BEFORE THE UNITED STATES DEPARTMENT OF TRANSPORTATION
WASHINGTON, DC

RESPONSE OF FLYERSRIGHTS.ORG TO THE MOTION OF AIRLINES FOR AMERICA AND REGIONAL AIRLINES ASSOCIATION ("AIRLINES") FOR A TEMPORARY EXEMPTION FROM 14 C.F.R. 259.4 (AKA LENGTHY TARMAC DELAY OR "3 HOUR RULE")

Docket DOT-OST-2013-0084

Dated: April 25, 2013

FlyersRights.org, the largest nonprofit airline passenger organization with over 25,000 members, strongly opposes the subject motion by the Airlines to be exempted from the 3 hour rule and urges the DOT to deny the Airlines’ April 19th, 2013 request in its entirety and to instead undertake alternative measures proposed herein.

This proposed exemption is unnecessary, irresponsible and clearly not in the public interest. If granted it would only aggravate flight delays, impose incredible hardships on passengers who could be confined on the tarmac in aircraft for 3 to 12 hours without adequate water, food, or toilet facilities as occurred prior to the 3 hour rule to 150,000 to 250,000 passengers per year as well as damage the international reputation of the US airline industry, the DOT, and the United States Government.
I. The projected delays from sequestration furloughs, the sole justification for the requested exemption, are highly speculative and unknown at this time.

So far since the ATC cut backs began on April 21st, flight delays been far less than projected even at hub airports. See testimony of Michael Huerta to the Congress on April 24, 2013, related news reports, Flightstats.com and www.fly.faa.gov. But even if the delays are as serious as predicted, the Airlines do not explain how giving them the power to hold passengers captive on the tarmac in deplorable conditions, depriving them of their freedom, and preventing them from obtaining alternative transportation or abandoning their trips will help the situation, rather than aggravate it.

II. The Airlines and airports have had more than ample time to prepare and practice contingency plans for lengthy delays or disruptions of normal flight operations regardless of the cause, and existing exceptions in the 3 Hour Rule already provide Airlines with adequate flexibility.

Starting in at least 2001 Airlines first committed to and were then obligated to not hold passengers for lengthy time periods on the tarmac. This occurred after a 1999 mass stranding of up to 10 hours of 4,500 Northwest Airlines passengers in
Detroit in a snow storm. That incident received national public, DOT and Congressional attention resulting in a promise by Airlines to voluntarily curb such practices with contingency plans. In 2007 the DOT Inspector General testified before Congress and reported that many airlines had failed to meet their commitments not to engage in lengthy tarmac confinements. In 2008, a DOT National Task Force developed model “Contingency Plans for Lengthy Airline On-Board Ground Delays” issued 11/12/2008. And as of 2010 and 2011, all airlines were required to file and post contingency plans for lengthy tarmac delays. See 14 C.F.R. 259.4, DOT-OST-2010-0140, 76 FR 23164, Apr. 25, 2011. Airports have also been required to file and post contingency plans for lengthy tarmac delays.

Major hub airports such as JFK have also had in place contingency plans to assist airlines in deplaning passengers and providing them with extra gates, food, potable water and sanitation facilities for over six years.

After all this airline foot dragging and failure to adequately plan for disruptions, Congress specifically mandated in the FAA Modernization and Reform Act of 2012 that airlines and airports submit to the DOT Secretary for approval delay contingency plans by May 14, 2012.
However, the Airlines now claim after all this time they are still unprepared. We suggest that this revelation shows that the DOT needs to mandate that airlines actually test and practice their plans and actively train their employees to execute their plans effectively and efficiently.

Sequestration (Budget Control Act of 2011) has been the law for nearly two years, the FAA and DOT provided general notice of the cutbacks to ATC over 4 months ago and have provided progressively more specific updates.

Contingency plans by law are required to include at a minimum allowing passengers to deplane after 3 hours for domestic flights and 4 hours for international flights. Passengers must also be provided with operable lavatory facilities, medical attention, food and potable water after 2 hours. Exceptions include situations where there is a safety-related or security-related reason such as weather why passengers cannot be deplaned as determined by the pilot-in-command or where air traffic control advises the pilot that deplaning passengers would significantly disrupt airport operations.

Airlines are also required to have had their contingency plans coordinated with airport authorities, US Customs and Border Protection, and the Transportation Security Administration.
Accordingly, the Rule already provides for reasonable exceptions to cover the present situation.

III. The requested exemption would impose enormous additional costs on passengers far in excess of any added costs on airlines.

Assuming that 100,000 passengers would be subject to tarmac confinements of 5 hours between now and Sept. 30, 2013, the amount victimized by such practices for airlines commercial convenience prior to the 3 Hour Rule, and assuming that their time is valued at $80 per hour, less than the compensation of flight crew members, there would be a direct cost of at least $16 Million. The consequential cost of missing important business and personal engagements is of course enormously greater.

Airlines normally incur minimal flight crew costs when planes return to the gate or flights are canceled as these employees are paid only nominal wages unless the aircraft door is closed and the aircraft has pulled away from the gate. In general it costs an airline more in flight pay to confine passengers on the tarmac than to deplane after 3 hours.

However, passengers are generally not entitled under airline contracts of carriage and court decisions to compensation for flight delays, even from lengthy tarmac

The Airlines do not and cannot explain how an exemption from the 3 hour rule would be in the public interest or even in the airlines’ best interest.

IV. There are ample alternatives to mitigate or eliminate flight delays which could be caused by sequestration budget cuts.

These include:

1. Staffing busy hub airports with little or no cutbacks of ATC and providing for greater cutbacks at less busy airports. This would minimize the domino effect of flight delays at choke points such as New York City, Chicago, Atlanta or Dallas may have on national air traffic.
2. Reinstitute Rule 240 requiring airlines to honor tickets of another airline when it has empty seats where the other airline’s flight has been canceled or excessively delayed to the same or nearby destination.

3. Declare a moratorium on change and cancelation fees where a flight is delayed over 2 hours.

4. Consolidate multiple flights to the same destination using larger aircraft to carry the same number of passengers, reducing congestion at many hub airports.

5. Divert flights to nearby less used airports when congesting causes excessive delays and provide for ground transportation to original airport or other connections.

None of these require legislative or court action, and could be undertaken by DOT/FAA action and/or airlines voluntarily.

Accordingly, the motion for an exemption from the 3 Hour Rule should be denied and the alternatives proposed herein adopted to mitigate sequestration delays.

Respectfully submitted,

/s/ Paul S. Hudson