



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

Issued by the Department of Transportation
on the **8th day of October, 2003.**

AirTran Airways,

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

**Docket OST-2003-14194
Served: October 8, 2003**

CONSENT ORDER

This order concerns alleged violations of 14 CFR Part 382 by AirTran Airways (AirTran). Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part would also violate the ACAA. ACAA and Part 382 violations would also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. Finally, to the extent that the alleged ACAA and Part 382 violations occurred in interstate air transportation, the incidents would also violate 49 U.S.C. § 41702, which requires that air carriers provide safe and adequate interstate air transportation. This order directs AirTran to cease and desist from future violations of the ACAA and Part 382 and assesses a compromise civil penalty for such violations.

BACKGROUND

AirTran currently operates 62 Boeing 717 (B-717) aircraft, each of which has at least 100 passenger seats.¹ None of these aircraft are configured with closets for passenger use.

In October 2002, the Department of Transportation's disability hotline, which takes calls from passengers with disabilities who are experiencing difficulty receiving proper air travel accommodations, received a call from a passenger seeking to stow his folding wheelchair inside the cabin of one of AirTran's B-717 aircraft. According to the passenger, he asked to stow his new, compact, high-performance, titanium folding wheelchair inside the cabin but was told by

¹ It also operates several DC-9 aircraft, which are not subject to this order.

AirTran's complaint resolution official that there was no space inside the cabin to stow the wheelchair and that it would have to be stowed in the cargo compartment.

This hotline call prompted an investigation by the Office of Aviation Enforcement and Proceedings ("Enforcement Office"). As part of its investigation, the Enforcement Office placed four telephone calls to AirTran's reservation center on October 16, 2002, and asked whether AirTran would allow a passenger to stow a folding wheelchair inside the cabin of its B-717 aircraft. In all four calls, the AirTran representative stated that the wheelchairs must be gate checked and stowed in the cargo compartment.

The Enforcement Office placed sixteen similar calls to AirTran's reservation center on November 20 and 21, 2002.² In five of these calls, the agents stated that folding wheelchairs must be gate checked and stowed in the cargo compartment. Notably, one of these five agents stated that this had been the policy for the entire five-year duration of her employment with AirTran. Similarly, another one of the five agents said that this had been the policy during the two years she had been working for AirTran.³ In the remaining 11 calls, the agents stated that wheelchairs may be stowed in the overhead bin of the B-717, which has the capacity to hold items smaller than 9 inches by 23 inches by 56 inches that do not weigh more than 110 pounds. Several of these agents stated that they had just received a company memo about the in-cabin stowage of wheelchairs.

In response to these representations by AirTran's reservation agents, the Enforcement Office boarded one of AirTran's B-717 aircraft at Baltimore/Washington International Airport in late November 2002. During this visit, the Enforcement Office staff attempted to stow a folding wheelchair that was 12 inches wide, 36 inches high and 32 inches long folded. This wheelchair did not fit inside the overhead bin such that it could be closed and latched shut.

As a result of its calls and inspection, the Enforcement Office requested further information on AirTran's policy regarding the stowage of wheelchairs inside the cabin of its B-717 aircraft. AirTran responded that its B-717 aircraft contain a priority space in its overhead bins inside the cabin for the stowage of folding wheelchairs. AirTran noted that the use of overhead bins as the exclusive in-cabin stowage space for folding wheelchairs was characteristic of many carriers' long-standing policies in place since 1999 and to date and that the Enforcement Office had not previously objected to these practices.⁴

² These calls were made after the Enforcement Office had advised AirTran of its investigation and its concerns regarding the information being provided by AirTran's reservation agents regarding the in-cabin stowage of wheelchairs.

³ AirTran took delivery of its first B-717 aircraft in October 1999, at which time its then and continuing mixed fleet of B-737 and DC-9 aircraft were not subject to the provisions of Part 382 giving rise to the violations alleged in this order.

⁴ In response to AirTran's assertion that it has always complied with § 382.21(a)(2) by allowing the stowage of wheelchairs in overhead bins and that the Enforcement Office has knowingly allowed this practice to go unchecked, the Enforcement Office notes that it began its investigation of AirTran and other carriers as soon as it received evidence that they might not be in compliance with the rule. Also, based on our calls to AirTran's reservation agents, AirTran's overhead bin stowage policy, which the Enforcement Office believes is not in compliance with

Since this time, the Enforcement Office has requested more detailed information from AirTran regarding the stowage of folding wheelchairs inside the cabin of its B-717 aircraft. AirTran responded to this request for information in a timely manner and notified the Enforcement Office of its intent to voluntarily create a priority space for the stowage of folding wheelchairs that do not fit in the overhead bins of its B-717s.⁵ AirTran stated that it would designate the bulkhead row on the left side of its B-717 aircraft, which contains two passenger seats, for such purpose. AirTran has received approval of this system from the Federal Aviation Administration. It anticipates that it will offer such stowage to requesting passengers with disabilities on all B-717s on or before January 1, 2004.

