



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

**Issued by the Department of Transportation
On the Eighth day of September, 2010**

Pinnacle Airlines, Inc.

**Violations of 49 U.S.C. § 41708 and
14 CFR Part 234**

Docket OST 2010-0005

Served September 8, 2010

CONSENT ORDER

This consent order results from Pinnacle Airlines, Inc.'s, (Pinnacle) failure to provide accurate on-time performance information to the Department of Transportation (Department) in violation of 14 CFR Part 234 and 49 U.S.C. § 41708. It directs Pinnacle to cease and desist from future similar violations of Part 234 and section 41708, and assesses the carrier a compromise civil penalty of \$10,000.

Applicable Law

Section 234.4 of the Department's regulations requires certain U.S. air carriers to file the Bureau of Transportation Statistics (BTS) Form 234 "On-Time Flight Performance Report" with the Office of Airline Information (OAI) on a monthly basis. The data are filed with a certification of their accuracy.¹ The data are then published and made available to the public in a useable format in the Department's monthly *Air Travel Consumer Report* (ATCR), which, among other things, lists all regularly scheduled flights with tarmac delays of three hours or more.² ATCR data are used by the traveling public to choose among transportation options and by carriers as a basis for making advertising claims regarding the quality of their service compared to other carriers. It is imperative, therefore, that ATCR data be accurate. Violations of section 234.4 also constitute violations of 49 U.S.C. § 41708.

¹ See *Technical Directive 19: On-Time Reporting*, Section V(1)(a) (January 25, 2010), available at www.bts.gov/programs/airline_information/accounting_and_reporting_directives/technical_directive.html.

² See *Air Travel Consumer Report*, available at <http://airconsumer.dot.gov>.

Background

In its certified May 2010 BTS Form 234 filing, Pinnacle reported a tarmac delay in excess of three hours. After the Office of Aviation Enforcement and Proceedings (Enforcement Office) initiated an investigation of the circumstances surrounding the delay, Pinnacle reexamined its data and concluded that it had made an erroneous report to the Department and that the actual length of the delay was less than three hours. Pinnacle's failure to submit accurate data and belatedly advising the Department of the data problem delayed issuance of the July 2010 ATCR and delayed posting of the new data on the BTS website.³ The work associated with those delays and the delay in the issuance of the related press release required the unnecessary use of government resources.

Mitigation

In mitigation, Pinnacle states that the error in its report was inadvertent. Pinnacle states that in order to ensure no future errors occur in its Form 234 reports, it is revising its System Operations Control manual to provide multiple levels of review of tarmac delay data. Pinnacle further states that it is re-training all persons responsible for reporting flight times to the Department to ensure that the new procedures are followed and to re-emphasize the importance of accurate reporting to the Department. Pinnacle adds that it is committed to compliance with all applicable Federal aviation regulations.

Decision

The Enforcement Office has carefully considered the information provided by Pinnacle Airlines, Inc., but continues to believe that enforcement action is warranted. The Enforcement Office and Pinnacle Airlines, Inc., have reached a settlement of this matter in order to avoid litigation. Pinnacle Airlines, Inc., consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41708 and Part 234 of the Department's regulations, and to the assessment of \$10,000 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 Pinnacle Airlines, 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.

³ Pinnacle had also been given several earlier opportunities by Department staff to check the information on the flight in question but had not pointed out any problem with the data in question.

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 Pinnacle Airlines, Inc., violated 14 CFR Part 234 by filing a report that contained inaccurate data;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, Pinnacle Airlines, Inc., has also violated 49 U.S.C. § 41708;
4. We order Pinnacle Airlines, Inc., and all other entities owned or controlled by Pinnacle Airlines, Inc., and their successors and assignees, to cease and desist from violations of 49 U.S.C. § 41708 and 14 CFR Part 234;
5. We assess Pinnacle Airlines, Inc., a compromise civil penalty of \$10,000 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, \$5,000 shall be due and payable within 15 days from the date of issuance of this order. The remaining \$5,000 shall become due and payable if Pinnacle Airlines, 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 Pinnacle Airlines, 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 Pinnacle Airlines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
6. Payment 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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