



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

Issued by the Department of Transportation
on the 12th day of September 2019

Japan Airlines

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

Docket OST-2019-0001

Served September 12, 2019

CONSENT ORDER

This consent order concerns violations by Japan Airlines (JAL) of 14 CFR Part 259 and 49 U.S.C. § 41712. Specifically, JAL failed to adhere to the assurance in its contingency plan for lengthy tarmac delays regarding the timely deplaning of passengers on two flights. This order directs JAL to cease and desist from future similar violations of 14 CFR Part 259 and 49 U.S.C. § 41712, and assesses the carrier \$300,000 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 an unfair and deceptive practice within the meaning of 49 U.S.C. § 41712. Pursuant to 49 U.S.C. § 46301, violations of 14 CFR Part 259 or 49 U.S.C. §§ 41712 and 42301 subject a carrier to civil penalties of up to \$33,333¹ per violation. Because the purpose of section 259.4 is to protect individual passengers on international flights from being forced to remain on an aircraft for more than four hours without the opportunity to deplane, the Enforcement Office takes the position that a separate violation occurs for each passenger who is forced to remain on board an aircraft for longer than the set amount of time without the opportunity to deplane.

Facts and Conclusions

JAL is a foreign air carrier as defined by 49 U.S.C. § 40102(a)(2)² that operates scheduled passenger service at Chicago O'Hare International Airport (ORD), a large hub airport, and uses at least one aircraft having a design capacity of more than 30 passenger seats. JAL has adopted a contingency plan for lengthy tarmac delays covering its operations at all U.S. airports, including diversion airports.

On January 4, 2018, Winter Storm Grayson, a powerful Nor'easter, arrived in the New York Metropolitan area and severely disrupted air transportation operations at John F. Kennedy International Airport (JFK). The storm caused below-freezing temperatures, strong winds (approximately 45 knots), low visibility and approximately 8.5 inches of snow.

On the morning of January 4th, the Port Authority of New York and New Jersey (Port Authority) announced that it would close JFK for a few hours, and then ultimately decided to close the airport for the remainder of the day. JFK remained closed for approximately 19 hours starting the morning of January 4th until the morning of January 5th. Although the airport reopened on Friday, January 5th, operations at JFK were disrupted through Sunday, January 7th.

JAL flight JL004, which departed Tokyo-Narita International Airport (NRT) bound for JFK, experienced a tarmac delay of 4 hours and 31 minutes when it diverted to ORD on January 4, 2018. When flight JL004 arrived at ORD, there was congestion on the airfield as a result of multiple

¹ Under an amendment to 14 CFR 383.2 (see 83 FR 60743, November 27, 2018) and pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74; 117 Stat. 584, November 2, 2015), the maximum monetary civil penalty amount that may be assessed for violations covered by 49 U.S.C. 46301(a)(1)(A) or (B) increased from \$27,500 to \$33,333 for a person other than a small business or an individual and from \$11,000 to \$13,333 for a small business or an individual. The adjusted maximum civil penalty amount is effective and applies to all civil penalties assessed on or after November 27, 2018, for violations occurring before or after the effective date.

² 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.

flights that had diverted to the airport. JFK had temporarily closed when flight JL004 arrived at ORD, but JAL did not know until 57 minutes into the delay that JFK would be closing until the next morning.

JAL contacted ORD after being on the tarmac for approximately 1 hour, and the airport informed JAL that it had buses and stairs ready to assist JAL with deplaning. JAL cancelled JL004 after 1 hour 39 minutes into the delay and decided to remain in Chicago for the night. Approximately 3 hours and 45 minutes into the delay, ORD had buses and stairs at the aircraft ready to assist JAL with deplaning. JAL's service staff, who were needed to disembark passengers, did not arrive at the aircraft until 4 hours 22 minutes into the delay. Passengers were ultimately deplaned 4 hours and 31 minutes into the delay. JAL violated 14 CFR 259.4 and 49 U.S.C. § 41712 when it failed to provide passengers on flight JL004 an opportunity to deplane by the required four-hour mark.

In addition to the tarmac delay that occurred at ORD on January 4, 2018, this order also covers a tarmac delay experienced by JAL Flight JL004 on May 15, 2018, at Washington Dulles International Airport (IAD). Flight 004 departed from NRT bound for JFK on May 15, 2018, but was unable to land at JFK due to severe thunderstorm activity in the New York metro area. As a result, Flight 004 diverted to IAD to refuel in anticipation of heading to JFK when the weather improved. Fueling commenced approximately 3 hours and 24 minutes into the delay, but 4 hours and 4 minutes into the delay, while Flight 004 was still in the process of receiving fuel, the crew onboard Flight JL004 timed out. Flight JL004 requested deplaning assistance and passengers were provided the opportunity to deplane the aircraft onto a mobile lounge 4 hours and 59 minutes into the delay. In this instance, JAL violated 14 CFR 259.4 and 49 U.S.C. § 41712 when it failed to provide passengers on Flight JL004 an opportunity to deplane by the required four-hour mark.

Response

In response, JAL states that it takes seriously its obligation to abide by the Department's tarmac delay rule and that it is committed to ensuring the safety, security, and comfort of its passengers. JAL further states that it fully cooperated with Department's investigation of these two storm-related diversion events.

