



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

Issued by the Department of Transportation
on the 28th day of August, 2003

Southwest Airlines, Co.,

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

**Served: August 28, 2003
Docket OST-2003-14194**

CONSENT ORDER

This order concerns violations of 14 CFR Part 382 by Southwest Airlines, Co. (Southwest). Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part also violate the ACAA. ACAA and Part 382 violations also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. Finally, 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. This order directs Southwest to cease and desist from future violations of the ACAA and Part 382 and assesses a compromise civil penalty of \$500,000 for such violations.

BACKGROUND

Southwest inaugurated commercial flight operations in 1971. It currently operates a total of 368 Boeing 737s, each with more than 100 coach seats. Of the 368 Boeing 737s in operation, Southwest has a total of 227 Boeing 737s that were ordered after April 5, 1990, or delivered after April 5, 1992.

While conducting a Part 382 compliance review of Southwest in July 2002, the Department of Transportation's Office of Aviation Enforcement and Proceedings (Enforcement Office) discovered several consumer complaints concerning the in-cabin stowage of folding wheelchairs. Subsequently, Enforcement Office investigators, acting as customers, made 12 telephone calls to Southwest's reservations system to determine the type of information Southwest employees provide passengers about in-cabin stowage of folding wheelchairs. The complaint files and the telephone calls addressed Southwest's ability to stow one passenger's folding wheelchair on its aircraft, as required by 14 CFR 382.21(a)(2). In all but two of these calls, the reservations agent

stated that Southwest's aircraft could not accommodate a passenger's folding wheelchair inside the cabin.¹

The Enforcement Office visited Southwest's headquarters on August 16, 2002, during which the office notified the carrier of these areas of concern. The Enforcement Office followed this meeting with a letter, dated October 8, 2002, requesting information concerning Southwest's compliance with 14 CFR 382.21(a)(2) in providing in-cabin stowage of folding wheelchairs. Southwest initially responded to this request on November 9, 2002, and then sent a follow-up response letter on December 9, 2002.

With regard to in-cabin wheelchair stowage, Southwest stated that its aircraft "do have a designated priority stowage space for at least one standard-size folding wheelchair in the passenger cabin. Southwest has designated the overhead stowage bins ("OHBs") as the folding wheelchair priority stowage space on all of our aircraft. We acknowledge that some types of folding wheelchairs may not fit in our OHBs, such as those without quick-release removable wheels and/or having frames that only partially collapse." Southwest added, that to create an in-cabin stowage space for wheelchairs that do not fit in the overhead bin, it would retrofit the left aft windscreen of each of its Boeing 737 aircraft, including those aircraft that are not subject to the provisions of 14 CFR 382.21(a). According to Southwest, this space would be a closet in which a greater number and additional types of folding wheelchairs could be stowed. Southwest further stated that it would include this new wheelchair stowage area on all of its future aircraft.

APPLICABLE SECTIONS OF 14 CFR PART 382

The ACAA and Part 382 forbid discrimination in the provision of air transportation against qualified individuals with disabilities. See 14 CFR 382.7(a)(1). Specifically at issue in this case is section 382.21(a)(2), which requires that "[a]ircraft with 100 or more passenger seats shall have a priority space in the cabin designated for stowage of at least one folding wheelchair."² Under this section, the term "folding" refers to the accordion-like movement of a wheelchair, where the two sides of the frame are brought together. The term "folding" does not anticipate disassembly, including the removal of the large or small wheels of the wheelchair.³ The term

¹ Several of the Enforcement Office's Transportation Industry Analysts ("TIA") made 12 separate telephone calls to Southwest's reservations center and spoke with 12 different reservations agents over two days, July 24-25, 2002. During each call, the TIA represented that he or she was traveling with a collapsible folding wheelchair and would like to stow it inside the cabin of the aircraft. In response to these representations, all but two agents stated that the wheelchair would have to be stowed in the belly of the aircraft. Two of the agents told the TIA that they could go in the overhead bin if the wheelchair would fit, but if it did not, then it would have to be stored in the belly of the aircraft.

