



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

Issued by the Department of Transportation  
On the Fourteenth Day of January 2010

**TAM Linhas Aereas, S.A.**

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

**Docket OST-2010-0005**

**Served: January 15, 2010**

**CONSENT ORDER**

This order concerns violations by TAM Linhas Aereas, S.A., (TAM) 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, 2007, and 2008. 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 TAM to cease and desist from future violations of this statute and regulatory provision, and assesses the carrier a compromise civil penalty of \$5,000.

**Applicable Law**

Section 382.70 of Part 382 requires, among other things, that U.S. and foreign carriers that conduct, passenger service to, from, or within the United States with one or more aircraft having a designed seating capacity of more than 60 passenger seats to record and categorize complaints that they receive alleging inadequate accessibility or discrimination on the basis of a disability.<sup>1</sup> The regulation also requires that these carriers submit an annual report to the Department, due each year on the last Monday in January, summarizing the disability-related complaints that they received the prior calendar year. 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. Failure to comply with the Department's disability reporting requirement, in addition to violating 14 CFR 382.70, constitutes a violation of the ACAA.

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<sup>1</sup> It should be noted that on May 13, 2009, the Department issued a final rule amending its ACAA rule. In addition to a number of other changes, the final rule reorganized and updated the ACAA rules. Under the amended rule, 14 CFR 382.157(d) contains the requirement that carriers must submit annual disability reports to the Department.

The Department uses carriers' disability reports to comply with a congressional mandate 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. To this end, the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) has made efforts to ensure compliance with section 382.70 and the ACAA, 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.

### **Background**

TAM is a Brazil-based foreign carrier operating service to and from the U.S. It currently operates between six and eight daily roundtrip flights between Brazil and the U.S. using at least one aircraft having a design seating capacity of more than 60 passenger seats. Therefore, TAM's operations to and from the U.S. clearly fall within the scope of the reporting requirements set forth in section 382.70.

TAM has failed to submit its disability report for 2004, 2007, and 2008 on time. Specifically, the report due for 2004 was filed on February 2, 2005, two days late; the report for 2007 was filed on February 15, 2008, eighteen days late; and the report for 2008 was filed on February 18, 2009, twenty three days late. Therefore, TAM violated section 382.70 and the ACAA when it failed to file its reports in a timely manner.

### **Mitigation**

In mitigation TAM states that it had established procedures for filing of its annual reports but that for reasons resulting from the growth of the airline's international flight operations and the change in personnel assigned the task, the filing of the reports was not consistently achieved on a timely basis. TAM asserts that timely filings in 2005 and 2006 of its reports for the years 2004 and 2005 were made demonstrating that TAM was capable of observing the regulation and the requirement to submit annual reports. However, TAM states that during the period that reporting was required by the regulation, TAM reassigned individuals who had the task to prepare the year-end reports and these reassignments, coupled with actions taken by TAM to streamline departmental duties and responsibilities to accommodate the growth of the airline, resulted in inconsistent results.

Further TAM states that it has taken additional remedial steps to assure the timelier filing of the Part 382 reports, which include: (1) rewriting the job descriptions of the relevant personnel to specifically include the filing of TAM's disability-related complaint reports to help ensure that all future reports are filed on a timely basis; (2) assigning "back-up" personnel to oversee the individuals who are directly responsible for filing the reports as

a further precaution to prevent the late filing of any future reports; (3) placing on the annual agenda of TAM's Traffic Department, the division within TAM that is now responsible for filing the reports, the task of filing future Part 382 reports by TAM as an additional safeguard; and (4) revising its internal guidance document known as its "Operations Instructions" to provide for the same. TAM asserts that these additional remedial actions will result in timely filings in the future.

### **Decision**

The Enforcement Office has carefully considered the information provided by TAM and continues to believe that enforcement action is warranted. In order to avoid litigation, the Enforcement Office and TAM have reached a settlement of this matter. Without admitting or denying the violations described above, TAM agrees to the issuance of this order to cease and desist from future violations of 14 CFR Part 382 and 49 U.S.C. § 41705. TAM further agrees to the assessment of \$5,000 in compromise of potential civil penalties otherwise assessable against it. Of this penalty amount, \$2,500 shall be due and payable within 30 days after the date of issuance of this order. The remaining \$2,500 of the assessed penalty shall become due and payable if TAM violates 14 CFR 382.70 (now section 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. This compromise assessment is appropriate in view of the nature and extent of the violations in question, serves the public interest, and establishes a deterrent to future similar unlawful practices by TAM and 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 TAM Linhas Aereas, S.A., violated 14 CFR 382.70 by failing to submit its disability report to the Department of Transportation for 2004, 2007, and 2008 on time;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2 above, TAM Linhas Aereas, S.A. has also violated 49 U.S.C. § 41705;
4. We order TAM Linhas Aereas, S.A., and all other entities owned or controlled by or under common ownership with TAM Linhas Aereas, S.A., its successors and assignees to cease and desist from any further violations of 14 CFR 382.70 (now section 382.157(d)) and 49 U.S.C. § 41705;

5. We assess TAM Linhas Aereas, S.A., a compromise civil penalty of \$5,000 in lieu of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 and 3 above. Of this total penalty amount, \$2,500 shall be due and payable within 30 days after the date of issuance of this order. The remaining \$2,500 will become due and payable if TAM Linhas Aereas, S.A., violates 14 CFR 382.70 (now section 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 TAM Linhas Aereas, S.A., shall be subject to possible 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 instructions contained in the attachment to this order. Failure to pay any portion of the penalty as ordered shall subject TAM Linhas Aereas, S.A., to the assessment of interest, penalty, and collection charges under the Debt Collection Act.

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 motion.

**BY:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

**(SEAL)**

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