

## AVIATION LAW ALERT

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### DHS Adds Seven New Countries to Visa Waiver Program and Sets Effective Date for Electronic Systems for Travel Authorization Requirements

The Department of Homeland Security (“DHS”) has announced that beginning on November 17, 2008, eligible citizens or nationals from the Czech Republic, Estonia, Hungary, the Republic of Korea, Latvia, Lithuania, and Slovakia may travel to the United States under the Visa Waiver Program (“VWP”). Under the VWP, nationals from these seven countries plus citizens of Andorra, Australia, Austria, Belgium, Brunei, Denmark, Finland, France, Germany, Iceland, Ireland, Italy, Japan, Liechtenstein, Luxembourg, Monaco, the Netherlands, New Zealand, Norway, Portugal, San Marino, Singapore, Slovenia, Spain, Sweden, Switzerland and the United Kingdom may apply for admission to the United States for 90 days or less as non-immigrant visitors for business or pleasure without first obtaining a non-immigrant visa. Travelers using the VWP must have machine readable passports that are valid for 6 months beyond their intended visit to the United States.

Travelers using the VWP must also obtain approval through the Electronic System for Travel Authorization (“ESTA”) prior to traveling to the United States. For citizens or nationals from the Czech Republic, Estonia, Hungary, the Republic of Korea, Latvia, Lithuania, and Slovakia who are traveling under the VWP, ESTA approval must be obtained as of November 17, 2008. For citizens and nationals of the 27 other VWP countries traveling under the VWP, ESTA approval must be obtained as of January 12, 2009. ESTA approval must be obtained over the internet at <https://esta.cbp.dhs.gov>.

In our conversations with DHS personnel on the administration of the ESTA program from the air carrier prospective, DHS has stated that it does not intend to fine air carriers in the near future regarding the ESTA requirements. DHS stated that it is working with carriers to implement verification of the ESTA requirements through APIS. At this time, the APIS and ESTA implementation is a “work in progress.”

### JFK and Other Major Airports Implement E-Freight Process

The International Air Transport Association (IATA) recently launched e-freight operations in North America. The North American locations of this launch included New York’s JFK airport in late October and Chicago’s O’Hare airport in early November. E-freight is a joint air cargo industry program spearheaded by IATA designed to reduce paperwork, save money and improve efficiency.

E-freight is designed to take paper out of the air cargo supply chain. The airlines in the United States that are leading the use of the e-freight technology are: American Airlines, United Airlines, DHL and Kuehne & Nagel. There are 15 countries/governmental areas that have airports using e-freight technology: Australia, Canada, Germany, Hong Kong, Luxembourg, Mauritius, Netherlands, New Zealand, Norway, Singapore, South Korea, Sweden, the United Arab Emirates, the United Kingdom and the United States of America.

Currently, the use of e-freight is voluntary. The process is initiated by the company that wishes to utilize e-freight along with partner companies and entities with whom they conduct business. IATA has informational resources available for the implementation process. These resources include websites and a handbook. If you are interested in using e-freight, please let us know and we can provide you with copies of this information.

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### DOT Issues Notice of Proposed Rulemaking on Enhancing Passengers Protection for Flights Operated by U.S. Carriers

On November 18, 2008, the DOT issued a notice of proposed rulemaking regarding the enhancement of passengers' rights on flights operated by U.S. carriers. The rule does not apply to foreign carriers. These proposed rules result from the high incidence of lengthy tarmac delays. The notice of proposed rulemaking requires U.S. carriers to adopt a Contingency Plan for lengthy tarmac delays. Similar to the New York State law on passengers' rights, which was subsequently struck down by the Second Circuit, the notice of proposed rulemaking requires the Contingency Plan to contain an assurance of the maximum amount of time that the carrier will permit the aircraft to remain on the tarmac before proceeding to a gate and allowing passengers to deplane as well as an assurance that adequate food, water, and lavatory facilities, as well as medical attention if needed, will be available if the aircraft remains on the tarmac for a specified amount of time to be determined by the carrier.

U.S. carriers would be also be required to provide passengers with the contact information of the individual or office with which to file a complaint. Such contact information must be posted on the carrier's website, included on all e-ticket confirmations, and made available upon request at each ticket counter and gate.

Finally, under the notice of proposed rulemaking, the potential for enforcement actions against U.S. carriers exists. DOT will consider unrealistic scheduling of flights by U.S. carriers providing scheduled passenger air transportation to be an unfair and deceptive practice and an unfair method of competition. Any flight that is chronically delayed for three consecutive calendar quarters will be considered unrealistic or deceptive scheduling. A chronically delayed flight is one which is operated at least 30 times in a calendar quarter and arrives more than 15 minutes late or is cancelled more than 70% of the time during that quarter.

### Domestic Baggage Liability Limit Raised

On November 18, 2008, the United States Department of Transportation announced a final rule that will raise the minimum limit on domestic baggage liability for air carriers. The amount will be raised to \$3,300 from \$3,000. This is the first increase in domestic baggage liability since January 2007. Under federal rules, the Department of Transportation periodically reviews the liability limit to reflect inflation and changes in the Consumer Price Index. This increase will become effective on December 22, 2008.

*The Aviation Law Alert is intended to keep readers current on matters affecting aviation law and is not intended to be legal advice. If you have any questions, please call Evelyn Sahr at 202.659.6622 or any other attorney with whom you have been working.*