

SUBCHAPTER F—POLICY STATEMENTS

PART 398—GUIDELINES FOR INDIVIDUAL DETERMINATIONS OF BASIC ESSENTIAL AIR SERVICE

- Sec.
- 398.1 Purpose.
 - 398.2 Number and designation of hubs.
 - 398.3 Specific airports.
 - 398.4 Equipment.
 - 398.5 Frequency of flights.
 - 398.6 Seat guarantees.
 - 398.7 Timing of flights.
 - 398.8 Number of intermediate stops.
 - 398.9 Load factor standards.
 - 398.10 Overflights.
 - 398.11 Funding reductions.

AUTHORITY: 49 U.S.C. Chapters 401, 417; Airport and Airway Safety and Capacity Expansion Act of 1987 (Pub. L. 100-223, Dec. 30, 1987).

SOURCE: Docket No. OST-95-397, 60 FR 43529, Aug. 22, 1995, unless otherwise noted.

§ 398.1 Purpose.

The purpose of this part is to establish general guidelines for the determination of basic essential air service for each eligible place under 49 U.S.C. 41731 and 41732. Procedures for the determination of the essential air service level for a place are contained in part 325 of this chapter.

§ 398.2 Number and designation of hubs.

(a) *What is a hub?* The Department considers hubs as belonging to any one of three classifications:

(1) A *large* hub is a place accounting for at least 1.00 percent of the total enplanements in the United States;

(2) A *medium* hub is a place accounting for at least 0.25 percent but less than 1.00 percent of the total enplanements in the United States; and

(3) A *small* hub is a place accounting for at least 0.05 percent but less than 0.25 percent of the total enplanements in the United States.

(b) *How many hubs?* (1) As a general matter, the Department will require service to one large or medium hub.

(2) In Alaska or when the nearest large or medium hub is more than 400 miles from the eligible place, the De-

partment may instead require service to a small hub or nonhub.

(3) In some cases, the Department may require service to two hubs, of which at least one will be a large or medium hub. The Department will require service to two hubs if an eligible place has close commercial, geographic, and political ties to both hubs and if there is sufficient traffic from the eligible place to support two round trips a day to both hubs. If traffic is not sufficient, the Department may require one round trip a day to both hubs if the community requests such service.

(4) In no event will essential air service consist of service to more than two hubs.

(c) *Which hub?* (1) In designating hubs, the Department will weigh all of the following factors:

(i) The extent to which candidate hubs provide access to the national air transportation system;

(ii) The commercial, geographic, and political ties of candidate hubs to the eligible place;

(iii) The traffic levels to candidate hubs, as shown by traffic studies and origin and designation data;

(iv) The distance of candidate hubs from the eligible place; and

(v) The size of candidate hubs. Large size will be a positive factor, but principally as substantiating the access and community-ties factors.

(2) For Alaska, rather than requiring service to a hub, the Department may instead require that service from an eligible place be provided to a nearby focal point for traffic which, in turn, has service to a hub.

§ 398.3 Specific airports.

(a) At an eligible place, essential air service may be specified as service to a particular airport. In the case of hyphenated places, essential air service will be specified as service to more than one airport only if clearly necessary and if the multi-airport service is economically feasible and justified on the basis of traffic levels at those airports.

§ 398.4

(b) At a hub, essential air service is not usually specified as service to a particular airport.

§ 398.4 Equipment.

(a) Except in Alaska, service will be provided by aircraft offering at least 15 passenger seats, unless:

(1) Average daily enplanements at the place did not exceed 11 passengers for any fiscal year from 1976 through 1986;

(2) The requirement would necessitate the payment of compensation in a fiscal year for service at the place when compensation would otherwise not be necessary; or

(3) The affected community agrees in writing to the use of smaller aircraft to provide service at the place.

(b) The aircraft must have at least two engines and use two pilots, unless scheduled air transportation has not been provided to the place in aircraft with at least two engines and using two pilots for at least 60 consecutive operating days at any time since October 31, 1978.

(c) The aircraft must be pressurized when the service regularly involves flights above 8,000 feet in altitude.

(d) All aircraft must meet the applicable safety standards of the Federal Aviation Administration.

(e) The aircraft must be conveniently accessible to passengers by stairs rather than over the wing.

§ 398.5 Frequency of flights.

(a) Except in Alaska, at least two round trips each weekday and two round trips each weekend.

(b) In Alaska, a level of service at least equal to that provided in 1976, or two round trips each week, whichever is greater, except that the Department and the appropriate State authority of Alaska may agree to a different level of service after consulting with the affected community.

(c) An essential air service level may be set at more than that stated in paragraphs (a) and (b) of this section if:

(1) Historical traffic data and studies of traffic-generating potential for the place indicate that more frequent service is needed to accommodate passengers and accompanying baggage with the aircraft used at that place;

14 CFR Ch. II (1-1-14 Edition)

(2) More flights are needed because the capacity available to the eligible place is being shared with traffic destined for an intermediate stop or for a place beyond the eligible place;

(3) More flights are needed to accommodate passengers because smaller aircraft are being used at the place;

(4) More flights are needed in order to ensure adequate connecting opportunities as provided for by § 398.7; or

(5) For Alaska, the appropriate state agency agrees that more frequent service is needed to accommodate cargo traffic with the aircraft used at the eligible place.

(d) For eligible places where traffic levels vary substantially with the season, a two-tier level of essential air service may be established with required flight frequencies changing accordingly.

§ 398.6 Seat guarantees.

(a) The number of seats guaranteed at the eligible place will be sufficient to accommodate the estimated passenger traffic at an average load factor of 60 percent, except that an average load factor of 50 percent will be used when service is provided with aircraft having fewer than 15 passenger seats.

(b) Only under unusual circumstances will an eligible place's essential air service level be set at a number of flights that will accommodate more than 40 passengers a day in each direction (a total of 80 inbound and outbound passengers). Generally, 40 passengers can be accommodated by guaranteeing 67 seats a day in each direction (a total of 134 inbound and outbound seats).

(c) The Department may guarantee an eligible place more than 67 seats a day if:

(1) The number of stops between or beyond the eligible place and the hub results in available aircraft capacity being shared with passengers at those other places;

(2) The distance between the eligible place and the designated hub requires the use of large aircraft;

(3) The eligible place has suffered an abrupt and significant reduction in its service that warrants a temporary increase in the maximum guaranteed capacity; or

(4) Other unusual circumstances warrant guaranteeing the eligible place more than 67 seats a day.

§ 398.7 Timing of flights.

To qualify as essential air service, flights must depart at reasonable times, considering the needs of passengers with connecting flights at the hub. It is the policy of the Department to consider the reasonableness of the time in view of the purpose for which the local passengers are traveling. If travel is primarily to connect with other flights at the hub, local flight times should be designed to link with those flights. If travel is primarily local (*i.e.*, to and from the hub), there should be at least one morning flight in each direction and one late-afternoon or evening flight in each direction.

§ 398.8 Number of intermediate stops.

(a) Except in Alaska, no more than one intermediate stop is permitted in providing essential air service between the eligible place and its hub, unless otherwise agreed to with the community. In cases where an eligible place receives service to two hubs, however, more than one intermediate stop is permitted between that place and its secondary hub.

(b) In Alaska, more than one intermediate stop is permitted if required by low traffic levels at the eligible place or by the long distance between the eligible place and its hub.

(c) The Department may specify non-stop service when necessary to make the service viable.

(d) Where an eligible place normally is an intermediate stop that shares available capacity with another place, it is the policy of the Department either to require additional capacity (more flights or larger aircraft) between the eligible place and its hub or to specify some turnaround operations on that route segment.

§ 398.9 Load factor standards.

The load factor standards used in this part may be raised for individual eligible places under either of the following circumstances:

(a) The place is served by the carrier as part of a linear route; or

(b) It would be in the interest of the community, the carrier, or the general public to raise the load factor standard for that place.

§ 398.10 Overflights.

The Department considers it a violation of 49 U.S.C. 41732 and the air service guarantees provided under this part for an air carrier providing essential air service to an eligible place to overfly that place, except under one or more of the following circumstances:

(a) The carrier is not compensated for serving that place and another carrier is providing by its flights the service required by the Department's essential air service determination for that place;

(b) Circumstances beyond the carrier's control prevent it from landing at the eligible place;

(c) The flight involved is not in a market where the Department has determined air service to be essential; or

(d) The eligible place is a place in Alaska for which the Department's essential air service determination permits the overflight.

§ 398.11 Funding reductions.

(a) If, in any fiscal year, appropriations for payments to air carriers remain at or below the amounts estimated as necessary to maintain subsidy-supported essential air service at the places receiving such service, and Congress provides no statutory direction to the contrary, appropriations shall not be available for essential air service to otherwise eligible places within the 48 contiguous States and Puerto Rico that have a rate of subsidy per passenger in excess of \$200.00, or are located:

(1) Less than 70 highway miles from the nearest large or medium hub airport;

(2) Less than 55 miles from the nearest small hub airport; or

(3) Less than 45 highway miles from the nearest nonhub airport that has enplaned, on certificated or commuter carriers, 100 or more passengers per day in the most recent year for which the Department has obtained complete data.

Pt. 399

(b) The rate of subsidy per passenger shall be calculated by dividing the annual subsidy in effect as of July 1 of the prior fiscal year by the total origin-and-destination traffic during the most recent year for which the Department has obtained complete data.

PART 399—STATEMENTS OF GENERAL POLICY

Subpart A—Applicability and Effects of Policy Statements

Sec.

- 399.1 Applicability.
- 399.2 Exclusions.
- 399.3 Statements in other Board documents.
- 399.4 Nature and effect of policy statements.
- 399.5 Arrangement of policy statements.

