

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.

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(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

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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.