

connection with the renewal of such loan.

(e) *Renewal notice.* At least ninety (90) days before the due date of the loan, the association shall send written notification in the following form to the borrower:

Notice

Your loan with _____ Federal Savings and Loan Association, secured by a [mortgage/deed of trust] on property located at [address], is due and payable on [90 days from date of notice].

If you do not pay by that date, your loan will be renewed automatically for _____ years, upon the same terms and conditions as the current loan, except that the interest rate will be _____%. (See accompanying Truth-In-Lending statement for further credit information.)

Your monthly payment, based on that rate, will be \$_____, beginning with the payment due on _____, 19____.

You may pay off the entire loan or a part of it without penalty at any time.

If you have questions about this notice, please contact [title and telephone number of association employee].

(f) *Application disclosure.* An applicant for a renegotiable rate mortgage loan must be given, at the time s/he requests an application, a disclosure notice in the following form:

Information About the Renegotiable-Rate Mortgage

You have received an application form for a renegotiable-rate mortgage ("RRM"). The RRM differs from the fixed-rate mortgage with which you may be familiar. In the fixed-rate mortgage the length of the loan and the length of the underlying mortgage are the same, but in the RRM the loan is short-term (3-5 years) and is automatically renewable for a period equal to the mortgage (up to 30 years). Therefore, instead of having an interest rate that is set at the beginning of the mortgage and remains the same, the RRM has an interest rate that may increase or decrease at each renewal of the short-term loan. This means that the amount of your monthly payment may also increase or decrease.

The term of the RRM loan is _____ years, and the length of the underlying mortgage is _____ years. The initial loan term may be up to six months longer than later terms.

The lender must offer to renew the loan, and the only loan provision that may be changed at renewal is the interest rate. The interest rate offered at renewal is based on changes in an index rate. The index used is computed monthly by the Federal Home Loan Bank Board, an agency of the Federal government. The index is based on the national average contract rate for all major lenders for the purchase of previously-occupied, single-family homes.

At renewal, if the index has moved higher than it was at the beginning of the mortgage, the lender has the right to offer a renewal of the loan at an interest rate equalling the original interest rate plus the increase in the index rate. This is the maximum increase permitted to the lender. Although taking such

an increase is optional with the lender, you should be aware that the lender has this right and may become contractually obligated to exercise it.

If the index has moved down, the lender *must* at renewal reduce the original interest rate by the decrease in the index rate. No matter how much the index rate increases or decreases, **THE LENDER, AT RENEWAL, MAY NOT INCREASE OR DECREASE THE INTEREST RATE ON YOUR RRM LOAN BY AN AMOUNT GREATER THAN _____ OF ONE PERCENTAGE POINT PER YEAR OF THE LOAN, AND THE TOTAL INCREASE OR DECREASE OVER THE LIFE OF THE MORTGAGE MAY NOT BE MORE THAN _____ PERCENTAGE POINTS.**

As the borrower, you have the right to decline the lender's offer of renewal. If you decide not to renew, you will have to pay off the remaining balance of the mortgage. Even if you decide to renew, you have the right to prepay the loan in part or in full without penalty at any time after the beginning of the minimum notice period for the first renewal. To give you enough time to make this decision, the lender, ninety (90) days before renewal, will send a notice stating the due date of the loan, the new interest rate and the monthly payment amount. If you do not respond to the notice, the loan will be automatically renewed at the new rate. You will not have to pay any fees or charges at renewal time.

The maximum interest-rate increase at the first renewal is _____ percentage points. On a \$50,000 mortgage with a loan term of _____ years and an original interest rate of [lender's current commitment rate] percent, this rate change would increase the monthly payment (principal and interest) from \$_____ to \$_____. Using the same example, the highest interest rate you might have to pay over the life of the mortgage would be _____ percent, and the lowest would be _____ percent.

(Sec. 5, 48 Stat. 132, as amended; 12 U.S.C. 1464, Reorg. Plan No. 3 of 1947; 3 CFR 1943-1948 Comp. 1071)

By the Federal Home Loan Bank Board,

J. J. Finn,
Secretary.

[FR Doc. 80-10750 Filed 4-6-80; 8:45 am]

BILLING CODE 6720-01-M

12 CFR Part 590

[80-234]

Regulations for Federally Related Mortgage Loans; Preemption of State Usury Laws

Dated: April 3, 1980

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: These regulations implement section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 which provides for permanent preemption of state interest ceilings with

respect to Federally-related residential first mortgage loans made after March 31, 1980. The regulations: (1) describe mortgage lenders subject to the statute and regulations; (2) define mortgage loans covered by the statute and regulations; (3) provide special rules for loans secured by first liens on mobile homes; and (4) provide notice that the Board will issue interpretations of the statute upon written request and explain the procedure for filing such requests.

EFFECTIVE DATE: April 1, 1980.

FOR FURTHER INFORMATION CONTACT: James C. Stewart, Office of General Counsel, Federal Home Loan Bank Board, 1700 G Street, N.W., Washington, D.C. 20552 ((202) 377-6457).

SUPPLEMENTARY INFORMATION: As authorized under Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, 94 Stat. 161, the Board has adopted regulations governing the preemption of state usury laws with respect to Federally-related first mortgages made after March 31, 1980. These regulations replace the regulations implementing the temporary usury exemption contained in section 105(a)(1) of Public Law 96-161, 93 Stat. 1233 (1979). The Board, however, adheres to the positions taken in the Interpretations issued pursuant to those regulations. See 45 FR 2840 (Jan. 15, 1980); 45 FR 6165 (Jan. 25, 1980); 45 FR 8000 (Feb. 6, 1980); 45 FR 15921 (Mar. 12, 1980).

Although section 501 preempts state usury laws applicable to both mortgage loans and payment of interest on deposits, these regulations implement the provisions governing mortgage loans only. Regulations concerning the payment of interest on deposits by Bank System members are contained in Part 526 of the Federal Home Loan Bank System regulations. Similar regulations of the Federal Reserve Board (12 CFR Part 217), the Federal Deposit Insurance Corporation (12 CFR Part 329) and the National Credit Union Administration (12 CFR Part 701.35(g)) are in effect for deposits in depository institutions regulated by those agencies.

The Board has implemented section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 which preempts state laws expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be assessed in connection with making a Federally-related residential first mortgage. Federally-related loans include those made by: (1) Federally-chartered banks, credit unions, or savings and loans; (2) state-chartered

lenders whose accounts are insured by the FSLIC, FDIC, or NCUA; (3) members of the Federal Reserve or Federal Home Loan Bank Systems; and (4) lenders approved by the Department of Housing and Urban Development for participation in any mortgage insurance program. The regulations also apply to loans eligible for purchase by GNMA, FNMA, or FHLMC. Lenders that do not meet any of the above criteria will still be eligible for the exemption if they are considered "creditors" under the Truth in Lending Act, 15 U.S.C. 1602(f), and make, or invest in, residential real estate loans totaling over one million dollars annually. Creditors selling residential mobile home loans will not have to meet this million dollar test to be eligible for the exemption, if they sell their mobile home loans to a lender otherwise covered by this preemption.

