



**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 **September, 2003**

Ryan International Airlines, Inc.

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

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

CONSENT ORDER

This order concerns violations of 14 CFR Part 382 arising by Ryan International Airlines, Inc., (Ryan). 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 Ryan to cease and desist from future violations of Part 382 and the ACAA, 49 U.S.C. § 41702, and 49 U.S.C. § 41712 and assesses Ryan a compromise civil penalty.

BACKGROUND

The investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) into Ryan's compliance with Part 382 began with three informal complaints filed with the Enforcement Office by three individuals, all of whom have mobility-related disabilities. In the first and second complaint, two individuals provided information that appeared to indicate numerous violations of the ACAA and Part 382 during a November 13, 2000, flight on Ryan from Atlantic City, New Jersey, to Chicopee, Massachusetts. According to their complaints, Ryan improperly required the removal of the gel, non-spillable batteries from each complainant's wheelchair. These two individuals also stated that Ryan did not have the proper deplaning equipment and, as a result, they were strapped to a wooden office chair with clothing belts and carried off the plane. Lastly, according to these complainants, it took over two hours to reassemble their electric wheelchairs, which were damaged upon reassembly.

The third individual's complaint regarding flights taken on December 21 and December 31, 2000, also contains information appearing to indicate ACAA and Part 382 violations. At the

time of the incidents, the complainant was a minor. According to his complaint, the December 21 flight to Hawaii from San Francisco, California, was delayed twice for mechanical reasons. During each delay, this individual specifically requested to deplane with the rest of the passengers. However, according to the individual, a Ryan employee denied each of his requests and he was, therefore, forced to remain in his airplane seat for approximately seven hours. He also stated that he waited a substantial amount of time for wheelchair assistance to deplane in Hawaii and San Francisco. This third individual's personal wheelchair also suffered damage during his return flight from Hawaii to San Francisco.

Based on the serious nature of these three complaints, the Enforcement Office requested that Ryan provide copies of all the wheelchair-related complaints it had received directly from passengers since April 5, 2000. These complaints filed directly with Ryan, which included the three earlier sent to the Enforcement Office, involve a significant number of apparent violations of the ACAA and Part 382. Such violations also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712 and reflect inadequate interstate air transportation prohibited by 49 U.S.C. § 41702.

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). Part 382 contains numerous directives, of which 10 sections are relevant to this case and the complaints giving rise to it. These 10 regulations deal with enplaning and deplaning assistance, assistance connecting between flights, accessible lavatories, handling of passengers' wheelchairs, denial of transportation and responding to passengers' complaints.

Section 382.21(a)(3) requires new aircraft¹ with more than one aisle in which lavatories are provided to have at least one accessible lavatory.² Aircraft with an accessible lavatory must also have an on-board wheelchair to assist passengers in using the lavatory. See, 14 CFR 382.21(a)(4)(i). Section 382.39 requires carriers to provide enplaning, deplaning and connecting assistance and contains requirements regarding the quality of service carriers must provide when assisting passengers in such endeavors.

Section 382.41(e)(2) requires carriers to designate priority stowage space for at least one passenger's folding wheelchair on any aircraft with a closet or other approved stowage area that is used for passengers' carry-on items and is large enough to accommodate the

¹ New aircraft are those "operated under 14 CFR part 121 and ordered by the carrier after April 5, 1990, or delivered to the carrier after April 5, 1992." 14 CFR 382.21(a).

² An accessible 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." 14 CFR 382.21(a)(3).

wheelchair.³ Section 382.41(f) requires carriers to return passengers' wheelchairs as close to the aircraft door as possible. In addition, section 382.43(a) requires carriers to reassemble passengers' wheelchairs and ensure their prompt return in the same condition as received by the carrier. According to section 382.43(b), when wheelchairs and other assistive devices are lost, damaged or delayed, baggage liability limits do not apply. Rather, the "criterion for calculating the compensation for a lost, damaged, or destroyed wheelchair or other assistive devices shall be the original purchase price of the device." See, 14 CFR 382.43(b).

