



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

Issued by the Department of Transportation
on the 30th day of April, 2004.

ATA Airlines, Inc.,

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

Served: April 30, 2004

Docket OST 2004-16943

CONSENT ORDER

This order concerns violations of 14 CFR Part 382 by ATA Airlines, Inc. (ATA). Part 382 implements the Air Carrier Access Act (ACAA), 49 U.S.C. § 41705, and violations of that part also violate the ACAA. ACAA and Part 382 violations also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. Finally, to the extent that the ACAA and Part 382 violations occurred in interstate air transportation, the incidents are also violations of 49 U.S.C. § 41702, which requires that air carriers provide safe and adequate interstate air transportation. This order directs ATA to cease and desist from future violations of the ACAA, sections 41702 and 41712, and Part 382 and assesses a compromise civil penalty of \$120,000 for such violations.

BACKGROUND

ATA currently operates a fleet of 30 Boeing 737-800 aircraft, 15 Boeing 757-200 aircraft and 10 Boeing 757-300 aircraft. All of these aircraft have 100 or more passenger seats and were ordered after April 5, 1990, or delivered after April 5, 1992.

In February 2003, the Department of Transportation's Office of Aviation Enforcement and Proceedings (Enforcement Office) began an investigation of ATA after the Enforcement Office learned that a portion of ATA's fleet, which are designed to carry at least 100 passengers and were either ordered after April 5, 1990, or delivered after April 5, 1992 (hereinafter "New Aircraft") may not have in-cabin stowage space for a passenger's standard-size folding wheelchair in violation of 14 CFR 382.21(a)(2).

The Enforcement Office conducted a teleconference with ATA concerning ATA's compliance with 14 CFR 382.21(a)(2) with respect to providing in-cabin stowage of folding wheelchairs and discovered that ATA's Boeing 737-800 (737) and Boeing 757-200/300 (757) do not have sufficient space to stow a passenger's standard-size folding wheelchair as required by 14 CFR 382.21(a)(2). This discovery prompted the Enforcement Office to send a follow-up letter requesting information on ATA's policy regarding in-cabin stowage of folding wheelchairs

in its B-737 and 757 aircraft. ATA responded to this written request, notifying 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 bin and describing the different options it was considering to stow a standard-size folding wheelchair in the cabin of its B-737 and 757 aircraft.

One such option, which ATA has decided to adopt, involves creating a new designated priority wheelchair stowage space by creating a three-point harness attached to the aft wall of the galley in the bulkhead seating row. ATA anticipates the project will take about 4 months to complete once it begins modifications. In the future, ATA plans to install closets for the stowage of a standard-size folding wheelchair on all of its New Aircraft.

APPLICABLE SECTIONS OF 14 CFR PART 382

The ACAA and Part 382 forbid discrimination in the provision of air transportation against qualified individuals with disabilities. See 14 CFR 382.7(a)(1). Specifically at issue in this case is section 382.21(a)(2), which requires that “[a]ircraft with 100 or more passenger seats shall have a priority space in the cabin designated for stowage of at least one folding wheelchair.”¹ 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.² The term "wheelchair" refers to standard-size wheelchairs.³ Taking these terms together, section 382.21(a)(2) requires that all new aircraft with 100 or more seats maintain a space that is large enough to stow one passenger's standard-size folding wheelchair on a priority basis.

In addition to the ACAA and Part 382, the issues described above appear to involve unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. To the extent that the apparent ACAA and Part 382 violations occurred in interstate air transportation, the incidents are also violations of 49 U.S.C. § 41702, which requires that air carriers provide safe and adequate interstate air transportation.

ANALYSIS

This order addresses the stowage of one passenger's standard-size folding wheelchair inside the cabin of ATA's Boeing 737s and Boeing 757s. It is the Enforcement Office's position that section 382.21(a)(2) requires that new aircraft with at least 100 seats have priority space for the

¹ 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).

² 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 . . ."

³ Our interpretation of "wheelchair" as used in § 382.21(a)(2) is within the meaning of the generic term "wheelchair," which has no limitation as to size in and of itself, or as used in the regulation (other than folding). A major wheelchair manufacturer has represented to the Department of Transportation that the following dimensions characterize a standard-size wheelchair, when folded: 13 inches wide by 36 inches high by 42-50 inches long.

stowage of at least one standard-size folding wheelchair. Although ATA denies that, prior to this investigation, its aircraft did not contain enough space for the stowage of one passenger's folding wheelchair, after notification by the Enforcement Office of its concerns and the size requirements for a standard-sized folding wheelchair, ATA has agreed, until closets are installed, to create a tie down system that will be used in the bulkhead seating row. The Enforcement Office appreciates ATA's willingness to create a space to stow a passenger's standard-size folding wheelchair but views the carrier's failure initially to provide the proper accommodation under 14 CFR 382.21(a)(2) seriously. After careful consideration of all the facts surrounding this matter, including the explanation and arguments set forth by ATA, the Enforcement Office continues to believe that enforcement action is warranted. In order to avoid litigation on this matter and without admitting to a violation of the Air Carrier Access Act, ATA has agreed to settle these matters and enter into this consent order directing it to cease and desist from future similar violations and to the assessment of a civil penalty.

