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AVIATION

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CHARTER AIR TRANSPORTATION

OTC RULES

By Notice of Proposed Rulemaking, EDR-281/SPDR-38/ODR-9, October 30, 1974, the Civil Aeronautics Board (Board) gave notice that it had under consideration adoption of a new Special Regulation (14 C.F.R. Part 378a) establishing a new class of charter air transportation designated as a One-Stop-Inclusive Tour Charter (OTC).¹ On the basis of comments submitted in response to the Notice, the Board subsequently issued a Supplemental Notice of Proposed Rulemaking, EDR-281B/SPDR-38B/ORD-9B on April 10, 1975, in which it indicated that substantial modifications of the proposed OTC rule were under consideration.² Numerous comments were received by the Board and the enactment of Part 378a (14 CFR Part 378a) was adopted on August 7, 1975 to become effective September 13, 1975.

In the enactment of 14 CFR Part 378a, the Board set forth in the preamble to the Part a concise history of the charter regulations, detailing their prior effect and the subsequent need for additional forms of charter air transportation. The Board noted that charter traffic carried by the nation's certificated air carriers had increased more than "twenty-fold" in the preceding twenty-five years due to CAB encouragement of charter services and imagination of airline management coupled with technological change.³ In fact, in some markets, charter traffic was found to account for a substantial percentage of total passenger movements.⁴

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Although the Board could not predict the extent to which charter operations could attract a significant portion of overall airline traffic, it found evidence to indicate that the relatively small number of charter passengers, in comparison to passengers carried on scheduled services on a systemwide basis, was due to limitations imposed by the Board on various kinds of operations which were deemed to be "charter trips" for purposes of the Federal Aviation Act of 1958, as amended (Act).⁵ Such restrictions have, *inter alia*, limited the benefits of charter transportation to persons who happened to be "*bona fide*" members of "*bona fide*" organizations which could lawfully charter aircraft under the Board's so-called affinity rules,⁶ to persons willing to risk participation on affinity charters operated in contravention of the affinity charter rules, and to persons who were able to conform their travel plans to the conditions imposed by the Inclusive Tour Charter rule.⁷

The Board stated that in 1971 it recognized the need for a charter rule that would "more effectively encourage the development of the economics of planeload operations while preserving a reasonable balance between scheduled and charter services" and it began to reexamine the types of restrictions which had been regarded as essential to the charter concept.⁸ In 1972, after thorough review, the Board adopted the Travel Group Charter rule (TGC) as an alternative to the affinity group concept.⁹ TGC's, to be lawful, had to meet, *inter alia*, the following basic requirements: (1) the charter contract had to be for forty or more seats; (2) the charter had to be performed on a round trip basis; (3) the charter had to involve a minimum duration of seven days for North American charters and a minimum duration of ten days in the case of all other charters; (4) the transportation portion of the charter had to be performed by direct air carriers holding certificates of public convenience and necessity under sections 401 and 402 of the Act; and (5) the cost of the transportation was to be pro-rated among the participants.¹⁰

In its preamble to the adoption of Part 378a, the Board stated that since the TGC rule had failed to provide a satisfactory alternative to affinity charters and had failed to increase charter availability, the Board had proposed the adoption in October, 1974 of the OTC as a further step in its efforts to supplant the affinity rules with workable, non-discriminatory and enforceable alternatives. The OTC as proposed, unlike the TGC, would not require participants to pay a pro-rata share of the total charter cost thus permitting indirect air carriers to assume the entrepreneurial risk entailed by a failure to resell all of the seats covered by the charter. In addition, unlike the TGC, the OTC rule, as proposed, would require

a tour package consisting of roundtrip air transportation and, at a minimum, daily hotel accommodations together with transfers and baggage handling. Another difference is that the TGC rule requires participants to make flight bookings sixty days prior to departure whereas OTC's could be sold up to fifteen days in advance of the departure for North American charters and thirty days in advance for all other charters.

At the time of the adoption of 14 CFR Part 378a, the Board circulated a basic fact sheet on the One-stop-inclusive Tour Charter which simply reviewed the OTC concept and ensuing charter requirements. The fact sheet read as follows:

1. *Purpose*

The OTC regulation is designed to increase the availability of low-cost charter air travel by authorizing the operation of a new class of charter tours.

