept the argument that expansion of the eligible class is necessary in order to avoid reducing flight frequency or raising charter prices from the levels prevailing under the existing so-called military charter system. Since, as we explained above, the existing system is being operated in violation of our charter rules, we can hardly be receptive to an argument predicated on the proposition that this unlawful system should be perpetuated simply because it offers cheap prices and high flight frequencies. Moreover, even if the argument were legally tenable, we have never received persuasive data to provide a firm factual basis for the prediction that by so limiting eligibility we would effectively destroy the attractiveness and usefulness of military charters. The estimates which the charter operators have supplied at various stages of this proceeding, and in testimony before the Airlift Panel, are at marked variance with each other and are unsupported by meaningful traffic statistics.[13] Indeed, even if it were assumed that as much as 50 percent of the traffic will be eliminated under the eligibility provisions being herein adopted, it would not necessarily follow that the prices of the flights would thereby be significantly affected. We observed in EDR–173C that the military charter operators' prices have not exactly correlated with volume, noting that, for example, the Davis price in 1969 was as low as $65 per passenger from Frankfurt to New York, while in

[9] Actually we indicated in EDR–173C that we would be prepared to authorize charters to remote territories and possessions if such charters could be shown to be economically practicable. However, we are now persuaded that it would be unreasonable to require an advance showing of the economic practicability of these operations. The only test should be whether the operator is willing to assume the risks of the program, while complying with our regulatory requirements.

[10] Our determination herein to expand eligibility for participation in overseas military personnel charters to the described category of DOD civilian employees reflects, among other factors, our deference to the views of the Airlift Panel that these charters "contribute significantly to the morale and welfare of our military and DOD civilian personnel stationed abroad and their dependents." H.A.S.C. No. 92–37, p. 7438. We are of course mindful that our decision to exclude from eligibility those DOD civilian employees who are U.S. citizens stationed in Hawaii or Alaska is not in complete accord with the literal terms of the Airlift Panel's recommendation that eligibility should be extended to all such DOD civilian employees "assigned outside the continental limits of the 48 States * * *" (Ibid.); but, on the other hand, we believe that our decision fully accords with the underlying objective of the Airlift Panel's recommendations, namely, that this new class of charters "should be performed for the purpose of uniting families to minimize the hardship of family separations during extended overseas tours rather than for low-cost vacation travel." Id. at p. 7437.

[11] The Airlift Panel found that free air transportation on a space-available basis is now more readily available from the Military Airlift Command than during the period 1968–69. (H.A.S.C. No. 92–37, pp. 7436, 7438.)

[12] Davis' argument that reservists, National Guardsmen, and civilian and military personnel of DOD share no less affinity than do the employees of any large single business corporation is not to the point. This argument goes to the question whether such persons are eligible for regular pro rata charters under our general rules, but is largely irrelevant to the present issue. What we must here determine is whether these persons should be eligible for a newly created class of charter which will not include requirements of our existing affinity charter rules, such as those provisions governing pro rata pricing and intermingling of passengers.

[13] In its comment upon EDR–173, Davis estimated that 15 percent of its traffic would be eliminated under the eligibility provisions which were later proposed in EDR–173C; but in response to questioning by the Panel, counsel for Davis estimated that 30 percent to 40 percent of its traffic would be eliminated (H.A.S.C. 92–35, p. 7313). Shoftour, in its comment to EDR–173C, estimated that 55 percent would be eliminated. Counsel for USC told the Panel that nearly half of USC's traffic would be eliminated. (H.A.S.C. 92–35, p. 7280.)

1970, with much greater volume, it was $80 between those points. Finally, the hypothesis that a decrease in a charter operator's volume need not cause an increase in prices is supported by an analysis of the business of charter operators, as distinguished from that of direct air carrier. These charter operators do not own aircraft or even invest in a fixed-term lease of aircraft; they merely charter from direct air carriers such capacity as they require. Thus, unlike direct air carriers, they are not bound by economic necessity to maintain high aircraft utilization. While a direct air carrier must perform a minimum number of flights per week to prevent its aircraft from remaining unprofitably idle on the ground, charter operators can tailor their charter commitments to their needs.[14]

Consequently, we are not persuaded that the eligibility restrictions will prevent the charter operators from maintaining the high load factors which are necessary for low prices. Load factors are a function of both traffic and capacity; and the military charter operators, ability to control their capacity will enable them to maintain high load factors notwithstanding a possible decrease in traffic. Thus, even if we concede that the frequency of flights will be somewhat reduced from present levels, so long as at least half of the present traffic remains eligible,[15] reductions in frequency should not be so great as to substantially inconvenience the participants. It appears from the comments and the testimony before the Airlift Panel that approximately 1,222 flights were arranged by the three military charter operators in 1971;[16] thus, a 50-percent drop in frequency would still leave 611 flights.

