ECKERT SEAMANS

FEBRUARY 2013

AVIATION REGULATORY UPDATE

1. DOT FINES CONTINUE AT HIGH LEVEL IN 2012

In 2012, DOT issued $4,135,000 in civil penalties and the number of consent orders increased by approximately 15%. Fines were attributable to the following categories:

Topic	Number of Fines	Total Penalties
Full Fare Advertising	22	$1,210,000
Improperly Holding Out Service	8	$255,000
Part 382	7	$470,000
Baggage Fee Disclosures	6	$440,000
Montreal Convention Violations	5	$420,000
Charter Rules	4	$580,000
Codeshare Notifications	4	$240,000
Tarmac Delay Rules	4	$395,000
Other (Misc.)	3	$125,000
Total	63	$4,135,000

2. PASSENGER RIGHTS RULE #3 DELAYED AGAIN

According to DOT's monthly Report on Significant Rulemakings, the Department has elected to again delay the third round of its passenger protection rules. According to sources at the Department, DOT "received valuable information from the airline and ticket agent industries, among other aviation stakeholders, that has been helpful in preparing the proposed rule and analysis. DOT is [still] reviewing this information and working to finalize the proposal."

The rule, commonly known as "Enhancing Airline Passenger Protections III" would cover issues such as whether the Department should enhance disclosure requirements on code-share operations, whether the Department should expand the on-time performance "reporting carrier" pool to include smaller carriers, whether the Department should require additional or special disclosures regarding certain substantial fees, e.g., oversize or overweight baggage fees, and whether the Department should require that ancillary fees be displayed through all sale channels including Global Distribution Systems such as Sabre and Travelport.

The Department has advised that the delay was necessary because it is "awaiting [the] development of additional data". DOT's latest projections indicate the rule will be issued via a Notice of Proposed Rulemaking at the end of May 2013.

3. DOT GUIDANCE ON PUBLIC CHARTER PROSPECTUSES BECOMES EFFECTIVE

On November 13, 2012, DOT issued a notice providing guidance on the review and approval of public charter prospectuses. The notice was issued following DOT's review of the Southern Sky Air & Tours, LLC d/b/a Direct Air bankruptcy, during which the Department noted several areas of non-compliance with numerous consumer protection requirements. Based on these findings, DOT sought to clarify certain elements of its public charter regulations (14 C.F.R. Part 380) to promote better compliance with those regulations and further improve consumer protection. The notice was to have taken effect on December 12, 2012. On December 11, 2012, however, DOT deferred the notice's implementation date until January 14, 2013.

Effective January 14, 2013, DOT will no longer approve public charter prospectus filings that do not, as part of the filings, contain the following: (1) A statement confirming that the contracts between the public charter operator and the direct air carriers include the full cost of the direct air service; and (2) a statement that the public charter operator will retain direct control of all passenger reservation records. In addition, public charter operators may only accept payment via credit card and may not use any type of voucher program. DOT intends to initiate enforcement action if it obtains evidence of violations of the commitments made in those statements mentioned above, or if charter operators are accepting debit purchases or utilizing a voucher program.

4. CANADA FINALIZES FULL FARE ADVERTISING RULE

On December 18, 2012, the Canadian Transportation Authority announced that it would require all-inclusive price advertising for air transportation. Canada's full fare advertising rules apply to any person/company that advertises air prices through any media (online booking systems, call centers and service desks, print, broadcast, websites and social media) to the Canadian public, for travel within or originating in Canada.

Under the new rules, air price advertising directed at the Canadian public must include:
(1) The total price, inclusive of all taxes, fees and charges which a consumer must pay to obtain the air service; (2) A minimum level of description of the air service offered, including the points of origin and destination, whether the service is one way or round trip, and limitations with respect to booking or travel availability periods; and (3) Access to a breakdown of the taxes, fees and charges and any optional services offered for a fee or charge.

The CTA expects air price advertisers to comply as quickly as possible with the new regulations. Companies who do not comply are subject to a $25,000 fine. Please contact us for further assistance in complying with this regulation.

5. FCC ADOPTS NEW LICENSING PROCEDURES FOR IN-FLIGHT WIRELESS USE

On December 30, 2012, the FCC announced new guidelines for carriers who want to provide in-flight Internet service. Private and commercial carriers (both US-registered and non-US registered) must apply for licenses in order to use Earth Stations Aboard Aircraft (ESAA). ESAAs are antennas attached to the outside of the aircraft that communicate with satellites to provide Internet service. Carriers will have to show that their ESAAs meet FCC requirements, and if granted, the licenses will be valid for fifteen years. Previously, licenses were granted on a case-by-case basis. The FCC hopes to enable more carriers to provide in-flight Internet and has created a streamlined process whereby carriers can apply for licenses which cover a fleet of aircraft.

Although, FAA regulations currently prohibit the use of most PEDs during flight, there is an exception whereby aircraft operators may permit PEDs that they have determined will not cause interference with the navigation or communication systems on the aircraft. As a result, many carriers allow usage once the aircraft has reached a safe altitude.

If you would like to apply for such a license, please contact us.

6. U.S. SENATE CONFIRMS NEW FAA ADMINISTRATOR

On January 1, 2013, the U.S. Senate confirmed Michael Huerta as Administrator of the Federal Aviation Administration. Mr. Huerta has served as acting Administrator since the arrest and subsequent resignation of Randy Babbitt in December 2011.Following his confirmation, Mr. Huerta will lead the FAA for five years, which many in the industry feel comes at a critical time as the Administration deals with increasingly congested skies and moves away from an inefficient, point-to-point navigation system to the modern NextGen system. Huerta was brought into the FAA primarily for work on the NextGen project, and Washington

aviation groups supported his confirmation as key to replacing an aging and inefficient aviation infrastructure. Notably, industry groups such as A4A and IATA also supported Huerta's confirmation.

7. HAZMAT UPDATE: DOT SEEKING COMMENTS ON THE TRANSPORTATION OF LITHIUM BATTERIES

DOT is seeking additional comment on the impact, if any, of recent changes to the ICAO Technical Instructions and, via their incorporation by reference, to the HMR. The Department is particularly interested in comments on whether it should require mandatory compliance with the 2013-2014 ICAO Technical instructions for all shipments of lithium batteries by air. Comments are due by March 8, 2013.

As background, DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) originally sought to "amend the Hazardous Materials Regulations to maintain alignment with international standards by incorporating various amendments, including changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements" in order to harmonize the Hazardous Materials Regulations with recent changes made to the International Maritime Dangerous Goods Code, the ICAO's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the UN Recommendations on the Transport of Dangerous Goods - Model Regulations. The NPRM also proposed the incorporation by reference of the 2013-2014 Edition of the ICAO Technical Instructions, which addresses among many topics, the air transportation of lithium batteries.

For purposes of the HMR, a shipment of lithium batteries are permitted to be transported by air in accordance with either the 2013–2014 Edition of the ICAO Technical Instructions (with the exception of primary lithium batteries and cells aboard passenger carrying aircraft and unapproved prototype lithium batteries and cells aboard passenger carrying aircraft), or the applicable requirements currently specified in the HMR (i.e. § 171.24(d)(1)(ii) and (iii)). Incorporation by reference of the 2013– 2014 Edition of the ICAO Technical Instructions provides shippers and carriers with the flexibility to choose the method of compliance most appropriate for their operation and transportation scenario.

8. BEA REPORTING REQUIREMENTS FOR CERTAIN FOREIGN AIRLINES

On January 24, 2013 the U.S. Department of Commerce's Bureau of Economic Analysis (BEA) announced that it will begin conducting a mandatory survey titled "Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States (BE-9)". Reports are required from U.S. offices, agents, or other representatives of foreign airlines that transport passengers or freight and express to or from the United States and whose total covered revenues or total covered expenses incurred in the United States: (a) were $5,000,000 or more during the previous year or are (b) expected to be $5,000,000 or more during the current year. Entities required to report will be contacted individually by BEA and reports will be due 45 days after the end of each calendar quarter. . Entities not contacted by BEA have no reporting responsibilities.

Entities subject to the reporting requirement must report the following data: (1) Freight revenue on merchandise exported from, and imported into, the United States; (2) Shipping weights on which the freight revenues were earned; (3) Expenses incurred in the United States for fuel and oil, wages and salaries paid to employees in the United States, agents' and brokers' fees and commissions for arrangement of freight and passenger transportation, aircraft handling and terminal services, and all other expenses incurred in the United States except aircraft leasing expenses; and (4)Aircraft (with crew) leasing expensesThe BE-9 survey forms and instructions are available on the BEA Web site at www.bea.gov/surveys/iussurv.htm. If you have been contacted to file a report, please contact us and we can assist you.

9. CANADA RATIFIES CAPE TOWN CONVENTION AND AIRCRAFT PROTOCOL

Canada has announced its ratification of the Cape Town Convention, effective April 1, 2013. The decision to ratify was made in a effort to help the Canadian airline industry and lower costs on aircraft financing.

As background, the Cape Town Convention became effective on March 1, 2006 and involves asset-based financing and leasing of aircraft and engines. Notably, the Convention allows for interests in engines or aircraft to be registered in the International Registry to protect the financing party or lessor's interest in the engines or aircraft from third party claims. To that end, the Convention provides a high degree of protection from risk for lenders, lessors and financiers and, as a result, has tangentially benefited the airline industry through diminished leasing and financing costs. To date, the Convention has been ratified by more than 50 countries worldwide.

10. DOT FINES UPDATE

The following DOT fines were issued in December 2012:

- Scott's Air LLC d/b/a Island Air Express: $20,000 for conducting unauthorized interstate air service. (December 28, 2012)
- World Travel Network, LLC: $10,000 for violations of the Department's full fare advertising rules. (December 28, 2012)
- Copa Airlines, Inc.: $150,000 for violations of the Department's tarmac delay rules. (December 31, 2012)
- Virgin America, Inc.: $55,000 for violations of the Department's tarmac delay rules. (December 31, 2012)

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ECKERT SEAMANS
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MARCH 2013

AVIATION REGULATORY UPDATE

SEQUESTRATION BEGINS

March 1, 2013 marked the official start of "Sequestration", which is a process that automatically cuts the federal budget across most departments and agencies, including many of the entities involved in the transportation industry. U.S. Transportation Secretary Ray LaHood issued a statement on February 22, 2013, in which he outlined the impact sequestration would have on transportation services. The U.S. Department of Transportation ("DOT") must cut nearly $1 billion from its budget. Approximately $600 million of this amount will come from the Federal Aviation Administration ("FAA"). The proposed budget cuts will affect services for commercial, general aviation and military aircraft. Moreover, due to the large cut to the FAA's budget, approximately 47,000 employees will be furloughed one day per week until September 30, 2013, which marks the end of the fiscal year. According to DOT other effects of sequestration will include:

- Flights to major cities like New York, Chicago and San Francisco could experience delays of up to 90 minutes during peak hours;
- Delays at major airports will have a ripple effect across the country; and
- Cuts to the budget will mean quick repair of runway equipment and preventative maintenance may not be possible and could lead to additional delays.

DOT and FAA are not the only agencies affected. On March 2, 2013, U.S. Customs and Border Protection ("CBP") released a statement outlining the effects sequestration would have on its personnel and operations. According to the statement, CBP will furlough employees and also reduce overtime and impose a hiring freeze. As a consequence, the industry will likely see some or all of the following issues:

- Increased wait times at major international airports of up to 50% or more with peak waits up to 3-4 hours or more at gateway airports;
- Decreased service levels in cargo operations; and
- Reduced flexibility to maintain or extend operating hours.

FCC ANNOUNCES LICENSING REQUIREMENTS FOR EARTH STATIONS ABOARD AIRCRAFT

Carriers who want to provide in-flight Internet service by using Earth Stations Aboard Aircraft (ESAAs) will have to apply for licenses starting April 8, 2013 in order to use the ESAAs. ESAAs are antennas attached to the outside of the aircraft that communicate with satellites to provide Internet service. In a recently published rulemaking, the Federal Communications Commission set out licensing requirements for Earth Stations Aboard Aircraft (ESAA) communicating with Fixed-Satellite Service Geostationary-Orbit Space Stations for U.S. and non-U.S. registered aircraft operating in U.S. airspace which will become effective April 8, 2013. All applications must be filed electronically through the International Bureau Filing System. In addition to the licensing requirements, the FCC stated that it is making the following frequencies available for use by ESAA:

- 10.95-11.2 GHz (space-to-Earth) on an unprotected basis
- 11.45-11.7GHz (space-to-Earth) on an unprotected basis
- 11.7-12.2 GHz (space-to-Earth) on a primary basis
- 14.0-14.5, GHz (Earth-to-space) on a secondary basis

AVIATION REGULATORY UPDATE

Frequencies that can be used on a primary basis are protected from interference from other users. Frequencies that are used on a secondary or unprotected basis have access to primary frequencies to the extent that they do not interfere with users of those primary frequencies.

DOT CRACKS DOWN ON DISCRIMINATORY ITALIAN AIRPORT FEES

For some time, airport authorities in Italy have charged carriers that operate flights within the European Union one set of fees and carriers that operate flights to and from points outside the European Union a different, higher, set of fees. On March 15, 2013, DOT issued a tentative finding that this method of imposing user charges "constitute[s] an unjustifiable or unreasonable discriminatory, predatory, or anticompetitive practice against U.S. air carriers and impose[s] an unjustifiable or unreasonable restriction on access of U.S. air carriers to the Italy market; violate[s] Article 12 of the U.S.-EU Air Transport Agreement; and warrant[s] remedial action under the International Air Transportation Fair Competitive Practices Act (IATFCPA)." DOT Order 2013-3-1.

Because DOT has found the Italian system of airport user charges violates the U.S.-EU Air Transport Agreement, it has determined the appropriate response is to impose operational restrictions on Alitalia - Compagnia Aerea Italiana S.p.A. (Alitalia) in an attempt to bring about the elimination of the differentiated fee system in Italy. Should the Department finalize its tentative findings, it intends to preclude Alitalia from engaging in "any or all services (on-line, interline or codeshare) between any point or points in Italy, via any intermediate point in the EU, and any point or points in the United States."

Interested parties have seven days to respond. All responses should be filed with the Department in Docket DOT-OST-2013-0038 or by mail to: Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE, Washington, DC, 20590.

QANTAS CAUGHT IN IRAN PLOT TO EVADE U.S. TRADE AND ECONOMIC SANCTIONS

U.S. investigators uncovered a plot to send three Boeing 747 jumbo jets previously owned by Qantas to Iran in violation of trade and economic sanctions. Qantas sold the aircraft to a company based in the Middle East, which apparently planned to ultimately send the planes to Iran. To keep the plan undercover, the planes were shifted between companies based in the U.A.E. and Gambia over the course of 16 months. One of the three aircraft surfaced in Iran; U.S. investigators prevented the other two 747s from making it into the country. According to reports, the aircraft were intended for use on routes between Tehran and Bangkok on Aban Air, the Iranian based airline. The U.S. Bureau of Industry and Security reports that the remaining two aircraft have been flown in and out of various countries in the Middle East, including Syria.

This case highlights the need for airlines to seek out information on companies to which they are potentially selling aircraft. Penalties for violating U.S. trade and economic sanctions can be severe. In addition to losing the right to export product, violators can be subject to fines ranging from $50,000 to $10,000,000 and imprisonment ranging from 10 to 30 years for willful criminal violations. Civil penalties can range from up to $250,000 to twice the amount of each underlying transaction and may in some cases be based per violation.

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MARCH 2013

AVIATION REGULATORY UPDATE

RECENT DEVELOPMENTS IN INTERNATIONAL TRADE AFFECTING AIRLINES

New U.S.-EU Transatlantic Trade and Investment Partnership Agreement

In his February 2013 State of the Union Address, President Obama announced plans to begin negotiations of the Transatlantic Trade and Investment Partnership between the United States and the European Union. The White House estimates that the U.S.-EU economic relationship is the world's largest, accounting for half of global economic output and nearly one trillion dollars in goods and services trade. This trade agreement would create the largest free trade zone in the world. Negotiations will begin in summer 2013 and it is hoped would conclude by the end of 2014, and would require agreement of all 27 EU Member States and the U.S. Congress. It will be an ambitious, high-standard trade and investment agreement through which the U.S. Administration hopes to increase U.S. exports, open foreign markets to U.S. companies by liberalizing trade barriers in the EU, and address regulatory and other non-tariff barriers.

The negotiations will have a significant impact on the aviation industry, covering issues such as removing non-tariff barriers, protecting intellectual property rights, harmonizing regulatory standards for trade and investment, labor, and the environment, and providing duty-free access of goods. U.S. labor groups have expressed concern about potential foreign ownership and control of airline carriers and outsourcing of aircraft maintenance jobs.

New International Services Trade Agreement

In January 2013, President Obama announced that the U.S. will begin negotiating a new international services agreement. The Geneva-based services negotiations will include Australia, Canada, Chile, Colombia, Costa Rica, the EU (including its 27 Member States), Hong Kong, Iceland, Israel, Japan, Mexico, New Zealand, Norway, Pakistan, Panama, Peru, South Korea, Switzerland, Taiwan, Turkey and the United States. Collectively these countries represent nearly two-thirds of global trade in services. The Obama Administration has noted that the international services negotiations will cover "transportation services."