2. *Required tour elements*

Persons traveling on OTC's will purchase a package of ground services, which will consist of at least the following: hotel accommodations, ground transfers (such as between the airport and hotel) and baggage handling. Other items may also be provided at the option of the tour operator. Since OTC's are designed to be marketed as *group* travel, tour packages may not include prepaid individual transportation (car rentals, rail passes, and the like). Anyone desiring such services may purchase them himself or through his travel agent.

3. *The tour operator*

Arrangements will be made by, and tour packages sold through, an independent tour operator. This is the same procedure used in the Board's other special charter regulations.

4. *OTC costs*

The minimum OTC price will be the pro rata cost of the tour participant's round trip seat, plus \$15 for each night of the tour. More elaborate tours will undoubtedly cost more than this minimum, which is designed to discourage sham "throwaway" tour packages. The minimum OTC price for children under 12 sharing a room with a full-price participant will be the pro rata seat cost plus \$7.50 per night.

5. *Minimum duration*

OTC's destined for points in North America (the 50 states, Canada, Mexico and the Caribbean) must be for a minimum of four days (three nights). Elsewhere, the minimum will be seven days (six nights).

6. *Advance purchase*

Tour participants will be required to purchase their OTC tours in advance of departure. Tour operators and direct air carriers will be required to file a list of passengers' names at least fifteen days before departure on North American OTC's, and at least thirty days before departure on all others. However, for North American OTC's operated after October 1, 1978, the advance filing requirement will be seven days. This two-step approach is designed to help the Board to monitor and evaluate the effects of the advance filing requirement on OTC operations.

7. *Termination*

Under the regulation, the OTC and SEC rules are made experimental. They will terminate on March 31, 1980, unless extended by the Board.

SPECIAL EVENT CHARTERS

The Board determined to proceed with its proposal contained in SPDR-37C¹¹ to incorporate Special Event Charters within the OTC rule stating that the interests of the public and administrative efficiency would be better served by treatment of OTC's and SEC's in the same Part (14 CFR Part 378a, Subpart F.) Thus, the SEC can be viewed as a subcategory of the OTC and is designed to provide charter travel tailored to the needs of persons attending a special event.

The Board noted that it had received numerous comments on its proposed definition of "special event" for the purposes of Part 378a. As the Board stated in its Supplemental Notice, it did not regard the status or goals of the event promoters to have any bearing upon whether or not the event is "Special". However, the Board acknowledged that it will "expressly prohibit SEC's to events which are sponsored by direct air carriers or which are created for the purpose of justifying charter travel." The fact sheet on SEC's, released by the Board, described the "special event" as follows:

* * *

2. *The Special Event*

Travel under the SEC rule will be authorized only to those events which: (1) do not exceed 10 days in duration, and (2) are not sponsored by a direct air carrier or created in order to justify the charter travel. However, most importantly, the event must be "special," which means specific and significant. Qualified events would be of a sporting, social, religious, education, cultural, or political nature. Appendix 8 of the rule gives examples of the kinds of events *not* deemed to qualify for charter travel under the SEC rule.¹²

In determining whether a given event should be deemed qualified for SEC's one element will be whether the details of date, location, participants (such as competing teams) and so forth were known 60 days in advance of the event. Those events for which the details are not known in advance will have a better chance of qualifying. Nevertheless, the 60-day period is merely a guideline; the Board recognizes that some qualified events will fall outside this guideline and where appropriate will approve SEC travel to such events.

* * *

Regarding ground packages and pricing, the Board advised that all necessary ground transportation and baggage handling must be provided in the package and that the package must include admission to the event for each day of the charter, unless scheduling obstacles make attendance unfeasible. Where the SEC involves an overnight stay, participants must be provided with sleeping accommodations. The Board stated that SEC's will not have a minimum price unless an overnight stay is part of the package. Where this occurs, the minimum will be the same as ordinary OTC's pro rata seat cost plus \$15 per night, for adults, or \$7.50 for children sharing accommodations with a full-price passenger.

