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January 6, 2014

AVIATION REGULATORY UPDATE

DOT DENIES REQUEST TO EXTEND EFFECTIVE DATE OF NEW SIGNAGE RULE FOR WHEELCHAIR STOWAGE; DELAYS ENFORCEMENT UNTIL APRIL 12, 2014

On January 9, 2014, the DOT denied petitions filed by Airlines for America (A4A) and IATA requesting additional time to comply with 14 C.F.R. 382.67(c), which requires carriers to install a sign or placard prominently on the door of any closet designated as priority space for the stowage of manual passenger wheelchairs. The Petitioners had requested the DOT delay the effective date of the new rule until October 13, 2014.

Although DOT denied the request for additional time to comply with the new rule, it did decide to delay enforcement of the rule until April 12, 2014 based on the presented argument that carriers - particularly foreign carriers - would need more than 60 days to comply with the rule. The DOT did not, however, agree that a lengthy delay of the effective date was necessary, noting that it had been advised that the process of obtaining FAA approval for the new signage would not exceed one month, and further remarking that foreign carriers should experience similar timeframes.

The DOT further clarified that it would only require English to be used on the required signage, though it encouraged the additional use of any other language predominantly used by carriers to communicate with passengers.

Finally, the DOT noted that, once the Enforcement Office began assessing the need for enforcement action against carriers who have not complied, the office would take into account all documented efforts made by carriers to meet the terms of the rule in a timely manner and to obtain approval by their civil aviation authority to install the required signage.

For your convenience, a copy of the DOT's Response is attached

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.

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January 24, 2014

AVIATION REGULATORY UPDATE

IRS INCREASES FEDERAL EXCISE TAXES FOR 2014

The IRS made inflation adjustments to federal excise taxes (FET) on commercial and private air transportation services effective January 1, 2014. Most non-commercial operators pay FET on fuel used to operate the aircraft, whereas commercial operators collect FET from customers based on the amount paid for the service. Please note that operators should consult IRS rules to determine what constitutes a commercial flight as the IRS and FAA have differing interpretations.

	2013	2014
Percentage Tax	7.5%	7.5%
Domestic Segment Fee	$ 3.90	$ 4.00
International Arrival/Departure Fee	$17.20	$17.50
Hawaii/Alaska Flight	$ 8.60	$ 8.70

OSHA TRAINING REQUIREMENT GOES INTO EFFECT

Per our August newsletter, as of December 1, 2013, flight departments must ensure that employees are trained on OSHA's revised Hazard Communication Standard. The revised rule implements a new labeling system for hazardous chemicals and requires employers to train employees on the new system. Specifically, employees must understand the following information on labels: product identifier, signal word, pictogram, hazard statement, and precautionary statement. Employees must also know how to use the information on safety data sheets. In addition, employers must present this information to employees in an understandable format, whether or not they speak English or are literate.

COMMENTS TO DOT'S PROPOSED RULE ON CONSUMER INFORMATION REGARDING ON-DEMAND TAXI OPERATIONS

Those in the air charter community have issued comments in response to the DOT's NPRM on Consumer Information Regarding On-Demand Taxi Operations. A summary of some of the comments follows:

- A registry program should be available which would serve as a vehicle through which customers and the rest of the private air industry could vet potential air charter brokers. Information in the registry should include: information on the air charter broker, class of aircraft that is entitled to a broker, level of liability insurance, whether it acts as an indirect air carrier, agent for the customer or agent for the direct air carrier, and accident history.

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- The rule should clarify what constitutes a broker versus an agent since an agent would fall outside the scope of the rule. When acting as an agent for a charterer, an actual charter customer (not the broker-agent) should be required to sign agreements for carriage with the direct air carrier.

- Indirect air carriers involved in air medical transport services should not be exempt from the rule. They should be required to disclose the air medical transport services medical/hospital affiliation as well as the aircraft operator.

- The rule would unduly burden air taxis and commuter carriers and are unnecessary since charterers are sophisticated entities that are capable of protecting their own interests and do not need consumer protections.

- Air charter brokers operating under a GSA Schedule contract should not have to obtain a certificate of authority since no member of the public can purchase a ticket under a GSA contract flight.

PRESIDENT SIGNS SMALL AIRPLANE REVITALIZATION ACT

The President signed into law the Small Airplane Revitalization Act. The law aims to cut certification costs for aircraft under 12,500 pounds by updating Part 23 regulations relating to aircraft components and technology. The law adopted many of the recommendations of the joint industry-government Aviation Rulemaking Committee (ARC) which was charged with revising the certification requirements. The FAA has until the end of 2015 to implement the ARC recommendations.

FAA TO RELEASE NEW SLEEP APNEA POLICY

The FAA Federal Air Surgeon announced that the FAA plans to release a policy which will require pilots and air traffic controllers with a BMI of 40 or greater and a neck size of 17 inches or greater to undergo screening for sleep apnea prior to receiving a medical certificate. The FAA will lower the BMI over time and require other pilots to get screened for sleep apnea. Currently, the FAA requires anyone diagnosed with sleep apnea to be treated before receiving a medical certificate. The FAA has also issued special medical certificates to 4,917 pilots who are being treated for sleep apnea.

CAPITOL HILL PUTTING PRESSURE ON CBP REGARDING AIRCRAFT SEARCHES

Eight Senate Republicans have sent a letter to the acting secretary of Department of Homeland Security (DHS) regarding the legality of CBP searches. The Senators have requested a report from DHS detailing every stop and search since 2009. As reported in our September Bulletin,

industry groups and Congressman Sam Graves had sent inquiries to DOT, DHS and CBP questioning the legality of CBP searches of general aviation aircraft within US borders. The parties have voiced concerns that the searches, which are usually performed as part of cross-border drug-interdiction efforts, are being conducted on aircraft that do not conduct cross-border operations and are done without reasonable suspicion or probable cause. In addition, CBP has recently proposed making certain public records unavailable for review, including those involving the referenced aircraft stops.

FAA UNDER PRESSURE TO SPEED UP CERTIFICATION PROCESS

The DOT assistant inspector general, Jeffrey Guzzetti, testified in front of the House Aviation Subcommittee regarding the FAA certification and regulation processes. Guzzetti stated that there is a backlog of over 1,000 applications for air operator and repair station certificates which is largely the result of the FAA's failure to have a streamlined process in place. At present, applications are dealt with on a first-come, first-served basis. The problem with this approach is that if a complex application is ahead of a less complicated one, the less complicated one is significantly delayed, even though it might be more efficient to clear that one first. The FAA is currently looking into ways to streamline the process.

ORGANIZATIONS LOBBY TO KEEP FUNDING FOR CONTRACT TOWER PROGRAM

Currently, the fiscal 2014 transportation funding bill (H.R.2610) provides $140 million in funding to the contract tower program. The program funds the nation's 251 FAA contract towers, 149 of which were threatened with budget cuts last spring as part of sequestration. Fearing that funding for the towers could be vulnerable to budget cuts, industry groups recently sent a letter to the House and Senate Appropriations Committees in support of keeping the funding.

DOT FINES AIR AMBULANCE SERVICE PROVIDER $15,000

The DOT fined BestCare EMS, Ltd. $15,000 for overreaching its economic authority and for engaging in unfair and deceptive trade practices. BestCare is an indirect air carrier specializing in air ambulance services. BestCare does not operate flights, but instead arranges medical air transportation. BestCare also employs the emergency medical technicians and paramedics who accompany patients on flights that are operated by direct air carriers, pursuant to contracts with BestCare. The DOT allows indirect carriers to hold out, arrange and coordinate the operation of air ambulance services without a certificate, so long as they meet certain conditions. In particular, indirect carriers cannot hold themselves out to the public in a way that would create the impression that they are direct air carriers.

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The DOT found that BestCare was creating the impression that it was a direct air carrier through numerous improper statements on its website. Some examples include posting an FAA 135 Air Taxi Certificate on its website with the statement "Copies of Certification and Insurance Available upon Request." This statement implied that BestCare operated flights and had an air carrier certificate, when in fact it did not. Other statements included "Read more about the BestCare Air Ambulance Fleet,¨ implying that BestCare operated its own fleet of aircraft, when no such fleet existed.

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February 2014

AVIATION REGULATORY UPDATE

DOT SEEKS COMMENTS ON POTENTIAL U.S. BAN ON CELL PHONE USE; SEEKS INFORMATION ON FINANCIAL IMPACT TO FOREIGN CARRIERS

On Friday, February 14, 2014, the U.S. Department of Transportation (DOT) announced that it is seeking public comment regarding a possible ban on voice communications via wireless devices during passenger flights operating within, originating from, or traveling to the United States. The DOT is specifically seeking input as to whether allowing passengers to engage in voice communications on aircraft would constitute an unfair practice to consumers, and has specifically sought comments from foreign air carriers who currently permit voice calls. Interested parties will have thirty (30) days after the date of publication of this item in the Federal Register to submit comments to the DOT.