II. TECHNICAL MODIFICATIONS

1. *Advertising.* Several comments have urged that the proposed prohibition against advertising and soliciting within the United States and its territories and possessions is unduly restrictive. The proposed prohibition was intended to prevent these charters from being advertised among persons who are ineligible for participation, and we must retain that objective. However, we have now concluded that the proposed prohibition is unduly broad and might even prevent advertisement from reaching many eligible participants in the United States, such as persons in this country who are in the immediate family of a military serviceman stationed abroad. We are therefore modifying the prohibition against advertising, by replacing the geographical limitation with a limitaton on the type of media which may be used. Accordingly, § 372.21 limits solicitation by charter operators to advertising in military-oriented media.[17]

2. *Bonds and escrows.* Davis and Shoftour recommend that the Board modify the proposed requirements for safeguarding customers' deposits. The proposed rule would have required a $100,000 surety bond plus a depository agreement with a bank, or, in the alternative, a bond in an amount not less than the maximum fare held out for charter flights scheduled during each calendar month, multiplied by 90 percent of the number of available seats on such flights. Both Davis and Shoftour argue that the depository agreement would be administratively impracticable, and Shoftour adds that the straight surety alternative would require such large bonds as to be unduly onerous.

The two alternative methods which we proposed for safeguarding customers' deposits are adapted from those which we have prescribed for study group charter operators and inclusive tour operators, under Parts 373 and 378, respectively. Those methods have proved to be generally satisfactory and we shall adopt them as alternatives available to military charter operators under this rule. However, since the military charter operators, unlike the operators of study group and inclusive tour charters, deal only with transportation services and receive customers' deposits only with respect to such services, we shall offer them a third alternative, adapted from the escrow requirement which we have imposed on supplemental air carriers, under Part 208. The escrow procedure will permit the operator to meet our security requirements by escrowing an amount equal to the sum, computed monthly, of the customers' deposits in excess of 25 percent of the operator's net worth, and by furnishing a $100,000 surety bond.[18] Of course, since the amount of funds to be escrowed varies with the amount of the operator's net worth, availability of this third alternative will be conditioned upon the operator's periodic submission to us of financial data disclosing his net worth.

3. *Foreign banks.* The proposed rule contemplated the use of both U.S.-regulated banks and certain foreign banks for purposes of the depository arrangement. We have now determined to require that only U.S.-regulated banks be used for purposes of the depository or escrow arrangements being provided herein.[19] Since participants in charters under this rule will be U.S. military and U.S. civilian employees of DOD, and their families, it seems more appropriate that banks used to safeguard their deposits should be subject to the regulatory jurisdiction of U.S. agencies, in the event that a controversy arises with respect to the bank's conduct as depository or escrowee. Moreover, Davis says that European banks are not even geared to handle depository arrangements of the type contemplated in the proposed rule, so that the use of foreign banks in connection with this rule might even be impractical.

4. *Surety company qualification.* The proposed rule provided that a bonding or surety company would be qualified for purposes of the military charters only if the company's surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6 and the company is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. The purpose of the proposed absolute standard was to relieve the Board from the burden of determining the qualifications of bonding companies on a case-by-case basis. Subsequent to the issuance of EDR–173C, we issued SPDR–26[20] in which we have proposed inter alia, to adopt the same absolute standard for surety bonds pursuant to Parts 373,[21] 378,[22] and 378a[23] of the Board's special regulations.

AIFS and Vacations have commented adversely on this aspect of the proposal. While they have no direct interest in this proceeding, they are concerned that our adoption here of an objective standard for surety companies would constitute a prejudgment of the very same issue which they are opposing in our pending rule making proceeding initiated by SPDR–26, where they are interested parties. We are of the view that the standards for acceptable surety companies with regard to military charters should be consistent with those in the other parts of the Board's regulations. Accordingly, we have determined not to adopt the proposed standard at this time for the purpose of this particular proceeding, but rather to defer the question to the more general rule making proceeding in SPDR–26. Thus, pending our

[14] In fact, it appears from the record that much of the capacity which the military charter operators, in particular, have been purchasing from the direct air carriers is surplus capacity, such as an empty return leg of a one-way conventional charter trip, and it is thus space available at a relatively low price.

[15] As indicated earlier, 50 percent is a conservative estimate.

[16] 600 by Davis, 400 by Shoftour, and 222 by USC.

[17] It is noted that scheduled carriers now have in effect special "overseas military" fares which are competitive with those of the charter operators. Pan American, which is one of the scheduled carriers having such fares, argues that it is unfair to allow the military charter operators to solicit passengers on radio and television stations operated by the U.S. Armed Forces, so long as the Armed Forces networks, which are noncommercial, do not allow scheduled carriers to be identified in a "solicitation" sense in their broadcasts. The Board, of course, in permitting charter operators to advertise on Armed Forces broadcasts, does not purport to influence the advertising policies governing such broadcasts. The charter operators remain fully subject to whatever restrictions the Armed Forces stations may impose upon commercial advertisers; but we assume that Armed Forces stations will apply their rules even-handedly to the charter operators and the scheduled carriers, both of which are commercial enterprises.

[18] This is essentially the same procedure suggested by Shoftour, except that we are requiring a $100,000 bond in addition to the escrow.

[19] The rule being adopted herein, like the proposed rule, requires that the U.S. bank be a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

[20] Oct. 26, 1971, 36 F.R. 20895 (Docket 23940).

[21] Study group charters.

[22] Inclusive tour charters.

[23] Contract bulk inclusive tours.

final action on SPDR–26, the standard for an acceptable surety company under this new Part 372 will be that which is presently contained in Parts 373, 378, and 378a. By the same token, such standard as we may ultimately adopt in SPDR–26 for Parts 373, 378, and 378a, would at the same time be adopted for this Part 372, by parallel amendment, so as to maintain consistency among all our charter rules on this question.

