



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

**Issued by the Department of Transportation
On the 12th day of May, 2010**

Falcon Air Express, Inc.

**Violations of 49 U.S.C. § 41708 and
14 CFR Part 241**

Docket OST 2010-0005

Served May 12, 2010

CONSENT ORDER

This consent order concerns reporting delinquencies by Falcon Air Express, Inc., (Falcon Air) that constitute violations of 49 U.S.C. § 41708 and the accounting and reporting requirements specified in 14 CFR Part 241. This order directs Falcon Air to cease and desist from future violations, and assesses the carrier a compromise civil penalty of \$100,000.

Applicable Law

Section 41708 of the United States Code, *inter alia*, authorizes the Secretary of Transportation to require air carriers to submit reports to the Department. Pursuant to section 41708, 14 CFR Part 241 designates various categories of data to be collected and prescribes the manner in which these data are to be submitted to the Department. The Department uses carriers' Part 241 reports to monitor carrier fitness and ownership, to analyze the effects of air transportation industry policy initiatives, to allocate airport development funds, to forecast traffic, and to develop airport and airway traffic policy. A carrier's failure to file its reports prevents the Department from making fully informed decisions. Failure to file reports when they are due constitutes a violation of both 49 U.S.C. § 41708 and 14 CFR Part 241.

Background

Falcon Air failed to file in a timely manner certain financial reports with the Department for half of 2007, all of 2008, and all of 2009, despite numerous warning notices from the Bureau of Transportation Statistics (BTS). In April 2010, only after being contacted by the Office of Aviation Enforcement and Proceedings (Enforcement Office), did Falcon Air file all the delinquent reports with BTS.

Mitigation

In mitigation, Falcon Air states that it did not intentionally fail to file the requisite data, nor did it purposefully withhold information from the Department or the BTS. The carrier states that its staff did not file the reports because the employees were focused on safety functions as well as matters of daily operational concerns—meeting customers' needs, attending to the hiring and managing of employees, issuing the paperwork to pay employees and suppliers/vendors, developing new business to sustain the company's financial obligations, and other critical functions. Falcon Air further states it has designated an individual who is now responsible for the completion and submission of all Part 241 reports on a timely basis, which Falcon Air believes reflects its new level of commitment to meeting its regulatory burdens.

Decision

The Enforcement Office has carefully considered the information provided by Falcon Air Express, Inc., but continues to believe that enforcement action is warranted. The Enforcement Office and Falcon Air Express, Inc., have reached a settlement of this matter in order to avoid litigation. Falcon Air Express, Inc., consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41708 and Part 241 of the Department's regulations, and to the assessment of \$100,000 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 an adequate deterrence to future noncompliance with the Department's reporting requirements by Falcon Air Express, Inc., as well as by other air carriers and foreign air carriers.

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 Falcon Air Express, Inc., violated 14 CFR Part 241 by failing to file required reports in a timely manner;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Falcon Air Express, Inc., has also violated 49 U.S.C. § 41708;
4. We order Falcon Air Express, Inc., and all other entities owned or controlled by or under common ownership with Falcon Air Express, Inc., and their successors and assignees, to cease and desist from violations of 49 U.S.C. § 41708 and 14 CFR Part 241;

5. We assess Falcon Air Express, Inc., a compromise civil penalty of \$100,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3, above. Of this total penalty amount, \$50,000 shall be due and payable in two equal installments. The first payment of \$25,000 is due and payable within 30 days after the date of issuance of this order and the second payment of \$25,000 is due and payable 60 days after the date of issuance of this order. The remaining \$50,000 shall become due and payable if Falcon Air Express, Inc., violates this order's cease and desist or payment provisions within one year following the date of issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and Falcon Air Express, Inc., may be subject to additional enforcement action for failure to comply with this order. Failure to pay the penalty as ordered shall also subject Falcon Air Express, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
6. Payments shall be made by wire transfer through the Federal Reserve Communication System, commonly known as "Fed Wire," to the account of the U.S. Treasury in accordance with the attached instructions.

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)

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