The preemption prescribed by this Part applies to loans, mortgages, credit sales, and advances secured by first liens on: (1) residential real estate; (2) stock in a residential housing co-op; or (3) residential mobile homes. The regulations define residential real estate to mean property improved, or to be improved, by a residence. There is no limitation on the number of dwelling units contained in the structure improving the property. Accordingly, loans secured by first liens on multi-unit apartment buildings are exempted from state interest ceilings by these regulations.

It also should be noted that although the preemption applies to individual cooperative unit loans secured by stock in the cooperative only when the loan proceeds are used to purchase the stock, a blanket mortgage on the entire coop would be secured by residential real property and therefore not subject to the purchase money limitation.

Section 501 preempts applicable state interest ceilings unless the state legislature provides by law that the preemption will not apply in that state. Any state action of this nature must be taken within three years to be effective. In the event a state overrides the preemption, the provisions of section 501 shall continue to apply to any loan, mortgage, credit sale, or advance made pursuant to a commitment made prior to the state's override legislation.

The preemption created by section 501 applies only to state laws expressly limiting interest, discount points, and similar charges. It does not affect consumer protections contained in state law. Examples of unaffected consumer protections are prohibitions against prepayment and other penalties or state laws requiring that attorney fees, assumption fees, etc., reflect their

reasonable cost. See S. Rep. No. 366, 96th Cong., 1st Sess. 19 (1979).

Federally-Related Loans or Credit Sales Secured by First Liens on Residential Manufactured Homes

Section 501 specifically exempts loans and credit sales secured by first liens on mobile homes from state usury laws. The mobile home securing the loan must be used, or be intended for use, as a residence and must meet the standards set forth in Section 603(6) of the National Mobile Home Construction and Safety Standards Act of 1974, 42 U.S.C. § 5402(6). Section 501(c) of the Depository Institutions Deregulation and Monetary Control Act of 1980 directs the Federal Home Loan Bank Board to adopt regulations establishing consumer safeguards which must be included in any mobile home loan contract or credit sale contract before the contract is eligible for the usury exemption. Until such regulations are adopted, however, mobile home loans and credit sales generally will be exempted from state interest ceilings. If these contracts contain precomputed finance charges, however, the agreement must provide for the refund of unearned precomputed finance charges in the event of prepayment. Moreover, the amount of this refund must not be less than would be refunded if the unearned interest were calculated by the actuarial method.

Under the actuarial method, the interest earned in any given period is calculated on the declining amount financed. Any payment by the debtor is applied first to the interest earned in that period and any excess is used to reduce the outstanding balance. When calculated by the actuarial method, the interest earned in a given period is almost always less than that earned under the Rule of 78's or the Sum of the Digits method of calculation. Accordingly, loans secured by first liens on mobile homes generally will not be eligible for the usury exemption provided in this Part if such loans require that unearned interest will be computed by the Rule of 78's or the Sum of the Digits method. If state law requires the use of a method which yields a refund greater than that obtained under the actuarial method, the state mandated method should be used.

It should be noted also that the term "prepayment" includes refinancings, consolidations, and payments of indebtedness after acceleration or judgment against the debtor.

Outstanding Commitments and Loans

The state usury preemption will not apply to loans or credit sales for which

commitments were made prior to the effective date of the Act. Commitments made in the three months prior to March 31, 1980, generally are exempted from state interest ceilings by Public Law 96-161. Loan commitments dated prior to the December 28, 1979, effective date of Public Law 96-161 continue to be governed by state law, if no other preemption is applicable.

The Board finds that (1) notice and public procedure are unnecessary under 5 U.S.C. § 553(b) and 12 CFR 508.11, because these amendments implement a statute and immediate implementation serves the public interest in ensuring the availability of Federally-related mortgage loans in states with restrictive usury laws; and (2) publication of said amendments for the 30-day period specified in 5 U.S.C. § 553(d) and 12 CFR 508.14 prior to the effective date is unnecessary for the same reasons.

Accordingly, the Federal Home Loan Bank Board hereby adopts a new Subchapter G, Regulations for Federally-Related Mortgage Loans, to replace the temporary Subchapter G which expired on March 31, 1980, and adds a new Part 590, to read as follows:

SUBCHAPTER G—REGULATIONS FOR FEDERALLY RELATED MORTGAGE LOANS

PART 590—PREEMPTION OF STATE USURY LAWS

Sec.

- 590.1 Authority, purpose, and scope.
- 590.2 Definitions.
- 590.3 Operations.
- 590.4 Special Rules for Federally-related Loans Secured by First Liens on Residential Manufactured Homes.
- 590.5 Interpretations.

§ 590.1 Authority, purpose, and scope.

(a) *Authority.* This Part contains regulations issued under section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980, Pub. L. No. 96-221, 94 Stat. 161.

(b) *Purpose and Scope.* The purpose of this permanent preemption of state interest-rate ceilings applicable to Federally-related residential mortgage loans is to ensure that the availability of such loans is not impeded in states having restrictive interest limitations. This Part applies to loans, mortgages, credit sales, and advances, secured by first liens on residential real property, stock in residential cooperative housing corporations, or residential manufactured homes as defined in § 590.2 of this Part.

§ 590.2 Definitions.

For the purposes of this Part, the following definitions apply:

(a) Loans means any loans, mortgages, credit sales, or advances.

(b) Federally-related loans include any loan:

(1) Made by any lender whose deposits or accounts are insured by any agency of the Federal government;

(2) Made by any lender regulated by any agency of the Federal government;

(3) Made by any lender approved by the Secretary of Housing and Urban Development for participation in any mortgage insurance program under the National Housing Act;

(4) Made in whole or in part by the Secretary of Housing and Urban Development; insured, guaranteed, supplemented, or assisted in any way by the Secretary or any officer or agency of the Federal government, or made under or in connection with a housing or urban development program administered by the Secretary, or a housing or related program administered by any other such officer or agency;

(5) Eligible for purchase by the Federal National Mortgage Association, the Government National Mortgage Association, or the Federal Home Loan Mortgage Corporation, or made by any financial institution from which the loan could be purchased by the Federal Home Loan Mortgage Corporation; or

(6) Made in whole or in part by any entity which:

(i) Regularly extends, or arranges for the extension of, credit payable by agreement in more than four installments or for which the payment of a finance charge is or may be required; and

(ii) Makes or invests in residential real property loans aggregating more than \$1,000,000 per year; *except* that the latter requirement shall not apply to such an entity selling residential manufactured homes and providing financing for such sales through loans or credit sales secured by first liens on residential manufactured homes, if the entity has an arrangement to sell such loans or credit sales in whole or in part, or where such loans or credit sales are sold in whole or in part, to a lender or other institution otherwise included in this section.