Subpart B—Policies Relating to Operating Authority

- 399.10–399.11 [Reserved]
- 399.12 Negotiation by air carriers for landing rights in foreign countries.
- 399.13–399.17 [Reserved]
- 399.18 Maximum duration of fixed-term route authorization granted by exemption; renewal of such authority.
- 399.19 [Reserved]
- 399.21 Charter exemptions (except military).

Subpart C—Policies Relating to Rates and Tariffs

- 399.30 Definitions.
- 399.31 Standard industry fare level.
- 399.32 Zone of limited suspension for domestic passenger fares.
- 399.33 Additional fare flexibility.
- 399.34 Intra-Hawaii and Intra-Puerto Rico/Virgin Islands fare flexibility.
- 399.35 Special tariff permission.
- 399.36 Unreasonable discrimination.
- 399.37 Joint fares.
- 399.39 Equipment purchase deposits.
- 399.40 Tariffs for domestic air transportation on or after January 1, 1983.
- 399.41 Zones of limited suspension for international cargo rates.
- 399.42 Flight equipment depreciation and residual values.
- 399.43 Treatment of leased aircraft.
- 399.44 Treatment of deferred Federal income taxes for rate purposes.

EXAMPLE OF SIFL ADJUSTMENT

Subpart D [Reserved]

14 CFR Ch. II (1–1–14 Edition)

Subpart E—Policies Relating to Hearing Matters

- 399.60 Standards for determining priorities of hearing.
- 399.61 Presentations of public and civic bodies in route proceedings.
- 399.62 Target dates in hearing cases.
- 399.63 Role of staff in route proceedings.

Subpart F—Policies Relating to Rulemaking Proceedings

- 399.70 Cross-references to the Office of the Secretary's Rulemaking Procedures.
- 399.73 Definition of small business for Regulatory Flexibility Act.

Subpart G—Policies Relating to Enforcement

- 399.80 Unfair and deceptive practices of ticket agents.
- 399.81 Unrealistic or deceptive scheduling.
- 399.82 Passing off of carrier identity by affiliation between carriers.
- 399.83 Unfair or deceptive practice of air carrier, foreign air carrier, or ticket agent in orally confirming to prospective passenger reserved space on scheduled flights.
- 399.84 Price advertising and opt-out provisions.
- 399.85 Notice of baggage fees and other fees.
- 399.86 Payments for non-air transportation services for air cargo.
- 399.87 Baggage allowances and fees.
- 399.88 Prohibition on post-purchase price increase.
- 399.89 Disclosure of potential for price increase before payment.

Subpart H—Other Policies Relating to Interests, Activities, and Relationships of Air Carriers

- 399.91 Air carrier participation in programs of technical assistance to airlines of less developed countries.

Subpart I—Policies Relating to Disclosure of Information

- 399.101 Public release of Board decisions in cases where the action of the Board is subject to the review or approval of the President.

Subpart J—Policies Relating to Federal Preemption of State Economic Regulations

- 399.111 All operations of federally authorized carriers to be regulated by the Board.

Subpart K—Policies Relating to Certificate Duration

399.120 Duration of certificates in limited-entry markets.

AUTHORITY: 49 U.S.C. 41712

SOURCE: PS-21, 29 FR 1446, Jan. 29, 1964, unless otherwise noted.

Subpart A—Applicability and Effects of Policy Statements

§ 399.1 Applicability.

All statements of general policy adopted by the Board for the guidance of the public will be published in this part, except as provided in § 399.2.

§ 399.2 Exclusions.

The following types of policies are generally not included in this part:

- (a) Policies relating solely to the internal management of the Board;
- (b) Policies requiring secrecy in the public interest or in the interest of national defense;
- (c) Policies that are repetitive of section 102 of the Act;
- (d) Policies that are fully expressed in a procedural or substantive rule of the Board, or in any opinion, decision, order, certificate, permit, exemption, or waiver of the Board;
- (e) Expressions of encouragement or admonition to industry to follow a certain course of action;
- (f) Positions on legislative items and on other matters that are outside the scope of the Board's current statutory powers and duties.

[PS-21, 29 FR 1446, Jan. 29, 1964, as amended by PS-63, 40 FR 6643, Feb. 13, 1975]

§ 399.3 Statements in other Board documents.

No statement contained in any Board opinion, decision, order, certificate, permit, exemption, or waiver shall be considered a statement of policy within the meaning of this part, even though such statements may constitute a precedent in future cases or declare future policy to be followed in like cases. Similarly, a denial by the Board or relief sought, or statements of the Board's reasons for failure to issue a rule upon which rulemaking proceedings have been commenced shall

not be considered statements of policy, except to the extent that it is specifically stated that such denial or failure is based upon a policy thereafter to be followed.

§ 399.4 Nature and effect of policy statements.

Policy statements published in this part will be observed by the Board until rescinded, but any policy may be amended from time to time as experience or changing conditions may require. Changes in policy may be made with or without advance notice to the public and will become effective upon publication in the FEDERAL REGISTER unless otherwise provided. If it appears to the Board, in its consideration of any matter before it, that the application of a policy published in this part would run counter to an express provision of law or policy enunciated by Congress in the Act, the published policy shall not be applicable to such matter.

§ 399.5 Arrangement of policy statements.

The statements of general policy relating to the various duties and functions of the Board are grouped according to subject matter in the following subparts; the titles of the subparts indicate the general subject matter included therein.

Subpart B—Policies Relating to Operating Authority

§§ 399.10-399.11 [Reserved]

§ 399.12 Negotiation by air carriers for landing rights in foreign countries.

(a) It is the policy of the Board (jointly with the Department of State) that, as a general rule, landing rights abroad for United States flag air carriers will be acquired through negotiation by the U.S. Government with foreign governments rather than by direct negotiation between an air carrier and a foreign government.

(b) It is corollary to the foregoing policy that no United States air carrier may avail itself of representations by one foreign government to further its

§§ 399.13–399.17

interest with another foreign government, especially with respect to landing rights, except insofar as such representations have been specifically authorized by the U.S. Government.

§§ 399.13–399.17 [Reserved]

§ 399.18 **Maximum duration of fixed-term route authorization granted by exemption; renewal of such authority.**

It is the policy of the Board to limit the duration of exemptions which authorize fixed-term route service to a maximum period of two years, and to entertain requests for renewal of such authority only when incorporated in a duly filed application for substantially equivalent certificate authority under section 401 of the Act. (See §377.10(c) of this chapter (Special Regulations).)

[PS–21, 29 FR 1446, Jan. 29, 1964, as amended at 65 FR 6457, Feb. 9, 2000]

§ 399.19 [Reserved]

§ 399.21 **Charter exemptions (except military).**

In deciding applications for exemptions from section 41102 of Title 49 of the United States Code by air carriers seeking to perform charter service in air transportation, we will give primary weight to the chartering public's own assessment of the air carrier services that best meet its transportation needs. Therefore, we will not, as a general rule, consider as relevant to our decision on such applications, objections based upon (1) offers by the objectors to perform the charter service, and/or (2) estimates of revenue or traffic diversion, unless in the latter case the objectors demonstrate that the diversion resulting from grant of the exemption would threaten their ability to fulfill their certificate obligations.

[PS–78, 43 FR 31886, July 24, 1978, as amended at 60 FR 43531, Aug. 22, 1995]

Subpart C—Policies Relating to Rates and Tariffs

§ 399.30 **Definitions.**

As used in this subpart:

DPFI formula fare means the trunk coach formula fare on July 1, 1977, as established by the Board in Phase 9 of

14 CFR Ch. II (1–1–14 Edition)

the Domestic Passenger Fares Investigation (Docket 21866–9).

SIFL means the standard industry fare level, as set forth in § 399.31.

[PS–92, 45 FR 24118, Apr. 9, 1980]

§ 399.31 **Standard industry fare level.**

(a) *Generally.* Except as set forth in paragraph (d) of this section, the standard industry fare level (“SIFL”) for coach/standard service in a market is equal to the predominant fare in effect in that market on July 1, 1977, as adjusted by the Board for cost increases.

(b) *Predominant fare.* For each market, the predominant fare in effect on July 1, 1977, is presumed to be as set forth below. The presumption may be rebutted, however, by showing that more passengers used a higher fare.

(1) For U.S. Mainland-Puerto Rico/Virgin Islands markets where the Board has specified day-of-week fare differentials: the peak-season midweek fare appearing in tariffs in effect on July 1, 1977.

(2) For U.S. Mainland-Puerto Rico/Virgin Islands markets where the Board has specified only seasonal fare differentials: the off-peak-season fare appearing in tariffs in effect on July 1, 1977.

(3) For U.S. Mainland-Hawaii markets: the peak-season second class fare appearing in tariffs in effect on July 1, 1977.

(4) For all other interstate and overseas markets: the lowest unrestricted fare in effect on July 1, 1977.

(c) *Adjustments for cost increases.* The Board adjusts the SIFL at least once every 6 months by the percentage change, since the previous adjustment, in the actual operating cost per available seat-mile for interstate and overseas transportation combined. The method of adjustment is illustrated in the example set out at the end of this subpart.

(d) *Intrastate markets in California, Florida, and Texas.* For each of these markets, the SIFL is equal to the level that it would be if the market were an interstate one whose predominant fare on July 1, 1977, was the DPFI formula fare.

(e) *Intra-Hawaii markets.* For intra-Hawaii markets, the Board's flexibility zones are based not on the SIFL, but on

the standard Hawaiian fare level ("SHFL"), which is equal to 110 percent of the first class fare in effect on July 1, 1977, as adjusted by the Board for cost increases.

[PS-92, 45 FR 24118, Apr. 9, 1980, as amended by PS-95, 45 FR 42255, June 24, 1980; PS-96, 45 FR 48604, July 21, 1980]

§ 399.32 Zone of limited suspension for domestic passenger fares.

(a) *Applicability.* This section sets forth the Board's policy on passenger fares for scheduled service by certificated air carriers in the following areas, except to the extent that greater flexibility is set forth in § 399.33:

(1) Within the 48 contiguous States and the District of Columbia ("the Mainland"); and

(2) Between the Mainland and Puerto Rico, the Virgin Islands, Hawaii, or Alaska.

