

**BEFORE THE  
DEPARTMENT OF TRANSPORTATION  
WASHINGTON, DC**

_____ )	
Motion of )	
)	
AIRLINES for AMERICA (A4A) )	
REGIONAL AIRLINES ASSOCIATION (RAA) )	Docket DOT-OST-2013-_____
)	
for a temporary exemption from )	
14 C.F.R. § 259.4 )	
_____ )	

**MOTION OF AIRLINES FOR AMERICA (A4A)  
AND REGIONAL AIRLINES ASSOCIATION  
FOR A TEMPORARY EXEMPTION FROM 14 C.F.R. § 259.4**

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DATED: April 19, 2013

**NOTICE: Answers to this motion are due on or before April 26, 2013.  
Copies of such answers should be served upon the undersigned.**

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Airlines for America (“A4A”) and Regional Airline Association (“RAA”), pursuant to 14 C.F.R. § 302.11 and 49 U.S.C. § 40109(c), hereby requests that the Department grant a temporary exemption from its tarmac-delay regulations under 14 C.F.R. § 259.4 for a period of at least 90 days or until the Federal Aviation Administration (“FAA”) sequestration furloughs end, whichever is longer, due to the substantial delay and disruption to air travel that will occur at U.S. airports from the FAA decision to implement daily ground delays and reduce air traffic control personnel as part of its sequestration implementation plan adopted in response to the Budget Control Act of 2011. Granting this exemption is in the public interest as it will provide airlines with some operational flexibility to help address delays and disruptions caused by the FAA’s sequestration plan.

In support of its motion for a temporary exemption from the tarmac-delay regulations, A4A states the following:

1. Just this week, the FAA informed A4A and RAA and its member airlines that, as part of its sequestration implementation plan, effective April 21, 2013, the FAA will implement daily ground delays at seven major U.S. airports that will result in the delay of approximately 3,800 flights daily. These seven airports are among the busiest in the United States, and include Newark Liberty International Airport, John F. Kennedy International Airport, La Guardia Airport, Fort Lauderdale/Hollywood International Airport, Chicago O'Hare International Airport, San Diego International Airport, and Los Angeles International Airport. The FAA has also determined that an additional six major U.S. airports will require daily traffic management initiatives resulting in approximately 2,900 additional daily flights being delayed. These six airports also are among the busiest in the United States, and include Philadelphia International Airport, Charlotte/Douglas International Airport, Hartsfield-Jackson Atlanta International Airport, Miami International Airport, Chicago Midway International Airport, and San Francisco International Airport. Most of these 13 airports are major hubs for U.S. airlines, and the projected flight delays threaten to wreak havoc on the carriers' networks, impacting hundreds of cities across the United States from which traffic is routed through these hub airports by delaying other flights and forcing passengers to miss connections. Combined, these 13 airports are expected to experience delays to approximately 6,700 daily flights, even assuming good weather, no additional FAA staffing issues, or any other issues that could affect daily operations. The potential amount of daily flight delays projected by the FAA is alarming, especially considering that, in all of 2012, the most flight delays experienced on a single day in the United States was less than half this

amount (2,994 flights). These flight delays will continue at least until the end of the current fiscal year (September 30, 2013).

2. A4A, RAA and their members were notified on Tuesday, April 16, 2013 of the FAA's plans to impose these drastic delays have had no time or opportunity to identify and plan for all of the system-wide impacts of these delays. The projected flight delays are expected to impact airlines and their passengers just as the heavy peak summer traffic season begins. Flights have already been sold months in advance, planes will be full, and delays and flight cancellations will result in turmoil for the traveling public. Airlines' existing flight schedules were devised and implemented in good faith based on the airlines' (and the traveling public's) reasonable expectation that the FAA would be able to accommodate certain flight volumes at the affected airports. The FAA's delay plan, however, may make it impossible for airlines to operate these set flight schedules that passengers are relying upon without substantial delays and last-minute cancellations.

