



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

Issued by the Department of Transportation
On the 5th day of October, 2007

Air New Zealand

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

**Docket OST-2007-26781
Served: October 05, 2007**

CONSENT ORDER

This order concerns violations by Air New Zealand, Limited (Air New Zealand) of the requirements of 14 CFR Part 382 (Part 382), with respect to filing an annual report detailing disability-related complaints that the foreign air carrier received from passengers in calendar year 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 Air New Zealand to cease and desist from future similar violations of Part 382 and the ACAA and assesses the carrier \$20,000 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 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 24, 2005, the second such report covering calendar year 2005 was due on January 30, 2006, and the third such report covering calendar year 2006 was due on or before January 29, 2007.

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 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.

Air New Zealand is a New Zealand 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 an average of 4 flights daily into the U.S. and offers bookings, in association with its Star Alliance partners, to a number of U.S. cities, including Denver, Chicago, Boston, New York and Washington, D.C. At present, Air New Zealand operates 94 aircraft. Air New Zealand’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. The carrier submitted the report for disability-related complaints received in calendar year 2005 on July 26, 2006, approximately six months after the report’s due date and only after the Enforcement Office had contacted the carrier regarding its delinquency. Therefore, Air New Zealand violated section 382.70 and the ACAA when it did not submit in a timely manner a report detailing the disability-related complaints that it received in calendar year 2005, on flights originating or terminating in the United States.²

In mitigation, as to the delay in filing the report covering 2005, Air New Zealand states that this was the result of extraordinary circumstances. The company explains that it underwent a massive reorganization and downsizing of its corporate staff in the winter of 2005-2006, which resulted in a large number of its corporate staff being laid off or reassigned, including the person who filed the 2004 report and would have been in charge of the 2005 report. Air New Zealand states that the carrier has since instituted various mechanisms to ensure that the report is generated automatically and submitted on time regardless of any change in personnel.

We view seriously Air New Zealand’s failure to submit the report covering calendar year 2005 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 Air New Zealand failed to timely submit a report detailing the disability-related complaints that it received in calendar year 2005 in violation of 14 CFR Part 382 and 49 U.S.C. § 41705.

In order to avoid litigation, Air New Zealand has agreed to settle these matters with the Enforcement Office and enter into this consent order directing Air New Zealand to cease and desist from future similar violations of Part 382 and 49 U.S.C. § 41705, and

² We note that Air New Zealand filed its report for calendar year 2006 in a timely fashion.

assessing \$20,000 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 deterrence to future noncompliance with the Department's reporting requirements by Air New Zealand, 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 Air New Zealand has violated 14 CFR 382.70 by failing to submit an annual report 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 violation described in ordering paragraph 2 above, Air New Zealand has also violated 49 U.S.C. § 41705;
4. Air New Zealand, and all other entities owned or controlled by or under common ownership with Air New Zealand, 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. Air New Zealand is assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above, of which \$10,000 is due and payable within 30 days after the service date of this order. The remaining \$10,000 of the assessed penalty shall be suspended for one year following the service date of this order, and shall be forgiven, unless, during this period, Air New Zealand 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 Air New Zealand 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:

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