



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

Issued by the Department of Transportation
on the 28th day of June, 2017

Delta Air Lines, Inc.

Violations of 49 U.S.C. § 41721 and

14 CFR Part 235

Docket DOT-OST-2017-0001

Served June 28, 2017

CONSENT ORDER

This consent order concerns violations of 49 U.S.C. § 41721 and the reporting requirements specified in 14 CFR Part 235 for reporting inaccuracies by Delta Air Lines, Inc. (“Delta”). This order directs Delta to cease and desist from future similar violations of 49 U.S.C. § 41721 and 14 CFR Part 235, and assesses Delta a compromise civil penalty of \$120,000.

Applicable Law

Pursuant to 14 CFR Part 235, U.S. carriers that operate scheduled service with at least one aircraft with a design capacity of more than 60 seats must submit to the United States Department of Transportation’s (“Department”) Aviation Consumer Protection Division (“ACPD”) monthly reports on any incidents involving the loss, injury, or death of an animal¹ during air transport.² Additionally, section 235.3(b) states that within 15 days after the end of December of each year, each covered carrier shall also submit to the ACPD the total number of reportable incidents for the entire calendar year and the total number of

¹ An “animal” is defined as “any warm- or cold-blooded animal which, at the time of transportation, is being kept as a pet in a family household in the United States and any dog or cat which, at the time of transportation, is shipped as part of a commercial shipment on a scheduled passenger flight.” 14 CFR 235.1.

² The monthly reports must be submitted within 15 days after the end of the month to which the information applies. 14 CFR 235.3(a).

animals transported in the calendar year (hereinafter “annual animal report”).³ This report must be accompanied by a certification of its accuracy. 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). ATCR data are used by the traveling public to choose among transportation options and to obtain information on the quality of services provided by the airlines. Additionally, carriers use ATCR data as a basis for making advertising claims regarding the quality of their service compared to other carriers. Therefore, it is imperative that ATCR data be accurate. Failure to submit accurate animal incident reports in a timely manner violates Part 235 and 49 U.S.C. § 41721.

Facts and Conclusions

On January 15, 2016, Delta submitted to the ACPD its certified annual animal report for calendar year 2015, in which Delta reported that it transported a total of 98,779 animals. On February 11, 2016, Delta contacted the Department and expressed concern that the methodology used by some carriers when submitting data for the annual animal report was flawed. Soon thereafter, the ACPD requested covered carriers, including Delta, to provide information regarding the methodology used to calculate the total number of animals transported in calendar year 2015. In response, Delta reviewed its records, provided its methodology, and acknowledged that the total number of animals transported in calendar year 2015 that it originally reported was incorrect. Delta then indicated that the total number of animals transported was 159,747. After an investigation by the Department’s Office of Aviation Enforcement and Proceedings (“Enforcement Office”) into the drastic change in animal reporting numbers submitted by Delta, the carrier reviewed its calculations and changed the number of animals that it transported in calendar year 2015 for a third time. During its third submission of animal reporting numbers, Delta reported that the carrier did not transport 159,747 animals as it reported to the Department on February 12, 2016. Instead, Delta reported that it carried only 96,630 animals during calendar year 2015 – a difference of 63,117 animals between its second submission of animal reporting numbers and its third submission.

The Enforcement Office is concerned that after numerous conversations with Delta where the carrier certified that its annual animal report was accurate and suggested that other carriers may have misreported data, Delta revised its animal reporting data numerous times. We are also concerned that Delta’s second submission of animal reporting numbers for calendar year 2015 increased the overall number of animals reported by over 60,000 animals. Delta’s amendment of its animal reporting numbers significantly improved the carrier’s incident per 10,000 animals transported rating from 1.82 to a rate of 1.13. Further, the Enforcement Office and ACPD are concerned that, following an investigation into Delta drastically increasing its numbers, Delta submitted a third number to the Department consisting of approximately 63,000 fewer animals than its previous submission. This third change in Delta’s animal reporting numbers caused Delta’s incident per 10,000 animals transported rating to increase from 1.13 to 1.86.

³ The annual report covering calendar year 2015 was due by January 15, 2016.

Additionally, each time Delta revised its reported number of animals transported in calendar year 2015, certain of Delta's connection carriers also needed to revise their numbers as they had relied on the accuracy of Delta's submissions and were forced to amend their reported numbers. As a result of Delta's inaccurate reporting and the Department's subsequent concerns about the accuracy of the data from a number of carriers, the publication of the February 2016 ATCR was delayed. Furthermore, the delayed February 2016 ATCR that was ultimately published did not contain information regarding the total number of animals transported in calendar year 2015. This information is important as it provides a more complete picture of an airline's animal transport record. Without this information, consumers are unable to compare the rate of animal incidents from one carrier to another. Delta's inaccurate reporting has deprived the traveling public of useful data for determining which carrier to choose when transporting a pet.

Response

In response, Delta notes that 2015 was the first year for which these animal-incident reports were required. For that reason, Delta states that the carrier had to develop protocols and methodologies to comply with the new reporting requirement. Delta further states that, as is common with the development of any new process, there were glitches in the initial launch and asserts that the errors in initial reporting were inadvertent. Delta points out that over the course of responding to the Department's inquiries about its first two submissions from January and February 2016, Delta identified several flaws in its newly developed protocols. Delta explains that, to address those issues, the carrier created an entirely new search logic to extract data from the relevant databases. Delta further states that the new criteria resolved all of the identified problems.

Delta regrets the missteps that occurred during the rollout of its initial animal-data reporting process. Delta notes that those errors were the result of inexperience with a new process, not bad faith. Delta has indicated that the corrective actions it has taken underscore the carrier's intention to improve that process. On the strength of those measures, Delta is confident that its animal-data reports will be accurate going forward.

Decision

The Enforcement Office views seriously Delta's violations of 49 U.S.C. § 41721 and 14 CFR Part 235. 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, and without admitting or denying the violations described above, Delta consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41721 and 14 CFR Part 235 and to the assessment of \$120,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. 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 against future similar unlawful practices by Delta and other carriers.

This order is issued under the authority contained in 14 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. § 41721 and 14 CFR Part 235 by failing to file accurate animal reporting statistics, as described above;
3. We order Delta Air Lines, Inc. and its successors and assigns to cease and desist from further violations of 49 U.S.C. § 41721 and 14 CFR Part 235;
4. We assess Delta Air Lines, Inc. a compromise civil penalty of \$120,000 in compromise of civil penalties that might otherwise be assessed for the violations described above;
 - a. \$60,000 of the assessed penalty shall be due and payable within 30 days of the service date of this order; and
 - b. \$60,000 shall become due and payable if, within one year of the date of issuance of this order, Delta Air Lines, Inc. violates the order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Delta Air Lines, Inc. may be subject to additional enforcement action for violation of 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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