(b) *Downward flexibility.* Each carrier may set fares in each market at any amount below the SIFL. The Board will not suspend such a fare on the ground that its level is unreasonable, except in the following extraordinary circumstances:

(1) There is a high probability that the fare would be found to be unlawful after investigation;

(2) There is a substantial likelihood that the fare is predatory so that there would be an immediate and irreparable harm to competition if the fare were allowed to go into effect;

(3) The harm to competition is greater than the injury to the traveling public if the proposed fare were unavailable; and

(4) The suspension is in the public interest.

(c) [Reserved]

(d) *Upward flexibility.* Each carrier may set fares above the SIFL as follows, and where they are so set, the Board will not suspend them on the grounds that their level is unreasonable except upon a clear showing of abuse of market power that the Board does not expect to be corrected through marketplace forces:

(1) For service on the Mainland: Up to 30 percent above the sum of the SIFL plus \$14. Each time after January 13, 1981, that the Board adjusts the SIFL for cost increases in accordance

with § 399.31(c), it will adjust the \$14 figure by the same percentage rounded to the nearest whole dollar. The Board order announcing the adjustment will be published in the FEDERAL REGISTER and served on all certificated carriers, and copies will be available through the Domestic Fares and Rates Division, Bureau of Domestic Aviation, Civil Aeronautics Board, Washington, D.C. 20428.

(2) For service between the Mainland and Puerto Rico, the Virgin Islands, Hawaii, or Alaska: Up to 30 percent above the SIFL.

(e) *Fares above the zone.* Tariff filings that state fares above the applicable zone must include the data and information set forth in § 221.165 of this chapter. For peak fares, this must include a description of the carrier's off-peak fares that are available in the market. The Board will suspend a fare above the zone that it finds not to be justified by cost or competitive factors.

[PS-94, 45 FR 40973, June 17, 1980, as amended by PS-96, 45 FR 48604, July 21, 1980; PS-101, 46 FR 11809, Feb. 11, 1981]

§ 399.33 Additional fare flexibility.

For scheduled service in the areas set forth in § 399.32(a), certificated air carriers have the following fare flexibility in addition to that set forth in § 399.32:

(a) *First class.* Carriers may without restriction set the level of first class fares.

(b) *Small aircraft.* Carriers may without restriction set the level of fares for service with aircraft designed to have a maximum passenger capacity of 60 or fewer seats.

(c) *Through service and on-line connecting service.* For through service and on-line connecting service, carriers may set their fares up to the sum of the local fares minus one tax-rounded coach ceiling terminal charge for each local fare after the first, if that level is higher than the ceiling set forth in § 399.32(d). The Board will not suspend such a fare on the ground that its level is unreasonable except upon a clear showing of abuse of market power that

§ 399.34

14 CFR Ch. II (1-1-14 Edition)

the Board does not expect to be corrected through marketplace forces.

[PS-92, 45 FR 24119, Apr. 9, 1980, as amended by PS-94, 45 FR 40974, June 17, 1980; PS-96, 45 FR 48604, July 21, 1980]

§ 399.34 Intra-Hawaii and Intra-Puerto Rico/Virgin Islands fare flexibility.

For scheduled service within Hawaii, and within and between Puerto Rico and the Virgin Islands, certificated air

carriers have the fare flexibility set forth in §§ 399.32 and 399.33, except that:

(a) Instead of the limits set forth in § 399.32(d), the upper limit of the zone for Puerto Rico/Virgin Islands is 30 percent above the SIFL, and for Hawaii is 30 percent above the SHFL; and

(b) The fare flexibility set forth in § 399.33(a) (first class) does not apply to service within Hawaii.

APPENDIX A TO § 399.34—UNITED STATES-PUERTO RICO ENTITY
[Normal fares in selected markets—comparison with SIFL]

Market	Rate-making mileage	DPFI formula fare July 1977	July 1977 normal fare level				DPFI formula May 1980	May 1980 normal fare level					
			Peak		Offpeak			Peak		Offpeak			
			Mid week	Week end	Mid week	Week end		Mid week	Week end	Mid week	Week end		
San Juan:													
Atlanta	1,547	\$130.81	.....	.....	.....	.....	\$203.53	.....	.....	.....	.....	.....	.....
Eastern	.....	.....	\$113	\$113	\$107	\$107	.....	\$176	\$176	\$166	\$166	.....	.....
Boston	1,674	139.04	.....	.....	.....	.....	216.33	.....	.....	.....	.....	.....	.....
American	.....	.....	.....	.....	.....	.....	.....	209	218	199	209	.....	.....
Eastern	.....	.....	122	128	116	122	.....	209	218	198	209	.....	.....
Chicago	2,072	164.83	.....	.....	.....	.....	256.45	.....	.....	.....	.....	.....	.....
American	.....	.....	149	149	143	143	.....	232	232	222	222	.....	.....
Eastern	.....	.....	149	149	143	143	.....	232	232	222	222	.....	.....
Miami	1,045	97.09	.....	.....	.....	.....	151.06	.....	.....	.....	.....	.....	.....
American	.....	.....	.....	.....	.....	.....	.....	121	131	113	121	.....	.....
Delta	.....	.....	.....	.....	.....	.....	.....	121	131	113	121	.....	.....
Eastern	.....	.....	78	84	72	78	.....	121	131	112	121	.....	.....
Pan Am (National)	.....	.....	78	84	72	78	.....	122	122	122	122	.....	.....
New York	1,597	134.05	.....	.....	.....	.....	208.57	.....	.....	.....	.....	.....	.....
American	.....	.....	108	114	102	108	.....	175	196	175	196	.....	.....
Eastern	.....	.....	108	114	102	108	.....	175	196	175	196	.....	.....
Pan Am	.....	.....	.....	.....	.....	.....	.....	147	147	147	147	.....	.....
Philadelphia	1,576	132.69	.....	.....	.....	.....	206.45	.....	.....	.....	.....	.....	.....
American	.....	.....	115	121	109	115	.....	197	208	187	197	.....	.....
Eastern	.....	.....	115	121	109	115	.....	175	196	175	196	.....	.....
Washington	1,565	131.97	.....	.....	.....	.....	205.34	.....	.....	.....	.....	.....	.....
American	.....	.....	114	120	108	114	.....	187	197	176	187	.....	.....
Eastern	.....	.....	114	120	108	114	.....	195	206	184	195	.....	.....
Pan Am (National)	.....	.....	.....	.....	.....	.....	.....	147	147	147	147	.....	.....

APPENDIX B TO § 399.34—SELECTED FARE AND SERVICE DATA FOR SEATTLE-ALASKA MARKETS

Market	Rate-making mileage	Actual July 1977 Y fare	DPFI formula fare May 1980 ¹	SIFL formula fare May 1980 ¹⁰	Y fare as of June 1980 ²		O. & D. pas-sengers Y/E Aug. 30, 1979 ³	Carriers providing single plane service June 1980 ⁴
					Alaska Airlines	Wien Alaska		
Seattle:								
Anchorage	1,448	\$119.00	\$193.52	\$185.14	\$159	\$159	196,630	AS/NW/WA/WC
Cordova	1,293	118.62	176.85	184.55	178	.....	4,330	AS
Fairbanks	1,533	131.00	201.85	203.81	204	204	44,910	AS/NW/WC
Gustavus (Via JNU)	950	109.62	140.74	170.55	138	.....	1,340	AS
Juneau	909	90.62	137.04	140.99	141	141	40,110	AS/WC
Ketchikan	680	71.62	112.96	111.43	112	112	34,970	AS/WC
Petersburg (Via KTN)	790	89.22	124.07	138.81	138	.....	6,870	AS
Sitka	862	85.62	131.48	133	133.21	.....	17,240	AS
Wrangell (Via KTN)	762	89.22	121.30	138.81	138	.....	4,120	AS
Yakutat	1,092	117.62	155.56	182.99	175	.....	1,500	AS
Kenai ⁵	1,468	124.28	198.37	193.35	.....	159	2,470	WC
King Salmon ⁶	1,603	167.94	209.26	261.28	.....	200	4,090	WC
Prudhoe Bay ⁷	1,802	190.74	229.63	296.75	.....	273	960	WC
Kodiak ⁸	1,439	119.00	192.59	185.14	.....	155	11,140	WC

APPENDIX B TO § 399.34—SELECTED FARE AND SERVICE DATA FOR SEATTLE-ALASKA MARKETS—
Continued

Market	Rate-making mile-age	Actual July 1977 Y fare	DPFI formula fare May 1980 ¹	SIFL formula fare May 1980 ¹⁰	Y fare as of June 1980 ²		O. & D. pas-sengers Y/E Aug. 30, 1979 ³	Carriers providing single plane service June 1980 ⁴
					Alaska Airlines	Wien Alaska		
Homer ⁹	1,449	143.40	193.52	223.10	.....	159	1,250	WC

¹ \$25.14 plus 13.75¢ per mile (0–500); 10.49¢ per mile (501–1500); 10.08¢ per mile (1501 and over). See Order 80–4–211.
² Domestic Tariffs.
³ O. & D. Origin Destination Survey of Airline Passenger Traffic, Table 8, 12 months ended September 30, 1979.
⁴ AS=Alaska Airlines; NW=Northwest Orient Airlines; WA=Western Airlines; WC=Wien Air Alaska.
⁵ Via Anchorage (\$15.28).
⁶ Via Anchorage (\$48.94).
⁷ Via Fairbanks (\$59.74).
⁸ Local WA Fare.
⁹ Via Kodiak (\$24.40).
¹⁰ July 1977 fare increased by cumulative adjustment factor of 1.5558% per Order 80–4–211.

