



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

Issued by the Department of Transportation
On the 22nd day of October 2007

Eurofly S.p.A.

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

**DOT-OST-2007-26781
Served: October 22, 2007**

CONSENT ORDER

This order concerns violations by Eurofly S.p.A. (Eurofly) of 14 CFR Part 382 (Part 382) with respect to filing annual reports detailing disability-related complaints that the foreign 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 Eurofly 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, including 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 first annual report covering calendar year 2004 was due on January 25, 2005. The second such report covering calendar year 2005 was due on January 30, 2006, and the third report covering calendar year 2006 was due on 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

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.

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.

Eurofly is a foreign carrier based in Italy that operates charter and seasonal scheduled service to and from the U.S. using at least one aircraft having a design seating capacity of more than 60 passenger seats. As such, Eurofly's operations into the U.S. fall within the scope of the reporting rule, and Eurofly violated section 382.70 and 49 U.S.C. § 41705 when it filed its reports of disability-related complaints for calendar years 2004, 2005 and 2006 after the filing deadlines. Eurofly submitted all three reports following notification from the Enforcement Office in April 2007 of their delinquent status.

In mitigation, Eurofly asserts that it has always endeavored to comply with all applicable U.S. rules and regulations and that its failure to file the reports in question was wholly inadvertent. Eurofly states more specifically that it did not become aware of the reporting requirement because of its limited operations and lack of presence in the U.S. market at the time that the annual reporting requirement for 2004 became effective in early 2005. Eurofly explains that it only operated 12 charter flights to the U.S. from June through August 2004, with no U.S. staff, thus missing the notification from the Department to registered carriers in late 2004. Eurofly assures the Department that upon learning of this reporting requirement it immediately took steps to ensure that the company will submit future reports on time.

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 Eurofly violated 14 CFR Part 382 and 49 U.S.C. § 41705 by failing to timely submit reports for disability-related complaints received in 2004, 2005 and 2006. In order to avoid litigation, Eurofly has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Eurofly 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. Of this amount, \$5,000 shall be due and payable within 30 days of the service date of the order, and an additional \$5,000 shall be due and payable within 60 days of the service date of the order. The remaining \$10,000 of the assessed penalty shall be suspended for one year following the service date of the order and then forgiven 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 Eurofly, as well as by other domestic and foreign 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 Eurofly S.p.A. violated 14 CFR 382.70 by failing to submit its 2004, 2005 and 2006 annual reports to the Department of Transportation summarizing the disability-related complaints that it received during the prior calendar years by January 25, 2005, January 30, 2006, and January 29, 2007 respectively;
3. We find that by engaging in the conduct and violation described in ordering paragraph 2 above, Eurofly S.p.A. has also violated 49 U.S.C. § 41705;
4. Eurofly, S.p.A. and all other entities owned or controlled by or under common ownership with Eurofly, S.p.A., its successors and assignees are ordered to cease and desist from any further similar violation of 14 CFR 382.70 and 49 U.S.C. § 41705;
5. Eurofly, S.p.A. 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 this amount, \$5,000 shall be due and payable within 30 days of the service date of the order, and an additional \$5,000 shall be due and payable within 60 days of the service date of the order. The remaining \$10,000 of the assessed penalty shall be suspended for one year following the service date of the order and then forgiven unless Eurofly violates the order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Eurofly may be subject to additional 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 Eurofly, S.p.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

*An electronic version of this document is available on the World Wide Web at
<http://dms.dot.gov>.*