



Order 97-8-23

**UNITED STATES OF AMERICA  
DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY  
WASHINGTON, DC**

**Issued by the Department of Transportation  
on the 22nd day of August, 1997**

**Served August 22, 1997**

**Falcon Air Express, Inc.**

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

**CONSENT ORDER**

This consent order concerns reporting delinquencies that constitute violations of 49 U.S.C. 41708 and the accounting and reporting requirements specified in Part 241 of the Department's regulations (14 CFR Part 241) by Falcon Air Express, Inc. (Falcon Air), a certificated air carrier. This order directs Falcon Air to cease and desist from future violations and to pay compromise civil penalties.

The Department uses carriers' 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 also constitutes a violation of both 49 U.S.C. 41708 and the Department's applicable regulations.

Falcon Air has failed to file reports on time as required on several occasions during 1996 and 1997 and failed to heed an October 1996 warning letter about its delinquencies.

In mitigation, Falcon Air states that it is a relatively new carrier that during most of the period here in question operated but one aircraft. Further, while initially its reporting was timely and accurate, its delinquencies followed a turnover of personnel at a time when its administrative supervisors were focusing on satisfying Federal Aviation Administration (FAA) requirements. Finally, when the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) brought Falcon Air's delinquencies to the attention of the carrier's counsel and president, Falcon Air

took immediate action toward bringing the carrier's reporting into compliance.<sup>1</sup> To help avoid a recurrence, Falcon Air has retained the person who initially prepared its required reports to work for Falcon Air each month, as necessary, to assure that Falcon Air's required filings are accurate and timely.

The Enforcement Office has carefully considered the information provided by Falcon Air but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Falcon Air have reached a settlement of this matter. Falcon Air 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 \$20,000 in compromise of potential civil penalties. Of the total penalty amount, \$10,000 shall be due within 15 days after the service date of this order. The remaining \$10,000 shall be suspended and thereafter forgiven unless Falcon Air violates this order's cease and desist provision within the year following the service date of this order or fails to comply with the order's payment provisions, in which case the unpaid balance of the \$20,000 penalty shall become due and payable immediately. We believe that this compromise assessment is appropriate and serves the public interest. In light of all the circumstances, the terms of this order represent an adequate deterrence to future noncompliance with the Department's reporting requirements by Falcon Air, as well as by other air carriers and foreign air carriers similarly situated.

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. has violated 14 CFR Part 241 by failing to file 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. 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, are ordered to cease and desist from violations of 49 U.S.C. 41708 and 14 CFR Part 241;
5. Falcon Air Express, Inc. is assessed \$20,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of the total penalty amount, \$10,000 shall be paid within 15 days after the service date of this order. The remaining

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<sup>1</sup> Falcon Air filed the last of its delinquent reports on June 30, 1997.

\$10,000 shall be suspended and thereafter forgiven unless Falcon Air Express, Inc. violates this order's cease and desist provision within the year following the service date of this order or fails to comply with the order's payment provisions, in which case the penalty balance shall be due and payable immediately. Failure to pay the compromise assessment as ordered will also subject Falcon Air Express, Inc. to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and possible enforcement action for failure to comply with this order; and

6. Payments shall be made by wire transfer through the Federal Reserve Communications System, commonly known as "Fed Wire," to the account of the U.S. Treasury. The wire transfers shall be executed in accordance with the instructions contained in the Attachment to 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:**

**ROSALIND A. KNAPP**  
**Deputy General Counsel**

**(SEAL)**