(b) "Loans which are secured by first liens on real estate" means loans on the security of any instrument (whether a mortgage, deed of trust, or land contract) which makes the interest in real estate (whether in fee, or in a leasehold or subleasehold extending, or renewable, automatically or at the option of the holder or the lender, for a period of at least 5 years beyond the maturity of the loan) specific security for the payment of the obligation secured by the instrument; *Provided* That the

instrument is of such a nature that, in the event of default, the real estate described in the instrument could be subjected to the satisfaction of the obligation with the same priority as a first mortgage of a first deed of trust in the jurisdiction where the real estate is located.

(c) "Loans secured by first liens on stock in a residential cooperative housing corporation" means loans on the security of: (1) a first security interest in stock or a membership certificate issued to a tenant stockholder or resident member by a cooperative housing organization; and (2) an assignment of the borrower's interest in the proprietary lease or occupancy agreement issued by such organization.

(d) "Loans secured by first liens on residential manufactured homes" means a loan made pursuant to an agreement by which the party extending the credit acquires a security interest in the residential manufactured home which will have priority over any conflicting security interest.

(e) "Residential real property" means real estate improved or to be improved by a structure or structures designed primarily for dwelling, as opposed to commercial, use.

(f) "Residential manufactured home" means a structure, transportable in one or more sections, which is at least eight body feet wide, thirty-two body feet long, and which is built on a permanent chassis and designed to be used as a dwelling, with or without a permanent foundation, when connected to the required utilities, and includes the plumbing, heating, air-conditioning, and electrical systems contained therein, and which structure is or will be used as a residence.

(g) "State" means the several states, Puerto Rico, the District of Columbia, Guam, the Trust Territories of the Pacific Islands, the Northern Mariana Islands, and the Virgin Islands.

§ 590.3 Operation

(a) The provisions of the constitution or law of any state expressly limiting the rate or amount of interest, discount points, finance charges, or other charges which may be charged, taken, received, or reserved shall not apply to any Federally-related loan:

(1) Made after March 31, 1980; and

(2) Secured by a first lien on:

(i) Residential real property;

(ii) Stock in a residential cooperative housing corporation when the loan is used to finance the acquisition of such stock; or

(iii) A residential manufactured home, *provided* that the loan so secured

contains the consumer safeguards required by § 590.4 of this Part;

(b) The provisions of paragraph (a) shall apply to loans made in any state on or before the date (after April 1, 1980 and prior to April 1, 1983) on which the state adopts a law or certifies that the voters of such state have voted in favor of any law, constitutional or otherwise, which states explicitly and by its terms that such state does not want the provisions of paragraph (a) to apply with respect to loans made in such state, *except* that—

(1) The provisions of paragraph (a) shall apply to any loan which is made after such date pursuant to a commitment therefor which was entered into during the period beginning on April 1, 1980, and ending on the date the state takes such action;

(2) The provisions of paragraph (a) shall apply to any rollover of a loan which loan was made, or committed to be made, during the period beginning on April 1, 1980, and ending on the date the state takes such action, if the mortgage document or loan note provided that the interest rate to the original borrower could be changed through the use of such a rollover; and

(3) At any time after the date of enactment of this Act, any state may adopt a provision of law placing limitations on discount points or such other charges on any loan described in this Part.

(c) Nothing in this section preempts limitation in state laws on prepayment charges, attorneys' fees, late charges or other provisions designed to protect borrowers.

§ 590.4 Special rules for federally-related loans secured by first liens on manufactured homes.

(a) In order to qualify for the usury exemption contained in this Part, any loan secured by a first lien on a residential manufactured home that includes a precomputed finance charge must provide for the refund of the unearned portion of this precomputed finance charge in the event the entire indebtedness is prepaid. The amount of such refund must not be less than the amount which would be refunded if the unearned interest were calculated by the actuarial method, except that the debtor shall not be entitled to a refund which is less than one dollar.

(b) As used in this section:

(1) A "prepayment" occurs upon—

(A) The refinancing or consolidation of the indebtedness;

(B) The actual prepayment of the indebtedness by the consumer whether voluntarily or following acceleration of

the payment obligation by the creditor; or

(C) The entry of a judgment for the indebtedness in favor of the creditor.

(2) The term "actuarial method" means the method of allocating payments made on a debt between the outstanding balance of the obligation and the precomputed finance charge pursuant to which a payment is applied first to the accrued precomputed finance charge and any remainder is subtracted from, or any deficiency is added to, the outstanding balance of the obligation.

(3) The term "precomputed finance charge" means interest or a time price differential (including service or carrying charges and any amount payable under a point, discount, or other system of additional charges) as computed by the add-on or discount method.

§ 590.5 Interpretations.

(a) The Board periodically will publish Interpretations under section 501 of the Depository Institutions Deregulation and Monetary Act of 1980, Pub. L. No. 96-221, 94 Stat. 161, in the *Federal Register* in response to written requests sent to the Secretary to the Board, 1700 G Street, N.W., Washington, D.C. 20552.

By the Federal Home Loan Bank Board.

J. J. Finn,

Secretary.

[FR Doc. 80-10770 Filed 4-8-80; 8:45 am]

BILLING CODE 6720-01-M

CIVIL AERONAUTICS BOARD

14 CFR Part 221

[ER-1172; Amdt No. 53; Docket 31290]

Tariffs; Conforming Amendment

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB is revising its policy statement on domestic passenger fares in PS-92, also issued today. (FR Doc 80-10760) This amendment of the CAB's rule on tariffs corrects a cross-reference to that policy statement.

DATES: Adopted: April 3, 1980. Effective: April 3, 1980.

FOR FURTHER INFORMATION CONTACT:

Norman D. Schwartz, Chief, Legal Analysis Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W. Washington, D.C. 20428, 202-673-5056.

SUPPLEMENTARY INFORMATION: This amendment of 14 CFR Part 221 is interpretative. The Board therefore finds that notice and public procedure and a

delayed effective date are unnecessary and not in the public interest.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 221, *Tariffs*, as follows:

In § 221.165, paragraph (d)(4) is amended to read:

§ 221.165 Explanation and data supporting tariff changes and new matter in tariff publications.

* * * * *

(d) Exceptions:

* * * * *

(4) The requirement for data and/or information in paragraph (b) of this section shall not apply to fares for scheduled passenger service within the 48 contiguous states and the District of Columbia that are within the zones set forth in § 399.32 of this chapter.

(Secs. 204, 403, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, and 788, as amended, 49 U.S.C. 1324, 1373, and 1482)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,

Secretary.

