



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 August, 2006.

US Airways, Inc.

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

Docket No. OST-2006-23528

Served: August 31, 2006

CONSENT ORDER

This order concerns violations of 14 CFR Part 382 by US Airways, Inc. (US Airways). 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 US Airways to cease and desist from future violations of the relevant statutes and Part 382 and assesses a compromise civil penalty of \$150,000.

BACKGROUND

The investigation resulting in the instant consent order began in the spring of 2004 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 the US Airways' reservations center to determine the type of information US Airways' employees provide passengers about the in-cabin stowage of wheelchairs. During nearly half the calls, US Airways personnel informed the caller that in-cabin wheelchair stowage was not possible and that US Airways checks all passengers' wheelchairs at the gate.¹ These telephone calls suggested

¹ In March 2004, staff from the Enforcement Office made test calls to US Airways' reservation agents requesting information on the availability of in-cabin stowage space for a passenger's standard-size folding wheelchair on routes where the operating aircraft have a designed seating capacity of 100 or more passengers. During six of the ten calls,

potential compliance problems with respect to section 382.21(a)(2), which requires new aircraft with 100 or more passenger seats operated under 14 CFR Part 121 to have a priority space in the cabin for stowage of at least one folding wheelchair.² The responses of US Airways' reservation agents also indicated a possible compliance problem with section 382.41(e), which requires carriers to allow a passenger to stow his or her wheelchair in the cabin of aircraft having sufficient stowage space.

In October 2004, the Enforcement Office sent an investigation letter to US Airways requesting information from the carrier regarding its wheelchair stowage policies, the types of aircraft in its fleet and the availability of in-cabin stowage space for a standard-size folding wheelchair on those aircraft.³ US Airways responded by providing the requested information about its aircraft fleet and acknowledging that it did not presently have space for the stowage of one standard-size folding wheelchair on certain of its aircraft as required by section 382.21(a)(2). The carrier emphasized its intention, however, to create a priority space for the stowage of folding wheelchairs that do not fit in the overhead bins or closets through an in-cabin wheelchair restraint system that it had begun implementing. With regard to whether US Airways permits the stowage of wheelchairs in the aircraft cabin when an approved stowage area is available, the Enforcement Office found that US Airways' written policy appeared to be consistent with the intent of section 382.41(e)(2). Since telephone calls previously conducted by the Enforcement Office had indicated that the carrier's practices implementing the policy might not be in full compliance, US Airways was encouraged to provide its agents with its written policy on wheelchair stowage and the requirements of section 382.41(e)(2).

In early 2005, the Enforcement Office requested more detailed information from US Airways regarding the order and delivery dates of its passenger fleet aircraft and documentation it had received from the Federal Aviation Administration (FAA) confirming that the in-cabin wheelchair restraint system implemented by the carrier had been reviewed and approved as safe. US Airways provided the aircraft order and delivery date information, but asserted that FAA approval of the wheelchair restraint system was not required.

The Enforcement Office subsequently made clear its position that FAA review of any alternative in-cabin wheelchair stowage method was mandatory.⁴ US Airways then sought and by April 28, 2005, received letters from the FAA acknowledging that it found the system for securing a

US Airways representatives informed Enforcement Office staff that a wheelchair could be stowed in the closet or "some place in the cabin." During the remaining four calls the representatives indicated that there is no in-cabin wheelchair stowage, and the wheelchairs would have to be placed in cargo.

² New aircraft means 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.

³ A major wheelchair manufacturer has represented to the Enforcement Office that the following dimensions characterize a standard-size wheelchair, when folded: 13 inches wide by 36 inches high by 42-50 inches long.

⁴ It is established enforcement precedent that before the Enforcement Office has permitted a carrier to use an alternative in-cabin wheelchair stowage method to comply with section 382.21(a)(2) in lieu of stowage in a closet or overhead bin, the carrier must provide the Enforcement Office written confirmation from the FAA that the wheelchair stowage method which the carrier wishes to use is safe.

standard-size folding wheelchair on the last row of seats on the carrier's Boeing 757, 767 and Airbus 320, 321 and 330 aircraft to be in accordance with accepted procedures.

APPLICABLE SECTIONS OF 14 CFR PART 382

The ACAA and its implementing regulation, 14 CFR Part 382, forbid discrimination against qualified individuals with disabilities in the provision of air transportation. See 49 U.S.C. § 41705 and 14 CFR 382.7(a)(1). Specifically at issue is section 382.21(a)(2), which requires that new "[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." 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.⁵ The term "wheelchair" refers to standard-size wheelchairs.⁶ 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 issue described above appears 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. To the extent that they 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

US Airways operates 283 aircraft designed to carry 100 or more passengers.⁷ Of these 283 aircraft, 149 are new aircraft ordered by the carrier after April 5, 1990, or delivered to the carrier after April 5, 1992.⁸ The evidence shows that although US Airways' written policy on wheelchair stowage is consistent with section 382.41(e)(2), prior to the carriers' recent installation of restraint systems for folding wheelchairs, the carrier did not have the required space for stowing one passenger's standard-size folding wheelchair in the cabin on 83 of its 149

⁵ 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 . . ."

