ECKERT SEAMANS
ATTORNEYS AT LAW

DECEMBER 2019

AVIATION REGULATORY ALERT

SUMMARY REPORT OF DISABILITY-RELATED COMPLAINTS RECEIVED DURING CALENDAR YEAR 2019 DUE TO DOT BY JANUARY 27, 2020

Each January carriers are required to submit an annual report to the Department of Transportation (DOT or Department) which includes a categorized summary of all disability-related complaints received by the airline during the prior calendar year. The summary is to be submitted to the Department's Aviation Consumer Protection Division (DOT ACPD) on or before the last Monday in January. This year's report, covering calendar year 2019, is due on January 27, 2020. Carriers that did not receive any written disability-related complaints in calendar year 2019 are still required to file a report showing no complaints.

Failure to comply with the reporting requirements for disability-related complaints likely will subject a carrier to a civil penalty of up to $34,174 per violation. DOT has taken enforcement action against a number of carriers in the past for failing to comply with these requirements. Please contact us if you have any questions on the submission process or require assistance in making your annual report.

SIGNIFICANT FINE AGAINST LUFTHANSA FOR FAA NONCOMPLIANCE

On November 27, 2019, the Federal Aviation Administration (FAA) announced a $6,428,000 civil penalty against Deutsche Lufthansa AG (Lufthansa) for allegedly conducting approximately 900 flights to certain U.S. destinations that were not listed on its Part 129 Operations Specifications (Ops Specs). As a foreign air carrier, Lufthansa is only allowed to operate flights to U.S. airports that have been authorized by FAA and listed in its Ops Specs. In this case, Lufthansa was alleged to have operated a number of flights to both San Diego and Philadelphia without having updated its Ops Specs accordingly. This situation illustrates the seriousness with which the FAA views noncompliance with safety regulations and highlights the need for carriers to periodically review their Ops Specs to ensure that all U.S. operations remain within approved parameters.

DOT SEEKS COMMENT ON CHANGES TO ACCESSIBLE LAVATORY REGULATIONS FOR SINGLE-AISLE AIRCRAFT

In December 2019, the Department of Transportation released a proposed update to its longstanding rule on the nondiscriminatory treatment of passengers with disabilities (14 C.F.R. Part 382) regarding accessible lavatories on single-aisle aircraft. The rulemaking proposes new performance requirements for accessible lavatory fixtures and for onboard wheelchairs (OBW). The proposed rulemaking is expected to be officially published on or around December 31, 2019, and **comments on the proposed standards will be due within 60 days of publication in the Federal Register (i.e., through February 2020).** DOT is encouraging public input on how precisely to understand and interpret some of the language it is adopting from the consultative process. The rulemaking will apply to newly-delivered single-aisle aircraft three years after publication of a final rule.

The current rulemaking focuses on "short-term" improvements to accessibility on single-aisle aircraft with 125 seats or more. "Long-term" suggestions from the consultative process, such as requiring single-aisle aircraft to have large accessible lavatories akin to those currently mandated for twin-

aisle aircraft, are still under consideration and will be addressed in a separate rulemaking which is expected to be published in the coming months.

Under the proposed rule, at least one onboard lavatory on newly-delivered single-aisle aircraft with 125 or more seats (or at least one lavatory on an existing aircraft of that size if lavatories are upgraded) will need to meet new performance requirements. These include:

- Accessible grab bars, call buttons, door locks, dispensers, and controls
- Faucets with tactile information regarding temperature or designed to prevent scalding
- Minimal obstructions on lavatory door sills and sufficient clearance under sinks
- A visual barrier system allowing the lavatory to be used privately with the door ajar
- Removing the International Symbol of Accessibility from non-compliant lavatories

For onboard wheelchairs, the rule provides performance standards for safety and maneuverability to accommodate several different types of accessible use of the lavatory such as full backward entry of the OWB for private non-toilet tasks and partial forward entry for a stand-and-pivot transfer using accessible grab bars.

The proposed rule will also require carriers to meet new annual training standards of flight attendant proficiency, to publish information on their websites regarding lavatory accessibility, and provide information to passengers on procedures for safe disposal of sharps and bio-waste.

We encourage all carriers to familiarize themselves with these forthcoming requirements. Please let us know if we can assist with any questions or preparation of a public comment.

IMPORTANT UPDATES ON CANADIAN AIR CARRIER REGULATIONS

As we have previously reported, the second and final phase of Canada's *Air Passenger Protection Regulations* (APPR) entered into force on December 15, 2019. The regulations cover flights to, from, or within Canada, including code shares, and address a variety of consumer protection issues such as denied boarding compensation, tarmac delay requirements, and more. The responsible regulator is the Canadian Transportation Agency (CTA), which in December published guidance material on the requirements concerning flight delays and cancellations as well as the seating of children under 14 years of age.