The Board adopted its own prior proposals pertaining to the maximum SEC duration without change: North American SEC's may not exceed three days (two nights); elsewhere, SEC's may not exceed six days (five nights). However, the Board decided to modify its prior limitations on the maximum duration before and after the special event within which the departing and return flight might be operated. The Board found grace period's corresponding to the participants attendance at the special event rather than the beginning and termination of the special event itself would better complement the participant's actual plans and serve to limit SEC's to their original purpose.

IRAN AIR CHARTER AUTHORITY

Iran Air (Iran National Airlines Corporation) is the holder of a foreign air carrier permit issued pursuant to C.A.B. Order 74-5-28, which authorizes it to perform foreign air transportation of persons, property and mail between Iran and certain designated points in the United States. Under the provisions of its permit, Iran Air may operate scheduled services to the United States with whatever number of frequencies and combination of authorized points it desires.

Additionally, Iran Air's permit authorizes the carrier to engage in charter trips in foreign air transportation subject to Part 212 of the Board's Economic Regulations.¹³ This enables Iran Air to perform an unlimited number of on-route charters¹⁴ without obtaining prior approval from the Civil Aeronautics Board. The carrier may also perform off-route charters¹⁵ with advance approval from the Board upon notice to the Board five days prior to flight. The Board does not require any fees from Iran Air for approval of off-route charters and United States air carriers may not exercise a "right of first refusal" over their operation.

On September 24, 1975, the Board adopted Order 75-9-83¹⁶ regarding the present operations of Iran Air *vis-à-vis* United States air carriers. The Board noted that it had recently been brought to its attention that the Government of Iran had given Iran Air the right of first refusal over certain charters from the United States to Iran and that in turn, Iran Air has been requiring non-designated U.S. air carriers to obtain a "No Objection Certificate" before a charter trip may be performed in Iranian air space. For cargo flights, the fee for such a certificate is either 10% of the general cargo rate or 15% of the charter price, whichever is higher. In the instance of passenger flights, the certificate fee is either 10% of the normal economy-class fare or 15% of the charter price, whichever is higher.

In its opinion, the Board reviewed its prior policies with regard to the grant of authority to operate charter trips in foreign air transportation stating that such rights are not generally included within the purview of bilateral agreements to which the United States is a party. Rather, the Board reaffirmed its longstanding policy to unilaterally grant charter authority to foreign air carriers providing scheduled services and underscored that such rights are dependent strictly upon comity and reciprocity.¹⁷ The Board further stated:

. . . the development of international air transportation is best served by a liberal grant of charter rights between countries. However, when other foreign governments exercise their powers in a manner which sharply restricts the charter operations of United States carriers, we will act promptly and firmly to respond to such abuses. Indeed, we are required by law to do so. Section 2 of the International Air Transportation Fair Competitive Practices Act of 1974 (PL 93-623, 88 Stat. 2102), expressly requires that several agencies, including the Board, keep under review "all forms of discrimination or unfair competitive practices to which United States air carriers are subject in providing foreign air transportation services and each *shall take all appropriate actions within its jurisdiction to eliminate such forms of discrimination or unfair competitive practices found to exist.*" [emphasis added in Opinion].

The Board concluded that the "no-objection fee" represented precisely the type of discriminatory and unfair and deceptive practices which Congress mandated the Board to eliminate. Thus, the Board, under section 212.4(b) of the Board's Economic Regulations (14 C.F.R. 212.4(b)),¹⁸ found it in the public interest to order that Iran Air be prohibited from performing on-route charters in the absence of prior authorization from the Board until such time as the air carrier proves to the satisfaction of the Board that it is no longer imposing special fees upon United States air carriers engaged in Iranian charter operations. The Board added that pending termination of the fee requirement ". . . we . . . will not be disposed to grant either on-route or off-route charter flights if so requested."

AEROFLOT CHARTER AUTHORITY

On September 25, 1975, by Order 75-9-91 the Civil Aeronautics Board (Board) refused to review a staff decision, made under delegated authority¹⁹ by the Director, Bureau of Operating Rights (BOR), which denied applications of Aeroflot Soviet Airlines (Aeroflot) for Statements of Authorization pursuant to Part 212 of the Board's Economic Regulations to enable it to perform seven charter flights.²⁰

BOR's staff action of September 15, 1975, was predicated upon a finding that the U.S.S.R. had not provided reciprocal authorization to World Airways, Inc. (World) when it failed to act upon that carrier's request to operate a series of inclusive tour charter (ITC) flights to the U.S.S.R. in 1976.

