

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 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]