⁶ The Enforcement Office interprets "wheelchair" as used in section 382.21(a)(2) as 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) and considers a standard-size wheelchair, as indicated earlier, to have the following dimensions when folded: 13 inches wide by 36 inches high by 42-50 inches long.

⁷ It also operates 13 Embraer 170 series aircraft, which are designed to carry fewer than 100 passengers.

⁸ The Enforcement Office interprets the term "delivered to the carrier" to mean delivery to the initial carrier. Therefore, only aircraft delivered by the manufacturer, after April 5, 1992, to US Airways, US Airways' lessor or another carrier that later sold the aircraft to US Airways would be subject to section 382.21(a)(2).

new aircraft as required by section 382.21(a)(2).⁹ These 83 aircraft consist of 21 Boeing 757, 1 Boeing 767, and 24 Airbus 320, 28 Airbus 321 and 9 Airbus 330 aircraft. US Airways, therefore, violated 14 CFR 382.21(a)(2) and 49 U.S.C. §§ 41702, 41705, 41310 and 41712 until the wheelchair restraint systems on these aircraft were properly implemented.

In mitigation, US Airways states that when notified by the Department that a number of its new aircraft appeared to be out of compliance with section 382.21(a)(2), the carrier took prompt action to install wheelchair restraint systems on 83 covered aircraft where existing in-cabin stowage capacity was not sufficient to accommodate a standard-size folding wheelchair. US Airways maintains that despite the small number of complaints it had received regarding onboard stowage for folding wheelchairs, its commitment to better serve disabled passengers led to the strong belief that it should offer onboard stowage on all flights. US Airways, therefore, installed wheelchair restraint systems on an additional 19 aircraft exempt from section 382.21(a)(2) to provide in-cabin stowage space for a standard-size folding wheelchair.

In November 2005, US Airways also voluntarily implemented a new program to allow passengers requiring oxygen in-flight to use portable oxygen concentrators aboard its fleet. US Airways believes that as the nation's largest low fare carrier, its oxygen program makes air travel available to thousands of passengers annually who otherwise would be unable to travel without purchasing medical oxygen at a significant cost.

The Enforcement Office appreciates the cooperation and commitment US Airways has demonstrated to improving access to air travel for its passengers with disabilities. Nonetheless, the Enforcement Office views seriously the carrier's failure to provide proper accommodations under 14 CFR 382.21(a)(2) on 83 of its covered aircraft. After careful consideration of all the facts in this case, the Enforcement Office continues to believe that enforcement action is warranted. In order to avoid litigation, US Airways 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 US Airways did not act in accordance with the ACAA and Part 382 when it failed to provide space to stow one passenger's standard-size folding wheelchair inside the cabin of 83 of its new aircraft with at least 100 passenger seats. This order directs US Airways to cease and desist from similar violations in the future and assesses a civil penalty of \$150,000 for violations from September 12, 2004, (the date US Airways filed a petition for reorganization under Chapter 11 of the U.S. Bankruptcy Code) to April 28, 2005, (the date US Airways came into compliance with section 382.21(a)(2)), in compromise of the

⁹ Between October 25, 2004, and December 13, 2004, US Airways installed kits for stowing a standard-size folding wheelchair on the last row of passenger seats in 102 aircraft where the existing stowage space was not sufficient to stow a standard-size folding wheelchair, including 19 aircraft not covered by section 382.21(a)(2). By April 28, 2005, US Airways had received notification from the FAA acknowledging that the system for securing a standard-size folding wheelchair on a seat on its Boeing 757, 767 and Airbus 320, 321 and 330 aircraft was found to be in accordance with accepted procedures. Thus, as of April 28, 2005, US Airways was, and currently is, in compliance with the requirement for the in-cabin stowage of wheelchairs.

penalties otherwise assessable under 49 U.S.C. § 46301. The civil penalty amount of \$150,000 shall be deemed an allowed administrative expense.¹⁰

This agreement is without prejudice to any other right to set-off against this claim any federal debts owed to US Airways by this or any other federal agency.

This order also directs US Airways to 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 US Airways 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 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 US Airways violated the requirements of 14 CFR 382.21(a)(2) by failing to provide for an approved space to stow one passenger's standard-size folded wheelchair on 83 of its aircraft with at least 100 passenger seats operated under 14 CFR Part 121 and ordered on or before April 5, 1990, or delivered on or after April 5, 1992;
3. We find that US 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 to the extent the violations described in ordering paragraph 2 occurred in foreign air transportation, the conduct violated 49 U.S.C. § 41310(a);
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 US 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, 41310(a) and 41712 by engaging in the conduct described in ordering paragraph 2;

¹⁰ The Department filed an administrative expense claim request for \$500,000 regarding this matter on August 15, 2005, with the United States Bankruptcy Court for the Eastern District of Virginia Alexandria Division through Donlin, Recano & Company, Inc. An amended administrative expense claim request for the same amount was filed on August 18, 2005, superseding the previous claim request.

