



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

Issued by the Department of Transportation
on the 15th day of June, 2021

Air Canada

**Violations of 14 CFR Part 259
and 49 U.S.C. § 41712**

DOT-OST-2021-0073

**NOTICE OF ENFORCEMENT PROCEEDING AND
PROPOSED ASSESSEMENT OF CIVIL PENALTIES**

The attached complaint of the U.S. Department of Transportation (Department) Office of Aviation Consumer Protection (OACP) asserts that Air Canada unlawfully failed to provide timely refunds for flights to and from the United States that it canceled or significantly changed. In doing so, Air Canada committed an unfair practice in violation of 49 U.S.C. § 41712(a). Air Canada also violated the requirement to adhere to its Customer Service Plan regarding prompt ticket refunds as set forth at 14 CFR 259.5. Each failure to provide refunds as required constitutes a violation of 14 CFR 259.5 and 49 U.S.C. § 41712(a).

Between March 1, 2020 and the present, OACP received over 6,000 complaints through the Department's complaint portal stating that Air Canada has failed to provide refunds for flights it canceled or significantly changed. In addition, almost 90 consumers have filed formal complaints with the Department alleging that Air Canada has failed to provide refunds as required. In its answers to these formal complaints, Air Canada has argued that it is not required to provide refunds for flights that it has canceled or significantly changed given the COVID-19 pandemic.

OACP has notified Air Canada multiple times throughout 2020 and 2021 of its view that Air Canada's position lacks merit. Despite these efforts, Air Canada refused to change its policy until approximately April 13, 2021.

Air Canada's new refund policy does not change the fact that Air Canada committed thousands of violations of U.S. law prior to that time. Moreover, in the absence of an order directing Air

Canada to cease and desist from future similar violations, there remains the possibility that Air Canada could revive its no-refund policy in the future.

Pursuant to 14 CFR 302.407, by this notice and complaint, OACP is instituting a formal enforcement proceeding and seeking an assessment of civil penalties. Under 49 U.S.C. § 46301 and 14 CFR Part 383, Air Canada may be assessed \$34,184 for each failure to provide a refund in violation of 49 U.S.C. § 41712 and 14 CFR 259.5.¹ Under 49 U.S.C. 46301(a)(2), a separate violation occurred for each day these violations continued.

OACP is seeking a civil penalty amount that considers consumer harm, the scale of the violations, Air Canada's knowledge and intent, and deterrent effect. OACP conservatively estimates the minimum number of violations to be 5,110.² For over a year, Air Canada as a matter of practice refused to refund consumers for non-refundable flights between United States and Canada that the carrier canceled or significantly changed.

Based on these factors, OACP is seeking a civil penalty of \$25,500,000 against Air Canada for violating 49 U.S.C. § 41712 and 14 CFR Part 259 by failing to provide consumers prompt refunds after canceling or significantly changing flights between the U.S. and Canada.³ Although OACP has authority to seek a significantly higher civil penalty, it considers this amount to be high enough to deter future misconduct as the penalty being sought against Air Canada is higher than the cost to Air Canada had it complied with U.S. law. Pursuant to 14 CFR § 302.407(d), Air Canada is hereby notified of its potential liability for violations of 14 CFR Part 259 and 49 U.S.C. § 41712.

This notice and the attached complaint will be served on Air Canada. Pursuant to 14 CFR § 302.408, Air Canada is required to file, within 15 days, an answer to the complaint admitting or denying specifically and in detail each allegation of the complaint, and a response to the proposed assessment of civil penalties, specifically presenting any matters the respondent intends to rely on in opposition to or in mitigation of such civil penalties.

Blane A. Workie

BLANE A. WORKIE

Assistant General Counsel for
Aviation Consumer Protection

¹ Under amendments to 14 CFR 382.2, the civil penalty applicable for violations occurring from July 31, 2019 to January 10, 2021, is \$34,174; the civil penalty applicable to violations occurring from January 11, 2021 to May 2, 2021 is \$34,777; and the civil penalty for violations from May 3, 2021 to the present is \$35,188. Revisions to Civil Penalty Amounts, 84 Fed. Reg. 37059 (July 31, 2019); 86 Fed. Reg. 1745 (January 11, 2021) and 86 Fed.Reg. 23241 (May 3, 2021).

³ Air Canada informed the Department that it received approximately 5,110 refund requests involving flights to or from the U.S. that were cancelled by Air Canada due to the COVID-19 pandemic in the period March 13 to November 13, 2020.

