



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

Issued by the Department of Transportation
on the **10th day of November, 2003**

Served: November 10, 2003

Delta Air Lines, Inc.

Docket OST-2003-16507

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

CONSENT ORDER

This order concerns certain alleged violations by Delta Air Lines, Inc., (Delta) of the requirements of 14 CFR Part 382, with respect to providing assistance to passengers in wheelchairs and dispositive responses to persons who complained to the carrier about its failure to comply with 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 any 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 any violations occurred in foreign air transportation, the incidents would also represent violations of 49 U.S.C. § 41310, which in part prohibits air carriers from unreasonably discriminating against any person in foreign air transportation. Any ACAA and Part 382 violations would also constitute unfair and deceptive practices in violation of 49 U.S.C. § 41712. This order directs Delta to cease and desist from future violations of Part 382 and the cited statutory provisions and assesses the carrier \$1.35 million, subject to offsets and penalty reductions for improved compliance of up to \$1.25 million, in compromise of civil penalties that might otherwise be assessed against the carrier for such violation.

Part 382 requires air carriers to provide passengers with disabilities assistance in aircraft enplaning and deplaning and imposes specific requirements in doing so. Sections 382.39 (a) and (b) set forth several requirements regarding the type and quality of service air carriers must provide when assisting passengers with disabilities. Moreover, 14 CFR 382.65 requires a carrier to respond to a customer's complaint about a disability-related issue in a dispositive manner within 30 days of the date the carrier receives a written complaint. This order finds that on a number of occasions, as revealed by our review of complaints filed with the Department and directly with Delta, the carrier has failed to comply with certain of these requirements.

The Office of Aviation Enforcement and Proceedings (Enforcement Office) investigated Delta's compliance with certain provisions of Part 382 by reviewing complaints that the Department received from disabled Delta passengers and by requesting that Delta provide the Department copies of all complaints Delta received directly from passengers between April 5, 2000, and August 22, 2002, that alleged a failure to provide adequate enplaning, connecting, and deplaning wheelchair assistance. A review of those complaints revealed a significant number of apparent violations of sections 382.39 and 382.65. Almost all of the complaints involved incidents occurring after April 5, 2000, the effective date of the increase in civil penalties for ACAA violations enacted by AIR 21.¹

A number of complaints appear to reflect a material failure on the part of the carrier in meeting the requirements of section 382.39, including instances of failure to provide wheelchair assistance altogether, prolonged delays in obtaining wheelchairs, and stranding individuals alone in wheelchairs or on board an aircraft for extended periods of time. In addition, Delta's complaint files indicated that in numerous instances it did not provide a written response to the complainant fully compliant with the requirements of section 382.65, which requires that the carrier must provide a "dispositive response" with respect to each complaint postmarked within 45 days of the complained of incident. An appropriate response must specifically discuss the complaint at issue, state the carrier's view of whether a violation occurred, and provide an explanation of the carrier's view if no violation occurred or what corrective action was taken, if a violation is admitted. The response must also state that the complainant may refer the matter to the Department.

In mitigation, Delta Air Lines, Inc., states that it has established industry-leading programs for its disabled customers and continually strengthens its programs by creating new structures to oversee, manage and enhance services provided to disabled customers. The new structures, together with other disability program enhancements, according to Delta, demonstrate its total commitment to its long-standing policy of full compliance with all applicable legal requirements. Indeed, Delta states that its corporate policy is to assist disabled passengers over and above the requirements of statutes and regulations. To accomplish its policy objectives with respect to disabled passengers, Delta points out that it has committed and continues to commit substantial sums of money and other resources to the advancement and protection of the interests of its disabled customers. According to Delta it has instituted or reinforced numerous programs, systems, training enhancements and procedures, which it continually expands and refines through cross-divisional teams and dedicated staff, in order to meet the needs of its disabled customers and to ensure compliance with all applicable requirements pertaining to disabled travelers.