On September 22, 1975, Aeroflot, by petition to the Board, requested review and reversal of BOR's denial. In support of its petition Aeroflot claimed, *inter alia*, that the U.S.S.R. was unable to authorize World's flights since the performance dates of such flights would occur subsequent to the expiration of the existing United States-Soviet understanding pertaining to charter flights.

The Board, in its refusal to overturn the staff action stated that Aeroflot's petition did not allege adequate grounds for review pursuant to 14 C.F.R. Section 385.51(b) of the Organization Regulations. The Board noted "in particular" that Aeroflot's arguments in its petition were similar to those previously advanced in support of a recent petition seeking off-route charter authorization. The Board advised that in acting upon the former petition it had been clearly stated that the Board would not be disposed to reverse the staff's action unless there was a showing that the Soviet Ministry of Civil Aviation had or would approve World's application for its 1976 ITC program.²¹ Since there was no showing that World's application would be granted, the Board declined its right to exercise discretionary review of the BOR action and the action of the Director, BOR, dated September 15, 1975, became the action of the Board.

PAN AMERICAN/AEROFLOT AGREEMENT

On July 3, 1975, Pan American World Airways, Inc. (Pan American) made application to the Civil Aeronautics Board (Board) for approval of an agreement amending the agreement for Bilateral Provision of Services between Aeroflot Soviet Airlines and Pan American World Airways.²² The agreement which would have established flight service levels for the parties between the United States and the Soviet Union, was filed by Pan American pursuant to section 412(a) of the Federal Aviation Act of 1958, as amended (Act), and Part 261 of the Board's Economic Regulations (14 C.F.R. Part 261). The filed agreement was dated June 27, 1975 and would have revised a previous agreement between the two carriers made in January, 1967, which agreement was an outgrowth of the Civil Air Transport Agreement concluded between the United States and the Soviet Union in November, 1966. The 1966 agreement made provision for agreements between the designated carriers of the two countries on frequencies of service, subject to approval, negotiation and implementation by the respective Governments. Recently, frequencies have been established by intergovernmental negotiation and agreement rather than by the carriers. The agreement filed by Pan American proposed revisions of the intergovernmentally agreed frequencies.

In pertinent part, the terms of the present agreement establish:

- (1) The maximum number of weekly round-trip scheduled frequencies to be operated by Pan American and Aeroflot between the United States and the Soviet Union during the period beginning November 1, 1975 and ending October 31, 1978;
- (2) The type of aircraft to be operated on each frequency; and
- (3) The maximum number of weekly round-trip scheduled fifth freedom frequencies²³ to be operated by Aeroflot during the period.

The agreement filed before the Board, which was subsequently disapproved, proposed to establish substantial increases in capacity to be operated by the parties over that which was presently effective and that which had previously been effective. The agreement would have involved an increase in flight frequencies and also an increase in Aeroflot fifth freedom frequencies. Pan American claimed in support of the proposed agreement that approval of same would increase its revenues and reduce its costs.²⁴

In summary the Board disapproved the agreement stating:

. . . there presently exists a marked disparity in the benefits achieved from the agreement by Pan American as opposed to Aeroflot. This disparity may be largely attributed to the severe market restrictions faced by Pan American with respect to Soviet originating traffic. The proposed agreement, although it would somewhat increase the traffic carried by Pan American, would expand significantly the disparity of economic benefits realized under the agreement. The Board finds, therefore, that it would be inconsistent with and adverse to the public interest to approve a carrier agreement which, without alleviating the imbalance of competitive opportunities existing between the two carriers, accentuates the present economic disparity with only limited and basically unsubstantiated advantages for the U.S. designated carrier.

