



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

Issued by the Department of Transportation  
on the 9<sup>th</sup> day of December, 2016

**Delta Air Lines, Inc.**

**Violations of 49 U.S.C. § 42301(h)**

**Docket OST-2016-0002**

**Served: December 9, 2016**

**CONSENT ORDER**

This consent order concerns violations by Delta Air Lines, Inc., (Delta) of 49 U.S.C. § 42301(h), which requires filing an incident report within 30 days following any flight that experiences an excessive tarmac delay.<sup>1</sup> This order directs Delta to cease and desist from future similar violations of 49 U.S.C. § 42301(h) and assesses the carrier \$40,000 in civil penalties.

**Applicable Law**

Pursuant to the FAA Modernization and Reform Act of 2012 (the Act), 49 U.S.C. § 42301(h), air carriers<sup>2</sup> that engage in covered air transportation<sup>3</sup> must submit to the Department of Transportation's (Department) Aviation Consumer Protection Division (ACPD) a written incident description, including resolution, for any flight experiencing an excessive tarmac delay no later than 30 days after the incident.<sup>4</sup> The requirement to submit a written incident description under the Act is separate and distinct from a carrier's obligation to submit to the Bureau of Transportation Statistics a tarmac delay report under 14 CFR Part 244 or an on-time performance report under 14 CFR Part 234. The Department uses the written incident

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<sup>1</sup> The term "excessive tarmac delay" is defined in 49 U.S.C. §42301 as "a tarmac delay that lasts for a length of time, as determined by the Secretary [of Transportation]." The Secretary has determined that tarmac delays of more than 3 hours for domestic flights and 4 hours for international flights are excessive. See 49 U.S.C. § 42301(i)(4) and 14 CFR 259.4 (b).

<sup>2</sup> 49 U.S.C. § 40102(a)(2) defines an air carrier as "a citizen of the United States undertaking by any means, directly or indirectly, to provide air transportation."

<sup>3</sup> The term "covered air transportation" means scheduled or public charter passenger air transportation provided by an air carrier that operates an aircraft that as originally designed has a passenger capacity of 30 or more seats. See 49 U.S.C. § 42301 (i) (2).

<sup>4</sup> See 49 U.S.C. § 42301(h).

description required by 49 U.S.C. § 42301(h) to assess whether a violation may have occurred and whether a more detailed investigation is warranted to gather additional information. Failure to file the written incident descriptions when they are due constitutes a violation of 49 U.S.C. § 42301.

### **Facts and Conclusions**

Delta is an air carrier as defined by 49 U.S.C. § 40102(a)(2) and provides covered air transportation as defined in 49 U.S.C. § 42301. As such, Delta is a covered carrier with respect to the reporting requirement of 49 U.S.C. § 42301(h).

Delta operates scheduled service at Orlando International Airport (MCO), Tampa International Airport (TPA), Denver International Airport (DEN), and Los Angeles International Airport (LAX). Between August 2015 and March 2016, the Office of Aviation Enforcement and Proceedings (Enforcement Office) learned through the Bureau of Transportation Statistics that Delta had filed tarmac delay reports as required under 14 CFR Part 244 for five domestic flights shown below for which no written incident description as required under 49 U.S.C. § 42301(h) had been received.<sup>5</sup> The Enforcement Office sent letters of inquiry to Delta about these flights, and in each case Delta conceded that the required reports had not been filed.<sup>6</sup> None of these cases violated the tarmac delay rule, 14 CFR Part 259, as each fell within the scope of that rule's safety, security, or air traffic control exceptions.

### **Response**

Delta states that its failure to submit reports, pursuant to § 42301(h), for these flights was completely inadvertent. Delta further states that once the Enforcement Office brought the oversight to Delta's attention, Delta immediately modified its internal processes to ensure that, going forward, reports required by § 42301(h) will be submitted on a timely basis. Delta notes that since that change was made, Delta's § 42301(h) reports have in fact been timely. Delta further notes that there was obviously no intent to conceal the delays that affected the flights at issue given that Delta reported those delays to the Bureau of Transportation Statistics ("BTS") pursuant to 14 CFR Part 244. Delta contends that any harm caused by the failure to report under § 42301(h) was mitigated by Delta's proper reporting of the delays to the BTS under Part 244.

### **Decision**

The Enforcement Office views seriously Delta's violations of 49 U.S.C. § 42301(h). Accordingly, after carefully considering all the facts in these instances, including those set forth above, the Enforcement Office believes that enforcement action is warranted.

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<sup>5</sup> On December 14, 2015, the Enforcement Office sent a notice with instructions to all covered carriers concerning the filing of written reports as required under 49 U.S.C. § 42301(h) through an established website in the Tarmac Delay Report Filing System. Prior to this date, carriers filed their written reports directly with the Enforcement Office.

<sup>6</sup> Following each inquiry by the Enforcement Office, Delta promptly submitted the past due report. Delta has since filed reports timely for all incidents occurring after March 2016 through August 2016 in the Department's Tarmac Delay Incident Report Filing System.

In order to avoid litigation, Delta consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 42301(h) and to the assessment of \$40,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. This compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It represents a strong deterrent against future similar unlawful practices by Delta and other air carriers.

This order is issued under the authority contained in 49 CFR Part 1.

**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 Delta Air Lines, Inc., violated 49 U.S.C. § 42301(h) by failing to file the required written incident descriptions concerning flight 897 on August 20, 2015, flight 2812 on November 14, 2105, flight 1940 on March 5, 2016, and flights 1517 and 1616 on March 23, 2016, in a timely manner;
3. We order Delta Air Lines, Inc., and its successors and assigns, to cease and desist from future violations of 49 U.S.C. § 42301(h);
4. We assess Delta Air Lines, Inc., \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total amount, \$20,000 shall be due and payable within 30 days of the date of issuance of this order. The remaining \$20,000 shall become due and payable if, within one year of the service date of this order, Delta violates the order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Delta may be subject to additional enforcement action for failure to comply with this order.
5. We order Delta Air Lines, Inc., to pay within 30 days of the issuance of this order the penalty assessed in Ordering Paragraph 4, above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Delta Air Lines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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:**

**BLANE A. WORKIE**  
**Assistant General Counsel for**  
**Aviation Enforcement and Proceedings**

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