Delta points to a number of specific procedures and initiatives as indicating its commitment to compliance with the ACAA. First, Delta states that special attention to the needs and requirements of Delta's disabled customers is reflected directly in commitments by senior management, including its Chairman and CEO and the President and Chief Operating Officer of Delta. Second, Delta states that it has established a cross divisional Disability Compliance Council for the express purpose of overseeing, managing and improving all aspects of Delta's

¹ Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21; Pub. L. 106-181; 114 Stat. 61; April 5, 2000). Section 707(b) of AIR-21 amended 49 U.S.C. § 46301(a)(3) to apply a \$10,000 maximum civil penalty for each violation of the ACAA.

programs to address the needs of disabled passengers. Third, Delta asserts that it is unique among major carriers in that it was the first to create a special management position whose primary responsibility is to promote and address consumer advocacy issues for disabled passengers, and this individual has been given the power and resources necessary to fulfill Delta's unparalleled commitment to meeting the needs of its disabled customers. Fourth, Delta states that it continually revises and enhances its training programs to address the needs of its disabled customers, for example, by developing, at considerable cost, a comprehensive web and computer-based/interactive disability training program which will capture and promote more effective training on key provisions of the ACAA under Part 382. Fifth, Delta states that it has created strong relationships with groups representing the disabled community, including the establishment of an industry-leading advisory board comprised of disabled persons who represent major disability organizations. Sixth, Delta states that a new structure has been established within the Airport Customer Service Division (ACS) to enhance that division's ability to take a leading role in all aspects of compliance with DOT and Delta policies regarding the provision of disabled passenger services. Seventh, Delta states that it has adopted a tri-level Quality Assurance Compliance Program to ensure full compliance with Part 382 that is being implemented or augmented at three levels--by contractors who provide disabled passenger wheelchair services, by ACS, and by Delta's corporate level quality assurance team. Eighth, Delta points out that it holds Complaint Resolution Official (CRO) conferences for the purpose of increasing the knowledge and effectiveness of Delta's CROs to serve their particular areas. Finally, Delta points to several other compliance-oriented programs including: (1) an internally created quick reference guide with respect to disabilities for all front-line employees that outlines key disability requirements and objectives; (2) an ACS job aid which highlights information concerning DOT requirements, contract of carriage requirements relating to disabilities and complaint resolution requirements; and (3) "road-show" presentations conducted by officials of the company throughout Delta's system to focus on issues relating to service for passengers with disabilities.

The Enforcement Office continues to view seriously the failure by any carrier to provide proper wheelchair service to passengers pursuant to 49 U.S.C. § 41705 and Part 382. After carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. However, the Enforcement Office recognizes Delta's commitments in connection with implementing the above described improvements and making the above-described expenditures during a time in which the airline industry continues to face financial difficulties and believes that certain measures Delta has implemented after this investigation began and plans to implement in the future should be allowed as offsets to reduce a substantial portion of the assessed civil penalty. By this order, the Department finds that Delta has, on numerous occasions, failed to provide adequate wheelchair assistance to passengers with disabilities and failed to provide a dispositive response with respect to many of the related complaints in violation of the ACAA and 14 CFR Part 382. In order to avoid litigation, Delta, without admitting the alleged violations, has agreed to settle these matters with the Enforcement Office and enter into this consent order directing Delta to cease and desist from future similar violations of the ACAA and Part 382 and assessing \$1.35 million in compromise of potential civil penalties, subject to credit offsets of up to \$1.25 million and to the payment schedule set forth below. We believe

that this consent order and the penalty that it assesses will provide a strong incentive for all carriers to comply with the ACAA and 14 CFR Part 382.²

