

Dated: March 23, 2010.

**Maura M. Pally,**

*Deputy Assistant Secretary for Professional and Cultural Exchanges, Bureau of Educational and Cultural Affairs, Department of State.*

[FR Doc. 2010-7091 Filed 3-29-10; 8:45 am]

**BILLING CODE 4710-05-P**

## DEPARTMENT OF TRANSPORTATION

### Office of the Secretary

[Docket No. DOT-OST-2007-0022]

#### Request for Comments on Carriers' Temporary Exemption Requests From DOT's Tarmac Delay Rules for JFK, EWR, LGA and PHL Operations

**AGENCY:** Office of the Secretary (OST), Department of Transportation (DOT).

**ACTION:** Notice.

**SUMMARY:** On December 30, 2009, the Department of Transportation (DOT or Department) published a final rule that requires, among other things, that U.S. carriers adopt contingency plans for lengthy tarmac delays that include an assurance that a carrier will not permit an aircraft to remain on the tarmac for more than three hours in the case of domestic flights and for more than a set number of hours as determined by a carrier in the case of international flights without providing passengers an opportunity to deplane, with certain exceptions for safety, security or Air Traffic Control-related reasons. This rule becomes effective on April 29, 2010. Several airlines have requested an exemption from these requirements for operations at John F. Kennedy International Airport (JFK), for seven months in 2010 during which runway construction is expected to be under way at that airport and the rule will otherwise be effective, one airline has asked that operations at Newark Liberty International Airport (EWR) and LaGuardia Airport (LGA) be similarly exempted for the same time period, and another has requested that Philadelphia International Airport (PHL) be included in any relief granted by the Department. The Department is seeking comment on the exemption requests to assist it in deciding whether it should grant or deny these requests. The Department will publish a document in the **Federal Register** regarding its decision on the exemption requests after it has reviewed the comments submitted.

**DATES:** Comments should be filed by April 9, 2010. Late-filed comments will be considered to the extent practicable.

**ADDRESSES:** You may file comments identified by the docket number DOT-

OST-2007-0022 by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov> and follow the online instructions for submitting comments.

- *Mail:* Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Ave., SE., West Building Ground Floor, Room W12-140, Washington, DC 20590-0001.

- *Hand Delivery or Courier:* West Building Ground Floor, Room W12-140, 1200 New Jersey Ave., SE., between 9 a.m. and 5 p.m. ET, Monday through Friday, except Federal holidays.

- *Fax:* (202) 493-2251.

*Instructions:* You must include the agency name and docket number DOT-OST-2007-0022 at the beginning of your comment. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

*Privacy Act:* Anyone is able to search the electronic form of all comments received in any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act statement in the **Federal Register** published on April 11, 2010 (65 FR 19477-78).

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to the street address listed above. Follow the online instructions for accessing the docket.

**FOR FURTHER INFORMATION CONTACT:** Livaughn Chapman or Blane A. Workie, Office of the Assistant General Counsel for Aviation Enforcement and Proceedings, U.S. Department of Transportation, 1200 New Jersey Ave., SE., Washington, DC 20590-0001; 202-366-9342 (phone), 202-366-7152 (fax), [livaughn.chapman@dot.gov](mailto:livaughn.chapman@dot.gov) or [blane.workie@dot.gov](mailto:blane.workie@dot.gov) (e-mail).

**SUPPLEMENTARY INFORMATION:** On December 30, 2009, the Department published a final rule titled "Enhancing Airline Passenger Protections" that sets forth numerous measures geared toward strengthening protections afforded to air travelers. 74 FR 68983. One of these provisions, which takes effect April 29, 2010, requires U.S. certificated and commuter air carriers that operate scheduled passenger service or public charter service using any aircraft with a design capacity of 30 or more passenger seats to adopt, implement, and adhere to contingency plans for lengthy tarmac delays at each large and medium hub U.S. airport at which they operate