5. *Foreign air carriers.* Our proposal contemplated that charters under this rule would be operated by foreign air carriers as well as U.S. air carriers. Capitol, Pan American, and TIA contend that foreign air carriers should not be allowed to participate in the newly authorized class of overseas military charters. In support of this contention, it is urged that the participation of foreign carriers would adversely affect the U.S. balance of payments, and would be inappropriate in view of the uniquely military nature of the traffic. Additionally, TIA says that a number of European countries have more restrictive policies with regard to landing rights of U.S. supplementals than does the United States with regard to supplementals of those countries, and that any inclusion of foreign air carriers in this new class of charters should be the subject of bargaining in negotiations on the issue of such landing rights.

We believe that there is merit to the arguments against permitting foreign air carriers to perform the military charters which we are newly authorizing herein. Although the military charter operations are commercial ventures, all of the traffic on those flights will be related to the U.S. defense effort; thus, it seems quite appropriate that it move only on U.S. carriers. Nor does it appear that the elimination of foreign carriers from participation in the market would have any significant effect upon the military charter operators' ability to obtain capacity. The record of the hearings before the Airlift Panel indicates that, heretofore, a preponderance of the operators' capacity has been purchased from U.S. air carriers.[24] Thus, we have tentatively determined not to authorize foreign air carriers to perform these charters. However, in order to avoid disruption of arrangements for charter transportation of military personnel and their immediate families, via foreign air carriers, which may have already been made for the 1972 summer season, we will permit foreign air carriers to perform charters under this rule until October 1, 1972.

Moreover, to emphasize that this aspect of the rule is only tentative, we are issuing contemporaneously herewith a supplemental notice of proposed rule making[25] which invites comments upon the precise issue whether foreign air carriers should be permanently authorized to operate the class of charters established hereunder.

6. *Split charters.* Our proposal contemplated that this new class of charters would be authorized only on the basis of an "entire capacity" charter. Upon further consideration, and in light of the comments received, we have now determined that there is no real justification for this restriction. We will therefore permit split charters to be operated for this new class of charter to the same extent, and subject to the same limitations, as when operated in connection with other authorized classes of charters. Thus, the military charter operators will be able to obtain space on a less-than-planeload basis, so long as the charter for each group participating in the flight covers at least 40 seats, and the participating chartering groups in the aggregate engage the entire capacity of the aircraft.

7. *Tariffs.* We have proposed to require the charter operators to file tariffs showing all rates, fares, and charges for the charter trips as well as the rules, regulations, practices, and services in connection with the transportation. Additionally, in order to protect charter participants from unreasonable or discriminatory fares and conditions, we proposed to provide that the tariffs be subject to suspension, rejection, or cancellation by the Board, on reasonable notice but without the necessity of an evidentiary hearing.

AMEXCO and Shoftour argue that the tariff requirements would be unduly burdensome. Shoftour adds that the proposed suspension, rejection, or cancellation power is unnecessary because the adherence by charter operators to reasonable rates would be assured, both by natural market forces and by the constant background presence of DOD as a protector of the military charter participants. Moreover, Shoftour argues that the power to cancel without hearing would be contrary to the requirements of title X of the Act. Davis supports the proposed requirement for filing tariffs, but opposes the proposed provision for suspension or cancellation without hearing, arguing that the rules should authorize only the rejection of improperly filed tariffs and the establishment of minimum and maximum rates after investigation and hearing. Davis maintains that the charter operators' prices will be dependent upon cost levels and competitive pressures, and that the threat of retroactive cancellation could inhibit the successful marketing of the charters; nor is such cancellation necessary, says Davis, where the Board has the opportunity, in the first instance, to reject improperly filed tariffs and to investigate unreasonably low tariffs. Pan American, on the other hand, supports the proposal to require tariff filings, subjects to suspension, rejection, and cancellation, in order that the Board may regulate the extent of price markups to the serviceman and prevent overreaching with respect to the rules of the indirect air carriers regarding refunds, cancellations, and the like.

Upon consideration of the comments, we have determined to adopt the provisions relating to tariffs as proposed. It is true that we do not require tariffs to be filed by operators of study group tours and inclusive tours, but, as noted above, the operators of military charters are unique inasmuch as they provide only air transportation services. Consequently, their role vis-a-vis their customers is really more analogous to that of a direct air carrier than to those tour operators whose prices reflect a variety of services other than air transportation and thus do not lend themselves to tariff procedures. Although we hope that natural market forces and observation by DOD will tend to minimize overcharging and related problems,[26] we are charged with the ultimate responsibility for insuring that the operations which we are herein authorizing will be conducted in a manner consistent with the public interest.

However, we are withdrawing the proposed provisions for suspension, rejection, or cancellation of such tariffs. At the time we issued our proposal, the Board had no statutory authority to take such action with respect to tariffs covering foreign air transportation, and we therefore considered it desirable to condition our authorizations to this new class of indirect air carriers upon the reservation to the Board of such powers. Since that time, the Board's authority has been expanded by enactment of Public Law 92–259 (86 Stat. 95), which amended various provisions of the Federal Aviation Act of 1958. Under the Act, as so amended, the Board is now empowered to suspend, pending a hearing, tariffs in foreign air transportation and to reject or cancel such tariffs after hearing. We believe that our new statutory powers to deal effectively with foreign air transportation rates and practices will enable us to exercise adequate regulatory supervision of the tariffs filed by the charter operators hereunder, so that we need not adopt the proposed provisions for reserved powers.

