



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

Issued by the Department of Transportation
on the 31st day of October, 2006.

United Airlines,

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

Served October 31, 2006

Docket No. OST-2006-23528

CONSENT ORDER

This order concerns violations of 14 CFR Part 382 by United Airlines (United). 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 the apparent ACAA and Part 382 violations occurred in foreign air transportation, they constitute violations of 49 U.S.C. § 41310(a), which prohibits an air carrier from subjecting a person to unreasonable discrimination in foreign air transportation. 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. ACAA and Part 382 violations also constitute unfair and deceptive trade practices in violation of 49 U.S.C. § 41712. This order directs United to cease and desist from future violations of the ACAA and Part 382 and assesses a compromise civil penalty of \$75,000 for such violations subsequent to December 9, 2002.

BACKGROUND

United operates 523 aircraft designed to carry 100 or more passengers. Of these 523 aircraft, 496 are aircraft ordered by the carrier after April 5, 1990, or delivered to the carrier after April

5, 1992 [hereinafter "new aircraft"]. At issue in this consent order are 12 of United's Boeing 737 series aircraft.¹

The investigation resulting in the instant consent order began when staff from the Department of Transportation's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) made a series of telephone calls to United's reservations center and inquired as to whether United allows for the stowage of a passenger's folding wheelchair inside the cabin of "new" aircraft with 100 or more passenger seats and, if yes, the size of the space or spaces designated for such stowage.² These telephone calls were prompted by several consumer complaints filed with the Enforcement Office.

In response to our questions regarding the stowage of personal wheelchairs, some of United's reservations agents responded appropriately to the questions; however, others provided inconsistent, incorrect and/or incomplete replies that suggested that United may not be in compliance with our in-cabin stowage requirements.³

The Enforcement Office's concern about these results and the consumer complaints prompted it to ask United for further information regarding its in-cabin stowage policy and procedures. In its response, United stated that "most of United's aircraft are closet equipped [and], for those that are not, we use a seat-stowage method" and that United had "received FAA approval [for the seat-stowage method] in January 2004." The Enforcement Office then requested that United provide it with written documentation verifying that approval.⁴ However, United could not provide the Enforcement Office with a written FAA approval of its seat-stowage method for folding wheelchairs. As a result, the Enforcement Office sent United a formal investigation letter to which United responded in full.

In United's response, the carrier stated that the majority of its aircraft had space to stow passengers' wheelchairs in various closets on the aircraft. However, United acknowledged that neither the closet space nor the overhead bins were adequate for stowage of a standard-

¹ The Enforcement Office also looked into whether 47 of United's Airbus 320 series aircraft had sufficient space in the cabin to stow at least one passenger's standard-size folding wheelchair. This review revealed that, in February 2004, these "new aircraft" were reconfigured for United's Ted service resulting in the elimination of the closet space. However, before these aircraft were released back into service, United implemented a seat stowage method whereby a passenger's folding wheelchair could be placed in a row of seats and strapped using seatbelts and seatbelt extenders. While United utilized a seat stowage system onboard these aircraft after reconfiguration of the aircraft resulted in the elimination of sufficient closet space to stow a standard-size wheelchair, the carrier did not obtain written approval from the Federal Aviation Administration (FAA) for the seat stowage method until November 2005.

² Specifically, in March 2004, staff from the Enforcement Office made test calls to United's reservation agents requesting information on the availability of in-cabin stowage space for a passenger's standard-size folding wheelchair.

³ For example, two of United's agents explained that in-cabin wheelchair stowage was not possible if the designated stowage space, a closet in the first-class cabin of the aircraft, already contained first-class passenger and/or crew belongings.

⁴ All carriers using the seat-stowage method for folding wheelchairs must comport with FAA safety regulations.

size wheelchair⁵ on 47 of its A320 or 12 of its B737 aircraft. United further stated that it created space to stow a standard-size folding wheelchair in those aircraft on February 12, 2004, by implementing a system whereby a passenger's folding wheelchair is placed and strapped on top of passenger seats for stowage.

The carrier also stated that it contacted the appropriate FAA regional office regarding its proposed seat-stowage method and, at that time, United states that it was verbally told that its seat-stowage method met with FAA approval. On November 1, 2005, United obtained and provided the Enforcement Office with a copy of the required FAA documentation.

We also note that, on December 9, 2002, United filed a petition for reorganization under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division. Although alleged violations of section 382.21(a)(2) transpired prior to United's bankruptcy filing, the immediate consent order takes into consideration only those violations that occurred subsequent to United's December 9, 2002, filing.⁶

APPLICABLE SECTIONS OF 14 CFR PART 382

The ACAA and its implementing regulation, 14 CFR Part 382, forbid discrimination in the provision of air transportation against qualified individuals with disabilities. See 49 U.S.C. § 41705; 14 CFR 382.7(a)(1). Specifically at issue in this case is the section in Part 382 related to in-cabin stowage of wheelchairs.

