

AVIATION REGULATORY UPDATE

FAA REAUTHORIZATION ACT – CONSUMER PROTECTION PROVISIONS

Since 2015, the FAA has been funded by short-term extensions of authority, with the current short-term extension ending on September 30, 2018. The U.S. House of Representatives and Senate have been negotiating a final version of the FAA Reauthorization Act with the goal of passing the bill before the September 30th deadline. On September 22, 2018, House and Senate negotiators reached a deal on a five-year FAA reauthorization, which is anticipated to easily pass both chambers of Congress. The House and Senate plan to pass a one-week extension to enact the full bill (H.R. 302). The current draft contains several developments with regard to consumer protection, including, but not limited to:

Denied Boarding Rules:

- **Tightening of Denied Boarding rules** to prevent involuntarily deplaning revenue passengers if the passenger (1) is traveling on a confirmed reservation; (2) checked in prior to the check-in deadline for the flight; and (3) had their ticket or boarding pass collected/scanned by the gate agent.
- **Changes to Denied Boarding Compensation (DBC) limits** to clarify that there is no maximum to the amount of DBC that can be paid; and would require that carriers proactively offer DBC rather than wait for passengers to ask.

Passenger Rights:

- **Passenger Rights Overview** would require carriers to submit to DOT, for approval by the Secretary of Transportation, a 1-page document outlining passenger rights for compensation for delays, diversions, cancellations, damage to baggage, overbooking, and involuntary denied boardings, which carriers would be required to publish on their website.
- Would **require large ticket agents to adopt minimum customer service standards** for providing prompt refunds, holding reservations for 24 hours, disclosing cancellation policies, notifying of itinerary changes, and responding to complaints.
- Carriers must promptly provide **refunds to passengers of any ancillary fees** paid for services related to air travel that they did not receive, including on a scheduled flight, on a subsequent replacement itinerary if there has been a rescheduling, or for a flight not taken by the passenger.
- FAA shall issue regulations that **establish minimum dimensions for passenger seats** on aircraft operated by air carriers in interstate air transportation or intrastate air transportation, including minimums for seat pitch, width, and length, and other factors that are necessary for the safety of passengers.
- Establishes the position of **Aviation Consumer Advocate** at DOT to help consumers resolve their air travel complaints.

AVIATION REGULATORY UPDATE

- DOT shall consider requiring carriers to **disclose to consumers the projected period of time between actual wheels-off and wheels-on times** for a flight upon reasonable request from a passenger; and require carriers to post on their website the actual wheels-off and wheels-on times during the most recent calendar month for a reportable flight.

Disabled Passenger Protections:

- Would have DOT develop an **“Airline Passengers with Disabilities Bill of Rights”** to be displayed on carrier websites and in any pre-flight notifications.
- Would **increase the maximum penalty to \$96,420** (from the current amount of \$32,140) for civil penalties involving passengers with disabilities, including damage to a passenger’s wheelchair or other mobility aid or injury to a disabled passenger.
- Would have DOT conduct a rulemaking proceeding to **define the term “service animal”** for purposes of air transportation, develop minimum standards for the in-cabin carriage of service animals and emotional support animals (ESAs), and consider if the definition of service animal should be aligned with that of the ADA.

Prohibited Actions on Aircrafts:

- **Prohibition from engaging in voice communications using a mobile communications device** during scheduled passenger interstate or intrastate air transportation.
- **Prohibit individuals from using electronic cigarettes** while on an aircraft.

Passenger Complaints to DOT:

- DOT shall consider the benefits of **using mobile phone applications, or other technologies, to communicate complaints.**
- DOT will conduct an evaluation of the **aviation consumer protection portion of its website to identify any changes to the user interface**, including the interface presented to individuals accessing the website from a mobile device, that will improve usability, accessibility, consumer satisfaction, and website performance.

Required Studies and Recommendations:

- The Comptroller General of the U.S. will issue a report to Congress and DOT on the best practices to **improve air carrier employee training on polices for nondiscrimination** of racial, ethnic, and religious differences. After receiving this report, DOT will develop their own report to distribute to air carriers.

