ECKERT SEAMANS
ATTORNEYS AT LAW

September 2015

AVIATION REGULATORY UPDATE

CONGRESS EXTENDS FAA FUNDING; PREVENTS GOVERNMENT SHUTDOWN

The United States Senate and U.S. House of Representatives voted yesterday to adopt H.R. 3614, the Airport and Airway Extension Act of 2015, which is a stopgap measure to extend the current programs and policies of the Federal Aviation Administration (FAA) through March 31, 2016. Without this action, the FAA's current authorization, which expires on September 30, 2015, would have lapsed, likely resulting in a government shutdown. Many had expected Congress to conclude a long-term FAA bill by September 30, 2015 that addressed contentious issues such as air traffic control reform and passenger facility charges, but Congress was unable to do so. With passage by Congress, the bill now goes to President Obama, who is expected to sign the measure into law. Congressional leaders anticipate that with this extra time they will be able to develop a final long-term FAA reauthorization bill that will gain support in both the House and Senate.

UPDATE ON IRAN AND CUBA SANCTIONS

Ongoing diplomatic efforts between the United States and Cuba and Iran are likely to continue to impact aviation regulatory matters. Details of recent developments with Iran and Cuba are below.

Cuba: The U.S. Departments of Treasury and Commerce issued new regulations on September 21, 2015 regarding Cuba in a continued push to loosen the sanctions regime against that country. The most relevant update concerns the Department of Commerce's amended rule on the export and re-export of items related to aviation safety. Under the rule, Commerce will consider export license applications that relate to items intended to ensure the safety of Cuban civil aviation. Items that will be reviewed pursuant to this policy include aircraft parts and components related to safety of flight, weather observation stations, airport safety equipment, and commodities used for security screening of passengers.

A U.S. negotiating team traveled to Havana this week to engage in talks about a new U.S.-Cuba air services agreement and we will keep you updated on any new developments.

Iran: The emerging diplomatic agreement with Iran will likely result in a near-term lifting of sanctions against Iran. Sanctions are likely to be lifted sometime in 2016 when the International Atomic Energy Agency certifies that Iran has complied with its obligations under the agreement (the so-called "Implementation Day"). Until then, non U.S.-persons involved in the export of U.S.-origin goods may apply for specific licenses authorizing export of such goods that are related to the inspection and repair and/or servicing of commercial aircraft in Iran. Secretary of State John Kerry has also announced that Ambassador Stephen Mull will be the U.S. Lead Coordinator on implementing the Iran deal.

FAA PROPOSES NEW OVERFLIGHT FEES

Operators of aircraft that transit U.S. airspace without taking off or landing in the United States must pay overflight charges based on their individual operations. The FAA recently proposed an increase in overflight charges, as the relevant rates were last set in 2011. Specifically, the FAA is proposing an

across-the-board increase of 9% for all overflight fees, beginning in October 2017. A copy of the notice of proposed rulemaking can be found here. Comments on the proposal are due on or before October 27, 2015.

DOT CLARIFIES MEANING OF "IN EASILY ACCESSIBLE FORM"

The U.S. Department of Transportation's Enhancing Airline Passenger Protections; Final Rule (Consumer Rule 2) requires carriers to post on their website copies of their tarmac delay plans, customer service plans and conditions of carriage. These documents must be made available to the travelling public and posted on-line "in easily accessible form." Industry stakeholders interpreted this requirement in myriad ways, which led DOT to issue updated guidance as to its specific interpretation of the term "in easily accessible form" in the context of the above-referenced requirement. DOT's updated guidance notes that the purpose of the requirement is to ensure that consumers can easily find those documents and suggested that carriers consider placing links on their homepage that would take consumers to those relevant documents. It would not be acceptable for a carrier to make its tarmac delay plan, customer service plan, or conditions of carriage available only after a consumer clicks through numerous links or pages on the website. DOT's guidance is useful in determining how DOT will evaluate carrier websites and how it will assess possible enforcement action for non-compliance.

