



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

**Issued by the Department of Transportation  
on the 26<sup>th</sup> day of December, 2013**

**Virgin America Inc.**

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

**Docket OST 2013-0004**

**Served December 26, 2013**

**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, and assesses the carrier a compromise civil penalty of \$60,000.

**Applicable Law**

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 statistical data to be collected and prescribes the manner in which these data are to be submitted to the Department. The Department uses carriers' Part 241 reports 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.

**Facts**

Virgin America is a certificated air carrier and is therefore subject to the reporting requirements of 49 U.S.C. § 41708 and 14 CFR Part 241. Virgin America failed to file in a timely manner a revised Form 41 for the fourth quarter of 2012, despite repeated

requests from the Bureau of Transportation Statistics (BTS) and failed to submit in a timely manner a complete Form 41 for the first quarter of 2013.<sup>1</sup>

This is Virgin America's second violation of the Department's accounting and reporting requirements since 2008. By Order 2009-1-17, issued on January 30, 2009, Virgin America was found to have violated 49 U.S.C. § 41708 and 14 CFR Part 241 by failing to file in a timely manner certain quarterly financial reports with the Department for both the first and second calendar quarters of 2008.

### **Mitigation**

In mitigation, Virgin America states that it is committed to fulfilling its Part 241 reporting obligations in accordance with the Department's regulations and BTS reporting directives, and that it has cooperated fully with the Enforcement Office during the course of this investigation. Virgin America notes that the alleged reporting delinquencies did not involve a willful disregard of the submission deadlines imposed under Part 241, but resulted instead from the transition of staff in its accounting department, as well as formatting errors with respect to the underlying data contained in a handful of reports, which were rejected by BTS for technical reasons. With respect to such data formatting errors, Virgin America states that, following communications from BTS staff, it endeavored in good faith to promptly rectify those errors. Finally, Virgin America further states that it has taken a number of decisive, corrective measures to address the root cause of the alleged delinquencies identified by the Department.

### **Decision**

The Office of Aviation Enforcement and Proceedings (Enforcement Office) has carefully considered the information provided by Virgin America, but continues to believe that enforcement action is warranted. The Enforcement Office and Virgin America have reached a settlement of this matter in order to avoid litigation. Virgin America, without admitting or denying the allegations described herein, consents to the issuance of this order to cease and desist from future violations of 49 U.S.C. § 41708 and 14 CFR Part 241 and to the assessment of \$60,000 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 provides a strong incentive for Virgin America and other air carriers to submit data to the Department in a timely and complete manner, as required.

This order is issued under the authority contained in 14 CFR Part 1.

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<sup>1</sup> After being contacted by the Enforcement Office, Virgin America submitted all past due reports and is currently up to date with respect to its reporting obligations.

**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 49 U.S.C. § 41708 and 14 CFR Part 241 by failing to file required reports in a timely manner, as described above;
3. We order Virgin America Inc. its successors, its affiliates, and all other entities owned by, controlled by, or under common ownership and control with Virgin America Inc. its successors, its affiliates, and its assigns to cease and desist from further violations of 49 U.S.C. § 41708 and 14 CFR Part 241;
4. We assess Virgin America Inc. \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations described in ordering paragraph 2, above. Of this total penalty amount, \$30,000 shall be due and payable within thirty (30) days of the date of this issuance of this order. The remaining portion of the civil penalty amount, \$30,000, shall become due and payable immediately if, within one year of the date of issuance of this order, Virgin America Inc. violates this order's cease and desist provisions or fails to comply with the order's payment provisions, in which case Virgin America Inc. may be subject to additional enforcement action for violation of this order; and
5. We order Virgin America Inc. to pay the penalty through Pay.gov to the account of the U.S. Treasury in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Virgin America Inc. to the assessment of interest, penalty, and collection charges under the Debt Collection Act, and to possible additional 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:**

**SAMUEL PODBERESKY**  
**Assistant General Counsel for**  
**Aviation Enforcement and Proceedings**

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