APPENDIX C TO § 399.34—ADJUSTMENT OF THE INTRA-HAWAIIAN FARE LEVEL JULY 1, 1977, TO REFLECT COST AT 12.35 PERCENT RETURN

	Regulatory actual Y.E. March 1977			Cost inflation adjusted to July 1, 1977			July 1, 1977, at 12.35 pct R.O.I.
	Aloha	Hawaiian	Total	Aloha	Hawaiian	Total	
RPM's (000)	321,578	404,793	726,371	321,578	404,793	726,371	726,371
ASM's (000)	489,128	638,050	1,127,178	489,128	638,050	1,127,178	1,127,178
Load Factor (percent)	65.75	63.44	64.44	65.75	63.44	64.44	64.4
Yield (dollars) ²	\$0.1427	\$0.1453	\$0.1441	\$0.1427	\$0.1453	\$0.1441	\$0.1589
Operating Revenue—Total	\$47,648	\$71,599	\$119,247	.....	.....	.....	.....
Passenger Related Revenue	\$46,301	\$59,942	\$106,243	\$46,301	\$59,942	\$106,243	\$116,966
Operating Expense—Total	\$45,195	\$68,836	\$114,031	.....	.....	.....	.....
Passenger Related Expenses	\$43,858	\$57,501	\$101,359	¹ \$45,937	\$59,013	¹ \$104,950	\$104,950
Operating Profit—Passenger	\$2,443	\$2,441	\$4,884	\$364	\$929	\$1,293	\$12,016
Interest Expense	\$741	\$2,583	\$3,324	\$741	\$2,583	\$3,324	\$3,324
Earnings Before Tax	\$1,702	\$(142)	\$1,560	\$(377)	\$(1,654)	\$(2,031)	\$8,692
Tax at 48 Percent	\$817	\$68	\$749	\$181	\$794	\$975	\$4,172
Net Income	\$885	\$(74)	\$811	\$(196)	\$(860)	\$(1,056)	\$4,520
Return Element	\$1,626	\$2,509	\$4,135	\$545	\$1,723	\$2,268	\$7,844
Investment	\$16,192	\$47,326	\$63,518	\$16,192	\$47,326	\$63,518	\$63,518
Return on Investment (percent)	10.04	5.30	6.51	3.37	3.64	3.57	12.35
Increase Factor ³	.....	.....	.....	.....	.....	.....	10.27

¹ Cost inflation to July 1, 1977; 1.047 percent for Aloha, 1.026 for Hawaiian. The differing rates for the two carriers, having equivalent aircraft and duplicate route structures, is due primarily to a shift by Hawaiian to larger DC–9–50 aircraft starting in the fourth quarter of 1976.
² Passenger revenue divided by RPM's.
³ Passenger yield at 12.35 percent return divided by actual passenger yield for the year ended March 1977.

[PS–96, 45 FR 48604, July 21, 1980]

§ 399.35 Special tariff permission.

(a) *Definition.* As used in this section, to grant STP means to approve a carrier's application for Special Tariff Permission to file a tariff on less than the statutory notice set forth in § 221.160(a) of this chapter.

(b) *Lower fares, rates, and charges.* It is the policy of the Board to grant STP for tariffs that state lower fares, rates, or charges and any rules affecting only those lower fares, rates, or charges, except that:

(1) The Board will not grant STP to match a tariff filed on statutory notice; and

(2) The Board will not grant STP if the proposed fares, rates, charges, or rules raise significant questions of lawfulness, that is, could reasonably be expected to be found unjust or unreasonable, unjustly discriminatory, unduly preferential, unduly prejudicial, or predatory, under current statutory or Board guidelines. In these situations, if the carrier files the tariff on statutory notice and at the same time applies for

§ 399.36

STP to advance the tariff's effective date, the Board will use its best efforts to act within 15 days to grant or deny STP.

(c) *Higher fares or rates.* For tariffs that state higher fares or rates, and any rules affecting only those fares or rates, the Board's policy on STP is, except in unusual or emergency circumstances:

(1) To grant STP if the resulting fares or rates are within a statutory or Board-established zone of fare or rate flexibility; and

(2) Otherwise, to deny STP.

[PS-94, 45 FR 40974, June 17, 1980, as amended by PS-109, 48 FR 4279, Jan. 31, 1983]

§ 399.36 Unreasonable discrimination.

(a) As used in this section:

(1) *Unreasonable discrimination* means unjust discrimination or unreasonable preference or prejudice; and

(2) *Rate* means rate, fare, or charge.

(b) Except in unusual circumstances or as provided in paragraph (c) of this section, the Board will find a rate for domestic air transportation to constitute unreasonable discrimination only if:

(1) There is a reasonable probability that the rate will result in significant long-run economic injury to passengers or shippers;

(2) The rate is in fact discriminatory according to a reasonable cost allocation or other rational basis;

(3) The rate does not provide transportation or other statutorily recognized benefits that justify the discrimination; and

(4) Actual and potential competitive forces cannot reliably be expected to eliminate the undesirable effects of the discrimination within a reasonable period.

(c) A rate that discriminates on the basis of the status of the traffic carried will not be presumed to be unreasonably discriminatory, unless the use of the status categories in question is contrary to established national anti-discrimination policy.

[PS-93, 45 FR 36062, May 29, 1980]

§ 399.37 Joint fares.

There should be joint fares in all markets over all routings within the

14 CFR Ch. II (1-1-14 Edition)

contiguous 48 states and the District of Columbia as follows:

(a) *Level.* The level shall not exceed the sum of the maximum local fares permitted by this subpart minus one tax-rounded coach ceiling terminal charge for each interline connection, and in any event shall not exceed the sum of the actual local fares.

(b) *Division.* Joint fares shall be divided according to the relative costs of the mileage flown by each carrier participating in the interline movement. However, where a joint fare is equal to the sum of the actual local fares, each carrier shall get the local fare as its share.

[PS-92, 45 FR 24119, Apr. 9, 1980, as amended by PS-95, 45 FR 42255, June 24, 1980]

§ 399.39 Equipment purchase deposits.

Equipment purchase deposits are advance payments made by air carriers to manufacturers for the purchase of equipment to be delivered in the future, or funds segregated by air carriers for this purpose. It is the policy of the Board not to recognize equipment purchase deposits in an air carrier's investment base for ratemaking purposes. When equipment is acquired by an air carrier and placed in air-transport service, the Board will recognize in the air carrier's investment base interest on purchase deposits on such equipment capitalized and amortized in accordance with the Uniform System of Accounts and Reports for Certificated Air Carriers (part 241 of this chapter).

[PS-32, 32 FR 5370, Mar. 30, 1967]

§ 399.40 Tariffs for domestic air transportation on or after January 1, 1983.

The Board will not approve or accept any tariff filings for interstate of overseas air transportation to be performed on or after January 1, 1983. Any tariffs for such transportation that do not specify an earlier expiration date shall expire at midnight on December 31, 1982.

[PS-107, 47 FR 14893, Apr. 7, 1982]

§ 399.41 Zones of limited suspension for international cargo rates.

(a) *Applicability.* This section states the Board's policy for suspending rate changes for the transportation of property in foreign air transportation. It does not affect the Board's authority to suspend any rate as unjustly discriminatory, unduly preferential, or unduly prejudicial. This section applies to rate changes by all direct air carriers and direct foreign air carriers.

(b) *Standard foreign rate levels.* For each market in foreign air transportation, the standard foreign rate level for the carriage of property shall be the bulk general commodity rates in effect in that market on April 1, 1982, as adjusted in accordance with paragraph (f) of this section. However, the general commodity rate for shipments larger than 500 kg. shall be deemed to be the same as the 500 kg. rate for the purposes of this paragraph, regardless of any different rate in effect in the market.

(c) *Ceilings of limited rate suspension.* Except as provided in paragraph (d) of this section, the Board will not suspend as unreasonable any proposed rate for foreign air transportation of property equal to or less than the following levels:

(1) For all bulk rates (GCR's and SCR's) in the Atlantic region, 20 percent above the standard foreign rate level.

(2) For all bulk rates (GCR's and SCR's) in the Pacific region, 15 percent above the standard foreign rate level.

(3) For all bulk rates (GCR's and SCR's) in the Western Hemisphere region (except Mexico and Canada), 5 percent above the standard foreign rate level.

(4) For all bulk rates (GCR's and SCR's) in Canada/Mexico transborder markets, 10 percent above the standard foreign rate level for the Western Hemisphere.

(5) For all container rates, no maximum level.

(d) *Extraordinary circumstances.* The Board may suspend any tariff if it finds that:

(1) The suspension is in the public interest because of unreasonable regulatory action by a foreign government

with respect to rate proposals of an air carrier, or

(2) All of the following extraordinary circumstances are present:

(i) It is highly probable that the fare would be found unreasonable after investigation;

(ii) There is a substantial likelihood of immediate and irreparable harm to the public if the rate is allowed to go into effect; and

(iii) The suspension is required by the public interest.

(e) *Burden of proof.* Persons requesting tariff suspension under paragraph (d) of this section shall have the burden of producing convincing evidence that the conditions of that paragraph are present.

(f) *Standard foreign rate level adjustments.* (1) The Board will periodically adjust the standard foreign rate levels to reflect the percentage change in average operating costs per available ton-mile since the previous adjustment.

(2) Costs will be averaged for three regions—the Atlantic, the Pacific, and Western Hemisphere—and applied equally among all markets in each region.

(3) Cost computations will be based on scheduled freighter and combination service by U.S. air carriers.

(4) Adjustments will be made on April 1 and October 1 of each year, or more frequently as the Board finds appropriate.

(5) In computing costs under this section, the Board will make no adjustments for load factors, aircraft utilization, or other matters due to operational decisions made solely by carrier management. However, the Board retains the discretion to normalize costs for strikes, mandatory aircraft groundings, and other occurrences not solely due to management decisions.

(g) *Definitions.* For the purpose of this section:

(1) *GCR* means general commodity rate.

(2) *SCR* means specific commodity rate.

