



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

**Issued by the Department of Transportation
On the 30th day of January, 2009**

Virgin America Inc.

DOT-OST-2009-0001

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

Served January 30, 2009

CONSENT ORDER

This consent order concerns reporting delinquencies by Virgin America Inc. (Virgin America) that constitute violations of 49 U.S.C. § 41708 and the accounting and reporting requirements specified in 14 CFR Part 241. This order directs Virgin America to cease and desist from future violations of this statute and this regulatory provision, and assesses the carrier a compromise civil penalty of \$40,000.

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 this data is 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.

Virgin America failed to file in a timely manner certain quarterly financial reports with the Department for both the first and second calendar quarters of 2008. On September 22, 2008, after its 2007 annual audit was complete, Virgin America filed these reports with the Bureau of Transportation Statistics (BTS).

In mitigation, Virgin America states that it was undergoing an audit from an independent accounting firm. In further mitigation, Virgin America notes that it contacted BTS to inform it of Virgin America's inability to file these reports by the otherwise applicable filing dates prior to being contacted by BTS or the Office of Aviation Enforcement and Proceedings (Enforcement Office), and it continued to file all required monthly reports.

The Enforcement Office has carefully considered the information provided by Virgin America Inc. but continues to believe that enforcement action is warranted. Compliance with 14 CFR Part 241, both in terms of timeliness and accuracy, is viewed seriously by the Department. The Enforcement Office and Virgin America Inc. have reached a settlement of this matter in order to avoid litigation. Virgin America 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 \$40,000 in compromise of potential civil penalties otherwise due and payable pursuant to of 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 Virgin America 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 Virgin America Inc. violated 14 CFR Part 241 by failing to file two required reports in a timely manner.
3. We find that by engaging in the conduct and violations described in ordering paragraph 2 above, Virgin America Inc. has also violated 49 U.S.C. § 41708.
4. We order Virgin America Inc. and all other entities owned or controlled by or under common ownership with Virgin America Inc. and its successors and assignees, to cease and desist from violations of 49 U.S.C. § 41708 and 14 CFR Part 241 of the Department's regulations.
5. We assess Virgin America Inc. a compromise civil penalty of \$40,000 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, \$20,000 shall be due and payable within 15 days of the issuance of this order. The remaining \$20,000 will become due and payable if Virgin America Inc. violates this order's cease and desist provisions within one year following the date of issuance of this order, or fails to comply with the payment provisions of this order, in which the

entire unpaid portion of the \$20,000 penalty shall become due and payable immediately, and Virgin America Inc. shall be subject to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to possible additional enforcement action for failure to comply with this order.

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)

*An electronic version of this document is available
on the World Wide Web at
<http://www.regulations.gov>*