



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

Issued by the Department of Transportation
On the Twenty-Fourth day of May, 2012

Virgin America Inc.

Docket OST 2012-0002

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

Served May 24, 2012

CONSENT ORDER

This order concerns violations by Virgin America Inc., (Virgin America) 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 Virgin America 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 annual reports 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.

Background

In July 2011, staff of the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) conducted an on-site regulatory compliance inspection at Virgin America's corporate headquarters in Burlingame, California. During this inspection, the Enforcement Office reviewed all disability-related complaints received by Virgin America from 2009 through June 2011.

The Enforcement Office found that in numerous instances, Virgin America failed to provide a dispositive written response to a written complaint alleging a violation of Part 382, and thereby failed to comply with the requirements of section 382.155. In addition, Virgin America violated section 382.157 by failing to properly categorize and account for all the disability-related issues that were raised in the complaints received during the calendar years 2008 and 2009. As a result, a number of complaints were missing from Virgin America's annual reports submitted to the Department in 2009 and 2010.

Mitigation

In mitigation, Virgin America states that its business model is focused on providing outstanding customer service to all of its guests and that it takes its responsibilities under the ACAA and Part 382 very seriously. Virgin America also states that it has fully cooperated with the Department's staff from the beginning of the Department's audit and has continually worked to improve its complaint reporting, coding, and reporting processes. Virgin America asserts that in many instances it provided refunds or credits to passengers who submitted disability-related complaints, and it is Virgin America's

¹ On May 13, 2009, the Department issued a final rule amending its ACAA rules, which, among other things, restructured and updated the rule. 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 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.

practice to continually monitor such complaints and use them as a basis for improving service.

With respect to the categorization and accounting of disability-related complaints, Virgin America states that it has made enhancements to its complaint database and tracking systems to ensure that all disability-related complaints are captured. With respect to its written responses, Virgin America states that it has revised its response letters to ensure that each response is complete and dispositive. Virgin America further notes that the issues identified during the Department's audit relate to recordkeeping and reporting requirements, and not to Virgin America's compliance with the service-related requirements of Part 382.

Decision

The Enforcement Office has carefully considered the information provided by Virgin America Inc., and continues to believe that enforcement action is warranted. In order to avoid litigation, Virgin America 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 Virgin America Inc., \$100,000 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 Virgin America Inc., 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 Virgin America 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 Virgin America 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 Virgin America 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 Virgin America Inc., and its successors and assigns to cease and desist from violations of 14 CFR Part 382 and 49 U.S.C. §§ 41310, 41702, 40705, and 41712. Failure to comply with this cease and desist provision shall subject Virgin America Inc., and its successors and assignees to further enforcement action;
9. We assess Virgin America Inc., a compromise of civil penalty of \$100,000 in lieu 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 be due and payable immediately if Virgin America Inc., violates this order's cease and desist or payment provisions within one year of the issuance of this order; 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 Virgin America 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

(SEAL)

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