(3) *Container rate* means any rate specifically applicable to property tendered to the carrier in a unit load device.

[PS-109, 48 FR 4279, Jan. 31, 1983]

§ 399.42

14 CFR Ch. II (1-1-14 Edition)

§ 399.42 Flight equipment depreciation and residual values.

For rate-making purposes, for air carriers receiving subsidy under section 406 of the Act, it is the policy of the Board that flight equipment depreciation will be based on the conventional straight-line method of accrual, employing the service lives and residual values set forth below:

[In percent]

	Service life in years	Residual value as percent of cost
Turbofan equipment:		
4-engine	14	2
3-engine	14	2
2-engine	14	2
Turbojet equipment:		
4-engine	10	5
2-engine	10	5
Turboprop equipment:		
4-engine	12	5
2-engine	10	15
Wide-body equipment:		
4-engine	16	10
3-engine	16	10

[PS-54, 38 FR 24643, Sept. 10, 1973, as amended by PS-99, 45 FR 82625, Dec. 16, 1980]

§ 399.43 Treatment of leased aircraft.

In determining the appropriate treatment of leased aircraft for ratemaking purposes, it is the Board's policy to recognize actual rental expenses. In unusual circumstances where the leased aircraft value (determined on a constructive depreciated basis) in relation to net book value of owned aircraft operated by the same air carrier is significantly in excess of the ratio for the

aggregate of the domestic trunklines and local service carriers (computed on the same basis), a reasonable profit element may be added which shall reflect the additional risks of operations with the leased aircraft, to the extent that such risks are not compensated by the return on investment. Such profit element would be determined by applying the standard rate of return, less 6 percentage points, to the value of the leased aircraft, on a constructive depreciated basis, to the extent the ratio of such value to depreciated cost of owned aircraft plus the value of leased aircraft exceeds the average for the domestic air carriers. Rental cost plus allowable profit, if any, will not be recognized in amounts exceeding depreciation plus return on investment computed as if the aircraft had been purchased by the carrier.

[PS-44, 36 FR 7229, Apr. 16, 1971]

§ 399.44 Treatment of deferred Federal income taxes for rate purposes.

For rate-making purposes other than the determination of subsidy under section 406(b), it is the policy of the Board that Federal income tax expense should be based on the normal taxes that would be paid under the depreciation standards used for rate making, and that accumulated reserves for deferred taxes should be excluded from the recognized capitalization for rate-base purposes.

[PS-46, 36 FR 7232, Apr. 16, 1971]

EXAMPLE OF SIFL ADJUSTMENT

[Methodology for determining change in operating expense per available seat-mile]
[See footnotes at end of table]

Year ended September 1979	Trunks	Locals	Trunks plus locals	Total passenger/cargo ¹⁶
Total operating expense ¹ (millions)	\$16,455	\$2,522	\$18,977	\$19,384
Less:				
All-cargo expenses ²	269	.....	269	269
Belly offset ³	952	153	1,105	1,153
Nonscheduled ⁴	141	46	187	205
Transport related ⁵	379	31	410	416
Plus: Capitalized lease adjustment ¹⁰	119	2	121	121
Passenger operating expense	14,833	2,294	17,127	17,462
Passenger fuel cost ¹¹ .....	.....	.....	4,103	N.A.
Scheduled service ASM's (mils.)	281,671	33,051	314,722	318,459
Passenger nonfuel operating expense per ASM (dollars) .....	.....	.....	.04138	N.A.
Passenger fuel expense per ASM (dollars) .....	.....	.....	.01304	N.A.

Office of the Secretary, DOT

Pt. 399, Subpt. C, Example

[Methodology for determining change in operating expense per available seat-mile]
[See footnotes at end of table]

Year ended September 1979	Trunks	Locals	Trunks plus locals	Total pas- senger/ cargo ¹⁶
Total passenger expense per ASM (dollars) .....	.....	.....	.05442	.05483
Year ended September 1978				
Total operating expense ¹ (millions)	14,081	2,033	16,114	16,448
Less:				
All-cargo expenses ²	282	.....	282	282
Belly offset ³	869	152	1,021	1,065
Nonscheduled ⁴	193	53	246	256
Transport related ⁵	419	30	449	454
Plus: Capitalized lease adjustment ¹⁰	78	1	79	79
Passenger operating expense	12,396	1,799	14,195	14,470
Passenger fuel cost ¹¹ .....	.....	.....	3,129	N.A.
Scheduled service ASM's (mils.)	262,068	27,067	289,135	292,255
Passenger nonfuel operating expense per ASM (dollars) .....	.....	.....	.03827	N.A.
Passenger fuel expense per ASM (dollars) .....	.....	.....	.01082	N.A.
Total passenger expense per ASM (dollars) .....	.....	.....	.04909	.04951
Percent change in nonfuel operating expense per ASM (percent) .....	.....	.....	8.13	N.A.
Projected change in nonfuel expense from April 1, 1979 to April 1, 1980 ⁶ .....	.....	.....	8.13	N.A.
Estimated change in fuel cost, year ended September 1979 average to April 1, 1980 ¹⁴ .....	.....	.....	73.06	N.A.
Nonfuel operating expense per ASM at April 1, 1980 ⁷ (dollars) .....	.....	.....	.04474	N.A.
Fuel expense per ASM at April 1, 1980 ⁷ (dollars) .....	.....	.....	.02257	N.A.
Total expense per ASM at April 1, 1980 ⁷ (dollars) .....	.....	.....	.06731	¹⁵ .06782
Year ended March 1977				
Total operating expense ¹ (millions)	\$11,726	\$1,520	\$13,316	\$13,601
Less:				
All-cargo expense ²	238	.....	238	238
Belly offset ³	729	96	825	865
Nonscheduled ⁴	220	35	225	266
Transport related ⁵	427	111	538	554
Passenger operating expense	10,112	1,348	11,460	11,678
Passenger fuel cost	2,190	230	2,420	N.A.
Scheduled service ASM's (mils.)	239,593	23,428	263,021	265,837
Operating expense per ASM (dollars) .....	.04221	.05754	.04357	.04393
Projected expense per ASM (dollars) as at July 1, 1977 ¹³ .....	.....	.....	.....	.04593
Projected operating expense per ASM as at April 1, 1980 (page 1) (dollars) .....	.....	.....	.....	.06782
Ceiling adjustment factor ⁸ (percent) .....	.....	.....	.....	47.66

D.P.F.I. formula effective July 15, 1977¹²:

Terminal charge	\$16.16
Plus .....	.0884/mile (0-500 miles).
Plus .....	.0674/mile (501-1,500 miles).
Plus .....	.0648/mile (over 1,500 miles).
Ceiling formula through April 30, 1980 ⁹ :	
Terminal charge	\$23.86
Plus .....	.1305/mile (0-500 miles).
Plus .....	.0995/mile (501-1,500 miles).
Plus .....	.0957/mile (over 1,500 miles).

¹ Total operating expense for all operations and service (in millions).

² Scheduled all-cargo operations expense.

³ Total scheduled-service cargo revenue, less scheduled all-cargo operations revenue, carried as a by-product in aircraft belly compartments. Includes freight, express, priority and non-priority U.S. mail, and excess baggage.

⁴ Total non-scheduled revenues times 0.95, assuming charter operations would only be conducted at a profit.

⁵ Total transport-related expense, less any excess of expense over total transport-related revenues.

⁶ We here project costs from April 1, 1979 (the midpoint of the data year ended September 1979) to April 1, 1980 the resultant increase factor effective through April 30, 1980.

⁷ Operating expense per ASM for year-ended September, 1979, times projected change.

⁸ Projected operating expense per ASM on April 1, 1980 divided by the operating expense as at July 1, 1977.

⁹ Adjustment results in a 2.5 percent increase in level over current January 1, 1980 factor.

¹⁰ Additional rental expense that would have been incurred had leases not been capitalized under FASB-13, less actual amortization of capitalized lease expense.

¹¹Total fuel cost, scheduled service, times complement of rate of All-Cargo expense to total Operating Expense.
¹²Order 77–7–26.
¹³Year ended March, 1977 cost per ASM, times cost escalation factor of 1.04543 (to July 5, 1977). See DPF1 workpapers, Y.E. March, 1977.
¹⁴Estimated average cost per gallon for the trunk plus local service carriers at April 1, 1980, divided by the average for the year ended September, 1979 (48.33¢).
¹⁵Change in Trunks plus Locals cost per ASM as at April 1, 1980, to year ended September, 1979 times total Psgr/Cargo cost for the year ended September, 1979.
¹⁶Includes Alaskan, Hawaiian and other regional carriers.

[PS–92, 45 FR 24119, Apr. 9, 1980]

Subpart D [Reserved]

Subpart E—Policies Relating to Hearing Matters

§ 399.60 Standards for determining priorities of hearing.

(a) *General.* This policy statement describes the general standards which will be used by the Board in determining the order in which it will designate for hearing those matters on its docket which are to be decided after notice and hearing. Among such matters are applications for certificates of public convenience and necessity or for foreign air carrier permits; applications under section 408 of the Act for approval of consolidations or acquisitions of control; complaint cases; and various rate-making proceedings.

(b) *Standards.* Matters will be assigned for hearing in accordance with the degree of relative priority which each matter is entitled to on the basis of the comparative public interest involved therein. Among other things, the Board will take into account:

- (1) Statutory requirements for preference or statutory limitations on the time within which the Board shall act;
- (2) The impact of delay on the public or particular persons;
- (3) The need for promptly securing compliance with the provisions of the Act;
- (4) The time for which the matter has already been pending and which would be required to dispose of it;
- (5) Whether the application requests renewal of an existing temporary authorization; and
- (6) In matters relating to operating authority:
 - (i) Whether a proposal might reduce subsidy or increase economy of operations;

(ii) Whether an application proposes new service;

(iii) The volume of traffic that might be affected by the grant or denial of the proposal;

(iv) The period that has elapsed since the Board considered the service needs of the places or areas involved; and

(v) The relative availability of necessary staff members of the carriers, communities and the Board, in the light of other proceedings already in progress, to handle the processing of the case.