Although the specifics of the agreement have not yet been disclosed publicly, the agreement could affect standardization of service-related activities in the aviation industry such as aircraft repair and maintenance services and specialty air services, which are aviation-related issues covered in past trade negotiations such as the Korea-U.S. Free Trade Agreement. Other issues affecting the airline industry would likely include reducing non-tariff barriers, eliminating preferences for domestic firms, eliminating nationality requirements to do business in countries, transparency of regulations in foreign countries, and decreasing equity limits to participate in foreign markets.

Continuing Negotiations of the Trans-Pacific Partnership Agreement

In March 2013, the Office of the U.S. Trade Representative concluded its 16th round of negotiations of its Trans-Pacific Partnership (TPP) Agreement between the U.S. and 10 other countries (Canada, Mexico, Australia, Brunei Darussalam, Chile, Malaysia, New Zealand, Peru, Singapore, and Vietnam). The 17th round of negotiations will be held in Lima, Peru from May 15-24, 2013. Issues under negotiation that may potentially affect airlines include government procurement, investment, intellectual property, labor, and service-related activities in the aviation industry such as aircraft repair and maintenance services and specialty air services. There are opportunities for airlines to express their concerns and priorities to the negotiators.

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INCREASED BAGGAGE LIABILITY FOR DOMESTIC CARRIERS

Pursuant to 14 C.F.R. Part 254, DOT is required to set minimum baggage liability limits for domestic air transportation. Section 254.6 mandates that the Department review the domestic baggage liability limit every two years and revise the limit, as required, to match changes in the Consumer Price Index for All Urban Consumers ("CPI-U"). On March 4, 2013, DOT used a specific formula prescribed in 14 C.F.R. 254.6 to determine that the current limit on domestic baggage liability ($3,300) should be raised to $3,400, effective June 6, 2013. This means that domestic airlines can be liable for up to $3,400 if a passenger's baggage is lost, stolen, or damaged when it is being transported by the airline.

FINAL RULE: FLIGHTCREW MEMBER DUTY AND REST REQUIREMENTS

On January 4, 2012 the FAA released a final rule titled "Flightcrew Member Duty and Rest Requirements" that amends the existing flight, duty, and regulations applicable to U.S. carriers and their flight crews. The rule created new part 117, which effectively replaces the existing regulations for flight, duty and rest regulations for Part 121 passenger operations. The FAA received numerous questions from organizations such as Airlines 4 America (A4A) and the Air Line Pilots Association (ALPA) in response to this rule and, on March 5, 2013, published a clarification in the Federal Register.

The clarification addresses numerous important issues. For instance, the FAA clarified that the 8-hour sleep opportunity required by §117.25 does not have to take place during a specific time of day (only that an 8-hour sleep opportunity be provided at some point during the mandatory 10-hour rest period). The FAA also clarified that a "suitable accommodation", as defined by §117.3, can be used by multiple parties at the same time (e.g., a room with multiple reclining chairs). A third clarification addressed the repositioning of aircraft from Customs to a domestic gate. In such a scenario, where an international flight has arrived and deplaned its passengers at Customs, moving that aircraft to a domestic gate for a subsequent operation would not constitute "flight time" but would be part of a flightcrew member's flight duty period.

The clarification addresses numerous other issues such as the applicability of previous flight, duty, and rest interpretations to Part 117, the new rule's application to Part 91 flights, deadhead transportation, the meaning of "further aircraft movement", fitness for duty certification requirements, Fatigue Risk Management Systems, and flight time limitations. For those interested in learning more, the clarification in its entirety is available here: http://www.gpo.gov/fdsys/pkg/FR-2013-03-05/pdf/2013-05083.pdf

CONSERVATIVE/LIBERTARIAN PUBLIC INTEREST GROUPS FILE SUPREME COURT BRIEFS IN SUPPORT OF AIRLINES' CHALLENGE TO DOT ADVERTISING RULES

As we reported in December, Spirit Airlines Inc., Allegiant Air and Southwest Airlines Co. (collectively, "airlines") filed an appeal to the Supreme Court of the United States on November 21, 2012 in regard to an earlier decision by the United States Court of Appeals for the District of Columbia ("District Court") on DOT's price advertising rules.

In a new development, three conservative/libertarian public interest groups have filed amicus curiae ("friend of the court") briefs in support of the airlines' efforts to overturn DOT's full fare advertising rule. Generally, these entities believe that the DOT's rule, by regulating the content and design of air travel advertisements and fare quotations, infringes on First Amendment free speech rights and that the case is

an important one "because it addresses the collapse of constitutional protection for commercial speech and the government's attempt to impede the free flow of information."

The three groups that have filed amicus curiae briefs are the New England Legal Foundation, the Pacific Legal Foundation and the Cato Institute, joined by National Federation of Independent Business/Small Business Legal Center ("NFIB"). The Supreme Court should decide in early 2013 whether or not it will grant certiorari.

FINES UPDATE

The following fines have been issued in 2013:

- Legendary Journeys, Inc. fined $40,000 for failing to comply with the Department's full-fare advertising rule, 14 CFR 399.84(a). Legendary Journeys, Inc., a travel agent, included the phrase "FREE AIR" or "INCLUDES FREE AIR" adjacent to the stated price on its cruise – package advertisements. DOT determined that use of the phrase "FREE AIR" was deceptive because the air fare was not actually free as the advertisement implied. Namely, during the sale process, consumers were given the option of either purchasing the cruise package with air for the advertised price plus taxes and fees, or purchasing the package without air, in which case the consumer would receive a $100-$200 "credit". This method of advertising violated the requirements of 14 CFR 399.84(a) and constituted an unfair and deceptive practice prohibited under 49 U.S.C. § 41712.
- Sky King, Inc. fined $500,000 for violating DOT's public charter rules. Specifically, Sky King violated 14 C.F.R. Parts 212 and 380 by operating public charter flights on behalf of Direct Air without receiving the full charter price for the flights. Additionally, Sky King cancelled charter flights with less than ten days' notice before the scheduled departure date and failed to return all passengers who had purchased round trip fares to their point of origin. Interestingly, the fact that Sky King filed for bankruptcy had no impact on the case; the penalty amount will be included in DOT's proof of claim that will be filed in Sky King's bankruptcy case.
- United Airlines fined $130,000 for violating DOT's tarmac delay rules. On May 7, 2012, United allegedly failed to notify passengers delayed at a gate that they had the opportunity to deplane. The penalty was issued in part because three passengers filed complaints with the Department's Aviation Consumer Protection Division alleging they were never notified of the option to deplane during the delay.

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APRIL 2013

AVIATION REGULATORY UPDATE

SPECIAL ALERT: U.S. SUPREME COURT DENIES CERT IN SPIRIT AIRLINES CASE/UPHOLDS DOT PASSENGER RIGHTS RULE

The U.S. Supreme Court today denied an appeal filed by Spirit Airlines Inc., Allegiant Air and Southwest Airlines Co. (collectively, "airlines") in regard to an earlier decision by the U. S. Court of Appeals for the District of Columbia upholding DOT's consumer protection rules. By denying the airlines' "Petition for Writ of Certiorari", the Supreme Court refused to review the lower court's prior decision and, in effect, provided a final validation to that decision and several aspects of DOT's Enhancing Airline Passenger Protections; Final Rule (EAPP #2).

At issue in the case were the Department's requirements that the most prominent figure displayed on print advertisements and websites be the total price, inclusive of taxes; that airlines allow consumers who purchase their tickets more than a week in advance the option of canceling their reservations without penalty for twenty-four hours following purchase; and that airlines not increase the price of air transportation and baggage fees after consumers purchase their tickets. While airlines were required to comply with all three of these requirements in early 2012, the Supreme Court's denial of certiorari is nonetheless another significant blow to the airline industry, as the lower court's decision gives DOT a published court opinion with language that will surely be used as justification that the full fare advertising rules protect against unfair and deceptive practices.

The case is *Spirit Airlines v. Department of Transportation*, U.S. Supreme Court, No. 12-656. If you would like further information on this decision, please feel free to contact us.

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MAY 2013

AVIATION REGULATORY UPDATE

NEW TRANSPORTATION SECRETARY NOMINATED

President Obama, on April 29, 2013, nominated Anthony R. Foxx to be the next Secretary of the U.S. Department of Transportation (DOT). Foxx, who currently serves as the Mayor of Charlotte, North Carolina, is a graduate of Davidson College. He also has a law degree from New York University. Prior to running for public office, Mr. Foxx worked for the House Judiciary Committee and the Department of Justice. As mayor, Mr. Foxx worked on multiple transportation projects for his city including opening an additional runway at Charlotte Douglass International Airport, making improvements on a major bridge, and returning streetcars to downtown Charlotte. Mr. Foxx must now be confirmed by the Senate.

HOUSE AND SENATE BILLS PASS - FAA FURLOUGH IS SUSPENDED

In a rare case of bipartisan agreement, Congress passed legislation on April 26, 2013 that effectively ended the Federal Aviation Administration's (FAA) furlough of 47,000 employees. The Reducing Flight Delays Act was enacted days after the first round of furloughs became effective, resulting in more than 3,000 flight delays. The legislation allows DOT to shift, on a one-time basis, up to $253 million from the FAA's Airport Improvement Program. The use of funds from the FAA's Airport Improvement Program is somewhat controversial, as the money being used was intended to finance work such as safety improvements and pavement repairs. Critics believe this move will have long-term impacts on domestic airport operations. The bill, which does not end sequestration cuts, is only for fiscal year 2013, meaning that additional legislative action will likely be required if sequestration continues into the next fiscal year. President Obama signed the legislation on May 1, 2013.

DOT FINES AIR CHINA FOR TARMAC DELAY VIOLATIONS

DOT yesterday fined Air China $90,000 for alleged violations of the tarmac delay rules. Air China's July 15, 2012 flight from JFK International Airport to Beijing Capital International Airport was delayed at the gate from 6:40 p.m. to 8:26 p.m. During this time, the aircraft remained parked with the door open; however, Air China failed to notify the passengers during this time that they could leave the aircraft. Under the tarmac delay rules, such notifications must be made every 30 minutes while the opportunity to deplane exists. The flight ultimately took off from JFK at 10:51 p.m., a mere eleven minutes past the four-hour deadline. Interestingly, Air China was fined for violations that occurred during the first two hours of the delay, before the delay was reportable. Had the crew left the aircraft door closed during the first two hours of the delay and updated passengers every 30 minutes, there may not have been a violation.

SOUTHWEST PAYS FOR FAILING TO RESPOND TO CONSUMER COMPLAINTS

DOT fined Southwest Airlines Co. $150,000 as part of a settlement for violations of the Department's complaint response rules, enumerated in 14 C.F.R. Part 382 and 14 C.F.R. Part 259. Under Part 382, carriers are required to provide timely responses to written disability-related complaints. Under the passenger rights rule, which includes Part 259, carriers must provide substantive responses to all written consumer complaints.

Southwest received a large number of disability-related and passenger-related complaints between June 2011 and January 2012. Southwest failed to respond to the written complaints due to a problem with their website. The website issue was resolved and Southwest did respond to the complaints, yet their responses were not submitted within the timeframe required by Parts 382 and 259. Southwest conceded that its

responses were not timely yet the responses were also not substantive in nature, as required by 14 C.F.R. 382.155 and 14 C.F.R. 259.7(c). According to Southwest, it merely provided a summary of the complaint and did not address the specific details of each complaint. Southwest did not admit or deny whether they violated substantive portions of Part 382 that were at issue in the complaints that were submitted to the carrier.

CBP PLANS TO TEST PRE-CERTIFICATION OF IMPORTERS

New U.S.-EU Transatlantic Trade and Investment Partnership Agreement

U.S. Customs and Border Protection (CBP) recently announced a new plan to test the pre-certification of importers for participation in the Importer Self-Assessment (ISA) program. According to a notice published in the Federal Register, the test will be known as the "Customs Broker Importer Self-Assessment Pre-Certification (Broker ISA PC)" test. CBP's goal is to use existing relationships with customs brokers to promote importers, especially small entities, to participate in the ISA program. According to CBP, ISA is a voluntary approach to trade compliance. The ISA program provides special benefits to those importers that assume responsibility for monitoring their own compliance with international trade laws and regulations.

To participate in the test, licensed customs brokerages and licensed customs broker sole proprietorships must have: (1) operated as a licensed customs broker for at least five consecutive years; (2) had C–TPAT certification status for at least three consecutive years; (3) maintained written internal control procedures designed to ensure compliance with CBP related activities; (4) been trained in internal control concepts based on the Committee of Sponsoring Organization (COSO) Internal Control—Integrated Framework course; and (5) a compliant history with CBP laws and regulations.

CBP will limit the initial test phase to no more than nine (9) participants. Any further expansions of the test will be announced via the Federal Register. Comments may be submitted at any point throughout the test. A full copy of the announcement is available at: http://www.gpo.gov/fdsys/pkg/FR-2013-04-17/pdf/2013-08968.pdf.

FAA CONTEMPLATES UPDATES TO PART 129 OPS SPECS PROCESS

The FAA has requested to renew a previous information collection request regarding the Part 129 Operations Specifications process. In an April 29, 2013 Federal Register publication, the FAA is seeking to clarify and standardize the rules for applications by foreign air carriers for Part 129 Operations Specifications and to establish new standards for amendment, suspension, and termination of existing Operations Specifications. The purpose of this move is to update the process for issuing Operations Specifications and to establish a regulatory basis for current practices of amending, suspending, and terminating existing Operations Specifications.

Interested parties may file comments on or before May 29, 2013; however, as no rule has been drafted at this point regarding changes to the Operations Specifications process, the FAA is primarily interested in comments concerning whether the proposed collection of information is necessary for FAA's performance.

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AVIATION REGULATORY UPDATE

FINAL RULE ISSUED FOR HAZARDOUS MATERIALS

The Pipeline and Hazardous Materials Safety Administration ("PHMSA") has issued a final rule revising regulatory references to the maximum and minimum civil penalties for a knowing violation of the Federal hazardous material transportation law. The following penalty amounts now are applicable:

- Maximum civil penalty increased from $55,000 to $75,000 for a person who knowingly violates the Federal hazardous material transportation law;
- Maximum civil penalty increased from $110,000 to $175,000 for a person who knowingly violates the Federal hazardous material transportation law that results in death, serious illness, or severe injury to any person or substantial destruction of the property; and
- Current $250 minimum civil penalty increased to $450 for violations related to training.

AIR CARGO ADVANCE SCREENING (ACAS) PILOT PROGRAM EXTENDED

Last October, CBP announced that the Air Cargo Advance Screening (ACAS) pilot program would run for six months. On April 23, 2013, CBP extended the pilot period for six months. CBP has also reopened the application period -- new participants may submit applications through May 23, 2013. Comments concerning any aspect of the announced test may be submitted at any time during the test period.

The ACAS pilot is a voluntary test in which participants submit a subset of required advance air cargo data to CBP at the earliest point practicable prior to loading cargo onto aircraft destined to or transiting through the U.S.

Prospective ACAS pilot participants will need to fulfill the following eligibility requirements: (1) have the technical capability to electronically submit data to CBP and receive hold messaging responses via an existing point to point connection with CBP, a connection to CBP through a trade service provider (SITA, ARINC, Descartes, etc.), or a secure VPN connection with CBP; (2) if the participant does not have an existing connection with CBP, sign an Interconnection Security Agreement (ISA) or amend its existing ISA, if necessary, and adhere to security policies defined in the DHS 4300a security guide; and (3) establish operational security protocols that mitigate any threat which is identified by the NTC; respond promptly with complete and accurate information when contacted by the NTC with questions regarding the data submitted, as well as follow any Do Not Load instructions.

CBP does not intend to enforce punitive measures if ACAS pilot participants are non-compliant with these conditions of participation in the pilot. Carriers interested in participating in the ACAS pilot program should submit an email to CBPCCS@cbp.dhs.gov, stating their interest and qualifications based on the program's eligibility requirements. The email should also include a point of contact. Pilot participants will receive guidance on the necessary steps for the transmission of ACAS data.

FOREIGN REPAIR STATION RULE MOVES TO OMB FOR FINAL REVIEW

On March 16, 2013, the foreign repair station security rule was sent to the Office of Management and Budget (OMB) for final review. The rule will allow certification of foreign repair stations, which has been frozen since August 2008. Prior to this new development, the rule had been stuck “in coordination” between the TSA and the Department of Homeland Security for well over a year. OMB acknowledged

its receipt of the rule on March 16 and has begun its review, which typically lasts 90 days. For most regulatory proceedings, OMB review is the final obstacle before a final rule is issued.