² Section 382.21(a) explains that this requirement applies to "new aircraft operated under 14 CFR part 121 and ordered by the carrier after April 5, 1990 or delivered to the carrier after April 5, 1992," (hereinafter referred to as "new" aircraft).

³ This understanding relies on the plain meaning of the word "folding." For example, Webster's Ninth New Collegiate Dictionary defines the term "folding" as: "to lay one part over another part of . . . to reduce the length or bulk of by doubling over . . . to clasp together . . . a part doubled or laid over another part"

"wheelchair" refers to standard-size wheelchairs.⁴ Taking these terms together, section 382.21(a)(2) requires that all new aircraft with 100 or more seats maintain a space that is large enough to stow one passenger's standard-size folding wheelchair on a priority basis.

In addition to the ACAA and Part 382, the issues described above appear to involve unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. To the extent that the apparent 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.

ANALYSIS

This order covers the issue of the stowage of one passenger's standard-size folding wheelchair inside the cabin of Southwest's Boeing 737s. With regard to wheelchair stowage, Southwest denies that prior to this investigation its aircraft did not contain enough space for the stowage of one passenger's standard-size folding wheelchair. However, after notification by the Enforcement Office of its concerns, Southwest has agreed to retrofit the left aft windscreen of its entire fleet of Boeing 737s to permit stowage of a folding wheelchair that otherwise would not fit in an overhead bin. Southwest believes that this process will take 14 months to complete. Although the Enforcement Office appreciates Southwest's willingness to create a space to stow a passenger's standard-size folding wheelchair, the office views the carrier's failure initially to provide the proper accommodation under 14 CFR § 382.21(a)(2) seriously. After careful consideration of all the facts surrounding this matter, including the explanation and arguments set forth by Southwest, the Enforcement Office continues to believe that enforcement action is warranted. In order to avoid litigation on this matter, Southwest has agreed to settle these matters, without admitting to a violation of the Air Carrier Access Act, and enter into this consent order directing it to cease and desist from future similar violations and to the assessment of a civil penalty.

In mitigation, Southwest notes that it routinely ranks first in the monthly DOT Air Travel Consumer Report, based on the fact that, among major carriers, it receives the smallest number of consumer complaints as submitted to the Department. Additionally, Southwest states that it has earned an admiral reputation for customer service among airline passengers with disabilities. Southwest states that in a recent 2003 research study entitled "Adults with Disabilities: Travel and Hospitality," conducted by HarrisInteractive® for the Open Doors Organization, it was found to be the carrier most often flown by the "heavy airline user" category of air travelers with disabilities (i.e., passengers with disabilities who fly by commercial carrier three or more times every two years). Moreover, according to Southwest, sixty-six percent of those polled gave Southwest Airlines the highest rating for accommodating the needs of air travelers with disabilities.

⁴ Our interpretation of "wheelchair" as used in § 382.21(a)(2) is within the meaning of the generic term "wheelchair," which has no limitation as to size in and of itself, or as used in the regulation (other than folding). A major wheelchair manufacturer has represented to the Department of Transportation that the following dimensions characterize a standard-size wheelchair, when folded: 13 inches wide by 36 inches high by 42-50 inches long.

By this order, the Department finds that Southwest failed to act in accordance with the ACAA and Part 382 in failing to provide for a space to stow one passenger's standard-size folding wheelchair inside the cabin on new aircraft with at least 100 seats. This order directs Southwest to cease and desist from similar violations in the future and assesses a civil penalty of \$500,000 in compromise of the penalties otherwise assessable under 49 U.S.C. § 46301. Southwest will be credited up to \$450,000 for costs associated with its future work in retrofitting its 141 Boeing 737s that were ordered prior to April 5, 1990, or delivered before April 5, 1992, with a type of closet that will be capable of being used for in-cabin stowage of a standard-size folding wheelchair.⁵

In addition to imposing a civil penalty, this order directs Southwest to comply with section 382.21(a)(2) and provide a space to stow one passenger's standard-size folding wheelchair on new aircraft with 100 or more passenger seats. This order also directs that Southwest notify the Enforcement Office within 30 days if it changes its designated space for the stowage of passenger's standard-size folding wheelchairs. Finally, this order directs that Southwest complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order.

