



**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 September, 2013

Virgin America Inc.,

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

Docket OST 2013-0004

Served September 10, 2013

CONSENT ORDER

This order concerns violations by Virgin America Inc., (Virgin America) of 14 CFR Part 382 (Part 382), the Department of Transportation's (Department) regulation implementing the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, with respect to the requirement that the carrier ensure that its in-flight safety videos are accessible to persons with hearing impairments by using open captioning or an inset for a sign language interpreter. Violations of Part 382 also violate the ACAA. This order directs Virgin America to cease and desist from future violations of Part 382 and the ACAA and assesses the carrier \$150,000 in civil penalties.

APPLICABLE LAW

The ACAA prohibits discrimination in the provision of air transportation against qualified individuals with disabilities. In March 1990, the Department issued its rule implementing the ACAA, 14 CFR Part 382.¹ Among other provisions, section 382.47(b) required carriers to ensure that each safety briefing presented to passengers on video screens on aircraft be accessible to persons with hearing impairments.² Specifically, the rule provided that carriers must meet this requirement by incorporating open captioning or an inset for a sign language interpreter as part of the video presentation. The rule further provided that an equivalent non-video alternative to the captioning or inset

¹ 14 CFR Part 382, *Nondiscrimination on the Basis of Handicap in Air Travel, Final Rule*, 55 FR 8008-01, March 6, 1990.

² An oral safety briefing provided to all passengers onboard before takeoff is mandated by the Federal Aviation Administration's operation safety rule, 14 CFR 121.571.

requirement would be permitted only if the open captioning or inset would either interfere with the video presentation as to render it ineffective or be too small to be readable. Section 382.47(b) was effective between April 5, 1990, and May 12, 2009.

On May 13, 2008, the Department published its revised Part 382, which substantially changed the requirements regarding the accessibility of in-flight safety briefing video presentations.³ The new rule, in section 382.69(a), requires that all new safety briefing videos created and used on aircraft on or after November 10, 2009, must be high-contrast captioned. With regard to videos created before November 10, 2009, section 382.69(c) retains the substantive requirements and exception of section 382.47(b) (1990 version of rule) and extends those provisions for the period from May 13, 2009 through November 9, 2009.

BACKGROUND

As an air carrier providing scheduled passenger air transportation, Virgin America is subject to the requirements of ACAA and Part 382. In August 2007, Virgin America launched its scheduled operations using aircraft that are equipped with a personal in-flight entertainment system using customized seat back touch screens. On October 9, 2007, Virgin America began to use this in-flight entertainment system to present a safety briefing video before the take-off of each flight. The video presentation provides details of the safety features of the aircraft through animation and oral narratives, which is not accompanied by open captioning or an inset for sign language interpreter and, therefore, is not accessible to passengers with hearing impairments. The Enforcement Office has determined that the content and format of the video is such that inserting open captioning with readable font size would not interfere with the video as to render it ineffective. As such, Virgin America's safety briefing video displays violated section 382.47(b) (1990 version of rule) between October 9, 2007, and May 12, 2009. It also violated section 382.69(c) (2008 version of rule) between May 13, 2009, and November 9, 2009.

MITIGATION

Virgin America states that it reasonably concluded initially that captioning of its in-flight safety video for the hearing impaired would obscure the presentation of important safety information for all passengers. As a result, Virgin America states that it decided to rely on the exception provided under the then-existing regulation allowing for equivalent non-video alternative compliance with the Department's requirements for hearing-impaired passengers. Virgin America points out that the revised regulation at section 382.69(a), issued by the Department in 2008, eliminated this exception only for "new" safety videos created after November 10, 2009. Virgin America states that as a result, it continued its prior practice of providing its hearing-impaired passengers with live safety demonstrations, Safety Information Cards and personalized safety briefings upon request by passengers in order to communicate required safety-related information. Virgin America maintains that it has a demonstrated record of commitment to its hearing-

³ 14 CFR Part 382, *Nondiscrimination on the Basis of Disability in Air Travel, Final Rule*, 73 FR 27614, May 13, 2008.

impaired and other passengers with a disability. In this regard, Virgin America asserts that it has consistently provided multiple, equivalent non-video alternatives for transmitting safety information to passengers with hearing impairments. Nevertheless, in order to bring this matter to a conclusion, and without admitting any of the alleged violations, Virgin America has agreed to modify its pre-2009 in-flight safety video by adding high-contrast captioning for the hearing-impaired and to accomplish this modification across its entire fleet by September 30, 2013.

DECISION

After carefully considering all the known facts in this case, including those set forth above by Virgin America, we believe that enforcement action is warranted. In order to avoid litigation, Virgin America, without admitting or denying the violations described herein, has agreed to settle this matter with the Enforcement Office and enter into this consent order to cease and desist from future similar violations of 14 CFR Part 382 and 49 U.S.C. § 41705. This order directs Virgin America to cease and desist from similar violations in the future and to add high-contrast open captioning to its existing in-flight safety videos displayed on all aircraft operated by the carrier and assesses a civil penalty of \$150,000. This assessment is appropriate considering the nature and extent of the violation described herein and serves the public interest. It establishes a strong deterrence to future similar unlawful practices by Virgin America and other carriers.

This order is issued under the authority contained in 49 CFR Part 1 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 between October 9, 2007, and May 12, 2009, Virgin America Inc., violated 14 CFR 382.47(b) (effective through May 12, 2009) by failing to ensure its in-flight safety briefing video is accessible to passengers with a hearing impairment;
3. We find that between May 13, 2009, and November 9, 2009, Virgin America Inc., violated 14 CFR 382.69(c) (effective beginning May 13, 2009) by failing to ensure its in-flight safety briefing video is accessible to passengers with a hearing impairment;
4. We find that by violating sections 382.47(b) and 382.69(c) as described in paragraphs 2 and 3, above, Virgin America Inc., violated the Air Carrier Access Act, 49 U.S.C. § 41705;
5. We order Virgin America Inc., and all other entities owned or controlled by, or under common ownership and control with Virgin America Inc., its successors,

affiliates, and assignees, to cease and desist from violations of 49 U.S.C. § 41705 and 14 CFR 382.69 related to accessibility of safety videos;

6. We assess Virgin America Inc., \$150,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 through 4 of this order. Of this total penalty amount, \$75,000 shall be due and payable within 30 days of the issuance date of this order, and the remaining \$75,000 shall become due and payable if Virgin America Inc., fails to add high-contrast open captioning to its existing in-flight safety video displayed on all aircraft operated by Virgin America Inc., by September 30, 2013, or fails to comply with the payment provision in this ordering paragraph, in which case, the entire unpaid portion of the civil penalty shall become due and payable immediately and Virgin America, Inc. may be subject to further enforcement action; and
7. We order Virgin America Inc., to pay the penalty through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Virgin America Inc., 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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