



**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.

JetBlue Airways,

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

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

CONSENT ORDER

This order concerns violations of 14 CFR Part 382 by JetBlue Airways (JetBlue). 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 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. This order directs JetBlue to cease and desist from future violations of the ACAA and Part 382 and assesses a compromise civil penalty of \$100,000 for such violations.

BACKGROUND

JetBlue inaugurated commercial flight operations on February 11, 2000. Between April 5, 2000, and November 21, 2002, JetBlue operated 73,952 flights aboard its Airbus 320 aircraft. It currently operates 46 identically configured Airbus 320s, each with 162 coach seats.

While conducting a Part 382 compliance review in October 2002, the Department of Transportation's Office of Aviation Enforcement and Proceedings (Enforcement Office) discovered several statements on JetBlue's webpage and in its contract of carriage that appeared

to depart from 14 CFR Part 382. The statements at issue addressed JetBlue's: (1) stowage of one passenger's folding wheelchair inside the cabin of its aircraft, 14 CFR § 382.21(a)(2); (2) carriage and stowage of wheelchair batteries, 14 CFR § 382.41(g); (3) liability for loss, damage or destruction of wheelchairs and other assistive devices, 14 CFR § 382.43(b); and (4) carriage of assistive devices, 14 CFR § 382.41(d).

The Enforcement Office's concern about these issues prompted a teleconference with JetBlue, during which the office notified the carrier of these four areas of concern. The Enforcement Office followed this meeting with a letter requesting information addressing all four areas of concern. JetBlue responded to this request on December 23, 2002.

With regard to the stowage of one passenger's folding wheelchair inside the cabin under section 382.21(a)(2), the Enforcement Office made 10 telephone calls to JetBlue's reservations system to determine what information JetBlue employees were providing to passengers on this issue. In all but one of these telephone calls, the reservations agent stated that JetBlue's aircraft could not accommodate a passenger's folding wheelchair inside the cabin.¹

After being told of the test calls and the Department's concerns, JetBlue responded that its aircraft "do not currently have a designated priority stowage space for at least one passenger's standard-sized folding wheelchair in the passenger cabin." To create such a space for wheelchairs that do not fit in the overhead bin, JetBlue proposed to secure one passenger's folding wheelchair atop three passenger seats.² JetBlue further stated that it would continue this practice on all of its current and future aircraft.

With regard to wheelchair batteries, www.jetblue.com stated: "Wheelchair batteries must be placed in special shipping boxes and passengers requiring such boxes should notify JetBlue at least 48 hours prior to departure of the need for an appropriate battery box. JetBlue Airways will always remove and box batteries even if they are non-spillable."³ JetBlue's contract of carriage failed to distinguish between spillable and non-spillable batteries stating, "Wheelchair batteries must be placed in special shipping boxes." In addition, the Enforcement Office made nine calls to JetBlue's reservations center inquiring as to the removal and packaging of non-spillable

¹One of the Enforcement Office's Transportation Industry Analysts ("TIA") made 10 separate telephone calls to JetBlue's reservations center and spoke with 10 different reservations agents on October 16 – 17, 2002. During each call, the TIA represented that he was traveling with his collapsible folding wheelchair and would like to stow it inside the cabin of the aircraft. In response to these representations, all but one agent stated that the wheelchair would have to be stowed in the cargo compartment of the aircraft.

²JetBlue pointed out in its letter that smaller, non-standard wheelchairs, "such as one tested by JetBlue which measured 21.5 inches by 16 inches by 29 inches, will be placed in the overhead compartment above the customer requesting its onboard stowage for the first customer requesting in cabin stowage. Similarly, other model wheelchairs that will fit in an overhead bin, including those with detachable wheels, will also be kept in the overhead compartment nearest to the customer requesting its placement in the cabin for the first customer requesting in cabin stowage."