[FR Doc. 80-10759 Filed 4-8-80; 8:45 am]

BILLING CODE 6320-01-M

14 CFR Part 399

[PS-92; Amdt. No. 69; Docket 31290]

Statements of General Policy; Domestic Passenger Fares

AGENCY: Civil Aeronautics Board.

ACTION: Final rule.

SUMMARY: The CAB revises its policy statement about domestic passenger fares to reflect the Airline Deregulation Act of 1978. In a market with one, two, or three airlines, each can now charge up to 5 percent above the Standard Industry Fare Level year-round, rather than being limited to a certain number of days. Also, the CAB changes its method of adjusting the fare ceiling for cost increases, to conform to the Deregulation Act. In PSDR-66, also issued today, the CAB is proposing more far-reaching changes in domestic fare policy. (See FR Doc. 80-10761).

DATES: Adopted: April 3, 1980. Effective: April 3, 1980.

FOR FURTHER INFORMATION CONTACT:

Norman D. Schwartz, Chief, Legal Analysis Division, Bureau of Domestic Aviation, Civil Aeronautics Board, 1825 Connecticut Avenue, N.W., Washington, D.C. 20428; 202-673-5056.

Introduction

In 1978, the Board voluntarily established a broad zone within which

we would ordinarily not suspend passenger fares for markets within the 48 contiguous states and the District of Columbia. This policy was set out in PS-80, PR-177, ER-1072, and Order 78-8-152, which are collectively referred to as "PS-80" (43 FR 39522, September 5, 1978). Then, the Airline Deregulation Act of 1978 (Pub. L. 95-504) amended the Federal Aviation Act ("the Act") to create a statutory zone of reasonableness for domestic passenger fares.

In notice of proposed rulemaking PSDR-61 (44 FR 30108, May 24, 1979) ("the Notice"), we proposed two changes in the domestic passenger fare policies to conform them to the Deregulation Act. First, we tentatively decided to remove the 110-day limitation on the 5 percent upward flexibility now allowed carriers in markets where two or three carriers are authorized to provide service. Second, we proposed to modify the methodology we adopted in PS-80 to update the fare ceiling to the one required by section 1002(d)(6) of the Act.

We also proposed eliminating our policy of allowing local service carriers the flexibility to raise their fares in a zone ranging up to 30 percent above the coach fare level established for the trunks without submitting an economic justification. We felt that the locals should be subject to the same fare policies prescribed for the trunks, including the limitations on upward pricing flexibility, since the historic distinction between the trunks and local service carriers was disappearing as the latter rapidly entered trunk-type routes. We also saw no reason to subject certificated carriers operating aircraft having 60 seats or less to fare regulation during the relatively short transitional period to complete fare freedom.

Comments have been received from American, Delta, Eastern, Ozark, Pacific Southwest (PSA), Piedmont, Republic (filing comments as North Central), TWA, United USAir (filing comments as Allegheny), Swift Aire Lines, the Commuter Airline Association of America (CAAA) and the Puget Sound Traffic Association (PSTA). United also submitted a supplemental comment requesting that we eliminate the 58-day limitation on upward pricing flexibility in monopoly markets. A motion to file an otherwise unauthorized document accompanied these comments. We will grant the motion. A detailed summary of these comments is attached as Appendix A. Generally, most of the carriers supported the Board's proposed changes to its PS-80 policies. PSA pointed out that language governing

intrastate fares adopted in PS-82 (44 FR 9940, February 15, 1979) was omitted from proposed § 399.31(a) and requested its reinstatement. The omission was inadvertent and the final rule has been revised accordingly. Several carriers have, however, suggested that the methodology proposed for updating the standard industry fare level be modified to account for fuel price increases on a more frequent basis. See comments of American, Delta, Eastern and United. Both Delta and TWA questioned other aspects of the methodology, which we discuss below. On the other hand, PSTA questioned the Board's tentative decision to allow the carriers greater flexibility than prescribed by the Act. Piedmont, Republic and USAir opposed our proposed elimination of the 30 percent upward zone for local service carriers, while Swift Aire and the CAAA fully endorsed our tentative decisions not to subject certificated carriers operating aircraft having 60 seats or less to fare regulation. CAAA suggested that the Board also vacate those provisions of orders dealing with replacement service by commuters for local service carriers which provide that the commuters cannot charge fares higher than those charged by the local service carriers.

We have examined these objections and suggested modifications carefully. On the basis of this review and our own analysis as set forth in the Notice, we have decided to adopt the changes in our fare policy as proposed, except in the following respects.

First as suggested by United, we are eliminating the 58-day limitation on the 5 percent upward fare flexibility now allowed carriers in their monopoly markets. We see no reason to continue this limitation especially since it is difficult to administer, and our experience under PS-80 shows that prices have not been out of line with costs. Second, we have decided to continue allowing local service carriers the flexibility to raise fares up to 30 percent above the trunk formula fare. As further explained below, we believe that the continuation of this zone is necessary to encourage these carriers to remain in their short-haul, low-density markets. These determinations are not, of course, our last word on domestic fare policy. Since PSDR-61 was issued, free entry has become the rule domestically, and a significant increase in fare flexibility over the policies of PS-80, as modified here, appears warranted. Accordingly, the Board is issuing concurrently PSDR-66, outlining new proposals in the evolution of our fare policy.

Changes to the Board's PS-80 Policies

1. *Fare Flexibility Above the Fare Ceiling.* The Board's domestic fare policies recognize the need for allowing carriers the flexibility to raise their fares above a fare level based on industry averages with limited risk of suspension. Under these policies, a ceiling fare is based on the formula established in Phase 9 of the Domestic Passenger Fare Investigation (DPFI) (Docket 21866-9). The ceiling is updated periodically by the Board. Carriers in workably competitive markets (defined as those with four or more carriers authorized) are allowed the flexibility to raise their fares up to 10 percent above the ceiling. In two- and three-carrier markets, carriers are able to raise their fares up to 5 percent above the ceiling on 110 days of the year; and in their monopoly markets, carriers have the flexibility to raise their fares up to 5 percent above the ceiling on 58 days of the year. In the Notice, we proposed to continue this general policy during the transition period before January 1, 1983, when our authority over domestic passenger fares ends. We also proposed to expand the scope of the upward zone governing two and three-carrier markets by eliminating the 110-day limitation.