3. The Department's tarmac-delay regulations under 14 C.F.R. § 259.4 prohibit an air carrier from allowing aircraft to remain on the tarmac for more than three hours in the case of domestic flights, and for more than four hours in the case of international flights, before allowing passengers to deplane, except in certain limited situations where safety or security prevent the aircraft from leaving its position on the tarmac or when air traffic control advises that returning to the gate or other disembarkation point would "significantly disrupt airport operations."

4. Concerns about compliance with DOT's tarmac-delay regulations threaten to make this critical situation caused by the FAA's flight-delay plan even

worse. In order to avoid violating DOT's tarmac-delay rules and being subjected to substantial civil penalties, airlines may be forced to cancel flights and significantly disrupt the travel plans of their passengers. During this period of FAA-imposed daily ground delays, airlines will be forced to operate in unprecedented and highly unpredictable circumstances where the only certainty seems to be that there will be substantial delays even if no one can predict how extensive those delays may be at a particular airport on a particular day or for a particular flight. In these circumstances, airlines may feel compelled to return aircraft to the gate in order to avoid violating Part 259, thereby further complicating an already bad traffic situation at these impacted airports. This in turn could create excessive ground congestion as the demand for access to gates exceeds the supply, and airlines and airport operators struggle to ensure an adequate supply of jet stairs and passenger holding areas within airport terminals.

5. In order to avoid exacerbating the scale and effect of projected flight delays and resulting flight cancellations on airline operations and to avoid even worse disruption to passenger travel plans due to flight delays and cancellations, A4A and RAA requests that the Department grant a temporary exemption from § 259.4 of the tarmac-delay regulations for a period of at least 90 days or until the Federal Aviation Administration ("FAA") sequestration furloughs end, whichever is longer. Such a temporary exemption will provide airlines with the operating flexibility necessary to focus on responding to the FAA's projected delays in ways that minimize disruptions for the traveling public.

6. To be clear, A4A and RAA are not proposing that DOT suspend the effectiveness of the tarmac regulations in general. On the contrary, our requested exemption is narrowly tailored and would only apply for a temporary period at all U.S. airports. The exemption request includes *only* the rules prohibiting air carriers from allowing aircraft to remain on the tarmac for more than three hours in the case of domestic flights, and for more than four hours in the case of international flights, before allowing passengers to deplane, and is intended to provide airlines with the operating flexibility to respond to the expected flight delays resulting from the FAA's delay plans. An exemption from § 259.4 will assist the airlines in reducing the number of potential flight cancellations that could result from the FAA's plans and alleviate the expected disruption to operations on the ground caused by the large number of aircraft that would be forced to return to the gate to avoid violating Part 259.

7. Strict application and enforcement of the tarmac-delay regulations in § 259.4 would be particularly inappropriate and harmful in the context of the FAA's impending flight-delay program because the types of delays that the FAA's program is likely to create are fundamentally different from the types of incidents that prompted DOT to implement the tarmac-delay regulations. DOT, in adopting the tarmac-delay regulations, took the position that the airlines have a responsibility to be prepared to manage service and operational disruptions caused by *ad hoc*, extraordinary, relatively rare but predictable events such as large snowstorms. Accordingly, DOT issued final regulations, but afforded the airlines 120 days in

which to prepare to comply with the regulations' detailed requirements.<sup>1/</sup> By contrast, the full effects and implications of the FAA's abrupt and all-but-immediate implementation of severe restrictions on flight operations at many of the busiest U.S. airports during this summer travel season are extremely difficult to predict. Airlines have been afforded no opportunity for advance planning for the widespread effects of FAA's flight-delay plan: they have no way of knowing in advance how severe the delays may be at a particular airport on a particular day, so there is no way to plan accordingly and to do so at such short notice when the airlines are already committed to operating a schedule of flights for which consumers have purchased tickets. Airlines will need to make (potentially system-wide) schedule adjustments, but that process will take time, particularly when the schedules at issue involve flights that the airlines have already sold to the public. Airlines also will need time to develop experience about how to manage these FAA-imposed ground stops in ways that limit the impact on operations and minimize tarmac delays. As noted above, the airlines have no experience with a program such as the FAA's flight-delay plan, which will impose severe delays on thousands of flights at key airports on a daily basis. From a tarmac-delay planning perspective, this poses completely different and as yet largely unknown challenges from those posed by the relatively rare and localized types of largely weather-related events that prompted adoption of the tarmac-delay regulations. Unquestionably, however, the effects of the FAA's flight-delay plan will be felt at many more airports and with

