



**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, D.C.**

Issued by the Department of Transportation
on the 26th day of June 2006

Aerovias del Continente Americano, S.A.

**Violations of 49 U.S.C. § 41705
and 14 CFR Part 382**

OST-2006-23528

Served: June 26, 2006

CONSENT ORDER

This order concerns violations by Aerovias del Continente Americano, S.A. (Avianca) of the requirements of 14 CFR Part 382 (Part 382), with respect to filing annual reports detailing disability-related complaints that the foreign air carrier received from passengers in calendar years 2004 and 2005. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part also violate the ACAA. This order directs Avianca to cease and desist from future similar violations of Part 382 and the ACAA and assesses the carrier \$10,000 in civil penalties.

Under section 382.70, covered carriers (i.e. U.S. and foreign air carriers operating passenger service to and from the United States with at least one aircraft having a design capacity of more than 60 passenger seats) must, among other things, submit an annual report to the U.S. Department of Transportation (Department) summarizing the disability-related complaints that they received the prior calendar year¹. Foreign air carriers are required to submit information only with respect to disability-related complaints associated with any flight segment originating or terminating in the United States. The annual report to the Department is due each year on the last Monday in January. The first annual report covering calendar year 2004 was due to the Department on January 24, 2005, and the second such report covering calendar year 2005 was due on January 30, 2006.

¹ In addition, the rule requires carriers to record complaints that they receive alleging discrimination or inadequate accessibility on the basis of a disability. The complaints are to be categorized according to the passenger's type of disability and nature of complaint. The rule also requires that covered carriers retain a copy of each disability-related complaint that the carrier receives and a record of the action taken on the complaint for three years.

To comply with 49 U.S.C. § 41705 which requires, among other things, that the Secretary of Transportation “regularly review all complaints received by air carriers alleging discrimination on the basis of disability . . . and report annually to Congress on the results of such review,” and to ensure that consumers can compare the overall disability complaints filed against particular carriers, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) is committed to ensuring carriers file disability-related reports as required. To this end, the Enforcement Office has made efforts to ensure compliance with section 382.70, including providing carriers and carrier associations information about the disability reporting requirements and posting a copy of the disability reporting rule on its Aviation Consumer Protection Division’s website.

Avianca is a Columbia based foreign air carrier operating passenger service to and from the United States with one or more aircraft having a design seating capacity of more than 60 seats. It operates on average 290 daily flights to 18 national and 17 international destinations, including Fort Lauderdale, Miami, and New York. At present, Avianca has 35 aircraft – 1 Boeing 767-300, 4 Boeing 767-200, 5 Boeing 757-200, 15 McDonnell Douglas MD-83, and 10 Fokker 30. Avianca’s operations into the U.S. include passenger service with aircraft with more than 60 seats, and they clearly fall within the scope of the reporting rule. Therefore, Avianca violated section 382.70 and the ACAA when it did not submit a report detailing the disability-related complaints that it received in calendar years 2004 and 2005, on flights originating or terminating in the United States.²

We view seriously Avianca’s failure to submit the reports required by section 382.70. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. By this order, the Department finds that Avianca failed to submit reports detailing the disability-related complaints that it received in calendar years 2004 and 2005 in violation of 14 CFR Part 382 and 49 U.S.C. § 41705. In order to avoid litigation, Avianca has agreed to settle these matters with the Enforcement Office and enter into this consent order directing Avianca to cease and desist from future similar violations of Part 382 and 49 U.S.C. § 41705, and assessing \$10,000 in compromise of potential civil penalties otherwise due and payable. Of this amount, \$5,000 shall be due and payable within 15 days after the service date of this order and the remaining \$5,000 of the assessed penalty shall be suspended for one year following the service date of this order and forgiven after that time if the carrier complies with the payment provisions and commits no further violations during that period. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department’s reporting requirements by Avianca, as well as by other domestic and foreign air carriers.

² Avianca has now filed its calendar year 2004 and 2005 reports.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Avianca has violated 14 CFR 382.70 by failing to submit an annual report by January 24, 2005, and by January 30, 2006, to the Department of Transportation summarizing the disability-related complaints that it received the prior calendar year;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2 above, Avianca has also violated 49 U.S.C. § 41705;
4. Avianca, and all other entities owned or controlled by or under common ownership with Avianca, its successors and assignees are ordered to cease and desist from further violations of 14 CFR 382.70 and 49 U.S.C. § 41705;
5. Avianca is assessed \$10,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above, of which \$5,000 shall be due and payable within 15 days after the service date of this order. The remaining \$5,000 of the assessed penalty shall be suspended for one year following the service date of this order, and shall be forgiven, unless, during this time period, Avianca fails to comply with the payment provisions of this order or the cease and desist provisions of paragraph 4 above, in which case the entire unpaid portion of the assessed penalty shall become due and payable immediately and the carrier may be subject to further enforcement action; and
6. Payment shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U. S. Treasury in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Avianca Airlines, Inc. to the assessment of interest, penalty and collection charges under the Debt Collection Act and possible enforcement action for failure to comply with this order.

This order will become a final order of the Department 10 days after its service date unless a timely petition for review is filed or the Department takes review on its own motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

(SEAL)

*An electronic version of this document is available on the World Wide Web at
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