



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

Issued by the Department of Transportation
On the 16th day of October

Cayman Airways

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

**Docket OST-2007-26781
Served: October 16, 2007**

CONSENT ORDER

This order concerns violations by Cayman Airways 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, 2005, and 2006. 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 Cayman Airways 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

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.

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.

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.

Cayman Airways, based in the Cayman Islands, operates scheduled service to and from the United States with an average of five daily flights utilizing three Boeing 737-200 and two Boeing 737-300 aircraft. The carrier offers service to a number of U.S. cities, including Miami and New York. According to the Department’s records, the carrier submitted its report detailing disability-related complaints for calendar year 2006 on February 8, 2007, but did not submit its reports for calendar years 2004 and 2005, until April 24, 2007. Therefore, Cayman Airways violated section 382.70 and the ACAA when it did not submit reports in a timely manner that detailed the disability-related complaints that it received in calendar years 2004, 2005, and 2006 on flights originating or terminating in the United States.

In mitigation and explanation, Cayman Airways submits that it takes seriously its obligations to accommodate passengers with disabilities while simultaneously ensuring a safe environment. Cayman states that the late-filed reports are not indicative of a willful disregard for the Department's regulations. The carrier explains that, unfortunately, significant operational difficulties and other business challenges directly resulting from Hurricane Ivan in 2004 hampered Cayman Airways’ ability to timely transmit the underlying reports. Nevertheless, Cayman states as soon as the airline learned of the reporting requirements, it moved swiftly to collect the required data and transmit the reports to the Department.

Additionally, the carrier explains that the manager of customer relations has been delegated responsibility for compiling data on a regular basis and transmitting timely annual reports to the Department. Moreover, Cayman Airways states that the station managers at all of the carriers’ stations in the United States, as well as the station manager at Grand Cayman, have been advised of the reporting requirements under Part 382 and are instructed to report immediately any disability-related complaints to the manager of customer relations.

We view seriously Cayman Airway’s 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 Cayman Airways failed to timely submit reports detailing the disability-related complaints that it received in calendar years 2004, 2005 and 2006 in violation of 14 CFR Part 382 and 49 U.S.C. § 41705.

In order to avoid litigation, Cayman Airways has agreed to settle these matters with the Enforcement Office and enter into this consent order directing Cayman Airways to cease and desist from future similar violations of Part 382 and 49 U.S.C. § 41705, and 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 Cayman Airways, 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 Cayman Airways has violated 14 CFR 382.70 by failing to submit an initial annual report by January 24, 2005, a second report by January 30, 2006, and a third report by January 29, 2007, 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, Cayman Airways has also violated 49 U.S.C. § 41705;
4. Cayman Airways, and all other entities owned or controlled by or under common ownership with Cayman Airways, 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. Cayman Airways 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 shall be due and payable within 15 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, Cayman Airways 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 Cayman Airways, 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:

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Deputy General Counsel

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<http://dms.dot.gov>*