



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

Issued by the Department of Transportation  
on the 26<sup>th</sup> day of March, 2018

**All Nippon Airways Co., Ltd.**

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

**Docket OST-2018-0001**

**Served March 26, 2018**

**CONSENT ORDER**

This consent order concerns violations by All Nippon Airways Co., Ltd., (ANA) of 14 CFR Part 259 and 49 U.S.C. § 41712. Specifically, ANA failed to adhere to the assurance in its contingency plan for lengthy tarmac delays to deplane passengers on international flights by the four-hour mark. This order directs ANA to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and assesses the carrier \$90,000 in civil penalties.

**Applicable Law**

Pursuant to section 259.4 of the Department's rules (14 CFR 259.4), covered carriers, which include any foreign air carrier conducting scheduled passenger service or public charter service with at least one aircraft having a designed seating capacity of 30 or more seats, are required to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each large hub, medium hub, small hub, and non-hub airport. Section 259.4(b)(2) requires that for international flights operated by a covered carrier that depart from or arrive at a U.S. airport, the carrier will not permit an aircraft to remain on the tarmac at a U.S. airport for more than four hours before allowing passengers to deplane, unless the pilot-in-command determines there is a safety-related or security-related reason why the aircraft cannot leave its position on the tarmac to deplane passengers, or unless air traffic control advises the pilot-in-command that returning to the gate or another disembarkation point elsewhere in order to deplane passengers would significantly

disrupt airport operations. A covered carrier's failure to comply with the assurances required by section 259.4 and as contained in the carrier's contingency plan for lengthy tarmac delays constitutes a prohibited unfair and deceptive practice within the meaning of 49 U.S.C. § 41712.

### **Facts and Conclusions**

ANA is a foreign air carrier<sup>1</sup> that operates scheduled service at Washington Dulles International Airport (IAD), a large hub airport, and that uses at least one aircraft having a design capacity of more than 30 passenger seats. ANA has adopted a contingency plan for lengthy tarmac delays covering its operations at all U.S. airports, including diversion airports.

An investigation by the Office of Aviation Enforcement and Proceedings (Enforcement Office) revealed that on February 9, 2017, ANA Flight NH110, from Haneda International Airport (HND) to John F. Kennedy International Airport (JFK), experienced a tarmac delay of four hours and 20 minutes after diverting to IAD due to adverse weather conditions at JFK. Flight NH110 landed at IAD at 10:56 a.m., and blocked into at a gate at IAD at 11:04 a.m.

Soon after landing, Flight NH110 proceeded to a gate at IAD and the doors of the aircraft were opened. Before arrival at IAD, ANA's station manager contacted Customs and Border Protection (CBP) to inquire about deplaning passengers onboard Flight NH110 while refueling the aircraft. At that time, CBP offered ANA the opportunity to deplane its passengers, but informed ANA that if ANA wished to deplane passengers at IAD, all passengers and luggage would have to be deplaned and clear Federal Inspection Services (FIS). ANA decided not to deplane all passengers and luggage on board Flight NH110 when it arrived at the gate because doing so would have caused the flight to be cancelled as deplaning its crew would have triggered a mandatory rest period. ANA was also reluctant to deplane passengers as it received information that conditions at JFK would improve and Flight NH110 would be able to take off for JFK within four hours.

While Flight NH110 was at the gate, ANA asked CBP about alternative deplaning options that would not require passengers and baggage to clear FIS, including the use of IAD's temporary mobile lounge dock ("TMLD") or a jet bridge. CBP later explained to the Department that if it offers a carrier the opportunity to deplane and clear passengers through FIS, it typically would not grant a carrier's request to allow passengers to forgo the FIS clearance process and merely offload passengers into the TMLD or a jet bridge, nor would it create a sterile area for non-cleared passengers, as these alternatives require CBP to reposition its manpower away from its FIS clearing activities to monitor and contain non-cleared passengers. Thus, because CBP offered ANA the opportunity to deplane and clear passengers through FIS, CBP denied ANA the use of the TMLD and the jet bridge to deplane passengers. Doing so would have required CBP to divert significant resources from its ongoing clearance work possibly delaying the clearance of passengers from other flights. CBP did station an officer on the jet bridge while Flight NH110 was at the gate.

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<sup>1</sup> 49 U.S.C. § 40102(a)(2) 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."