APPLICABLE SECTIONS OF 14 CFR PART 382

The ACAA, 49 U.S.C. § 41705, and 14 CFR 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 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."⁶ 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.⁷ It is the position of the Enforcement Office that the term "wheelchair" refers to standard-size wheelchairs.⁸ It is further the position of the Enforcement Office that taking these terms together section 382.21(a)(2) requires that all new aircraft with 100 or more seats have a space that is large enough to stow one passenger's standard-size folding wheelchair on a priority basis.

§ 382.21(a)(2), is of recent vintage. AirTran was not allowing stowage of folding wheelchairs inside the cabin but requiring stowage in the cargo compartment of the aircraft. Prior to notifying AirTran of the potential Part 382 in-cabin wheelchair stowage issue, the Enforcement Office placed four test telephone calls on October 16, 2002. In each of these calls, the AirTran representative stated that wheelchairs must be gate checked and stowed in the cargo compartment. After notifying AirTran of the potential Part 382 wheelchair stowage issue, the Enforcement Office made 16 more calls. In five of these calls the AirTran representatives stated that wheelchairs must be stowed in the cargo compartment. In the remaining 11 calls, the AirTran representatives stated that wheelchairs may be stowed inside the cabin in the overhead bin.

⁵ Section 382.41(e)(1) states that carriers "shall permit the stowage of wheelchairs or components of wheelchairs in overhead compartments and under seats, consistent with the requirements of FAA safety regulations for carry-on items." This requirement is separate and distinct from the requirement of § 382.21(a)(2).

⁶ 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). All of AirTran's B-717 aircraft are covered by this provision.

⁷ 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 . . ."

⁸ 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). The following dimensions characterize a standard-size wheelchair, when folded: 13 inches wide by 36 inches high by 42-50 inches long.

In addition to the ACAA and Part 382, noncompliance with section 382.21(a)(2) involves unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. To the extent that ACAA and Part 382 violations occur 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 addresses the stowage of a passenger's folding wheelchair inside the cabin of AirTran's B-717 aircraft. It is the Enforcement Office's position that section 382.21(a)(2) requires that new aircraft with at least 100 seats have a priority space for the stowage of at least one standard-size folding wheelchair for use by a requesting passenger with a disability. Further, it is the Enforcement Office's position that a standard-size wheelchair is approximately 36 inches in height, 13 inches in width when folded, and 42 to 50 inches in length.⁹ Prior to its recent adoption of a seat stowage method for folding wheelchairs, the evidence shows that the existing stowage space within AirTran's B-717 aircraft was not of sufficient size to stow a standard-size folding wheelchair like the one used by the Enforcement Office in its test.

In mitigation, AirTran states that it has already adopted the seat stowage method for its existing aircraft and will install closets inside the cabin of its newly ordered B-737-700 aircraft for the stowage of wheelchairs on a priority basis. These closets will be large enough to stow the largest standard-size folding wheelchair as defined above, i.e., 13 inches by 36 inches by 50 inches.¹⁰

Despite these efforts, the Enforcement Office views AirTran's initial failure to provide the proper accommodation under 14 CFR § 382.21(a)(2), as defined above, seriously. After careful consideration of this omission, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation on this matter, and without admitting or denying the alleged violations, AirTran has agreed to settle these matters and enter into a consent order to cease and desist from future similar violations.

By this order, the Department finds that AirTran failed to act in accordance with the ACAA and Part 382 in failing to provide space for the in-cabin stowage of one passenger's standard-size folding wheelchair on new aircraft with at least 100 seats. This order directs AirTran to cease and desist from similar violations in the future and assesses a civil penalty of \$125,000 in compromise of the penalties otherwise assessable under 49 U.S.C. § 46301. All but \$20,000 of this civil penalty will be offset by the following expenditures by AirTran: (1) \$25,000 for the development of training materials, in conjunction with the Southeast Disability and Business Technical Center, addressing general issues involving service to air travelers with disabilities; (2)

⁹ Gary D. Roberts, P.EnG. and C.J. Kritch, P.EnG., *Feasibility Study of In-cabin Storage of Wheelchairs and Scooters on Commercial Aircraft*, Prepared for the Transportation Development Center, Transport Canada, pp.24-5 (March 1988). This study was cited in the regulatory evaluation used as the basis for the rulemaking that promulgated 14 CFR 382.21(a)(2). Nondiscrimination on the Basis of Handicap in Air Travel, 55 Fed. Reg. 8008 (March 6, 1990) (codified at 14 CFR Part 382). The Transport Canada study was also referred to in the preamble of that rule. *Id.*

¹⁰ AirTran requested, and on June 27, 2003, received, assurances that the provision of such a closet space for the in-cabin stowage of wheelchairs on a priority basis would satisfy the mandates of section 382.21(a)(2).