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 this order as being in the public interest;
2. We find that Delta Air Lines, Inc., on a number of occasions violated the requirements of 14 CFR 382.39 by failing to provide prompt and proper enplaning, deplaning, and connection assistance to disabled air travelers, primarily those having mobility impairments;
3. We find that Delta Air Lines, Inc., on a number of occasions violated the dispositive response requirements of 14 CFR 382.65 in connection with certain of the violations described in ordering paragraph 2;
4. We find that Delta Air Lines, Inc., in the instances described in ordering paragraphs 2 and 3, violated the Air Carrier Access Act, 49 U.S.C. § 41705;
5. We find that, to the extent that certain of the instances described in ordering paragraphs 2 and 3 occurred in foreign air transportation, Delta Air Lines, Inc., violated 49 U.S.C. § 41310;
6. We find that, to the extent that certain of the instances described in ordering paragraphs 2 and 3 occurred in interstate air transportation, Delta Air Lines, Inc., violated 49 U.S.C. § 41702;
7. We find that certain of the violations described in ordering paragraphs 2 through 6 are unfair and deceptive practices that constitute violations of 49 U.S.C. § 41712;
8. We order Delta Air Lines, Inc., and its successors and assigns to cease and desist from further violations of 14 CFR Part 382 and 49 U.S.C. §§ 41310, 41702, 41705 and 41712 by engaging in the conduct described in ordering paragraphs 2 through 7;
9. Delta Air Lines, Inc., is assessed a civil penalty in the amount of \$1.35 million in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 7 of this order, subject to the payment schedule set forth in paragraph 9 (a) through (c) below, and subject to credit offsets of up to \$1.25 million as provided in subparagraphs 9 (d) through (f) below:

(a) \$50,000 shall be due and payable 90 days after the service date of this order;

² This consent order will settle all violations of 14 CFR 382.39 and 382.65 that Delta may have committed prior to the service date of this order.

(b) \$50,000 shall be due and payable 12 months after the initial payment as set forth in subparagraph (a) above;

(c) \$50,000 shall be due and payable 18 months after the initial payment as set forth in subparagraph (a) above, which amount shall be forgiven and not be due and payable in the event that Delta Air Lines, Inc., achieves (i) a 20 percent reduction in the disability complaint rate³ per 100,000 enplanements with respect to complaints that the Department receives alleging that Delta Air Lines, Inc. failed to provide adequate enplaning, deplaning, or connecting wheelchair assistance in calendar year 2003 over calendar year 2002 and (ii) a 15 percent reduction in the disability complaint rate per 100,000 enplanements with respect to complaints that the Department receives alleging that Delta Air Lines, Inc. failed to provide adequate enplaning, deplaning, or connecting wheelchair assistance in calendar year 2004 over calendar year 2003;

(d) \$150,000 shall be credited to Delta Air Lines, Inc., for expenditures made to improve its quality of service to air travelers with disabilities above what is required by 14 CFR Part 382, since the initiation of the investigation and giving rise to this order, which the Enforcement Office has already reviewed and accepted;

(e) \$1,050,000 shall be credited to Delta Air Lines, Inc., for expenditures that will be made in the 24 months after the service date of this order to improve its quality of service to disabled air travelers above what is required by 14 CFR Part 382 in accordance with ordering paragraph 10; and

(f) To the extent the carrier fails to provide adequate documentation verifying the appropriate expenditures of the \$1,050,000 offset, that amount shall become due and payable 28 months after the service date of this order⁴;

10. The improvements described in ordering paragraph 9(e) shall consist of one or more of the following:

(a) The implementation of a customer experience review program. Under this program, Delta Air Lines, Inc., shall seek volunteers from the pool of passengers with disabilities that utilize Delta services and/or hire auditors to provide Delta Air Lines with written responses to a series of questions capturing the disabled customer's travel experience. The questions will cover, among other things, compliance in the following areas: meet and assist services, boarding and deplaning, on-board services (e.g., the provision of on-board wheelchairs where required), wheelchair assistance in terminals, on-board stowage of personal wheelchairs, and complaint handling by

³ The disability complaint rate is the total number of complaints received by DOT alleging that Delta Air Lines, Inc., failed to provide adequate enplaning, deplaning, or connecting wheelchair assistance divided by the total number of enplanements by Delta.

⁴ However, if Delta is unable to gather adequate documentation, the offset shall not be automatically withdrawn and become due and payable immediately. Rather, the Enforcement Office shall grant Delta reasonable extra time in which to complete the process of submitting adequate information and the requirement to pay such amount shall be tolled during such process.