UPCOMING DOT RULEMAKINGS

Below is an update on pending DOT rulemakings:

- Accessibility of Websites and Ticket Kiosks – Final Rule expected 5/6/2013, but DOT review is slightly behind.
  This rule addresses whether carriers should be required to make web sites they operate and on which their agents sell airport transportation on their behalf accessible to people with disabilities; and (2) whether automated kiosks operated by carriers at U.S. airports should be required to be accessible
- Accessibility of Airports – Final Rule expected 10/4/2013
  This rule includes new provisions related to service animal relief areas and closed captioning of televisions and audio-visual displays for airports, as well as lifts used for passenger transfers from the tarmac.
- Potential Ban on Electronic Cigarettes – Final Rule expected 12/4/2013
  This rule explicitly bans the smoking of electronic cigarettes on all flights in scheduled intrastate, interstate, and foreign air transportation.
- HMR amendment regarding lithium batteries - Final Rule expected 10/31/2013
  This rule seeks to amend the Hazardous Materials Regulations to comprehensively address the safe transportation of lithium cells and batteries.
- Enhancing Airline Passenger Protections #3 – Supplemental NPRM expected 7/15/2013
  EAPP #3 proposes numerous additional consumer protection obligations on airlines and ticket agents. Some of these obligations include: (1) whether marketing carrier should assist codeshare partner when codeshare partner's flight experiences a lengthy tarmac delay; (2) enhanced disclosure requirements for codeshare flights, including requiring on-time performance data and reporting of all codeshare operations; (3) additional or special disclosures for certain substantial fees, e.g., oversize or overweight baggage fees and seat upgrade fees; and (4) whether DOT should require that ancillary fees be displayed through all sales channels.
- Carrier-Supplied Medical Oxygen, Accessible In-Flight Entertainment Systems, Service Animals, and Accessible Lavatories on Single-Aisle Aircraft - Supplemental NPRM expected 8/28/2013
  This rule addresses several Part 382 issues, including medical oxygen, service animal issues, and expanded aircraft accessibility requirements.
- Use of the Seat-Strapping Method for Carrying a Wheelchair on an Aircraft ─ Final Rule expected 5/24/2013, but DOT is slightly behind.
  This rule prohibits carriers from using the "seat-strapping" to carry wheelchairs in flight.

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AVIATION REGULATORY UPDATE

FINES UPDATE

The following fines have recently been issued:

Compagnia Aerea Italiana, S.p.A. (Alitalia) - $125,000

DOT fined Alitalia $125,000 for providing inaccurate information on its website regarding its policy on compensation to passengers on delayed and cancelled flights. Alitalia in 2009 denied compensation to a class of passengers affected by two flight cancellations that were covered by the EU rules. The applicable EU rules were, according to Alitalia's general Conditions of Carriage, incorporated into the contract of carriage between Alitalia and its passengers. When purchasing tickets on-line, passengers were even required to acknowledge that the Conditions of Carriage apply to their purchase as a condition of completing their purchase. In denying compensation, Alitalia argued that its general Conditions of Carriage conflicted with Rule 55 of its tariff, which was not available on its website or at its U.S. ticket counters. The applicable tariff provision exempted travel to and from the U.S. from the terms of the Conditions of Carriage. One of the plaintiff's main arguments is that they had no notice of the applicable tariff provisions.

Following a complaint DOT's Aviation Enforcement Office investigated Alitalia's refusal to pay cash compensation to the passengers. After reviewing the facts DOT determined that the inconsistent statements of policy contained in the tariff and the general Conditions of Carriage were an unfair and deceptive trade practice in violation of 49 U.S.C. 41712. Alitalia was directed to cease and desist from further similar violations and assessed a civil penalty of $125,000 (half payable now, half if a subsequent violation is discovered). It was also directed to revise its tariff and general Conditions of Carriage to reflect its actual policy regarding compensation in cases of delayed or cancelled flights to or from the U.S.

Caribbean Airlines - $100,000

DOT fined Caribbean Airlines $100,000 for violating the Department's tarmac delay rules. The Caribbean Airlines flight at issue was scheduled to depart JFK International Airport to Trinidad's Piarco International Airport on August 15, 2012. The aircraft left the gate area but was unable to depart due to poor weather conditions and, after waiting for some time, also needed to refuel. Caribbean Airlines' actions resulted in two violations of the tarmac delay rules. First, the plane remained on the tarmac for almost four and a half hours before a staircase was provided to deplane passengers, and second, the airline failed to provide food and water within two hours of the aircraft leaving the gate.

United Postal Service (UPS) - $4,000,000

The FAA proposed a $4 million penalty on UPS for allegedly maintaining and improperly operating four aircraft in violation of federal regulations. The FAA alleged that UPS failed to follow procedures for making structural repairs while it operated the planes on more than 400 flights between October 2006 and June 2009. The violations are a result of UPS' failure to comply with a consent agreement in which UPS agreed to inspect all of its aircraft and compare actual repairs with maintenance records. The required inspection would have ensured the four aircraft were in compliance with regulations. The aircraft in question are two DC-8 aircraft and two MD-11 aircraft.

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MAY 2013

AVIATION REGULATORY UPDATE

This Aviation Regulatory Update is intended to keep readers current on matters affecting immigration, and is not intended to be legal advice. If you have any questions, please contact Evelyn Sahr at 202.659.6622, James Ehrig at 202.659.6672, Drew Derco at 202.659.6665, or any other attorney with whom you have been working.

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MAY 2013

AVIATION REGULATORY UPDATE

DOT'S NEW PASSENGER PROTECTION RULE EXPECTED JULY 15, 2013

DOT announced yesterday at the fourth meeting of the Advisory Committee for Aviation Consumer Protection that its Enhancing Airline Passenger Protections III - Notice of Proposed Rulemaking will be issued on July 15, 2013. In addition, the Final Rule on Accessibility of Carrier Websites and Ticket Kiosks will be issued in early June. Brief summaries of both rulemakings follow:

1. Enhancing Airline Passenger Protections III – NPRM expected July 15, 2013

This rulemaking would address the following issues:

- Whether DOT should require marketing carriers to provide assistance to code-share partners when a flight operated by the code-share partner experiences a lengthy tarmac delay;
- Whether DOT should enhance disclosure requirements on code-share operations, including requiring on-time performance data, reporting of certain data code-share operations, and certain website schedule disclosure of code-share operations;
- Whether DOT should expand the on-time performance "reporting carrier" pool to include smaller carriers;
- Whether DOT should require travel agents to adopt minimum customer service standards in relation to the sale of air transportation;
- Whether DOT should require ticket agents to disclose the carriers whose tickets they sell or do not sell and information regarding any incentive payments they receive in connection with the sale of air transportation;
- Whether DOT should require ticket agents to disclose any preferential display of individual fares or carriers in the ticket agent's internet displays;
- Whether DOT should require additional disclosures regarding certain substantial fees (such as oversize or overweight baggage fees);
- Whether DOT should prohibit post-purchase price increase for all services and products not purchased with the ticket or wither it is sufficient to prohibit post-purchase price increases for baggage charges that traditionally have been included in the ticket price; and
- Whether DOT should require that ancillary fees be displayed through all sale channels.

2. Accessibility of Carrier Websites and Ticket Kiosks – Final Rule Expected Early June 2013.

This final rule will address the following issues:

- Whether carrier websites should be made accessible to passengers with disabilities and include certain accommodations that conform with the World Wide Web Consortium's Website Content Accessibility Guidelines; and
- Whether automated kiosks operated by carriers at U.S. airports must be accessible to passengers with disabilities via such measures as personal headsets, clear floor space, identifying markings, and color.

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AVIATION REGULATORY UPDATE

We will provide you further details on these rules as information becomes available. In the interim, should you have any questions, please let us know.

This Aviation Regulatory Update is intended to keep readers current on matters affecting immigration, and is not intended to be legal advice. If you have any questions, please contact Evelyn Sahr at 202.659.6622, James Ehrig at 202.659.6672, Drew Derco at 202.659.6665, or any other attorney with whom you have been working.

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JUNE 2013

AVIATION REGULATORY UPDATE

DOT ISSUES NEW GUIDANCE ON COMPLIANCE WITH ITS DISABILITY AND PASSENGER RIGHTS RULES

The U.S. Department of Transportation (DOT) today issued three guidance documents on compliance with DOT's Disability and Passenger Rights rules. We have included the applicable documents and have provided a brief summary of each below.

Guidance on the 24-Hour Hold Requirement

DOT's Passenger Rights rule requires carriers to hold reservations at the quoted fare for 24 hours without payment or allow reservations to be cancelled within 24 hours without penalty, provided the reservation is made within seven days of the flight's scheduled departure time. 14 CFR 259.5(b)(4). Carriers are required to notify consumers of this policy and DOT considers any failure to notify consumers of this policy an unfair and deceptive practice in violation of 49 U.S.C. 41712.

In reviewing carrier websites, DOT has found that many carriers disclose this policy in their customer service plan (which is posted online), but not in other necessary places. Pursuant to DOT's guidance, the policy should be disclosed, at a minimum:

- on the "Terms and Conditions" page where the carrier's general cancellation policy is stated;
- during the online reservation process before a reservation is processed or a payment is submitted if any limitations on refundability are discussed;
- in the ticket "Terms and Conditions" pop-up window that is linked to a required step of a reservation;
- on any carrier FAQ page where the carrier's ticket reservation or cancellation policies are stated;
- during any online cancellation process before a cancellation is confirmed and a cancellation fee is assessed;
- and on the webpage where a carrier promotes "fare lock" or "fare insurance" types of ancillary service and charges a fee for holding a quoted fare without payment for a specified number of hours.

Carriers must also orally disclose the policy, namely through reservation or customer service agents who receive inquiries by phone or in person at the ticket counter. These representatives must also disclose the policy when they receive enough information to know that the person making the inquiry made a reservation within the previous 24 hours.

With respect to cancellations (online, by telephone or in-person) that are covered by the 24-hour reservation hold requirements, carriers must offer consumers the option of a full refund in the original form of payment before the cancellation request is submitted.

Guidance on the Application of Preboarding Requirements for Air Travelers with Disabilities

This guidance concerns what, if any, obligations carriers have with respect to preboarding announcements. 14 C.F.R. 382.93 states, "As a carrier, you must offer preboarding to passengers with a disability who self-identify at the gate as needing additional time or assistance to board, stow accessibility equipment, or be seated." DOT has determined that preboarding must be offered to passengers who need a specific seat assignment, who need to stow their personal folding wheelchairs, and any passengers that "need additional time or assistance to board, stow accessibility equipment, or be seated." Passengers must self-identify at the

gate as being a person with a disability that needs to preboard for one of the above-listed reasons to receive preboarding privileges.

DOT, in the attached guidance, clarified that under 14 C.F.R. 382.93 carriers must board passengers with disabilities who self-identify at the gate before all other passengers, including first class passengers, elite-level passengers, members of the military, passengers with small children, etc. Carriers must comply with this preboarding guidance in all boarding operations; however, carriers that have a preboarding system that does not board passengers with disabilities first can apply for an equivalent alternative determination from DOT.

With respect to preboarding announcements, Part 382 does not require carriers to make a general announcement of the opportunity to preboard in the boarding/gate area. The Enforcement Office did clarify that, if carriers make preboarding announcements in the gate area for other types or classes of passengers, they should make a similar announcement to inform persons with disabilities of the opportunity to preboard. Moreover, carriers that do make preboarding announcements should ensure that passengers with disabilities who preboard have ample time to safely enplane.

Carriers have 90 days to make any necessary changes to their preboarding policies to be in compliance with DOT's guidance.

Guidance on the Transport of Portable Dialysis Machines by Travelers with Disabilities

DOT's Office of Aviation Enforcement and Proceedings has recently been made aware of several troubling situations involving passengers with disabilities who use home dialysis machines. The passengers allegedly experienced issues transporting their portable dialysis machines in the aircraft cabin on recent flights. DOT, after hearing of these instances, published a new set of Frequently Asked Questions regarding the transportation of portable dialysis machines. While the complete list is available in the attached guidance, some of the questions asked and answered include: (1) Is a portable dialysis machine an assistive device?; (2) Must carriers permit passengers to bring their portable dialysis machines in the aircraft cabin?; (3) Do portable dialysis machines count toward a passenger's carry-on limit?; and (4) Are carriers required to accept portable dialysis machines as checked bags regardless of size?

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

GUIDANCE ON THE 24-HOUR RESERVATION REQUIREMENT

NOTICE

This notice provides guidance to U.S. and foreign air carriers regarding compliance with the customer service rule that requires carriers to hold a reservation at the quoted fare for 24 hours without payment or allow a reservation to be cancelled within 24 hours without penalty (the "24-hour reservation requirement"). The 24-hour reservation requirement is mandated by the Department of Transportation's consumer rule "Enhancing Airline Passenger Protections" (14 CFR 259.5(b)(4), 76 Fed. Reg. 23110, 23166, Apr. 25, 2011) and applies to all reservations made seven days or more prior to the flight's scheduled departure time.[1] To comply with the regulation, carriers may not deceive consumers about the 24-hour reservation requirement when consumers inquire about cancelling or changing a reservation within 24 hours of making or paying for that reservation. This guidance also clarifies that the Department's Office of Aviation Enforcement and Proceedings (Enforcement Office) considers the failure to notify such consumers of the 24-hour reservation requirement to be unfair and deceptive in violation of 49 U.S.C. § 41712. It also considers the failure to offer a passenger a full refund in the original form of payment in the event of a cancellation request covered by the 24-hour reservation requirement to be an unfair and deceptive practice.

Disclosing the 24-Hour Reservation Requirement on Carrier Websites

In addition to complying with the requirements under 14 CFR 259.5 to adopt and adhere to a customer service plan, 14 CFR 259.6 requires that each U.S. and foreign air carrier that has a website marketed to U.S. consumers post its customer service plan, which must include a commitment pertaining to the 24-hour reservation requirement, on its website in an easily accessible format. This requirement is intended to better inform consumers about their rights, including those associated with the 24-hour reservation requirement, before purchasing tickets and whenever questions arise later. On the other hand, customer service plans are not always the

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[1] In a subsequent Frequently Asked Questions document, we clarified that a carrier can choose either to hold the reservation free of charge for 24 hours or to allow consumers to cancel the reservation within 24 hours and receive a full refund and the carrier is not required to offer both options.

sole source of information on carrier websites regarding consumer rights. With respect to the 24-hour reservation requirement, carriers are expected not only to include this commitment in their customer service plans and to post the plans on their websites; they are also expected to incorporate the 24-hour reservation requirement into their general cancellation policies and make appropriate disclosures wherever those policies are provided to the public. Otherwise, the presentation of the carriers' general policies would likely mislead consumers who could avail themselves of the 24-hour reservation requirement about their rights.

The Enforcement Office recently reviewed several U.S. carrier websites and found that while all contain a customer service plan, there is a significant disparity in the methods of disclosing the 24-hour reservation requirement. On one end of the spectrum, some carriers disclose the 24-hour reservation requirement on their "Frequently Asked Questions" webpage, on the payment page before the finalization of an online reservation, and also through the "live chat" format upon inquiry. These notifications ensure that consumers are informed of their right to a full refund or free fare hold. On the other end of the spectrum, some carriers' websites disclose the 24-hour reservation requirement only on the customer service plan page and omit any mention of it on other webpages that describe cancellation policies and cancellation fees applicable to "non-refundable" or otherwise restricted tickets, and this is problematic.

The Enforcement Office considers the 24-hour reservation requirement to be an integral component of each carrier's cancellation policy; therefore, the Enforcement Office considers the failure to provide reasonable disclosure of the 24-hour reservation requirement along with general cancellation policies to constitute an unfair and deceptive practice in violation of 49 U.S.C. § 41712. The Enforcement Office recognizes that each carrier's website provides information regarding its cancellation policies differently. Accordingly, the following examples are intended to provide guidance regarding the Enforcement Office's view of what constitutes reasonable disclosure of the 24-hour reservation requirement. Disclosure should appear, at a minimum, on the "Terms and Conditions" page where the carrier's general cancellation policy is stated; during the online reservation process before a reservation is processed or a payment is submitted if any limitations on refundability are discussed; in the ticket "Terms and Conditions" pop-up window that is linked to a required step of a reservation; on any carrier FAQ page where the carrier's ticket reservation or cancellation policies are stated; during any online cancellation process before a cancellation is confirmed and a cancellation fee is assessed; and on the webpage where a carrier promotes "fare lock" or "fare insurance" types of ancillary service and charges a fee for holding a quoted fare without payment for a specified number of hours.[2] Future review

[2] We note that if a carrier allows passengers to cancel a reservation within 24 hours and receive a full refund, it is permissible for the carrier to charge an ancillary fee for "fare lock" service that covers any number of hours. If a carrier chooses to comply with the 24-hour reservation requirement by allowing a fare to be held for 24 hours without full payment, it may offer a "fare lock" service for a fee to lock in the flight itinerary and price for any

of carrier websites for unfair or deceptive practices will consider whether a carrier's disclosure of its cancellation policies is compliant on a case-by-case basis.

