



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

Issued by the Department of Transportation
On the 12th day of September 2007

Lloyd Aereo Boliviano, S.A.
**Violations of 49 U.S.C. § 41705
and 14 CFR Part 382**

OST-2007-26781
Served: September 12, 2007

CONSENT ORDER

This order concerns violations by Lloyd Aereo Boliviano, S.A. (Aereo Boliviano) of the requirements of 14 CFR Part 382 (Part 382), with respect to filing annual reports detailing disability-related complaints that the foreign air carrier received from passengers in calendar years 2004, 2005, and 2006. Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part also violate the ACAA. This order directs Aereo Boliviano to cease and desist from future similar violations of Part 382 and the ACAA and assesses the carrier \$10,000 in civil penalties.

Under section 382.70, covered carriers (i.e., U.S. and foreign air carriers operating passenger service to, from and 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 the prior calendar year.¹ Foreign air carriers are required to submit information only with respect to disability-related complaints associated with any flight segment originating or terminating in the United States. The annual report to the Department is due each year on the last Monday in January. The first annual report covering calendar year 2004 was due to the Department

¹ In addition, the rule requires carriers to record complaints that they receive 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 nature of complaint. The rule also requires that covered carriers 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.

on or before January 24, 2005, the second such report covering calendar year 2005 was due on or before January 30, 2006, and the third such report covering calendar year 2006 was due on or before January 29, 2007.

Section 41705 of Title 49 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.” The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) is committed to ensuring carriers file disability-related reports to comply with the Department’s statutory obligation and to provide consumers information about disability complaints filed against particular carriers. To this end, the Enforcement Office has made informal efforts to promote compliance with section 382.70, 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.

Aereo Boliviano, based in Cochabamba, Bolivia, operates scheduled international passenger service to and from the United States with an average of two roundtrip flights per week utilizing Boeing 727 aircraft. The carrier submitted its initial report detailing disability-related complaints received in 2004 on February 18, 2005, two weeks after the reporting deadline. It submitted the report for calendar year 2005 on October 3, 2006, approximately eight months after the report’s due date and only after the Enforcement Office had contacted the carrier regarding its delinquency. Additionally, Aereo Boliviano submitted the report for calendar year 2006 on February 6, 2007, more than a week after the reporting deadline. The carrier was delinquent in filing despite having assured the Enforcement Office that the report would be filed in a timely manner. In each of these instances, Aereo Boliviano violated section 382.70 and the ACAA by submitting the reports beyond the reporting deadline.

In mitigation, Aereo Boliviano states that from February 2006 to July 2006, the airline had been the target of labor action, leading to changes in the ownership and management of the company. Further, as a result of the labor action, Aereo Boliviano states that it suffered a catastrophic decline in revenue. Aereo Boliviano explains that the unstable financial position of the company led the Bolivian Authorities to suspend its certificate at the end of March 2007, requiring the airline to cease its operations. Aereo Boliviano is seeking to re-structure itself; however, the carrier explains this process is ongoing, and at this time it is not clear when the airline will be able to resume its operations.

We view seriously Aereo Boliviano’s failures in 2005, 2006, and 2007 to submit the report required by 382.70 in a timely manner. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. By this order, the Department finds that Aereo Boliviano violated 14 CFR Part 382 and 49 U.S.C. § 41705 by submitting late reports covering disability-related complaints it received in 2004, 2005, and 2006. In order to avoid litigation, Aereo Boliviano has agreed to settle these matters with the Enforcement Office and enter into this consent order directing Aereo Boliviano to cease and desist from future similar violations of Part 382 and 49 U.S.C. § 41705, and assessing the carrier \$10,000 in compromise of potential civil penalties otherwise due and payable.

We believe this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's reporting requirements by Aereo Boliviano as well as by other domestic and foreign air 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 Lloyd Aereo Boliviano, S.A. violated 14 CFR 382.70 by failing to submit an annual report by January 24, 2005, a second annual report by January 30, 2006, and a third annual report by January 29, 2007, to the Department of Transportation summarizing the disability-related complaints that it received the prior calendar year;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2 above, Lloyd Aereo Boliviano, S.A. has also violated 49 U.S.C. § 41705;
4. Lloyd Aereo Boliviano, S.A. and all other entities owned or controlled by or under common ownership with Lloyd Aereo Boliviano, S.A. its successors and assignees are ordered to cease and desist from further violations of 14 CFR 382.70 and 49 U.S.C. § 41705;
5. Lloyd Aereo Boliviano, S.A. is assessed \$10,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above, of which \$5,000 is due and payable within 60 days after the service date of this order. The remaining \$5,000 of the assessed penalty shall be paid in two equal payments of \$2,500 each, in which \$2,500 is due and payable on January 15, 2008 and \$2,500 is due and payable on April 15, 2008. If Lloyd Aereo Boliviano, S.A. fails to comply with the payment provisions of this order or the cease and desist provision of paragraph 4 above is violated; the entire unpaid portion of the assessed penalty shall become due and payable immediately and the carrier may be subject to further enforcement action;
6. Because of demonstrated short term financial difficulties of the carrier, the date the civil penalty is due to be paid may be extended with the approval of the Enforcement Office, but in no event may final payment be made later than 2 years after the service date of this order. If Aereo Boliviano intends to seek a change to the civil penalty payment terms, it must notify and obtain approval from the Enforcement Office 30 days prior to the date payment is due; and
7. 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 in accordance with the attached instructions. Failure to pay the penalty as ordered will subject Lloyd Aereo Boliviano, S.A., to the assessment of interest, penalty

and collection charges under the Debt Collection Act and possible enforcement action for failure 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:

ROSALIND A. KNAPP
Deputy General Counsel

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World Wide Web at <http://dms.dot.gov>.*