scheduled and public charter air service. For domestic flights, the rule requires covered U.S. carriers to provide assurance that they will not permit an aircraft to remain on the tarmac for more than three hours, with two safety/security-related exceptions: (1) Where the pilot-in-command determines that an aircraft cannot leave its position on the tarmac to deplane passengers due to a safety-related or security-related reason (e.g., weather, a directive from an appropriate government agency); and (2) where Air Traffic Control (ATC) 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. For international flights departing from or arriving at a U.S. airport, the rule requires covered U.S. carriers to provide assurance that the carriers will not permit an aircraft to remain on the tarmac for more than a set number of hours before deplaning passengers as determined by the carriers, with the same safety, security, and ATC exceptions. 14 CFR 259.4(b)(1) and (b)(2). For all flights, carriers must provide adequate food and water no later than two hours after the aircraft leaves the gate (in the case of a departure) or touches down (in the case of an arrival) if the aircraft remains on the tarmac, unless the pilot-in-command determines that safety or security requirements preclude such service. Carriers must also ensure that lavatory facilities are operable and medical attention is provided if needed while the aircraft remains on the tarmac. Pursuant to 49 U.S.C. 46301, violations of 14 CFR Part 259 subject a carrier to civil penalties of up to \$27,500 per violation. 49 U.S.C. 46301.

Jet Blue, American, and Delta recently requested an exemption from the tarmac delay rules for their JFK operations from March 1 through December 1, 2010, the period of time during which work affecting JFK's Runway 13R/31L (also referred to as the "Bay Runway") is scheduled to take place, or until work on the runway is completed, whichever date is earlier.<sup>1</sup> On March 1, 2010, runway and airfield construction did in fact commence at JFK, and will temporarily affect operations at that airport. Runway 13R/31L, which is the longest and most frequently used of the four runways at JFK, measures 14,572 feet in length and handles approximately one-third of JFK's annual operations, including approximately half of all departures at JFK. The Port

<sup>1</sup> We note at the outset that the requested exemption would begin March 1, 2010, although the rule does not go into effect until April 29, 2010.

Authority of New York and New Jersey (Port Authority) plans to resurface this runway with concrete and widen it to accommodate new large aircraft and to help prevent ice ingestion. The Port Authority also plans to install new runway lighting, electrical infrastructure, and a new electrical feeder system to the runway.

The construction project is proposed to occur in six phases, and will render Runway 13R/31L unavailable from March 1 to June 30, 2010. The western two-thirds of the runway is planned to reopen on July 1, but its use will be limited under some weather and operating conditions, primarily because some high-speed runway turnoffs and navigational aids (NAVAIDS) will be unavailable until later in the construction period. On September 15, Runway 4L/22R will close until September 30 to resurface its intersection with Runway 13R/31L. Runway 13R/31L and its associated NAVAIDS is planned to reopen in its entirety and be fully functional in mid-November 2010.

JetBlue asserts that it is imperative for the Department to issue it an exemption from the tarmac delay rules because of the JFK runway construction to ensure that the very purpose of the rule—to enhance passenger protections—is not undermined by the application of the final rule to unforeseen and unaddressed circumstances. More specifically, JetBlue requests relief from 14 CFR §§ 259.4(b)(1) and (b)(2), which prohibit carriers from permitting an aircraft to remain on the tarmac for more than 3 hours for domestic flights and for more than a set period of time as determined by the carrier for international flights without providing passengers an opportunity to deplane. JetBlue reasons that disruptive events, such as airport construction, often have a significant, domino-like impact upon multiple flights because the interconnecting resources required for each flight—aircraft, flight deck crew and flight attendant crew—each may compound the problem. JetBlue asserts that one late flight may delay three additional flights if the resources connect differently, and two or more late flights JetBlue argues may delay several more flights. JetBlue avers that once the final rule takes effect on April 29, 2010, the potential for disruption will be further compounded because at the three-hour mark, flights must return to the gate and offer passengers the opportunity to deplane, thereby further delaying that flight (if not resulting in a cancellation). JetBlue asserts that such incidents will have a subsequent ripple effect on the following flights that

require use of the same aircraft, cockpit crew or flight attendant crew.

If the Department grants JetBlue its requested exemption, JetBlue states, it will inform passengers before boarding that significant delays may be encountered because of the Bay Runway closing, and will ensure that each of its aircraft is stocked with sufficient food and beverages to accommodate any such delay. In addition, JetBlue states that its lavatories will be available and its LiveTV service will be provided to passengers on each aircraft. JetBlue avers that it has already taken several steps to minimize the impact of this closure on its JFK operations, including voluntarily and significantly reducing planned flight operations and implementing guidelines for passenger comfort and convenience in such situations that are more stringent than current law requires.