Verbally Disclosing the 24-Hour Reservation Requirement

Similar to the website disclosure discussed above, carriers must fully and accurately disclose their cancellation policies, including the 24-hour reservation requirement, through reservation agents or customer service agents upon receiving direct inquiries from consumers by telephone or in person at the ticket counter. We consider any inquiry regarding a carrier's general cancellation policies or specifically regarding the 24-hour reservation requirement to be a "direct inquiry." In addition, the 24-hour reservation requirement should be disclosed following any discussion that provides carriers with sufficient information to determine that the inquirer made his or her reservation within the previous 24 hours and could reasonably be expected to take advantage of the 24-hour reservation requirement if informed of it. For example, if a consumer calls the carrier to change an itinerary covered under the 24-hour reservation requirement, and the carrier knows or should know that the reservation was made within the previous 24 hours (e.g., the carrier's agent is informed that the reservation was made "yesterday"), the carrier should disclose the 24-hour reservation requirement and offer to cancel and rebook the itinerary.[3]

Refunds for Cancellations under the 24-Hour Reservation Requirement

For any online cancellation that is covered by the 24-hour reservation requirement, in deciding whether to pursue enforcement action, the Enforcement Office considers it to be a violation of 14 CFR 259.5(b)(4) and an unfair and deceptive practice for a carrier not to offer consumers the option of receiving a full refund in the original form of payment before the cancellation request is submitted. Carriers may offer other refund options, such as, for example, carrier-issued credits, but such offer should not be pre-selected as the default choice of refund form or appear as the more prominent refund option.

Similarly, for any telephone or in-person cancellation request that is covered by the 24-hour reservation requirement, section 259.5(b)(4) requires carriers to offer the requester a full refund in the original form of payment.

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number of hours in excess of 24 hours but the offer should clearly disclose that during the first 24 hours the fare lock applies regardless of whether a "fare lock" service is purchased.

[3] Alternatively, if the carrier is willing to waive the change fee, it does not need to disclose the 24-hour reservation requirement. Otherwise, under section 259.5(b)(4), the carrier should provide the option of cancelling the original itinerary without a change or cancellation fee and booking the desired itinerary. The carrier is entitled to charge any difference in fares between the two itineraries in such a case. If a consumer seeks to cancel a portion of a roundtrip itinerary, the price of which is conditioned upon the purchase of a roundtrip ticket, carriers may decline to honor the 24-hour reservation requirement unless the consumer agrees to cancel the entire itinerary.

Refunds processed under the 24-hour reservation requirement must be processed within the timeframes mandated by Regulation Z of the Board of Governors of the Federal Reserve System, 12 CFR Part 1026 (formerly 12 CFR Part 226), and 14 CFR Part 374 for credit card purchases, and by Department enforcement precedent for purchases using other forms of payment. Those refund processing timeframes must also be disclosed in the carrier's customer service plan. See 14 CFR 259.5(b)(5).

Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C-70), 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

By:

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings

Dated: May 31, 2013

An electronic version of this document is available at http://www.dot.gov/airconsumer

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

ADDITIONAL GUIDANCE ON THE APPLICATION OF PREBOARDING REQUIREMENTS FOR AIR TRAVELERS WITH DISABILITIES

NOTICE

Since the final rule amending the Department's Air Carrier Access Act regulation (14 CFR Part 382) took effect on May 13, 2009, a number of carrier representatives have contacted the Office of Aviation and Enforcement Proceedings (Enforcement Office) to ask for a clarification or interpretation regarding what specifically is meant by preboarding under 14 CFR 382.93,[1] and whether carriers are required by section 382.93 to make general announcements in the gate area about preboarding. The resulting clarifications and interpretations have been disseminated through informal conversations or emails between DOT staff and individual carrier representatives. The Enforcement Office believes that these informal conversations and email exchanges over time may have resulted in some misunderstandings regarding the requirements of section 382.93. The Enforcement Office is issuing this notice to correct any such misunderstandings, and to ensure that carriers are correctly and consistently applying those requirements.

In the revised final rule published on May 13, 2008, the Department expanded the preboarding requirement to cover not only people who need a specific seat assignment or who need to stow their personal folding wheelchairs, but also to cover passengers that "need additional time or assistance to board, stow accessibility equipment, or be seated." For a passenger to be entitled to preboarding, that passenger must self-identify at the gate as being a person with a disability that needs to preboard for one of the above-listed reasons. In the section-by-section analysis of the preamble to the final rule, the Department noted that the obligation to preboard passengers with disabilities "exists regardless of the carriers' preboarding policies for other persons (e.g., families with small children)."

With the advent of different preboarding policies based on a variety of factors, including but not limited to classes of service, frequent flyer levels, and advanced purchase of priority boarding, the Enforcement Office has received numerous questions concerning when in the boarding process carriers are required by section 382.93 to allow for preboarding of passengers with disabilities in light of carrier boarding policies for other individuals. It is the Enforcement Office's view that section 382.93 requires carriers to board passengers with disabilities who self-identify at the gate as needing to preboard for one of the listed reasons to board the plane before all other passengers, including first class passengers, elite-level passengers, members of the military, passengers with small children, etc. The purpose of section 382.93 is to afford

[1] 14 CFR 382.93 states, "As a carrier, you must offer preboarding to passengers with a disability who self-identify at the gate as needing additional time or assistance to board, stow accessibility equipment, or be seated."

passengers with disabilities who are entitled to preboard enough time and space to board, stow their accessibility equipment, or be seated safely. While the Enforcement Office recognizes that there may be procedures where separate boarding for first class and/or business class passengers may be accomplished at the same time as coach passengers with disabilities if multiple jet bridges are used for boarding, any preboarding system that deviates from the requirement that passengers with disabilities are boarded first must be approved by the Enforcement Office through the established equivalent alternative procedures outlined in 14 CFR 382.10. If boarding of first and business class passengers is accomplished using a separate dedicated jet bridge, such passengers who are disabled must be provided preboarding in accordance with the rule.

Additionally, in regards to whether section 382.93 requires carriers to make preboarding announcements, the Department stated in the comments and responses section of the preamble to the 2008 final rule that it is not requiring a general announcement of the opportunity to preboard in the boarding the area. However, if a carrier makes a preboarding announcement in the gate area for other types or classes of passengers, then we would strongly encourage that carrier to also make an announcement to inform persons with disabilities of the opportunity to preboard. In the Enforcement Office's view, by making a preboarding announcement, the carrier would ensure that a passenger with a disability who self-identifies as needing preboarding is actually given that opportunity thereby avoiding potential enforcement action against the carrier. An additional benefit to making a preboarding announcement would be to allow a passenger who fails to self-identify the opportunity to preboard if an announcement is made, decreasing the likelihood of such a passenger filing a preboarding complaint. The Enforcement Office also notes that if a carrier does choose to make preboarding announcements, the carrier should ensure that passengers with disabilities who do take advantage of the offer to preboard are given enough time to board safely.

The Enforcement Office will allow carriers 90 days from the issuance date of this notice to revise their preboarding policies to be in line with this notice, if necessary, prior to instituting enforcement action in this area. Questions regarding this notice may be addressed to the Office of Aviation Enforcement and Proceedings (C-70), 1200 New Jersey Avenue, S.E., Washington, D.C. 20590.

By:

Samuel Podberesky
Assistant General Counsel for
Aviation Enforcement and Proceedings

Dated: May 29, 2013

An electronic version of this document is available at http://www.dot.gov/airconsumer

UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
OFFICE OF THE SECRETARY
WASHINGTON, DC

GUIDANCE ON THE TRANSPORT OF PORTABLE DIALYSIS MACHINES BY TRAVELERS WITH DISABILITIES

NOTICE

The Air Carrier Access Act (ACAA) prohibits U.S. and foreign air carriers from discriminating against an individual in air transportation on the basis of his/her disability. Beginning in 1990, the Department of Transportation issued a number of rules implementing the ACAA. These rules, which are contained in 14 CFR Part 382 (Part 382), define the responsibilities of airlines and the rights of passengers with disabilities under the ACAA including people who use portable dialysis machines at home (i.e., they are on home dialysis). Recently, the Department of Transportation's Office of Aviation Enforcement and Proceedings has been made aware of difficulties people on home dialysis are having when traveling on commercial airlines. The purpose of this notice is to remind airlines of their obligations and inform individuals with disabilities of their rights regarding the use and transport of portable dialysis machines by providing answers to ten frequently asked questions about the types of accommodations and services that must be provided to people who are on home dialysis.

Frequently Asked Questions

1. *Question:* Is a portable dialysis machine considered by DOT to be an assistive device?

Answer: Yes. Section 382.3 defines an assistive device as any piece of equipment that assists a passenger with a disability to cope with the effects of his or her disability. It further explains that such devices may include medical devices and medications. A portable dialysis machine is therefore an assistive device under section 382.3.

2. *Question:* Must a carrier permit a passenger with a disability to bring his or her portable dialysis machine into the aircraft cabin or check it in the baggage compartment?

Answer: Yes. Section 382.121(a) requires carriers to permit passengers with a disability to bring assistive devices into the aircraft cabin provided that they comply with applicable safety, security, and hazardous materials rules. Section 382.125(a) requires carriers to stow assistive devices in the baggage compartment if the item cannot be

transported in the cabin in accordance with applicable safety, security, and hazardous materials rules.

3. *Question:* Does a portable dialysis machine count towards a passenger's carry-on limit?

Answer: No. Assistive devices are not counted against the carry-on or checked baggage limits imposed by airlines. Section 382.121(b) prohibits airlines from counting assistive devices toward a limit on carry-on baggage.

4. *Question:* Must a carrier give portable dialysis machines brought in the cabin of an aircraft stowage priority over other items brought onto the aircraft?

Answer: Yes. Section 382.123(a) requires carriers to give assistive devices, such as portable dialysis machines, priority for stowage over items brought onto the aircraft by other passengers or crew enplaning at the same airport so long as the passenger with a disability takes advantage of the opportunity to pre-board.

5. *Question:* May a carrier require a passenger to pay a fee to carry a portable dialysis machine onboard an aircraft or in the baggage compartment?

Answer: No. Section 382.31(a) prohibits carriers from imposing charges for providing services that Part 382 requires to be provided to passengers with a disability. Because carriers are required to permit passengers to carry portable dialysis machines into the aircraft cabin or to check them for carriage in the baggage compartment, carriers are precluded from imposing a charge for doing so.

6. *Question*: Are carriers required to accept for transport portable dialysis machines as checked bags regardless of size?

Answer: No. While section 382.125(a) requires carriers to stow assistive devices in the baggage compartment consistent with applicable safety, security and hazardous materials rules, section 382.13(c) states that airlines are not required to make modifications (e.g., provide accommodations) that would constitute an undue burden or fundamentally alter their program. This means that there may be circumstances where the carriage of devices such as dialysis machines due to their weight, size, or number would constitute an undue burden or cause a fundamental alteration of the carrier's service. In such situations the carrier may not be required to transport the assistive device at all. These situations necessitate case-by-case determinations. Generally, we view portable dialysis machines that weigh approximately 100 pounds or slightly more including the case used to transport the machine to be of reasonable size for carriage in the baggage compartment of most commercial aircraft.

7. *Question:* What are my rights if my portable dialysis machine is damaged during air transport?

Answer: For domestic travel, the general baggage liability limits do not apply if an airline loses or damages an assistive device such as a portable dialysis machine. In these cases, the basis for calculating the compensation is the original purchase price of the device. See section 382.31. This expanded liability for assistive devices does not extend to international trips where the Montreal Convention usually applies. For international travel, the liability limit is currently 1,131 Special Drawing Rights (SDR).[1] This was equal to approximately $1685 when this guidance was issued.

8. Question: Are carriers required to accept for transport medications, syringes and dialysis fluids passengers on home dialysis bring with them?

Answer: Yes. The definition of an assistive device includes items such as medications, syringes, and dialysis fluids. *See* section 382.2. However, section 382.13(c) also states that airlines are not required to make modifications (e.g., provide accommodations) that would constitute an undue burden or fundamentally alter their program. As such, we would not require a carrier to accept a large supply of dialysis liquid. DOT believes that it is reasonable to limit the quantity of dialysis liquid that a carrier must accept to a one or two day supply.

9. Question: Can I use my portable dialysis machine during the flight?

Answer: Generally no. Section 382.121(a)(3) states that carriers must permit assistive devices to be used within the cabin as long as they comply with applicable safety, security, and hazardous materials rules. However, many airlines do not allow portable dialysis machines to be used at any time during flight because the required safety testing regarding electromagnetic interference, which ensures that the use of the portable dialysis machine will not interfere with the navigation or communication systems of the aircraft, has not been conducted.

10. Question: What should a passenger do if an airline refuses to accept his/her portable dialysis machine for transport or is charging a fee to transport the machine?

Answer: Passengers should ask to speak with the airline's complaint resolution official (CRO). CROs are individuals trained to be the carrier's experts in ensuring that carrier personnel correctly implement the ACAA and Part 382 requirements. It is their job to ensure that the problems of passengers with disabilities are resolved in a way that is consistent with the regulations outlined by the Department.

If an airline's CRO is unable to resolve your issue, you can call the Department's disability hotline during normal business hours (9 am to 5 pm Eastern time, Monday through Friday except Federal holidays) at **1-800-778-4838** (voice) or **1-800-455-9880 (TTY)** to obtain assistance. You can also file a complaint with the Department at http://airconsumer.ost.dot.gov/escomplaint/es.cfm or by sending a letter to Aviation

[1] The liability limits are those set out in Articles 21 and 22 of the Montreal Convention. Article 24 of the Montreal Convention provides for a review of those limits every five years in light of inflation that has occurred during that period.

Consumer Protection Division, C-75, U.S. Department of Transportation, 1200 New Jersey Ave, S.E., Washington, D.C. 20590.

If you have any questions or desire additional information, please contact Blane Workie, Principal Deputy Assistant General Counsel for Aviation Enforcement and Proceedings, or Livaughn Chapman, Chief, Aviation Civil Rights Compliance Branch, at (202) 366-9342.

By:

Samuel Podberesky
Assistant General Counsel for
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Dated: June 3, 2013

An electronic version of this document is available at http://www.dot.gov/airconsumer

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JUNE 2013

AVIATION REGULATORY UPDATE

U.S. SENATE COMMITTEE HOLDS HEARING ON AIRLINE CONSOLIDATION

On June 19, 2013 the U.S. Senate Committee on Commerce, Science and Transportation held a hearing on the pending US Airways-American Airlines merger. US Airways CEO Doug Parker and American Airlines CEO Tom Horton were present to answer questions regarding the merger and its impact on consumers. Also testifying were Susan Kurland, Assistant Secretary for Aviation & International Affairs at DOT, Gerald Dillingham for the Government Accountability Office (GAO) and Charles Leocha, Director of the Consumer Travel Alliance. Throughout the hearing Senators questioned Mr. Parker and Mr. Horton as to whether the merger would be a benefit to consumers and if there would be a loss of services and/or jobs as a result of the merger.

Mr. Parker testified that the merger would benefit consumers by creating a bigger airline with service to more locations than either airline could offer on its own and would create a more powerful competitor for United and Delta. Numerous senators pushed the CEOs to commit that a merger would not result in a loss of service or jobs and that airfares would not rise. The CEOs gave their assurances that would not be the case yet Mr. Parker did concede that their commitment could change if, for example, the price of jet fuel soared or if flights became unprofitable. Mr. Horton testified that the merger would make American Airlines, after its bankruptcy reorganization, a stronger airline.

Much of the discussion focused on whether the merged airline would divest any existing slots at Ronald Reagan Washington Airport due to the newly merged airline controlling nearly 70% of the landing slots. Mr. Parker testified that he had no intention of divesting any slots because it would reduce the number of flights to smaller markets if other airlines controlled the landing slots. The other airlines would simply use those slots to fly to larger markets.

The merger, expected to close in September 2013, would create the nation's largest airlines by total of passengers served. The merger must still be approved by the Department of Justice (DOJ), company shareholders and the American Airlines bankruptcy judge. Congress has no role on whether the merger is approved or not but they could have some influence on the DOJ's decision. On the eve of the hearing, Senators Amy Klobuchar and Mile Lee, in a letter to Attorney General Eric Holder, Jr., urged the Obama administration to carefully scrutinize the merger and suggested the DOJ and DOT force the newly merged airline to give up some of its gates at Ronald Reagan Washington National Airport.

FOREIGN REPAIR STATION RULE DELAYED AGAIN

As we reported last month, the foreign repair station security rule was sent to the Office of Management and Budget (OMB) for final review on March 16, 2013. The rule, which has been frozen since August 2008, will allow certification of foreign repair stations once it is approved. In most cases, OMB review typically lasts 90 days and is the final obstacle before a final rule is issued in the majority of regulatory proceedings. Unfortunately, OMB has extended its review of the foreign repair station rule beyond this typical 90-day window. To date, the agency has not indicated when its review will be completed.

CONGRESS ATTEMPTS TO BLOCK ABU DHABI PRECLEARANCE FACILITY

The U.S. Department of Homeland Security (DHS) recently proposed to establish a preclearance facility at Abu Dhabi International Airport in the United Arab Emirates. At preclearance facilities, Customs and Border Protection (CBP) officers process and admit passengers into the U.S. before their flight, as

opposed to when they arrive at a U.S. airport. Such facilities are currently being used at eight Canadian airports, as well as at airports in Dublin and Shannon Ireland.