Moreover, as will appear infra, it is contemplated that some flights will be operated during the coming summer season pursuant to arrangements which were made prior to the adoption of the rules contained herein. In recognition of the fact that, at the time such arrangements were made, the charter operators had no tariffs on file, the tariff filing rules being adopted herein will not become effective until October 1, 1972.[27]

8. *Record retention.* We are adopting record retention requirements consistent

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[24] H.A.S.C. 92–35, pp. 7296, 7319, and 7323.

[25] EDR–173F/SPDR–25C.

[26] In this connection, we note that our Office of Consumer Affairs receives a significant number of complaints about various aspects of the existing "military charter" operations, indicating that DOD's presumed interest in protecting participants does not afford complete protection to the customers of these charter operators.

[27] Although effectiveness of the tariff filing requirement is being postponed until Oct. 1, 1972, there will of course be no postponement of the effectiveness of the prohibitions against undue or unreasonable preferences or advantages or unjust discriminations or undue or unreasonable prejudices or disadvantages, contained in sec. 404(b) of the Act and § 372.22 of the part being adopted herein.

with those in effect for study group charterers[28] and inclusive tour operators.[29] Although this provision was not specifically included in our proposal, we find good cause to adopt it now without formal proceedings thereon. It is in the nature of a purely technical provision, desirable from our standpoint in order to facilitate enforcement, but without being in any way burdensome to the operators.

9. *Effective date.* We have determined to make this rule effective immediately, since it imposes no burden on anyone but, rather, prescribes the terms and conditions upon which a new class of charters may be performed by direct air carriers and a new class of indirect air carriers may be authorized to operate such charters. However, we recognize that travel arrangements for the summer season of 1972 may already have been innocently made under the existing system of so-called military charters. We are in accord with the Airlift Panel that undue hardship to innocent persons should be avoided. We have therefore determined to grant, as proposed in EDR–173C, interim operating authority to those charter operators who were engaged in these operations on August 27, 1971. Moreover, until October 1, 1972, flights performed pursuant to agreements already made by these operators with direct air carriers and foreign air carriers shall be permitted to include passengers drawn from classes of persons which have been regarded by these operators as eligible for the so-called military charters.

In consideration of the foregoing, the Civil Aeronautics Board hereby adopts Part 372 of its special regulations (14 CFR Part 372), effective June 3, 1972, as follows:

Subpart A—General Provisions

Sec.
372.1 Applicability.
372.2 Definitions.
372.3 Waiver.
372.4 Enforcement.
372.5 Suspension or revocation of authority.

Subpart B—Exemption

372.10 Exemption.

Subpart C—Conditions and Limitations

372.20 Requirement of operating authorization.
372.21 Solicitation.
372.22 Discrimination.
372.23 Methods of competition.
372.24 Surety bond, depository agreement, escrow agreement.
372.25 Tariffs to be filed for charter trips.
372.26 Prohibition on operations unless tariffs are observed.
372.27 Name of operator.
372.28 Record retention.

Subpart D—Operating Authorization

372.30 Application.
372.31 Issuance.
372.32 Effective period.
372.33 Nontransferability.

[28] 14 CFR 373.8.
[29] 14 CFR 378.7. See also EDR–218/SPDR–22A, 37 F.R. 222 (proposed rule for travel group charters).

Subpart E—Reporting Requirements

372.40 Reporting requirements.

AUTHORITY: The provisions of this Part 372 issued under secs. 101(3), 204(a), 401, 407, and 416(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 737, as amended, 743, 754, as amended, 766, as amended, and 771; 49 U.S.C. 1301, 1324, 1371, 1377, and 1386.

Subpart A—General Provisions

§ 372.1 Applicability.

This part establishes the terms and conditions governing the furnishing of overseas military personnel charters in air transportation by direct air carriers (and, until October 1, 1972, by foreign air carriers) and by overseas military charter operators. This part also relieves charter operators from the provisions of section 401 of the Act, for the purpose of enabling them to provide overseas military personnel charters utilizing aircraft chartered from such direct air carriers (and, until October 1, 1972, foreign air carriers). Nothing contained in this part shall be construed as repealing or amending any provisions of any of the Board's regulations, unless the context so requires.

§ 372.2 Definitions.

As used in this part, unless the context otherwise requires—

"Charter" means overseas military personnel charter.

"Charter operator" means overseas military personnel charter operator.

"Charter participant" means a member of the overseas military personnel charter group.

"Charter price" means the total amount of money paid by the charter participant to the charter operator for air transportation.

"Immediate family" means only the following persons: The spouse, children, and parents of military personnel on active duty with the U.S. Armed Forces (including Coast Guard) stationed outside the 48 contiguous States of the United States and the District of Columbia, and the spouse, children, and parents of civilian employees of the Department of Defense who are citizens of the United States and are stationed in a foreign country, or in a U.S. territory or possession, where U.S. military personnel are stationed.