Delta supports JetBlue's request for a temporary exemption and further requests that identical relief from the tarmac delay contingency planning provisions be extended to Delta, and to other similarly situated carriers at JFK. Delta states that it has already trimmed its JFK schedule in anticipation of the Bay Runway reconstruction, and will take all reasonable measures to minimize inconvenience to passengers. Delta states that it agrees with JetBlue's argument that rigid and inflexible application of the new tarmac delay rule would have the unintended and undesirable effect of exacerbating passenger inconvenience and disruption by forcing the cancellation of flights that could otherwise be operated. Delta avers that airline recovery and reaccommodation efforts will be further hampered by the reduced capacity of the airport. Delta states that it is willing to abide by the same terms and conditions proposed by JetBlue, including informing passengers of the likelihood of delays, and ensuring that it provides adequate food, beverage, and sanitary facilities.

American agrees with arguments by JetBlue and Delta that application of the new tarmac delay rule during the JFK runway reconstruction project could have unintended adverse impacts on passengers by causing carriers to cancel flights in lieu of incurring large civil penalties. American supports the exemption requests of both JetBlue and Delta, provided that the Department extends relief to all carriers operating at JFK, rather than limit such relief to JetBlue and Delta. American argues that any scenario under which some but not all carriers at JFK would be subject to the tarmac delay rule would be

unworkable, unfair, and confusing to consumers.

Continental argues that the problems caused by the runway closure and construction at JFK described by Delta and JetBlue in their exemption requests are not limited to JFK. Continental states that the airports in the New York Metropolitan area share the same air space and arrival and departure corridors. Consequently, Continental contends, delays or delay mitigating strategies at JFK will adversely affect air carriers and passengers at EWR and LGA as well. Therefore, Continental takes the position that to the extent the Department grants Delta and JetBlue temporary relief from the tarmac delay rules fundamental fairness dictates that airlines serving EWR and LGA receive the same relief.

Comments on these carriers' requests have been filed by FlyersRights.org. FlyersRights.org opposes each of the exemption requests. FlyersRights.org argues that those carriers are requesting permission to keep their passengers stranded for more than three hours on taxiways at JFK because airlines have overscheduled operations beyond the capacity of the JFK runway system during this temporary period. Flyersrights.org asserts that over-scheduling exists because the FAA has not required the airlines serving JFK to reduce their scheduled operations at that airport to avoid multi-hour departure delays before takeoff during the Bay Runway reconstruction period. Flyersrights.org argues that ATC should prohibit airlines from pushing aircraft back from gates at congested airports, such as JFK, when a lengthy tarmac delay is inevitable. Flyersrights.org maintains that airlines have had months to plan for the reconstruction of the Bay Runway, and argues that a grant of the exemption requests would set a bad precedent.<sup>2</sup>

Most recently, on March 22, 2010, US Airways also filed a request for an exemption from the tarmac delay rules. US Airways states in its petition that it fully supports Continental's request that all carriers serving the three major New York City airports be granted relief from the tarmac delay rules under the same terms and conditions contained in JetBlue's petition, provided that the Department grants the same relief for Philadelphia's airport (PHL). US Airways argues that PHL should be included because PHL shares the same airspace with JFK, LGA and EWR, is part of the same air traffic control

<sup>2</sup> Interested persons can read the carriers' exemption requests and comments on these requests in their entirety in this docket.

center, and has the same congestion challenges as those airports.

The Department is seeking comment on whether it should act on the requests by JetBlue, Delta, American, Continental and US Airways by means of one of the following four measures: (1) Deny each exemption request; (2) grant one or more of the exemption requests in their entirety; (3) grant a limited temporary exemption for operations at one or more of the airports by allowing the 3-hour limit to be raised to 4 hours during the two specific heavy construction periods (April 29 thru June 30, 2010 and September 16 thru September 29, 2010) planned for JFK's Bay Runway; or (4) deny each exemption request, but direct the Aviation Enforcement Office to consider the runway closure and unexpected bad weather in deciding whether to pursue an enforcement case against a carrier for a lengthy tarmac delay incident that occurs at one or more of the airports.

We invite interested persons to comment on these proposed courses of action. What are the potential costs or benefits of each measure? Are there other alternative measures that the Department should consider? How likely are the proposed measures to succeed in protecting passengers from lengthy tarmac delays? Should carriers' requests for an exemption for their JFK operations be treated differently than the request for an exemption for the operations at LGA, EWR and PHL? Should any course of action apply to all carriers at JFK or only specific carriers (e.g., carriers with more significant presence at JFK)? Since carriers can establish any tarmac delay limits for international flights in their contingency plans, is there any reason that an exemption is needed for such flights? Commenters should explain their reasons for supporting or not supporting a particular measure or method.