These zones (as modified) will give the carriers more freedom to raise their fares than that provided under section 1002(d)(4)(A) of the Act which allows only non-monopoly carriers (defined as carriers which provide air transportation to less than 70 percent of the passengers traveling in air transportation between a pair of points) the flexibility to raise their fares up to 5 percent above the ceiling. As discussed in the Notice, we felt that it would be reasonable and consistent with the purposes of the Airline Deregulation Act to allow a carrier to price its services above the ceiling within the zones established by PS-80, regardless of whether it provides air transportation to 70 percent or more of the passengers traveling in the market. American and Ozark, however, stated that this decision was not clearly set forth in the proposed policy statement. The source of their concern is footnote 4 to proposed § 399.31(c)(2), which, as drafted, suggested that upward fare proposals of carriers transporting 70 percent or more of the passengers in a market will be suspended. We are revising several sections of Part 399, to more clearly state our policy on fare flexibility, including increases above the zone. PSTA challenged our authority to adopt a policy on upward fare flexibility that is more permissive than the upward zone established by the statute. It

argued that Congress clearly intended that the 5 percent statutory zone be the only upward pricing flexibility allowed the carriers, pointing out that while Congress specifically authorized the Board to increase the downward no-suspend zone, it failed to give the Board similar authority to expand the upward zone. PSTA also questioned the Board's policy of establishing the size and scope of the upward zone on the basis of the number of authorized carriers in the market. This policy was adopted in PS-80 and the reasons for it were fully explained in that document. Indeed, in that rulemaking, in which PSTA participated, the Board asked the commenters to address specifically the issue of upward pricing flexibility; our decision was based on the comments before us then, and we will not reconsider it here.

PSTA's argument that upward flexibility must be limited to that set forth in the Act is not persuasive. As we stated in the Notice, although the Act affects our ability to regulate fares within the statutory zones, it does not diminish our powers to determine the reasonableness of fares outside of these zones. Because we retain our traditional suspension powers over fares outside the statutory zones, we retain the responsibility for developing a policy for the benefit of the public and the industry, announcing how and under what circumstances we will exercise these powers. Indeed, PSTA conceded that the establishment of zones allowing the carriers pricing flexibility with limited risk of suspension is not banned by the Act. By now allowing the carriers some pricing flexibility above the ceiling with limited risk of suspension, we are simply establishing guidelines for the exercise of our discretionary suspension power. We are not relinquishing our jurisdiction over fares outside the statutory zone. In this regard, PSTA's observation that Congress has expressly given us the authority to disclaim jurisdiction over the reasonableness of fares below the floor of the statutory zone by increasing the downward zone but failed to give us similar authority to increase the upward zone is correct. But it is not relevant.

We have therefore decided, as proposed in the Notice, to continue allowing carriers the flexibility to price their services above the ceiling within specified zones with limited risk of suspension. The dimensions of the zones governing markets with at least four nonstop carriers authorized, and those markets with two or three, will be as we proposed in the Notice, *i.e.*, 10 percent in

the former markets and 5 percent in the latter.

The zone we are adopting for monopoly markets, however, differs from the one set forth in the Notice. There, we proposed to continue our PS-80 policy of allowing a carrier in a monopoly market the flexibility to raise the fares up to 5 percent above the ceiling on only 58 days of the year. We now conclude that the 58-day limitation is no longer necessary and that monopoly carriers should be allowed this modest 5 percent upward fare flexibility throughout the year. In the first place, our experience under PS-80 shows that prices have continued to bear a reasonable relationship to costs, and that there is reason to expect that they still would do so once the 58-day limitation is removed. In the second place, this additional flexibility will enable the carriers to more easily cope with the rapid escalation in costs, especially fuel prices, by adjusting fares more often than we update the ceiling. Finally, this limitation is extremely difficult to administer both for the Board's staff and the carriers. As United pointed out in its supplemental comments, the volatile nature of competition and prices makes the 58-day limitation all but unmanageable. These administrative burdens simply are too great in relation to any benefits to be gained. To the extent that the Notice may be considered as not having fully stated the possibility that we would remove the 58-day limitation, we find that notice and public procedure are impracticable and contrary to the public interest, in view of the extreme difficulty there would be in administering the limitation during a further rulemaking proceeding.

In sum, pending resolution of the issues raised in PSDR-66, our policy on upward fare flexibility will be as follows: carriers in markets where four or more carriers are authorized to provide nonstop service will be able to raise their fares up to 10 percent above the ceiling with limited risk of suspension. In all other markets, carriers will be allowed 5 percent upward fare flexibility on all days throughout the year. Pricing changes outside the zones may continue to be filed, but we will suspend them if they are not justified by cost or competitive factors.

2. Definition and Updating of the Fare Ceiling (SIFL). In addition to expanding upward fare flexibility, the Notice proposed to change both the basis of the fare ceiling and the method of updating it set forth in our policy statement. Under PS-80, the basis of the ceiling was the formula established in Phase 9

of the DPFI ("the DPFI formula fare"). We updated this ceiling by adjusting actual operating costs per passenger mile on a semiannual basis to a hypothetical level, reflecting the DPFI ratemaking standards of load factor, seating, utilization, and depreciation.

Instead of the DPFI formula fare, the Deregulation Act keys the statutory zone of reasonableness to a standard industry fare level ("SIFL"). The SIFL is generally defined in new section 1002(d)(6) as the "[adjusted] fare level * * * in effect on July 1, 1977, for each interstate or overseas pair of points, for each class of service * * *". We interpreted this to mean the predominant fare in effect on that date. In most cases, that was equal to the DPFI formula fare. Under the DPFI standards, however, local service carriers had the flexibility to set fares up to 30 percent above the formula. In cases where such a fare was the predominant one on July 1, 1977, therefore, the original SIFL is higher than the DPFI formula fare. The Notice proposed to conform the PS-80 ceiling to this new basis.

Instead of the practice followed under PS-80, our updating of the SIFL must now conform to section 1002(d)(6)(B), which states—

The Board shall, not less than semiannually, adjust [the SIFL] by increasing or decreasing such fare level, as the case may be, by the percentage change from the last previous period in the actual operating cost per available seat-mile for interstate and overseas transportation combined. In determining the standard, the Board shall make no adjustment to costs actually incurred.

We proposed, therefore, to eliminate the DPFI ratemaking standards from our policy statement. We proposed also to exclude from consideration an allowance for tax and return markup, as well as the costs attributable to traffic other than passengers in scheduled service, e.g., non-scheduled operations, all-cargo services and the costs associated with belly cargo, using the revenue offset method. We decided, however, to continue our policy on anticipating costs 3 months beyond the time we make the adjustment to the SIFL. Details of the proposal were illustrated in an example set out in Appendix A to the Notice.

Although most of the commenters who discussed the methodology agreed with our basic approach, several suggested changes, especially in the treatment of fuel expense. Delta, Eastern and United, for example, urged that because of the volatile nature of fuel prices, we readjust the SIFL for fuel cost increases

more frequently than the six months we propose.