DHS' proposal regarding an Abu Dhabi preclearance facility prompted heavy opposition from numerous groups, including the Air Line Pilots Association and Airlines for America. One of the main criticisms is that the only airline flying directly from Abu Dhabi to the U.S. is Etihad, which means the proposed preclearance facility would only benefit one airline – and a foreign airline at that. In addition , Reps. Pat Meehan (R-PA), Peter DeFazio (D-Ore.), and Candice Miller (R-Mich.) introduced an amendment, that was passed with unanimous support, to DHS' 2014 appropriations bill which prohibits the Department from allocating funds to the Abu Dhabi preclearance facility because no domestic airline services the airport.

COURT UPHOLDS EX-IM BANK LOAN TO AIR INDIA

On June 18, 2013, the U.S. Court of Appeals for the District of Columbia Circuit upheld a loan to Air India by the U.S. Export-Import Bank. Delta Airlines, Inc. challenged the 3.4 billion dollar loan, which was given to support Air India's purchase of 30 Boeing wide-body jets.

The Export-Import Bank Act, which establishes the Ex-Im Bank, also authorizes the bank to provide loans to foreign companies so they can purchase American goods. The Act, however, contains certain restrictions that limit the Bank's authority to approve loans to foreign corporations. Most notably, under Section 635(b)(1)(B) of Title 12, the Bank must "take into account any serious adverse effect" of a loan on U.S. industries and/or U.S. jobs. In its original lawsuit, Delta alleged that the Ex-Im Bank failed to consider the economic impact of its loan to Air India, arguing that it would negatively impact numerous U.S. carriers, especially Atlantic-based airlines.

On appeal, however, the Court upheld the loan but remanded the case. As a result of this decision, the Ex-Im Bank loan to Air India is permitted to move forward. The Bank, however, must show on remand that it has adequately considered the economic impact of its loan on U.S. interests such as Delta Airlines and that its actions were fully in compliance with the Bank Act.

IATA RECOMMENDS STREAMLINING OF PASSENGER RIGHTS REGULATIONS

The International Air Transport Association (IATA) has called attention to an opportunity over the next six months to harmonize passenger rights regulations on a global scale. Several governments are set to review their passenger rights rules in 2013. In the EU, regulators are reviewing the EU passenger rights rule, Regulation 261/2004. In the U.S., DOT's third round of passenger protections, Enhancing Airline Passenger Protections III, has been submitted to the Office of Management and Budget for approval. Several other countries, including South Korea, Kuwait, Kenya, Mexico and Jordan are interested in either reviewing existing passenger rights regulations or enacting new rules. Based on this seemingly global initiative to protect the rights of air consumers, IATA supports a more coordinated approach to passenger protections, guided by the Montreal Convention of 1999.

IATA, at its recent annual meeting in Cape Town, passed a resolution to be a guide for the implementation of passenger rights regulations worldwide. The principles included in the resolution provide passenger protections and provide assistance or compensation to passengers when flights are cancelled or delayed. According to IATA, consumers have a variety of options and levels of service to choose from, which incentivizes airlines to find solutions that benefits passengers when consumer

protection issues arise. Countries that have already ratified the Montreal Convention are being encouraged by IATA to use it as a foundation for passenger rights regulations, similar to how the Convention established a worldwide framework for airline liability.

NEW REQUIREMENTS FOR APHIS CONTINGENCY PLANS

Pursuant to a new APHIS rule, all USDA-licensed carriers that are regulated under the Animal Welfare Act (AWA) must develop a "contingency plan" for how they will respond to, and protect animals during, an emergency. The Plan must be completed by July 29, 2013 and all relevant employees must be trained on the plan by September 27, 2013. Fortunately, carriers have the flexibility to develop a plan that works best for them and their animals.

While there is no required format for the contingency plan, it should include, at a minimum, the following elements:

- Common emergencies likely to happen to your facility
- Specific tasks to be taken during emergencies
- Chain-of-command for implementing the plan
- Materials and resources required for response and recovery
- Employee training on the plan

On or after September 28, 2013 the written contingency plan should be available for APHIS to review upon request on the regular inspection cycle. The plan does not, however, need to be submitted for approval or posted on-line.

DOT, CBP, AIRLINES WORK TO STOP HUMAN TRAFFICKING

Representatives from DOT, CBP, and several U.S. carriers recently announced a joint partnership to combat human trafficking. Under the partnership, which is voluntary, employees of Delta Air Lines, JetBlue Airways, Allegiant Air, and North American Airlines will be trained to identify and recognize signs of human trafficking in air travel, both aboard aircraft and on the ground.

The program, called the "Blue Lightning Initiative", was initially developed as a joint effort between DOT and DHS. The program is being offered to help educate airline employees on potential indicators of human trafficking and also on how to identify potential victims of human trafficking. In addition to employee training, the Blue Lightning Initiative offers a voluntary mechanism for carriers to identify suspected human trafficking victims and notify federal authorities.

AMENDMENT TO IMMIGRATION BILL WOULD REQUIRE BIOMETRIC DATA COLLECTION AT INTERNATIONAL AIRPORTS IN THE U.S.

An amendment to the Immigration Bill, S. 744, introduced by Senator Chuck Schumer (NY) would authorize DHS to designate international airports in the U.S. where aliens arriving to and departing from the U.S. would be subject to biometric inspections and to issue reasonable notice requirements for aircraft

carrying aliens to or from the U.S. The amendment would also require such airports to provide space for biometric data collection and mandate a formal rulemaking by DHS.

Additional requirements of the amendment would authorize DHS to:

- Withdraw any designation if the designated airport fails to provide, at no cost to the Federal government, adequate space and facilities for the inspection of aliens and collection of biometric information from aliens departing the U.S.;
- Provide reasonable requirements for aircraft in civil air navigation with respect to giving notice of intention to land in advance of landing or notice to land as DHS deems necessary to administer and enforce this provision;
- Provide for the application of civil air navigation these provisions deem necessary;
- Impose civil penalties in the amount of $2,000 any person who violates any requirement of the provision; and
- Impose a lien on the owner of an aircraft or person in command of an aircraft if they are in violation of any requirement of the provision.
- The Senate is currently debating the bill and is expected to vote on final passage by the July 4, 2013 recess. If the bill passes the Senate it will then move on to the House of Representatives for consideration.

FINES UPDATE

The following fines have recently been issued by DOT:

Delta Air Lines, Inc. - $750,000

On January 26, 2013, DOT fined Delta Air Lines $750,000 for failing to comply with the Department's oversales rule, 14 C.F.R. Part 250, its rule on Customer Service Plans, 14 C.F.R. 259.6, and Order 2009-7-7, in which Delta was required to cease and desist from violating DOT's oversales regulation. During a routine visit to Delta's headquarters in Atlanta, DOT's Enforcement Office discovered significant evidence of noncompliance with 14 C.F.R. Part 250. According to the notice of proposed penalty, the Enforcement Office "identified numerous instances in which a complaint file indicated that Delta denied boarding to eligible passengers against their will, but failed to advise them of their rights to cash or check DBC payments, failed to furnish a written notice to these passengers as required by section 250.9, or failed to solicit volunteers before denying boarding of passengers involuntarily."

Unfortunately, this was Delta's second violation of the Department's oversales rule since 2009 and, accordingly, DOT took the position that these latest violations were evidence of a "wide-spread practice of noncompliance by Delta" that requires significant enforcement action.

AirTran Airways, Inc. - $100,000

DOT fined AirTran $100,000 for violating of the full fare advertising rule, 14 C.F.R. 399.84(a) and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. From September 2012 through December 2012 AirTran promoted an advertising campaign called A+ Rewards Visa, which

offered two round trip flights after a customer spent $2,000 in the first three months of opening the account. In response to the promotion, 8,534 consumers applied for the A+ Rewards Visa. AirTran, however, failed to disclose that all consumers in the promotion would be required to pay government fees to redeem the two round trip flights after spending the minimum $2,000. The fees were not disclosed anywhere in the promotional advertisements and therefore the full price to be paid by the consumer was not disclosed.

JTB USA, Inc. - $60,000

JTB USA, Inc. was fined $60,000 for failing to disclose code-sharing arrangements during the telephone reservations process. Between January and February 2013 the Enforcement Office made a series of calls to JTB USA as potential consumers and inquired about booking flights. In the course of the calls JTB USA failed to disclose the code-sharing arrangements for the flights in question and also failed to inform consumers booking flights of the identity of the airline that would be operating the aircraft on which the consumer would be flying. DOT deemed these deficiencies to be unfair and deceptive practices in violation of 49 U.S.C. § 41712. The takeaway here, other than the violation itself, is that DOT has begun actively calling ticket agents (and, presumably, carriers) and posing as consumers to determine whether DOT consumer protection rules are being followed.

This Aviation Regulatory Update is intended to keep readers current on matters affecting immigration, and is not intended to be legal advice. If you have any questions, please contact Evelyn Sahr at 202.659.6622, James Ehrig at 202.659.6672, Drew Derco at 202.659.6665, or any other attorney with whom you have been working.

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REVISED IRS FORM 720 FOR PCORI FEES

On June 3, 2013, the Internal Revenue Service released revised IRS Form 720, Quarterly Excise Tax Return, to add the temporary excise tax for Patient-Centered Outcomes Research Institute (PCORI) fees by insurers and self-insured plan sponsors of certain applicable health plans, including those covering retirees and COBRA beneficiaries.

The new PCORI fees, required to be reported annually, are based on the average number of lives covered under the policy or plan. Generally, insurers and self-insured plan sponsors must use one of four alternative methods (i.e., actual count, snapshot, member months or state form) to determine the average number of lives covered under the policy or plan. For calendar year plans, the first PCORI fee reporting and payment is due for the 2012 plan year on or before July 31, 2013.

If you would like assistance in determining your PCORI fee payments and filing the applicable excise tax return on or before the July 31, 2013 deadline, please contact us.

ENHANCING AIRLINE PASSENGER PROTECTIONS III DELAYED

As we reported in May, a supplemental passenger rights rulemaking, commonly known as Enhancing Airline Passenger Protections III (EAPP #3), was expected to be published in the Federal Register on July 15, 2013. The NPRM was sent to the Office of Management and Budget (OMB) for final review on April 8, 2013. OMB review typically lasts 90 days and is the final obstacle before a rulemaking is published in the majority of regulatory proceedings; however, OMB has evidently extended its review of EAPP #3 beyond this typical 90-day window.

The rule, which proposes numerous additional consumer protection obligations on airlines and ticket agents, is now slated for publication on August 15, 2013. Some of the rule's proposed obligations include: (1) whether marketing carrier should assist codeshare partner when codeshare partner's flight experiences a lengthy tarmac delay; (2) enhanced disclosure requirements for codeshare flights, including requiring on-time performance data and reporting of all codeshare operations; (3) additional or special disclosures for certain substantial fees, e.g., oversize or overweight baggage fees and seat upgrade fees; and (4) whether DOT should require that ancillary fees be displayed through all sales channels.

USDA PUTS NEW APHIS REQUIREMENTS ON HOLD FOR FURTHER REVIEW

As we reported in June, pursuant to a new APHIS rule, all USDA-licensed carriers that are regulated under the Animal Welfare Act (AWA) were required to develop a "contingency plan" for how they will respond to, and protect animals during, an emergency. However, due to questions and concerns from the airline industry, the U.S. Department of Agriculture has indefinitely stayed the regulation in order to conduct a review and analysis of the new contingency plan requirements. The USDA's review will take into account the impact of the contingency plan requirements on regulated entities and will reexamine any unique circumstances and costs that may vary by the type and size of affected businesses. USDA-licensed carriers were originally supposed to have their contingency plans in place by July 29, 2013 and conduct employee training on the plan by September 27, 2013.

The effect of this decision is that carriers will not be required to develop or train employees on an APHIS contingency plan until the USDA has completed its review of the applicable requirements.

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AMERICAN EAGLE AIRLINES FINED $200,000 FOR MULTIPLE LENGTHY TARMAC DELAYS

American Eagle Airlines allowed two flights to sit on the tarmac for more than three hours without giving passengers an opportunity to deplane. This violated the carrier's tarmac delay contingency plan and also 14 C.F.R. Part 259 and 49 U.S.C. § 41712. American Eagle's actions resulted in a fine of $200,000.

Both tarmac delays occurred on December 25, 2012 at Dallas/Ft. Worth International Airport (DFW) during inclement winter weather. The winter storm caused a ground stop which left all of American Eagle's gates occupied. It also extended deicing times. The first flight, Flight #2720 from Sioux Falls, landed at 2:48 p.m. but did not arrive at the gate until 6:36 p.m. American Eagle contacted DFW to ask for additional space to park inbound flights and for assistance with busing, but was ultimately unable to find a gate for this aircraft, resulting in a tarmac delay of 3 hours and 48 minutes. The second flight was Flight #3361, which arrived from Baton Rouge at 3:29 p.m. The aircraft was not dispatched to a hardstand until 6:00 p.m. and did not park at the hardstand until 7:00 p.m. Passengers were allowed to deplane at 8:01 p.m. resulting in a tarmac delay of 4 hours and 32 minutes.

American Eagle's response stated that the carrier took all reasonable action to address issues with the winter storm conditions but was incapable of deplaning within the 3 hour time limit. DOT advised that, despite American Eagle's arguments, the Department takes lengthy tarmac delays seriously and noted that this was not American Eagle's first violation of the tarmac delay rule; American Eagle's actions in this situation violated a prior cease and desist order issued to American Eagle on November 14, 2011, also for tarmac delays. In order to avoid litigation American Eagle has agreed to cease and desist from future violations and will pay $200,000 in compromise of potential civil penalties otherwise due and payable.

ALL CLAIMS IN LAX III LITIGATION DISMISSED BY DOT

On July 3, 2013, DOT resolved a controversy regarding the reasonableness of Los Angeles International Airport's (LAX) terminal fees and fee methodologies that dated back to 2007.

As background, several carriers went to DOT and challenged a new terminal fee and fee methodology proposed by LAX. On June 15, 2007, DOT published a final decision regarding the reasonableness of the fees and fee methodology, and this decision was subsequently challenged by several airlines in the U.S. Court of Appeals for the District of Columbia Circuit. The Court of Appeals issued a decision on August 7, 2009 and remanded many issues back to DOT for further consideration. Those issues included: (1) why an airport can use Fair Market Value to determine non-airfield rates but not airfield rates; (2) whether LAX has a monopoly and, if so, how that status impacts the calculation of rent; (3) whether the airport may consider only "other aeronautical uses"; and (4) why the burden of persuasion should not be on the airport to justify its use of different methods for determining rentable space for the airlines with month-to-month agreements as opposed to airlines with long-term agreements.

On July 3, 2013, DOT issued an order that dismissed the claims of Southwest Airlines, US Airways, Air Tran Airways, and Frontier Airlines and terminated the proceeding in its entirety. According to industry reports, parties involved in the litigation had been exploring settlement negotiations since the case was remanded to DOT. On February 6, 2013, Air Tran Airways and LAX filed a joint stipulation of dismissal. Southwest Airlines filed a similar stipulation on March 18, 2013. In both filings, the parties advised DOT that they had settled their disputes concerning airport rates, charges and methodologies. On May 9, 2013 the airport filed for dismissal of the claims brought by US Airways and Frontier Airlines, advising that it had adopted resolutions on airport-wide rates, charges, and methodologies, which were subsequently incorporated into new agreements entered into with US Airways and Frontier Airlines in December 2012. Those agreements included provisions

by each carrier acknowledging that its claim pending before DOT was moot and consenting to the dismissal of its complaint without any right to refile.

As a result of DOT's Order, all remand proceedings that were pending before the Department are dismissed. Following the decision, all claims raised in the LAX III proceedings between LAX and the aforementioned airlines are resolved and new rates and rate methodologies are in place for purpose of determining future charges for use of airport terminal space.

IATA SEEKS DOT APPROVAL TO SET INDUSTRY STANDARD FOR RESERVATIONS AND TICKETING IN RESOLUTION 787

IATA, seeking to develop an updated standard for electronic data transmission capable of supporting airline competition, filed an application with DOT on March 11, 2013 to approve Resolution 787 (Enhanced Airline Distribution). Resolution 787, which was adopted by IATA's Passenger Services Conference, generally includes a new worldwide business model for the pricing and sale of airline tickets. It aims to develope a new electronic data interchange for airline distribution communications using Extensible Markup Language (XML), which is the modern programming language of the internet.

Since IATA filed its original application in March 2013, more than 400 interested parties have filed comments. Most carriers that submitted comments supported IATA's application and believe an industry standard will be beneficial to consumers, as it will promote transparency in the pricing system. Airlines 4 America also supports the application, arguing that XML-based standards will make it faster and easier to inform airline consumers about fares and schedules and other transportation-related services.

Notwithstanding the aforementioned support from carriers, IATA Resolution 787 has received stiff opposition from organizations and coalitions that represent travel agencies and travel booking sites. Many such entities are of the opinion that Resolution 787 is not in the public interest, has anticompetitive effects and, that there is simply not information to assess the intent and scope of the application at this time. For example, the Amadeus IT Group says it is open to a development of standards but believes any such standards should be market-driven, not imposed by DOT. Expedia, Inc. believes the application is premature because it is unclear which entities will be expected to bear the brunt of the costs and that imposition of the resolution may result in higher booking fees for consumers and corporations.