In particular, the Board advised that market restrictions, which did not allow Pan American to compete with Aeroflot on a wholly equal basis, were critical to the Board's analysis and ultimate decision. The Board found that of the US-USSR traffic carried by the two carriers, Pan American carried 40% of the U.S. origin traffic. In addition, 52% of the total traffic carried by the two carriers represented U.S. citizenry. In comparison, because of "severe marketing restrictions upon Pan American in the

Soviet Union," the Board found Pan American carried only 11% of the 48% of the traffic which is Soviet originating. Thus, the Board stated that the results of the restrictions severely weighted the balance of benefits in the favor of the Soviet Union.²⁵

Some of the benefits of the agreement which Pan American alleged would accrue in its favor were based on penetration by Pan American and Aeroflot in the scheduled service market. The Board noted however that a major change, unrecognized by Pan American in its application, had recently occurred. The Board stated that charter traffic flown on just the two national carriers had increased from 2,645 passengers in 1973 to 15,814²⁶ in 1974, and to 15,923 in the first nine months of 1975. The Board felt the passage of the new OTC rule could be expected to increase the number of charter passengers thus reducing the scheduled service market which Pan American wanted to penetrate and derive benefits from.

The agreement was disapproved by the Board on November 13, 1975 by CAB Order 75-11-48.

NATIONAL AIRPORT NOISE POLICY

The Federal Aviation Administration (FAA) of the Department of Transportation began public hearings in September, 1975 in four cities in order to obtain public comments regarding the development of a national airport noise policy.²⁷ In addition to the September hearings, the FAA planned to convene hearings in as many as ten to twenty other locations by January 1, 1976. The scheduling of the hearings follows a notice published by the FAA in the Federal Register on July 9, 1975. Such notice requested comment on four major policy options listed by the FAA as follows:

1. Let airport operators impose any restrictions they want as long as such restrictions do not impinge on federal responsibilities for aircraft operating procedures and the management and control of the navigable air space.²⁸
2. The FAA would develop a comprehensive federal regulatory program of noise abatement to be instituted at individual airports to minimize noise problems.²⁹
3. Require public operators to prepare a local noise abatement plan and submit it to the FAA for review and approval.³⁰

4. Continue present efforts to reduce noise at its source through the development of appropriate technology as well as the development of noise abatement operating procedures. The initiative and responsibility for developing, establishing and implementing airport restrictions would be left to the local airport operator but FAA would take appropriate action in cases where the restrictions constitute an undue burden on interstate commerce, or interfere with aircraft operating procedures or the management and control of the navigable airspace. Under this "ad hoc" approach, FAA would continue to deal with specific factual situations but there would be no assurance of consistency of application in all circumstances.

In addition to public comment on the aforementioned policy options, the FAA addressed the following questions to the public for comment and discussion:

1. Which of the identified policy options should be adopted or rejected by FAA and why?
2. What benefits in terms of noise reduction can be anticipated as a result of airport use restrictions?
3. Are there other possible airport restrictions in addition to those already identified?
4. What costs can be anticipated as a result of implementing such restrictions?
5. Should any type or category of aircraft be precluded from consideration for use restrictions and, if so, what and why?

Public comments bearing on this notice will be accepted by the FAA through January 1, 1976.

NASA-FAA SAFETY REPORTING AGREEMENT

On October 10, 1975, it was announced by the Acting FAA Administrator that the National Aeronautics and Space Administration had signed an agreement with the Federal Aviation Administration to act as a "third party" for the purpose of receiving, processing and analyzing reports of unsafe conditions or practices filed under the FAA's Aviation Safety Reporting Program. When operative, the new reporting system will modify prior programs which required reports to be filed directly with the FAA.

The FAA indicated that its objective in the institution of this new program is to provide the safest possible aviation system through the identification and correction of unsafe conditions before they lead to accidents. The agreement also contains specific procedures to provide for protection of the identity of persons submitting reports to NASA, except in those cases allegedly involving criminal conduct or accidents.

Further, the agreement calls for NASA to set up an "aviation safety reporting working group" under its Research and Technology Advisory Council to (1) advise NASA on the system's design and operation; (2) to evaluate and review the program once it is underway; and (3) to assure the continued confidentiality of those submitting reports. Membership in the "group" will include aviation and consumer groups together with those involved in the operational aspects of the national aviation system.

The new reporting system is scheduled to be in operation by April, 1976, with details of the program to be outlined in a Federal Register notice and advisory circular to be issued in that same month. In the interim, reports will continue to be filed directly with the FAA.