The DOT's request coincides with a rulemaking proceeding initiated by the U.S. Federal Communications Commission (FCC) in late 2013 that may result in the elimination of its current ban on the use of mobile devices on passenger flights for voice communications. The FCC's rulemaking considers whether new technologies can effectively prevent harmful interference to ground wireless networks resulting from voice calls onboard aircraft -- which was the original reason for the FCC's ban. The FAA relaxed rules on the use of personal electronic devices (PEDs), not including cell phones used for voice communications, during most stages of flight in November 2013 after determining that such usage no longer posed a threat to the safe operation of aircraft. The DOT is now considering a prohibition on voice calls from aircraft based on consumer protection grounds. Numerous individuals and groups have raised concerns that such practices would be disruptive to air travel.

The DOT has noted that possible outcomes of any rulemaking include taking no action (thereby leaving the decision to allow voice calls to each air carrier) or prohibiting all voice calls on all flights in the U.S. The DOT has sought specific commentary on the following issues from Part 121, 125, 129 and 135 carriers:

- Whether a blanket ban on voice communications is necessary, and why;
- What benefits may be derived from allowing voice communications;
- Whether air carriers should be allowed to determine whether voice calls may be permitted and how they may be permitted;
- Whether a proposed ban should include all in flight voice communications, or only certain types;
- Whether a definition of mobile wireless device should be included in any proposed ban;
- Whether text-to-speech technologies should be considered exempt from any proposed ban, particularly for passengers with disabilities, and why;

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- When a proposed ban might apply (i.e. only once the aircraft door is closed);
- Whether a proposed ban should include exceptions for personal, passenger-related emergencies, or for crewmembers, law enforcement, or other officials;
- Any impact on consumers of allowing in-flight voice communications;
- Any alternatives that might be available to allow consumers to avoid being subjected to voice calls on flights (e.g. creation of 'quiet sections,' or limitations on voice calls during certain times);
- Whether voice communications are more or less disruptive than other behaviors that take place during passenger flights (i.e. conversations between passengers).

In addition to the above, the DOT has also requested comment from foreign air carriers that currently permit voice communications pursuant to national laws and who can provide insight as to how such practices have impacted their ability to provide adequate air transportation and/or maintain customer satisfaction with their services. DOT also has specifically asked what the financial impact on foreign carriers would be if a U.S. ban is imposed.

Should you have any questions regarding the above or should you wish to submit comments, please contact us.

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April 2014

AVIATION REGULATORY UPDATE

U.S. HOUSE BILL MAY IMPACT DISPLAY OF TICKET PRICES IN ADVERTISING

The Transparent Airfares Act of 2014, H.R. 4156, has the potential to void the U.S. Department of Transportation's (DOT) full fare advertising rule. Passage of the bill, which has bipartisan support, is possible.

Understandably, airlines and consumer rights groups are split. Currently, DOT's full fare advertising rule requires airlines and ticket agents to disclose the full price to be paid by the consumer in all advertisements. This approach has been widely supported by consumer groups and passengers. Air carriers, on the other hand, generally support the Transparent Airfares Act and argue the full fare advertising rule allows the government to bury tax hikes in ticket prices.

Consumer groups and passengers believe the bill would allow carriers to quote deceptively low airfares and advertise ticket prices that are between 15% and 20% lower than that which is finally paid by the consumer. Carriers, on the other hand, argue that about 20% of the advertised fare goes to the federal government and airports in the form of taxes and fees, and unfairly reflects on the price of air transportation as charged by the carrier. The bill could be voted on at any time.

PHILIPPINES GRANTED CATEGORY 1 STATUS

The Federal Aviation Administration (FAA) on April 9, 2014 announced that the Republic of the Philippines complies with International Civil Aviation Organization (ICAO) safety standards and has therefore been granted a Category 1 rating. This decision comes on the heels of a March 2014 FAA review of the Civil Aviation Authority of the Philippines.

The Philippines was downgraded to Category 2 in January 2008, a decision which meant at the time that it lacked laws or regulations necessary to oversee air carriers in accordance with minimum international standards and/or that its civil aviation authority was deficient. The return to Category 1 status means the Philippines' civil aviation authority complies with ICAO standards and that its air carriers can add flights and service to the United States and can carry the code of U.S. carriers.

SANCTIONS RELIEF PROVIDED FOR IN THE JOINT PLAN OF ACTION ("JPOA") BETWEEN THE P5 + 1 AND THE ISLAMIC REPUBLIC OF IRAN

On January 12, 2014, the US, United Kingdom, Germany, France, Russia, and China entered into the JPOA with Iran. While the ultimate goal of the JPOA negotiations was to agree on a long-term plan which would ensure that Iran never develops nuclear weapons, the JPOA resulted in certain concessions by the US that directly impact the aviation industry. Although most transactions involving US persons and US source goods are still prohibited by US law, the JPOA

resulted in the creation of a favorable licensing policy through which OFAC is permitted to grant to certain license applicants authorization to engage in transactions specifically intended to ensure the safe operation of Iranian commercial passenger aircraft. Licenses granted pursuant to the new licensing regime will be issued by OFAC on a case-by-case basis.

Activities which may be licensed include the exportation and reexportation of: services related to the inspection of commercial aircraft and parts in Iran or a third country; services related to the repair or servicing of commercial aircraft in Iran or a third country; and goods or technology, including spare parts, to Iran or a third country. It is, however, important to remember that all transactions for which license applications are submitted must be related to the safe operation of Iranian commercial passenger aircraft and, further, that all of the foregoing activities are specifically prohibited by Iranian Transactions and Sanctions Regulations (31 C.F.R. Part 560) unless a license has been granted by OFAC. Notably, transactions with Iran Air are permitted under the new licenses which OFAC has been authorized to issue; however, all other airlines listed on OFAC's Specially Designated Nationals and Blocked Persons List remain prohibited.

UPDATE ON UKRAINE-RELATED SANCTIONS – ADDITIONS TO THE SPECIALLY DESIGNATED NATIONALS ("SDN") LIST

As of April 28th, the US has added additional Russian nationals and entities to the SDN list. In addition to Bank of Rossiya, which was added to the SDN list in March, the following entities were added in April: Aquanika, Avia Group LLC, Avia Group Nord LLC, CJSC Zest, INVESTCAPITALBANK, JSB SobinBank, SakhaTrans LLC, smp bank, stroygazmontazh, stroytransgaz GROUP, stroytransgaz holding, stroytransgaz llc, stroytransgaz ojsc, stroytransgaz-m llc, the limited liability investment company abros, transoil, and VOLGA GROUP.

Please note that many of the entities listed above do business under other names and some are aviation related. It is therefore important to check the current version of OFAC's SDN list before doing business with a Russian national or entity. OFAC's SDN List is available at the following website:

http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx

INDUSTRY WORKS WITH CBP TO REDUCE WAIT TIMES

Several groups, including Airlines for America (A4A) and Airports Council International – North America (ACI-NA), are pressuring the U.S. government to find a solution to reduce wait times at international airports. One answer to this problem is additional funding and personnel. To that end, the 2014 budget includes funding for 2,000 additional Customs and Border Protection (CBP) agents to address the problem; however, it is not confirmed whether these officers will be assigned to airports with the most critical wait times.

A second possible solution involves the use of new technology. On this front, ACI-NA is working with CBP to install self-service kiosks at select airports, which will help ease the flow of incoming passengers. These kiosks, which cost between $30,000 and $40,000 per unit, would initially allow U.S. citizens to scan their passports and in some cases receive expedited screening. The parties envision access to kiosks being expanded to Canadian citizens, then to legal permanent residents and, finally, to foreign citizens with visas to the U.S. So far, kiosks have been installed in about 10 U.S. and Canadian airports, including New York John F. Kennedy International, Seattle-Tacoma International Airport and Toronto Pearson International Airport.

In addition to kiosks ACI-NA also is working with CBP on an app that would mimic the kiosks on passengers' smartphones. The app, once it is developed and implemented, would allow passengers to scan their passports while still onboard the aircraft or in the arrivals hall. The data would be transmitted to CBP and the passenger would be instructed either to proceed to customs or appear before an officer for secondary screening, says Cota. The app will be tested in a pilot program at a large U.S. airport in mid-2014.