Interested persons may urge upon the Board such considerations as they believe should lead it to accord a particular application a priority different from that which the Board has given it.

§ 399.61 Presentations of public and civic bodies in route proceedings.

For the purpose of implementing the Board's policy to provide for the exclusion of irrelevant, immaterial, or unduly repetitious evidence and otherwise to expedite route proceedings, and in light of experience, the following guidelines are hereby established:

(a) Public and civic bodies which represent the same geographic area or community should consolidate their presentation of evidence, briefs or oral argument to the examiner and the Board;

(b) A public body or a civic organization, or several such bodies or organizations whose presentation of evidence is consolidated, should keep to a minimum the number of witnesses used to present the factual evidence in support of the community's position;

(c) Exhibits offered in evidence by a public body or civic organization should be limited to evidence of the economic characteristics of the community and area involved, data as to

community of interest and traffic, evidence with respect to the sufficiency of existing service, and airport data, and should not include data relating to number of electricity, water and gas meters, telephones, schools, freight car loadings, building permits, sewer connections, or volume of bank deposits in the community.

§ 399.62 Target dates in hearing cases.

(a) *Applicability.* This section applies to initial and recommended decisions of administrative law judges, final decisions, and decisions on petitions for review or reconsideration in cases in which the Board has ordered a trial-type hearing before an administrative law judge.

(b) *Issuance of target dates.* In cases to which this section applies, the Board or the administrative law judge, as the situation calls for, shall issue a notice of the target date for the completion of the initial or recommended decision, final decision, or decision on a petition for review or reconsideration. The Board or the administrative law judge shall endeavor to render the pending decision not later than the target date.

(c) *Time for promulgating target dates.*

(1) In the case of initial, recommended, or final decisions, notice of target dates shall be issued, served, and filed within 20 days of the submission of closing briefs, or the conclusion of oral argument to the administrative law judge or the Board, as may be appropriate.

(2) In the case of petitions for review or for reconsideration, notices of target dates shall be issued, served, and filed within 20 days of the date for the filing of answers: *Provided*, That, in the case of petitions for reconsideration of Board decisions awarding new route authority, the Board shall, in lieu of issuing individual target dates, endeavor to render its decision no later than the day preceding the effective date of the new authority awarded.

[PS-71, 41 FR 41407, Sept. 22, 1976, as amended by PS-73, 42 FR 21611, Apr. 28, 1977]

§ 399.63 Role of staff in route proceedings.

(a) *General.* This policy statement establishes the standards applicable to

staff participation in oral hearing cases involving award of route authority.

(b) *Standards.* The staff's role during such hearings, primarily because it acts in the broad public interest, and not for a particular private or local interest, is to assure that essential evidence is introduced to resolve the public interest issues; that the evidence submitted by the parties is subject to adversary testing, and that decisional options are developed with the public interest in mind. In route cases designated by the Board that offer the opportunity for developing new policies to adapt to the administration of the Federal Aviation Act or that raise unusual evidentiary issues, a prehearing presentation by staff of decisional options will contribute to a better trial record, be consistent with traditional notions of fundamental fairness, better serve the Board's decisionmaking needs and ultimately serve the public interest. In any route case where the Board has not required the staff to participate by making a prehearing presentation, the staff shall present a prehearing presentation of decisional options if the administrative law judge finds that there exists unusual policy or evidentiary issues which clearly require such a presentation. We believe it is not desirable for the staff to advocate the adoption of a single decisional option at the outset of a case. Accordingly,

(1) In route cases designated by the Board that offer the opportunity for developing new policies, the staff shall make a prehearing presentation of the decisional options available, and describe the kinds of evidence needed or available to develop each option. The staff need not and should not be required to develop evidence on each option. In every case, after the close of the hearing, however, the staff shall advocate a position based upon one or more of the decisional options identified in its prehearing presentation or developed at trial.

(2) In any route case in which the administrative law judge finds that there exists unusual policy or evidentiary issues clearly requiring a prehearing presentation, the staff shall submit a prehearing statement of the decisional options available.

§ 399.70

(3) To the extent possible, the Board, in its instituting orders, will identify or designate the cases which involve the development of new policies or unusual evidentiary issues that will require the type of staff participation described in § 399.63(b)(1).

[PS-76, 43 FR 19354, May 5, 1978]

Subpart F—Policies Relating to Rulemaking Proceedings

§ 399.70 Cross-references to the Office of the Secretary's Rulemaking Procedures.

The rules and policies relating to the disposition of rulemaking petitions by the Department of Transportation Office of the Secretary are located in its rulemaking procedures contained in 49 CFR part 5. The criteria for identifying significant rules and determining whether a regulatory analysis will be performed are set forth in the Department's Regulatory Policies and Procedures, 44 FR 11034, February 26, 1979, and Executive Order 12866.

[Doc. No. OST-96-1429, 61 FR 29019, June 7, 1996]

§ 399.73 Definition of small business for Regulatory Flexibility Act.

For the purposes of the Department's implementation of chapter 6 of title 5, United States Code (Regulatory Flexibility Act), a direct air carrier or foreign air carrier is a small business if it provides air transportation only with small aircraft as defined in § 298.3 of this chapter (up to 60 seats/18,000 pound payload capacity).

[Doc. No. OST-96-1429, 61 FR 29019, June 7, 1996]

Subpart G—Policies Relating to Enforcement

§ 399.80 Unfair and deceptive practices of ticket agents.

It is the policy of the Department to regard as an unfair or deceptive practice or unfair method of competition the practices enumerated in paragraphs (a) through (m) of this section by a ticket agent of any size and the practice enumerated in paragraph (s) by a ticket agent that sells air transportation online and is not considered

14 CFR Ch. II (1-1-14 Edition)

a small business under the Small Business Administration's size standards set forth in 13 CFR 121.201:

(a) Misrepresentations¹ which may induce members of the public to believe that the ticket agent is an air carrier.

(b) Using or displaying or permitting or suffering to be used or displayed the name, trade name, slogan or any abbreviation thereof, of the ticket agent, in advertisements, on or in places of business, or on aircraft in connection with the name of an air carrier with whom it does business, in such manner that it may mislead or confuse the traveling public with respect to the agency status of the ticket agent.

(c) Misrepresentations as to the quality or kind of service, type or size of aircraft, time of departure or arrival, points served, route to be flown, stops to be made, or total trip-time from point of departure to destination.

(d) Misrepresentation as to qualifications of pilots or safety record or certification of pilots, aircraft or air carriers.

(e) Misrepresentations that passengers are directly insured when they are not so insured; for example, where the only insurance in force is that protecting the air carrier in event of liability.

(f) Misrepresentations as to fares and charges for air transportation or services in connection therewith.

(g) Misrepresentation that special discounts or reductions are available, when such discounts or reductions are not specific in the lawful tariffs of the air carrier which is to perform the transportation.

(h) Advertising or otherwise offering for sale or selling air transportation or services in connection therewith at less than the rates, fares and charges specified in the currently effective tariffs of the air carrier or air carriers who are engaged to perform such air transportation or services, or offering or giving rebates or other concessions thereon,

¹The word "misrepresentation" used in this list includes any statement or representation made in advertising or made orally to members of the public which is false, fraudulent, deceptive or misleading, or which has the tendency or capacity to deceive or mislead.

Office of the Secretary, DOT

§ 399.81

or assisting, suffering or permitting persons to obtain such air transportation or services at less than such lawful rates, fares and charges.

(i) Misrepresentations that special priorities for reservations are available when such special considerations are not in fact granted to members of the public generally.

(j) Selling air transportation to persons on a reservation or charter basis for specified space, flight, or time, or representing that such definite reservation or charter is or will be available or has been arranged, without a binding commitment with an air carrier for the furnishing of such definite reservation or charter as represented or sold.

(k) Selling or issuing tickets or other documents to passengers to be exchanged or used for air transportation knowing or having reason to know or believe that such tickets or other documents will not be or cannot be legally honored by air carriers for air transportation.

(l) Failing or refusing to make proper refunds promptly when service cannot be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale.

(m) Misrepresentations regarding the handling, forwarding or routing of baggage or other property, or the loss or tracing thereof, or failing or refusing to honor proper claims for loss of or damage to baggage or other property.

(n) Misrepresentation as to the requirements that must be met by persons or organizations in order to qualify for charter or group fare flights.

(o)-(r) [Reserved]

(s) Failing to disclose and offer Web-based discount fares on or after June 10, 2014, to prospective passengers who contact the agent through other channels (e.g., by telephone or in the agent's place of business) and indicate

they are unable to use the agent's Web site due to a disability.

[PS-21, 29 FR 1446, Jan. 29, 1964, as amended at 78 FR 67916, Nov. 12, 2013]

§ 399.81 Unrealistic or deceptive scheduling.

(a) The unrealistic scheduling of flights by any air carrier providing scheduled passenger air transportation is an unfair or deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. 41712.

(b) With respect to the advertising of schedule performance, it is an unfair or deceptive practice and an unfair method of competition to use any figures purporting to reflect schedule or on-time performance without indicating the basis of the calculation, the time period involved, and the pairs of points or the percentage of system-wide operations thereby represented and whether the figures include all scheduled flights or only scheduled flights actually performed.

(c) *Chronically delayed flights.* (1) This section applies to any air carrier that is a "reporting carrier" as defined in Part 234 of Department regulations (14 CFR Part 234).

(2) For the purposes of this section, a chronically delayed flight means any domestic flight that is operated at least 10 times a month, and arrives more than 30 minutes late (including cancelled flights) more than 50 percent of the time during that month.

(3) For purposes of this paragraph, the Department considers all of a carrier's flights that are operated in a given city-pair market whose scheduled departure times are within 30 minutes of the most frequently occurring scheduled departure time to be one single flight.