Issued this 25th day of March 2010, at Washington, DC.

**Ray LaHood,**

*Secretary of Transportation.*

[FR Doc. 2010-7198 Filed 3-29-10; 8:45 am]

**BILLING CODE 4910-9X-P**

## DEPARTMENT OF TRANSPORTATION

### Surface Transportation Board

[STB Docket No. AB-317 (Sub-No. 6X)]

#### Indiana Harbor Belt Railroad Company—Discontinuance of Trackage Rights Exemption—in Lake County, IN

Indiana Harbor Belt Railroad Company (IHB) has filed a verified

notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances of Service and Trackage Rights* to discontinue its local and overhead trackage rights over approximately 1.78 miles of Elgin, Joliet & Eastern Railway Company's (EJE) line of railroad extending from milepost 47.88 at Hammond, to milepost 46.10 at Hammond (Hammond Line), in Lake County, IN.<sup>1</sup> The line traverses United States Postal Service Zip Code 46320.

*IHB has certified that:* (1) No local traffic has moved via its trackage rights over the line for at least 2 years; (2) any IHB overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of IHB rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Surface Transportation Board (Board) or with any U.S. District Court or has been decided in favor of complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the discontinuance of service shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10502(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on April 29, 2010, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues and formal expressions of intent to file an OFA for continued rail service under 49 CFR 1152.27(c)(2)<sup>2</sup> must be filed by April 9, 2010.<sup>3</sup> Petitions to reopen must be filed by April 19, 2010, with: Surface Transportation Board, 395 E Street, SW., Washington, DC 20423-0001.

*A copy of any petition filed with the Board should be sent to IHB's representative:* Michael J. Barron, Jr., Fletcher & Sippel LLC, 29 North Wacker

<sup>1</sup> IHB notes that EJE anticipates filing for authority to abandon the Hammond Line.

<sup>2</sup> Each OFA must be accompanied by the filing fee, which currently is set at \$1,500. See 49 CFR 1002.2(f)(25).

<sup>3</sup> Because this is a discontinuance proceeding and not an abandonment, trail use/rail banking and public use conditions are not appropriate. Likewise, no environmental or historical documentation is required here under 49 CFR 1105.6(c) and 1105.8(b), respectively.

Drive, Suite 920, Chicago, IL 60606-2832.

If the verified notice contains false or misleading information, the exemption is void *ab initio*.

Board decisions and notices are available on our website at [www.stb.dot.gov](http://www.stb.dot.gov).

Decided: March 25, 2010.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.

**Kulunie L. Cannon,**  
*Clearance Clerk.*

[FR Doc. 2010-7015 Filed 3-29-10; 8:45 am]

**BILLING CODE 4915-15-P**

## DEPARTMENT OF TRANSPORTATION

### Federal Highway Administration

[FHWA Docket No. FHWA-2010-0027]

#### Livability Initiative under Special Experimental Project No. 14

**AGENCY:** Federal Highway Administration (FHWA), DOT.

**ACTION:** Notice; request for comments.

**SUMMARY:** The FHWA is requesting comments on a livability initiative to harmonize and coordinate the Federal-aid Highway Program with grant-in-aid programs administered by the Department of Housing and Urban Development (HUD) and the Environmental Protection Agency (EPA). Under this initiative, the FHWA intends to utilize Special Experimental Project No. 14 (SEP-14) to permit, on a case-by-case basis, the application of HUD requirements on Federal-aid highway projects that may otherwise conflict with Federal-aid Highway Program requirements. One such requirement is contained in HUD's Section 3 Program, the goal of which is to provide training, employment and contracting opportunities to low and very low income persons residing within the metropolitan area (or nonmetropolitan county) in which the project is located and businesses that substantially employ such persons. The purpose of this proposed SEP-14 experiment is to further the goals of the DOT, HUD, and EPA partnership on sustainable communities.

**DATES:** Comments must be received on or before May 14, 2010.

**ADDRESSES:** All comments should include the docket number that appears in the heading of this document and may be submitted in the following ways:

- *E-Gov Web site:* <http://www.regulations.gov>. This Web site allows the public to enter comments on any **Federal Register** notice issued by