U.S. SUPREME COURT APPROVES DROP OF DISRUPTIVE FREQUENT FLIER

The U.S. Supreme Court unanimously decided earlier this month in Northwest, Inc. v. Ginsberg that airlines have sole discretion to drop people from their frequent flier programs. The case arose out of the decision by Northwest Air Lines to terminate the WorldPerks frequent flier membership of Rabbi Binyomin Ginsberg shortly before its merger with Delta. Northwest argued the termination was based on "abuse" (i.e., Ginsberg had a history of complaining to the airline and seeking compensation), but Ginsberg claimed that Northwest acted because of the merger. The U.S. Court of Appeals for the Ninth Circuit held that Ginsberg's complaint was not preempted by the Airline Deregulation Act of 1978 (the "ADA"), and the U.S. Supreme Court granted certiorari.

While the case involved Northwest's frequent flier program, its ramifications extend far beyond the WorldPerks program and involved the larger issue of preemption under the ADA. The question being argued by the parties involved the extent to which the ADA preempts a claim that an airline violated an implied covenant of good faith and fair dealing based upon state law.

The Court's holding addressed three separate issues. First, it noted that state law is preempted if it adds to the parties' agreement but not if it only enforces the agreement. Second, the Court noted in some cases the implied covenant simply holds parties to their agreement, but in others it goes farther, to implement "community standards of decency, fairness, or reasonableness." Finally, the Court held that the implied covenant is preempted whenever it implements broader community standards, but not when it simply holds parties to their agreement in fact. As applied

to Ginsberg's situation, the Court concluded that Ginsberg's claim was preempted under the ADA.

In overturning the Ninth Circuit's decision, Justice Samuel Alito wrote that travelers have protection from being mistreated because they can sue for breach of contract, just not for any covenants implied by participating in a loyalty program. In addition, Alito highlighted in the 18-page decision that the ADA is "based on the view that best interests of airline passengers are most effectively promoted . . . by allowing the free market to operate" and that customers "can avoid an airline with a poor reputation and possibly enroll in a more favorable rival program." He also noted that "the Department of Transportation has the authority to investigate complaints about frequent flyer programs."

EXTENSION REQUESTED TO EXTEND COMMENT PERIOD ON PROPOSED RULEMAKING FOR DRUG/ALCOHOL TESTING

As previously reported, in March 2014 the FAA released an Advanced Notice of Proposed Rulemaking (ANPRM) requesting guidance regarding drug and alcohol testing at FAA-certified foreign repair stations. The ANPRM included more than 40 questions on a wide variety of issues. The final rule on drug and alcohol testing is a Congressional mandate and will cover certain employees at FAA-certified foreign repair stations that work on U.S. registered aircraft.

Since the release of the ANPRM, IATA, Lufthansa, A4A, and the Aeronautical Repair Station Association have all requested an extension of 120 days to provide comments beyond the current May 16, 2014 deadline. The request for extension filed by IATA and Lufthansa explains that the issues are complex and require a detailed analysis of the numerous topics that are covered by the ANPRM. A4A also requested that the FAA host a public meeting or webinar to answer questions. We will keep you updated on this issue as events warrant.

FINES UPDATE

The following fines have recently been issued by DOT:

Sky King, Inc. – $100,000
Sky King, Inc. was fined $100,000 for violating 49 U.S.C. § 41708 and 14 C.F.R. Part 241. The carrier failed to file its required Air Carrier Financial Reports for all four quarters of 2013, despite numerous requests by the Bureau of Transportation Statistics. Sky King filed for Chapter 11 bankruptcy in February 2014 and is working with a Trustee to find a buyer so that it will be able to quickly commence operations and timely file the required reports.

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Skyscanner Limited – $40,000

Skyscanner a ticket agent, was fined $40,000 for violating the Department's codeshare and baggage disclosure rules, 14 C.F.R. § 257.5(d), 14 C.F.R. § 399.85(b) and 49 U.S.C. § 41712. An investigation by DOT's Enforcement Office revealed that Skyscanner failed to fully disclose on its website certain codeshare arrangements when it advertised flights that were operated by a regional carrier on behalf of a major carrier. The agent did not disclose the corporate names of the transporting carriers and as a result, consumers were unable to determine the identity of the airline that would be operating their flight. The investigation also revealed that Skyscanner failed to prominently disclose on its website certain additional fees for baggage.

British Airways PLC – $225,000

British Airways PLC was fined $225,000 for violating the Department's tarmac delay rules, 14 C.F.R. Part 259 and 49 U.S.C. § 41712, on two separate flights. The first violation occurred on November 7, 2012. On that date a BA flight traveling from Newark Liberty International Airport (EWR) to London Heathrow Airport (LHR) was delayed on the tarmac at EWR for 5 hours and 34 minutes. The second violation occurred on November 15, 2012, and involved BA flight 214, which was traveling from Boston Logan Airport (BOS) to LHR. The flight, which was scheduled to depart at 9:00 p.m., ultimately pushed away from the gate at 9:34 p.m. due to a late arriving aircraft. At approximately 10:00 p.m. the aircraft returned to the gate due to a mechanical issue and the doors were opened. The aircraft remained at the gate until 2:00 a.m. when the passengers deplaned. An investigation by the Department's Enforcement Office found that British Airways did not announce to the passengers that an opportunity to deplane existed while the aircraft was at the gate with the doors opened.

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May 2014

AVIATION REGULATORY UPDATE

FAA RELEASES ORDER LIMITING SCHEDULED OPERATIONS AT JFK

The Federal Aviation Administration (FAA) has designated John F. Kennedy International Airport (JFK) as an IATA level three fully coordinated airport, which means carriers are required to obtain takeoff and departure slots before operating to the facility. Notwithstanding this requirement the FAA on May 29, 2014 released a Notice of Limited Waiver of the Slot Usage Requirement at JFK due to construction at the airport during the winter 2014/2015 and summer 2015 scheduling seasons. The notice, which is necessary due to a temporary reduction in capacity at the airport caused by the construction, grants with conditions a limited waiver of the airport's slot usage requirement and applies only to JFK slots for the period between March 1, 2015 and October 24, 2015.

The Notice is FAA's attempt to reduce service at JFK through voluntary reductions in operations by carriers that currently operate to the airport. To obtain a waiver for a specific slot held, a carrier must temporarily return to the FAA slots that it will not operate during the waiver period. While the carrier will not be operating a particular slot during that timeframe, it will nevertheless retain historical precedence for the slot or slots at issue and will be able to reacquire rights to the slot for the next season. The temporary return of slots to the FAA will allow the agency to plan for days on which closures due to construction and resulting operational impacts occur.

The FAA does recognize that carriers may make adjustments in their schedules based on operational assessments that are currently underway and may also need additional time to finalize schedules and potential reductions beyond the regular winter 2014/2015 slot return deadline of August 15, 2014. Therefore, the FAA will allow an additional slot return date to allow for better planning and for discussions with the FAA on potential schedule and slot adjustments to avoid delays. For slots between March 1 and March 28, 2015, the temporary slot return deadline is **December 15, 2014**. For slots between March 29 and October 24, 2015, the temporary slot return deadline is **January 15, 2015**. FAA will discuss this issue in further detail at the upcoming IATA slots conference in Abu Dhabi and will reach out to affected carriers on an individual basis over the coming weeks.

Temporary slot returns should be submitted to the Slot Administrative Office by email at: 7-awa-slotadmin@faa.gov.

UPDATE ON FAA FOREIGN REPAIR STATION DRUG AND ALCOHOL TESTING

As we reported in the March U.S. Aviation/Regulatory Update, the FAA is seeking comments on developing a rulemaking that would require employees of FAA-certified foreign repair stations and certain other maintenance providers who perform safety-sensitive work on Part 121 U.S. aircraft to be subject to a drug and alcohol testing program. The FAA has granted an extension to file comments which are now due on **July 17, 2014**.

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Before the FAA adopts a final regulation it is particularly interested in hearing from interested parties whether local privacy laws currently permit drug and alcohol testing programs since the FAA's authority is limited to a program that will be consistent with local laws. The FAA is also interested in knowing the costs of implementing a drug and alcohol testing program in a foreign country and if there are already established programs in other countries that could be used as guidance for the FAA.

Please let us know if you are interested in filing comments or would like assistance with filing. A link to the ANPRM is attached for your convenience below:

http://www.gpo.gov/fdsys/pkg/FR-2014-03-17/pdf/2014-05653.pdf

CDC GUIDANCE REGARDING REPORTING OF SUSPECTED MIDDLE EAST RESPIRATORY SYNDROME (MERS)

The United States Centers for Disease Control and Prevention (CDC) has issued guidance regarding Middle East Respiratory Syndrome for airline crew on flights arriving to the United States. The guidance states that crew should report to CDC ill travelers (with symptoms below) arriving from countries in and near the Arabian Peninsula, including Bahrain, Iraq, Iran, Israel, Jordan, Kuwait, Lebanon, Oman, the Palestinian territories, Qatar, Saudi Arabia, Syria, the United Arab Emirates (U.A.E.), and Yemen. Crew should report to CDC if the ill person:

- feels warm to the touch, gives a history of feeling feverish, or has an actual measured temperature of 100° F (37.8° C) or higher, PLUS
- has a cough or difficulty breathing.