Currently, those in opposition to IATA's application are requesting that DOT order IATA to submit all documents in its possession that relate or refer to Resolution 787 in a motion filed on March 18, 2013. IATA has opposed this effort. DOT has not yet ruled on the request for documentation or the application itself. We will continue to keep you updated on the DOT proceeding.

FAA TO RELAX RULES FOR GADGETS IN FLIGHT

According to industry officials, the Federal Aviation Administration (FAA) is expected to relax some of its rules regarding personal electronic device (PED) use at low altitudes. Following an advisory committee review of the matter, FAA's new rules are anticipated to permit the broader use of PEDs during air travel. Currently, PEDs must be shut off until the aircraft has reached 10,000 feet. The new, relaxed rules would allow the use of approved devices from the time the cabin doors close to when the plane reaches 10,000 feet. Moreover, some devices, like e-readers, would be allowed during all phases of the flight. The use of cell phones, however, will remain off limits because the FAA advisory panel tasked with evaluating this issue was not authorized to reconsider the highly controversial cell phone call rule.

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These upcoming changes could present new business opportunities for carriers trying to meet passenger demand for fast airborne connections and wi-fi entertainment options. Industry estimates for this potential new business exceed $3 billion annually. Boeing and Airbus currently plan to modify 20,000 aircraft with onboard connectivity within the next decade.

The FAA is expected to make a formal decision on this matter near the end of September 2013.

FAA TO INCREASE QUALIFICATION STANDARDS FOR PILOTS

On July 15, 2013, the FAA released new rules concerning increased qualification requirements for pilots and co-pilots that operate flights for U.S. passenger and cargo airlines. The new regulations were drafted in part as a result of the Colgan Air 3407 crash in February 2009 and in part because of a Congressional mandate in the Airline Safety and Federal Aviation Administration Act of 2010. The new qualification requirements rule is one of several that were mandated by the Act. Other rules include the new flight duty and rest requirements for pilots, which were finalized in December 2011, and the FAA's upcoming rules on air carrier training programs, which are expected this fall.

Below are highlights from the new qualifications rules:

Qualifications	Prior Rules	New Rules
Airline Transport Pilot (ATP) certificate Airline Transport Pilot	*At least 23 years old; *Hold commercial pilot certificate with instrument rating; *Pass ATP knowledge and practical tests; and *1,500 hours total time as pilot.	*Meet all requirements in prior rules; *Have at least 50 hours in a multi-engine airplane; and *Successfully complete new ATP Certification Training Program prior to taking the ATP knowledge test (after July 31, 2014).
Airline Transport Pilot certificate with restricted privileges (multiengine airplane rating only)	None	*At least 21 years old; *Hold commercial pilot certificate with instrument rating; *Successfully complete new ATP Certification Training Program prior to taking the ATP knowledge test (after July 31, 2014); *Pass ATP knowledge and practical tests; and *At least 750 hours total time as (military pilots); or *At least 1,000 hours total time as pilot and a Bachelor's degree with an aviation major; or *At least 1,250 hours total time as pilot and an Associate's degree with an aviation major; or *1,500 total time as a pilot.
Serve as First Officer (Co-pilot) in Part 121 air carrier operations	*Hold commercial pilot certificate with instrument rating; and at least a second class medical certificate.	*ATP certificate with type rating for aircraft flown; *250 hours of flight time in an airplane as a pilot in command, or as second in command performing the duties of the pilot in command while under supervision of a pilot in command, or any combination thereof; *100 hours of cross-country flight time;

		*25 hours of night flight time OR *ATP certificate with restricted
Serve as Captain (pilot in command) in Part 121 air carrier operations	*ATP certificate with type rating for aircraft flown; *At least 1,500 hours total time as pilot; and *First class medical certificate.	*Meet all requirements in prior rules; and *At least 1,000 flight hours in air carrier operations (as co-pilot in Part 121 operations, as Captain in fractional ownership operations, as Captain in Part 135 turbojet, commuter, or 10 or more passenger seat operations, or any combination thereof).

FINES UPDATE

The following fines have recently been issued by DOT:

Southwest Airlines Co. - $200,000

On July 30, 2013, Southwest Airlines Co. (Southwest) was fined $200,000 for violations of the Department's full-fare advertising rule, 14 C.F.R. 399.84(a), and the statutory prohibition against unfair and deceptive practices, 49 U.S.C. § 41712. After receiving a consumer complaint, DOT's Office of Aviation Enforcement (Enforcement Office) investigated Southwest's "The Luv a Fare Sale", which was advertised in emails sent to consumers on January 11, 2013. The sale was for one-way nonstop fares "for $100 or less" for travel on Valentine's Day, February 14, 2013. The Enforcement Office, however, found that Southwest failed to have a reasonable number of seats available for purchase in a number of city-pair markets for that particular sale. In some city-pair markets only 1% or 2% of the seats were available for the sale price.

In addition, Southwest on January 30, 2013 published a fare through DING!, an application that enables consumers to purchase tickets from their smart phones. The sale advertised a $66 one-way fare from Dallas Love Field to Branson Airport in Missouri for travel between March 1, 2013 and March 30, 2013. However, there were no seats available at the sale price on any day during the sale period.

By advertising a Valentine's Day sale that did not have a reasonable amount of seats for purchase and for advertising a sale where there were no seats available at all for the sale price, Southwest was found to be in violation of 14 C.F.R. 399.84(a) and 49 U.S.C. § 41712.

Frontier Airlines, Inc. - $80,000

On August 1, 2013, DOT fined Frontier Airlines, Inc. (Frontier) for violations of the Department's full fare advertising rule, 14 C.F.R. 399.84 and its prohibitions against unfair and deceptive trade practices, 49 U.S.C. §41712. Under the full fare advertising rule, "fares" for award tickets issued under a carrier's frequent flyer program should be the total amount of miles (or credits) a consumer needs to redeem for the award ticket plus any monetary amount the consumer must pay in order to obtain the award ticket. Frontier published several advertisements that included the following statement: "Get up to 45,000 miles with qualifying transactions. That's enough for a roundtrip award ticket!" Those advertisements, however, failed to note that consumers would have to pay certain taxes and fees to redeem the "roundtrip award ticket." DOT determined that this was a violation of the full fare advertising rule and fined Frontier $80,000.

Korean Air Lines Co., Ltd - $60,000

DOT fined Korean Air Lines $60,000 for violating Articles 17 and 19 of the Montreal Convention and the statutory prohibition against unfair and deceptive trade practices, 49 U.S.C. § 41712. These fines resulted

from passenger complaints regarding mishandled baggage on Korean Air flights to and from the U.S. While the Montreal Convention imposes restrictions on a carrier's ability to limit its liability with mishandled checked baggage, Korean Air had limited the reimbursement for delayed baggage to between $50 and $150 based on the passenger's class of service. The reimbursements were paid regardless of the value of the baggage claim, the length of the delay or how many passengers were affected by the delay. Korean Air also disclaimed liability for the loss of items in checked baggage. These actions resulted in a limitation of Korean Air's liability to a level far below what is required by the Montreal Convention and thus resulted in a fine.

British Airways Plc - $40,000

British Airways was fined $40,000 for providing inaccurate information on its website regarding discounted fees for checked baggage paid in advance. Under DOT rules, carriers that display fees on their website must be sure that all displayed fees are available to all consumers and that consumers are able to obtain the optional services at the advertised rates.

In this case, British Airways failed to provide notice to consumers that certain reduced baggage fees would not be offered to all consumers and as a result, the consumers paid the higher rates when checking in at the airport. British Airways' failure to provide accurate information to consumers regarding reduced rates for baggage fees violated 49 U.S.C. § 41712 and resulted in a monetary penalty

PrimeSport, Inc. - $60,000

PrimeSport, Inc. (PrimeSport), a Georgia-based corporation that provides tickets and tour packages for special events, was fine $60,000 by DOT. The fine resulted from PrimeSport's failure to apply for and receive approval from DOT before advertising and selling public charter flights for the Pittsburgh-Steelers-Minnesota Vikings NFL game, which was scheduled to be played in September 2013 in London. By not applying for approval from DOT, PrimeSport's actions were in violation of 14 C.F.R. Part 380, 14 CFR 380.27, and 49 U.S.C. § 41712. PrimeSport has agreed to settle the matter and pay a $60,000 fine.

Bloomspot, Inc. - $20,000

On July 31, 2013, DOT issued a $20,000 penalty against Bloomspot, Inc., an on-line ticket agent, for violations of the Department's full fare advertising rule, 14 C.F.R. 399.84(a). As a ticket agent, Bloomspot is subject to DOT regulations and, in late 2012, published multiple advertisements that violated the full fare advertising rule by failing to disclose a double-occupancy requirement. The Department determined Bloomspot's actions to be unfair and deceptive practices and issued the aforementioned fine.

This Aviation Regulatory Update is intended to keep readers current on matters affecting immigration, and is not intended to be legal advice. If you have any questions, please contact Evelyn Sahr at 202.659.6622, James Ehrig at 202.659.6672, Drew Derco at 202.659.6665, or any other attorney with whom you have been working.

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TRIAL DATE SET FOR US AIRWAYS/AMERICAN AIRLINES ANTITRUST SUIT

On August 13, 2013, the U.S. Department of Justice filed suit under federal antitrust law to halt the proposed $11 billion merger between the parent company of American Airlines and US Airways Group, Inc. The Justice Department has alleged that the proposed merger would lessen competition and increase fares while reducing commercial air service in the U.S., all of which would unfairly hurt American consumers.

The Justice Department has specifically alleged that the proposed merger would further reduce competition in an industry where 75% of the market is already controlled by four airlines (US Airways, American, Delta and United). The Justice Department further argued that neither airline will be harmed by the prevention of the merger, as US Airways has posted increased profits in recent months and American Airlines is expected to recover from bankruptcy to become a strong standalone airline.

The airlines have responded that the complaint fails to sufficiently tie the proposed merger to increased rates and decreased competition, arguing that the Justice Department is unfairly targeting this merger for a problem that is industry-wide. The Justice Department last stopped a major airline merger in 2001 based on similar grounds, though it has since allowed several major mergers to take place.

The Justice Department's complaint is currently before a U.S. District Court Judge in the District of Columbia and was joined by the Attorneys General of six states and the District of Columbia. In each of the states involved, the merger is expected to significantly affect fares or the local economy through the downsizing of hubs. The trial has been scheduled for November 25, 2013. We will keep you updated on developments as the case heads to trial.

ETIHAD AIRWAYS FINED $20,000 FOR FAILING TO SUBMIT T-100(F) REPORTS

The U.S. Department of Transportation (DOT) on August 20, 2013 fined Etihad Airways, Inc. (Etihad) $20,000 for failing to submit T-100(f) reports from May 2012 to October 2012. According to Etihad, the missed filings resulted from the illness of a staff member who was tasked with T-100 reporting duties, and a subsequent failure of back-up reporting measures. Once Etihad became aware of the filing deficiency, it filed the missing reports right away. It also took several mitigating actions, including setting up automatic reminders for T-100 reporting deadlines and holding training for relevant staff members. Despite Etihad's efforts at remediation and the fact that it only failed to timely file six reports, DOT issued a penalty of $20,000.

Compliance with the Department's T-100(f) reporting requirements has recently become a focus for DOT. Under DOT regulations, each foreign air carrier that provides civilian passenger and/or cargo service to or from the U.S. under a Foreign Air Carrier permit or exemption authority from DOT is required to file BTS Form 41 Schedule T-100(f), "Foreign Air Carrier Traffic Data by Non-Stop Segment and On-Flight Market" (Schedule T-100(f)). The

filing of Schedule T-100(f), which is a monthly report submitted to DOT and to the Bureau of Transportation Statistics (BTS), is required by 14 C.F.R. Part 217.

Pursuant to 14 C.F.R. 217.3, specific traffic data elements must be compiled in terms of each flight stage that was performed by the carrier and reported to DOT within thirty (30) days following the end of each reporting month. Some of the information that must be reported includes: (1) the name and code of the air carrier reporting the data; (2) the year and month to which the reported data are applicable; (3) the origin airport code; (4) the destination airport code; (5) the service class code; (6) the aircraft type; (7) the number of revenue departures; (8) the number of revenue passengers transported; (9) the amount of revenue freight transported; (10) the number of revenue aircraft departures; (11) the total number of revenue passengers on board over a flight stage, including those already on the aircraft from previous flight stages; (12) the volume of revenue freight transported; (13) the total number of revenue passengers enplaned in a particular market; (14) the total amount of revenue freight cargo enplaned in a particular market; (15) the available capacity; and (16) the number of available seats. 14 C.F.R. 217.5.

T-100(f) reports must be submitted to DOT thru the e-submit web site: https://esubmit.rita.dot.gov/Warning.aspx. The information submitted in each carrier's report is put into a database that provides monthly traffic and operational data for each foreign air carrier, for each city-pair/flight stage market that the carrier operated, and monthly traffic, capacity and operational data for each aircraft type that a foreign air carrier flew in each city-pair segment or flight stage.

To avoid a potential enforcement action, we encourage carriers to confirm they are filing monthly reports, where required, in accordance with the above. If you have any questions or would like assistance filing T-100(f) reports, please feel free to contact us.

DOT TERMINATES PROCEEDINGS AGAINST SEVERAL CARRIERS UPON REVIEW OF PART 382 TRAINING RECORDS

In May and June 2013, the Service Employees International Union (SEIU) filed formal complaints on behalf of several employees with the Assistant General Counsel for Aviation Enforcement and Proceedings, alleging violations of the Air Carrier Access Act (ACAA) and Part 382. In its complaints, SEIU alleged that Southwest Airlines, United Air Lines, and US Airways, along with PrimeFlight Airline Services failed to, among other things, provide training to proficiency concerning the requirements of Part 382 in accordance with 14 C.F.R. Part 141.

In each case, the respective carriers were able to provide evidence that the complainant(s) received required training in accordance with Part 382, including training logs, verifications signed by the complainant(s), and completed tests that demonstrated the complainant(s)' proficiency in the ACAA and Part 382. Based on the evidence presented, DOT declined to institute any formal enforcement proceedings and dismissed all of the complaints. The Enforcement Office also placed SEIU on notice that "if, in the future, SEIU files an unsubstantiated complaint that contains misleading statements or otherwise exhibits

unprofessional conduct, the Enforcement Office will pursue action to bar the SEIU from practicing before the Department under 14 C.F.R. 300.20".

This case serves as an excellent reminder of the importance of conducting required Part 382 training and also maintaining diligent records of that training. Pursuant to 14 C.F.R. 382.141, carriers are required to provide training to proficiency for all personnel who deal with the traveling public. As a general rule, carriers must conduct annual refresher training for Complaint Resolution Officials (CROs) and training once every three years for other personnel. 14 C.F.R. 382.143. In addition to the aforementioned training requirements, carriers are also required to retain for three years individual training records that demonstrate all persons required to receive training have done so. 14 C.F.R. 382.145.

If you have any questions on Part 382 training requirements, or would like assistance in training your employees, please let us know.

DOT ISSUES GUIDANCE FOR FLIGHT SEARCH WEBSITES USED BY CONSUMERS

On August 19, 2013, DOT issued guidance pertaining to what it has called 'unfair and deceptive practices' on websites used by consumers to search for commercial flights. The guidance specifically relates to the message that is displayed when consumers run a search that generates no matching flights for airlines marketed by the website.

DOT has noted that while flight search websites (such as travelocity.com, orbitz.com or kayak.com) are not required to produce flight information for all airlines, they are required to notify users of that fact when a search generates no matching flights. Therefore, specific search result language such as "no flights are available," or "no flights match your search criteria" will be considered unfair and/or deceptive if any airline, including an airline not marketed by the website, does provide a matching flight.

The Department has urged websites that do not market all airlines to instead employ language that indicates clearly that only those airlines marketed by the website have been searched and that no matches were found amongst those airlines. The guidance also suggests that websites may want to include an easily accessible link to a listing of all airlines marketed by the website for further clarity, though this is not specifically required.

This guidance does not apply where a search does generate matching flights through airlines marketed by the website.

FAA PROMOTES WORKPLACE SAFETY FOR AIRCRAFT CABIN CREWS

On August 21, 2013 the Federal Aviation Administration (FAA) and the Occupational Safety and Health Administration (OSHA) issued a final policy for improving workplace safety for aircraft cabin crewmembers. The purpose of the policy is to help improve occupational

safety in the aircraft cabin by applying OSHA standards to aircraft cabin crewmembers while they are aboard aircraft in operation.

An aircraft is in operation "from the time it is first boarded by a crewmember, preparatory to a flight, to the time the last crewmember leaves the aircraft after completion of that flight, including stops on the ground during which at least one crewmember remains on the aircraft, even if the engines are shut down". A crewmember is "anyone who is assigned to perform duty in an aircraft cabin when the aircraft is in operation (other than flightcrew members)". *Occupational Safety of Health Standards for Aircraft Crewmembers*, 40 FR 29111 (July 2, 1975).