We recognize, of course, that fuel prices have risen very sharply in recent months and additional increases are likely to continue for the foreseeable future. We recognize, also, that carriers must have the opportunity to recover these costs in their fares without undue regulatory lag. For these reasons the Board is now, at least on an interim basis, adjusting the SIFL ceiling every 2 months to reflect these fuel costs. But while we expect to utilize this procedure as long as the current trend in fuel prices continues, we do not believe that it or any other method to account for fuel cost increases more quickly than other costs should become a permanent feature of our fare policy during the transition period. Neither the Board nor the airline industry knows whether the current trend in fuel prices will continue, and we think it unwise to base a fare policy on what may essentially prove to be a relatively short-lived phenomenon. In our view, the better approach is to establish an updating methodology to be used in more normal times and deviate from it when circumstances warrant. Thus, we will not adopt the modification suggested by these carriers.

TWA would have us include a tax and return element in our computation of the latest operating expenses since it maintains that interest rates are high and are subject to the same inflationary pressures as other costs. The only problem with this argument is that it ignores the fact that in the long history of the Board's rate regulation these elements have never been considered as operating expenses and there is no reason to begin now during the transition period. We also find no merit in TWA's argument that the Board should not use the DPFI-Phase 9 mileage block costs to determine the SIFL. Because the Act requires that we base the SIFL on the fare level in effect on July 1, 1977, we must use the Phase 9 formula as the basis for computing the original SIFL, and cannot deviate from it except in those cases where actual fares departed from the formula. TWA disputed our use of the revenue offset method to exclude the costs associated with belly cargo carried on combination aircraft as understating the expenses attributable to passengers. According to it, belly cargo revenues cover economic costs (i.e., return on capital and an income tax element) and this should not be used to reduce total operating expenses which do not include these elements. TWA did not indicate, however, how we would determine a tax and return element for cargo

especially since the data necessary to make these calculations are no longer being updated by the Board. In fact, because the Board no longer controls cargo rates we cannot even presume that these rates necessarily have a tax and profit element as TWA would have us accept. Thus we reject TWA's suggested revision.

Delta suggested that the Board use the "Trunks plus Locals" data for computing the SIFL rather than "Total Passenger/Cargo" so as to properly adjust for capitalized leases. This adjustment was excluded from the Total Passenger/Cargo column in the Appendix attached to the Notice. Under the Act, the Board must use the operating costs associated with all interstate and overseas transportation combined and Delta's suggestion simply cannot be adopted. In any event, we now include in computing the interim SIFL a capitalized lease adjustment in determining the costs associated with total passenger/cargo operations. We will continue to do so and thus Delta's objection is moot. A recent example of SIFL updating is attached to this issuance, and made a part of the rule.

(3) *Local Service Carrier Fares.* In the Notice, the Board proposed eliminating the DPFI policy of allowing local service carriers the flexibility to raise their fares in a zone ranging up to 30 percent above the coach fare established for the trunks without submitting an economic justification. We tentatively decided that the basis for this policy was no longer valid, pointing out that it was designed in part to encourage the locals to experiment with fare changes in order to reduce their dependence on subsidy. At the time, locals were heavily subsidized and serving predominantly short-haul low density markets. Today, however, USAir and Texas International no longer receive subsidy, and the locals are taking advantage of the new regulatory environment engendered by the Airline Deregulation Act, leaving the shorter-haul, lower-density markets to the commuters and expanding into the longer-haul, higher-density markets traditionally served by the trunks. We tentatively concluded, therefore, that the historic distinction between the trunks and local service carriers was fast disappearing and the locals should be subject to the same fare policies as the trunks. We also proposed allowing all certificated carriers unrestrained fare freedom on flights operated with aircraft having 80 seats or less.

Three local service carriers—Piedmont, Republic (filing comments as North Central) and USAir (filing comments as Allegheny) opposed our

tentative proposal to eliminate the 30 percent upward zone. While their arguments varied, they all revolved around the same basic theme: Although the locals are now entering longer-haul, trunk-type routes, they continue to serve the short haul, low-density markets, where the DPFI formula fares—which form the basis for the SIFL calculations—are below costs. Therefore, if the 30 percent zone is eliminated, they would be forced to leave these markets or increase their dependence on subsidy.

The Board is becoming increasingly concerned over the general trend by certificated carriers away from providing service in shorter-haul markets. We certainly do not want to accelerate this trend, which we now believe might result from reducing the fare flexibility that the local service carriers now enjoy. For this reason we will not eliminate the 30 percent upward flexibility that was based on the DPFI formula fare. In fact, we are considering in PSDR-66, removing the ceiling in all markets of 200 miles or less. Meanwhile, the 30 percent upward flexibility for local service carriers is restated in § 399.33(c). Where 130 percent of the July 1, 1977, DPFI formula fare, as adjusted for cost increases, is greater than the ceiling applicable to trunks (that is, 105 or 110 percent of the current SIFL, depending on the number of carriers in the market), local service carriers may set their fares up to that higher level.

4. *Small Aircraft.* The CAAA suggested that, in conjunction with our policy of allowing all certificated carriers unrestrained fare freedom on flights operated with small aircraft, the Board should vacate those orders dealing with replacement service by commuters for local service carriers which provide that the commuter cannot charge fares higher than those charged by local service carriers. We believe that the CAAA's suggestion is a valid one. The policy we establish here, therefore, will supersede those orders, and commuters providing replacement service will have unrestrained fare freedom on flights using small aircraft. We have also restated this fare flexibility provision to conform to the air taxi rule, 14 CFR Part 298, which speaks of aircraft designed to have a maximum passenger capacity of 80 or fewer seats. This reflects our intent in the Notice.

In addition to the changes to our proposal indicated above, we are making editorial changes for clarity, which do not affect the substance of the rule.

Since this rule relieves a restriction, it may become effective immediately.

Accordingly, the Civil Aeronautics Board amends 14 CFR Part 399, Statements of General Policy, as follows:

1. The Table of Contents is amended by moving § 399.30 to § 399.38, redesignating § 399.30 through 399.33, and adding a new § 399.37, to read:

Subpart C—Policies Relating to Rates and Tariffs

Sec.	Definitions.
399.330	Definitions.
399.331	Standard industry fare level.
399.332	Zone of limited suspension for domestic passenger fares.
399.333	Additional fare flexibility.
399.334-36	[Reserved].
399.337	Joint fares.
399.338	Temporary subsidy rates.
* * * * *	

§ 399.30 [Redesignated as § 399.38]

2. Section 399.30, *Temporary Subsidy Rates*, is redesignated as § 399.38.

3. New §§ 399.30 through 399.33 and § 399.37 are added to Subpart C, to read:

§ 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 the Domestic Passenger Fares Investigation (Docket 21866-9).
 "SIFL" means the standard industry fare level, as set forth in § 399.31.

§ 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, it is presumed that the lowest unrestricted fare in effect on July 1, 1977, was the predominant fare. This presumption may be rebutted by showing that more passengers used a higher fare.

