



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

Issued by the Department of Transportation
on the 21st Day of June, 2010

Served June 21, 2010

**Petition to stay the
effectiveness of 14 CFR 382.67
and 14 CFR 382.123(c)**

Docket: DOT-OST-2010-0115

RESPONSE TO PETITION

By this order, we are denying JetBlue Airways' (JetBlue) petition to immediately stay the effectiveness of 14 CFR 382.67 and 14 CFR 382.123(c), but also advising it that the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings has agreed to its request to temporarily not enforce those sections for the reasons discussed below.

The Petition

In July 2009, the U.S. Department of Transportation (Department) committed to conducting a rulemaking to determine whether or not the prohibition against using the seat-strapping method to transport a passenger's manual folding wheelchair in the cabin of an aircraft as set forth in section 382.123(c)¹ should be deleted, modified, or remain as written. By petition filed April 8, 2010, Jet Blue requests that the Department immediately stay the effectiveness of 14 CFR 382.67² and 14 CFR 382.123(c) or not enforce those sections for new aircraft delivered while the Department completes this rulemaking.

¹ 14 CFR 382.123(c) prohibits carriers from utilizing "the seat-strapping method of carrying a wheelchair in any aircraft you order after May 13, 2009 or which are delivered after May 13, 2011." Any such new aircraft must have the designated priority stowage space for a passenger's manual folding wheelchair as required by section 382.67.

² 14 CFR 382.67 requires carriers to "ensure that there is a priority space in the cabin of sufficient size to stow at least one typical adult-sized folding, collapsible, or break-down manual passenger wheelchair, the dimensions of which are within a space of 13 inches by 36 inches by 42 inches without having to remove the wheels or otherwise disassemble it. This requirement applies to any aircraft with 100 or more passenger seats."

In support of its petition, JetBlue notes that on December 17, 2008, it filed an application for an equivalent alternative determination concerning section 382.123(c) of the Department's revised disability rule which the Department denied. JetBlue notes that in denying this application, the Department stated the "issues JetBlue has raised do merit further consideration in an appropriate forum." Furthermore, JetBlue notes that Department stated its intent to "address this matter in a future rulemaking" to be conducted "as expeditiously as possible." JetBlue also highlights the significant cost that it will incur to reconfigure its new aircraft to comply with sections 382.67 and 382.123(c), if the Department does not stay the effectiveness of sections 382.67 and 382.123(c). No opposition to JetBlue's request has been filed in the Docket.

Decision

We are denying JetBlue's petition to immediately stay the effectiveness of sections 382.67 and 382.123(c). Under the Administrative Procedure Act, 5 U.S.C. § 551 et seq., the Department would need to conduct a general rulemaking to stay the effectiveness of sections 382.67 and 382.123(c). The rulemaking process, which generally involves the issuance of a Notice of Proposed Rulemaking (NPRM) before any final action is taken, takes time and is not immediate. The Administrative Procedure Act allows an agency to deviate from notice and comment "when the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." In this instance, inviting interested persons to comment on staying the effectiveness of the two provisions of Part 382 in question is not impracticable, unnecessary or contrary to public interest. Therefore, it is not possible to immediately stay the effectiveness of sections 382.67 and 382.123(c) for JetBlue and other similarly situated carriers. We note that the Department is already working in an expedited manner to publish an NPRM seeking comment on whether or not seat-strapping should be allowed as a means to stow a passenger's manual folding wheelchair.

With respect to JetBlue's request to not enforce sections 382.67 and 382.123(c), the authority to pursue or not to pursue enforcement action against airlines with respect to air travel consumer protection and civil rights requirements lies with the Department's Office of the Assistant General Counsel for Aviation Enforcement and Proceedings. In response to this request, the Assistant General Counsel has agreed not to enforce sections 382.67 and 382.123(c) while the Department completes this rulemaking process. As a matter of prosecutorial discretion, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings will not enforce the requirement that aircraft ordered after May 13, 2009, or delivered after May 13, 2010, have a priority space in the cabin of sufficient size to stow a passenger's manual folding wheelchair as required by section 382.67 and will allow carriers to continue using seat-strapping, as permitted by the Federal Aviation Administration or, if applicable, foreign safety authorities, until the rulemaking process is complete. With that being said, the Assistant General Counsel has stated that if, based on comments received in the rulemaking process, the Department determines that sections 382.67 and 382.123(c) should remain as written, all covered carriers, including JetBlue, would be expected expeditiously to retrofit any aircraft ordered after May 13, 2009, or delivered after May 13,

2010, without a priority space, to include a priority space as is currently required by section 382.67 and to discontinue the use of seat-strapping as is prohibited by section 382.123(c).

ACCORDINGLY, we are denying JetBlue's petition to immediately stay the effectiveness of 14 CFR 382.67 and 14 CFR 382.123(c) but also advising it that the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings has agreed to its request to temporarily not enforce those sections. A copy of this order will be served on the petitioner.

By:

Susan Kurland
Assistant Secretary for Aviation
and International Affairs

(SEAL)

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