



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

**Issued by the Department of Transportation
on the 7th day of June, 2000**

Trans States Airlines, Inc.

**Violations of 49 U.S.C. § 41708, 14 CFR
Parts 241 and 249, and Order 96-3-41**

Served June 7, 2000

CONSENT ORDER

This consent order concerns failures by Trans States Airlines, Inc. (Trans States), a certificated air carrier, to (1) file required reports on time and accurately in violation of 14 CFR Part 241, 49 U.S.C. § 41708, and the cease and desist provision of Order 96-3-41, and (2) comply with the record retention and information request requirements specified in 14 CFR Parts 241 and 249 of the Department's regulations and 49 U.S.C. § 41708. This order directs Trans States to cease and desist from future violations and to pay compromise civil penalties.

The Department uses carrier 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 properly to file its reports pursuant to Part 241, to retain the information required by Part 249, and to supply the underlying documentation upon Department request prevents the Department from making fully informed decisions and violates those regulations. Failure to file accurate reports or to retain the required data or supply information upon request also constitute violations of both 49 U.S.C. § 41708 and the Department's applicable regulations.

Over the past four years, the Department's Office of Airline Information (OAI), of the Bureau of Transportation Statistics, has repeatedly written to and telephoned Trans States concerning inaccuracies and under-reporting of the carrier's passenger Origin-Destination Survey (Survey) data.¹ In December 1998 and on January 9, 1999, the Office of the Assistant General Counsel for Aviation Enforcement and Proceedings (Enforcement Office) contacted Trans States regarding the carrier's pattern of failing to submit accurate Survey reports in a timely manner. Trans States sent letters on January 4 and 8, 1999, promising to implement procedures to improve the quality of the carrier's reports, but did not do so. The data in Trans States' fourth quarter 1998 Survey filing were 20 to 30 percent underreported, and could not be corrected because Trans States reported that it did not retain all the documentation necessary to reconstruct the defective submission.²

By not retaining the necessary documentation, Trans States has violated the Department's record retention requirements. In the O&D Procedural Statement it submitted on March 5, 1999, Trans States stated that it routinely retained copies of electronic tickets from all of its interline and code-share partners ("partners") in its data base for three years, that, upon request, it has rapid access to all TWA³ paper ticket documentation, and that data from the tickets remain in the FoxPro data base of the carrier. Nevertheless, when OAI made a request for such materials with respect to the carrier's fourth quarter 1998 Survey filing, Trans States responded that it had not retained the records necessary to correct deficiencies in its report.

In addition, in response to an OAI request for a limited sample of passenger tickets for two days in February 1999, Trans States asserted that it had not retained copies of the requested passenger tickets and was not able to obtain the needed data through its carrier partners. On May 3, 1999, citing the high level of underreporting in various Trans States markets, OAI wrote to Trans States pursuant to 14 CFR 385.19(e) seeking ticket lift documents and supporting information. Trans States' petitions for review of the request were denied finally on July 12, 1999.⁴ It was not until November 1999 that Trans States requested a

¹ OAI contacted Trans States more than a dozen times between April 1996 and December 1999, describing the deficiencies and directing the carrier under 14 CFR 385.19 to resubmit its data. In all, between mid-1996 and December 1998, OAI requested that the data for five of the ten reports submitted by Trans States be revised and resubmitted.

² The deficient Trans States report for the fourth quarter of 1998 was the sixth report in eleven quarters to require extensive revision.

³ TWA is one of Trans States' code-share partners.

⁴ Trans States petitioned on May 13, 1999, for review of the request, pursuant to 14 CFR 385.31. OAI reviewed the petition, upheld its decision, and again directed Trans States

waiver to permit it to use an alternative record retention method.⁵ Moreover, OAI was delayed in verifying the completeness and accuracy of Trans States' Survey report for the fourth quarter of 1998 because the carrier was delinquent in filing its T-100 reports for June, August and September 1999.