"Overseas military personnel charter" means a charter, either one-way or round-trip, limited to military personnel on active duty with the U.S. Armed Forces (including the Coast Guard), stationed outside the 48 contiguous States of the United States and the District of Columbia, and/or civilian employees of the Department of Defense who are citizens of the United States and are stationed in a foreign country, or in a U.S. territory or possession, where such U.S. military personnel are stationed, and/or the immediate families of the foregoing persons, where the following conditions are met: (a) All military personnel and civilian employees of the Department of Defense participating in the charter are on official furlough, leave, pass, or other authorized absence from duty, and (b) the transportation is between a place in the 48 contiguous States of the United States or the District of Columbia and a place in Alaska, Hawaii, or a territory or possession of the United States, or a foreign country in which military personnel of the United States are stationed.

"Overseas military personnel charter operator" means any citizen of the United States, as defined in section 101 (13) of the Federal Aviation Act (49 U.S.C. 1301(13)) authorized hereunder to engage in the formation of overseas military personnel charter groups and who complies with the provisions of this part.

"Person" means any individual, firm, association, partnership, or corporation.

§ 372.3 Waiver.

A waiver of any of the provisions of this regulation may be granted by the Board upon its own initiative, or upon the submission by a charter operator of a written request therefor: *Provided*, That such a waiver is in the public interest and it appears to the Board that special or unusual circumstances warrant a departure from the provisions set forth herein.

§ 372.4 Enforcement.

In case of any violation of the provisions of the Act, or this part, or any other rule, regulation, or order issued under the Act, the violator may be subject to a proceeding pursuant to sections 1002 and 1007 of the Act before the Board or a U.S. district court, as the case may be, to compel compliance therewith, to civil penalties pursuant to the provisions of section 901(a) of the Act, or in the case of willful violation, to criminal penalties pursuant to the provisions of section 902(a) of the Act; or other lawful sanctions.

§ 372.5 Suspension or revocation of authority.

The Board reserves the power to suspend the authority of any charter operator, without hearing, if it finds that such action is necessary in order to protect the rights of the traveling public, or to revoke such authority for cause.

Subpart B—Exemption

§ 372.10 Exemption.

Subject to the other conditions of this part, charter operators are hereby relieved from the provisions of section 401 of the Act.

Subpart C—Conditions and Limitations

§ 372.20 Requirement of operating authorization.

No person shall engage in air transportation as an overseas military personnel charter operator by organizing, providing, selling, or offering to sell, soliciting or advertising an overseas military personnel charter or charters unless there is in force an operating authorization issued by the Board pursuant to

§ 372.31 authorizing such person to engage in such transportation: *Provided*, That any person engaged in operations as an overseas military personnel charter operator on August 27, 1971, may continue so to engage and be relieved of complying with § 372.24, until such time as the Board shall pass upon an application for an operating authorization, if within 45 days after the effective date of this part such person files an application pursuant to § 372.30: *And provided further*, That until October 1, 1972, the passengers participating in a charter flight performed pursuant to an agreement between any such person and any direct air carrier or foreign air carrier, which was fully executed prior to the effective date of this Part 372 and a copy of which is filed with the Board (Director, Bureau of Operating Rights) no later than 14 days after the effective date of this part, may be drawn not only from the eligible classes of persons specified in § 372.2, but also from the following additional classes of persons, and the members of their immediate families; U.S. military personnel stationed anywhere in the United States; retired U.S. military personnel; and civilian employees of the Department of Defense stationed anywhere in the United States.

§ 372.21 Solicitation.

Solicitation of charter participants through advertising by charter operators shall be restricted to the following:

(a) Radio and television stations operated by the U.S. Armed Forces:

(b) Newspapers, periodicals, or other printed media disseminated and distributed primarily among military personnel or civilian employees of the Department of Defense: *Provided, however*, That any printed advertisement of a charter operator shall include a statement explaining that eligibility for participation in such charters is limited to military servicemen who are stationed outside of the 48 contiguous States and the District of Columbia, and/or U.S. citizen civilian DOD employees who are stationed in a foreign country, or a U.S. territory or possession, where U.S. military personnel are stationed, and their respective immediate families.

§ 372.22 Discrimination.

No charter operator shall make, give, or cause any undue or unreasonable preference or advantage to any particular person, port, locality, or description of traffic in air transportation in any respect whatsoever or subject any particular person, port, locality, or description of traffic in air transportation to any unjust discrimination or any undue or unreasonable prejudice or disadvantage in any respect whatsoever.

§ 372.23 Methods of competition.

No charter operator shall engage in unfair or deceptive practices or unfair methods of competition in air transportation or the sale thereof.

§ 372.24 Surety bond, depository agreement, escrow agreement.

(a) Before selling or offering to sell, soliciting or advertising any charter flight, a charter operator shall comply with one of the three following requirements:

(1) The charter operator shall furnish a surety bond in an amount not less than the maximum fare held out for charter flights proposed to be operated during each calendar month multiplied by 90 percent of the number of available seats on such flights: *Provided, however*, That the liability of the surety to any charter participant shall not exceed the charter operator's applicable tariff fare. Such bond shall be filed with the Board not less than 45 days prior to the commencement of the calendar month covered by the bond together with a list of flights proposed to be operated during the month showing charter price, departure dates, equipment to be used for each flight and the seating capacity: *Provided, however*, That the amount of the bond shall be increased if additional charter flights are proposed or may be reduced if proposed charter flights are canceled, in which event a substitute bond and amended list of proposed flights shall be filed with the Board within 10 days of the date that the charter operator adds flights or cancels flights previously proposed, but in no event later than 2 days prior to the operation of any such additional charter flights; or