CERTIFICATE OF SERVICE

I certify that on June 15, 2021, pursuant to 14 CFR 302.407(b), the foregoing Notice of Enforcement Proceeding and Proposed Assessment of Civil Penalties, and the related Complaint, were served on counsel for Air Canada by electronic mail, read- receipt requested, as follows:

Evelyn D. Sahr
 Drew M. Derco
 Eric Felland
 ECKERT SEAMANS CHERIN
 & MELLOTT, LLC
 1717 Pennsylvania Avenue NW
 Suite 1200
 Washington, D.C. 20006
esahr@eckertseamans.com
dderco@eckertseamans.com
efelland@eckertseamans.com

I also certify that on June 15, 2021, pursuant to 14 CFR 302.407(b), the foregoing Notice of Enforcement Proceeding and Proposed Assessment of Civil Penalties, and the related Complaint, were served on the following individuals who filed formal complaints against Air Canada, by electronic mail, read-receipt requested, as follows:

Docket	Complainant	Email address
DOT-OST-2020-0055	Charles Cervinka	charles.cervinka@gmail.com
DOT-OST-2020-0056	Lois Cronsberry & Sergio Palmieri	lkronsberry@gmail.com
DOT-OST-2020-0059	Carey and Corey Brayall	carriecandace@gmail.com
DOT-OST-2020-0061	Brigitta Soos-Nagy	soosbrigi@gmail.com
DOT-OST-2020-0062	Tyler Cooke	tyler_cooke@hotmail.com
DOT-OST-2020-0063	Naomi Horovitz	naomi.horovitz@gmail.com
DOT-OST-2020-0067	G & C Jacobsmeyer	gcjake@charter.net
DOT-OST-2020-0069	Kim Plumridge-Malito	kimplumridge@outlook.com
DOT-OST-2020-0070	Alan Kwok	alan.sm.kwok@gmail.com
DOT-OST-2020-0071	Brandon Miller	brandonjrm@gmail.com
DOT-OST-2020-0073	Allen Woo	woomanchu@yahoo.com
DOT-OST-2020-0074	Jeffrey Stricker	strickerj@live.com
DOT-OST-2020-0077	Howard Chen	howardchen94@gmail.com

DOT-OST-2020-0078	Dusan Fejes	dusan.fejes@hotmail.com
DOT-OST-2020-0079	Gordon Leung	Gordon-leung@hotmail.com
DOT-OST-2020-0080	Jonathan Morar	Jonathan.morar@gmail.com
DOT-OST-2020-0081	Natalia Bastian	Bastiannatalia@gmail.com
DOT-OST-2020-0082	Sandra Jones	sforsythjones@hotmail.com
DOT-OST-2020-0083	Rachel Reyes	rachel_reyes110@hotmail.com
DOT-OST-2020-0085	Callie Stirling	callie.stirling@gmail.com
DOT-OST-2020-0087	Mary Patten	mary.patten@yahoo.com
DOT-OST-2020-0088	Maria & Keving Nan	maria.keving@gmail.com
DOT-OST-2020-0091	Brent Arentsen	brentarentsen@gmail.com
DOT-OST-2020-0092	Jiping Wang	jipingw1@gmail.com
DOT-OST-2020-0094	Kristina Barnett Lee	krisbarnett@hotmail.com
DOT-OST-2020-0095	Nina Carpenter	carpenter9862@gmail.com
DOT-OST-2020-0096	Myles Jeffries	mylesjeffries@me.com
DOT-OST-2020-0097	Connor Mojo	cmojo94@gmail.com
DOT-OST-2020-0100	Susan Wingert	southnorthca@yahoo.ca
DOT-OST-2020-0108	Erin Yeung	erinkyung@gmail.com
DOT-OST-2020-0111	Maja Kyle	maja.kyle@hotmail.com
DOT-OST-2020-0114	Tiffany Horan	tiffany.horan2012@gmail.com
DOT-OST-2020-0121	Gerard Longo	gerardlongo64@gmail.com
DOT-OST-2020-0125	Ernest Blazenko	eblaz@hotmail.com
DOT-OST-2020-0126	Andrew Westphal	awestphal@gmail.com
DOT-OST-2020-0131	Amber Cottrill	ajcottrill@hotmail.com
DOT-OST-2020-0132	Amy and Jeff Colobong	amyandjeffc@gmail.com