AVIATION REGULATORY UPDATE

- The Secretary of Transportation shall **review the rate at which air carriers change passenger itineraries more than 24 hours before departure**, where the new itineraries involve additional stops or depart 3 hours earlier or later than originally scheduled and compensation or other suitable air transportation is not offered.
- DOT will develop specific **recommendations regarding improvements to wheelchair assistance** provided by air carriers, and recommendations on training programs for employees assisting disabled passengers.
- Requires DOT to review airline policies for traveling during pregnancy and considerations for such passengers requesting advance boarding.
- DOT's Advisory Committee will conduct a review and issue recommendations on modifying the regulations governing practices for ticketing, pre-flight seat assignments, and stowing of assistive devices for passengers with disabilities.

PETITION TO CONDUCT RULEMAKING TO PREVENT EXTREME ONBOARD TEMPERATURES

- On July 2, 2018, the Association of Flight Attendants (AFA) petitioned the Secretary of Transportation to conduct a rulemaking to establish operational temperature standards on commercial airplanes. The rule would establish limits for a comfortable cabin temperature for passenger planes operated by both U.S. and foreign carriers. The petition calls for adoption of the temperature limitations specified in Standard 161 of the American Society of Heating, Refrigerating and Air Conditioning Engineers.
- AFA argues that the rule would be in the public interest to prevent illnesses or injury caused by extreme temperatures. AFA stated that there have been numerous incidents of extreme temperature conditions, caused by in-flight crowding, that drew national attention. As an example, in June 2017 in Denver, Colorado, an infant was rushed by ambulance to a hospital after it was forced to endure an "oven with wings" aboard an aircraft. This incident was covered by the Associated Press and ABC News.
- The petition has broad support from various labor groups and other allies, including: the Transportation Workers Union of America, AFL-CIO; FlyersRights.org; Air Lines Pilots Association; and the Transportation Trades Department, AFL-CIO.

AVIATION REGULATORY UPDATE

FAA ISSUES NEW ADVISORY TO AIRLINES CONCERNING IRANIAN AIRSPACE

On September 9, 2018, the FAA issued a new advisory to U.S. operators to exercise caution when operating in Iranian airspace. This advisory comes at the expiration of the prior year's advisory and is a result of the FAA's stated concerns over military activity in Iran, including reference to an unnamed U.S. civil operator which was intercepted by Iranian combat jets in December 2017. The advisory also cited military activities associated with the conflict in Syria, including combat aircraft which originate from or transit through Iranian airspace.

The U.S. Department of State (State Department) has advised U.S. citizens not to travel to Iran due to the risk of unwarranted arrest and detention. The State Department's advisory highlights the risks for operators with U.S. citizens as passengers when flying over Iranian airspace if an unplanned landing is required due to medical or technical reasons.

U.S. TREASURY SANCTIONS THAI FIRM WITH LINKS TO IRAN'S MAHAN AIR

On September 14, 2018, the U.S. Treasury Department's Office of Foreign Assets Control announced new sanctions targeting Bangkok-based firm, My Aviation Company Ltd. The aviation firm is accused of acting as General Services Agent (GSA) in Thailand for Mahan Air.

GSAs, by definition, are third-party entities that "provide services to an airline under the airline's own brand, including sales and marketing, freight handling and airport warehouse and ramp supervision." In this case, not only did this Bangkok-based company provide cargo services to Mahan Air, but it is also alleged to have worked with local freight forwarding entities to ship cargo aboard regularly scheduled Mahan Air flights to Tehran, Iran. By imposing sanctions on GSA entities such as My Aviation Company Ltd., service providers will "finally have to decide whether the profits generated by transacting with Mahan are worth the risk of American sanctions."

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 (esahr@eckertseamans.com or 202-659-6622); Drew Derco (dderco@eckertseamans.com or 202-659-6665), or Alexander Matthews (amatthews@eckertseamans.com or 202-659-6633).