Section 382.21(a)(2), 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."⁷ 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.⁸ The term "wheelchair" refers to standard-size wheelchairs.⁹ 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 at least one passenger's standard-size folding wheelchair on a priority basis.

⁵ As noted in prior enforcement orders, a standard-size wheelchair is 13 inches wide by 36 inches high by 42-50 inches long.

⁶ On January 20, 2006, the United States Bankruptcy Court for the Northern District of Illinois, Eastern Division confirmed the Second Amended Plan of Reorganization for United Airlines [Docket No. 13277].

⁷ Section 382.21(a)(2) applies to "new aircraft," that is aircraft ordered by a carrier after April 5, 1990 or delivered to a carrier after April 5, 1992.

⁸ 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 . . ."

⁹ Our interpretation of "wheelchair" as used in section 382.21(a)(2) is within the meaning of the generic term "wheelchair," which has no size limitation in and of itself, or as used in the regulation (other than folding).

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. Finally, to the extent that the apparent ACAA and Part 382 violations occurred in foreign air transportation, they constitute violations of 49 U.S.C. § 41310(a), which prohibits an air carrier from subjecting a person to unreasonable discrimination in foreign air transportation.

ANALYSIS

This order focuses on the stowage of a passenger's standard-size folding wheelchair inside the cabin of United's B737 aircraft. Section 382.21(a)(2) requires that new aircraft with at least 100 seats have a priority space for the stowage of at least one standard-size folding wheelchair for use by a requesting passenger with a disability. Further, it is the Enforcement Office's position that a standard-size wheelchair when folded is approximately 36 inches in height, by 13 inches in width, by 42 to 50 inches in length. The evidence shows that for a number of years United did not configure 12 of its B737 aircraft that were ordered after April 5, 1990, or delivered after April 5, 1992, with an in-cabin stowage space for a standard-size folding wheelchair as defined by the Enforcement Office. In February 2004, United began to utilize a system on its B737 aircraft whereby a passenger's folding wheelchair is placed in a row of seats and strapped using seatbelts and seatbelt extenders for safe stowage. However, United did not receive written FAA approval for this system until November 2005. Thus, as of November 2005, United was, and currently is, in full compliance with the requirement for the in-cabin stowage of wheelchairs.

It is United's position that it was in compliance with the ACAA and any applicable FAA safety regulations with respect to its 12 B737 aircraft as of February 2004, when it implemented the wheelchair stowage system described above. Prior to implementing this system, United states that it had communicated with FAA and alerted an FAA representative of this activity. At the same time, United states that it confirmed that because this stowage system was a "minor" modification (consistent with an FAA-approved decision making process specifically granted to United), specific FAA approval was not necessary and that it was within United's in-house engineering department's scope of authority (as granted to United by FAA) to implement the wheelchair seat stowage method without written FAA approval. United does not believe that its initial lack of specific FAA written approval is in any way a violation of any FAA safety regulations. For this reason, United continues to believe that it was in compliance with ACAA with respect to these aircraft as of February 2004. Furthermore, United states that there is no Office of the Secretary (OST) regulation or FAA regulation that obligates United to obtain written FAA approval for such a modification.

In mitigation with respect to the 12 B737 aircraft which were not in compliance, United notes that this is a very small number of aircraft, given its current fleet size of 523 aircraft. United states that the noncompliance of these aircraft with the ACAA was completely unintentional. Furthermore, according to United, a review of its records for the relevant time period confirms that no passengers complained to United about being denied the ability to stow a wheelchair on board any of these aircraft.

United states that it continues to be an airline sensitive to and keenly aware of the numerous challenges encountered by passengers with disabilities. United appreciates that passengers with disabilities represent an important customer base and that it needs to continually strive to satisfy and earn the loyalty of this customer base. Where possible, United maintains that it has dedicated resources to improve the services it provides to passengers with disabilities. At Chicago O'Hare airport alone, United's largest hub, United explains that it is not unusual for the company to provide courtesy wheelchair service to more than 1,000 customers each day.

Furthermore, according to United, in 2006, disability issues remain a top priority. United states that it is on an Advisory Board of a disability organization that keeps abreast of initiatives that make a difference in the lives of people with disabilities. United also notes that earlier this year, it organized a training forum for service leaders, and invited two well-respected speakers with disabilities who are United customers. These customers shared both their positive and negative experiences of traveling on airlines and the obstacles they sometimes encounter. United states that the dialog its frontline employees had with these individuals was so powerful that the company has expressed plans to roll out additional conferences. Notably, United points out that this initiative is separate from any obligation under the Air Carrier Access Act. As such, United maintains that it has repeatedly shown a commitment for continuous improvement to provide accessible travel to customers with disabilities.