(2) The charter operator shall—

(i) Furnish and file with the Board a surety bond in the amount of $100,000 for the protection of the charter participants: *Provided, however*, That the liability of the surety to any charter participant shall not exceed the charter operator's applicable tariff fare; and

(ii) Enter into an agreement with a bank, the terms of which shall include the following:

(*a*) Each participant shall pay for his deposit and subsequent payments comprising the charter participant's tariff fare only by check or money order payable to such bank which shall maintain a separate accounting for each flight: *Provided, however*, That if the participant makes a cash deposit, the charter operator who receives such cash deposit shall forthwith remit to the designated bank a check for the full amount of the deposit;

(*b*) The bank shall not pay the air carrier the charter price for the transportation earlier than 60 days (including day of departure) prior to the scheduled day of departure of the originating or returning flight, upon certification of the departure date and price by the charter operator;

(*c*) The bank shall reimburse the charter operator for refunds made by the latter to the participants upon written notification from the charter operator;

(*d*) If the charter operator notifies the bank that a flight has been canceled, the bank shall make the applicable refunds directly to the participants;

(*e*) Except as provided in item (*c*) of this subdivision, the bank shall not pay any funds from the account to the charter operator prior to 2 banking days after completion of each flight when the balance in the account shall be paid to the charter operator upon certification of the completion date by the charter operator and direct air carrier;

(*f*) Notwithstanding any provisions above, the amount of total deposits required to be maintained in the depository account of the bank may be reduced by one or both of the following: The amount of surety bond in the form prescribed herein in excess of the minimum bond required by subdivision (i) of this subparagraph; an escrow with the designated bank of Federal, State, or municipal bonds or other negotiable securities which are publicly traded on a securities exchange: *Provided*, That such other securities shall be substituted for cash in an amount no greater than 80 percent of their market value at time of deposit in escrow with the bank: *And provided, further*, That should the valuation of such other securities decrease in an amount in excess of 20 percent of the valuation at time of original deposit, additional securities shall be placed in escrow so as to compensate for such decrease in value below 20 percent; or

(3) The charter operator shall:

(i) Furnish and file with the Board a surety bond in the amount of $100,000 for the protection of the charter participants: *Provided, however*, That the liability of the surety to any charter participant shall not exceed the charter operator's applicable tariff fare; and

(ii) Enter into an agreement with a bank, the terms of which shall include the following:

(*a*) Whenever the gross amount of customers' deposits exceeds 25 percent of the charter operator's net worth, as computed under generally accepted accounting principles, the charter operator shall, on or before the 30th day of the succeeding month, place in escrow or in trust with the bank cash in an amount at least equal to the amount by which such deposits exceed 25 percent of its net worth: *Provided*, That negotiable securities may be substituted for cash, but the market value thereof shall at all times be not less than the amount of cash for which they are substituted;

(*b*) The escrow agreement or the trust agreement between the bank and the operator shall not be effective until approved by the Board. Claims against the escrow or trust may be made only with respect to the nonperformance of air transportation.

(b) As used in this section, the term "bank" means a bank, savings and loan association, or other financial institution insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation.

(c) Any bond furnished under this section shall insure the financial responsibility of the charter operator and the supplying of the air transportation in accordance with the contract between the charter operator and the charter participants, and shall be in the form set forth in the appendix attached to this Part 372. Such bond shall be issued by a reputable and financially responsible bonding or surety company which is legally authorized to issue bonds of that type in the State in which the charter originates or

in which the charter operator is incorporated. For purposes of this section, the term "State" includes any territory or possession of the United States, or the District of Columbia. The Board will consider that a bonding or surety company is prima facie qualified under this section if such company's surety bonds are accepted by the Interstate Commerce Commission under 49 CFR 1084.6 and if such company is listed in Best's Insurance Reports (Fire and Casualty) with a general policyholders' rating of "A" or better. If the bond does not comply with the requirements of this section, or for any reason fails to provide satisfactory or adequate protection for the public, the Board will notify the direct air carrier and the charter operator, by registered or certified mail, stating the deficiencies of the bond. Unless such deficiencies are corrected within the time set forth in such notification, the subject charters shall in no event be operated.

(d) Any bond furnished under this section shall provide that unless the charter participant files a claim with the charter operator within sixty (60) days after completion of the charter, the surety shall be released from all liability under the bond to such charter participant. The contract between the charter operator and the charter participants shall contain notice of this provision.

§ 372.25 Tariffs to be filed for charter trips.

Effective October 1, 1972, a charter operator shall not operate or sell or offer to sell, solicit or advertise, any charter trips unless such operator shall have on file with the Board a currently effective tariff showing all rates, fares, and charges for such charter trips and showing the rules, regulations, practices, and services in connection with such transportation.

§ 372.26 Prohibition on operations unless tariffs are observed.

No charter operator shall charter aircraft to provide air transportation to charter participants except in accordance with the rates, fares, and charges and all applicable rules, regulations, and other provisions for such transportation as set forth in the currently effective tariff or tariffs of the direct air carrier transporting charter participants; and no such operator shall demand, collect, accept, or receive, in any manner or by any device, directly or indirectly, or through any agent or broker, or otherwise, any portion of the rates, fares, or charges so specified in the tariffs of such air carrier, and shall not demand, accept, or receive, either directly or indirectly, any privilege, service, or facility except those specified in the currently effective tariffs of such direct air carrier.

§ 372.27 Name of operator.

