



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

Issued by the Department of Transportation  
on the 11th day of August 1997

**Served August 11, 1997**

**Challenge Air Cargo, Inc.**

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

**CONSENT ORDER**

This consent order concerns reporting delinquencies by Challenge Air Cargo, Inc. ("Challenge Air") that constitute violations of 49 U.S.C. § 41708 and the accounting and reporting requirements specified in 14 CFR Part 241. This order directs Challenge Air to cease and desist from future violations and to pay a compromise civil penalty.

The Department uses carriers' 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 also constitutes a violation of both 49 U.S.C. § 41708 and the applicable Department regulations.

Challenge Air has failed to file required reports on time on numerous occasions in the past three years. During this period, the Department's staff sent Challenge Air a number of warning letters about its delinquencies. Since that time, Challenge Air has become delinquent in filing other reports. As of May 20, 1997, Challenge Air had not filed 12 required reports, with an average delinquency of over 27 days.<sup>1</sup>

In response, Challenge Air points to a number of mitigating factors, including that the employee long assigned responsibility for the preparation and filing of the

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<sup>1</sup> Challenge Air has now filed all of its delinquent reports.

reports became ill and died before he could train a fully competent successor. Since that time, Challenge Air asserts that it has taken the necessary steps, including the redesign of its management structure to assure that responsibility for timely submission of accurate reports will be properly handled in the future: a designated individual will have responsibility for seeing that all required reports are properly submitted; at the same time, upper management will assume responsibility for seeing that the goal of full compliance is met; to that end, an assistant treasurer will report directly on such matters to the Vice President for Finance. Finally, given these changes, Challenge Air states that it has taken the steps necessary to assure that these reports will be filed on a timely basis in the future.

The Office of the Assistant General Counsel for Aviation Enforcement and Proceedings ("Enforcement Office") has carefully considered the information provided by Challenge Air but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Challenge Air have reached a settlement of this matter. Challenge Air 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 \$60,000 in compromise of potential civil penalties. Of the total penalty amount of \$60,000, \$30,000 shall be paid as follows: \$10,000 shall be due within 15 days of the issuance of this order; four payments of \$5,000 each shall be due on October 1, 1997, November 15, 1997, January 15, 1998, and February 21, 1998. The remaining \$30,000 civil penalty shall be suspended for one year following issuance of this order, and then forgiven unless Challenge Air Cargo, Inc. violates this order's cease and desist provision within that one-year period or fails to comply with the order's payment provisions, in which case the unpaid portion of the \$60,000 penalty shall become due and payable immediately, and the carrier may be subject to further enforcement action. 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 Challenge Air Cargo, 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 Challenge Air Cargo, Inc. has violated 14 CFR Part 241 by failing to file required reports in a timely manner;

3. We find that by engaging in the conduct and violations described in ordering paragraph 2 above, Challenge Air Cargo, Inc. has also violated 49 U.S.C. § 41708;
4. Challenge Air Cargo, Inc., and all other entities owned or controlled by or under common ownership with Challenge Air Cargo, Inc., and their 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. Challenge Air Cargo, Inc. is assessed \$60,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Challenge Air Cargo, Inc. shall pay \$30,000 as follows: \$10,000 shall be due within 15 days of the issuance of this order; and four payments of \$5,000 each shall be due on October 1, 1997, November 15, 1997, January 15, 1998, and February 21, 1998.
6. The remaining \$30,000 civil penalty shall be suspended for one year following issuance of this order, and then forgiven unless Challenge Air Cargo, Inc. violates this order's cease and desist provision within that one-year period or fails to comply with the order's payment provisions, in which case the unpaid portion of the \$60,000 penalty shall become due and payable immediately. Failure to pay the compromise assessment as ordered will subject Challenge Air Cargo, Inc. 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
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)**