Crew should report the ill traveler's presence as soon as possible and before arrival by one of the following methods:

1. **Air Traffic Services (ATS) if in international airspace or Air Traffic Control (ATC) if in U.S. airspace**
   This reporting option also complies with International Civil Aviation Organization (ICAO) reporting standard (ICAO document 4444 and Annex 9 of the Chicago Convention).

   ATC will notify CDC's Emergency Operations Center (EOC) and the EOC will notify the appropriate CDC Quarantine Station and the local health department of jurisdiction.

OR

2. **Airline's land-based point of contact (e.g., Operations Center, Flight Control, airline station manager)**
   Instruct the airline's point of contact to notify CDC by contacting the:

   a. CDC Quarantine Station at or closest to the airport where the flight is arriving: http://www.cdc.gov/quarantine/QuarantineStationContactListFull.html or

   b. CDC EOC (770.488.7100), which will then notify the appropriate CDC Quarantine Station.

U.S. DOT RELEASES CONSUMER RULE #3

On May 23, 2013 the U.S. Department of Transportation (DOT) published the latest installment of new consumer protections for air travelers in the Federal Register, building on the previous passenger protection rules that were issued in December 2009 and April 2011. The newest rule, "Transparency of Airline Ancillary Fees and Other Consumer Protections Issues" (i.e. Consumer Rule 3), was published in the form of a Notice of Proposed Rulemaking (NPRM).

The NPRM proposes the following:

- To require airlines and ticket agents to disclose fees for certain additional services (i.e. first checked bag, second checked bag, one carry-on item, and advance seat assignment) associated with airline tickets at all points of sale.

- To expand the number of carriers that would be required to report on-time performance, oversales, and mishandled baggage information to DOT. Reporting carriers would also have to include data for domestic scheduled flights operated by a codeshare partner.

- To enhance protections for air travelers by codifying the Department's interpretation of the term "ticket agent", which is used in many laws and regulations.

- To require large travel agents to adopt minimum customer service standards similar to those already imposed on airlines (i.e. responding promptly to customer complaints and holding reservations without payment, or cancelling without penalty, for 24 hours if the reservation is made one week or more prior to a flight's departure date).

- To require carriers and ticket agents to disclose any code-share arrangements on initial itinerary displays on their websites.

- To require large ticket agents to maintain and display lists of carriers whose tickets they market and sell.

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- To prohibit unfair and deceptive practices by ticket agents, such as preferentially ranking flights of certain carriers above others without disclosing the bias in any presentation of carrier schedules, fares, rules, or availability.

- To clarify how the post-purchase price increase rule is applied to price increases for ancillary services.

- DOT has also asked for comments from interested parties on how the industry should best handle erroneous fares that are published by mistake and subsequently purchased by predatory consumers.

Comments on the proposal are due within 90 days of publication in the *Federal Register*, or by **August 21, 2014**. We will provide a more complete explanation of the rule shortly as well as any issues you may wish to consider submitting comments on. In the meantime please do not hesitate to contact us with any questions.

FDA AND FOOD LABELING FOR AIRLINES

We have learned that the Food and Drug Administration (FDA) is considering a new policy on how food must be labeled on commercial airlines, which represents a change in the way the agency has historically interpreted the 2004 Food Allergen Labeling and Consumer Protection Act (the Act). Currently, complimentary food served on airlines is treated the same as food served in restaurants, which is exempt from labeling requirements. The FDA's change in position appears to be based, at least in part, on a concern that passengers with severe allergies may inadvertently ingest food on an aircraft that was not labeled under the agency's current interpretation of the Act.

As recently as 2008 the FDA continued to view food service on airlines as akin to restaurant food. Carriers and members of the in-flight catering community point to numerous ways in which in-flight food options are analogous to choices at a restaurant, as opposed to foods served in a grocery store (which must be labeled). For instance, passengers review airline "menus" when making food choices, obtain food via live service like in a restaurant, and interact with flight attendants in the same manner as a waiter or waitress. Given the above, and because food is served on commercial airlines in a variety of ways depending on flight time, origin, destination and cabin class, industry interests argue that a strict rule on labeling without any flexibility would be problematic.

While members of the industry are aware that some passengers have serious allergen concerns, it is impossible for carriers to create a 100% allergen-free environment due to passengers bringing their own food onto aircraft. Regardless of this difficulty, carriers strive to make allergen information available through labeling. In fact, many carriers already make allergen-related information available through the use of menu cards, inflight magazines or table tray liners,

which allows passengers to make informed choices before they make food selections. Airlines believe that flexible means of distributing allergen information is the best course and has been proven by the lack of incidents inflight. The industry also believes that package labeling would be too limiting and the FDA should continue to classify airlines like restaurants which are not required to have on-package labeling, and will continue to work with FDA on any changes to the agency's policy in this regard.

DC COURT OF APPEALS CASE ON DRONES

A non-profit Texas company specializing in performing missing persons searches, Texas EquuSearch Mounted Search and Recovery Team (EquuSearch), filed a lawsuit in U.S. Court of Appeals for the D.C. Circuit asking the court to set aside an order that prohibits the non-profit company from employing drones to perform its work. EquuSearch has coordinated volunteer searchers in search-and-rescue missions and for nearly a decade has used camera-equipped model aircraft to assist in the searches.

In February 2013, an EquuSearch volunteer made an informal inquiry to the FAA about whether the agency's policies on the use of drones for search-and-rescue missions has changed. The FAA responded in an email to EquuSearch that the unauthorized use of drones violates Advisory Circular AC 91-57 and hence the operations are illegal. The FAA also noted that EquuSearch holds a Certificate of Authorization (COA) to operate but only in a particular area and if there were any operations outside of the prescribed area they should stop immediately. In response to the email from the FAA, on March 17, 2014 EquuSearch brought the exchange to the attention of the FAA's Chief Counsel and asked the directive to "stop immediately" be rescinded within 30 days. When EquuSearch did not receive a reply within 30 days the company filed a Petition of Review with the court.

The Petition for Review argues there is no basis in law to prohibit the operation of model aircraft for humanitarian search-and-rescue operations and that the use of drones falls outside FAA restrictions that say model aircraft may not be operated "by persons or companies for business purposes."

FINES UPDATE

The following fine has recently been issued by DOT:

Air Europa Lineas Aereas, S.A.U. - $140,000

Air Europa Lineas Aereas was fined $140,000 for violating the Department's tarmac delay rules, 14 C.F.R. Part 259 and 49 U.S.C. § 41712. The offending flight, which occurred on November 7, 2012, was scheduled to depart JFK at 10:05 p.m. for Madrid-Barajas Airport (MAD). The aircraft's door was closed at 11:34 p.m. At 11:54 p.m., the captain announced the flight would be delayed due to weather conditions. Air Europa

requested an estimated pushback time from Air Traffic Control several times yet no estimate was given. The aircraft continued to hold at the gate until 3:31 a.m. and, after deicing, the flight ultimately departed for MAD at 4:34 a.m. An investigation by the Department's Enforcement Office found that during the time the aircraft was sitting at the gate Air Europa did not adhere to its tarmac delay contingency plan and did not inform the passengers on board that an opportunity to deplane existed.

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.

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FAA PUBLISHES GUIDANCE TO MODEL AIRCRAFT OPERATORS

On June 23, 2014 the FAA published a *Federal Register* notice on its interpretation of the statutory special rules for model aircraft in the FAA Modernization and Reform Act of 2012. The notice comes on the heels of several incidents where unmanned model aircraft were flown recklessly near airports and crowds of people.

The notice essentially provides clear guidance to operators of model aircraft on the "Do's and Don'ts" of safe operation. The FAA also restated the definition of a "model aircraft" and described its operational limits as: (1) the aircraft is flown strictly for hobby or recreational use; (2) the aircraft is operated in accordance with a community-based set of safety guidelines and within the programming of a nationwide community-based organization; (3) the aircraft is limited to not more than 55 pounds unless otherwise certified through a design, construction, inspection, flight test, and operational safety program administered by a community-based organization; (4) the aircraft is operated in a manner that does not interfere with and gives way to any manned aircraft; (5) when flown within 5 miles of an airport, the operator of the aircraft provides the airport operator and the airport air traffic control tower…with prior notice of the operation; and (6) the aircraft is flown within visual line sight of the operator.

