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Order 2001-12-25



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

Issued by the Department of Transportation  
on the 31st day of December 2001

**Midwest Express Airlines, Incorporated**

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

**Served December 31, 2001**

**CONSENT ORDER**

This consent order concerns the failure of Midwest Express Airlines, Inc. ("Midwest Express"), to comply with 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. This order directs Midwest Express to cease and desist from future violations and to pay compromise civil penalties.

Midwest Express, as an air carrier, is subject to the credit refund requirements of Regulation Z as implemented by Part 374 of the Department's rules (14 CFR Part 374). Regulation Z and 14 CFR Part 374 establish that, with respect to refund requests involving airline tickets purchased by individuals with a credit card, a creditor—here the air carrier—must transmit a credit statement to the credit card issuer within seven business days of receipt of full documentation for the refund requested. A failure to provide such refunds within the stipulated time period is also considered to be an unfair or deceptive practice in violation of 49 U.S.C. § 41712. *See, e.g.*, Eastern Airlines Orders 89-8-25 and 89-8-50 (issued August 14 and 31, 1989, respectively); Northwest Airlines, Order 87-11-33 (issued November 16, 1987).

During July 2000, the Department's Office of Inspector General ("OIG") conducted a review of Midwest Express's handling of refund requests in connection with OIG's audit of fourteen airlines' compliance with their respective Customer Service Commitments. That review indicated a failure

by Midwest Express to comply with Regulation Z regarding the timely processing of credit refund requests.

As a result of OIG's review, the Office of Aviation Enforcement and Proceedings ( "Enforcement Office") conducted its own investigation of Midwest Express's compliance with Regulation Z. That investigation confirmed that the carrier has failed to process credit refunds within seven business days of the receipt of appropriate documentation for the requested refund. The failure to process these credit refund requests within the seven business day period required by Regulation Z 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 Midwest Express to civil penalties under 49 U.S.C. § 46301.

In mitigation, Midwest Express states that the carrier's own records did not reveal the same degree of non-compliance with Regulation Z and Part 374 found by the Department's Office of Inspector General, but the carrier forthrightly acknowledges that its compliance was not consistent with its overall record of attentive passenger service. Midwest Express further explains that Regulation Z applies only to credit card refund requests made by individuals, which constitute only about fifty percent of the credit card transactions the carrier handles.

Nonetheless, Midwest Express has revised its procedures and committed additional technology and staffing to the passenger refund process, costing the carrier in excess of \$378,000 in both recurring and nonrecurring costs. According to Midwest Express, as a result of this effort, the carrier is maintaining a high level of compliance. For example, during the period January through September 2001, only one credit card refund complaint was noted in the most recent Air Travel Consumer Report published by the Department (November 2001). The carrier thus concludes that there is no evidence of widespread consumer dissatisfaction.

Midwest Express asserts that its compliance disposition has been consistently excellent and that it has had one of the lowest consumer complaint ratios of any major or national carrier. The carrier states in summary that its compliance with Part 374 and Regulation Z is now at the same high level and, given the carrier's enhanced procedures, it will remain so.

The Enforcement Office has carefully considered the information provided by Midwest Express but continues to believe that enforcement action is warranted. In this connection, the Enforcement Office and Midwest Express have reached a settlement of this matter. Midwest Express consents to the issuance of this order to cease and desist from future violations of Regulation Z, 14 CFR Part 374 and 49 U.S.C. § 41712, and to the assessment of \$25,000 in compromise of potential civil penalties. Of that total penalty amount, \$12,500 shall be payable within 15 days of the date of issuance of the order. The remaining \$12,500 shall be suspended for one year and then forgiven, unless

Midwest Express violates this order's cease and desist provision within that time period, or fails to comply with the order's payment provisions, in which case the entire civil penalty will become due and payable. 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 Midwest Express, 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 Midwest Express Airlines, Inc. 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, Midwest Express Airlines, Inc. also engaged in an unfair and deceptive practice in violation of 49 U.S.C. § 41712;
4. Midwest Express Airlines, Inc., and all other entities owned and controlled by, or under common ownership and control with, Midwest Express Airlines, Inc., 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. Midwest Express Airlines, Inc. is assessed \$25,000 in compromise of civil penalties that might otherwise be assessed for the violations found in paragraphs 2 and 3 of this order. Of that total penalty amount, \$12,500 shall be payable within 15 days of the date of issuance of the order. The remaining \$12,500 shall be suspended for one year, and then forgiven, unless Midwest Express violates this order's cease and desist provision within that time period, or fails to comply with the order's payment provisions, in which case the entire civil penalty will become due and payable. Failure to pay the compromise assessment as ordered will subject Midwest Express Airlines, 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
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

Attachment

(1) To 021030004	(2) Type		
(3) From		(4) Ref.	(5) Amount
(6) Ordering Bank and Related Data			
(7/8) TREAS NYC/CTR/OST			
(9) BNF=/AC-69010005 OBI=			
(10) Payor			
(11)			

1. Treasury Department Code—Provided
2. Type Code—To be provided by sending bank.
3. Sending Bank's Code—(ABA#)
4. Reference No.—Optional number, entered if sending bank desires to number transaction.
5. Amount—Include dollar sign and punctuation including cents digits.
6. Sending Bank Name—Telegraphic abbreviation corresponding to Item 4.
- 7/8. Entire line provided precisely as shown.
9. Entire line provided precisely as shown.
10. Enter name of air carrier or other payor (as shown on order).
11. Identify payment (maximum 80 digits). Enter order number (if any), issue date, and state "installment" or "full payment."

**NOTE:** Questions about these instructions should be directed to Yash Parekh, Office of Financial Management, Accounting Services Division, TBP-24, Rm 9422, DOT, phone: (202) 366-5760, fax: (202) 366-7163. To ensure proper credit, notify Mr. Parekh when each payment is made.