



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

Issued by the Department of Transportation
On the Twenty-Seventh day of January, 2012

Spirit Airlines, Inc.

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

Docket OST 2012-0002

Served January 27, 2012

CONSENT ORDER

This order concerns violations by Spirit Airlines, Inc., (Spirit) of the requirements of 14 CFR Part 382 (Part 382) with respect to properly coding and recording its disability-related complaints in connection with required reporting to the Department of Transportation (Department) as well as providing 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 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. Violations of Part 382 also constitute unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712. This order directs Spirit to cease and desist from future similar violations and assesses the carrier \$100,000 in civil penalties.

Department's Rule Protecting Passengers with Disabilities

Pursuant to section 382.157 [formerly section 382.70] carriers must categorize disability-related complaints they receive according to the type of disability and nature of complaint and submit an annual report to the Department detailing the disability complaints received the

prior calendar year.¹ If a written complaint contains multiple issues, each issue must be coded separately to adequately account for the number of complaints a carrier receives.²

Under 14 CFR 382.155 [formerly section 382.65] carriers are required to provide a dispositive written response to a written complaint alleging a violation of Part 382 within 30 days of its receipt.³ 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.

In May 2010, staff of the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) conducted an on-site regulatory compliance inspection at Spirit's corporate headquarters in Miramar, Florida. During this inspection, the Enforcement Office reviewed disability-related complaints received by Spirit in calendar year 2009. Subsequent to the compliance inspection the Enforcement Office requested additional disability-related complaints received by Spirit in calendar year 2010.

The review disclosed that Spirit violated section 382.157 by failing to adequately categorize and account for all the disability-related issues that were raised in complaints received during 2009, in its report submitted to the Department in January 2010. In 2009, Spirit reported 55 disability-related complaints in its 2010 annual report to the Department. A review of those 55 complaints revealed disability-related issues that were under-coded and not counted in Spirit's 2010 annual report to DOT. In addition, the Enforcement Office discovered that there were a large number of additional complaints that were not counted in the 2010 annual report.

Furthermore, Spirit violated section 382.155 by failing to provide dispositive responses to written disability-related complaints it received. The Enforcement Office discovered that Spirit failed to provide a dispositive response in a vast majority of the disability-related complaints it received in 2009 and 2010.

Mitigation

In mitigation Spirit states that it is fully committed to complying with the requirements of Part 382. To achieve the highest level of compliance, Spirit states that it carefully monitors the performance of its staff and vendors who provide wheelchair assistance at airports to ensure that the needs of passengers with disabilities are properly met. Although Spirit carries

¹ On May 13, 2009, the Department issued a final rule, which, among other things, restructured the rule for greater clarity, including changing the organization and numbering scheme of Part 382. Prior to the 2009 amendment of Part 382, section 382.70 contained the disability-related complaint reporting requirement.

² As noted in the Department's 2004 guidance document on the reporting requirements for disability-related complaints, carriers must categorize and report each separate disability-related complaint issue if one piece of correspondence raises more than one disability-related issue. Reporting Requirements for Disability-Related Complaints, 69 Fed. Reg. 77885, 77888 (Dec. 29, 2004).

³ Prior to the 2009 amendment of Part 382, section 382.65 contained the dispositive response requirement.

approximately seven million passengers a year, it asserts that it typically has fewer than 100 disability-related complaints.

With respect to meeting the disability reporting requirement, Spirit states that consistent with the actions of several other carriers, it believed that it was only required to report the primary concern expressed by the passenger. When advised by the Department that the report must include each disability-related problem that an individual complained about in a written complaint, Spirit immediately revised its approach to cataloging complaints for the required DOT annual report. In this connection, during 2010, Spirit states that it upgraded its complaint tracking software to enhance its ability to keep track of, and properly classify, all disability-related complaints. Spirit states that it has also revised its response letters to ensure that it consistently provides a timely dispositive response and advises that passengers may contact the Department. In 2011, Spirit explains that it modified the “Frequently Asked Questions” (FAQ) section on its website to be more accessible and to provide additional information of value to passengers with disabilities. Also, in 2011, Spirit states that it established the position of Disability Specialist. By focusing all disability issues through this single person, Spirit asserts that it has been able to ensure a more consistent approach to addressing passenger issues and the accuracy of its annual report to the Department.

Decision

The Enforcement Office has carefully considered the information provided by Spirit and continues to believe that enforcement action is warranted. In order to avoid litigation, Spirit Airlines, Inc., 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 violations of 14 CFR Part 382 and 49 U.S.C. §§ 41310, 41702, 40705, and 41712, and assessing Spirit \$200,000 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 Spirit and other carriers.

This order is issued under the authority contained in 49 CFR 1.57(a) and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of the order as being in the public interest;
2. We find that Spirit Airlines, Inc., violated the requirements of 14 CFR 382.155 by failing to provide dispositive responses to written complaints alleging a violation of Part 382;
3. We find that Spirit Airlines, Inc., violated the requirements of 14 CFR 382.157 by failing to properly categorize and accurately report its disability-related complaints;
4. We find that Spirit Airlines, Inc., in the instances described in ordering paragraphs 2 and 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 and 3, above, 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 and 3, above, 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 6 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;
8. We order Spirit Airlines, Inc., and its successors and assignees to cease and desist from violations of 14 CFR Part 382, 14 CFR 399.84, and 49 U.S.C. §§ 41310, 41702, 40705, and 41712. Failure to comply with this cease and desist provision shall subject Spirit Airlines, Inc., and their successors and assignees to further enforcement action;
9. Spirit Airlines, Inc., is assessed \$100,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraphs 2 through 7 above. Of this total penalty amount, \$50,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$50,000 shall become due and payable immediately if Spirit violates this order's cease and desist provisions within one year following the date of issuance of this order or fails to comply with the order's payment provisions; and
10. 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. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the compromise penalty assessment as ordered shall subject Spirit Airlines, Inc., 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 own initiative.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

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