It is important to note that the FAA may take enforcement action against operators of model aircraft who operate their aircraft in an unsafe manner. The FAA plans to coordinate with its inspectors and model aircraft operators in order to promote the dissemination of standard information on how the public should operate model aircraft in compliance with current regulations and avoid endangering the safety of the nation's airspace.

Additional information on the safe operation of model aircraft is available here: http://www.faa.gov/about/initiatives/uas/model_aircraft_operators/.

TSA FEE INCREASE SET TO TAKE EFFECT IN JULY

The Transportation Security Administration's (TSA) Civil Aviation Security Service Fee will be increased beginning July 21, 2014, following a Congressional budget deal that was passed in December 2013. TSA published an Interim Final Rule in the *Federal Register* on June 20, 2014 in which the Administration detailed its plan to restructure the Security Service fee. The Bipartisan Budget Act of 2013, which provides for the fee increase, simplifies the structure under which fees are collected by (1) requiring the Security Service Fee be imposed on a one-way trip basis, as opposed to a per-enplanement basis; and (2) eliminating the cap on the amount of fees that can be collected.

Under the new scenario, TSA Civil Aviation Security Service Fees will be raised from $2.50 for a non-stop flight or $5.00 for a trip with a connection to a flat fee of $5.60 each way. However, the TSA, in implementing Congress' mandate as it applies to the Security Service Fee, also plans

to change the definition of a "trip". Instead of charging each passenger $5.60 each way, TSA is proposing to instead charge a separate $5.60 fee for each leg of a flight in which a connection between domestic flights is more than 4 hours, or between domestic flights in Alaska or Hawaii and international destinations with layovers of more than 12 hours.

Section 601(d) of the Budget Act provides for implementation of the fee increase by July 1, 2014 through publication of notice of the fee in the *Federal Register*. While not required by the Statute, TSA has chosen to issue the subject rulemaking as an Interim Final Rule in order to allow interested parties the opportunity to comment before the rule is finalized and the new fee takes effect. Interested parties may file comments beyond the rule's effective date, to **August 19, 2014**. The Interim Final Rule is available at: http://www.gpo.gov/fdsys/pkg/FR-2014-06-20/pdf/2014-14488.pdf. If you are interested in filing a comment please let us know.

DOT CONSIDERING EXTENSION OF TIME TO FILE COMMENTS ON ITS PROPOSED CONSUMER RULE 3

On June 13, 2014, Airlines for America, the International Air Transport Association and the Regional Airline Association, on behalf of their members, requested a 90-day extension for submitting comments on DOT's Notice of Proposed Rulemaking (NPRM) entitled "Transparency of Airline Ancillary Fees and Other Consumer Protection Issues" (*i.e.*, Consumer Rule 3). The rule proposes, among other things, to: (1) require carriers to disseminate certain ancillary service fee information to ticket agents; (2) require carriers to modify their websites to display (as specific charges) certain basic ancillary service fees; (3) modify the Department's post-purchase price increase rule with respect to ancillary fees; and (4) amend the tarmac delay rule to clarify that the Department may impose penalties for tarmac delay violations on a per passenger basis (up to $27,500 per passenger).

All carriers should consider submitting comments to this latest attempt by DOT to over-regulate the industry. Currently, comments are due by August 21, 2014. If the extension is granted, comments will be due by November 19, 2014.

FOKKER SERVICES B.V. SETTLES WITH TREASURY FOR $21 MILLION FOR OFAC VIOLATIONS

Fokker Services B.V. (Fokker), a Dutch aerospace services provider, settled with the U.S. Departments of Commerce, Justice, and Treasury on June 5, 2014 for a total monetary penalty of $21 million for engaging in illegal transactions with customers in Iran, Sudan, and Burma. According to the U.S. government, Fokker used "work-arounds" to circumvent trade laws and export aircraft parts, technology, and services to these jurisdictions. It also allegedly falsified documents, deleted references to transactions with Iran and avoided working with U.S. companies with strong export law compliance programs.

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In forfeiting the $21 million, Fokker took responsibility for willingly and knowingly committing criminal conduct including over 1,150 violations committed between 2005 and 2010. As a result of the investigation and settlement, Fokker has implemented a new compliance program in hopes of avoiding these kinds of issues in the future and has ceased all business with the sanctioned countries. Fokker has also closed its Iranian office and made changes to its contractual language and user agreements with customers.

CONGRESS WEIGHS IN ON NORWEGIAN AIR INTERNATIONAL

On June 10, 2014, an amendment to HR 4745: Fiscal Year 2015 Transportation, Housing and Urban Development Appropriations bill was adopted by the House of Representatives. The amendment prohibits government funds from being used to approve "a new foreign air carrier permit under sections 41301 through 41305 of title 49, United States Code, or exemption application under section 40109 of that title of an air carrier already holding an air operator's certificate issued by a country that is party to the U.S.-E.U.-Iceland-Norway Air Transport Agreement where such approval would contravene United States law or Article 17 *bis* of the U.S.-E.U.- Iceland-Norway Air Transport Agreement." The Senate is currently debating a similar amendment.

The amendment is aimed at a proposed subsidiary of Norwegian Air Shuttle, Norwegian Air International ("NAI"), which has applied for permit and exemption authority from DOT to engage in scheduled and charter operations between the U.S. and EU, the U.S. and the ECAA and the U.S. and Norway. NAI's application has been pending since December 2013. Critics argue that NAI applied for an Air Operator Certificate in Ireland in order to avoid Norway's social laws and evade collective bargaining agreements with its Norwegian pilots and flight attendants. NAI's pilots are currently based in Thailand and employed under contracts that are covered by Singapore law which prevent collective bargaining. Article 17 *bis* of the U.S.-EU-Iceland-Norway Open Skies Agreement states that "The Parties recognize the importance of the social dimension of the Agreement and the benefits that arise when open markets are accompanied by high labour standards. The opportunities created by the Agreement are not intended to undermine labour standards or the labour-related rights and principles contained in the Parties' respective laws." Sponsors of the amendment argue that NAI's application is in violation of Article 17 *bis*.

INTERLINE BAGGAGE RULES FOR CANADA

The Canadian Transportation Agency (CTA) has decided to align its baggage policy for interline carriers with current rules in place in the U.S., particularly DOT regulation 14 C.F.R. 399.87. In so doing, the CTA has decided that for international itineraries involving multiple air carriers to and from Canada that are purchased on a single ticket issued on or after October 1, 2014, carriers should:

- Apply a single set of baggage rules to the entire itinerary; and
- Disclose the applicable rules on the itinerary receipt or e-ticket.

The carrier whose designator code is identified on the first flight segment of the interline ticket (i.e., the selecting carrier) can apply either its own baggage rules to the entire itinerary or use IATA's "most significant carrier" approach to determine which rules apply. Regardless of what the selecting carrier decides, the same baggage rules must be applied throughout the entire itinerary.

The applicable carrier's baggage rules (allowances for the first and second checked bags and carry-on baggage) should be disclosed on the passenger's ticket and a comprehensive summary of all the carrier's baggage rules should be available on the carrier's website.

Carriers whose automated systems are compliant with 14 C.F.R. 399.87 regarding interline baggage to/from the U.S. and that use the same policy for interline baggage to/from Canada should find themselves in full compliance. Carriers must also clearly state in tariffs their policies respecting interline baggage and file revised tariffs with the CTA as applicable. If you have questions or require assistance in ensuring compliance with Canada's interline baggage rules, please let us know.

DOT TENTATIVELY APPROVES IATA RESOLUTION 787

On May 21, 2014 DOT issued an Order to Show Cause in Docket OST-2013-0048, in which it tentatively approved IATA's controversial Resolution 787.

DOT noted two broad categories of public benefit in approving the resolution: (1) that Resolution 787 would create modern, industry-wide technical standards and protocols for data transmission throughout the distribution chain, which would subsequently promote efficiency, cost savings, and innovation for consumers; and (2) that the use of common technical standards would make it easier for consumers to compare competing carriers' fares and ancillary products across multiple distribution channels, which would in turn increase transparency, efficiency, and competition among airlines.

Should an order be issued by DOT the following conditions will be imposed:

Scope of approval

- Approval of Resolution 787 does not constitute approval of any agreement among IATA member airlines regarding any method or business model of distributing air transportation, nor restrict the use of any channels available for the distribution of air transportation, including indirect distribution by other than airlines.

- Any future agreement among IATA member airlines regarding business models for the distribution of air transportation shall not be implemented without prior compliance with any applicable government approval or notification process.

Use of Other Data Transmissions Standards

- Approval of Resolution 787 does not constitute approval of any agreement among IATA member airlines to require the use of any particular data transmission standard(s).

Backwards Compatibility/Other Standards

- Any communications or message standards or protocols developed under Resolution 787 shall be open standards, meaning useable by distributors of air transportation and intermediaries in the distribution of air transportation, including CRSs and other aggregators, on a non-discriminatory basis.