In mitigation, ATA states that it has always made good faith efforts to comply with the Air Carrier Access Act; however, certain collapsible wheelchairs were just too large to fit in ATA's overhead storage bins. Once ATA was advised of the need to accommodate a standard-size folding wheelchair in its cabin, ATA states that it developed an interim plan to accommodate at least one such wheelchair (in addition to any other wheelchair that might fit in its overhead bins). According to the carrier, ATA's reservations agents, when asked by a passenger about in-cabin stowage of personal wheelchairs, have always been prompted to advise the passenger that one personal collapsible wheelchair may be stowed onboard the aircraft. ATA states that there has never been any intent by it not to comply with or to circumvent 14 CFR 382.21(a)(2), 382.41(a) and 382.41(e)(1) and (e)(2) or the Air Carrier Access Act. Finally, ATA points out that the ratio of disability-related complaints it has received for every 100,000 passengers it has carried has improved since 2001 and 2002 and complaints filed against ATA with DOT in the "Disability" category also decreased in 2003.

By this order, the Department finds that ATA failed to act in accordance with the ACAA and Part 382 in failing to provide for in-cabin stowage of one passenger's standard-size folding wheelchair on new aircraft with at least 100 seats. This order directs ATA to cease and desist from similar violations in the future and assesses a civil penalty of \$120,000 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 \$110,000 will be offset by enhancements to ATA's aircraft and systems that were proposed by ATA and accepted by the Enforcement Office as being above and beyond those required by Part 382. To better assist passengers with disabilities, ATA has agreed to (1) install closets large enough to stow a standard-size wheelchair in the cabin of all of its New Aircraft; (2) develop and implement a one-year Compliance Quality Assurance Program whereby passengers with disabilities that utilize ATA's service will provide ATA with written reports regarding observed compliance of the carrier with the ACAA and 14 CFR Part 382 on trips that they take; (3) provide its customers easier access to information about disability related services; and (4) enable its customers to communicate their special needs to ATA through its website.

In addition to imposing a civil penalty, this order directs ATA to 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 ATA 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 ATA 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 ATA Airlines, Inc., violated the requirements of 14 CFR 382.21(a)(2) by failing to provide space to stow one passenger's standard-size folding wheelchair in the passenger cabin of its aircraft ordered by ATA Airlines, Inc., after April 5, 1990, or delivered to ATA Airlines, Inc., after April 5, 1992;
3. We find that ATA 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. We order ATA Airlines, Inc., and its successors and assigns to cease and desist from further violations of 14 CFR 382.21(a)(2) and 49 U.S.C. §§ 41702, 41705, and 41712 by engaging in the conduct described in ordering paragraph 2⁴;
7. ATA Airlines, Inc., is assessed a civil penalty of \$120,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 through 6 of which:
 - a. \$10,000 shall be due and payable 15 days after the service date of this order;
 - b. \$10,000 shall be credited to ATA Airlines, Inc., for expenditures toward a Compliance Quality Assurance Program regarding the Air Carrier Access Act as described above that is implemented within one year after the service date of this order;
 - c. \$4,500 shall be credited to ATA Airlines, Inc., for improving its website within one year after the service date of this order by providing easier access to information

⁴ In the context of this overall settlement, the Enforcement Office accepts the fact that it will take ATA 4 months from the service date of this order to come into full compliance with the wheelchair stowage requirements.

about disability-related services, developing a questionnaire for passengers with disabilities who pre-disclose their disabilities regarding how well ATA Airlines, Inc., met their special needs and providing customers with special needs the ability to communicate those needs to ATA Airlines, Inc., on its website; and

- d. \$95,500 shall be credited to ATA Airlines, Inc., for installing a closet of sufficient size to accommodate a standard-size folding wheelchair onboard each of its New Aircraft within one year after the service date of this order.
8. Within 14 months after the service date of this order, ATA shall provide DOT with a statement with supporting documentation verifying the cost of the offsets listed in paragraph 7 b through 7 d above. The statement shall show the actual cost of the offset and a sworn and certified statement from an appropriate company official testifying that the documentation is true and complete to the best of the official's knowledge. To the extent that \$110,000 is not expended, that amount shall become due and payable by ATA at that time;
9. ATA Airlines, Inc., shall notify the Enforcement Office within 30 days if it changes in any manner its designated space to stow passengers' standard-size folding wheelchairs;
10. ATA Airlines, Inc., shall complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order; and
11. 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 ATA Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible enforcement action for failure to comply with this order.

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

(SEAL)

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 Signature: _____