³ See <http://www.jetblue.com/travelinfo/howToDetail.asp?topicId='17'> (Oct. 28, 2002).

batteries. In four of these calls, reservations agents indicated that JetBlue would remove and separately package spillable and non-spillable wheelchair batteries.⁴

In subsequent discussions with JetBlue management, JetBlue stated that its practice is "to accept battery-powered wheelchairs, with the battery attached, if the battery is labeled by the manufacturer as non-spillable. Battery-powered wheelchairs lacking a non-spillable label are accepted as baggage, with the battery attached, only if the wheelchair can be loaded/stowed/unloaded in an upright position and the battery is disconnected and the terminals are insulated to prevent short circuits." With regard to spillable batteries that cannot remain upright at all times and those with signs of leakage, JetBlue stated that it removes such batteries and places them in a secure battery container. JetBlue pledged to undertake a thorough review of all its training and operating manuals, its website, and contract of carriage to make certain that its "practices which currently are in compliance with all provisions in [14 CFR Part 382] are accurately reflected in all policies."

With regard to liability for lost, damaged, or delayed assistive devices, JetBlue's contract of carriage stated: "Under no circumstances will Carrier's liability exceed \$2,500 per passenger, unless passenger has purchased excess coverage. (Qualified handicapped individuals traveling with wheelchairs or mobility aids will be entitled, without charge, to an additional \$2,500 of coverage for loss, damage or delay of those items.)"

JetBlue later explained that its actual "practice is to not limit [sic] in any way liability for all repair, replacement, rental, and transportation charges incurred by the customer in cases involving damage or delay to a wheelchair or other assistive device." JetBlue further asserted that its contract of carriage did not accurately reflect its policies and practices to date. Again, JetBlue pledged to ensure that "its practices which currently are in compliance with this regulation are accurately reflected in all policies."

Finally, JetBlue's contract of carriage appeared to limit the number of assistive devices that a passenger with a disability may transport, stating: "Carrier will also accept one additional wheelchair battery, crutches, braces or other prosthetic devices on the same flight."

JetBlue asserted that it does not limit customers with a disability to a certain number of assistive devices and that it will modify its contract of carriage to more clearly delineate this policy and practice.

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). Part 382 contains numerous directives, of which four are relevant to this case. These directives concern stowage space for one passenger's folding wheelchair in the cabin, the carriage of

⁴ Four calls were made on October 16 and 17, 2002. In three of these calls, the JetBlue reservations agent indicated that JetBlue would remove and separately package spillable and non-spillable batteries. Five calls were made between January 21 and 23, 2003. Of these five calls, only one reservations agent stated that a passenger's non-spillable battery would have to be removed.

wheelchair batteries, a carrier's liability for lost, damaged or delayed wheelchairs and other assistive devices, and the carriage of assistive devices.

Primarily at issue in this consent order, 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."⁵ 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 Enforcement Office's interpretation of the term "folding" does not anticipate disassembly, including the removal of the large or small wheels of the wheelchair.⁶ The Enforcement Office also takes the position that the term "wheelchair" refers to standard-size wheelchairs.⁷ 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.

Addressing the carriage of wheelchair batteries, section 382.41(g) forbids carriers from removing and separately packing non-spillable wheelchair batteries that have been labeled as such by the manufacturer. This same provision also forbids the removal and separate packaging of spillable batteries from wheelchairs that can be loaded, stored, secured and unloaded in an upright position.

Section 382.43(b) excepts a carrier's liability on domestic flights for loss, damage, or delay concerning wheelchairs or other assistive devices from the limits established by 14 CFR Part 254. Because there is no limit to a carrier's liability for the loss, damage, or destruction of wheelchairs on domestic flights, a carrier's liability limit is determined by the original purchase price of the device. 14 CFR § 382.43(b).

Finally, at issue are the Part 382 requirements that address the carriage of assistive devices inside the cabin of aircraft. Carriers must allow passengers with disabilities to stow assistive devices on board the aircraft in close proximity to their seats.⁸ Assistive devices carried into the cabin of an aircraft by a passenger with a disability may not be counted toward any carry-on baggage limit. 14 CFR § 382.41(d).

