



**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 November, 2000

Served November 16, 2000

Kitty Hawk Aircargo, Inc.

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

CONSENT ORDER

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

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

Kitty Hawk Aircargo has failed to file required reports on time on numerous occasions during the past two years. During this period, the Department's staff sent Kitty Hawk Aircargo numerous warning letters about its delinquencies. In this regard, the Department's Office of Airline Information (OAI) sent Kitty Hawk Aircargo warning letters about delinquent T-100 and Form 41 reports—which are required by Part 241—on April 22, 1997, and April 29, July 28, and October 26, 1999.

When Kitty Hawk Aircargo failed to comply with OAI's many warnings, on October 29, 1999, the Office of Aviation Enforcement and Proceedings (Enforcement Office) sent a warning letter to Kitty Hawk Aircargo regarding its pattern of delinquent reporting. In that letter, the Enforcement Office offered Kitty Hawk Aircargo one last opportunity to file all of its delinquent reports and to ensure that in the future all of its required reports are filed in a timely fashion. Kitty Hawk Aircargo only filed

eighteen of its many delinquent required reports. Despite all of these warnings, as of February 10, 2000, 76 required reports had not been filed by Kitty Hawk Aircargo, and were an average of 168 days late, and 84 delinquent reports that had been filed by the carrier between January 20, 1998, and February 10, 2000, were filed an average of 42 days late.¹

In mitigation, Kitty Hawk Aircargo states that its reporting delinquencies were the result of a lengthy and difficult conversion from one financial reporting software system to another (a process which began in March 1999, and which it says it has now successfully completed). Kitty Hawk Aircargo also contends that about the same time, it began to experience difficulties with its flight operations statistical database, and that those difficulties often resulted in inaccurate information that had to be corrected by hand (a problem that it says has likewise now been remedied). Finally, Kitty Hawk Aircargo states that the delinquency notices were addressed to the attention of an employee who had not worked at Kitty Hawk Aircargo since May of 1996. Kitty Hawk Aircargo points out that, after the reporting delinquencies were brought to the attention of current Kitty Hawk Aircargo management, the overwhelming majority of those deficiencies were remedied in less than two weeks' time, and that it immediately thereafter implemented numerous remedial programs to ensure timely compliance with its reporting responsibilities, including the training of several additional personnel on Kitty Hawk Aircargo's flight operations and accounting software, the development of internal audit procedures to ensure timely reporting, and a daily audit of the flight operations database to ensure accuracy.

The Enforcement Office has carefully considered the information provided by Kitty Hawk Aircargo but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Kitty Hawk Aircargo have reached a settlement of this matter. Kitty Hawk Aircargo 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 \$50,000 in compromise of potential civil penalties, which shall become due on the effective date of this order, and payable according to ordering paragraph 5, below. The payment provisions of this order have been fashioned to take into account the carrier's bankruptcy proceeding, and the fact that the violations covered by this order primarily occurred prior to the bankruptcy filing. The carrier filed for reorganization under the U.S. Bankruptcy Code on May 1, 2000, in the U.S. Bankruptcy Court for the Northern District of Texas (Fort Worth). The assessment of this compromise civil penalty is accepted as a pre-petition general unsecured claim in the carrier's bankruptcy proceeding.² The Enforcement Office acknowledges that neither it nor this order holds the Creditor's Trust, the Trustee, or the individual members of the Post-Effective Date Committee, responsible for causing any of the violations that are the subject of this order.

¹ Since January 1998, Kitty Hawk Aircargo has failed to file on time more than seventy-four percent of its required reports. Kitty Hawk Aircargo filed the last of its delinquent reports on June 26, 2000.

² The Department will file a general unsecured pre-petition claim with the Bankruptcy Court to reflect the terms of this agreement.

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 Kitty Hawk Aircargo, 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 Kitty Hawk Aircargo, 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, Kitty Hawk Aircargo, Inc. has also violated 49 U.S.C. § 41708;
4. Kitty Hawk Aircargo, Inc., and all other entities owned or controlled by or under common ownership with Kitty Hawk Aircargo, Inc., and their successors and assignees, are ordered to cease and desist from violations of 49 U.S.C. § 41708 and 14 CFR Part 241 of the Department's regulations;
5. Kitty Hawk Aircargo, Inc. is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. The assessed compromise penalty shall become due on the effective date of this order. It shall be treated as a pre-petition general unsecured claim in Kitty Hawk Aircargo, Inc.'s bankruptcy proceeding in the U.S. Bankruptcy Court for the Northern District of Texas (Fort Worth), and it shall be paid in accordance with the applicable provisions of the Bankruptcy Code, and the instructions of that court;
6. Failure to pay the compromise assessment as ordered will subject Kitty Hawk Aircargo, 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)

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