- Approval of Resolution 787 does not constitute approval of any agreement to prohibit individual IATA member airlines or groups of such airlines from continuing to utilize any communication or message protocol, including existing standards.

- Nothing in the approval of Resolution 787 shall be deemed to be an approval of either a restriction on backwards compatibility or a restriction on development of a communications or messaging standard that is not backward compatible. Further, nothing in Resolution 787 shall be construed to inhibit the ability of distributors of air transportation to use other standards, including existing standards, in combination with any standard developed under Resolution 787. Airlines and technology service providers are free to pursue backward compatibility of Resolution 787 communications or message standards or protocols based on their particular business needs.

Privacy and anonymous shopping

- Approval of Resolution 787 does not constitute approval of any agreement among IATA member airlines to require the disclosure by any passenger of personal information of any kind. In addition, approval of Resolution 787 is conditioned on the airline or ticket agent that is requesting and receiving the personal information of the buyer of air transportation following its privacy policy in effect at the time the request is made for the sharing and storage of personal information.

Data ownership

- Approval of Resolution 787 does not in any way address the issue of data ownership.

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NTSB TRAINING OFFERED FOR FAMILY ASSISTANCE PLAN COMPLIANCE

The National Transportation Safety Board's (NTSB) Transportation Disaster Assistance Division is hosting a training program for carriers on Family Assistance Plan compliance. The goal of the training program is to "train the trainers" so that carriers can begin to standardize procedures for responding to emergency situations. The course will be held on July 29 & 30, 2014 in San Francisco, CA at Virgin America's Headquarters in Burlingame, CA and is limited to 40 attendees.

Carriers are also encouraged to attend the NTSB's Transportation Disaster Assistance Division 301 Family Assistance course, as it is a prerequisite for upcoming the "Train the Trainer" class. The 301 course is offered by NTSB twice a year. Information on this course can be found through the following link: http://www.ntsb.gov/trainingcenter/CourseInfo/2014/TDA301.html.

FINES UPDATE

The following fine has recently been issued by DOT:

Southwest Airlines Co. - $200,000
Southwest Airlines Co. (Southwest) was fined $200,000 for violating the Department's advertising rules, 14 C.F.R. Part 399.84(a) and 49 U.S.C. § 41712, and Order 2013-7-20. According to DOT's Enforcement Office, during a period of time in October 2013, Southwest ran television advertisements in the Atlanta area for $59 sale fares to destinations such as New York, Los Angeles and Chicago. The investigation concluded that Southwest did not have any seats available for $59 between Atlanta and any of the advertised destinations on any of the advertised dates. By advertising fares for seats that were not available, Southwest violated 14 C.F.R. Part 399.84(a) and 49 U.S.C. § 41712. Additionally, Southwest was fined for violating a previous Consent Order, Order 2013-7-20.

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HOUSE APPROVES TRANSPARENT AIRFARES ACT

The U.S. House of Representatives today overwhelmingly approved the Transparent Airfares Act of 2014 (H.R. 4156) with a voice vote. The bipartisan legislation next goes to the Senate for a vote and, if approved, to President Obama for signature. The Bill would return transparency to U.S. airfare advertising and provide greater clarity for consumers by permitting carriers to separately disclose the base airfare and any government-imposed taxes and fees in advertisements for passenger air travel.

The Bill was introduced in the House by Transportation and Infrastructure Committee Chairman Bill Shuster (R-PA), senior Committee Member Peter DeFazio (D-OR), U.S. Rep. Tom Graves (R-GA), Transportation Committee Ranking Member Nick J. Rahall, II (D-WV), Aviation Subcommittee Chairman Frank LoBiondo (R-NJ), and Aviation Subcommittee Ranking Member Rick Larsen (D-WA).

As we previously reported, passage of the bill could void the U.S. Department of Transportation's (DOT) full fare advertising rule. Understandably, airlines and consumer rights groups are split. Currently, DOT's full fare advertising rule requires airlines and ticket agents to disclose the full price to be paid by the consumer in all advertisements. This approach has been widely supported by consumer groups and passengers. Air carriers, on the other hand, generally support the Transparent Airfares Act and argue the full fare advertising rule allows the government to bury tax hikes in ticket prices.

TURKISH AIRLINES FINED $300,000 FOR IMPROPER HANDLING OF CONSUMER COMPLAINTS

On July 25, 2014, DOT's Office of Aviation Enforcement and Proceedings fined Turkish Airlines $300,000 for violating several of the Department's consumer protection rules having to do with consumer complaints. Pursuant to DOT's Enhancing Airline Passenger Protections (EAPP2) rulemaking, carriers must acknowledge receipt of written complaints regarding scheduled service within 30 days and provide a substantive written response to the complaint within 60 days of receipt of the complaint (14 C.F.R. 259.7).

Under 14 C.F.R. Part 382, which is DOT's regulation for the non-discrimination of passengers with disabilities in air travel, carriers must meet similar requirements for each of the disability-related complaints that they receive. Specifically, 14 C.F.R. 382.155 requires carriers to provide a dispositive written response to each written disability-related complaint within 30 days of receipt of the complaint. An appropriate dispositive response must (1) specifically discuss the complaint at issue; (2) admit or deny whether the carrier believes that a violation of Part 382 occurred under the circumstances; (3) summarize the relevant facts that led to the carrier's conclusion; and (4) advise the complainant of his or her right to refer the matter to the Department for an investigation.

AVIATION REGULATORY UPDATE

The penalty was imposed because Turkish Airlines failed to provide timely responses to a "large" number of consumer complaints and several disability-related complaints that the Department's Aviation Consumer Protection Division (ACPD) received directly from consumers and forwarded to the carrier. Turkish Airlines also failed to adequately assure the Department that it provided substantive responses to those complaints that it received directly from consumers, although Turkish Airlines did advise the department that all such complaints were acknowledged within 30 days.

This is the largest penalty ever imposed by DOT on a foreign carrier for failing to adequately respond to consumer complaints. Not only does this penalty set a precedent for future enforcement actions, but it also very likely signals a focus by the Enforcement office on complaint handling issues. Carriers would be well advised to audit their customer service departments to ensure that all consumer and disability-related complaints are being acknowledged and responded to in accordance with EAPP2 and Part 382.

FAA PROPOSES $12 MILLION FINE AGAINST SOUTHWEST AIRLINES

On July 28th, the Federal Aviation Administration (FAA) proposed to fine Southwest Airlines $12 million for continuing to operate certain aircraft after being told that repairs to the aircraft did not comply with U.S. regulations. This is one of the largest fines in FAA history.

The FAA alleges that beginning in 2006, Southwest conducted significant alterations to the aluminum skin of 44 of its aircraft. In the course of its investigation, FAA determined that the subcontractor used to perform the work did not follow required procedures when making the alterations. The FAA further alleges that Southwest returned the jetliners to service and operated them when they were not in compliance with Federal Aviation Regulations. In response to these allegations, the FAA has proposed to fine Southwest $12 million. Southwest has 30 days to respond to the proposed fine.

FAA PUBLISHES POLICY ON UAS ENFORCEMENT AND INVESTIGATIONS

The FAA on July 15, 2014 issued a Notice of its national policy on "Education, Compliance, and Enforcement of Unauthorized Unmanned Aircraft Systems Operators". The purpose of the Notice is to guide inspectors on the process of contact and education that is typically provided to individuals who are the subject of an inquiry relating to the unauthorized operation of Unmanned Aircraft Systems (UAS) in the National Airspace System (NAS).

Following an increase in UAS-related incident reports arising from model aircraft and small UAS operations, the FAA has decided to use outreach and education to encourage voluntary compliance with applicable statutory and regulatory requirements that pertain to UAS operations. Specifically, the Notice provides an outline and protocol for inspectors to educate alleged

violators and, when necessary, conduct a UAS investigation. Inspectors will take the following actions:

- Conduct an inquiry appropriate to the circumstances. Such inquiries will include a phone call to the operator and should be used as an educational outreach opportunity.
- Depending upon the circumstances, send the operator an administrative informational letter that includes Web site addresses to FAA UAS guidance and relevant C.F.R. provisions.
- In cases where the UAS operator is uncooperative, noncompliant, or the operation poses medium to high risk to the NAS, inspectors may proceed with enforcement action against the operator.
- Enter the activity into the Program Tracking and Reporting Subsystem (PTRS) database.