It shall be an express condition upon the exercise of the exemption herein granted and the operating authorizations issued hereunder, that the charter operator concerned, in holding out to the public and performing air transportation services, shall do so only in a name the use of which is authorized under the provisions of Part 215 of this chapter.

§ 372.28 Record retention.[29]

(a) Every charter operator conducting a charter pursuant to this part shall retain for 2 years after completion of the charter or series of charters true copies of the following documents at its principal or general office in the United States:

(1) All documents which evidence or reflect deposits made by, and refunds made to, each charter participant;

(2) All statements, invoices, bills, and receipts from suppliers or furnishers of goods and services in connection with the charter or series of charters.

(b) Every charter operator shall make the documents listed in this section available upon request by an authorized representative of the Board and shall permit such representative to make such notes and copies thereof as he deems appropriate.

Subpart D—Operating Authorization

§ 372.30 Application.

(a) *Application form.* Any person desiring to operate as an overseas military personnel charter operator may apply to the Board for an appropriate operating authorization. Such an applicant shall execute in duplicate an "Application for Operating Authorization as an Overseas Military Personnel Charter Operator" (CAB Form 372). The application shall be certified by a responsible official of such person and shall contain the following information:[30] (1) Date; (2) name of applicant, trade names, and name in which authorization is to be issued; (3) address of principal office and mailing address; (4) form of organization (i.e., corporation, partnership, etc.), State under whose laws company is authorized to operate and date company was formed; (5) a list containing the names of each officer, director, partner, owner, or member of applicant, and holder of more than 5 percent of outstanding stock if a corporation, or owner of more than a 5-percent interest if other than a corporation; an indication as to whether or not 75 percent or more of the voting interest is owned or controlled by citizens of the United States or one of its possessions; if more than 5 percent of applicant's stock is held by a corporation, an indication must be made as to whether or not 75 percent or more of the voting interest in such corporation is owned or controlled by citizens of the United States or one of its possessions; (6) a description of current business activities and of former business experience in, or related to, the transportation field; (7) description of operating authority granted applicant by agencies of the U.S. Government (such as customs broker, surface or air freight forwarder, motor carrier, ocean freight forwarder, etc.), and, if applicable, reasons for revocation or other termination; (8) list of names of the officers, owners, etc., of applicants who have at any time applied for any type of authority or registration from the Civil Aeronautics Board and, if applicable, reasons for revocation or other termination; (9) list of officers, owners, etc., of applicant who have at any time been employed by or associated with any air carrier authorized to operate by the Civil Aeronautics Board indicating dates of employment and capacity in which employed; (10) any additional information in support of application; (11) balance sheet as of a date not more than 3 months prior to application and profit and loss statement for the full year ending as of date of balance sheet; (12) brief account of any arrangement by which applicant will have available financial sources and facilities of other companies or individuals; (13) the charter operator's surety bond and, where applicable, a copy of the depository, escrow or trust agreement with a bank as provided in § 372.24.[31]

(b) *Additional information.* The applicant shall also submit such other additional information pertinent to its proposed activities as may be requested by the Board with respect to any individual application.

§ 372.31 Issuance.

(a) If, after the filing of an application for an operating authorization, it appears that the applicant is capable of performing the air transportation authorized by this part as an overseas military personnel charter operator and of conforming to the provisions of the Act and all rules and requirements thereunder, and that the conduct of such operations by the applicant will not be inconsistent with the public interest, the applicant will be notified by letter. Such notification will advise the applicant that, upon the filing of a valid tariff pursuant to § 372.25, an operating authorization will be issued to the applicant.

(b) If, after the filing of an application for an operating authorization, it appears that the applicant has not

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[29] Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious, or fraudulent statements or representations, or makes or uses any false writing of document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than 5 years, or both. Title 18, United States Code sec. 1001.

[30] NOTE: Any person who claims to have been engaged in operations as an overseas military personnel charter operator on Aug. 27, 1971, and who has filed an application within 45 days after the effective date of this part shall also include certification as to the periods during which it has been continuously engaged in such operations. (See § 372.20.)

[31] The surety bond and, where applicable, a copy of the depository escrow, or trust agreement with the bank should not be filed with the Board until the applicant is notified by the Board to do so. See instructions to CAB Form 372, Appendix A, filed as part of the original document.

made a due showing of capability or that the conduct of operations by the applicant might otherwise be inconsistent with the public interest, the Board shall by letter notify the applicant of its findings to that effect. The Board may dismiss any such application unless within 30 days of the date of the mailing of such letter, the applicant has in writing requested reconsideration and submitted such additional information as it believes will make the necessary showing, or requested that the application be assigned for hearing, in which case the applicant shall outline the evidence to be presented at such hearing and shall show the need for hearing in order properly to present its case.

(c) In the event that reconsideration or hearing is requested, the Board may, without notice or hearing, enter an order of approval or of disapproval in accordance with its determination of the public interest upon the showing made, or on its own initiative may assign the application for hearing.

§ 372.32 Effective period.

Each operating authorization shall be effective upon the date specified therein, and shall continue in effect, unless sooner suspended or revoked, during such period as the authority provided by this part shall remain in effect, or if issued for a limited period of time, shall continue in effect until the expiration thereof unless sooner suspended or revoked.

§ 372.33 Nontransferability.