DOT EXTENDS COMMENT PERIOD FOR PART 382 INFORMATION COLLECTION

On November 12, 2013, the Department published a final rule amending 14 C.F.R. part 382, to require airlines to ensure that their websites are accessible to individuals with disabilities. Among numerous other requirements, the final rule established the following two new information collection requirements: (1) by December 12, 2015, carriers must provide an online mechanism for passengers to request disability accommodation services (e.g., enplaning/deplaning assistance, deaf/hard of hearing communication assistance, escort to service animal relief area, etc.) for a particular flight; and (2) by December 12, 2016, carriers must ensure that when a user activates a link on a carrier's primary Web site to embedded third-party software or to an external Web site, a disclaimer is displayed notifying the user that the application or web site may not be accessible.

DOT provided 60 days for interested parties to submit comments on either (or both) of these new information collection requirements. The Department received no comments and has elected to extend the comment period for an additional 30 days to give the public additional time to comment.

Comments are now due by October 28, 2015.

FAA SIGNS TWO NEW INTERNATIONAL AGREEMENTS

The FAA has announced two new agreements with the following international regulatory partners: European Aviation Safety Agency (EASA) and Transport Canada (TCCA). The agreements aim to eliminate duplicate processes, have safety enhancing equipment installed on aircraft more quickly, and

lead to cost and time savings by allowing the safety authorities to rely on each other's respective regulatory systems.

As a result of the new agreements, producers of equipment approved under Technical Standard Orders (TSOs) or Supplemental Type Certificates (STCs) will in most cases only have to go through the regulatory process once, whether that process is completed in the U.S., Canada or one of the European countries that fall under EASA's regulations.

FAA SUMMER 2016 SCHEDULING SEASON DEADLINE IS OCTOBER 8, 2015

The FAA has announced a submission deadline of October 8, 2015 for summer 2016 flight schedules at Los Angeles International Airport (LAX), Chicago O'Hare International Airport (ORD), San Francisco International Airport (SFO), John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR) in accordance with the International Air Transport Association (IATA) Worldwide Slot Guidelines. The October 8, 2015 deadline coincides with the schedule submission deadline for the IATA Slot Conference for the summer 2016 scheduling season. Carriers with operations at any of these airports must submit their schedules to the FAA Slot Administration Office by that date.

DOT CONSENT ORDERS

- Denied Boarding Compensation - American Airlines was fined $20,000 for failing to comply with DOT's oversales rule, 14 C.F.R. Part 250. Following an investigation of a complaint filed with the Aviation Consumer Protection Division (ACPD), the Department found that American violated Part 250 in the manner it handled Ms. Doe and 12 other members of her party after they were involuntarily denied boarding at Miami International Airport. The passengers flew from Orlando to Miami where they were scheduled to connect to an onward flight to London's Heathrow Airport. The reservations for the group on the Heathrow leg were confirmed and they received boarding passes in Orlando. When the group arrived at the gate in Miami, however, they were pulled aside and told they could not board the Heathrow flight and were directed to the rebooking desk to reschedule their flight. Two of the passengers eventually obtained seats on the flight, but Ms. Doe and the remaining passengers had to rebook on another set of flights departing the next day to London via Barcelona.

- American Airlines acknowledged in its initial response that Ms. Doe's group held valid, confirmed tickets and were entitled to denied boarding compensation (DBC). American stated that each adult was entitled to either a check for $168 or a $209 travel voucher, and each child passenger was entitled to either a check for $125 or a $156 travel voucher. American responded to Ms. Doe and the Enforcement Office on several occasions in response to questions by the Enforcement office on American's calculation of DBC. In its final response regarding the complaint, American reached the conclusion that each passenger should receive $848 in compensation.