The regulation dealing with the denial of transportation to a qualified disabled passenger is also at issue in this case. Section 382.31 precludes carriers from refusing to provide transportation to a qualified individual with a disability solely because the person's disability results in appearance or involuntary behavior that may offend, annoy, or inconvenience crewmembers or other passengers. 14 CFR 382.31(b). This regulation also requires that an air carrier provide written justification for a denial of transportation within 10 days of the denial. 14 CFR 382.31(e).

Finally, at issue are the regulations under Part 382 that address the manner in which carriers respond to complaints by passengers with disabilities. Section 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. A dispositive response must specifically discuss the issue raised by the complaint. If a carrier asserts that no violation occurred, it must provide an explanation of its view. If a carrier agrees that a violation occurred, it must describe the corrective action taken in response to the violation. Finally, a carrier's dispositive written response must notify the complainant that he or she may refer the matter to the Department's consumer office.

In addition to violating the ACAA and Part 382, the violations described above appear to involve 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.

ANALYSIS

All of the complaints covered herein involve incidents occurring after April 5, 2000, the effective date of the increase in civil penalties for ACAA violations enacted by AIR 21.⁴ Furthermore, the overwhelming majority of these complaints appear to reflect a serious dereliction on the part of Ryan in meeting the requirements of Part 382. For example, it appears that Ryan violated section 382.31 when it denied transportation to an individual based on her appearance, despite assurances from a doctor that flying would not affect her health.

³ The requirement under 382.41(e)(2) applies regardless of aircraft size or manufacture date. In comparison, under 382.21(a)(2), new aircraft with 100 or more passenger seats must have a designated priority space for the stowage of a folding wheelchair.

⁴ 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.

On another occasion Ryan acted egregiously in violation of section 382.39 when it deplaned a passenger using a baggage conveyor belt.

Additionally, Ryan's complaint files indicate that it routinely did not provide a written response to the complainant that complied with the requirements of section 382.65, which requires that the carrier give a "dispositive response" within 30 days to each complaint postmarked within 45 days of the complained of incident.

In mitigation, Ryan states that it has attempted, to the very best of its ability and its knowledge, to provide full and equal access to its facilities in all respects to persons with disabilities. According to Ryan, its philosophy, that all customers (whether disabled or not) deserve to be treated with the utmost respect by its employees and vendors, will not change by virtue of this order. Indeed, Ryan states that it has welcomed this opportunity to work with the Department to improve its ability to respond to the issues raised by the complaints. In fact, Ryan indicates that it has elected to expend more in improving service for disabled air travelers than is necessary to cover the civil penalty offsets prescribed in this order. In addition, Ryan states that it will continue to train its employees and vendors to improve its ability to meet the needs of persons with disabilities well beyond the 24-month period provided for civil penalty offsets by this order. Moreover, according to Ryan, it welcomes and will earnestly consider the thoughts and concerns of all interested parties regarding any reasonable and lawful manner in which Ryan can better serve persons with disabilities.

In further mitigation, Ryan notes that the ACAA complaints at issue in this order, assuming the truth of all allegations described therein, still constitute a very small percentage of the number of customers Ryan serves every year. However, Ryan states that it welcomes any reasonable opportunity for improvement of its operations for the benefit of each of its customers. Thus, Ryan deems it to be the optimum approach to use this order as a means to improve its operations for all of its customers, whether disabled or not, rather than expend time and resources to engage in costly litigation to dispute the allegations in the complaints discussed in this order. Moreover, according to Ryan it is encouraged by DOT's statements expressed in informal discussions with the carrier that it recognizes and appreciates the fact that circumstances in the air industry are extremely dynamic, which Ryan believes can sometimes result in unanticipated situations that inhibit the ability to serve passengers in the exact manner desired by the carrier. Ryan expresses its appreciation that DOT intends to work closely with Ryan in lawfully handling such unanticipated circumstances and otherwise to be available for questions on compliance issues related to the ACAA and Part 382. Therefore, in reliance upon the cooperation of the Department in Ryan's future efforts to improve its system to obtain full compliance with the ACAA, Ryan has decided that it is most reasonable for it to accept the terms of this consent order.