After refueling, Flight NH110 pushed back from the gate and waited on the tarmac for clearance to take off, but Flight NH110 was unable to depart because of a ground stop that was issued at JFK. At 2:25 p.m., three hours and twenty-nine minutes into the delay, ANA decided to return Flight NH110 to a gate at IAD to deplane passengers, and requested a disembarkation location, but there were no available gates as gate space was limited given the number of diversions that arrived at IAD on this date. At 2:52 p.m., the Metropolitan Washington Airports Authority (MWAA), the entity in charge of IAD ramp and other facilities, gave Flight NH110 clearance to taxi to a deicing pad to disembark passengers. Flight NH110 blocked in at the deicing pad at 3:03 p.m. and began deplaning passengers at 3:16 p.m., four hours and 20-minutes into the tarmac delay. ANA's conduct violated 14 CFR 259.4(b)(2) and 49 U.S.C. § 41712 in this instance.

### **Response**

In response, ANA states that it is committed to adhering to DOT regulatory requirements and making decisions in the best interests of its passengers and its crew. ANA believes enforcement action is not warranted given the totality of the circumstances, but is willing to settle this matter in the interest of settlement and compromise.

ANA states that although NH110 was offered the opportunity to fully deplane all passengers and luggage at IAD, doing so approximately ten minutes into the delay would not have been in the best interest of the passengers onboard the flight, all but five of whom had a final destination of JFK. ANA states that deplaning all passengers and luggage at IAD would have required the immediate cancellation of the flight at IAD and meant that the JFK-bound passengers would be stranded at IAD for an indefinite amount of time and passengers at JFK awaiting their return flight to Tokyo would have been stranded for an indefinite period of time. ANA states that temporarily deplaning passengers into a sterile area at IAD would not have caused the cancellation of the flight, as crew rest requirements would not have been triggered.

ANA further states that its decision to not deplane passengers at IAD at the 10-minute mark was based on operational data from JFK as it had effective ATC clearance to JFK. ANA also states that its personnel worked tirelessly to explore alternative deplaning options with both CBP and MWAA so that the passengers could deplane at IAD without clearing FIS and continue to JFK. ANA states that MWAA's Irregular Operations Plan calls for the use of the TMLD during irregular operations and its reliance on that plan and MWAA's IAD tarmac delay plan was reasonable. ANA believes that CBP's refusal to allow deplaning onto a jet bridge or the TMLD was a significant contributing factor to the delay, and should have been taken into account by DOT in determining whether to pursue enforcement action. ANA states that its decision to return to the gate at the 3 hour and 29-minute mark was realistic given the conditions on the ground and the location of Flight NH110 relative to the disembarkation location assigned to it by MWAA. ANA also believes that the unexpected communication issues between MWAA departments which led to a nearly 20-minute delay in receiving taxi clearance was a significant contributing factor to the delay, and should have been taken into account by DOT in determining whether to pursue enforcement action.

ANA believes that the imposition of a penalty in this case is not warranted. ANA states that it worked diligently to enable passengers to continue to their final destination and expended significant resources both to accommodate passengers disrupted by the diversion of Flight NH110, both at IAD and JFK, and to compensate passengers for the inconvenience caused by the need to deplane at IAD.

### **Decision**

The Office of Aviation Enforcement and Proceedings views seriously ANA'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. By this order, the Department finds that ANA failed to adhere to the assurances in its contingency plan for lengthy tarmac delays regarding the timely deplaning of passengers. In order to avoid litigation, ANA has agreed to settle this matter with the Enforcement Office and enter into this consent order directing the carrier to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and assessing \$90,000 in compromise of potential civil penalties otherwise due and payable. 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 to future similar unlawful practices by ANA 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 All Nippon Airways Co., Ltd., violated 14 CFR 259.4(b)(2) by failing to adhere to the assurance in its contingency plan for lengthy tarmac delays regarding timely deplaning of passengers;
3. We find that by engaging in the conduct described in ordering paragraph 2, above, All Nippon Airways Co., Ltd., engaged in an unfair and deceptive practice and an unfair method of competition in violation of 49 U.S.C. § 41712;
4. We order All Nippon Airways Co., Ltd., and its successors and assigns to cease and desist from further violations of 14 CFR Part 259 and 49 U.S.C. § 41712;
5. We assess All Nippon Airways Co., Ltd., \$90,000 in civil penalties in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2 and 3 above. Of this total amount, \$45,000 shall be due and payable within 30 days of the service date of this order. The remaining \$45,000 shall become due and

payable if, within one year of the service date of this order, All Nippon Airways Co., Ltd., violates this order's cease and desist or payment provisions, in which case the entire unpaid amount shall become due and payable immediately and All Nippon Airways Co., Ltd., may be subject to additional enforcement action for failure to comply with this order. and

6. We order All Nippon Airways Co., Ltd., 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 All Nippon Airways Co., Ltd., 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 A. WORKIE**  
**Assistant General Counsel for**  
**Aviation Enforcement and Proceedings**

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