SECURITY RULES FOR FOREIGN CARRIERS

Effective October 9, 1975, foreign air carriers operating into the United States were required to implement security programs for screening passengers and carry-on baggage similar to those procedures already in operation by U.S. carriers.³¹ Specifically, the new rule directs foreign air carriers to institute an effective security program for flights to, from and within the United States. The security program must include and utilize weapon-detection procedures for screening all passengers and carry-on baggage prior to boarding. In addition, such program must be designed to prevent or deter unauthorized access to aircraft and prevent cargo or checked baggage from being loaded unless handled in accordance with security procedures. The amendment to Federal Aviation Regulation Part 129 (Operations of Foreign Air Carriers) also provides for procedures in the handling of bomb threats and/or air piracy threats.

The FAA noted that since security procedures have been effected in approximately five hundred United States airports, such procedures may have averted as many as twenty-five potential hijackings of American air carriers in 1974. In fact, there has not been a successful hijacking of a U.S. domestic air carrier since November, 1972. In comparison, foreign air carriers have experienced fifty hijackings since that date.

NOTES

¹C.A.B. Docket 27135.

²On June 18, 1974, the Board issued a Notice of Proposed Rulemaking, EDR-276/SPDR-37/ODR-8 concerning the adoption of another new form of charter transportation, the Special Event Charter (SEC). By Supplemental Notice of Rulemaking EDR-276C/SPDR-37C/ODR-8C, dated April 21, 1975, the Board concluded that the adoption of the SEC sufficiently overlapped the adoption of the OTC, such that the Board determined to incorporate the SEC rule as a special section of the OTC rule for those special event charters which cannot individually meet the terms of the OTC rules. SEC's will be discussed in this article, *infra*.

³The Board found that the bulk of this expansion occurred in the 1960's.

⁴Principally the Board cited the North Atlantic markets but it further noted that charter services did not in any way constitute a significant portion of the air transportation system.

⁵The Board noted that such limitations have been structured to preserve the statutorily mandated distinctions between charter and individually-ticketed services and have been found necessary to protect the scheduled air transportation system.

⁶See, 14 CFR Parts 207 and 208.

⁷See, 14 CFR Part 378 which provides for three-stop tour packages whose minimum price must exceed the lowest available scheduled air fare for the tour itinerary.

⁸See, *e.g.*, SPDR-22, January 29, 1971.

⁹In the adoption of the TGC Rule, the Board recited two principal motivating factors: (1) its growing concern that existing charter rules tended to be "inherently discriminatory", since charter travel was limited to groups having a "prior affinity" and thereby excluding members of the general public who did not belong to qualified organizations large enough to engage in a charter program; and (2) continuing signs that the artificial and arbitrary "prior affinity" rules were difficult to enforce so that an increasing demand for low-cost charter travel was being met by the operation of alleged affinity charter flights.

¹⁰For additional rules applicable to TGC's, see generally 14 CFR Part 372a, with special reference to Subpart B—General Conditions and Limitations.

¹¹See note 2, *supra*.

¹²

Examples of Events Not Deemed
To Be "Special" For The Purposes Of
Part 378a, Subpart F

The following list consists of a selection of events not deemed to be "special" for the purposes of Part 378a, Subpart F. It is intended as guidance for the public and the industry as to what kinds of events are deemed outside the scope of the Special Event Charter rule. The list is by no means exhaustive.

1. CONVENTIONS, MEETINGS, OR SEMINARS:

a. Annual conventions of business firms, professional organizations, and other entities.

2. REGULARLY SCHEDULED ATHLETIC EVENTS:

a. Regular season games for baseball, basketball, football, soccer, etc.

b. Playoffs that are *scheduled* to last more than 10 days would be excluded from consideration as a Special Event. However, if a playoff series, were to be scheduled for a total of 11 days (including travel), then each set of *games* at the opposing teams' home cities will qualify as a separate special event.

- c. The Olympics since the total number of days involved exceeds 10 days.
- NOTE: The Super Bowl, College Bowl Games (Rose, Orange, etc.), NFL Playoffs, NCAA Basketball Regionals or semi-finals or finals, among others, *would be considered Special* since the participants would not normally be known more than a month in advance.
3. ANNUAL FESTIVALS, JAMBOREES OR REVIVAL MEETINGS:
- a. Cherry Blossom Festival, Mardi Gras, and similar events, since these are normally recurring events on an annual basis.
 - b. Scout Jamborees, etc., since these are also recurring annual events.
4. RELIGIOUS PILGRIMAGES:
The shrines which these persons visit can be visited at any time. In addition, there are usually no specific activities associated with such tours other than, for example, general prayer sessions.

