

**§ 399.81**

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

be performed as contracted or representing that such refunds are obtainable only at some other point, thus depriving persons of the immediate use of the money to arrange other transportation, or forcing them to suffer unnecessary inconveniences and delays or requiring them to accept transportation at higher cost, or under less desirable circumstances, or on less desirable aircraft than that represented at the time of sale.

(m) Misrepresentations regarding the handling, forwarding or routing of baggage or other property, or the loss or tracing thereof, or failing or refusing to honor proper claims for loss of or damage to baggage or other property.

(n) Misrepresentation as to the requirements that must be met by persons or organizations in order to qualify for charter or group fare flights.

**§ 399.81 Unrealistic or deceptive scheduling.**

(a) It is the policy of the Board to consider unrealistic scheduling of flights by any air carrier providing scheduled passenger air transportation to be an unfair or deceptive practice and an unfair method of competition within the meaning of section 411 of the Act.

(b) With respect to the advertising of scheduled performance, it is the policy of the Board to regard as an unfair or deceptive practice or an unfair method of competition the use of any figures purporting to reflect schedule or on-time performance without indicating the basis of the calculation, the time period involved, and the pairs of points or the percentage of systemwide operations, thereby represented and whether the figures include all scheduled flights or only scheduled flights actually performed.

[PS-111, 49 FR 40567, Oct. 17, 1984, as amended by PS-114, 50 FR 456, Jan. 4, 1985]

**§ 399.82 Passing off of carrier identity by affiliation between carriers.**

(a) *Applicability.* This policy shall apply to proceedings in which the Board, in exercising its regulatory powers with respect to air carriers and foreign air carriers, is required to determine whether carriers have engaged in unfair or deceptive practices, or un-

fair methods of competition. The standards herein shall not be construed to supersede any action previously taken by the Board in a particular proceeding dealing with the subject matter of this statement, but to the extent not inconsistent therewith shall provide standards which supplement, or implement such specific Board action. The limitation of this policy statement to certain affiliated carriers should not be construed as an indication that the Board will permit other carriers to pass off by means of activities which are inconsistent with the minimum safeguards set forth in paragraph (c) of this section. In such cases the Board may determine in an adjudicatory proceeding that the activities engaged in have a tendency to pass off and constitute an unfair or deceptive practice or an unfair method of competition.

(b) *Definition.* For the purpose of this statement, the term *affiliation*, as between an air carrier and a foreign air carrier, shall mean that one of the carriers directly or indirectly has one of the following relationships to the other:

- (1) Owns or controls 10 percent or more of the securities of the other, with or without an accompanying power to vote;
- (2) Is in control of the other within the meaning of section 408 of the Act;
- (3) Has any of the interlocking relationships described in section 409 of the Act;
- (4) Is jointly controlled with the other carrier, directly or indirectly by a third person;
- (5) Provides general agency services for the other carrier.

For the purpose of this statement, *general agency services* shall mean services performed under an agreement between an air carrier and a foreign air carrier which provides for the general representation of one by the other in a specified area or point, in relation to services such as the following: Solicitation and sale of passenger, express, and cargo transportation; airport transportation and hotel accommodations; local advertising and publicity, local sales offices; passenger services; local government representation; purchase,