(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 these markets, the SIFL is equal to 110 percent of the predominant fare in effect on July 1, 1977, as adjusted by the Board for cost increases and as follows: 8 percent upward every 6 months beginning on

July 1, 1979, until it reaches the interstate SIFL. In any event, it will increase to the interstate SIFL on January 1, 1981. As used in this paragraph, "interstate SIFL" means the level that the SIFL would be if the market were an interstate one whose predominant fare on July 1, 1977, was the DPFI formula fare.

§ 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 within the 48 contiguous states and the District of Columbia, except to the extent that greater flexibility is set forth in § 399.33.

(b) *Bottom of zone.* Each carrier may set fares in each market as low as 50 percent below the SIFL. Also, on 40 percent of their weekly available seat miles, carriers may set fares as low as 70 percent below the SIFL. Where the SIFL is based on a fare higher than the DPFI formula fare, the formula fare (as adjusted for cost increases) is to be used to compute these floors. If a fare is below the SIFL and within the zone, the Board will not suspend the 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) *Fares below the zone.* Tariff filings that state fares below the zone must include the data and information set forth in § 221.165 of this chapter. The Board will not suspend a fare below the zone that is based on such factors as the carrier's individual costs or specialized marketing needs, unless the level of the fare will result in an inability of the carriers in the market to provide adequate service to the public, or the fare is otherwise unjust, unreasonable, predatory, unjustly discriminatory, unduly preferential, or unduly prejudicial.

(d) *Top of zone.* Each carrier may set fares above the SIFL as follows, and except in unusual or extraordinary circumstances the Board will not suspend the fares on the ground that their level is unreasonable:

(1) Up to 10 percent above the SIFL, in markets where four or more carriers are authorized to provide nonstop service on either an unrestricted or restricted basis (but not counting carriers that have only fill-up authority or that cannot carry local traffic); and

(2) Up to 5 percent above the SIFL in all other markets.

(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 should include a showing that off-peak fares 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.

§ 399.33 Additional fare flexibility.

For scheduled service within the 48 contiguous states and the District of Columbia, 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) *Local service carriers.* In markets where the DPFI formula fare, adjusted for cost increases and multiplied by 130 percent, is higher than the ceiling set forth in § 399.32(d), local service carriers may set their fares up to that higher level. The Board will not suspend such

fares, except in unusual or extraordinary circumstances.

§§ 399.34-36 [Reserved]

§ 399.37 Joint fares.

There should be joint fares in all markets over all routings within the 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. For purposes of constructing joint fares, maximum local fares in all markets, including California, Florida, and Texas, will be based on the DPFI formula fare, as adjusted for cost increases.

(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.

4. The Example of SIFL Adjustment attached to this rule is inserted at the end of Subpart C.

(Secs. 204, 403, 404, and 1002 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 758, 760, and 788, as amended, 49 U.S.C. 1324, 1373, 1374, and 1482)

By the Civil Aeronautics Board.

Phyllis T. Kaylor,
Secretary.

EXAMPLE OF SIFL ADJUSTMENT

[Methodology for determining change in operating expense per available seat-mile]

Year ended September 1979	Trunks	Locals	Trunks plus locals	Total passenger/cargo ¹⁴
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.
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

EXAMPLE OF SIFL ADJUSTMENT—Continued

[Methodology for determining change in operating expense per available seat-mile]

Year ended September 1979	Trunks	Locals	Trunks plus locals	Total passenger/ cargo ¹⁶
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, 1977 ¹²				
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	\$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.¹¹ Total fuel cost, scheduled service, times complement of rate of All-Cargo expense to total Operating Expense.¹² Order 77-7-26.¹³ Year ended March, 1977 cost per ASM, times cost escalation factor of 1.04543 (to July 5, 1977). See DPFI workpapers, Y.E. March, 1977.¹⁴ Estimated 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¢).¹⁵ Change 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 Sept., 1979.¹⁶ Includes Alaskan, Hawaiian and other regional carriers.

Appendix A—Summary of Comments to PSDR-61**American Airlines**

American supports the proposed rulemaking as a fair and reasonable method of implementing the Airline Deregulation Act of 1978. Its only suggestion is to revise the language of footnote 4 to § 399.31(c)(2) to eliminate what it believes to be an ambiguity in the Board's policy on upward fare flexibility.

Delta Airlines

Delta has focused on the methodology proposed by the Board to compute the Standard Industry Fare Level (SIFL), citing three major deficiencies. First, it believes that the Board has understated fuel costs in its calculations shown in Appendix A¹ and, in any event, does not indicate whether it will provide for more frequent review of the impact of fuel costs on the SIFL. Second, Delta states that the text of the Notice and Appendix A appear to be inconsistent as to which date the Board has projected ASM costs, pointing out that in the text the Board states that costs have been projected through September 1979, while in the Appendix costs have been computed as of July 1, 1979. Finally, Delta suggests that the Board use the "Trunks plus Locals" data for computing the SIFL rather than "Total Passenger/Cargo" so as to properly adjust for capitalized leases.² Delta concedes, however, that some of the problems it cites exist in the Board's method for calculating the interim SIFL (Order 79-6-96) and urges the Board to adopt that method in finalizing PSDR-61.

Eastern Airlines

Eastern's comments incorporate its petition for reconsideration of Order 79-6-96 establishing the interim SIFL.³ Specifically, it requests that the Board utilize the latest fuel data available to calculate the SIFL; that the Board project fuel costs on the basis of the average increase in price over three months rather than six; that we review actual fuel costs each month as it becomes available and make the necessary adjustment to the SIFL; and that we permit carriers to file tariffs on

short notice so that they can implement fare modifications on the data established for the SIFL.

Ozark Air Lines

Ozark believes that footnote 4 to § 399.31(C)(2) contradicts the Board's policy on upward fare flexibility and suggests that it be eliminated.

Pacific Southwest Airlines

PSA points out that the Board has deleted from the proposed § 399.33(a) the language governing fares in interstate markets adopted on an interim basis in PS-82. It urges us to reinstate that language. It also urges us to clarify that cost increases calculated for PS-80 markets will also be used in PS-82 markets.

Piedmont Airlines

Piedmont opposes the Board's tentative decision to eliminate the 30 percent upward zone of fare flexibility now allowed local service carriers. While it agrees with the Board that the locals are now entering the longer-haul trunk-type markets where there is no reason for the 130 percent rule, it argues that the locals are still serving the shorter-haul lower-density markets where the upward zone continues to have validity. It points out that it was the fact that the locals were serving these types of higher cost markets that led the Board to adopt the 130 percent rule and the elimination of it would only increase the local's dependence on subsidy.

