



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

Issued by the Department of Transportation  
On the 14<sup>th</sup> day of October, 2016

**Philippine Airlines, Inc.**

**Violations of 14 CFR Part 244  
and 49 U.S.C. § 41708**

**Served: October 14, 2016**

**Docket OST-2016-0002**

**CONSENT ORDER**

This consent order results from the failure of Philippine Airlines, Inc. (PAL) to provide accurate on-time performance information to the Department of Transportation (Department) in violation of 14 CFR Part 244 and 49 U.S.C. § 41708. It directs PAL to cease and desist from future similar violations of Part 244 and section 41708, and assesses the carrier \$20,000 in civil penalties.

**I. Applicable Law**

Section 244.3 of the Department's regulations requires certain foreign air carriers to file Bureau of Transportation Statistics (BTS) Form 244 "Tarmac Delay Report" with the Office of Airline Information for each month in which at least one tarmac delay of three hours or more occurred. The data are filed with a certification of their accuracy.<sup>1</sup> 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 international flights with tarmac delays of four hours or

<sup>1</sup> See *Part 244 – Reporting of Tarmac Delay Data (Revised)*, (August 10, 2011), available at [http://www.bts.gov/programs/airline\\_information/accounting\\_and\\_reporting\\_directives/number\\_303a.html](http://www.bts.gov/programs/airline_information/accounting_and_reporting_directives/number_303a.html).

more.<sup>2</sup> The ATCR data in question are used for a number of purposes, including by the traveling public to choose among transportation options, by the Department as a basis to conduct enforcement investigations, 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 244.3 also constitute violations of 49 U.S.C. § 41708.

### **Facts and Conclusions**

PAL is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)<sup>3</sup> that operates scheduled service from John F. Kennedy International Airport (JFK) using at least one aircraft having a designed seating capacity of 30 or more passenger seats. On May 17, 2015, PAL Flight 127 experienced a mechanical issue requiring maintenance prior to departure from JFK.

In its original certified BTS Form 244 filing, PAL reported a tarmac delay of 270 minutes. After the Enforcement Office initiated an investigation of the circumstances surrounding the lengthy tarmac delay, PAL provided data that there was a tarmac delay of 300 minutes. PAL subsequently re-examined its data and concluded that it filed an erroneous BTS Form 244 and that the actual length of the delay was no more than 200 minutes. We agree with PAL's revised assessment. However, PAL's failure to submit accurate data in accordance with 14 CFR 244.3 wasted valuable Department resources, since it compelled the Enforcement Office to initiate an investigation and resulted in the publication of inaccurate data in the ATCR, which must be revised.

### **Response**

In response, PAL states that the timeline of events that formed the basis of PAL's original BTS Part 244 report was provided to PAL by the manager/supervisor of PAL's third-party ground handler at JFK. At the time, PAL asserts that it had no reason to believe that the timetable was incorrect and relied in good faith on that manager's report. However, after receiving an inquiry from DOT about Flight 127, PAL's internal counsel with the assistance of outside counsel conducted a comprehensive investigation including a review of internal documents that had not been examined at the time the BTS report was filed, and determined that the report and timeline information provided by the ground handler was incorrect. PAL so advised the Department and promptly submitted a corrected BTS report. While the investigation established that the original report was incorrect, PAL states that it was an inadvertent error resulting from incorrect information given to PAL by what PAL believed to be a trustworthy third-party representative. In

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

<sup>3</sup> 49 U.S.C. § 40102(a)(21) defines a foreign air carrier as "a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation."

addition, PAL states that it has implemented checks-and-balances procedures in an effort to prevent similar reoccurrences.

### **Decision**

We view seriously PAL's violation of 14 CFR Part 244. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted.

In order to avoid litigation, PAL has agreed to settle this matter with the Enforcement Office and enter into this consent order, which directs PAL to cease and desist from future similar violations of 14 CFR Part 244 and 49 U.S.C. § 41708, and assesses \$20,000 in compromise of potential civil penalties otherwise due and payable. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent to future similar unlawful practices by PAL, and other 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 Philippine Airlines, Inc., violated 14 CFR 244.3 by failing to accurately report data for tarmac delays of three hours or more;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, Philippine Airlines, Inc. has violated 49 U.S.C. § 41708;
4. Philippine Airlines, Inc., and all other entities owned or controlled by Philippine Airlines, Inc., its successors and assignees are ordered to cease and desist from further violations of 14 CFR Part 244 and 49 U.S.C. § 41708;
5. We assess Philippine Airlines, Inc., a compromise civil penalty of \$20,000 in lieu of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above;
6. Of this total amount, \$10,000 shall be due and payable 30 days from the date of issuance of this order. The remaining \$10,000 shall become due and payable if, within one year of the service date of this order, Philippine Airlines, Inc., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Philippine Airlines, Inc., may be subject to additional enforcement action for failure to comply with this order; and

7. We order Philippine Airlines, Inc., to pay the penalty through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Philippine Airlines, 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 WORKIE**  
**Assistant General Counsel for**  
**Aviation Enforcement and Proceedings**

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