



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

**Issued by the Department of Transportation
On the Seventh day of January, 2011**

Mesaba Aviation, Inc.

Docket OST-2011-0003

**Violations of 14 CFR Part 382 and
49 U.S.C. §§ 41310, 41702, 41705, and 41712**

Served January 7, 2011

CONSENT ORDER

This order concerns violations by Mesaba Aviation, Inc. (Mesaba) of the requirements of 14 CFR Part 382 (Part 382) with respect to providing wheelchair assistance to passengers with a disability and making dispositive responses to written complaints alleging a violation of Part 382. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part also violate the ACAA. To the extent that the ACAA and Part 382 violations occurred in interstate air transportation, the incidents are also violations of 49 U.S.C. § 41702, which requires that air carriers provide safe and adequate interstate air transportation; to the extent the violations occurred in foreign air transportation, the incidents would violate 49 U.S.C. § 41310, which, in part, prohibits air carriers and foreign air carriers from unreasonably discriminating against any person in foreign air transportation. This order directs Mesaba to cease and desist from future violations of Part 382 and assesses the carrier \$125,000 in civil penalties.

Applicable Law

Under section 382.39 [now sections 382.91 to 382.105], carriers must provide passengers with disability-related assistance in enplaning and deplaning aircraft. This assistance includes, as needed, the provision of services and personnel and the use of wheelchairs, ramps, or mechanical lifts. Section 382.39(a)(3) [now section 382.103] prohibits carriers from leaving passengers who are not independently mobile unattended in a ground wheelchair, boarding wheelchair, or other device for more than 30 minutes.

Section 328.65 [now section 382.155] requires carriers to provide a dispositive written response to a written complaint alleging a violation of Part 382 within 30 days of its receipt. An appropriate dispositive response must specifically discuss the complaint at issue, state the

carrier's view of whether a violation occurred, and state that the complainant may refer the matter to the Department for an investigation.

Background

The Office of Aviation Enforcement and Proceedings (Aviation Enforcement Office) investigated Mesaba's compliance with the ACAA and Part 382 by reviewing disability-related complaints that the Department received against Mesaba during the past several years and that Mesaba received directly from passengers in 2007 and 2008. The records indicated a significant number of apparent violations of section 382.39 [now sections 382.91 to 382.105] during the pertinent time period. Additionally, Mesaba's complaint files indicated that in a number of instances, it did not provide a dispositive response to complainants as required by section 382.65 [now section 382.155]. More specifically, the violations that resulted from section 382.65 [now section 382.155] are cases in which Mesaba completely failed to provide a written response to a complainant or are cases wherein Mesaba failed to notify a complainant of his or her right to pursue DOT enforcement action.

Mitigation

In mitigation, Mesaba explains that the complaint files identified by the Department in this matter involved services provided to passengers ticketed on Northwest Airlines, Inc. (Northwest) and Delta Air Lines, Inc. (Delta). Mesaba further explains that during the relevant period, Mesaba was wholly-owned and controlled by those carriers, both of which exclusively handled passenger sales, reservation, customer care, and recordkeeping functions, and most terminal services, for passengers on Mesaba flights. For example, Mesaba states that Northwest and Delta's Customer Care Departments maintained primary responsibility for managing and providing dispositive responses to disability-related complaints when required by Part 382. Further, Mesaba states that more than half of the complaint files at issue involved wheelchair services provided at Northwest/Delta hubs in Detroit, Memphis, and Minneapolis; at these three hubs, Northwest and Delta maintained exclusive control over the contractors that provided enplaning/deplaning/connecting wheelchair assistance to their passengers with disabilities. Mesaba states that it relied exclusively on Northwest/Delta and their wheelchair service contractors to meet the regulatory responsibility for terminal wheelchair assistance that section 382.91 assigns to Mesaba when it delivers a disabled passenger requiring such assistance to one of these hubs.

Mesaba states that it recognizes its Part 382 responsibilities to the disabled passengers it transports, and it has high standards for the accommodations to be provided to them, whether by Mesaba, a major carrier, or a service contractor. Mesaba states that in the future it will focus additional management resources and will improve internal controls and processes to better ensure those responsibilities and standards are met. Mesaba also maintains that it will encourage its major carrier partners to support service levels for disabled passengers that exceed the requirements of Part 382, whether or not a Mesaba flight is involved.

Decision

The Enforcement Office has carefully considered the information provided by Mesaba and continues to believe that enforcement action is warranted. In order to avoid litigation, Mesaba has agreed to settle this matter with the Enforcement Office and enter into this consent order directing the carrier to cease and desist from future similar violations of Part 382 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712, and assessing \$125,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by Mesaba and other 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 Mesaba Aviation, Inc. violated the requirements of 14 CFR 382.39 [now sections 382.91 to 382.105] by failing to provide adequate and prompt enplaning and deplaning wheelchair assistance to passengers with disabilities;
3. We find that Mesaba Aviation, Inc. violated the requirements of 14 CFR 382.65 [now section 382.155] by failing to provide dispositive responses to written complaints alleging a violation of Part 382;
4. We find that Mesaba Aviation, Inc. in the instances described in ordering paragraphs 2 through 3, above, violated the Air Carrier Access Act, 49 U.S.C. § 41705;
5. We find that to the extent the violations described in ordering paragraphs 2 through 3 occurred in interstate air transportation, the conduct violated 49 U.S.C. § 41702;
6. We find that to the extent the violations described in ordering paragraphs 2 through 3 occurred in foreign air transportation, the conduct violated 49 U.S.C. § 41310;
7. We find that the violations described in ordering paragraphs 2 through 3 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;
8. We order Mesaba Aviation, Inc. and its successors and assigns to cease and desist from further violations of 14 CFR Part 382 and 49 U.S.C. §§ 41310, 41702, 41705, and 41712 by engaging in the conduct described in ordering paragraphs 2 through 3;
9. We assess Mesaba Aviation, Inc. a compromise civil penalty of \$125,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs

2 through 7, above, which shall be due and payable within 30 days from the date of issuance of this order. Failure to pay the penalty as ordered shall subject Mesaba Aviation, Inc. to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible additional enforcement action for failure to comply with this order; and

10. Payment shall be made by wire transfer through the Federal Reserve Communication System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions.

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

(SEAL)

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