



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

Issued by the Department of Transportation
On the Twenty-Sixth Day of February, 2010

Bahamasair Holdings Limited

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

Served: February 26, 2010

Docket: DOT-OST-2010-0005

CONSENT ORDER

This order concerns violations by Bahamasair Holdings Limited (Bahamasair) of the requirements of 14 CFR Part 382 (Part 382), with respect to the filing of annual reports detailing disability-related complaints that Bahamasair received from passengers in each calendar year between 2004 and 2008. 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 Bahamasair to cease and desist from future similar violations of Part 382 and the ACAA and assesses the carrier \$15,000 in civil penalties.

Under section 382.70 (recodified as section 382.157),¹ 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.² The annual report to the Department is due each year on the last Monday

¹ On May 13, 2009, 14 CFR 382.70 changed to 14 CFR 382.157; however, its relative substance remains the same.

² 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 the nature of the complaint. The rule also requires that covered

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, the fourth report covering calendar year 2007 was due on January 28, 2008, and the fifth report covering calendar year 2008 was due on January 26, 2009.

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.

Bahamasair is a foreign air carrier based in Nassau, Bahamas that operates scheduled service to and from the United States using at least one aircraft having a design seating capacity of more than 60 passenger seats. Bahamasair’s operations into the United States clearly fall within the scope of the reporting rule. Therefore, Bahamasair violated section 382.70 and the ACAA when it submitted to the Department the report for calendar year 2004 on April 4, 2005, sixty-three days late, the report for calendar year 2005 on February 8, 2006, nine days late, the report for calendar year 2006 on January 31, 2007, two days late, the report for calendar year 2007 on January 31, 2008, three days late and the report for calendar year 2008 on February 25, 2009, over four weeks late.

In mitigation, Bahamasair states that it is a small Caribbean airline with limited budgetary and human resources, facing greater challenges than most carriers in meeting non-critical administrative requirements, especially in light of time constraints and conflicting priorities arising during the busy opening weeks of a new year. Bahamasair states further that it has nevertheless consistently met the requirements of section 382.70 insofar as disability-related complaints need to be monitored, categorized, recorded and retained on an ongoing basis (and, in fact, there were no such complaints received by Bahamas air during the reporting years 2006-08, and only one complaint concerning a damaged wheelchair in 2009). Moreover, Bahamasair avers that because the Department first made Bahamasair aware in 2009 of its concerns regarding the timing of the carrier’s disability-related complaint report submissions, senior management personnel of Bahamasair did not learn of its consistent reporting deficiency until recently. Bahamasair states that since learning of the reporting tardiness, Bahamasair has cooperated fully with the Department and has implemented robust internal procedures and clear lines of

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.

responsibility to ensure that its future disability-related complaints reports will be filed timely, no later than the last Monday in January.

We view seriously Bahamasair's failure to submit its report 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 Bahamasair failed to submit timely its annual reports detailing the disability-related complaints it received in calendar years 2004, 2005, 2006, 2007, and 2008 in violation of 14 CFR Part 382 and 49 U.S.C. § 41705.

In order to avoid litigation, Bahamasair Holdings Limited has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Bahamasair Holdings Limited to cease and desist from future similar violations of Part 382 and 49 U.S.C. § 41705, and assessing \$15,000 in compromise of potential civil penalties otherwise due and payable. 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 Bahamasair Holdings Limited, 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 Bahamasair Holdings Limited has violated 14 CFR 382.70 by failing to submit timely its annual reports detailing the disability-related complaints it received in calendar years 2004, 2005, 2006, 2007, and 2008 to the Department of Transportation summarizing the disability-related complaints that it received in those calendar years;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2 above, Bahamasair Holdings Limited also violated 49 U.S.C. § 41705;
4. Bahamasair Holdings Limited and all other entities owned or controlled by Bahamasair Holdings Limited, its successors and assignees are ordered to cease and desist from further violations of 14 CFR 382.70 [now section 382.157(d)] and 49 U.S.C. § 41705;
5. Bahamasair Holdings Limited is assessed \$15,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of this total penalty amount, \$7,500 shall be due and payable within 30 days after the service date of this order. The remaining \$7,500 will become due and payable if Bahamasair Holdings Limited violates 14 CFR 382.157(d) within

one year following the date of issuance of this order, or fails to comply with the payment provisions of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Bahamasair Holdings limited may be subject to additional enforcement action for failure to comply with this order; 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 Bahamasair Holdings Limited 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)

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<http://regulations.gov>*