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

⁵ 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).

⁶ 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 . . ."

⁷ This 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 an adult standard-size wheelchair when folded: 13 inches wide by 36 inches high by 42-50 inches long.

⁸ Such stowage must also comport with FAA safety regulations.

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 four issues: (1) the stowage of one passenger's folding wheelchair inside the cabin of JetBlue's Airbus 320s; (2) the carriage and stowage of wheelchair batteries on JetBlue's aircraft; (3) JetBlue's liability for the loss, damage or destruction of wheelchairs and other assistive devices; and (4) the carriage of assistive devices in the cabin of JetBlue's aircraft.

With regard to the last three of these issues, the Enforcement Office's investigation revealed evidence of written policies but not practices in contravention of Part 382. In an apparent breach of section 382.41(g), JetBlue's website informed passengers that all electric wheelchair batteries would be removed even if non-spillable. In addition, diverging from the unlimited liability standard set by 382.43(b), JetBlue's contract of carriage limited its liability to \$5,000 for lost, damaged, or destroyed assistive devices. JetBlue's contract of carriage also appeared to limit the number of assistive devices that a passenger with a disability could transport. When notified of these apparent lapses by the Enforcement Office, JetBlue asserted that even though its website and contract of carriage contained statements contrary to the mandates of Part 382, its actual policies and practices were in compliance. JetBlue provided convincing evidence in support of this assertion and dedicated itself to quickly correcting the errors.

With regard to wheelchair stowage, JetBlue admitted that prior to this investigation its aircraft did not contain a priority space for the stowage of one passenger's standard-size wheelchair, as the term "standard-size" is defined by the Enforcement Office. JetBlue notes that section 382.21(a)(2) does not, by its terms, describe the size of the wheelchair that must be given priority space. After notification of the Enforcement Office's position on this issue, JetBlue has implemented an FAA-approved cabin stowage method, by which it will stow one passenger's folded wheelchair, standard-size or other, on top of passenger seats D, E, and F in the last row of seats of its aircraft if requested by a disabled passenger.⁹ Although the Enforcement Office appreciates JetBlue's willingness to quickly create a space to stow a passenger's standard-size folding wheelchair, the office views the carrier's admitted failure initially to provide the proper accommodation under 14 CFR § 382.21(a)(2) seriously.

In mitigation of this admitted violation of the Enforcement Office's interpretation of the rules, JetBlue notes that in addition to immediately curing the issues surrounding its website and contract of carriage, it has provided DOT with documentary evidence from the disability community showing a high rate of satisfaction with JetBlue's service to passengers with disabilities. JetBlue states that its quality record of service to passengers with disabilities is further highlighted by the fact that neither JetBlue nor DOT has ever received a complaint addressing the stowage of a passenger's wheelchair inside the cabin of one of its aircraft and, to date, DOT has never received an assistive device damage complaint against JetBlue. According

⁹ These seats will be available for assignment for passenger seating at airport check-in only. Any passenger who specifically requests to sit in such seats or who is assigned to sit in such seats on the day of flight will be notified that his or her seat or flight may be changed in order to accommodate a wheelchair.

to JetBlue, the two complaints of such damage that were received by JetBlue were addressed immediately and to the satisfaction of the complainant. Finally, JetBlue points out that DOT has only received one disability-related complaint against JetBlue since January 2000, and that complaint was found not to be a violation of 14 CFR Part 382 by DOT.

While we can appreciate the points raised by JetBlue, we wish to make clear the seriousness with which we view all carriers' obligations to comply with the Department's rules designed to ensure nondiscriminatory accessibility for disabled air travelers. In this regard, a small number of complaints or the fact that complaints, when they occur, are addressed immediately, does not change the fact that where violations have occurred they must be addressed by the Department. After careful consideration of JetBlue's record of quality service to individuals with disabilities, as well as its admitted failure to provide priority space for the in-cabin stowage of one passenger's standard-size folding wheelchair, the Enforcement Office believes that enforcement action is warranted.¹⁰ In order to avoid litigation on this matter, JetBlue and the Enforcement Office have agreed to settle these matters and enter into this consent order under which JetBlue agrees to cease and desist from future similar violations.