In determining whether or not to take enforcement action, inspectors will evaluate the extent of the safety risk to the NAS that arises from the noncompliant UAS operation. Inspectors will typically start by using counseling or an informational letter to advise and educate a UAS operator about the requirements for regulatory compliance. This correspondence will be strictly advisory in nature, and will aim to give the UAS operator guidance on how to conduct operations in accordance with applicable statutory and regulatory requirements. In egregious cases, or where a UAS operator is uncooperative or intentionally noncompliant or the operation poses medium to high risk to the NAS, the inspector may take formal enforcement action in accordance with the FAA's existing Compliance and Enforcement Program.

The Notice is available at: http://www.faa.gov/regulations_policies/orders_notices.

UPDATE ON APPLICATION OF NORWEGIAN AIR INTERNATIONAL

There have been two interesting developments in the dispute over Norwegian Air International's (NAI) application for a foreign air carrier permit and exemption authority, which was filed with DOT on December 2, 2013.

First, on July 9, 2014, former Secretaries of Transportation Andrew H. Card, Jr., Norman Y. Mineta, and Mary E. Peters wrote a blanket letter to Members of Congress in support of NAI's application. The Secretaries believe approval is warranted in this case because NAI's application meets all legal and regulatory requirements contained in U.S. law and the binding U.S.-EU Open Skies Agreement. They also believe certain parties are using the NAI application as an opportunity to block competition and deny a choice to transatlantic travel consumers and that any attempts by U.S. carriers and organized labor to undermine the Open Skies Agreement and restrict market competition would be detrimental to the liberalization of air transportation.

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Second, a U.S.-EU government-to-government meeting took place on Monday, July 14, in Brussels. Representatives from both the Transportation and State Departments were in attendance, at the behest of Secretary Foxx, so that they could discuss NAI's application and hear the EU's views on the legal meaning and applicability of Article 17 bis of the U.S.-EU Open Skies Agreement as it applies to carriers seeking either U.S. or EU authorizations under the ATA. The Department of Transportation will post a summary of the meeting in the relevant docket, but nothing has been published to date.

JUDGE RULES NO-FLY LIST VIOLATES TRAVELERS' RIGHTS

In late June, a federal judge in the U.S. District Court in Portland, Oregon ordered the government to revise its post-9/11 "no-fly" list, ruling the list violates Americans' constitutional rights to travel freely and to effectively challenge being blacklisted because of alleged links to terrorism.

The case was initiated in 2010 when thirteen American Muslims filed suit after they were barred from boarding aircraft to or from the U.S. because their names were on the government's secret no-fly list. Each of the plaintiffs, either a U.S. citizen or permanent resident, has denied any involvement with terrorism, and has not been charged with any crime. In each respective case, the individual had submitted an application to the U.S. Department of Homeland Security (DHS) asking why his or her name was on the list, but DHS provided no explanations and would not say whether they would be allowed to fly in the future.

The Judge ruled that DHS' process for challenging inclusion on the list "does not provide a meaningful mechanism for travelers who have been denied boarding to correct erroneous information in the government's terrorism databases." And, further that DHS must devise a "meaningful procedure" for disclosing how a person ended up on the list, because a traveler "who has not been given any indication of the information that may be in the record does not have any way to correct that information." That, she wrote, violates due process guaranteed by the U.S. Constitution.

FINES UPDATE

In addition to those noted above, the below additional fines have recently been issued by DOT:

Delta Air Lines, Inc. - $100,000
Delta Air Lines, Inc. (Delta) was fined $100,000 for violating the Department's advertising rules. Under those rules, Delta is required to clearly and conspicuously note the disclosure of a roundtrip purchase requirement prominently and in close proximity to the each way fare amount. From November 2012 to February 2014, Delta had advertised "Fare Specials" for each way fares that required a roundtrip purchase. DOT determined that Delta did not clearly and conspicuously

note this requirement prominently and proximately, and thus violated DOT advertising requirements.

Alaska Airlines, Inc. - $150,000
Alaska Airlines, Inc. was fined $150,000 for violating DOT's codeshare disclosure rules. Air carriers are required to disclose in all advertisements the name of the air carrier providing a passenger's air transportation prior to the purchase of a ticket. Where one or more of the flights at issue is operated by a codeshare partner, the existence of a code-share arrangement must be disclosed. In late 2013, an investigation by DOT's enforcement office revealed that for flights operated by its sister carriers and regional partners, Alaska Airlines' reservation agents did not identify the corporate name of the carrier operating these flights, or any other name under which the flight was operated. DOT determined that this practice violated its codeshare disclosure requirements.

Skywest Airlines - $295,750
The FAA has proposed a fine of $295,750 against Skywest Airlines for allegedly violating FAA drug and alcohol testing requirements. According to the FAA, Skywest allegedly failed to include more than 150 safety sensitive employees in a random drug testing pool, hired two employees before verifying they passed their drug tests, and allegedly improperly subjected three employees to drug tests that they should not have been subjected to. Skywest is set to meet with the FAA later this month to discuss these allegations.

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.

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UPDATE ON NORWEGIAN AIR INTERNATIONAL APPLICATION

On July 14, 2014, representatives from the U.S. Departments of State and Transportation met with European Commission (EC) officials to discuss the EC's views on the meaning and applicability of Article 17 *bis* so that DOT could take those views into consideration during its review of the NAI application.

It is the opinion of the EC that Article 17 *bis* provides no legal basis for a party to unilaterally deny an application under Article 4 of the Agreement. If a party has a concern about Article 17 *bis*, it should be brought to the Joint Committee. Given this, it is the EC's position that Article 17 *bis* of the Agreement cannot be used by one party as a mechanism to refuse to grant operating authorization under Article 4 of the Agreement to an airline of the other Party.

This meeting sparked many new filings in the docket, which are summarized below by issue.

Issue: Consideration of Article 17 bis in implementation of Air Transport Agreement

In favor of the application's approval, Delegation Chairmen John Byerly and Daniel Calleja noted that the EC's position is consistent with the parties' intentions when the U.S.-EU Open Skies Agreement was being negotiated. Federal Express agrees with the EC's view that "Article 17 *bis* itself does not formulate a legal rule that can be applied unilaterally by one party".

On the other hand, the Allied Pilots Association commented that Article 17 *bis* was formulated by EU and U.S. negotiators, in part to address Labor Representatives' concern that carriers might seek to evade social laws and undermine labor standards by engaging in venue-shopping. The Southwest Airlines Pilots Association (SWAPA) noted that no definitive language exists in Article 17 to define the article's consideration as anything other than guidance for a decision of fitness by a sole party to the agreement.

Issue: Public Interest

Numerous applicants including Air France, Austrian Airlines, KLM Royal Dutch Airlines, and SAS, urged the Department to deny NAI's application because approval would be not be consistent with the public interest. U.S. carriers such as Delta Airlines, United Air Lines, and American Airlines commented that the basic objectives of Article 17 *bis* would be undermined if DOT approves NAI's application, as it would allow NAI to enter the U.S.-EU market by establishing "a de facto flag of convenience" designed to go around Norway's labor protection laws.

Issue: Promotes U.S. Economy

Washington Airports Task Force, the American Society of Travel Agents, Travel United, the U.S. Travel Association, the Port of Oakland and the Broward County Aviation Department all filed in support of NAI's application, arguing that approval will benefit growth of the transatlantic market, provide additional choices to the traveling public, and bolster the U.S. economy by creating jobs in the travel industry and through increased airport traffic.

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Issue: Possible retaliation and trade war

NAI filed a comment asserting the opponents of its application have an anti-Open Skies agenda. NAI believes if this "protectionist position" is followed, the Department will invite an unnecessary, potentially grave dispute with the European Union and Ireland.

SENATE COMMERCE CHAIR OPENS PROBE INTO AIRLINE PASSENGER FEES AND CONSUMER DATA PRIVACY POLICIES

On August 18, 2014 Senator John D. Rockefeller, Chairman of the Senate Committee on Commerce, Science, and Transportation, announced that he plans to seek information from the top ten revenue generating U.S. passenger airlines regarding their disclosure policies on certain ancillary fees. The airlines at issue are United, Delta, American, Southwest, US Airways, JetBlue, Alaska, Hawaiian, Spirit, and SkyWest. The Senator's inquiry also asks for information on the airlines' internal policies for protecting consumer information that is collected during the ticket purchase process.

In the past several years, a trend has emerged where airlines increasingly charge fees for "optional" services, such as checked and carry-on luggage, seat selection, and priority boarding. Fees of this nature are separate from the base fare and have resulted in significant revenue for airlines. The Senator's inquiry tracks concerns by consumer advocate groups that in some cases, optional fees are not sufficiently disclosed to consumers shopping for flights, thus preventing consumers from making a true price comparison.