December 15, 2019, was also the entry into force date of Transport Canada's regulations on the collection of air travel performance data from air service providers, the *Air Travel Performance Data Collection Regulations*. **The first reports from carriers are due 120 days after the December implementation date, i.e., on April 13, 2020**. The regulations cover both charter and scheduled carriers, with some variation depending on whether the carrier is classified as "large" or "small." Performance data required for filings include origin/destination, on-time performance, and metrics on denied boardings, tarmac delays, mishandled baggage, and passenger complaints.

Finally, in a separate but related development, the CTA is in the process of developing new accessible transportation regulations, known as the *Accessible Transportation for Persons with Disabilities Regulations* (ATPDR). Phase I of these regulations was published in July 2019 and

guidance materials are forthcoming. **On December 5, 2019, the CTA published Phase II and is seeking public comment through February 7, 2020**. Topics under study in Phase II include the transportation of emotional support animals, planning and reporting obligations for carriers, and whether to apply CTA's One Person, One Fare requirement to international travel. The last of these may result in carriers being required to provide adjacent passenger seating at no extra cost for a personal attendant, large service animal, or passenger functionally disabled by obesity.

Carriers with operations to, from, or within Canada should review their policies and procedures in light of these regulations and consider submitting comments on ATPDR Phase II. As a reminder, certain rules have extraterritorial effect and may impact carrier policies on code share service to, from, or within Canada.

MONTREAL PROTOCOL 2014 ON DISRUPTIVE PASSENGERS ENTERS INTO FORCE JANUARY 1, 2020

With the ratification by Nigeria on November 26, 2019, of the Protocol to *Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Montreal Protocol 2014 or MP14), this law will enter into force among 22 signatories on January 1, 2020. The MP14 seeks to close jurisdictional gaps and ensure deterrence of unruly passengers regardless of the registration of the aircraft on which they travel. The protocol requires states parties to take jurisdiction over unruly passenger incidents onboard flights landing in their territory.

The International Air Transport Association (IATA) saluted this development and announced that it expects further ratifications of the protocol soon. It also encouraged member airlines to work with their civil aviation authorities to promote international uniformity in the enforcement of administrative, civil, and criminal remedies to reduce disruptive behavior by passengers.

ICAO UPDATES ANNEX 17 OF THE CHICAGO CONVENTION

On November 25, 2019, the International Civil Aviation Organization (ICAO) adopted Amendment 17 to Annex 17 (Security) of its International Standards and Recommended Practices (SARPs). Amendment 17 seeks to increase aviation security by measures including:

- Mechanisms for the protection of sensitive aviation security information from unauthorized access or disclosure;
- Requirements for States requesting additional security measures, and host States receiving such requests;
- Vulnerability assessments at airports engaged in international operations;
- Information sharing;
- Instructor certification systems and methods to ensure the qualification of instructors in the applicable subject matters;
- Standards regarding who should be subject to background checks, when background checks should be applied, and what should occur if an individual has been found unsuitable by any background check;
- Standards regarding insider threats which may stem from external service providers;

AVIATION REGULATORY ALERT

- The use of randomness and unpredictability in the implementation of security measures;
- Access control to security restricted areas;
- All persons, other than passengers, being screened before entering a security-restricted area (SRA); and
- The use of background checks and physical security measures to mitigate insider threats.

The Amendment was published on December 16, 2019; member states have until March 30, 2020, to notify ICAO of any portion the state disapproves of, and will have until June 30, 2020, to send ICAO any alternative standards they choose to implement.

FAA RELEASES PROPOSED RULE FOR REMOTE ID OF UAS

The FAA this month released its proposed rule for the remote identification (ID) of unmanned aircraft systems (UAS or drones). A notice of proposed rulemaking was published in the Federal Register on December 31, 2019, and the public comment period is open until March 1, 2020 (Docket FAA-2019-1100). Members of the UAS private sector have been eagerly anticipating the rule, which the FAA has described as laying the technical foundation for integration of sophisticated drone operations into the U.S. airspace system. A functional remote ID architecture will eventually facilitate more regular operations of UAS at long ranges beyond the visual line of sight of the operator, flying over people, and flying at nighttime.

The remote ID proposed rule is performance-based and seeks to be technology-neutral to allow for innovation in meeting compliance requirements. It will apply to nearly all drone operations in the U.S. once it takes effect. The rule specifies the data elements of a remote ID signal and envisions the internet as the primary network for collection of remote ID information. It also prohibits the use of ADS-B Out or transponders as a means of remote ID, as large numbers of drone operations could lead to such a proliferation of signals that these systems would no longer be effective for manned aircraft traffic management.