(a) An operating authorization shall be nonstranferable and shall be effective only with respect to the person named therein or his successor by operation of law, subject to the provisions of this section. The following persons may temporarily continue operations under an operating authorization issued in the name of another person, for a maximum period of 6 months from the effective date of succession, by giving written notice of such succession to the Board within 60 days after the succession:

(1) Administrators or executors of deceased persons;

(2) Guardians of incapacitated persons;

(3) Surviving partner or partners collectively of dissolved partnerships; and

(4) Trustees, receivers, conservators, assignees, or other such persons who are authorized by law to collect and preserve the property of financially disabled persons.

(b) All operations by successors, as above authorized, shall be performed in the name or names of the prior holder of the operating authorization and the name of the successor, whose capacity shall also be designated. Any successor desiring to continue operations after the expiration of the 6-month period above authorized must file an application for a new operating authorization within 120 days after such succession. If a timely application is filed, such successor may continue operations until final disposition of the application by the Board.

Subpart E—Reporting Requirements

§ 372.40 Reporting requirements.

Each charter operator shall prepare and file with the Bureau of Accounts and Statistics, within 45 days of the end of each calendar year, the following:

(a) The number of charter flights performed during each month of the year;

(b) The direct air carrier or foreign air carrier used on each flight;

(c) The total number of passengers carried on each flight with a breakdown of (1) the number of military personnel, (2) the number of civilian employees of the Department of Defense, and (3) the number of members of immediate family carried on each flight.

NOTE: The record-retention and reporting requirements herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,[2]
Secretary.

[FR Doc.72-8444 Filed 6-2-72;8:51 am]

SUBCHAPTER E—ORGANIZATION REGULATIONS

[Reg. OR-61, Amdt. 12]

PART 389—FEES AND CHARGES FOR SPECIAL SERVICES

Filing Fees Relating to Overseas Military Personnel Charters

Adopted by the Civil Aeronautics Board at its office in Washington, D.C., on the 18th day of May 1972.

By supplemental notice of proposed rule making EDR-173C/SPDR-25,[1] the Board proposed, inter alia, the adoption of a new Part 372 of its special regulations (14 CFR Part 372) which would establish a new class of charter for overseas military personnel and their immediate families, and to authorize a new class of charter operators to act as indirect air carriers with respect to such charters. The Board indicated at that time that if it finally adopted the rule proposed therein, Part 389 would be simultaneously amended, to provide fees for filings to be made under the new rule: $55 for a waiver of any of the provisions of Part 372, $275 for an application for an operating authorization, and $25 for surety bonds.

Since we have determined to adopt a final rule, as set forth in SPR-54, published contemporaneously herewith, we are also amending Part 389 in the manner indicated.

We are also taking this occasion to make certain editorial revisions in Part 389, by deleting certain references to Part 295, since that part is no longer in effect, having been superseded by Part 208; and by deleting subparagraph (2) of § 389.25(j) which sets forth provisions with respect to waivers for emergency transportation, since, in the circumstances therein described, requests for waivers are no longer required under the provisions of Part 208 which, as aforesaid, has superseded Part 295.

Since the amendment contained herein is in part editorial and in part one of agency procedure and practice, notice and public procedure hereon are not required and the rule may be made effective immediately.

Accordingly, the Civil Aeronautics Board hereby amends § 389.25 of Part 389 of the organization regulations (14 CFR Part 389), effective June 3, 1972, by amending paragraphs (j), (l), and (o) thereof, the section as amended to read as follows:

§ 389.25 Schedule of filing and license fees.

* * * * *

(j) *Other exemptions and Parts 207, 208, 372, 373, 378, and 378a waivers.* The filing fee for (1) an application for exemption under section 101(3) or section 416(b) of the Act, except applications within the provisions of paragraph (h) or (i) of this section, or (2) a request under § 207.16, § 208.3a, § 372.3, § 373.30, § 378.30, or § 378a.20 of this chapter for a waiver of any of the provisions of Parts 207, 208, 372, 373, 378, or 378a of this chapter, respectively, is $55: *Provided,* That the filing fee for an application for exemption or a request for waiver for the performance of a specific number of charters (one-way or round-trip) is $55, plus $5 for each charter (one-way or round-trip) described, subject to a maximum fee of $200.

* * * * *

(l) *Tour prospectus or bulk inclusive tour contracts and bonds.* The filing fee for each tour prospectus filed pursuant to § 378.10 or § 378.19 of this chapter, or for contracts and bonds covering a bulk inclusive tour or series of tours filed pursuant to § 378.10 of this chapter, or for bonds covering overseas military personnel charter operations filed pursuant to § 372.24 of this chapter is $25.

* * * * *

(o) *Operating authorization—air-freight forwarder or overseas military personnel charter operator.* The filing fee for an application, under Part 296, Part 297, or Part 372 of this chapter, for operating authorization as an air-freight forwarder, international air-freight forwarder, or overseas military personnel charter operator is $275.

* * * * *

(Sec. 204(a) of the Federal Aviation Act of 1958, as amended, 72 Stat. 743; 49 U.S.C. 1324; 65 Stat. 290, 31 U.S.C. 483a)

By the Civil Aeronautics Board.

[SEAL] HARRY J. ZINK,
Secretary.

[FR Doc.72-8445 Filed 6-2-72;8:51 am]

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[2] Appendices A and B filed as part of the original document.

[1] Aug. 27, 1971 (36 F.R. 17655).