

Affects Parts: 40, 41, 42, 45, 61
Distribution: General

Regulation No. SR-385A

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

Adopted: July 31, 1953
Effective: August 1, 1953

SPECIAL CIVIL AIR REGULATION

DELEGATION OF AUTHORITY TO THE ADMINISTRATOR TO PERMIT AIR CARRIERS UNDER CONTRACT TO THE MILITARY SERVICES TO DEVIATE FROM PARTS 40, 41, 42, 45, AND 61 OF THE CIVIL AIR REGULATIONS

Some time ago the Air Transport Association (ATA) on behalf of several scheduled air carriers under contract to the military services requested that authority be granted to such carriers to permit them to deviate from certain provisions of Parts 40, 41, 42, 45, and 61 of the Civil Air Regulations, under which they were then required to operate, in order to permit such carriers to accomplish expeditiously the mission assigned them by the military services. ATA stated that, in view of the type of operations which these carriers had been requested to perform, certain provisions of those parts imposed an undue burden upon the air carriers involved. It appeared that several difficulties encountered in complying with current regulations resulted from the fact that some of the air carriers were acting in the capacity of prime contractors with the military services, while others were acting as subcontractors and were merely furnishing aircraft and/or flight crews to another air carrier for use in operations conducted pursuant to the military contracts. It should be noted that Parts 40, 41, 42, 45, and 61 were designed to be applicable to scheduled and irregular air carrier operations performed under normal operating conditions. The Board believed that the type of operation which air carriers were expected to perform in executing their obligations under military contracts was a specialized type of operation different in many respects from the normal type of air carrier operation envisaged by the then current Civil Air Regulations relating to air carrier operations. For those reasons, the Board, on July 28, 1950, adopted Special Civil Air Regulation SR-349 which delegated authority to the Administrator to permit air carriers under contract to the military services to deviate from certain parts of the Civil Air Regulations in performing such contracts, such authority to terminate on August 1, 1951. This authority was extended to August 1, 1952, by SR-367 and to August 1, 1953, by SR-385.

On July 9, 1953, the Board published as a notice of proposed rule making in the Federal Register (18 F.R. 4032) and circulated as Draft Release No. 53-10 dated July 8, 1953, a proposal to extend for one year the authority provided in SR-385 to August 1, 1954. As a result of

comment received in response to the July 9, 1953, notice of proposed rule making, it appears that a controversy exists with respect to continuation of the authority granted by SR-385.

Objection to further extension of the rule was predicated upon assertions that the emergency for which this authority was granted no longer exists. In view of this controversy, it appears to the Board that further investigation should be made to determine the necessity for continuation of the rule and additional opportunity be given to interested parties to present comment to the Board. Until such investigation can be completed, the Board considers that the authority contained in SR-385 should be continued. Accordingly, the Board concludes that the provisions of SR-385 should be extended for three months to maintain the delegated authority in the Administrator without lapse. Since this regulation imposes no additional burden on any person, it may be made effective on less than 30 days' notice.

The Board considers it necessary to continue to limit the operations conducted pursuant to any deviation granted by the Administrator to those operations conducted pursuant to military contracts and to require that all operations conducted in accordance with such deviations be conducted in accordance with such terms and conditions as the Administrator may prescribe in granting the deviation. It is anticipated that the Administrator will continue, as part of the procedure in issuing a deviation of major importance, to coordinate his decision with the Board and the appropriate military authorities.

The regulation has been changed by deleting the words "or desirable" from the phrase "necessary or desirable" as contained in paragraph 1 of SR-385. This change was made because of difficulty encountered in the administration of the regulation which resulted from some air carriers seeking to place an interpretation on the word "desirable" which would in effect require the Administrator to grant a waiver of such provisions as the air carrier considered desirable. Since the purpose of the regulation is to permit the Administrator to issue waivers in those instances where it is essential to the operations being conducted, it is considered that the air carrier or the Department of Defense should bear the burden of establishing the necessity for deviation from the regulations.

In consideration of the foregoing the Civil Aeronautics Board hereby makes and promulgates a Special Civil Air Regulation, effective August 1, 1953, to read as follows:

1. Contrary provisions of the Civil Air Regulations notwithstanding, the Administrator may, upon application by an air carrier, authorize an air carrier under contract to the military services, or an air carrier

furnishing civil aircraft and/or flight crews to another air carrier for use in operations conducted pursuant to a contract with the military services, to deviate from the applicable provisions of Parts 40 (including revised Part 40), 41, 42, 45, and 61 to the extent that he finds upon investigation a deviation from those regulations is necessary for the expeditious conduct of such operations.

2. Any authority granted by the Administrator pursuant to this regulation shall be limited to those operations conducted pursuant to military contracts and shall not be applicable to any other type of operation.

3. The Administrator shall, in any authorization granted pursuant to this regulation, specify the terms and conditions under which the air carrier may deviate from the currently prescribed regulations, and each carrier shall, in the conduct of operations pursuant to military contracts, comply with such terms and conditions.

This regulation shall terminate November 1, 1953, unless sooner superseded or rescinded.

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

By the Civil Aeronautics Board:

/s/ M. C. Mulligan

M. C. Mulligan
Secretary

(SEAL)