



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

Issued by the Department of Transportation
On the Eighth day of November, 2012

AeroSvit Airlines

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

Docket OST 2012-0002

Served November 8, 2012

CONSENT ORDER

This order concerns violations by AeroSvit Airlines (AeroSvit) of the requirements of 14 CFR Part 382 (Part 382) with respect to the filing of annual reports detailing disability-related complaints that AeroSvit received from passengers in calendar years 2008 and 2011. 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 AeroSvit to cease and desist from future similar violations of Parts 382 and the ACAA and assesses the carrier a compromise civil penalty of \$20,000.

APPLICABLE LAW

Under 14 CFR 382.157, covered carriers (i.e., U.S. and foreign air carriers operating passenger service to, from, or within 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 during the previous calendar year.¹ The

¹ In addition, the rule requires a carrier to record complaints that it receives 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 the nature of the complaint. The rule also requires that covered carriers

annual report to the Department is due each year on the last Monday in January. The annual report for calendar year 2011 was due on January 30, 2012, and the annual report for calendar year 2008 was due on January 26, 2009.

The ACAA 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 a particular carrier. The Office of Aviation Enforcement and Proceedings (Enforcement Office) has made efforts to ensure that carriers file disability-related reports in compliance with section 382.157, 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.

FACTS AND CONCLUSIONS

AeroSvit is a foreign air carrier based in Kiev, Ukraine, that operates scheduled service to and from the United States using at least one aircraft having a design seating capacity of more than 60 passenger seats. AeroSvit’s operations into the United States clearly fall within the scope of the reporting rule. Therefore, AeroSvit violated section 382.157(d) and the ACAA when it submitted to the Department the report for calendar year 2011 on February 17, 2012, eighteen dates late, and the report for calendar year 2008 on February 25, 2009, four weeks late. Additionally, we note that, in June 2009 AeroSvit was warned that a subsequent failure to file the annual report in a timely manner could result in enforcement action.

MITIGATION

AeroSvit states that disruptions in the timely submission of AeroSvit’s reports under 14 CFR Part 382 cited by the Department are not indicative of a pattern of noncompliance with applicable regulations, but rather they are results of unfortunate administrative and technical “glitches” in the established internal reporting system. According to AeroSvit, following the 2008 reporting delay that was due to a lack of continuity after a personnel change, AeroSvit made significant improvements to its procedures and set up a series of safeguards in order to ensure timely submission of the report detailing disability-related complaints required under 14 CFR Part 382, including implementation of a set of electronic reminders and conducting extensive personnel training. AeroSvit asserts that the carrier’s focus was on ensuring continuity in the reporting function during the process of personnel changes and transitions from one responsible employee to another, and as a result of those measures AeroSvit successfully submitted timely reports for calendar years 2009 and 2010.

AeroSvit also asserts that the delay in the submission of the report for 2011 resulted from a technical disruption in the functioning of AeroSvit’s Customer Feedback Management

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.

(Crane 4C) system and a subsequent failure in the established employee reminder/notification mechanism due to overreliance on the electronic system of notifications. The carrier notes that the delay in the submission of the 2011 report revealed a vulnerability in the system that was established in 2009, since it over-relied on computer notifications, in the absence of which responsible personnel did not act on the deadlines appropriately. Based on the aforementioned information, AeroSvit states that it has undertaken steps to establish further safeguards against possible impacts of technical, human or any other factors on the timeliness of the required reporting.

DECISION

The Enforcement Office has carefully considered the information provided by AeroSvit and continues to believe that enforcement action is warranted. We view seriously AeroSvit's failure to file the annual reports on time as required by section 382.157(d). In order to avoid litigation, the Enforcement Office and AeroSvit have reached a settlement of this matter and enter into a consent order directing AeroSvit to cease and desist from future similar violations of 14 CFR Parts 382 and 49 U.S.C. § 41705, and to the assessment of \$20,000 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 represents an adequate deterrent against future non-compliance with the Department's reporting requirements by AeroSvit, as well as by other domestic and foreign air carriers.

This order is issued under the authority contained in 49 CFR Part 1.

ACCORDINGLY,

1. Based on the above information, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that AeroSvit Airlines violated 14 CFR 382.157 by failing to timely submit to the Department of Transportation its annual reports detailing the disability-related complaints it received in calendar years 2008 and 2011;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, AeroSvit Airlines also violated the Air Carrier Access Act, 49 U.S.C. § 41705;
4. AeroSvit Airlines and all other entities owned or controlled by AeroSvit Airlines, its successors and assigns, are ordered to cease and desist from further violations of 14 CFR 382.157 and 49 U.S.C. § 41705;
5. AeroSvit Airlines is assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 through 4, above. Of this total penalty amount, \$10,000 shall be due and payable within forty-

five (45) days of the date of the issuance of this order. The remaining \$10,000 shall become due and payable if AeroSvit Airlines violates 14 CFR 382.157 within one year following the date of issuance of this order, or fails to comply with this order's payment provisions, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and AeroSvit Airlines may be subject to additional enforcement action for failure to comply with this order; and

6. We order AeroSvit Airlines to pay the penalty through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject AeroSvit Airlines to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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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