Delta. In addition, at a minimum, the program shall cover compliance at Atlanta, Cincinnati, Salt Lake City, and New York City airports (JFK and LaGuardia). Within 26 months of the service date of this order, Delta Air Lines, Inc. shall submit -

(i) written certification to the Office of Aviation Enforcement and Proceedings that it has funded and implemented the customer experience review program;

(ii) a detailed explanation of the method used by Delta to determine the total expenditures; and

(iii) a sworn statement from an appropriate company official certifying that the total expenditures were properly expended to the best of that official's knowledge after completion of a reasonable inquiry to establish the accuracy of the sworn statement;

(b) Additional training regarding the requirements of the Air Carrier Access Act and 14 CFR Part 382 for all Delta Air Lines, Inc., and the Delta Connection Carrier employees and contractors of its wholly owned affiliates that have public contact with passengers such as customer service agents, reservation sales agents, and ramp agents. Within 26 months of the service date of this order, Delta Air Lines, Inc. shall submit -

(i) a statement with supporting documentation detailing training expenditures;

(ii) a detailed explanation of the method used by Delta to determine the total additional expenditures for training of its employees and contractors; and

(iii) a sworn statement from an appropriate company official certifying that the total expenditures were properly expended to the best of that official's knowledge after completion of a reasonable inquiry to establish the accuracy of the sworn statement;

(c) Increased expenditures for basic boarding equipment and wheelchairs in calendar year 2003 over normal expenditure levels in calendar year 2002 and in calendar 2004 over normal expenditure levels in calendar year 2003⁵. Within 30 days of the date of issuance of this order, the carrier shall submit to the Enforcement Office documentation concerning normal expenditure levels for boarding equipment and wheelchairs for calendar year 2002 and a statement with supporting documentation regarding how the carrier determined its normal wheelchair and boarding equipment needs in 2002. Within 26 months of the service date of this order, Delta Air Lines, Inc. shall submit -

(i) a statement with supporting documentation detailing expenditures relating to the items set forth in this paragraph for calendar 2003 and 2004;

⁵ For purposes of determining the expenditures for boarding equipment and wheelchairs in calendar year 2003 and 2004 in connection with compliance with this order, the carrier shall use the same methodology used to establish normal expenditures for boarding equipment and wheelchairs in calendar year 2002.

(ii) a detailed explanation of the method used by Delta to determine the total of such additional expenditures for calendar 2003 and 2004; and

(iii) a sworn statement from an appropriate company official certifying that the total expenditures were properly expended to the best of that official's knowledge after completion of a reasonable inquiry to establish the accuracy of the sworn statement; and

(d) Expenditures related to the repair and maintenance of Delta's unique hydraulic-lift carry-on wheelchairs. Delta shall also receive credit for the acquisition of hydraulic-lift carry-on wheelchairs above what it had planned to purchase prior to the institution of the investigation giving rise to this order during the 24 month period after the service date of the order. Within 26 months of the service date of this order, Delta Air Lines, Inc., shall submit –

(i) a statement with supporting documentation detailing expenditures relating to the acquisition, repair and maintenance of Delta's hydraulic-lift carry-on wheelchairs as covered by this paragraph;

(ii) a detailed explanation of the method used by Delta to determine the total of such additional expenditures; and

(iii) a sworn statement from an appropriate company official certifying that the total expenditures were properly expended to the best of that official's knowledge after completion of a reasonable inquiry to establish the accuracy of the sworn statement;

11. The improvements described in ordering paragraphs 9(e) and 10 may be modified with the approval of the Enforcement Office. If Delta Air Lines, Inc., intends to seek a change in the type of improvement to be made, it must notify and obtain approval from the Enforcement Office 45 days prior to the date documentation is due pursuant to paragraph 10; and
12. Payments 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 transfers shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered will subject Delta Air Lines, 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 unless a timely petition for review is filed or the Department takes review on its own initiative.

BY:

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