



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

Issued by the Department of Transportation
on the 16th day of December, 2004

Served December 16, 2004

Docket OST No. 2004-16943

**Tatonduk Outfitters Limited d/b/a
Everts Air Alaska and Everts Air
Cargo**

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

CONSENT ORDER

This consent order concerns alleged reporting failures, in particular repeated submission to the Department of incomplete and inaccurate data, by Tatonduk Outfitters Limited d/b/a Everts Air Alaska and Everts Air Cargo,¹ ("Tatonduk"), that constitute violations of 49 U.S.C. § 41708, and the reporting requirements specified in 14 CFR Part 241. This order directs Tatonduk to cease and desist from future violations, and assesses a compromise civil penalty of \$40,000.

Part 241 requires those carriers subject to the reporting requirements to file accurate and complete data in a timely fashion. Tatonduk has failed to file accurate and complete required reports on time on several occasions in the past. During this period, the Department's staff sent Tatonduk numerous warning letters about its inaccuracies and delinquencies.

¹ Tatonduk formerly d/b/a Tatonduk Flying Service, Inc., (see Order 2002-7-22 (Erratum)).

On November 4, 2003, the Department issued Order 2003-11-2 which revised final Alaska mainline mail rates and found that Tatonduk had filed inaccurate data that materially overstated its enplaned tons, thus significantly understating its terminal costs, thereby causing overall intra-Alaska mainline mail rates to be understated. The Department stated that, had Tatonduk's error not been caught and corrected, it estimated that the mainline carriers in the cost pool would have been underpaid \$3,000,000 in 2003. The order also found that Tatonduk had made similar errors, confusing transported and enplaned tons, in prior years, as well as errors in reporting financial information in the second and fourth quarters of 2002. (See Docket OST-95-429, served November 4, 2003.)

In addition, Order 2003-11-2 reviewed a prior Department order, Order 2000-11-9, issued November 9, 2000, in which the Department discussed in detail Tatonduk's failure to provide it accurate and complete data. As a result, the Department excluded the carrier from its calculation of bush mail rates for a year.

The Department uses carriers' reports to monitor carrier fitness and ownership, to analyze the effects of air transportation industry policy initiatives, to set intra-Alaska mainline mail rates,² to allocate airport development funds, to forecast traffic, and to develop airport and airway traffic policy. Because mail rates are established as a class, an individual carrier's failure to provide complete and accurate data affects all other carriers subject to the rate, the Department's proceedings, and the Postal Service. Failure to file complete and accurate reports when they are due also violates 49 U.S.C. § 41708 and constitutes a violation of the applicable Department regulations.

In explanation and mitigation, Tatonduk states that its goal at all times during the period in question was to comply fully with each of the Department's reporting requirements and regulations, and to file accurate and complete data in a timely fashion. Tatonduk states that it has cooperated fully with the Department and has, on numerous occasions, sought additional clarification when necessary. Tatonduk adds that any errors made by Tatonduk personnel were inadvertent and based upon good-faith misunderstandings of the reporting requirements.

In the carrier's view, Tatonduk has taken in response to this proceeding numerous steps to ensure future compliance including: (1) dedicating personnel to assist with the compilation of statistical data; (ii) broadening its audit process to discover errors prior to submission; and (iii) working with Department staff to compile a training syllabus and course to help correct all future errors and misunderstandings. Tatonduk avers that it will continue diligently to work with the Department to prevent any future non-compliance.

² In addition to Tatonduk d/b/a Everts Air Alaska and Everts Air Cargo, the carriers currently included in the Alaska Mainline mail rate calculation are Alaska Airlines, Northern Air Cargo, and Lynden Air Cargo.

In developing the training course to be conducted under the provisions of this order (see ordering paragraph 6, below), Tatonduk personnel, in consultation with staff members of the Bureau of Transportation Statistics, will prepare a syllabus that will address recurring problems as well as other issues encountered by Tatonduk in its preparation of traffic and statistical data. In the hope of bringing a greater understanding of these issues to the Alaskan carrier community, Tatonduk will provide to any interested Alaskan carrier a copy of the syllabus upon request.

The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings ("Enforcement Office") has carefully considered the information provided by Tatonduk but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Tatonduk have reached a settlement of this matter. Tatonduk 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. Of the total penalty amount, \$10,000 shall be due within 15 days of the date of issuance of this order, and an additional \$10,000 shall be due on March 30, 2005, unless a portion of the sum, not exceeding \$2,500, is offset by the cost of a training course as set forth in paragraph 6, below. The remaining \$20,000 shall be suspended for twelve months after the date of issuance of this order, and then forgiven, unless Tatonduk violates this order's cease and desist or payment provisions, in which case the entire sum will become due and payable. We believe that this compromise assessment is appropriate and serves the public interest. It represents an adequate deterrence to future noncompliance with the Department's reporting requirements by Tatonduk, 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 Tatonduk Outfitters Limited d/b/a Everts Air Alaska and Everts Air Cargo has violated 14 CFR Part 241 by failing to file complete and accurate required reports in a timely manner;

3. We find that by engaging in the conduct and violations described in ordering paragraph 2 above, Tatonduk Outfitters Limited d/b/a Everts Air Alaska and Everts Air Cargo has also violated 49 U.S.C. § 41708;
4. Tatonduk Outfitters Limited d/b/a Everts Air Alaska and Everts Air Cargo, and all other entities owned or controlled by or under common ownership with it, and its successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41708 and Part 241 of the Department's regulations;
5. Tatonduk Outfitters Limited d/b/a Everts Air Alaska and Everts Air Cargo is assessed \$40,000 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 due within 15 days of the date of issuance of this order, and an additional \$10,000 shall be due on March 30, 2005, unless a portion of the sum, not exceeding \$2,500 is offset by the cost of a training course as set forth in ordering paragraph 6, below. The remaining \$20,000 shall be suspended for twelve months after the date of issuance of this order, and then forgiven, unless Tatonduk violates this order's cease and desist or payment provisions, in which case the entire penalty amount will become due and payable. Failure to pay the compromise assessment as ordered will subject Tatonduk Outfitters Limited d/b/a Everts Air Alaska and Everts Air Cargo 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;
6. To obtain an offset of the civil penalty amount as noted in ordering paragraph 5, above, Tatonduk shall work with Bureau of Transportation Statistics staff and create a syllabus that addresses recurring problems and other issues encountered by Tatonduk in its preparation of traffic and statistical data. Representatives of Tatonduk shall attend a one-day training program with Department staff. Unless disapproved by the Department, an offset not to exceed \$2,500 shall be applied to the final installment of the civil penalty assessed in ordering paragraph 5, above, due and payable on March 30, 2005. Tatonduk shall submit its expenses for arranging and attending the training to the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings on or before March 15, 2005. Such expenses shall be verified by signature and be subject to enforcement under 18 U.S.C. § 1001; and

7. Payment 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 transfer 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)

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on the World Wide Web at
<http://dms.dot.gov/general/orders/aviation.html>*