



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

Issued by the Department of Transportation
On the Tenth day of May, 2010

Continental Airlines, Inc.

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

Served: May 10, 2010

Docket OST-2010-0005

CONSENT ORDER

This order concerns violations by Continental Airlines, Inc. (Continental) of the requirements of 14 CFR Part 382 (Part 382), with respect to the categorizing and reporting of disability-related complaints that Continental received from passengers. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of Part 382 also violate the ACAA. This order directs Continental to cease and desist from future similar violations of Part 382 and the ACAA and assesses the carrier \$100,000 in civil penalties.

Under section 382.157 [formerly section 382.70],¹ 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, categorize disability-related complaints that they receive according to the type of disability and the nature of the complaint, as well as submit an annual report to the U.S. Department of Transportation (Department) summarizing those complaints.² In a notice published in the Federal Register on December 24, 2004, the Enforcement Office explained that a single

¹ On May 13, 2009, section 382.70 changed to section 382.157 under an amendment to 14 CFR Part 382; however, the substance of section 382.70 remains the same.

² The annual report to the Department is due each year on the last Monday in January. 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.

piece of correspondence might express more than one complaint.³ It further elaborated that each disability-related problem that an individual complains about in writing must be categorized and reported separately.

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 that carriers file disability-related reports as required. To this end, the Enforcement Office has made efforts to ensure compliance with section 382.157, including providing carriers and carrier associations information about the disability reporting requirements via teleconference and via email, and posting a copy of the disability reporting rule on its website.

Continental is an air carrier that is subject to the disability complaint reporting requirements of Part 382. During an on-site regulatory compliance inspection at Continental’s headquarters, the Enforcement Office discovered that Continental had a policy of coding only one issue per written disability complaint based on what Continental described as the customer’s “point of passion,” notwithstanding the fact that many of the complaints involved more than one disability-related issue. Further investigation revealed that, despite being placed on notice of the requirement under section 382.157 to categorize and report each issue raised in a given piece of correspondence as a separate complaint, Continental’s personnel utilized the “point of passion” methodology to code the disability-related complaints it received for a significant period of time, resulting in substantial underreporting of the carrier’s disability-related complaints.

In mitigation, Continental states that there was no intention to disregard the guidance of the Department's Enforcement Office on how to code disability-related complaints to comply with Part 382 of the Department's regulations. Continental further states that it did not intend to use a coding methodology now understood to be different from this guidance. Continental states that it has changed and reinforced its procedures to ensure coding practices are fully consistent with the guidance. Continental states that it takes its compliance obligations very seriously under the Air Carrier Access Act and the Department's regulations, including Part 382. Continental states that this commitment is reflected in Continental's service it provides to passengers with disabilities, careful consideration of input and advice received from disabled communities, including Continental's Disabilities Advisory Board, and participation in various disability-related programs to promote this objective.

We view seriously Continental’s failure to code properly the disability-related complaints it received as required by section 382.157. 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 Continental failed

³ 69 Fed. Reg. 77885, 77888 (December 29, 2004).

to code properly the disability-related complaints it received in violation of 14 CFR Part 382 and 49 U.S.C. § 41705.

In order to avoid litigation, Continental Airlines, Inc. has agreed to settle this matter with the Enforcement Office and enter into this consent order directing Continental Airlines, Inc. to cease and desist from future similar violations of Part 382 and 49 U.S.C. § 41705, and assessing \$100,000 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 deterrent to future noncompliance with the Department's disability-related reporting requirements by Continental Airlines, Inc., 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 Continental Airlines, Inc. has violated 14 CFR 382.157 by failing to code properly the disability-related complaints it received as required by section 382.157;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2 above, Continental Airlines, Inc. also violated 49 U.S.C. § 41705;
4. Continental Airlines, Inc. and all other entities owned or controlled by Continental Airlines, Inc., its successors and assignees are ordered to cease and desist from further violations of 14 CFR 382.157 and 49 U.S.C. § 41705;
5. Continental Airlines, Inc. is assessed \$100,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above, payable within 30 days after the service date of 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 attached instructions. Failure to pay the penalty as ordered will subject Continental Airlines, 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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