§ 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 schedule performance, it is the policy of the Board to regard as an unfair or deceptive practice and an unfair method of competition to use 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 system-wide operations thereby represented and whether the figures include all scheduled flights or only scheduled flights actually performed.

(c) Chronically delayed flights.

(1) This section applies to any air carrier that is a “reporting carrier” as defined in Part 234 of Department regulations (14 CFR Part 234).

(2) For the purposes of this section, a chronically delayed flight means any domestic flight that is operated at least 10 times a month, and arrives more than 30 minutes late (including cancelled flights) more than 50 percent of the time during that month.

(3) For purposes of this paragraph, the Department considers all of a carrier’s flights that are operated in a given city-pair market whose scheduled departure times are within 30 minutes of the most frequently occurring scheduled departure time to be one single flight.

(4) The holding out of a chronically delayed flight for more than four consecutive one-month periods represents one form of unrealistic scheduling and is an unfair or deceptive practice and an unfair method of competition within the meaning of 49 U.S.C. 41712.

§ 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 unfair 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