



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

Issued by the Department of Transportation
On the 30th day of May 2007

LAN Airlines, S.A.

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

OST-2007-26781

Served: May 30, 2007

CONSENT ORDER

This order concerns violations by LAN Airlines, S.A. (LAN) of the requirements of 14 CFR Part 382 (Part 382), limited to the filing of 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 LAN to cease and desist from future similar violations of Part 382 and the ACAA and assesses the carrier \$30,000 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 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 25, 2005, and the second such report covering calendar year 2005 was due on January 30, 2006.

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

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.

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.

LAN, based in Santiago, Chile, operates scheduled international passenger service to and from the United States with an average of four daily flights to the U.S. utilizing Boeing 767-300 and Airbus 340-313 aircraft. According to the Department’s records, the carrier submitted its initial report detailing disability-related complaints received in 2004 on March 2, 2005, four weeks after the reporting deadline. Department records further indicate that the carrier submitted the report for calendar year 2005 on July 25, 2006, almost six months after the report’s due date and only after the Enforcement Office had contacted the carrier regarding its delinquency. In both instances, LAN violated section 382.70 and the ACAA by submitting the reports significantly beyond the reporting deadline.

In mitigation, LAN states that it believed – and continues to believe – that the 2004 disability report was timely submitted on January 24, 2005. LAN further believed – and continues to believe – that the 2005 report was submitted on February 2, 2006, only three days after the deadline. According to LAN, for both years, several attempts were made to re-submit both reports. Nevertheless, to ensure that future reports are timely filed, LAN states that it has established a four-tier system for reporting disability claim data to the Department. A new Customer Service Specialist for disability claims is in charge of retrieving data and filing the annual report with the Department. A second Customer Service Specialist supports this individual to make sure that the report is complete and filed, and a Customer Service Supervisor oversees the filing process. In addition, the Customer Service Manager for North America now verifies that the report has been submitted. LAN also states that a network alert also has been established on its computer system to remind the Customer Service Department of an upcoming deadline.

We view seriously LAN’s failure in 2005 and in 2006 to submit the report required by 382.70 in a timely manner.² 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 LAN violated 14 CFR Part 382 and 49 U.S.C. § 41705 by submitting late reports covering disability-related complaints it received in 2004 and 2005. In order to avoid litigation, LAN has agreed to settle these matters with the Enforcement Office and enter into this consent order directing LAN to cease and desist from future similar violations of Part 382 and 49

² The Enforcement Office also investigated Lan Ecuador and Lan Peru for failing to submit an annual report detailing disability-related complaints received in calendar years 2004 and 2005 as required by the ACAA and section 382.70. LAN states that it attempted to file those reports with the Department. In the interest of settling this matter, those investigations are being terminated with the corrective actions noted in this consent order.

U.S.C. § 41705, and assessing the carrier \$30,000 in compromise of potential civil penalties otherwise due and payable. Of this amount, \$15,000 shall be due and payable within 15 days after the service date of this order and the remaining \$15,000 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 of section 382.70 during that period. We believe 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 LAN 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 LAN Airlines, S.A. violated 14 CFR 382.70 by failing to submit an annual report by January 24, 2005, and another 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 failing to submit an annual report by January 24, 2005, and another by January 30, 2006, to the Department of Transportation summarizing the disability-related complaints that it received the prior calendar year, LAN Airlines, S.A. has also violated 49 U.S.C. § 41705;
4. LAN Airlines, S.A., and all other entities owned, affiliated, or controlled by or under common ownership with LAN Airlines, S.A., 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. LAN Airlines, S.A. is assessed \$30,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above, of which \$15,000 shall be due and payable within 15 days after the service date of this order. The remaining \$15,000 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, LAN Airlines, S.A. fails to comply with the payment provisions of this order or the cease and desist provision of paragraph 4 above is violated, 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 LAN Airlines, S.A., 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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