ECKERT SEAMANS
ATTORNEYS AT LAW

September 2015

AVIATION REGULATORY UPDATE

- The Department conducted an oversales complaint investigation in February 2015 and found that since at least 2008, American had misclassified involuntarily denied boardings as voluntary denied boardings which violated sections 250.10 and 49 U.S.C. § 41708. Because this misclassification impacted the accuracy of American's data on oversales as reflected in the DOT Air Travel Consumer Reports (ATCR), DOT concluded that it constitutes unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

- Economic Authority – Beijing Capital Airlines d/b/a Deer Jet was fined $40,000 for operating unauthorized air transportation between the United Kingdom and the United States in violation of 49 U.S.C. §§ 41301 and 41712. Beijing Capital did not hold a foreign air carrier permit or an exemption from the DOT's permit requirements when it operated a charter flight between the United Kingdom and the United States on September 10, 2014.

FAA PROPOSES DRUG AND ALCOHOL TESTING CIVIL PENALTIES

The FAA recently proposed several civil penalties ranging from $173,500 to $211,000 against three companies for alleged violations of the federal drug and alcohol testing regulations.

- $173,500 against Servisair LLC for failing to include ten of its safety-sensitive employees in random drug and alcohol testing pools in 2013. The FAA further alleged that the company conducted eight random drug tests in 2013 when it should have conducted 19 random drug tests.

- $174,600 against Mesa Airlines for failing to place six employees hired for safety-sensitive positions in its random drug and alcohol testing pools. The FAA further alleged that the company failed to notify the agency when an FAA certified mechanic refused to submit to a drug test within the two day period specified in the regulations, and that Mesa used a DOT drug testing form when conducting a non-DOT drug test. Finally, Mesa allegedly failed to ensure its contract for Medical Review Officer (MRO) services included a provision requiring the company to transfer records, including those related to positive drug results, to a new MRO Mesa might hire.

- $211,000 against Dukes Aerospace Inc. for failing to: (1) include four of its safety sensitive employees in random drug and alcohol testing pools; (2) receive verified negative reports prior to transferring nine employees into safety sensitive positions; (3) ask ten safety sensitive employees required drug and alcohol testing questions; (4) use a valid method of random selection for a drug test, and conduct a random drug test on two employees rather than the alcohol test they were selected for; (5) properly conduct a urine specimen collection; and (6) maintain required elements in the company's drug and alcohol testing policy.

ECKERT SEAMANS
ATTORNEYS AT LAW

September 2015

AVIATION REGULATORY UPDATE

ADDITIONAL CIVIL PENALTIES PROPOSED BY FAA

The FAA recently imposed the following, additional civil penalties:

- $735,000 against the City of Cleveland for failing to meet FAA requirements for maintaining a safe airport during winter weather. The FAA alleged that over a 15 month period ending in March 2015, the managers at Cleveland's Hopkins International Airport failed on numerous occasions to keep the runways and taxiways safe and clear of snow and ice.

- $154,000 against G&B Investment Management (G&B), N3344D Partners, LLC, Two Five Delta, LLC, and Gene Curtis for conducting commercial flight operations in violation of the Federal Aviation Regulations. Each of the above mentioned entities was controlled by Gene Curtis. The FAA alleged Mr. Curtis entered into an agreement under which he offered air transportation for compensation using two aircraft owned and operated by Curtis and G&B. These services were provided on 12 occasions. The aircraft were operated without an air carrier certificate, DOT economic authority and operations specifications. The FAA also alleged Mr. Curtis and the entities did not comply with operational and maintenance rules relating to commercial operations and advertised the operations without FAA authority.

- $360,000 against Empire Airlines, Inc. for operating an aircraft not in compliance with Federal Aviation Regulations. One of the airline's aircraft experienced a lightning strike and the aircraft maintenance manual required the propeller be removed from service and inspected for damage following such an event. The FAA alleged that Empire inspected the aircraft but did send the propeller to an authorized repair station. The airline operated the aircraft on 35 revenue flights before sending the propeller to an authorized repair station.

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 or Reese Davidson at rdavidson@eckertseamans.com or 202.659.6633.