We believe that this consent agreement and the penalty it assesses will provide a strong incentive for Southwest and other carriers to comply with the ACAA and 14 CFR Part 382.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 382.15.

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 Southwest Airlines violated the requirements of 14 CFR 382.21(a)(2) by failing to provide space to stow one passenger's standard-size folding wheelchair in the passenger cabin of its aircraft ordered by Southwest after April 5, 1990, or delivered to Southwest after April 5, 1992;
3. We find that to the extent the violations described in ordering paragraph 2 occurred in interstate air transportation, the conduct violated 49 U.S.C. § 41702;
4. We find that the violations described in ordering paragraph 2 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;

⁵ Enforcement Office staff have observed a demonstration of this capability using a mock up of the new bulkhead closet. Southwest's decision to create an actual closet, dedicated to the in-cabin stowage of wheelchairs, clearly demonstrates Southwest's desire to follow both the law and the spirit of 14 CFR 382.21(a). In addition, the Enforcement Office views the creation of such a closet space to be the optimal method of complying with 382.21(a) and that has been considered by it in agreeing to this settlement.

5. We order Southwest Airlines and its successors and assigns to cease and desist from further violations of 14 CFR 382.21(a)(2) and 49 U.S.C. §§ 41702, 41705, and 41712 by engaging in the conduct described in ordering paragraph 2⁶;
6. Southwest Airlines is assessed a civil penalty of \$500,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, of which:
 - a. \$50,000 shall be due and payable within 15 days after the service date of this order;
 - b. \$450,000 may be offset by Southwest's future retrofitting expenditures associated with installing a new bulkhead closet large enough to fit a standard size folding wheelchair on each of its 141 Boeing 737 aircraft that are not required to comply with 14 CFR 382.21 (a)(2)⁷;
7. Within 30 days of the service date of this order, Southwest shall provide DOT with a statement with supporting documentation verifying the cost of the offsets listed in paragraph 6 above. The statement shall show the projected or actual cost of the offset, a detailed explanation of the method used by Southwest to determine the projected or actual cost, and a sworn and certified statement from an appropriate company official testifying that the descriptions and documentation are true and complete to the best of that official's knowledge;
8. Within 18 months after the service date of this order, Southwest shall provide a sworn and certified statement from an appropriate company official testifying that the projected expenditures described in paragraphs 6 and 7 have been made, and, to the extent that \$450,000 is not expended, that amount shall become due and payable by Southwest at that time;
9. Southwest Airlines shall ensure that each aircraft it orders after the service date of this order has space within the passenger cabin to stow one standard-size folding wheelchair;
10. Southwest Airlines shall notify the Enforcement Office within 30 days if it changes in any manner its designated space to stow passengers' standard-size folding wheelchairs;
11. Southwest Airlines shall complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order;

⁶ In the context of this overall settlement, the Enforcement Office accepts the fact that it will take Southwest 14 months from the service date of this order to come into full compliance with the wheelchair stowage requirements.

⁷ The cost associated with these modifications is estimated by Southwest to be over \$2,880,000

12. Payments made pursuant to this order 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. Instructions on the payment of civil penalties are attached. Failure to pay the penalty as ordered will subject Southwest Airlines 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 motion.

BY:

ROSALIND A. KNAPP
Deputy General Counsel

CHECKLIST: AIRCRAFT COMPLIANCE WITH DISABILITY RULES

Please fill out and certify as correct the following checklist. Fill out one checklist for each type of aircraft the carrier currently operates. If you do not have enough room on this sheet to provide the requested information, please provide the information on a separate sheet and attach it to the checklist.

Airline Name: _____

Aircraft type and series (e.g., 737-400): _____

Number of such aircraft: _____

PART I GENERAL CONDITIONS FOR INSPECTION

Are the aircraft operated under 14 CFR Part 121? _____

Do the aircraft have 30 or more passenger seats? _____

Are the following true?