Indeed, Piedmont claims that it would experience a revenue erosion of \$10.8 million⁴ if the 130 percent is eliminated, since it reads PSDR-61 as requiring the local services carriers to roll back their standard fares in order to reestablish the same percentage relationship with this coach fare level existing on July 1, 1977. In Piedmont's case, the standard fare as of that date averaged 113 percent of the coach fare. Piedmont recognizes that it might not be required to roll back its fares but maintains that it would still suffer the revenue loss since PSDR-61 would freeze their current fare until they equaled the SIFL based on the lower percentage relationship. This revenue squeeze will only force Piedmont to abandon several of its smaller markets or seek increases in subsidy.⁵

⁴Of the \$10.8 million, Piedmont claims \$6.5 million is in nonsubsidy markets and \$4.3 million is in subsidized markets. It states that, at least as to former, it will not be able to recover the lost revenue through increased subsidy.

⁵Piedmont also notes that the Board will allow carriers operating small airplanes complete fare freedom. In its case, however, this provision is of no practical effect since it is significantly reducing its small aircraft fleet.

¹Although Delta does not have the data underlying Appendix A, it believes that the Board has increased fuel by 11.27 percent from the year ended September 30, 1978, to July 1, 1979. Fuel costs in May 1979 were already 15 percent above this level.

²The capitalized base adjustment is excluded from "Total Passengers/Cargo."

³Eastern's petition was denied by Order 79-7-180, dated July 30, 1979.

Republic Airlines

Republic (filing comments as North Central) urges that the Board retain the 130 percent upward zone of fare flexibility in all local service carrier markets of 400 miles, or less. While it agrees with the Board that the locals have taken advantage of the new regulatory environment to enhance their route systems, it points out that the locals continue to serve the low-density short-haul markets⁶ where under the Phase 9 fare formula, fares are set below costs. And it claims that this gap will widen as the Board updates the SIFL level because these adjustments will be based on short-haul fares which failed to cover costs on July 1, 1977, and will use industry average costs that do not adequately reflect the costs of serving short-haul markets. Thus, Republic claims there is a continuing need for the 130 percent rule.

Trans World Airlines, Inc.

TWA's comments are limited to the Board's proposed methodology for updating the SIFL, and although it believes that the proposal is quite reasonable, it feels that the methodology could be improved in three ways. First, it argues that the Board should consider the cost of capital as an actual operating expense since interest rates are high and are subject to the same inflationary trends as other operating costs. Second, TWA questions the Board's use of revenues from non-scheduled all-cargo and belly-cargo operations for excluding costs associated with these services. It points out that the revenue derived from these operations covers economic costs (i.e., return on capital and income tax elements) and should not be used to reduce operating expenses which do not include these elements. Finally, TWA states that the use of Phase 9 costs by mileage block to compute the SIFL is incorrect since it doesn't take into account the high costs associated with carrying a passenger whose trip involves two or more flights. TWA believes that the SIFL should take these costs into account.

United Airlines

United views the Board's proposed method for computing fuel cost adjustments to the SIFL, even as modified by Order 79-6-96,⁷ as too

⁶ It points out that as of the end of 1978 North Central's average length of haul was 254.6 compared to the trunkline figure of 837.1 miles and its cost per RPM as of September 1978 was 15 while the trunks' average cost was 8.8.

⁷ In PSDR-61, the Board proposed continuing the policy of projecting all costs, including fuel costs three months beyond the tariff effective date. This method would cover a six-month period and require

structural in a period of extremely volatile fuel prices. It especially objects to the Board's use of a six-month fare to project fuel costs. It suggests three alternatives. United suggests that the Board devise a system for obtaining the most current fuel price data to be used in projecting fuel costs. Alternatively, it believes that the Board should shorten the historical six-month base period and project fuel prices using the most recent data. Finally, the Board could obtain forecasts from reliable government agencies and use them to project future fuel prices.

USAir

USAir (filing comments as Allegheny Airlines) objects to the Board's proposed elimination of the 30 percent upward zone of fare flexibility now allowed local service carriers. It points out that the DPFI Phase 9 fare formula produced fares below average costs in short-haul market and because that formula will be used to develop the SIFL, fares in these markets will remain below costs. Thus, continuation of the 30 percent upward zone is fully justified. It also disputes the Board's conclusion that locals are leaving shorter-haul markets and entering trunk-type routes, arguing the average stage length of the locals in the first two months of 1979 was 248 miles or only 40 percent of that of the trunks. Finally, USAir asserts that elimination of the 130 percent rule will create a disincentive for locals to serve short-haul markets and is inconsistent with the Board's decision to allow carriers operating aircraft with 60 seats or less complete fare freedom.

Swift Aire Lines, Inc.

Swift Aire supports the proposal to allow carriers operating aircraft with 60 seats or less complete freedom to set fares.

Commuter Airline Association of America, Inc. (CAAA)

The CAAA supports the Board's tentative decision to allow carriers operating aircraft having 60 seats or less unrestricted freedom to set their own fares. Its only suggestion is that the Board vacate those provisions of orders dealing with replacement service by commuters for local service carriers which provide that the commuter cannot charge fares higher than those charged by the local service carriers. To retain such provision would, in its view, make little sense especially since the Board

only two SIFL adjustments each year. In Order 79-6-96, the Board decided to use on an interim basis fuel costs projected forward six weeks beyond the tariff effective date which would require four fuel related SIFL adjustments each year.

proposes to eliminate the 30 percent upward zone and to allow all carriers unrestricted fare freedom on their operations with aircraft of 60 seats or less.

Puget Sound Traffic Association (PSTA)

PSTA expresses concern over the Board's tentative decision to continue and in some instances to expand the upward zones of fare flexibility created by PS-80. It requests a clarification of these policies since it is unclear as to whether the Board is creating absolute "no-suspend" zones above the SIFL, or ones allowing the carriers some upward pricing flexibility with some risk of suspensions in certain presumptively competitive markets. If the Board proposes to establish absolute no-suspend zone of upward fare flexibility, PSTA maintains that it is exceeding its statutory authority. It argues that the Airline Deregulation Act establishes a maximum upward no-suspend zone of five percent and points out that while Congress specifically authorized the Board to increase the downward no-suspend zone, it failed to give the Board similar authority to expand the upward zone.⁸

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FEDERAL TRADE COMMISSION**16 CFR Part 13**

[Docket No. C-3014]

Mid City Chevrolet, Inc., et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Final order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order, among other things, requires a Laurel, Md. motor vehicle dealer and its corporate officer to cease, in connection with the advertising and sale of an automobile retrofit device known as the Power Pak, making false or unsubstantiated fuel economy claims and misrepresenting the purpose, content or conclusion of tests and surveys. Advertisements referring to fuel economy improvement resulting from the installation of an automobile retrofit

⁸ PSTA also questions the Board's policy of establishing the size of the upward zone on the basis of the number of authorized competition in the market. It claims that this policy ignores the actual competitive situation in the market and the practical constraints on that competition.