



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

**Issued by the Department of Transportation
On the 21st day of September, 2010**

United Air Lines, Inc.

**Violations of 49 U.S.C. § 41708 and
14 CFR Part 234**

Docket OST 2010-0005

Served September 21, 2010

CONSENT ORDER

This consent order concerns United Air Lines, Inc.'s, (United) failure to provide accurate on-time performance information to the Department of Transportation (Department) in violation of 14 CFR Part 234 and 49 U.S.C. § 41708. It directs United to cease and desist from future similar violations of Part 234 and section 41708, and assesses the carrier a compromise civil penalty of \$12,000.

Applicable Law

Section 234.4 of the Department's regulations requires certain U.S. air carriers to file a Bureau of Transportation Statistics (BTS) Form 234 "On-Time Flight Performance Report" with the Office of Airline Information (OAI) on a monthly basis. Each covered carrier must file information for each of its reportable flights, including flights that are diverted from their originally scheduled destination.¹ Furthermore, the report shall be made in the form and manner set forth in accounting and reporting directives issued by the Director of the Office of Airline Statistics.² In the case of diversion incidents, the Bureau of Transportation Statistics informs carriers that "when tracking the minutes to report in fields AI [total time away from gate at diverted airport] and AJ [longest time away from gate at diverted airport], the clock stops when passengers are given the opportunity to deplane the aircraft."³ The data are filed with a certification of their

¹ 14 CFR Part 234.4(a)

² *Id.*

³ See *Technical Directive #19: On-Time Reporting*, Section XII (January 25, 2010), available at www.bts.gov/programs/airline_information/accounting_and_reporting_directives/technical_directive.html.

accuracy.⁴ 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 flights with tarmac delays of three hours or more.⁵ ATCR data are used by the traveling public to choose among transportation options, by carriers as a basis for making advertising claims regarding the quality of their service compared to other carriers, and by the Office of Aviation Enforcement and Proceedings (Enforcement Office) to enforce the tarmac delay rule, 14 CFR 259.4. It is imperative, therefore, that ATCR data be accurate. Violations of 234.4 also constitute violations of 49 U.S.C. § 41708.

Background

In its certified May 2010 BTS Form 234 filing, United reported that four flights were "away from gate" in excess of three hours, including one for four hours and forty-one minutes.⁶ All four delay incidents occurred at the Colorado Springs, Colorado, airport after the flights were diverted there due to severe weather at Denver International Airport. Based on the information reported by United, the Enforcement Office was led to believe that the flights experienced tarmac delays of three hours or more, and, accordingly, initiated an investigation of the circumstances surrounding the delays. In response to the Enforcement Office's investigation, United examined its data and found that on all four flights, passengers were offered an opportunity to deplane, meaning the doors were open and the brakes were set, before the delays reached three hours in duration.⁷ United, therefore, failed to submit accurate data in accordance with 14 CFR 234.4 and Technical Directive #19.⁸ United's misreporting of this data wasted valuable Department resources, since only after the Enforcement Office initiated its investigation did it learn that United improperly filed the data. The Enforcement Office learned this only after the ATCR was published and released to consumers.

Mitigation

In mitigation, United states that it is strongly committed to full compliance with all applicable regulations, with a particular emphasis on the Department's new tarmac delay rules. Indeed, United states that it fully complied with the tarmac delay rule with respect to each of these four flights, specifically ensuring that all passengers were provided with food, beverages, and working lavatories, as well as an opportunity to deplane well prior

⁴ See *Technical Directive #19: On-Time Reporting*, Section V(1)(a) (January 25, 2010), available at www.bts.gov/programs/airline_information/accounting_and_reporting_directives/technical_directive.html.

⁵ See *Air Travel Consumer Report*, available at <http://airconsumer.dot.gov>.

⁶ United reported that the following flights were "away from gate" in excess of three hours: UA714 (281 minutes), UA406 (219 minutes), UA876 (211 minutes), and UA342 (190 minutes). See *Air Travel Consumer Report*, available at <http://airconsumer.dot.gov>.

⁷ In fact, passengers on UA714, were offered opportunities to deplane on two separate occasions.

⁸ United had earlier been given the opportunity by Department staff to check the information on the flights in question but had not pointed out any problem with the data.

to the three-hour mark of the delays. At the time United filed its May report, the company believed that the data it submitted relating to this new requirement were entirely accurate. However, it later realized that it should not have reported these flights as being “away from gate” for longer than 180 minutes. United states that this resulted in a wholly inadvertent over-reporting of the number of United flights experiencing long tarmac delays. United further states that no consumers could have been misled into believing that the company provided better service than it actually did as a result of its inadvertent over-reporting of tarmac delays. Nevertheless, United states that it is committed to providing fully accurate data to the Department and has taken considerable steps to ensure that no such over-reporting occurs again in the future.

Decision

The Enforcement Office has carefully considered the information provided by United but continues to believe that enforcement action is warranted. The Enforcement Office and United have reached a settlement of this matter in order to avoid litigation. Without admitting any violation of the regulations, United consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41708 and Part 234 of the Department’s regulations, and to the assessment of \$12,000 in compromise of potential civil penalties otherwise due and payable pursuant to 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 United 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 United Air Lines, Inc., violated 14 CFR Part 234 by filing a report that contained inaccurate data;
3. We find that by engaging in the conduct and violations described in ordering paragraph 2, above, United Air Lines, Inc., has also violated 49 U.S.C. § 41708;
4. We order United Air Lines, Inc., and all other entities owned or controlled by or under common ownership with United Air Lines, Inc., and their successors and assignees, to cease and desist from violations of 49 U.S.C. § 41708 and 14 CFR Part 234;
5. United Air Lines, Inc., is assessed \$12,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and

- 3, above. Of this total penalty amount, \$6,000 shall be due and payable within 15 days from the date of issuance of this order. The remaining \$6,000 shall become due and payable if United Air Lines, Inc., violates this order's cease and desist or payment provisions within one year following the date of issuance of this order, in which case the entire unpaid portion of the civil penalty shall become due and payable immediately, and United Air Lines, Inc., may be subject to additional enforcement action for failure to comply with this order. Failure to pay the penalty as ordered shall also subject United Air Lines, Inc., to the assessment of interest, penalty, and collection charges under the Debt Collection Act; and
6. 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 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:

SAMUEL PODBERESKY
Assistant General Counsel for
Aviation Enforcement and Proceedings

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