(4) The holding out of a chronically delayed flight for more than four consecutive one-month periods represents one form of unrealistic scheduling and is an unfair or deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. 41712.

[DOT-OST-2007-0022, 74 FR 69003, Dec. 30, 2009]

§ 399.82 Passing off of carrier identity by affiliation between carriers.

(a) *Applicability.* This policy shall apply to proceedings in which the Board, in exercising its regulatory powers with respect to air carriers and foreign air carriers, is required to determine whether carriers have engaged in unfair or deceptive practices, or unfair methods of competition. The standards herein shall not be construed to supersede any action previously taken by the Board in a particular proceeding dealing with the subject matter of this statement, but to the extent not inconsistent therewith shall provide standards which supplement, or implement such specific Board action. The limitation of this policy statement to certain affiliated carriers should not be construed as an indication that the Board will permit other carriers to pass off by means of activities which are inconsistent with the minimum safeguards set forth in paragraph (c) of this section. In such cases the Board may determine in an adjudicatory proceeding that the activities engaged in have a tendency to pass off and constitute an unfair or deceptive practice or an unfair method of competition.

(b) *Definition.* For the purpose of this statement, the term *affiliation*, as between an air carrier and a foreign air carrier, shall mean that one of the carriers directly or indirectly has one of the following relationships to the other:

- (1) Owns or controls 10 percent or more of the securities of the other, with or without an accompanying power to vote;
- (2) Is in control of the other within the meaning of section 408 of the Act;
- (3) Has any of the interlocking relationships described in section 409 of the Act;
- (4) Is jointly controlled with the other carrier, directly or indirectly by a third person;
- (5) Provides general agency services for the other carrier.

For the purpose of this statement, *general agency services* shall mean services performed under an agreement between an air carrier and a foreign air carrier which provides for the general representation of one by the other in a specified area or point, in relation to

services such as the following: Solicitation and sale of passenger, express, and cargo transportation; airport transportation and hotel accommodations; local advertising and publicity, local sales offices; passenger services; local government representation; purchase, lease or other acquisition of equipment; or aircraft and transit services, aircraft inspection, aircraft dispatch.

(c) *Minimum safeguards.* The minimum safeguards which the Board will consider as adequate to foreclose passing off by affiliated carriers are as follows:

(1) An air carrier and any affiliated foreign air carrier shall not engage in joint public relations activities at points served by both carriers which tend to pass off the services of one carrier as the services of the other carrier or as part of a unified system of which each is a part;

(2) Where one affiliated carrier provides general agency services for the other carrier, at points served by both carriers, it shall specifically identify all flights of the other carrier as flights of that carrier without reference to any relationship to the carrier performing the agency services;

(3) All forms of display (including aircraft insignia), scheduled publications, advertising, or printed matter employed by affiliated carriers shall not state or imply that the services of either carrier are performed in common with the other carrier or as part of a single system. In cases where it is necessary to indicate that any agency service is performed by one affiliated carrier for the other, the references to the carrier performing the agency should be sufficiently subordinated to the name of the other carrier as to emphasize the limited role of the agent;

(4) Telephone facilities at points served by both carriers should preserve the identity of the individual carriers;

(5) Where joint traffic or sales facilities are maintained by affiliated carriers, the separate identity of each carrier should be maintained by reasonably comparable use of display advertising, desk-space, personnel uniforms, and other facilities and activities;

(6) Where one carrier sells time payment tickets for travel over the other carrier (except interline travel), the

application form should identify the carrier performing the transportation;

(7) The respective personnel of the affiliated carriers shall preserve the individual identity of the respective carriers in all public dealings.

(d) *Unfair and deceptive practice.* It is the policy of the Board to regard any joint activity of an affiliated air carrier and a foreign air carrier as an unfair or deceptive practice or unfair method of competition where such joint activity does not satisfy the minimum safeguards enumerated in the preceding subsection.

(e) *Exceptions.* Exceptions to a safeguard set forth in paragraph (c) of this section may be recognized for activities in a foreign country if the Board finds that special circumstances pertaining to the country render the safeguard inappropriate. Exceptions on other grounds may be recognized pursuant to § 399.4.

[PS-29, 30 FR 13781, Oct. 29, 1965]

§ 399.83 Unfair or deceptive practice of air carrier, foreign air carrier, or ticket agent in orally confirming to prospective passenger reserved space on scheduled flights.

It is the policy of the Board to consider the practice of an air carrier, foreign air carrier, or ticket agent, of stating to a prospective passenger by telephone or other means of communication that a reservation of space on a scheduled flight in air transportation is confirmed before a passenger has received a ticket specifying thereon his confirmed reserved space, to be an unfair or deceptive practice and an unfair method of competition in air transportation or the sale thereof within the meaning of section 411 of the Act, unless the tariff of the particular air carrier or foreign air carrier provides for confirmation of reserved space by the means so used.

[PS-58, 39 FR 38096, Oct. 29, 1974]

§ 399.84 Price advertising and opt-out provisions.

(a) The Department considers any advertising or solicitation by a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, for passenger air transportation, a tour (*i.e.*, a combination of air transportation and

ground or cruise accommodations) or tour component (e.g., a hotel stay) that must be purchased with air transportation that states a price for such air transportation, tour, or tour component to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless the price stated is the entire price to be paid by the customer to the carrier, or agent, for such air transportation, tour, or tour component. Although charges included within the single total price listed (e.g., government taxes) may be stated separately or through links or “pop ups” on websites that display the total price, such charges may not be false or misleading, may not be displayed prominently, may not be presented in the same or larger size as the total price, and must provide cost information on a per passenger basis that accurately reflects the cost of the item covered by the charge.

(b) The Department considers any advertising by the entities listed in paragraph (a) of this section of an each-way airfare that is available only when purchased for round-trip travel to be an unfair and deceptive practice in violation of 49 U.S.C. 41712, unless such airfare is advertised as “each way” and in such a manner so that the disclosure of the round-trip purchase requirement is clearly and conspicuously noted in the advertisement and is stated prominently and proximately to the each-way fare amount. The Department considers it to be an unfair and deceptive practice to advertise each-way fares contingent on a round-trip purchase requirement as “one-way” fares, even if accompanied by prominent and proximate disclosure of the round trip purchase requirement.

(c) When offering a ticket for purchase by a consumer, for passenger air transportation or for a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations) or tour component (e.g., a hotel stay) that must be purchased with air transportation, a direct air carrier, indirect air carrier, an agent of either, or a ticket agent, may not offer additional optional services in connection with air transportation, a tour, or tour component whereby the optional service is automatically added to the consumer’s

§ 399.85

14 CFR Ch. II (1–1–14 Edition)

purchase if the consumer takes no other action, i.e., if the consumer does not opt out. The consumer must affirmatively “opt in” (i.e., agree) to such a service and the fee for it before that fee is added to the total price for the air transportation-related purchase. The Department considers the use of “opt-out” provisions to be an unfair and deceptive practice in violation of 49 U.S.C. 41712.

[76 FR 23166, Apr. 25, 2011]

§ 399.85 Notice of baggage fees and other fees.

(a) If a U. S. or foreign air carrier has a website accessible for ticket purchases by the general public in the U.S., the carrier must promptly and prominently disclose any increase in its fee for carry-on or first and second checked bags and any change in the first and second checked bags or carry-on allowance for a passenger on the homepage of that website (e.g., provide a link that says “changed bag rules” or similarly descriptive language and takes the consumer from the homepage directly to a pop-up or a place on another webpage that details the change in baggage allowance or fees and the effective dates of such changes). Such notice must remain on the homepage for at least three months after the change becomes effective.

(b) If a U.S. carrier, a foreign air carrier, an agent of either, or a ticket agent has a website accessible for ticket purchases by the general public in the U.S., the carrier or agent must clearly and prominently disclose on the first screen in which the agent or carrier offers a fare quotation for a specific itinerary selected by a consumer that additional airline fees for baggage may apply and where consumers can see these baggage fees. An agent may refer consumers to the airline websites where specific baggage fee information may be obtained or to its own site if it displays airlines’ baggage fees.

(c) On all e-ticket confirmations for air transportation within, to or from the United States, including the summary page at the completion of an online purchase and a post-purchase email confirmation, a U.S. carrier, a foreign air carrier, an agent of either, or a ticket agent that advertises or

sells air transportation in the United States must include information regarding the passenger’s free baggage allowance and/or the applicable fee for a carry-on bag and the first and second checked bag. Carriers must provide this information in text form in the e-ticket confirmation. Agents may provide this information in text form in the e-ticket confirmations or through a hyperlink to the specific location on airline websites or their own website where this information is displayed. The fee information provided for a carry-on bag and the first and second checked bag must be expressed as specific charges taking into account any factors (e.g., frequent flyer status, early purchase, and so forth) that affect those charges.

(d) If a U.S. or foreign air carrier has a website marketed to U.S. consumers where it advertises or sells air transportation, the carrier must prominently disclose on its website information on fees for all optional services that are available to a passenger purchasing air transportation. Such disclosure must be clear, with a conspicuous link from the carrier’s homepage directly to a page or a place on a page where all such optional services and related fees are disclosed. For purposes of this section, the term “optional services” is defined as any service the airline provides, for a fee, beyond passenger air transportation. Such fees include, but are not limited to, charges for checked or carry-on baggage, advance seat selection, in-flight beverages, snacks and meals, pillows and blankets and seat upgrades. In general, fees for particular services may be expressed as a range; however, baggage fees must be expressed as specific charges taking into account any factors (e.g., frequent flyer status, early purchase, and so forth) that affect those charges.