By this order, the Department finds that JetBlue failed to act in accordance with the ACAA and Part 382 in failing to provide a priority space to stow one passenger's folding wheelchair inside the cabin on new aircraft with at least 100 seats. This order directs JetBlue to cease and desist from similar violations in the future and assesses a civil penalty of \$100,000 in compromise of the penalties otherwise assessable under 49 U.S.C. § 46301. Of this amount \$10,000 will be paid within 15 days of the date of issuance of this order. The remaining \$90,000 will be offset by enhancements to JetBlue's aircraft and systems that were proposed by JetBlue and approved by the Enforcement Office as being above and beyond those required by Part 382. To better assist passengers with disabilities JetBlue has agreed to create a quality assurance team dedicated to improving JetBlue's service to passengers with disabilities and to include information regarding DOT's toll free disability Hotline in a prominent place on its website. To further improve service to passengers with disabilities inside the airport, JetBlue will install TTY communications devices at all of its ticket counter locations and select customer service stations.

In addition to imposing a civil penalty, this order directs JetBlue 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 JetBlue 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 JetBlue 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 JetBlue and other carriers to comply fully 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.

¹⁰ For the reasons stated above and in the interest of settling this matter, the investigation relating to the other alleged violations discussed above is being terminated with the corrective actions noted.

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 JetBlue Airways violated the requirements of 14 CFR § 382.21(a)(2) by failing to provide a priority 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 JetBlue Airways, in the instances 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. We order JetBlue Airways and its successors and assigns 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. JetBlue Airways is assessed a civil penalty of \$100,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2, of which:
 - a. \$10,000 shall be due and payable 15 days after the service date of this order;
 - b. \$20,000 shall be credited to JetBlue for expenditures made in creating and operating for one year a quality assurance team dedicated to issues surrounding transportation by individuals with disabilities and 14 CFR Part 382;
 - c. \$20,000 shall be credited to JetBlue for the cost of installing Teletypewriters (TTY) to ease the check-in process for deaf and hard of hearing individuals at all of JetBlue's ticket counters at all of the airports it serves, as well as in the gate areas at John F. Kennedy International Airport; and
 - d. \$50,000 shall be credited to JetBlue for providing on the carrier's website information regarding the Department of Transportation's toll free disability Hotline, to educate and assist individuals in resolving disability-related air travel problems.¹¹
8. Within 30 days of the service date of this order, JetBlue shall provide DOT with a statement with supporting documentation verifying the cost of each offset listed in paragraph 7 above.

¹¹ In assessing this civil penalty, the Enforcement Office also considered the installation of moveable armrests on all of JetBlue's seats save those in the front row and second exit row. The Enforcement Office also considered the cost of installing assist bars in all of the lavatories on JetBlue's aircraft.

The statement shall show the projected or actual cost of each offset, a detailed explanation of the method used by JetBlue to determine the projected or actual cost of each offset, 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;

9. Within one year after the service date of this order, JetBlue 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), (c) and (d). If by this date JetBlue has not made the expenditures covered in ordering paragraphs 7(b), (c), and (d) 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;
10. JetBlue Airways shall, upon request, offer passengers who use manual folding wheelchairs the option of stowing their wheelchair inside the cabin of the aircraft, either in the overhead bin, in the last row, seats DEF, or elsewhere in the cabin of the aircraft;
11. JetBlue Airways shall notify the Enforcement Office within 30 days if it changes in any manner its designated space to stow a passenger's standard-size folding wheelchair, which currently consists of a row of three passenger seats;
12. JetBlue shall complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order;
13. JetBlue shall ensure that its written training materials, website, contract of carriage, and all other written materials for internal or public use comply with 14 CFR Part 382; and

14. 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 JetBlue 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: _____