Regarding the January 2018 ORD diversion, JAL explains that due to extreme winter weather conditions at its destination airport of JFK, JAL made the decision to deplane passengers and remain in Chicago overnight after only 1 hour and 39 minutes on the ground at ORD, in ample time for the tarmac delay time limitations. JAL states that it was parked at a remote spot, no gates were available, and airport facilities were overburdened and overly congested due to numerous diverted flights (approximately 29). JAL states that the area just outside customs and immigration was jammed with people, and adding more could have created an unsafe situation.

JAL states that it complied with the Department's other tarmac delay requirements during the delay by ensuring that food and beverages were served, timely announcements were made, and passengers were kept comfortable onboard the aircraft. JAL states that its passenger service staff attempted to deplane passengers before the four-hour mark, but due to extreme congestion on the tarmac, their arrival to the aircraft was unusually and significantly delayed. JAL states that its passenger service staff was needed to safely deplane passengers, who ranged in age from infants

to elderly passengers, most of whom were traveling with carry-on baggage. JAL explains that the truck stairs and tarmac were slick with ice, the temperatures were dangerously frigid and its staff was able to communicate in Japanese with the Japanese-speaking passengers on the flight. JAL states that all passengers were safely deplaned, it was able to secure and pay for hotel rooms for all passengers who stayed in Chicago overnight, and it reimbursed passengers for meal costs. JAL states that it received no passenger complaints regarding this diversion incident.

With respect to the May 2018 IAD diversion, JAL explains that resources at IAD were overburdened due to a large influx of storm-related diversions. JAL states that it strove to get the passengers to the flight's destination airport of JFK, and to avoid inconveniencing them with an overnight stay in Virginia and alternative travel arrangements to their final destinations. JAL explains that it experienced difficulties in procuring the appropriate refueling tanker, which prolonged the tarmac delay. JAL further explains that, throughout the delay, its crew focused on ensuring the comfort of the passengers and complying with tarmac delay requirements, including providing timely food, beverages, and announcements. JAL states that it dispatched staff from JFK to directly coordinate passenger accommodations at IAD, provided chartered bus service for passengers, reimbursed passengers for lodging and alternate transportation expenses, and provided all passengers with compensation for the service disruption. JAL received no passenger complaints regarding this event.

JAL states that since these events, it has taken additional steps to reinforce the requirements of the tarmac delay rule and ensure future compliance with those requirements. JAL states that it has developed an operations control bulletin that identifies the core components of the pertinent tarmac delay requirements and emphasizes that a decision to deplane should be made well before the four-hour limit to account for circumstances outside of JAL's control, such as unavailability of airport resources in a mass diversion situation. JAL also states that it recently conducted tarmac delay refresher training to ensure that its staff continues to be familiar with the tarmac delay requirements and applicable procedures.

Finally, JAL states that it respectfully disagrees with the Enforcement Office's determination that civil penalties for excessive tarmac delays may be assessed on a per-passenger basis. JAL believes that the applicable statute provides for penalties to be assessed on a per flight-basis. Nevertheless, JAL has agreed to this settlement in the interest of avoiding litigation.

Decision

The Enforcement Office views seriously JAL'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 JAL failed to adhere to the assurance in its contingency plan for lengthy tarmac delays regarding timely deplaning of passengers.

In order to avoid litigation, JAL 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 \$300,000 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 JAL 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 Japan Airlines violated 14 CFR 259.4(b)(2) by failing adhere to the assurance in its contingency plan for lengthy tarmac delays that, for an international flight, it will not permit an aircraft to remain on the tarmac for more than four hours before allowing passengers an opportunity to deplane;
3. We find that by engaging in the conduct described in ordering paragraph 2 above, Japan Airlines engaged in unfair and deceptive practices and unfair methods of competition in violation of 49 U.S.C. § 41712;
4. We order Japan Airlines 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 Japan Airlines \$300,000 in compromise of civil penalties that might otherwise be assessed for the violations found in ordering paragraphs 2, 3, and 4 above. Of that amount,
 - a. \$120,000 shall be due and payable within 30 days of the date of issuance of this order,
 - b. \$60,000 shall be credited to Japan Airlines for cash compensation and travel vouchers³ provided to passengers onboard Flights 004 on January 4, 2018, and May 15, 2018, and
 - c. The remaining amount, \$120,000, will become due and payable if, within one year of the date of issuance of this order, Japan Airlines violates the order's cease and desist provisions or fails to comply with the order's payment provision, in which case Japan Airlines may be subject to additional enforcement action for violation of this order;
6. Japan Airlines shall provide the Department with supporting documentation containing a description of the expenditures associated with the offsets listed in subparagraph 5(b) above, and the accompanying accounting verifying the offsets. The documentation must be accompanied by a sworn statement by a senior carrier official attesting that the

³ The travel voucher credits are based on less than 80% of voucher value and two cents per frequent flyer mile provided to passengers onboard Flights 004 on both January 4, 2018, and May 15, 2018.

description, documentation, and accounting are true and complete to the best of that official's knowledge and that official has made a reasonable inquiry to establish the accuracy of the statement;

7. To the extent that Japan Airlines fails to provide adequate documentation and accounting verifying the appropriate expenditures of the \$60,000 offset listed in subparagraphs 5(b), above, the amount shall become due and payable within thirty (30) days of the due date, i.e., no later than October 14, 2019; and
8. We order Japan Airlines 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 Japan Airlines 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:

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