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

Issued by the Department of Transportation
On the 15th day of October 2008

Primaris Airlines, Inc. **Violations of 49 U.S.C. § 41705 and 14 CFR Part 382**	**Docket OST-2008-0031** **Served: October 15, 2008**

CONSENT ORDER

This order concerns violations by Primaris Airlines, Inc. (Primaris) of the requirements of 14 CFR Part 382 (Part 382), with respect to the filing of annual reports detailing disability-related complaints that Primaris received from passengers in calendar years 2005 and 2007. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of Part 382 also violate the ACAA. This order directs Primaris to cease and desist from future similar violations of Part 382 and the ACAA and assesses the carrier $80,000 in civil penalties.

Under section 382.70, covered carriers (i.e. U.S. and foreign air carriers operating passenger service to, from and within 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 year.[1] 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, the second report covering calendar year 2005 was due on January 30, 2006, the third report covering calendar year 2006 was due on January 29, 2007, and the fourth report covering calendar year 2007 was due on January 28, 2008.

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[1] In addition, the rule requires a carrier to record complaints that it receives 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 that 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.

Primaris, which is based in Las Vegas, Nevada, operates charter service within the United States. While the Department's records indicate that Primaris timely submitted its report detailing disability-related complaints received from passengers in calendar years 2004 and 2006,[2] Primaris did not submit its report for calendar year 2007 until June 4, 2008, approximately four months late, and did not submit its report for calendar year 2005 until August 22, 2006, nearly six months late. Therefore, Primaris violated section 382.70 and the ACAA when it did not submit the reports detailing the disability-related complaints that it received in calendar years 2005 and 2007 on flights originating or terminating in the United States in a timely manner.

In explanation and mitigation, Primaris states that its failure to submit its 2007 report on time resulted from a change in personnel. When Primaris submitted its 2005 report late, a Primaris official advised the Department in writing that certain remedial procedures would be established at Primaris' headquarters to ensure future timeliness of submission, including the establishment of a group calendar system with software to notify four company officials with a "tickler" system two week prior to the report submission date. However, Primaris explains that this official left the company without having established this system, or having notified any other Primaris officials of the ACAA reporting requirements. According to Primaris, it has now established a list of jointly responsible senior company officials who will be responsible for submitting the report going forward. Primaris states that the list includes Primaris' President, its Senior Vice President of Communications & Compliance and its General Counsel. Primaris also asserts that outside counsel will be charged with providing a reminder notice. According to Primaris, this list of company officials and outside counsel will be included in a new system designed to remind each and every official as to the pending due date for report submission every year. Primaris explains that this will assure redundancy and future compliance with the reporting requirement and will avoid the risk that the departure of one or two officials could result in a failure to file on time.

Primaris emphasizes that it devotes considerable effort toward training its flight crews on customer care and specific accommodations for passengers with disabilities. Topics of focus for Primaris are non-discrimination, specific procedures for disability-related

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[2] Primaris submitted its report detailing disability-related complaints for calendar year 2004 on January 14, 2005, and calendar year 2006 on January 16, 2007.

equipment and devices, boarding procedures, cabin services, assistive animals, sensitivity awareness, physical challenges, other special care needs, and children. According to Primaris, it has, as reflected in its manuals, strict requirements regarding handling of passengers with disabilities, as well as requirements for reporting incidents. To date, Primaris has not received a disability-related complaint from any passenger.

We view seriously Primaris' failure to submit the reports on time as 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 Primaris failed to timely submit reports detailing the disability-related complaints that it received in calendar years 2005 and 2007 in violation of 14 CFR Part 382 and 49 U.S.C. § 41705.

In order to avoid litigation, Primaris has agreed to settle these matters with the Enforcement Office and enter into this consent order directing Primaris to cease and desist from future similar violations of Part 382 and 49 U.S.C. § 41705, and assessing $80,000 in compromise of potential civil penalties otherwise due and payable subject to the offset and payment provisions set forth below. We believe that this assessment is appropriate and serves the public interest. It represents an adequate deterrent to future noncompliance with the Department's reporting requirements by Primaris, as well as by other domestic and foreign air carriers.

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 Primaris has violated 14 CFR 382.70 by failing to submit annual reports by January 30, 2006, and January 28, 2008, 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, Primaris has also violated 49 U.S.C. § 41705;

4. Primaris, and all other entities owned or controlled by or under common ownership with Primaris, 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. Primaris is assessed $80,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above, of which:

    a. $7,500 shall be due and payable within 30 days after the service date of this order;

b. $17,500 shall be due and payable in three installments as set forth below:

   i. a first payment of $7,500 shall be due and payable 90 days after the service date of this order;
   ii. a second payment of $5,000 shall be due and payable 150 days after the service date of this order; and
   iii. a third payment of $5,000 shall be due and payable 210 days after the service date of this order;

c. $15,000 shall be credited to Primaris by the Aviation Enforcement Office for salary and training expenditures associated with two Primaris employees becoming Complaint Resolution Officials (CRO) before May 13, 2009;[3]

d. Primaris must provide the following documentation as proof of these expenditures:

   i. a receipt, invoice, or similar document verifying the amount of training expenditures associated with CRO training obtained by Primaris employees;

   ii. a detailed explanation of the method used by Primaris to determine the percentage of time and salary attributed to two Primaris employees becoming CROs and providing CRO related services; and

   iii. a sworn statement to the Aviation Enforcement Office from an appropriate Primaris official certifying that the total salary and training expenditures were properly expended to the best of that official's knowledge after the completion of a reasonable inquiry to establish the accuracy of the sworn statement;

e. To the extent that Primaris fails to provide adequate documentation verifying the appropriate expenditure of the offset, that amount shall become due and payable 28 months after the service date of this order; and

f. If Primaris fails to timely file its annual reports detailing disability-related complaints received in calendar years 2008 and 2009 or fails to timely file any

[3] If Primaris obtains effective authority to conduct scheduled operations under 49 U.S.C. § 41101 before May 13, 2009, and therefore is required to have a CRO before that date, any salary or training expenses incurred from the date that Primaris obtains such authority cannot be used to offset the amount of the assessment.

quarterly financial reports due to the Bureau of Transportation Statistics through November 2010, the remaining $40,000 of the assessed penalty shall become due and payable 28 months after the service date of this order; and

6. Payments 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 Primaris 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

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