¹³Part 212 of the Board's Procedural Regulations (14 C.F.R. 212) establishes the terms, conditions and limitations applicable to charter foreign air transportation, performed pursuant to a foreign air carrier permit issued under section 402 of the Federal Aviation Act of 1958, as amended.

¹⁴14 C.F.R. 212.1 defines an "on route charter trip" as a

... charter trip in foreign air transportation performed by a foreign air carrier between points between which it holds authority under a foreign air carrier permit to engage in foreign air transportation on an individually ticketed or individually waybilled basis: *Provided*, That for the purposes of this part a charter trip between a point in the United States named in the foreign air carrier permit of the carrier performing such charter trip and point outside the United States which is not so named if such charter trip is operated via, and lands at, the homeland terminal point named in the foreign air carrier permit of such foreign air carrier, shall also be considered an 'on-route charter trip'.

¹⁵14 C.F.R. 212.1 defines an "off-route charter trip as any charter trip which is not an "on-route charter trip".

¹⁶In the matter of Iran Air (Iran National Airlines Corporation), Authority to operate on-route charters, Docket 28345.

¹⁷In support of this position, see: *In the Matter of On-Route Charter Authority of Foreign Air Carrier Permits*, Order 70-7-58, July 13, 1970; *Foreign Carrier Off-Route Charter Investigation*, 27 CAB 196, 197 (1958); 30 C.A.B. 1547-48 (1960); *Japan Air Lines Foreign Air Carrier Permit*, Order E 24295, October 14, 1966.

¹⁸14 C.F.R. 212.4(b) provides that the Board may, at any time, with or without hearing, notify a foreign air carrier that it cannot perform on-route charter trips in the absence of prior Board approval.

¹⁹The Civil Aeronautics Board has delegated by regulation, 14 C.F.R. Part 385.13, certain authority to the Director, Bureau of Operating Rights. Included in this delegation is the authority to approve or deny applications for authorization to conduct off-route charter trips filed pursuant to Part 212 of the Board's Economic Regulations. (See 14 C.F.R. Part 385.13(i))

²⁰The flights were round trip, varied from various points in the U.S. to various points in the USSR, and were scheduled in October and November 1975.

²¹See CAB Order 71-9-43, dated September 15, 1975.

²²Agreement CAB 19949-A17.

²³Fifth freedom transit rights involve the privilege of carrying traffic between the grantor-State and third States situated along an agreed route.

²⁴No comments relative to the agreement were filed.

²⁵The Board further cited statistics from the Summer, 1975 wherein Pan American had 13.4 percent of the available capacity of all carriers providing through or connecting service from New York to Moscow, and carried 8.4 percent of the traffic. Where as Aeroflot had 10.4 percent of the capacity and carried 15.4 percent of the traffic.

²⁶Estimate based on 90% load factor.

²⁷The four cities together with scheduled dates of hearing were: Los Angeles, September 16 and 17, 1975; San Diego, September 17, 1975; San Francisco, September 18 and 19, 1975; and Missoula, Montana, September 22, 1975.

²⁸The FAA noted that this kind of policy option would place the responsibility for developing and implementing noise control restrictions at the local level. However, such policy might not take into account the potential systemwide impacts of differing and independently established restrictions.

²⁹Such an option could provide a comprehensive, uniform approach to the airport noise problem and insure that the needs of a national air transportation system is met. However, the FAA indicated that this kind of program would take a considerable amount of time to implement thus possibly allowing an interim period prior to the inauguration of such a program.

³⁰Presumably, this system would result in plans carefully designed to meet and reflect local needs while allowing for FAA review which would provide for a reasonable degree of national uniformity. On the other hand, the FAA noted that the process could be cumbersome and impose substantial responsibilities on airport operators and the Federal Government.

³¹The new rule announced by the FAA is based on a notice of proposed rule-making issued by the agency in January, 1974. It reflects subsequent legislative provisions incorporated in P.L. 93-366 which directed FAA to include foreign air carriers in its security regulations.