- 1) The aircraft were ordered by the original customer after April 5, 1990 (Yes/No) _____
- 2) The aircraft were delivered to the original customer after April 5, 1992 (Yes/No) _____
- 3) The aircraft cabin has been refurbished since April 5, 1990 (Yes/No) _____

If the answers to items (1) through (3) are *all no*, stop here; terminate the certification of this particular type of aircraft.

PART II PRELIMINARY INFORMATION

Number of passenger seats: _____ Number of aisles: _____

Date aircraft ordered by original customer: _____

Date delivered to original customer: _____

Original customer: _____

If current operator was not original customer, date aircraft delivered to current operator: _____

Has the cabin been refurbished since April 5, 1990? _____

If yes, date the refurbishment was completed: _____

During refurbishment:

- Were existing seats replaced with newly manufactured seats? _____
 - Were closets replaced or new closets installed? _____
 - Were lavatories replaced or new lavatories installed? _____
-

PART III MOVABLE ARMRESTS

Number of passenger aisle seats:

First class: _____ Business class: _____ Coach class: _____ Aircraft Total _____

Number of passenger aisle seats that have a movable armrest on the aisle¹:

First class: _____ Business class: _____ Coach class: _____ Aircraft Total _____

Number of passenger aisle seats that do not have a movable armrest on the aisle because it was not feasible (for example, the armrest included an integrated tray table or entertainment system):

First class: _____ Business class: _____ Coach class: _____ Aircraft Total _____

Number of passenger aisle seats in exit rows where passengers with disabilities are not permitted to sit:

First class: _____ Business class: _____ Coach class: _____ Aircraft Total _____

How does the carrier ensure that individuals with disabilities, including mobility impairments, readily obtain seating in rows with movable armrests? _____

PART IV ACCESSIBLE LAVATORY

Complete this section only for twin-aisle aircraft. Before inspecting the lavatories, review the following:

§ 382.21 Aircraft accessibility

(a)(3) Aircraft with more than one aisle in which lavatories are provided shall include at least one accessible lavatory. This lavatory shall permit a qualified individual with a disability to enter, maneuver within as necessary to use all lavatory facilities, and leave, by means of the aircraft's on-board wheelchair. The accessible lavatory shall afford privacy to persons using the on-board wheelchair equivalent to that afforded ambulatory users. The lavatory shall provide door locks, accessible call buttons, grab bars, faucets and other controls, and dispensers usable by qualified individuals with a disability, including wheelchair users and persons with manual impairments.

Based on your inspection, is there at least one accessible lavatory as described above? _____

PART V AIRLINE ON-BOARD WHEELCHAIR

Complete this section only for aircraft that have more than 60 seats and an accessible lavatory.²

If the aircraft has more than 60 seats *and* an accessible lavatory (as described in Part IV), is the aircraft equipped with a permanent airline on-board wheelchair? Yes/No _____

If yes, briefly describe the location and type of stowage space for this wheelchair (e.g., "closet in front of first class cabin"): _____

¹ Note: some movable aisle armrests will not lift until a button is pushed or a lever is pulled.

² Complete this section if the aircraft (with more than 60 seats) has an accessible lavatory, even if it has only one aisle and thus is not *required* to have an accessible lavatory.

PART VI STOWAGE SPACE FOR FOLDING PASSENGER WHEELCHAIR

Complete this section only for aircraft that have 100 or more passenger seats.

Is there a stowage space in the cabin (for example, a closet) designated for the accommodation of a passenger's folding wheelchair? _____

If yes, briefly describe the location and type of space for this wheelchair (e.g., "closet in front of first-class cabin"). _____

If there is such an area: What are its interior dimensions? _____

What is the weight-bearing capacity of this area? _____

Are there tie downs/restraints in this area? _____

PART VII CERTIFICATION

I certify, subject to penalties under 18 U.S.C. § 1001, that the information provided in this checklist is true and complete to the best of my knowledge.

Certification Date: _____ Certifier's name: _____

Certification location: _____ Certifier's telephone number: _____

Certifier's Signature: _____