Under the policy, the FAA's aviation safety regulations will continue to take precedence; however, the FAA has determined that its regulations do not fully encompass all safety and health aspects of the aviation sector's unique work environment. Issues that will be governed by OSHA standards include: (1) information on hazardous chemicals; (2) exposure to blood-borne pathogens; and (3) hearing conservation programs. OSHA regulations will continue to apply to record-keeping and access to employee exposure and medical records. OSHA standards are not anticipated to have a negative effect on aircraft operations or safety.

The policy will be effective 30 days after publication in the Federal Register. OSHA will first conduct outreach with interested parties and will not begin enforcement activities until six months after publication in the Federal Register. The notice is available at: http://www.faa.gov/about/initiatives/ashp/.

FINES UPDATE

The following fines have recently been issued by DOT:

- United Air Lines - $350,000

United Air Lines was fined $350,000 on August 30, 2013 for failing to promptly refund consumers. Pursuant to DOT regulations, carriers are required to process refunds within seven days for credit card purchases and within twenty days for tickets purchased with cash or check. During an on-site inspection of United's operations, DOT's Enforcement Office found that between March and May 2012 United failed to process over 9,000 refund requests in the required timeframe.

United was also cited but not fined for additional violations, including but not limited to underreporting the number of mishandled baggage reports it received between January and October 2011 and underreporting the number of passengers bumped on oversold flights. United was cited but not fined for these additional violations because the carrier disclosed the reporting errors to DOT and took corrective action.

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- Aerovias del Continente Americano S.A. (Avianca) - $100,000

On March 24, 2013, Avianca experienced a lengthy tarmac delay of more than four hours in Miami. During the delay, Avianca made no attempts to deplane passengers or to solicit assistance from the airport operator for deplaning, thus failing to follow its Contingency Plan for Lengthy Tarmac Delays. In addition to the tarmac delay, Avianca misreported information regarding the affected flight in the BTS Form 244 "Tarmac Delay Report" it filed with DOT's Office of Airline Information. These deficiencies resulted in a fine of $100,000.

- Hipmunk, Inc. - $30,000

DOT fined Hipmunk, Inc., a ticketing agency, for failing to disclose code-share arrangements on its website. In addition to Hipmunk's failure to properly disclose code-share arrangements for flights operated by a regional air carrier on behalf of a major air carrier, DOT's investigation revealed a lack of compliance with 14 C.F.R. 399.85(b) in that Hipmunk did not clearly and prominently disclose on its website that additional fees for baggage fees might apply and where consumers could view the applicable baggage fees. DOT determined that Hipmunk Inc.'s actions violated 14 C.F.R. 257.5(d) and 49 U.S.C. 41712(c) and issued a penalty of $30,000.

- AAA Mid-Atlantic Inc. - $40,000

AAA Mid-Atlantic, Inc., a ticket agent, failed to disclose code-share arrangements as required by 49 U.S.C. 41712(c) and 14 C.F.R. 257. During a series of mock phone calls made by DOT's Enforcement Office, the company failed to make the required disclosure regarding code-share arrangements for the flights in question. Specifically, AAA Mid-Atlantic, Inc. only disclosed the marketing carrier and not the corporate name of the carrier operating the flights. DOT determined these actions to be unfair and deceptive trade practices in violation of 49 U.S.C. 41712 and fined AAA Mid-Atlantic, Inc. $40,000.

- Third Party Complaint of Benjamin Edelman v. Cathay Pacific – no financial penalty issued

Mr. Benjamin Edelman filed a third-party complaint against Cathay Pacific Airways Limited (Cathay Pacific), alleging the carrier misrepresented carrier-imposed surcharges as government taxes and fees in fare displays that were made available through the booking engine http://rtw.oneworld.com/. Mr. Edelman alleged that these actions were unfair and deceptive trade practices in violation of 49 U.S.C. 41712. The website in question is owned by **one**world Management Company, Inc. and provides a booking engine for round-the-world itineraries on numerous airlines, including Cathay Pacific. DOT did find that certain fare displays, in the unique context of the **one**world website, violated 14 C.F.R. 399.84(a). However, the Department chose not to assess a fine due to the prompt remedial action of both Cathay Pacific and the **one**world Management Company.

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- FC USA, Inc., d/b/a Liberty Travel - $100,000

In January and February 2013 members of DOT's Enforcement Office made numerous telephone calls to Liberty Travel as potential purchasers and asked about booking flights. During these calls, Liberty Travel reservation agents failed to make the required disclosures regarding code-share arrangements (the reservation agents only identified the marketing carrier and not the operating carrier of the flights in question). Liberty Travel is a ticket agency and therefore subject to DOT's detailed code-share disclosure requirements. DOT determined that the actions of Liberty Travel constituted violations of the Department's code-share notification rules and fined the travel agent $100,000.

- STA Travel, Inc. - $40,000

STA Travel, Inc. (STA) has been fined $40,000 for failing to disclose code-share arrangements as is required by 49 U.S.C. 41712(c) and 14 C.F.R. Part 257. Like the cases above, STA reservation agents failed to disclose the identity of a code-share arrangement for the flights inquired about by members of DOT's Enforcement Office. While STA argued it did not violate the code-share disclosure mandates because no bookings were made nor were any reservations held during the calls, DOT nonetheless determined its actions justified a penalty of $40,000.

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MERGER WATCH: UPDATE ON US AIRWAYS / AMERICAN AIRLINES MERGER

Texas Withdraws from Suit

On October 1, 2013, the state of Texas withdrew from the pending antitrust lawsuit filed by the U.S. Department of Justice against American Airlines and US Airways, citing a settlement reached with both airlines that has alleviated its concerns. Texas currently serves as the headquarters for American Airlines, and the settlement was based on agreements to keep the Dallas/Fort Worth International Airport as a central hub for the proposed "New American" airline that would result from the merger, as well as agreements to maintain current levels of service in the state. Five other states and the District of Columbia remain parties to the lawsuit, which is scheduled for trial on November 25, 2013, though the Department of Justice has requested a postponement based on the recent shutdown of the federal government.

Airlines Lose Motion to Compel Production

On October 10, 2013, American Airlines and US Airways lost a motion filed in late September to compel the Department of Justice to disclose evidence argued to be instrumental to the case. The airlines specifically sought information on third parties interviewed by the Justice Department during its antitrust investigation leading up to the lawsuit, as well as information as to why previous airline mergers had been allowed to proceed. The Department of Justice responded to the motion, arguing that the information sought was protected by privilege and other protections provided to government agencies during investigations. The motion was reviewed by a special master, which is a court official appointed to determine all information that must be surrendered by either side during the course of the lawsuit. The Special Master rejected the airlines' motion on October 10, 2013; the airlines have no plans to appeal the decision.

DOT ANNOUNCES CONSUMER PROTECTION RULES FOR CHARTER AND AIR TAXI OPERATORS

DOT on September 30, 2013 published a Notice of Proposed Rulemaking (NPRM) entitled "Enhanced Consumer Protections for Charter Air Transportation".

The NPRM first seeks to require air taxis and commuter air carriers that sell charter air transportation performed by other entities to make special consumer disclosures. Consistent with other DOT consumer protection regulations, DOT plans to prohibit air taxis and commuter air carriers from selling charter air transportation that is performed by another entity without disclosing in writing specific information including, but not limited to, the name of the entity that will operate the flight; the make and model of the aircraft to be used; the total cost of the air transportation, including any carrier-imposed fees or government-imposed taxes and fees; and the existence of third party fees for fuel, parking, etc.

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The NPRM next seeks to create a new class of indirect air carriers that will be referred to as "air charter brokers". These entities are persons or companies that do not currently hold DOT authority to function as an indirect or direct air carrier, but arrange air transportation services for customers. Currently brokers must act as the agent of a charterer or carrier and, because they are not permitted to hold out air transportation in their own right, are effectively "ticket agents" as defined in 49 U.S.C. 40102. The Department is proposing to allow air charter brokers to operate as indirect air carriers, so that they can engage in single entity charter transportation. Under DOT's proposal, air charter brokers would not be subject to increased licensing procedures, but would instead self-identify. Air charter brokers however would be subject to the consumer protection rules explained above.

In addition, this NPRM would codify the exemption authority granted to indirect air carriers to engage in the sale of air transportation related to air ambulance services. After receiving numerous complaints about how certain air ambulance services were operating, the Department took action. The NPRM would make DOT's provisions prohibiting unfair and deceptive practices applicable to air ambulance indirect air carries.

Finally, the NPRM addresses air charter broker issues relating to contracts with the Federal government. The NPRM would both clarify and codify that certain air services performed under contract with the Federal Government constitute air transportation that is performed in common carriage.

Comments must be received within 60 days of publication in the Federal Register. A full copy of the NPRM is available at http://www.gpo.gov/fdsys/pkg/FR-2013-09-30/pdf/2013-23142.pdf.

FAA POLICY REGARDING AIRPORT RATES AND CHARGES

On September 10, 2013, DOT and FAA published the entire Policy Regarding Airport Rates and Charges (the Policy) as a single document, in an effort to consolidate this information into a convenient resource for regulated entities and the general public. The Policy was originally published on June 21, 1996. In 2008, DOT and FAA adopted three amendments to the Policy that allowed operators of congested airports to use landing fees to provide incentives to carriers to (1) use the airport at less congested times; or (2) use an alternative airport to meet regional needs. The Federal Register published the three amendments in 2008 but did not publish the entire version of the Policy as amended.

The Policy covers important principles such as: 1) DOT relies upon airport proprietors, aeronautical users, the market, and institutional arrangements to ensure compliance with applicable legal requirements; 2) rates, fees, rentals, landing fees and other services charges imposed on aeronautical users for aeronautical use of airport facilities must be fair and reasonable; 3) aeronautical fees may not unjustly discriminate against aeronautical users or groups; 4) airport proprietors must maintain a self-sustaining fee and rental structure; 5) airport

proprietors may expend revenue generated by the airport only for allowable purposes; and 6) fees imposed on international operations must also comply with the international obligations of the U.S., which includes that the fees must be no less favorable to foreign airlines than to domestic carriers.

The FAA is not adopting or proposing any new amendments at this time. A full copy of the Policy is available at the following link. https://federalregister.gov/a/2013-21905

CTA UPDATE TO CODE OF PRACTICE RE: ELECTRONIC TICKET KIOSKS

The Canadian Transportation Agency (Agency) recently announced that it will be updating section 1.3 of its Code of Practice "Removing Communication Barriers for Travellers with Disabilities" relating to the use of automated ticket kiosks at Canadian Airports. (A copy of the Code is available at https://www.otc-cta.gc.ca/eng/removing-communication-barriers)

Currently, Section 1.3 of the Code requires that transportation service providers (such as airlines) that operate automated kiosks must ensure that at least one accessible device is available in each separate service area and, until such time as this service standard is met, provide an equivalent level of service to travelers with disabilities who are unable to use the device. The amended rule would require carriers and terminal operators to ensure that all automated kiosks used to perform customer service functions relating to check-in and ticketing meet a minimum accessibility standard. This standard would apply to the automated kiosk's physical design and functionalities. Some required features would include audio capability, tactile input controls, and touch screens that can be used with a prosthesis or stylus.

The CTA is taking an incremental approach and plans to require that at least one accessible kiosk be available in each separate service area (e.g., domestic and international areas) by December 31, 2014. All remaining units in a given area must be replaced with accessible kiosks once they are taken out of service in the normal course of operations.

There has been no formal published proposal in regards to this matter. Rather, CTA sent an email to its Accessibility Advisory Committee seeking input on the rule, and has asked interested parties that are associated with a member of the AAC to submit comments.

FCC AMENDS RULES TO HELP PREVENT RUNWAY COLLISIONS

The FCC has amended its rules to allow for the use of frequency 1090 MHz by aeronautical utility mobile stations. The purpose of the rule is to help reduce the number of collisions between aircraft and airport ground vehicles. Air traffic controllers utilize airport surface detection equipment in order to manage the movement of aircraft on airport surfaces. Currently, the system does not allow controllers to identify ground vehicles such as snowplows and maintenance vehicles. By allowing the use of frequency 1090 MHz, air traffic controllers will be

able to identify such vehicles. This, in turn, will reduce the number of aircraft colliding with or having to take evasive maneuvers to avoid vehicles on the runway. The new rule will become effective on November 4, 2013.

ICAO ASSEMBLY PASSES EMISSIONS PLAN

On October 4, 2013, the International Civil Aviation Organization (ICAO) agreed on a global system to limit aviation emissions through a global market based mechanism (MBM). The resolution commits ICAO to determining the details of the MBM by 2016, with the goal of having the MBM ready for implementation in 2020. Although the final version allows countries to deploy interim MBMs, such as Europe's Emissions Trading System (ETS), it mandates that any such interim solutions can only be extended to foreign airlines with "mutual agreement". The resolution also calls for exemptions from MBMs on routes to and from certain developing countries until a global scheme is implemented. Countries that qualify for exemptions are those whose share of international civil aviation activities is below the threshold of 1% of total revenue ton kilometers (RTK).

Groups such as the International Air Transport Association, the Air Transport Action Group, Airlines for America, and the Civil Air Navigation Services Organization all support ICAO's resolution, which must still be approved by the European Parliament and member states. The European Low Fares Airlines Association and the World Wildlife Fund were not supportive of the result, however, as they believed ETS was the right solution to curb aviation pollution.

NATIONAL AIRLINES CERTIFICATE APPLICATION DISPUTE

The latest development in an ongoing dispute between National Airlines (National) and U.S. aviation interests involves a proposed relationship with Emirates for Dulles-Dubai service. Specifically, National sought economic authority to codeshare with Emirates on Dulles-Dubai flights, and then to operate onward service from Dubai to Kabul, Bagram, and Kandahar using its own aircraft. DOT issued an Order to Show Cause on April 15, 2013 (*See* Order 2013-4-12), which authorized National to engage in foreign scheduled air transportation of persons, property, and mail, between a point or points in the United States, a point or points in the United Arab Emirates and beyond to a point or points in Afghanistan.

No objections to the Show Cause Order were received, and DOT subsequently issued a Foreign Certificate authorizing National to conduct the service noted in Order 2013-4-12. Following the Foreign Certificate's issuance, several U.S. carriers and associations have objected to National's application. United Airlines questioned National's economic fitness and business readiness for such operations and opposed using Emirates as a codeshare partner to carry Fly America traffic between the U.S. and the UAE. Delta Air Lines also opposed the application, arguing that National's service plans exceed the scope of what is being considered by DOT and stated that National's GSA city pair bid is a "sham transaction designed to circumvent the requirements of

the Fly America Act." The Air Line Pilots Association raised similar concerns, referring to the NAC-Emirates relationship as a "rent-a-code" relationship that violates the Fly America Act. On September 12, 2013, DOT released a Notice that allowed objections to be filed as Petitions for Reconsideration. Subsequently, Delta and United have filed supplemental objections. This is a fluid and ongoing situation, and we will keep you updated as this case progresses.

FINES UPDATE

The following fines have recently been issued by DOT:

Valley National Bank - $125,000

DOT fined Valley National Bank for its role as a depository (escrow) bank, which violated the Department's rule on public charters and 49 U.S.C. 41712. In 2011 and 2012 Valley National maintained escrow accounts for two charter operators, EZjet Air Services and Myrtle Beach Direct Air &Tours, and in its management of those accounts allowed disbursements contrary to the requirements of 14 C.F.R. 380.34. For EZjet, Valley National transferred funds to the operating account of EZjet from its escrow account without receiving verification from the direct air charter that the flight had been completed. Payments were also made to the tour operator for EZjet without appropriate certification for the operating carriers over several months prior to its ceasing operations. In the case of Direct Air, Valley National transferred funds to the account of ChemOil, the fuel supplier for many of the charter operator's flights, based solely on instructions from the charter operator. These transfers were made without the direct air carriers being paid in full, without documentation identifying fuel costs with specific flights and without invoices from ChemOil.

Virgin America, Inc. - $150,000

Virgin America, Inc. was fined $150,000 for violations of 14 C.F.R. 382 for failing to ensure that it's in-flight safety videos were accessible to persons with hearing impairments. On October 9, 2007 Virgin America began to use an in-flight entertainment system to present a safety briefing video, which provided details of the safety features of the aircraft through animation and oral narratives. The video was not accompanied by open captioning or an inset for a sign language interpreter, and was therefore not accessible to passengers with hearing impairments. The Enforcement Office determined that the content and format of the video would allow insertion of open captioning with a readable font size without interfering with the video to render it ineffective. As a result DOT determined the video violated 14 C.F.R. 382.47(b) (the 1990 version of the rule), between October 9, 2007 and May 12, 2009 and also violated 14 C.F.R. 382.69(c) (the 1998 version of the rule), between May 13, 2009 and November 9, 2009.