FAA WORKS TO MODERNIZE COMMERCIAL SPACE LAUNCH LICENSING

As an extension of its responsibilities for safety regulation of U.S. airspace, the FAA's Office of Commercial Space Transportation supervises and licenses private sector outer space rocket launches and atmospheric re-entries for landing. As the commercial space sector grows and more business models are explored, the Trump Administration has pressed to streamline regulatory requirements and help private space companies grow. The Commercial Space Transportation Office's Administrator announced at an event in Washington in December that licensing activity has increased over 1,000% in the past seven years; it is expected to grow similarly over the next five years. As a result, the Office has reorganized internally to streamline the number of staff who are required to work on approvals for each launch license. The FAA expects to propose new rules to further modernize the launch and reentry licensing process in the fall of 2020.

ECKERT SEAMANS
ATTORNEYS AT LAW

DECEMBER 2019

AVIATION REGULATORY ALERT

EUROPEAN COMMISSION TO PROPOSE CLIMATE LAW IN 2020

As the global aviation community continues to work toward the reduction of carbon emissions, one outstanding policy question is whether multiple overlapping emissions regimes will cover the commercial aviation industry. In the U.S., for example, the FAA has stated that it supports implementation of ICAO's Carbon Offsetting and Reduction Scheme for International Aviation (CORSIA) as a unified global market mechanism to ensure an equal competitive environment.

In December 2019, the European Commission published a roadmap toward European climate neutrality and announced that by March 2020 it would propose a climate law to reach that objective by 2050. According to the roadmap, this law will include several aviation-related aspects. The Commission intends to progress with its Single European Sky initiative, explore the ending of tax subsidies for aviation fuel, continue the EU Emissions Trading System in parallel with CORSIA while reducing free emissions allowances to airlines, explore options to boost sustainable fuels use, and tighten air pollution standards for aircraft and airport operations. With a global view, the EU further intends to pursue green diplomacy, push for international carbon markets, and use border tax adjustment mechanisms to prevent the "leakage" of emissions outside its jurisdiction.

OFAC TARGETS U.S. MAINTENANCE PROVIDER FOR DEALING WITH MAHAN AIR, A SANCTIONED ENTITY

On December 12, 2019, the U.S. Department of the Treasury's Office of Foreign Asset Control (OFAC) announced a Finding of Violation against Aero Sky Aircraft Maintenance, Inc. ("Aero Sky"), for allegedly violating the U.S.'s global terrorism sanctions. Aero Sky has been dissolved in bankruptcy; but if it were still operating, OFAC stated that the company would be subject to a significant monetary penalty for its conduct.

Specifically, in 2016, Aero Sky entered into contracts for repair services with the Iranian carrier Mahan Air, despite the fact that the airline was a specially designated national (SDN) under U.S. sanctions regulations and listed on OFAC's SDN list. Aero Sky mistakenly believed that the transactions qualified for an exemption under an OFAC general license in effect at the time of the deal. However, this was not the case. OFAC stated that Aero Sky's conduct showed reckless disregard of the law and failure to exercise a minimal degree of care in dealing with Mahan Air.

OFAC REACHES CIVIL ENFORCEMENT SETTLEMENT WITH INSURERS THAT SOLD POLICIES COVERING CUBA TRAVEL

On December 9, 2019, OFAC announced the settlement of a civil enforcement case against Allianz Global Risks US Insurance Company (AGR US) for $170,535. Between August 2010 and July 15, 2015, AGR US's Canadian subsidiary, AGR Canada, sold travel insurance though an underwriter to Canadian citizens that covered travel to Cuba. AGR Canada was subject to OFAC jurisdiction by virtue of its U.S. ownership and control. In total, AGR Canada processed 864 prohibited claims before global travel insurance policies covering Cuba became legal under amended regulations on January 15, 2015.

ECKERT SEAMANS
ATTORNEYS AT LAW

DECEMBER 2019

AVIATION REGULATORY ALERT

OFAC found that AGR Canada and AGR US should have received notice that some policies were covering trips to Cuba, yet ignored the warning signs. No compliance program had been in place and an internal investigation was not undertaken until 2014. Nevertheless, AGR US reduced its compromise penalty by developing a compliance program, hiring a compliance manager, self-disclosing the prohibited transactions, and then cooperating with OFAC's investigation.

Similarly, on December 9, 2019, OFAC announced it had reached a $66,212 settlement with Chubb Limited for insurance of trips by Europeans to Cuba between 2010 and 2014. Some of Chubb's predecessors in interest issued global policies through travel agents that did not contain sanctions exclusionary clause due to the E.U.'s Anti-U.S. Sanctions Blocking Regulation and an erroneous legal analysis about de minimis exposure to sanctions risk. Chubb helped reduce its settlement amount by hiring a compliance manager and cooperating with OFAC's investigation.

*This Aviation Regulatory Update is intended to keep readers current on matters affecting the industry, and is not intended to be legal advice. If you have any questions, please contact **Evelyn Sahr** at esahr@eckertseamans.com or 202-659-6622; **Drew Derco** at dderco@eckertseamans.com or 202-659-6665; **Eric Felland** at efellend@eckertseamans.com, 202-659-6677.*