\$40,000 for the cost of providing a link from AirTran's website to information regarding the Department of Transportation's toll-free Hotline to educate and assist individuals in resolving disability-related air travel problems; and (3) \$40,000 of the lost revenue to AirTran of seat space lost by installing closets large enough to stow the largest standard-size wheelchair on board its newly ordered Boeing 737-700 aircraft, rather than continuing the use of the seat stowage method on such aircraft. In addition, this order directs that AirTran 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 AirTran complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order.

This consent order and the civil penalty assessed take into account AirTran's adoption of the seat stowage method for its existing aircraft and its voluntary installation of closet space large enough to stow a standard-size wheelchair on all of its newly ordered Boeing 737-700 aircraft. We further believe that this consent order and the penalty it assesses will provide a strong incentive for AirTran 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 AirTran Airways violated the requirements of 14 CFR § 382.21(a)(2) by failing to provide space to stow one passenger's standard-size folded wheelchair in the passenger cabin of its new aircraft with at least 100 seats;
3. We find that AirTran Airways, by committing the violation described in ordering paragraph 2, violated the Air Carrier Access Act, 49 U.S.C. § 41705;
4. 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;
5. We find that the violations described in ordering paragraph 2 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;
6. AirTran Airways and its successors and assigns are ordered to cease and desist from further violations of 14 CFR Part 382 and 49 U.S.C. §§ 41702, 41705, and 41712 by engaging in the conduct described in ordering paragraph 2;
7. AirTran Airways is assessed a civil penalty of \$125,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 6, of which:
 - a. \$20,000 shall be due and payable 30 days after the service date of this order;

- b. \$25,000 shall be credited to AirTran for expenditures made in developing training materials, in conjunction with the Southeast Disability and Business Technical Center, addressing general issues involving service to air travelers with disabilities;
 - c. \$40,000 shall be credited to AirTran for the cost of providing a link from AirTran's website to 14 CFR Part 382 and information regarding the Department of Transportation's toll-free Disability Hotline to educate and assist individuals in resolving disability-related air travel problems; and
 - d. \$40,000 shall be credited to AirTran for the costs associated with the seat space lost in connection with its installation of closets large enough to stow the largest size standard wheelchair on board its undelivered Boeing 737-700 aircraft, rather than continuing to use the seat stowage method on board such aircraft. If the carrier fails to install a closet large enough to stow one passenger's large standard-size wheelchair (36" inches in height by 13 inches in width when folded by 50 inches in length) on all of its Boeing 737-700 aircraft to be delivered over the next 5 years after the service date of this order, this amount shall be due and payable as described in ordering paragraph 9 below;
8. Within 30 days after the service date of this order, AirTran shall provide DOT with a statement with supporting documentation verifying the cost of each offset listed in paragraph 7 above. The statement shall show the cost of each offset, a detailed explanation of the method used by AirTran to determine the cost of each offset, and a sworn statement from an appropriate company official certifying that the descriptions and documentation are true and complete to the best of that official's knowledge;
9. Within one year after the service date of this order, AirTran shall provide written certification to the Office of Aviation Enforcement and Proceedings that it has funded and implemented the accommodation programs described in ordering paragraphs 7(b) through (d). If by this date AirTran has not made the expenditures covered in ordering paragraphs 7(b) and (c) in full, it shall pay the amounts not expended in accordance with ordering paragraph 14, within 30 days of the date of the certification required by this paragraph. With respect to the accommodation program specified in paragraph 7(d), AirTran shall provide the required written certification within one year after the service date of this order for the first covered year. AirTran shall submit all subsequent certifications on the last Monday in October of that year for the prior covered year;
10. AirTran shall, upon request, offer passengers who use manual folding wheelchairs the option of stowing their wheelchairs inside the cabin of the aircraft, either in the overhead bin, in the row of passenger seats designated by AirTran for wheelchair stowage, or elsewhere in the cabin of the aircraft in accordance with 14 CFR Part 382;
11. AirTran shall complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order;

12. AirTran Airways shall notify the Enforcement Office within 30 days if it changes in any manner its designated space to stow passengers' standard-size folding wheelchairs on its Boeing 717 and Boeing 737 aircraft, or other aircraft governed by 14 CFR 382.21(a)(2); and
13. 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 AirTran Airways 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

An electronic version of this document is available on the World Wide Web at:
http://dms.dot.gov/reports/reports_aviation.asp

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: _____