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Alpha Media Group, LLC, d/b/a AlphaFlightGuru - $60,000

AlphaFlightGuru was fined $60,000 for failing to fully disclose full fares in its internet advertisements in violation of DOT's full-fare advertising rule. AlphaFlightGuru, a ticketing agent, advertised fares without stating the entire price to be paid by the consumer. Specifically, its website displayed price ranges for air travel that, instead of showing the entire price, simply included disclaimer language that not all taxes and fees were included. Although charges may be described separately, such descriptions may not be false or misleading, may not be displayed as prominently as the total price and must provide cost information on a per-passenger basis that accurately reflects the cost of the item covered by the charge.

Raj Travel, Inc. - $10,000

Raj Travel, Inc., a ticket agent, was fined $10,000 for violating the Department's full-fare advertising rule, 14 C.F.R. 399.84(a), its baggage fee disclosure requirement, 14 C.F.R. 399.85(b), and the statutory prohibition against unfair methods of competition, 49 U.S.C. 41712. On or about March 1, 2012, Raj Travel's website listed numerous fares that did not include taxes and fees but instead referenced "+ Taxes" and instructed the consumer to "call for details." The website also failed to disclose the possibility of additional baggage fees. Additionally, Raj Travel published advertisements in e-mails and on social media sites that also failed to state the entire price to be paid by the consumer. DOT determined that these actions violated the full-fare advertising and baggage fee disclosure rules.

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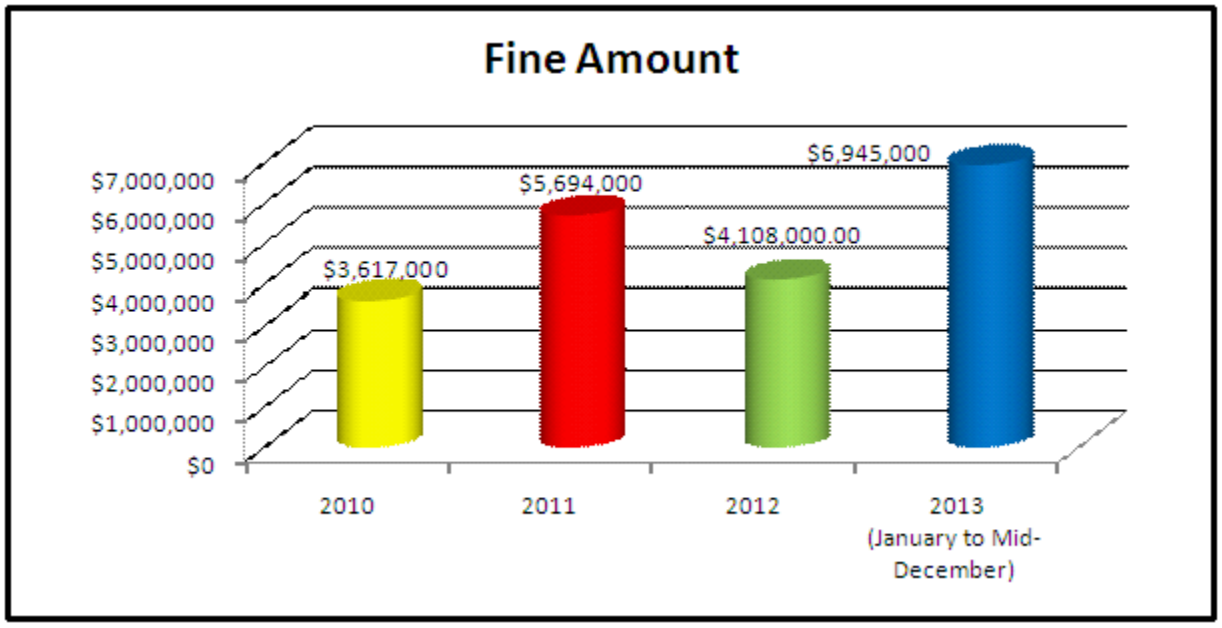
U.S. TO CHANGE TSA SECURITY FEE STRUCTURE:

Increase in TSA passenger security fee effective July 1, 2014; ASIF eliminated effective October 1, 2014

On December 10, 2013, Senate Budget Chair Patty Murray (D-WA) and House Budget Chair Paul Ryan (R-WI) announced a two year budget deal that includes two major changes to the current Transportation Security Administration (TSA) fee structure.

RECORD PENALTIES TO DATE FOR 2013

To date in 2013, DOT has continued its aggressive enforcement policy toward airlines. The Department has issued $6,945,000 in civil penalties through December 11th, which is an increase of approximately $2,800,000 from 2012 levels and almost $3,500,000 more than the total fines levied in 2010.



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US AIRWAYS FINED $1.2 MILLION FOR PART 382 VIOLATIONS

DOT recently fined US Airways $1.2 million dollars for implementing certain ground handling procedures at the Philadelphia International Airport (PHL) and Charlotte Douglas International Airport (CLT) that violated Part 382.

In February and March 2012, DOT's Enforcement Office investigated US Airways' compliance with Part 382. The Department's investigation included a full review of US Airways wheelchair handling procedures, its vendor contracts, and its disability-related complaints. The investigation found numerous violations of 14 C.F.R. 382.91, which requires carriers to provide assistance for passengers between gates to make a connecting flight, at both PHL and CLT. DOT determined US Airways' use of a combination of electric carts and wheelchairs caused unreasonable delays for passengers with disabilities and required too many transfer points when passengers had to transfer between terminals. There were also instances in which the carrier's inadequate connecting assistance caused passengers to miss connecting flights.

In response to the investigation findings, US Airways has taken many actions to better meet the needs of passengers with disabilities, including: 1) implementing a system using handheld devices to real-time track the needs of passengers; 2) completing time-motion engineering studies to efficiently route its electric carts to ease delays; 3) hiring many more employees to assist passengers with disabilities; 4) overhauling the appearance of the facilities for customers needing assistance; 5) creating a weekly report to track performance at PHL and CLT; 6) giving Complaint Resolution Officers the ability to issue voucher compensation if complaints arise; 7) making additions to the reservations system and website to improve services for passengers with disabilities; 8) implementing new procedures for listing the names of passengers on signage the carrier is assigned to assist; 9) establishing a new Disability Assistance Telephone Line and 10) altering its boarding passes to include a special designator that will notify gate agents and assistance providers that the passenger has an assistance request.

UNITED FINED $1,100,000 FOR TARMAC DELAY VIOLATIONS

DOT recently determined that United Airlines, Inc. ("United") violated 49 U.S.C. § 41712, 14 C.F.R. Part 259 and 49 U.S.C. § 42301 when it failed to adhere to its Contingency Plan for Lengthy Tarmac Delays during a severe weather incident at Chicago-O'Hare International Airport (ORD). On the day in question United allowed thirteen flights to sit on the tarmac for more than three hours, and during this time passengers were not given an opportunity to deplane and, on two of the flights, were not provided with operable lavatories. The thirteen tarmac delays at issue in this case ranges from three hours, three minutes to four hours and seventeen minutes. More than 900 passengers were impacted.

While DOT's Enforcement Office recognized the challenges of severe weather, it nonetheless fined United because its investigation revealed the carrier did not contact airport personnel for

assistance during ramp closures, and there were periods of time when United personnel were not responsive to requests for gate assignments. United also did not implement its ORD Extended Tarmac Delay Recovery Plan by commencing its "Deplane and Go" plan or its tandem parking plan.

DOT ANNUAL DISABILITY REPORTING DEADLINE

Under the Department of Transportation's (DOT) regulations concerning Nondiscrimination on the Basis of Disability in Air Travel (14 C.F.R. Part 382), carriers are required to report to DOT all disability-related complaints they received in 2013 for U.S. originating or destined passengers. This report must be submitted no later than **January 27, 2014**.

Carriers that did not receive any written disability–related complaints in calendar year 2013 are still required to file a "zero" report that shows no complaints. Failure to comply with the reporting requirement may subject a carrier to civil penalties. DOT has fined carriers for failing to adequately categorize and account for all the disability-related issues that were raised in complaints, and also for mis-categorizing complaints. It is therefore very important to ensure that all complaints are counted and properly classified in your annual report.

Please let us know if you require any assistance in completing or filing this form with DOT.

AMERICAN AND US AIRWAYS SETTLE WITH DOJ

American Airlines and US Airways have reached a settlement agreement with the U.S. Department of Justice (DOJ) and the six states involved in an August 2013 antitrust suit filed against the airlines. DOJ agreed to drop the antitrust suit, which was originally filed to prevent the carriers from merging, in exchange for an agreement in which American Airlines and US Airways will sell a number of takeoff and landing slots to low cost carriers, including slots at Washington Reagan and LaGuardia airports.

The Department of Justice's suit was filed on the basis that the merger would reduce competition, resulting in increased prices. By shifting slots at various airports to low cost carriers, DOJ hopes to increase the ability of smaller airlines to compete, thereby ensuring lower prices.

The merger between American Airlines and US Airways was formally completed on December 9, 2013. The new company, known as American Airlines Group Inc. will operate under the American Airlines brand. As a result of the approved merger and American's related bankruptcy recovery plan, the proposed new airline's worth will have increased to an estimated $13 billion. The settlement of the antitrust suit must, however, still be approved by the Court; such approval can only occur after a public comment period, which will end on February 7, 2014.

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A REMINDER ON TARMAC DELAY REPORTING

As part of DOT's Enhancing Airline Passenger Protection Rule(s), carriers are required to file a BTS Form 244 "Tarmac Delay Report" on a monthly basis for any covered flights that experienced a tarmac delay of more than three (3) hours, including diverted flights and cancelled flights on which passengers were boarded and subsequently deplaned. The reports are due within 15 days after the end of the month in which the delay occurred, and each report must contain seventeen specific pieces of data, including: (1) carrier code; (2) flight number; (3) departure airport (three letter code); (4) arrival airport (three letter code); and (5) day of flight operation (year/month/day).

Please note that Tarmac Delay Reports are required when a covered carrier experiences a tarmac delay of more than three (3) hours. This three hour requirement applies to foreign carriers. Carriers are not, however, required to submit "negative" reports (reports that no tarmac delays occurred). It is important to note that this reporting requirement is not applicable to foreign air carriers operating charter flights to the U.S. that do not pick up U.S. originating passengers. In code-share situations, it is up to the carriers to determine whether the operating carrier or the marketing carrier files the Tarmac Delay Report.

DOT recently fined two carriers, Shuttle America Corporation and GoJet Airlines, LLC, $10,000 each for failing to timely file the required Tarmac Delay Reports.

FAA PROPOSES CLARIFICATION ON AIRPORT IMPROVEMENT PROGRAM

The FAA is seeking public comment on a proposal to clarify its policy regarding the use of aviation fuel revenues in its Airport Improvement Program (AIP). The AIP was established by the Airport Airway Improvement Act of 1982 as a process for awarding federal grants to airports; airports receiving funds through the AIP have generally been required to apply airport revenue to projects related to air transportation. The FAA intends to clarify this requirement, so that any airport operator or state government submitting a grant application under the AIP must now make specific assurances that revenue derived from state and local taxes on aviation fuel will be applied only towards aviation-related purposes.

This policy clarification would apply prospectively to all new taxes levied, as well as to any existing taxes, unless such taxes are otherwise determined to be exempt. The deadline for public comment is **January 21, 2014**.

DOT FINES GOL $250,000 FOR PASSENGER RIGHTS VIOLATIONS

On November 26, 2013, DOT fined VRG Linhas Aéreas S.A. d/b/a GOL Linhas Aéreas Inteligentes ("GOL") $250,000 for failing to comply with numerous DOT consumer protection regulations. This is the largest fine issued by the Department under the "Enhancing Airline

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Passenger Protections" rule since it was adopted in April 2011. The majority of violations concerned problems with GOL's website, which was launched in November 2012. DOT determined that GOL's website failed to comply with 14 C.F.R. Parts 259 and 399 and that its actions constituted an unfair and deceptive practice under 49 U.S.C. § 41712. This resulted in a $250,000 against the carrier.

The website violations cited by DOT included:

- Failure to post a Contingency Plan for Lengthy Tarmac Delays (as required by 14 C.F.R. 259.6(a));
- Failure to post a Customer Service Plan (as required by 14 C.F.R. 259.6(b));
- Failure to post its Contract of Carriage in an easily accessible form (as required by 14 C.F.R. 259.6(c));
- Failure to disclose on its homepage a conspicuous link that directs consumers to a listing of optional services and fees (as required by 14 C.F.R. 399.85(d));
- Advertising prices for air transportation that failed to include all government-imposed taxes and fees and all mandatory airline-imposed fees (as required by 14 C.F.R. 399.84(a));
- Failure to clearly disclose where required that additional baggage fees may apply (as required by 14 C.F.R. 399.85(b)); and
- Failure to make available the physical and email addresses of the designated department with which consumers can file complaints, and also the contact information for DOT's Aviation Consumer Protection Division (as required by 14 C.F.R. 259.7 and 49 U.S.C. § 42302 (b)).

FCC TO DISCUSS ALLOWING IN-FLIGHT CALLS AT OPEN MEETING

Increasing consumer access to in-flight mobile wireless services is on the agenda for the FCC's next open meeting which will take place on December 12, 2013. At the meeting, the FCC will consider a Notice of Proposed Rulemaking (NPRM) concerning in-flight calls. Although the NPRM has not yet been issued, it is anticipated that the NPRM would revise old rules and allow airlines the ability to permit passengers to make in-flight calls via onboard airborne access systems at 10,000 feet and higher. Currently, such calls are not allowed.

FINES UPDATE

The following fines have recently been issued by DOT:

Carlson Wagonlit Travel, Inc. - $125,000

DOT fined Carlson Wagonlit Travel, Inc. ("Carlson"), a ticket agent, $125,000 for failing to disclose code-share arrangements in violation of 49 U.S.C. § 41712(c) and 14 C.F.R. Part 257.

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An investigation by DOT's Enforcement Office revealed through a series of covert phone calls between January and February 2013, that Carlson reservation agents failed to disclose certain codeshare arrangements for flights in violation of DOT regulations.

Frosch International Travel, Inc. - $65,000

Frosch International Travel, Inc. ("Frosch") was fined $65,000 for failing to disclose code-share arrangements in violation of 49 U.S.C. § 41712(c) and 14 C.F.R. Part 257. In January 2013, staff from DOT's Enforcement Office made telephone calls to Frosch, a ticket agent, and in all of the calls the Frosch reservation agents failed to disclose the identity of both the marketing and operating carriers. DOT determined these actions violated its codeshare disclosure rules and fined Frosch $65,000.

Jet Airways (India) Ltd. - $10,000

Jet Airways India was fined $10,000 for failing to provide accurate tarmac delay information to DOT, as is required by 14 C.F.R. Part 244. On October 29, 2011 Jet Airways Flight 228, traveling from Brussels Airport (BRU) to Newark Liberty International Airport (EWR) was diverted to Bradley International Airport (BDL) due to winter weather. The flight was ultimately delayed for 5 hours and 14 minutes. Despite this, Jet Airways submitted a BTS Form 244 filing in which it reported a tarmac delay of 4 hours and 40 minutes. Only after the Enforcement Office investigated the incident did Jet Airways recalculate the time delay and resubmit the report, which caused DOT to have to resubmit its Air Travel Consumer Report.

American Airlines, Inc. - $20,000

DOT fined American Airlines $20,000 for violating the full-fare advertising rule, 14 C.F.R. Part 399.84(a) and the Department's prohibition against unfair and deceptive practices. In January and February 2013, American Airlines ran two advertisements to promote its service to ski resort destinations and also a kids fly free component. In both advertisements American Airlines failed to comply with the Department's May 2012 guidance in that it failed to convey in the "kids fly free" advertisement that the fare was not truly free.

BestCare EMS, Ltd - $15,000

BestCare EMS, Ltd. ("BestCare"), an air ambulance company that arranges medical care transportation and employs emergency medical technicians and paramedics, was fined $10,000 by DOT for holding itself out as a provider of direct air transportation. An investigation by DOT's Enforcement Office found numerous improper statements and representations on Bestcare's website that implied the company had authority to operate its own flights and operated its own proprietary fleet of aircraft.

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VIH Cougar Helicopters, Inc. - $300,000

DOT fined VIH Cougar Helicopters, Inc. ("VIH Cougar") $300,000 for conducting unauthorized interstate and foreign air transportation. VIH Cougar was a registered air taxi operating under 14 C.F.R. Part 298 and provided seismic monitoring, firefighting and passenger and cargo operations using a fleet of helicopters. DOT determined, however, that the company was not a U.S. citizen because it was under the control of a Candaian citizen and, after undergoing a Show Cause proceeding, ultimately fined VIH Cougar for conducting unauthorized operations.

Alaska Airlines, Inc. - $30,000

Alaska Airlines, Inc. ("Alaska") was fined $30,000 for failing to adhere to its Contingency Plan for Lengthy Tarmac Delays. Specifically, during a lengthy tarmac delay at Philadelphia International Airport, Alaska failed to providing adequate food and water to all passengers within two hours as is required by 14 C.F.R. Part 259. In addition to the fine, Alaska has apologized to the 160 affected passengers and offered compensation in the form of a $100 discount.

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 or Drew Derco at dderco@eckertseamans.com or 202.659.6665.