8. US Airways is assessed a civil penalty in the amount of \$150,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraph 2 through 6 of which:
 - a. \$20,000 shall be due and payable thirty (30) days after the service date of this Order;
 - b. \$45,000 shall be credited to US Airways for expenditures made since the initiation of the investigation giving rise to this Order in implementing a system-wide program to allow passengers who need supplemental medical oxygen in flight to bring and use onboard their own personal oxygen concentrators (POC), subject to the stipulations in paragraph 9 below;
 - c. \$4,000 shall be credited to US Airways for expenditures made on the installation of wheelchair restraint kits on 19 aircraft exempt from section 382.21(a)(2) and \$15,000 shall be credited to US Airways for revenues lost between October 1, 2004, and September 30, 2005, on these same aircraft as a result of using the wheelchair restraint kit over a section of seats to accommodate a folding wheelchair, subject to the stipulations in paragraph 9 below; and
 - d. \$66,000 shall be expended by US Airways 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 in accordance with ordering paragraph 10. After 12 months, this amount shall be deemed satisfied if US Airways has made and documented the expenditures as described in ordering paragraph 11 below;
9. Within thirty (30) days of the service date of this Order, US Airways shall submit the following in connection with subparagraphs 8b and 8c:
 - a. The carrier shall provide the documentation described below verifying past expenditures related to the implementation of a new program allowing passengers who need continuous medical oxygen in-flight to use portable oxygen concentrators aboard its aircraft:
 - i. written certification to the Enforcement Office of expenditures for procedural bulletins, manual revisions, flight attendant training and other expenses related to the expansion of the portable oxygen concentrator program to US Airways' eastern operations from January, 2005, through July, 2006;
 - ii. a detailed explanation of the method used by US Airways to determine the total expenditures related to the expansion; and
 - iii. a sworn statement from an appropriate company official certifying that the expenditures were properly claimed to the best of that official's knowledge after completion of a reasonable inquiry to establish the accuracy of the claims;

- b. The carrier shall provide the documentation verifying expenditures and lost revenues as described below in connection with the installation of wheelchair restraint kits on 19 Boeing 757 and 767 series aircraft exempt from 14 CFR § 382.21(a)(2):
 - i. written certification to the Enforcement Office of expenditures for procedural bulletins, manual revisions and flight attendant training related to the use of the wheelchair restraint kits, as well as of lost revenues from October 1, 2004, through September 30, 2005, resulting from use of wheelchair restraint kits on the 19 exempt aircraft;
 - ii. a detailed explanation of the method used by US Airways to determine the total expenditures and lost revenues; and
 - iii. a sworn statement from an appropriate company official certifying that the expenditures and lost revenues were properly claimed to the best of that official's knowledge after completion of a reasonable inquiry to establish the accuracy of the claims; and
 - c. To the extent the carrier fails to provide adequate documentation verifying the appropriate expenditure of the \$64,000 offset as described in ordering paragraphs 9a. and 9b., that amount shall become due and payable 2 months after the service date of this Order;
10. The improvements described in ordering paragraph 8d. are listed in subparagraphs a. through c. below. The carrier shall have up to 12 months to make all these improvements.
- a. US Airways shall purchase a minimum of 200 personal transport slings (PTK) for US Airways' aircraft to aid in the enplaning and deplaning of passengers in wheelchairs;
 - b. US Airways shall purchase a minimum of 218 PTKs to aid in the enplaning and deplaning of passengers in wheelchairs at US Airways express-carrier stations; and
 - c. US Airways shall purchase a minimum of 4 wheelchair trievers to expedite wheelchair transfer in and out of the cargo holds and facilitate wheelchair delivery to passengers at the entry to the aircraft at selected airports. The carrier shall also modify its webpage on mobility needs services to inform passengers about the availability of the triever at those airports to expedite delivery of personal wheelchairs upon request for use during layovers. The carrier shall provide notice of this change to the Enforcement Office with a link to the modified page;
11. Within fourteen (14) months of the service date of this Order, the carrier shall provide the documentation described below:
- a. a statement, with supporting documentation, showing the total expenditures for the PTKs and the wheelchair trievers described in paragraph 10;

- b. detailed explanation of the method used by US Airways to determine the total expenditures on the PTKs and the wheelchair triervers; and
 - c. a sworn and certified statement from an appropriate company official demonstrating that the expenditures were properly claimed to the best of that official's knowledge after a reasonable inquiry to establish their accuracy;
12. To the extent the carrier fails to provide adequate documentation verifying the appropriate expenditure of the \$66,000 offset for future expenditures as described in ordering paragraph 11, that amount shall become due and payable 14 months after the service date of this Order;
 13. The improvements described in paragraph 10 may be amended with the approval of the Enforcement Office. If US Airways 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 11;
 14. Any failure by US Airways to fulfill its obligations in accordance with ordering paragraphs 8 and 10 or to document them adequately to Enforcement Office shall constitute a violation of this consent order and subject US Airways to enforcement action;
 15. US Airways 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 any aircraft governed by 14 CFR 382.21(a)(2);
 16. US Airways shall complete the attached accessibility checklist and return it to the Enforcement Office within 30 days of service date of this order; and
 17. 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 US 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 ten (10) days after its service unless timely petition for review is filed or the Department takes review on its own initiative.

BY:

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