We view Ryan's failure to provide proper accommodations under the ACAA and Part 382 in these cases very seriously. After carefully considering all the facts in these cases, including those set forth above by Ryan, the Enforcement Office believes that enforcement action is warranted. As noted above and in view of the similarity of the goals of Ryan and of DOT regarding ACAA compliance issues, Ryan does not believe it to be cost effective to engage in costly litigation in this matter. Thus, Ryan has agreed to settle these matters and enter into this consent order to cease and desist from future similar violations of the ACAA and Part 382.

By this order, the Department finds that in these cases Ryan and its employees failed to act in accordance with the ACAA, 14 CFR Part 382, and 49 U.S.C. § 41702 and committed unfair practices in violation of 49 U.S.C. § 41712. In addition, this order directs the carrier to cease and desist from similar violations in the future and assesses it a civil penalty of \$400,000 in compromise of the penalties otherwise assessable under 49 U.S.C. § 46301. We believe that this consent order and the penalty that it assesses will provide a strong incentive for Ryan and other carriers to comply with the ACAA and 14 CFR Part 382, although we note that Ryan has consistently pledged its intent to improve its operations substantially regardless of the existence or non-existence of any consent order or penalty.

This order is issued under the authority contained in 49 CFR 1.57a and 14 CFR 385.15.

ACCORDINGLY,

1. Based on the above discussion, we approve this settlement and the provisions of this order as being in the public interest;
2. We find that Ryan International Airlines, Inc., violated the requirements of 14 CFR 382.21(a)(4)(i) by failing to provide an aisle chair to assist in the use of the on-board accessible lavatory;
3. We find that Ryan International Airlines, Inc., violated the requirements of 14 CFR 382.31 by improperly and without adequate investigation denying transportation to a passenger with a disability and by failing to provide written justification for the denial within 10 days of the denial of transportation;
4. We find that Ryan International Airlines, Inc., violated the requirements of 14 CFR 382.39 by failing to provide prompt and proper enplaning, deplaning and connecting assistance;
5. We find that Ryan International Airlines, Inc., violated the requirements of 14 CFR 382.41 either by failing to allow the in-cabin stowage of a passenger's wheelchair, by failing to return a passenger's wheelchair as close as possible to the aircraft door, or by improperly requiring the removal of wheelchair batteries before the wheelchair was carried aboard the aircraft;
6. We find that Ryan International Airlines, Inc., violated the requirements of 14 CFR 382.43 either by failing to return a passenger's wheelchair or other assistive device in the condition received by the carrier, or by failing to properly compensate a passenger for a lost, damaged or destroyed assistive device;
7. We find that Ryan International Airlines, Inc., violated the dispositive response requirements of 14 CFR 382.65 in connection with the violations described in ordering paragraphs 2 through 6;
8. We find that Ryan International Airlines, Inc., by engaging in the conduct described in ordering paragraphs 2 through 7, violated the Air Carrier Access Act, 49 U.S.C. § 41705;