The Enforcement Office views United's failure to provide proper stowage space for a passenger's folding wheelchair under 14 CFR 382.21(a)(2), as described above, seriously. After careful consideration, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation on this matter, United has agreed to settle these matters and enter into a consent order to cease and desist from future similar violations.

By this order, the Department finds that when United took delivery of its B737 aircraft between April 1992 and October 2002, the carrier failed to act in accordance with the ACAA and Part 382 in failing to provide a space for the in-cabin stowage of at least one passenger's standard-size folding wheelchair on 12 of these new aircraft with at least 100 seats. Further, the carrier failed to obtain FAA written approval until November 2005 for a seat stowage method it implemented on February 12, 2004, on its 47 A320 aircraft which were reconfigured for United's Ted service resulting in the elimination of the closet space to stow a standard-size wheelchair and its 12 B737 aircraft which never contained sufficient closet space to stow a standard-size wheelchair. This order directs United to cease and desist from similar violations in the future and assesses a civil penalty of \$75,000 for violations after December 9, 2002, in compromise of the penalties otherwise assessable under 49 U.S.C. § 46301.

The penalty assessment provisions of this order have been fashioned to take into account United's bankruptcy proceedings and are not a demand for payment to the extent prohibited by section 362(a) of the Bankruptcy Code. This agreement is without prejudice to any other right to set-off against this claim any federal debts owed to debtors by this or any other federal agency.

In addition, this order directs that United complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the date of this order. The Enforcement Office believes that this consent order and the penalty it assesses will provide a strong incentive for United 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 United Airlines violated the requirements of 14 CFR 382.21(a)(2) by failing to provide space to stow one passenger's standard-size folded wheelchair on aircraft with at least 100 seats;
3. We find that the conduct 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 foreign air transportation, the conduct violated 49 U.S.C. § 41310(a);
5. 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;
6. We find that the violations described in ordering paragraph 2 involved unfair and deceptive practices and thereby violated 49 U.S.C. § 41712;
7. We order United Airlines 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 paragraph 2;
8. United is assessed a civil penalty in the amount of \$75,000 in compromise of the civil penalties that might otherwise be assessed by the Department of Transportation for the violations occurring subsequent to December 9, 2002, as found in ordering paragraphs 2 through 6 of this order;
9. The civil penalty assessed in ordering paragraph 8 shall be satisfied in the following manner:
 - a. United shall remit \$7,500 in the manner provided for in ordering paragraph 15 within thirty (30) days after the service date of this order;
 - b. United shall be credited \$67,500 for expenditures made within twelve (12) months after the service date of this order to improve its quality of service to air travelers with disabilities above what is required by Part 382 by purchasing and constructing a minimum of eight flight information display systems at

Chicago O'Hare International Airport. The information provided on flight information display systems shall include, but is not limited to the information concerning flight times, schedule changes, boarding information, connections, and gate assignments to assist the public, particularly hearing impaired travelers, to obtain flight information in a timely manner. After 12 months, this offset amount shall be deemed satisfied if United has made and documented the expenditures as described in ordering paragraph 10 below;

10. Within fourteen (14) months of the service date of this order, United shall provide the documentation described below:

- a. a statement, with supporting documentation, showing the total expenditures for purchasing and constructing the flight information display systems described in paragraph 9;
- b. a detailed explanation of the method used by United to determine the total expenditures for the flight information displays; and
- c. a sworn and certified statement from an appropriate company official demonstrating that the expenditures were properly claimed to the best of the official's knowledge after a reasonable inquiry to establish their accuracy;

11. To the extent that carrier fails to make the expenditures as described in paragraph 9 or to provide adequate documentation verifying the appropriate expenditure of the \$67,500 offset as described in ordering paragraph 10, that amount shall become due and payable 14 months after the service date of the order;

12. The improvements described in paragraph 9 may be amended with the approval of the Enforcement Office. If United intends to seek a change in the type of improvement made, it must notify and obtain approval from the Enforcement Office 30 days prior to the date documentation is due pursuant to ordering paragraph 10;

13. United shall notify the Enforcement Office within 30 days if it changes in any manner its designated space to stow passengers' standard-size folding wheelchairs on its A320 or B737 aircraft, or other aircraft governed by 14 CFR 382.21(a)(2);

14. United shall complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of the service date of this order; and

15. All 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. Failure to pay the penalty as ordered will subject United Airlines 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:

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(SEAL)

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