

**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

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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.

(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