



**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 July 2006

Boston-Maine Airways Corp.

**Violations of 49 U.S.C. § 41712 and 14 CFR
Part 374**

Docket OST 2006-23528

Served July 7, 2006

CONSENT ORDER

This consent order concerns the failure of Boston-Maine Airways Corp (“Boston-Maine”) to comply with (1) the requirement, implemented by 14 CFR Part 374, to make prompt credit card refunds as required by the Consumer Credit Protection Act and Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. §§1601-1693r and 12 CFR Part 226 and (2) Department enforcement case precedent that requires that cash refunds be made within a reasonable time after a request is made. This order directs Boston-Maine to cease and desist from future violations and assesses compromise civil penalties of \$50,000.

Boston-Maine, as an air carrier, is subject to the credit refund requirements of Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. 1601-1693r. 12 CFR Part 226 and 14 CFR Part 374, which implements Regulation Z, establish that, with respect to refund requests involving airline tickets purchased with a credit card, a creditor—here Boston-Maine—must transmit a credit statement for a passenger refund to the credit card issuer within seven business days of receipt of full documentation for the refund requested. In addition, through its enforcement case precedent, the Department has required that, with respect to tickets purchased with cash, an airline must provide a refund within 20 days of receipt of full documentation of such a request. A failure to provide such refunds within the stipulated time periods is considered to be an unfair or deceptive practice in violation of 49 U.S.C. § 41712. *See, e.g.*, Midwest Express Order 2001-12-25 (issued December 31, 2001); Eastern Airlines Orders 89-8-25 and 89-8-50 (issued August 14 and 31, 1989, respectively); and Northwest Airlines, Order 87-11-33 (issued November 16, 1987).

As a result of consumer complaints filed with its Aviation Consumer Protection Division, the Office of Aviation Enforcement and Proceedings (“Enforcement Office”) conducted an investigation into whether Boston-Maine was failing to provide prompt refunds as

required by Regulation Z and Department precedent. That investigation confirmed that the carrier has failed to process credit refunds within seven business days and cash refunds within 20 days of the receipt of appropriate documentation for the requested refund.

The failure to process these credit and cash refund requests within the period required by Regulation Z and the Department's enforcement case precedent has harmed consumers and constitutes a violation of 14 CFR Part 374 and an unfair and deceptive practice in violation of 49 U.S.C. § 41712 that subjects Boston-Maine to civil penalties under 49 U.S.C. § 46301.

In mitigation, Boston-Maine acknowledges that it has failed to remit timely refunds to passengers upon request in recent months. However, the carrier points out that as of February 15, 2006, it has issued refunds in full in response to all outstanding refund requests. It states that its refund practices subsequent to that date are now in full compliance with applicable regulations and enforcement case precedent. Furthermore, it avers that the carrier has taken specific and effective remedial steps, as noted below, to avoid a repetition of delayed passenger refund payments in the future.

According to Boston-Maine, in the past, limitations of its computer reservations system required that all ticket refund requests be processed manually, with no computer-based system for tracking refund requests and payments. The carrier states that refund instructions during that time had to be handwritten. That manual processing requirement was compounded by Boston-Maine's severe administrative staffing shortages during a prolonged period of substantial operating losses which, the carrier asserts, were attributable to its inability to operate more competitive aircraft.

Boston-Maine states that it has recently developed modifications to its computer reservations system software to enable the carrier to review and approve refund requests, and to process and issue refunds, more efficiently and well within the timelines specified in Regulation Z and implementing regulations. Specifically, Boston-Maine states that all refund requests are now automatically linked to the passenger's initial flight reservation confirmation number. These improvements will, according to the carrier, provide automated reporting tools to display the status of all pending refund requests at any given time, including, in the case of refunds not yet issued, a breakdown of the total time remaining prior to the refund issuance deadline for each specific outstanding refund requests.

The Enforcement Office has carefully considered the information provided by Boston-Maine, but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Boston-Maine have reached a settlement of this matter. Boston-Maine consents to the issuance of this order to cease and desist from future violations of Regulation Z, 14 CFR Part 374 and related Department enforcement case precedent, and 49 U.S.C. § 41712 with respect to passenger refunds, and to the assessment of \$50,000 in compromise of potential civil penalties, of which one-half will be payable according to the payment schedule described below. This penalty amount shall be payable within 15 days of the date of 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 Regulation Z and the Department's

refund requirements by Boston-Maine, as well as by other airlines and sellers of air transportation.

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 Boston-Maine Airways Corp. violated 14 CFR Part 374 by failing to process on a timely basis refunds of money paid by credit card to the carrier for certain air transportation, as required by the Consumer Credit Protection Act and Regulation Z of the Board of Governors of the Federal Reserve System, 15 U.S.C. 1601-1693r and 12 CFR Part 226;
3. We find that by engaging in the conduct and violations described in paragraph 2 above, and by failing to process refunds of money paid by cash to the carrier for certain air transportation within 20 days of receipt of complete documentation for such refunds, Boston-Maine Airways Corp. also engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
4. Boston-Maine Airways Corp. and all other entities owned and controlled by, or under common ownership and control with, Boston-Maine Airways Corp. and their successors and assignees, are ordered to cease and desist from future violations of Regulation Z, 14 CFR Part 374 and 49 U.S.C. § 41712;
5. Boston-Maine Airways Corp. is assessed \$50,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order, of which \$25,000 shall be due and payable within 15 days of the service date of this order. The remainder of the penalty shall be suspended for one year following the service date of this order and then forgiven, provided that Boston-Maine Airways Corp. complies with the payment terms of this order, as well as its cease and desist provisions, during the suspension period; if it fails to do so, the entire unpaid balance of the penalty shall become due and payable immediately, and Boston-Maine Airways Corp. may be subject to further enforcement action; 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. The wire transfer shall be executed in accordance with the instructions contained in the Attachment to this order. Failure to pay the compromise assessment as ordered will subject Boston-Maine Airways Corp. 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.

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

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