DOT-OST-2020-0133	Amy Chan	amy.louie@gmail.com
DOT-OST-2020-0138	Trevor Ritchie	dommm1956@yahoo.com
DOT-OST-2020-0139	Alex Lindsay	alinds@mail.com
DOT-OST-2020-0143	John Clemens	ballplayers398@outlook.com
DOT-OST-2020-0145	Scott Osburne	SOsburne@wpptc.com
DOT-OST-2020-0146	Joseph Sheehan	joersheehan@gmail.com
DOT-OST-2020-0150	Brent Nickle	bnenickle@outlook.com
DOT-OST-2020-0151	Christina Castellani	ccastel3@uwo.ca
DOT-OST-2020-0154	Scott MacDonald	scottymacd99@hotmail.com
DOT-OST-2020-0155	Calvin Blankenship	calvinbjr@gmail.com
DOT-OST-2020-0157	Sacha Mann	sacha.mann@gmail.com
DOT-OST-2020-0161	Sharon Westman	rudka0732@rogers.com
DOT-OST-2020-0162	Marie Louise Schaefer	Schaefer88.ml@gmail.com
DOT-OST-2020-0163	Adam Duffy	aduffy234@gmail.com
DOT-OST-2020-0166	Wendy Bowe	wendy.bowe2014@gmail.com
DOT-OST-2020-0170	Luke Kinzie	kinz.glg20@gmail.com
DOT-OST-2020-0171	Julie Neal	julieaneal@yahoo.com
DOT-OST-2020-0172	Daniel Gernazian	d.gernazian@gmail.com
DOT-OST-2020-0173	Frank Ruskey	frank.ruskey@shaw.ca
DOT-OST-2020-0174	Tim Stickelbrucks	Tim@stickelbrucks.com
DOT-OST-2020-0175	Johnathon Jones	jayandrea2017@gmail.com
DOT-OST-2020-0181	Stephen John Mellor	stevemellor@adam.com.au

DOT-OST-2020-0186	Carolyn Tompkins	Carolyn.r.Tompkins@gmail.com
DOT-OST-2020-0187	Cassandre Creswell	cassie.creswell@gmail.com
DOT-OST-2020-0188	Cristina Dutari	cristinadguev@gmail.com
DOT-OST-2020-0190	Mike Fells	mfells@transilient.com
DOT-OST-2020-0192	Roux Gerber	roux.gerber@gmail.com
DOT-OST-2020-0194	Linda Joyce Hauley	linda.hauley@gmail.com
DOT-OST-2020-0198	Scott Szeremeta	scott.szeremeta@gmail.com
DOT-OST-2020-0199	Harvey Kalichman	HNK@rogers.com
DOT-OST-2020-0205	Ryan Anderson	drake.anderson@gmail.com
DOT-OST-2020-0208	Nicole Rogers	nicrog@telus.net
DOT-OST-2020-0209	Anna Dale	dale_anna@hotmail.com
DOT-OST-2020-0210	Linda Cossette	linda.kerwin18@gmail.com
DOT-OST-2020-0219	Lydia Hatch	lydhatch@gmail.com
DOT-OST-2020-0221	Jaye Laura O'Brien Dockendorff	obrienjaye@yahoo.com
DOT-OST-2020-0223	Dawn Knoble	dawnknoble@hotmail.com
DOT-OST-2020-0227	Laura Hetrick	lhetric6@gmail.com
DOT-OST-2020-0230	Daniel Higdon	dhigdonou@gmail.com
DOT-OST-2020-0235	Steven McQuillan	smcquillan@hotmail.com
DOT-OST-2020-0241	Aaron Hushagen	hoosche@gmail.com
DOT-OST-2020-0244	Christina Mulchandani	qwissy@hotmail.com
DOT-OST-2020-0249	Sandra Murphy	Sandra.murphy@me.com
DOT-OST-2020-0257	Elisa Zaiceva	elisazaiceva@gmail.com
DOT-OST-2020-0263	Vicki Tatum	forminpins@att.net
DOT-OST-2021-0010	Matthew Gasper	mrgasper27@gmail.com
DOT-OST-2021-0011	Kaitlin Vanderberg	kait.vanderberg@gmail.com

DOT-OST-2021-0030	Lena Sherman	Lenasherman0621@gmail.com
-------------------	--------------	---------------------------

I also certify that on June 15, 2021, the foregoing Notice of Enforcement Proceeding and Proposed Assessment of Civil Penalties, and the related Complaint, were served on the U.S. Department of Transportation Office of Hearings by electronic mail, read-receipt requested, as follows:

U.S. Department of Transportation
Office of Hearings, M-20
M20.HrgDocs@dot.gov

Blane A. Workie
Assistant General Counsel for
Aviation Consumer Protection

By:

Robert M. Gorman
Senior Trial Attorney
Office of Aviation Consumer Protection
(202) 366-9350
robert.gorman@dot.gov

U.S. Department of Transportation
Office of the General Counsel
1200 New Jersey Avenue SE
Washington, DC 20590