(e) For air transportation within, to or from the United States, a carrier marketing a flight under its identity that is operated by a different carrier, otherwise known as a code-share flight, must through its website disclose to consumers booked on a code-share flight any differences between its optional services and related fees and those of the carrier operating the

flight. This disclosure may be made through a conspicuous notice of the existence of such differences on the marketing carrier's website or a conspicuous hyperlink taking the reader directly to the operating carrier's fee listing or to a page on the marketing carrier's website that lists the differences in policies among code-share partners.

(f) The Department considers the failure to give the appropriate notice described in paragraphs (a) through (e) of this section to be an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

[Doc. No. DOT-OST-2010-0140, 76 FR 23166, Apr. 25, 2011]

§ 399.86 Payments for non-air transportation services for air cargo.

The Board considers that payments by air carriers and foreign air carriers to shippers, indirect air carriers, or foreign indirect air carriers for non-air transportation preparation of air cargo shipments are for services ancillary to the air transportation, and are not prohibited under section 403 of the Act.

[PS-86, 44 FR 45609, Aug. 3, 1979]

§ 399.87 Baggage allowances and fees.

For passengers whose ultimate ticketed origin or destination is a U.S. point, U.S. and foreign carriers must apply the baggage allowances and fees that apply at the beginning of a passenger's itinerary throughout his or her entire itinerary. In the case of code-share flights that form part of an itinerary whose ultimate ticketed origin or destination is a U.S. point, U.S. and foreign carriers must apply the baggage allowances and fees of the marketing carrier throughout the itinerary to the extent that they differ from those of any operating carrier.

[Docket No. DOT-OST-2010-0140, 76 FR 23167, Apr. 25, 2011]

§ 399.88 Prohibition on post-purchase price increase.

(a) It is an unfair and deceptive practice within the meaning of 49 U.S.C. 41712 for any seller of scheduled air transportation within, to or from the United States, or of a tour (*i.e.*, a combination of air transportation and

ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, to increase the price of that air transportation, tour or tour component to a consumer, including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, or an increase in an applicable fuel surcharge, after the air transportation has been purchased by the consumer, except in the case of an increase in a government-imposed tax or fee. A purchase is deemed to have occurred when the full amount agreed upon has been paid by the consumer.

(b) A seller of scheduled air transportation within, to or from the United States or a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, must notify a consumer of the potential for a post-purchase price increase due to an increase in a government-imposed tax or fee and must obtain the consumer's written consent to the potential for such an increase prior to purchase of the scheduled air transportation, tour or tour component that includes scheduled air transportation. Imposition of any such increase without providing the consumer the appropriate notice and without obtaining his or her written consent of the potential increase constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

[Docket No. DOT-OST-2010-0140, 76 FR 23167, Apr. 25, 2011]

§ 399.89 Disclosure of potential for price increase before payment.

Any seller of scheduled air transportation within, to or from the United States, or of a tour (*i.e.*, a combination of air transportation and ground or cruise accommodations), or tour component (e.g., a hotel stay) that includes scheduled air transportation within, to or from the United States, must notify a consumer of the potential for a price increase that could take place prior to the time that the full amount agreed upon has been paid by the consumer,

including but not limited to an increase in the price of the seat, an increase in the price for the carriage of passenger baggage, an increase in an applicable fuel surcharge, or an increase in a government-imposed tax or fee and must obtain the consumer's written consent to the potential for such an increase prior to accepting any payment for the scheduled air transportation, or tour or tour component that includes scheduled air transportation. Imposition of any such increase without providing the consumer the appropriate notice and obtaining his or her written consent to the potential increase constitutes an unfair and deceptive practice within the meaning of 49 U.S.C. 41712.

[Docket No. DOT-OST-2010-0140, 76 FR 23167, Apr. 25, 2011]

Subpart H—Other Policies Relating to Interests, Activities, and Relationships of Air Carriers

§ 399.91 Air carrier participation in programs of technical assistance to airlines of less developed countries.

(a) *Applicability.* This policy shall apply to proceedings under sections 408, 409, and 412 of the Act in which the Board is required to make any determination as to the public interest or consistency with the Act of any agreement or relationship sought to be entered into by an air carrier, or officer or director thereof, with a foreign airline in connection with the performance of some activity pursuant to a technical assistance contract financed by an agency of the U.S. Government.

(b) *Policy.* It is the policy of the Board that all U.S. air carriers interested in performing contracts for aviation technical assistance to foreign airlines should have equal access to information necessary to bid on such contracts, and should be given equal consideration thereafter in the award of such contracts based upon customary contracting criteria and subject to the considerations set forth below:

(1) The air carrier selected should possess the necessary technical and managerial skills and economic strength to perform the assigned task in the recipient country to the credit of the United States. Where familiarity

with the particular language and culture of the recipient country are important to the success of the project, weight should be given to the capabilities of all interested carriers in this regard, including particularly those which a route carrier may have acquired through service to the country or area.

(2) Where a single U.S. route carrier is serving or is certificated to serve the recipient country or the region in which it is located, and where initiation or continued operation of the route by such carrier is an important national interest objective of the United States, weight should be given to any evidence that an award of the contract to the route carrier as opposed to any other U.S. carrier would be held to achieve this objective.

(3) An air carrier performing a technical assistance contract will necessarily occupy a close special relationship with the airline and government of the recipient country. Over and above the terms of any specific contract, there is latent in such relationship the possibility of a relative preference for such carrier over a competing U.S. air carrier in matters of interline traffic, governmental restrictions, etc. Accordingly, where more than one U.S. route carrier is certificated to serve the recipient country and more than one such carrier wishes to perform the technical assistance, none of such carriers should be awarded the contract over the objection of any other except under very unusual circumstances.

(4) Technical assistance contracts should contain realistic objectives and require competent performance at reasonable cost and within a reasonable period of time consistent with the ability of the foreign airline to become self-sufficient.

(5) Technical assistance contracts should not be awarded to a U.S. route carrier with major economic interests hostile to those of the U.S. route carrier serving the country.

(6) Technical assistance contracts should not be awarded to subsidized carriers except under special circumstances. Such circumstances should include at least a showing (i) that the subsidized carrier has special

qualifications, the utilization of which is required in the national interest by the circumstances of a particular program, and (ii) that performance of the contract will not interfere with the primary business of the subsidized carrier which is to provide air transportation in the United States. In the latter connection, it is to be recognized that participation with maximum effectiveness in a technical assistance program would not only divert the attention of top management from certificated services but might also involve the assignment of the most competent senior operational and technical personnel, the diversion of funds at least on a short-term basis, and the possible transfer from certificated services of aircraft and related equipment. Normally, therefore, unless substantial evidence and arguments are produced to the contrary, participation by subsidized carriers in technical assistance programs will be considered inconsistent with the public interest.

[PS-22, 29 FR 5788, May 1, 1964]

Subpart I—Policies Relating to Disclosure of Information

§ 399.101 Public release of Board decisions in cases where the action of the Board is subject to the review or approval of the President.

(a) By Executive Order 11920, 41 FR 23665 (June 11, 1976), effective July 11, 1976, the President has authorized the issuance for public inspection of decisions by the Board in cases where the action of the Board is subject to the review or approval of the President in accordance with section 801 of the Federal Aviation Act. In the interest of national security, and in order to allow for consideration of appropriate action under Executive Order 11652, Executive Order 11920 provides that decisions shall be withheld from public disclosure for five days after submission to the President but may be released on or after the sixth day following receipt by the President as to all unclassified portions of the text if the Board is not notified by the Assistant to the President for National Security Affairs or his designee that all or part of the decision shall be withheld from public disclosure.

(b) It is the policy of the Board to release to the public all decisions by the Board in section 801 cases as promptly as possible following submission of such decision to the President. Upon receipt of notice by the Assistant to the President for National Security Affairs as required by the Executive Order, the Board shall promptly provide one copy for public inspection in the Docket Section and one copy for public inspection and copying in the Public Reference Room, and shall promptly thereafter print and process the decision for more general distribution in accordance with Board procedures. Where the Board is required to withhold portions of the text of its decision it shall make public those portions of its decision which may be publicly released. Where the Board is required to withhold public release of its decision in its entirety it shall nonetheless publicly indicate that its decision has been transmitted to the President. The Board shall not publicly indicate that its decision has been transmitted to the President in those cases in which the Assistant to the President for National Security Affairs or his designee determines that classification of the existence of the decision is appropriate and so informs the Board. The provisions are also applicable to decisions submitted to the President for review pursuant to section 801(b) of the Act.

[PS-72, 41 FR 46291, Oct. 20, 1976]

Subpart J—Policies Relating to Federal Preemption of State Economic Regulations

AUTHORITY: Secs. 102, 105, 204, 401, 403, and 416 of the Federal Aviation Act of 1958, as amended; 72 Stat. 740, 743, 754, 758, 771; 49 U.S.C. 1302, 1305, 1324, 1371, 1373, and 1386.

SOURCE: PS-83, 44 FR 9951, Feb. 15, 1979, unless otherwise noted.

§ 399.111 All operations of federally authorized carriers to be regulated by the Board.

(a) All operations of Federally authorized carriers are subject to the requirements of Title IV of the Act, including certification and tariff-filing

§ 399.120

requirements, unless otherwise exempted from one or more of those requirements by Board order or regulation.

(b) When any intrastate air carrier that in August 1, 1977, was operating primarily in intrastate air transportation regulated by a State receives the authority to provide interstate air transportation, any authority received from such State shall be considered to be part of its authority to provide air transportation received from the Board under Title IV of the Act, until suspended, amended, or terminated as provided under such title.

14 CFR Ch. II (1-1-14 Edition)

Subpart K—Policies Relating to Certificate Duration

§ 399.120 Duration of certificates in limited-entry markets.

All certificate authority that the Department grants to U.S. air carriers in carrier selection proceedings will be awarded in the form of experimental certificates of five years' duration pursuant to section 401(d)(8) of the Federal Aviation Act. This provision does not alter or amend permanent certificates issued prior to January 1, 1985.

[Doc. No. 43403, 51 FR 43188, Dec. 1, 1986]