This is not the first time that Trans States has violated 49 U.S.C. 41708 and 14 CFR Part 241. Previous violations were resolved by means of a Consent Order—Order 96-3-41—issued on March 20, 1996. Under the consent order, Trans States agreed to cease and desist from further violations and to an assessed civil penalty of \$10,000. At that time Trans States assured the Enforcement Office that it had taken the necessary steps, including the addition of qualified personnel, and the overhaul of its management structure to consolidate in one office responsibility for the compilation of data, its processing, quality control and the actual submission of specific reports, to assure that these reports would be filed on a timely basis in the future.

Nevertheless, Trans States has continued to fail to file accurate required reports in a timely manner, failed to retain information required by 14 CFR Part 249, and failed to provide to the Department required documentation after being directed to do so.⁶ In light of the facts described above, Trans States is again subject to enforcement action for violating the Department's reporting and record retention requirements and Order 96-3-41.

In mitigation, Trans States states that it believes that it has a sound record of adherence to the goals and responsibility it shares with the Department to provide safe and responsive air transportation. Within that context, the carrier adds, the reporting problems at issue here are exceptions to Trans States' overall record of compliance and cooperation with the Department. While Trans States may have appeared to have been unwilling to cooperate, the firm continues, the record details misunderstandings about what appeared to the carrier to be unique and difficult reporting burdens. To correct those problems, the carrier devised a structure under which management at a high level and personnel with greater experience are involved in executing the carrier's reporting functions. The carrier also affirms that it has put into place an alternative data retention system and is now in full compliance with its information obligations.

In summary, while Trans States does not believe that enforcement action is warranted, and does not admit that any violations occurred, the carrier agrees to

to supply the requested information under 14 CFR 385.19(e). The Director, Bureau of Transportation Statistics, affirmed OAI's decision on July 12, 1999 (Docket BTS-99-5684).

⁵ OAI ultimately granted that request on December 28, 1999, because Trans States was unable to get all of its code-share partners to agree to the approach it proposed.

⁶ As of December 1999, the carrier had brought its report submissions up to date, and had in place an acceptable alternate data retention system.

the issuance of a consent order finding a violation and accepts the agreed-upon civil penalty to avoid further litigation and to put this difficult issue to rest.

The Enforcement Office has carefully considered the information provided by Trans States but continues to believe that enforcement action is warranted. In particular, the Enforcement Office disagrees with Trans States' assertion that the carrier did not commit any violations when it failed to file accurate required reports in a timely manner, failed to retain information required by 14 CFR Part 249, and failed to provide to the Department required documentation after being directed to do so. Nevertheless, the Enforcement Office and Trans States have reached a settlement of this matter. Trans States consents to the issuance of an order to cease and desist from future violations of 49 U.S.C. § 41708, Parts 241 and 249 of the Department's regulations, and Order 96-3-41, and to the assessment of \$40,000 in compromise of potential civil penalties, which shall be due within 15 days of the issuance of this order. 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 Trans States, 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 Trans States Airlines, Inc. violated 14 CFR Part 241 by failing to file accurate Passenger Origin and Destination Survey reports in a timely manner;
3. We find that that by engaging in the conduct described in paragraph 2 above, Trans States Airlines, Inc. violated Order 96-3-41;
4. We find that Trans States Airlines, Inc. violated 14 CFR Part 249 by failing to retain records required to be preserved;
5. We find that by engaging in the conduct described in paragraphs 2 through 4 above, and by failing to supply required documentation after being directed to do so by the Department pursuant to 14 CFR 385.19(e), Trans States Airlines, Inc. also violated 49 U.S.C. § 41708;

6. Trans States Airlines, Inc., and all other entities owned or controlled by Trans States Airlines, Inc., and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41708, 14 CFR Parts 241 and 249, and Order 96-3-41;
7. Trans States Airlines, Inc. is assessed \$40,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 through 5 of this order, which amount shall be due within 15 days of the date of issuance of this order. Failure to pay the compromise assessment as ordered will also subject Trans States Airlines 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
8. 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)