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<sup>1/</sup> Enhancing Airline Passenger Protections, 74 Fed. Reg. 68983, 68999 (Dec. 30, 2009), 76 Fed. Reg. 23110, 23156-57 (Apr. 25, 2011).

respect to many more flights than is typically the case with the sort of weather-related incident with which tarmac delays (until now) were generally associated.

These uncertainties – and the airlines' need for time to develop plans to manage the effect of the FAA's flight program – underscore the need for a temporary exemption from the strictures of the tarmac-delay regulations in § 259.4.

8. In these circumstances, strict application and enforcement of the tarmac delay regulations in § 259.4 would serve no purpose other than to punish the airlines for the effects of extraordinary and unpredictable delays that are wholly attributable to the FAA, not the airlines. Moreover, as noted above, strict application of the tarmac-delay rules could make a bad situation worse for passengers because airlines, rather than focusing on minimizing delays and disruptions due to the FAA's flight-delay program, would be forced to prioritize compliance with the tarmac-delay rule requiring the return of an aircraft to the terminal when a flight is at risk of exceeding the 3- or 4-hour tarmac-delay deadline. Given the unpredictability of the effects of the FAA's flight-delay plan, it would be far better to allow the airlines some discretion to respond to the consequences of the FAA's action by making operational decisions at a given airport on a given day in ways that they believe will best serve their customers rather than tethering the airlines to strict compliance with the tarmac-delay regulations. In short, the tarmac-delay regulations were not intended to address the type of widespread, unpredictable, government-imposed delays that are likely to be the result of the FAA's flight-delay plan; therefore, DOT should exercise its authority to provide airlines some temporary relief from these



regulations while the airlines work through an extraordinarily difficult set of circumstances that are not of their making.

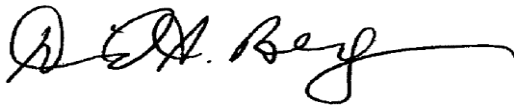
9. The requested exemption would clearly serve the public interest. The FAA has not provided detailed information about the specific impacts of its delay plan at each of the affected airports. Instead, the FAA has only advised the airlines that substantial delays are inevitable at affected airports. It is in the common interest of the airlines, the traveling public, the FAA and DOT that airline operations continue at the affected airports in as orderly a manner as possible. In light of the unprecedented circumstances created by the FAA's delay plan – which after all is a government-created problem that is beyond the airlines' control – the Department should grant the requested temporary exemption.

10. A4A and RAA's members take seriously their responsibility to their customers and intend to do everything in their power to minimize the adverse effects of the FAA's flight-delay plan on those customers. Although the airlines are not responsible for creating this problem, the airlines and their employees will do their best to manage the service delays and disruptions that the FAA's actions will cause. We are seeking this temporary exemption because it (and its members) strongly believe that strict application of the tarmac delay regulations in § 259.4 will exacerbate delays and cause greater inconvenience for passengers.

WHEREFORE, for the reasons set forth above, A4A and RAA respectfully request that the Department grant a temporary exemption from the requirements of 14 C.F.R. § 259.4 for a period of at least 90 days or until the Federal Aviation Administration ("FAA") sequestration furloughs end, whichever is longer, to provide

the airlines the flexibility to address the unprecedented flight delays resulting from the FAA's implementation of daily ground delays at some of the nation's largest airports.

Respectfully submitted,



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