9. We find that, to the extent that the violations described in ordering paragraphs 2 through 8 occurred in interstate air transportation, Ryan International Airlines, Inc. violated 49 U.S.C. § 41702;
10. We find that the conduct and violations described in ordering paragraphs 2 through 9 involved unfair and deceptive practices in violation of 49 U.S.C. § 41712;
11. We order Ryan International Airlines, Inc., 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 as described in ordering paragraphs 2 through 10;
12. Ryan International Airlines, Inc., is assessed a civil penalty in the amount of \$400,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 10 of this order, of which:
 - a. \$45,000 shall be due and payable within 30 days after the service date of this order;
 - b. \$355,000 shall be paid 26 months after the service date of this order except to the extent offset by amounts credited to Ryan International Airlines, Inc., by the Aviation Enforcement Office for expenditures that will be made in the 24 months after the service date of this order in accordance with ordering paragraphs 13, 14, 15, 16 and 17. These expenditures are aimed at improving Ryan's quality of service to disabled air travelers above what is required by 14 CFR Part 382;
13. The offsets described in paragraph 12 above, in part, shall consist of the training and labor cost of one corporate complaint resolution official (CRO)/disability services coordinator. Within 12 months of the service date of this order, and 12 months thereafter for one subsequent year, Ryan shall submit:
 - a. a statement, with supporting documentation, showing the total expenditures for training and labor costs associated with a corporate CRO/disability services coordinator;
 - b. a detailed explanation of the method used by Ryan to determine the total expenditures on the training and labor costs associated with a corporate CRO/disability services coordinator; and
 - c. a sworn and certified statement from an appropriate company official, attesting to the above statement and explanation of expenditures;
14. The offsets described in paragraph 12(b) above, in part, shall consist of initial and one year of recurrent training for Ryan pilots and station managers as complaint resolution officials (CROs) pursuant to 14 CFR 382.65. Within 12 months of the service date of this order, and 12 months thereafter for one subsequent year, Ryan shall submit:
 - a. a statement, with supporting documentation, showing the total expenditures for the CRO training for its pilots and station managers;

- b. a detailed explanation of the method used by Ryan to determine the total expenditures on the CRO training for its pilots and station managers; and
 - c. a sworn and certified statement from an appropriate company official, attesting to the above statement and explanation of expenditures;
- 15. The offsets described in paragraph 12(b) above, in part, shall consist of initial and one year of recurrent training for Ryan flight attendants and vendors regarding the ACAA and 14 CFR Part 382. Within 12 months of the service date of this order, and 12 months thereafter for one subsequent year, Ryan shall submit:
 - a. a statement, with supporting documentation, showing the total expenditures for the training for its flight attendants and vendors;
 - b. a detailed explanation of the method used by Ryan to determine the total expenditures on the training for its flight attendants and vendors; and
 - c. a sworn and certified statement from an appropriate company official, attesting to the above statement and explanation of expenditures;
- 16. The offsets described in paragraph 12(b) above, in part, shall consist of the purchase of wheelchairs and equipment for Ryan's ACAA training and additional wheelchairs for Ryan's aircraft. Within 12 months of the service date of this order, and 12 months thereafter for one subsequent year, Ryan shall submit:
 - a. a statement, with supporting documentation, showing the total expenditures for the purchase of wheelchairs and equipment for Ryan's ACAA training and additional wheelchairs for Ryan's aircraft;
 - b. a detailed explanation of the method used by Ryan to determine the total expenditures on the purchase of wheelchairs and equipment for Ryan's ACAA training and additional wheelchairs for Ryan's aircraft; and
 - c. a sworn and certified statement from an appropriate company official, attesting to the above statement and explanation of expenditures;
- 17. The above described improvements may be amended with the approval of the Aviation Enforcement Office. If Ryan intends to seek a change in the type of improvement made, it must notify and obtain approval from the Aviation Enforcement Office 60 days prior to the date documentation is due pursuant to paragraphs 13 through 16;
- 18. Any failure by Ryan International Airlines to make the expenditures in accordance with ordering paragraphs 13, 14, 15, 16, or 17 or to document them adequately to the Aviation Enforcement Office shall result in the associated civil penalties being paid in accordance with ordering paragraph 12(b); and
- 19. Payment shall be made within 15 days after the service date of this order by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire,"

to the account of the U.S. Treasury. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered will subject Ryan International Airlines, 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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DEPUTY GENERAL COUNSEL

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