

### § 398.7

(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

### 14 CFR Ch. II (1-1-08 Edition)

(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.

(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]

### 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.
- 399.85 [Reserved]
- 399.86 Payments for non-air transportation services for air cargo.
- 399.87 [Reserved]

### 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. 40101 *et seq.*