



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

**Issued by the Department of Transportation  
on the 24<sup>th</sup> day of February, 2017**

**Air India**

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

**Docket OST 2017-0001**

**Served February 24, 2017**

**CONSENT ORDER**

This consent order concerns violations by Air India of 14 CFR Part 259 and 49 U.S.C. § 41712. Specifically, the carrier failed to inform passengers on a flight delayed for a period at the gate with the door open that they had the opportunity to deplane as required under Part 259. This order directs Air India to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712 and assesses the carrier \$115,000 in civil penalties.

**Applicable Law**

Pursuant to section 259.4, foreign air carriers that operate scheduled passenger service or public charter service to and from the U.S. using any aircraft with a design capacity of 30 or more passenger seats are required to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each large, medium, small, and non-hub U.S. airport at which they operate scheduled or public charter air service.

Specifically, under section 259.4(b)(6), a carrier must provide an assurance that the passengers on the delayed flight will be notified beginning 30 minutes after scheduled departure time and every 30 minutes thereafter that they have the opportunity to deplane from an aircraft that is at the gate or another disembarkation area with the door open if the opportunity to deplane exists. A carrier's failure to comply with the assurances required by Part 259 and as contained in its contingency plan for lengthy tarmac delays is considered to be an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

## Facts and Conclusions

Air India is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(21)<sup>1</sup> that operates scheduled service from Newark Liberty International Airport (EWR), a large hub airport, using at least one aircraft having a design capacity of more than 30 passenger seats. The carrier has a tarmac delay contingency plan that states, “[b]eginning 30 minutes after scheduled departure time and every 30 minutes thereafter, passengers will be notified that they have the opportunity to deplane from an aircraft that is at the gate or other disembarkation area with the door open, if the opportunity to deplane actually exists.”

Air India was scheduled to operate flight 144 from EWR to Chhatrapati Shivaji International Airport (BOM) serving the Mumbai Metropolitan Area on July 3, 2014. Flight 144 was originally scheduled to depart at 4:25 p.m., and all passengers had boarded the aircraft by 4:15 p.m. However, due to a mechanical problem, the aircraft remained at the gate with the aircraft door open. Although the aircraft door remained open during this time and passengers had the opportunity to deplane, none of the carrier’s personnel, including the flight crew, announced to passengers that they had that opportunity, as the captain of the flight believed the mechanical problem would be rectified within a short time period. The aircraft doors were eventually closed at 7:10 p.m., and the aircraft pushed back at 7:15 p.m.

Section 259.4(b)(2) requires carriers to provide passengers on international flights the opportunity to deplane before the flight has been on the tarmac at a U.S. airport for more than four hours. Section 259.4(b)(6) requires that carriers announce that passengers have the opportunity to deplane from an aircraft when the flight is delayed and the aircraft is at a gate or another disembarkation area with the door open if the opportunity to deplane actually exists. A tarmac delay begins when passengers no longer have the option to get off an aircraft, which usually occurs when the doors of the aircraft are closed. Section 259.4(b)(6) was promulgated to address the issue of when a tarmac delay has not yet begun, or the clock has stopped, because the doors are open at a gate or another disembarkation area, and yet passengers remain unaware that they have the option to deplane. Carriers are not required to provide passengers the opportunity to deplane in less than four hours, but if that opportunity does exist, the rule requires that the carrier simply inform passengers of the option to deplane. The Department has encouraged carriers to also remind passengers that they are deplaning at their own risk and that the flight could depart at any time without them if that is in fact the case.

In sum, section 259.4(b)(6) is in place to address the precise incident that occurred on flight 144. Beginning thirty minutes after the scheduled departure time and every thirty minutes thereafter until the doors closed, Air India was required to notify passengers that they could deplane the aircraft if they wished to do so. Air India’s failure to provide proper notification to passengers of the opportunity to deplane during the delay is a violation of both 14 CFR 259.4(b)(6) and 49 U.S.C. § 41712.

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<sup>1</sup> 49 U.S.C. § 40102(a)(21) defines a foreign air carrier as “a person, not a citizen of the United States, undertaking by any means, directly or indirectly, to provide foreign air transportation.”

## Response

In response, Air India emphasizes its commitment to full compliance with the Department's consumer protection rules, including the Part 259 tarmac delay regulations. According to Air India, the delay of flight 144 was caused by a mechanical issue, which the Captain initially believed would be quickly fixed. Throughout the delay the door remained open and any passenger who wished, was able to deplane. Air India states that, as the mechanical problem was being fixed, the Captain continually advised passengers of the problem and the progress of the repairs. Air India further states that the situation became what is commonly referred to as a "creeping delay." Air India adds that, following the first hour of the delay, the cabin crew served passengers with refreshments, and attempted to minimize the inconvenience.

According to Air India, during the delay it was decided that the mechanical issue could not be repaired, and a revised non-ETOPS flight plan and related clearance would be needed – further delaying take off. While the mechanical issues were resolved, Air India states that the deteriorating weather conditions forced the cancellation of the flight. Once the flight was cancelled, Air India provided hotel accommodations and meals for those passengers who did not return to their homes.

Air India concludes that, under the circumstances presented by the mechanical and safety issues coupled with deteriorating weather, the Captain acted in the best interests of his passengers in an effort to ensure the flight would operate.

## Decision

The Enforcement Office views seriously Air India's violations of 14 CFR Part 259 and 49 U.S.C. § 41712. Accordingly, after carefully considering all the facts in this case, including those set forth above, the Enforcement Office believes that enforcement action is warranted. In order to avoid litigation, and without admitting or denying the violations described above, Air India consents to the issuance of this order to cease and desist from future violations of 14 CFR Part 259 and 49 U.S.C. § 41712 and to the assessment of \$115,000 in compromise of potential civil penalties otherwise due and payable pursuant to 49 U.S.C. § 46301. The compromise assessment is appropriate considering the nature and extent of the violations described herein and serves the public interest. It establishes a strong deterrent against future similar unlawful practices by Air India and other carriers.

This order is issued under the authority contained in 49 CFR Part 1.

### **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 Air India violated 14 CFR 259.4(b) by failing to properly notify passengers that they had the opportunity to deplane an aircraft while it was at the gate for a period with the door open as required by 14 CFR 259.4(b)(6);

3. We find that by engaging in the conduct described in ordering paragraph 2 above, Air India engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Air India and its successors and assigns to cease and desist from further violations of 14 CFR 259.4(b) and 49 U.S.C. § 41712;
5. We assess Air India \$115,000 in compromise of civil penalties that might otherwise be assessed for the violations described above. Of this total amount, \$57,500 shall be due and payable within 30 days of the service date of this order. The remaining \$57,500 shall become due and payable if, within one year of the service date of this order, Air India violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and Air India may be subject to additional enforcement action for failure to comply with this order;
6. We order Air India to pay within 30 days of the issuance of this order the penalty assessed in Ordering Paragraph 5, above, through Pay.gov to the account of the U.S. Treasury. Payment shall be made in accordance with the instructions contained in the Attachment to this order. Failure to pay the penalty as ordered shall subject Air India to the assessment of interest, penalty, and collection charges under the Debt Collection Act and to further enforcement action for failing 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:**

**BLANE WORKIE**  
**Assistant General Counsel for**  
**Aviation Enforcement and Proceedings**

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