In a letter to the aforementioned carriers, Chairman Rockefeller requested the following information: (1) the role that ancillary fees play in each carrier's business model, and how that role has changed over the past decade, if at all; (2) each carrier's total revenues for 2012, 2013, and 2014 to date, and also for the revenues collected for certain types of fees such as change fees, wi-fi passes, first and second checked bags, and trip insurance; (3) for fees that are sometimes disclosed in a range, such as preferred seat or flight change/cancellation fees, a list of each specific price that may be offered within the range and the frequency each specific price is charged; (4) the difference in the price of many ancillary fees (2009 prices compared with current prices); and (5) whether carriers obtain personal information from consumers when they shop for airfares or from other sources.

The Committee is also interested in raising awareness among consumers about the importance of protecting personal information they provide online because no federal privacy laws currently exist for the collection, use, and disclosure of consumer travel information.

DOT ISSUES FINAL ORDER APPROVING IATA RESOLUTION 787

On August 6, 2014, DOT issued a final order (Order 2014-8-1) approving IATA Resolution 787, subject to specific conditions. This order follows the Department's tentative grant of approval issued May 21, 2014.

As background, Resolution 787 establishes a process to develop a technical standard for data exchange within the air transportation market place. This process uses Extensible Markup Language (XML), which is a markup language that provides rules for encoding data in human-readable and machine-readable

format. Resolution 787 established certain goals associated with the use of this data standard, including the capability to provide personalized airline ticket pricing to consumers. These goals are known as New Distribution Capability (NDC).

After reviewing more than 40 comments received in response to its tentative grant of approval, DOT ultimately adopted Resolution 787, but limited its approval to the creation of an XML communications standard. DOT also stated that any future agreement among IATA members regarding business models for distributing air transportation shall not be implemented without compliance with the applicable government approval or notification process.

DOT EXTENDS COMMENT PERIOD FOR CONSUMER RULE 3

On July 31, 2014, the U.S. Department of Transportation (DOT) agreed to extend the comment period for its latest rulemaking on transparency of airline ancillary fees and other consumer protection issues. The new comment deadline is September 22, 2014.

The rule proposes, among other things, to: (1) require carriers to disseminate certain ancillary service fee information to ticket agents; (2) require carriers to modify their websites to display (as specific charges) certain basic ancillary service fees; (3) modify the Department's post-purchase price increase rule with respect to ancillary fees; and (4) amend the tarmac delay rule to clarify that the Department may impose penalties for tarmac delay violations on a per passenger basis (up to $27,500 per passenger).

FAA SCALES BACK REPAIR STATION RULE

In an attempt to address industry concerns, the Federal Aviation Administration (FAA) has scaled back its latest revamp of the repair station regulations by eliminating a proposed new ratings system and several other significant changes that were strongly opposed by industry groups after the Administration's release of a May 2012 notice of proposed rulemaking on the subject.

In addition to the new ratings system, which FAA intended to align with technological shifts since its last update, the Administration has also decided to drop proposals that would have required both supervisors and inspection personnel to speak English and that supervisors be present to oversee work being done by their staffs. The FAA also removed a proposed requirement that would have mandated that repair stations have the tooling and equipment needed to earn certifications or rating approvals. In addition, the new rule proposes to amend provisions on records falsification and the ability for FAA to weigh an applicant's enforcement history when it considers a new certificate application.

It is likely that a follow-up draft regulation that addresses key outstanding issues, like those mentioned above, will be published at some future date. We will continue to keep you appraised of new developments.

FAA PROPOSES HAZMAT PENALTIES AGAINST THREE COMPANIES

The FAA recently proposed civil penalties ranging from $63,000 to $91,000 against three companies for violating the Hazardous Materials Regulations (HMR). In each case, the FAA alleged the company failed to declare the hazardous materials being transported and failed to properly class, describe, package, mark,

and label the shipments in proper condition for shipment. The FAA further alleged each of the companies failed to ensure its employees had received the required training for shipping hazardous materials, and did not provide emergency response information with the packages.

The cases include the following:

- $91,000 penalty against Kuehne & Nagel, Inc., of Jersey City, NJ for offering a cardboard box containing one 3.78 liter can of Carboline Part A paint and one can containing a liter of Carboline Urethane Converter paint to FedEx for shipment by air. Under the HMR, paint is considered a hazardous material.

- $78,000 against Pantropic Power, Inc., of Miami, FL for shipping 11 12-ounce cans of aerosol paint on a FedEx aircraft from Miami to Puerto Rico. Workers at Luis Munoz Marin International Airport in San Juan discovered the package emitting an odor, and found a can had burst and leaked through its packaging. Aerosols are considered to be hazardous flammable gas.

- $63,000 against Superior International Industries of Carrollton, GA for offering an unmarked box containing two, 12-ounce cans of Cardinal Acrylic Aerosol Enamel spray paint to FedEx for shipment by air. Under the HMR spray paint is considered a flammable aerosol. The contents of the shipment were discovered after one of the cans leaked yellow paint in transit.

NTSB TRAINING OFFERED FOR DISASTER RESPONSE

The NTSB Transportation Disaster Response Course (TDA-301) is scheduled for September 23-25, 2014 at the NTSB Training Center in Ashburn, VA. TDA-301 is a basic family assistance course designed for commercial transportation officials, representatives of federal agencies, staff of non-governmental relief organizations and emergency managers, and is instrumental in understanding how any organization involved in the accident response can most effectively support the family assistance efforts. During the course, NTSB Transportation Disaster Assistance specialists, clinicians and other professionals will present a variety of disaster response and family assistance topics. If you have any interest in attending this course, please contact us.

NEW YORK UAS TEST SITE OPERATIONAL

The FAA on August 7, 2014 announced that the unmanned aircraft systems (UAS) test site in Rome N.Y. had received operational status. This is the fifth of six test sites to obtain FAA approval for operations.

In addition to providing information for integrating UAS into the national airspace system (NAS), the research at this site with focus on agricultural concerns to the benefit farmers. This will include studies on new ways to evaluate agricultural fields using different types of sensors, including visual, thermal and multispectral equipment. It will also enhance present methods for monitoring crops. The research team in New York also plans to develop test and evaluation processes and conduct research to avoid collisions with other manned and unmanned aircraft.

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According to FAA Administrator Huerta said "The data the New York team plans to acquire and share will help the FAA in researching the complexities of integrating UAS into the congested Northeast airspace."

FINES UPDATE

The below additional fines have recently been issued by DOT and FAA:

Air Methods Corporation - $428,000
The FAA has proposed a $428,000 fine against Air Methods Corporation for allegedly operating two helicopters that were not in compliance with Federal Aviation regulations. The FAA alleges Air Methods, an air ambulance operator, violated its FAA-approved operations specifications by flying two helicopters without performing required inspections of their Night Vision Imaging System Compatible Lighting Filtration (NVIS) installations. Air Methods allegedly operated both aircraft on more than 900 combined flights in 2011 when the inspections were overdue. Air Methods has 30 days to respond to the agency.

Air Evac EMS Inc. - $110,000
On July 31, 2013 the proposed a $110,000 civil penalty against Air Evac EMS Inc., of West Plains, Mo., for operating a Bell BHT 206 helicopter that was not in compliance with Federal Aviation Regulations. Allegedly, a company mechanic installed a chin bubble window on the aircraft without following the manufacturer's instructions, and then failed to document the installation in the aircraft's maintenance logbook. Following the repair, Air Evac returned the aircraft to service and flew it on eight passenger-carrying flights. The chin bubble window then fell off while the aircraft was flying, resulting in a precautionary landing.

Voyageur Travel LLC, formerly d/b/a LDS Travel and Meridian Trips LLC, and Brian Mickelsen - $20,000
DOT on August 14, 2014 fined Voyager Travel LLC, formerly d/b/a LDS Travel and Meridian Trips LLC and Brian Mickelsen, the owner and former member of the LLC, in his personal capacity, $20,000 for violating the Department's advertising requirements. This is a unique and somewhat unusual case because the company's owner was fined in his personal capacity. An investigation by the Department's Office of Aviation Enforcement and Proceedings revealed that prior to January 26, 2012, Voyager Travel advertised air tour packages that failed to include all fuel surcharges in the prices advertised, failed to state that the prices were subject to post purchase price increases, and failed to provide appropriate notice of the existence, nature, and amount of other charges and additional taxes and government-imposed fees that were then permitted to be stated separately from the base fare.

As part of the settlement agreement, Mr. Mickelsen also agreed to cease and desist from engaging in air transportation operations as an owner, director, or member of a LLC, ticket agent, air carrier or foreign air carrier, or agent of either, for ten years in order to avoid potential litigation.

MetJet, Inc.
On August 8, 2014, DOT issued a consent order and instructions to cease and desist to MetJet, Inc. (MetJet) and Michael Heisman, the former president and CEO of MetJet) for violating DOT's public charter regulations. Specifically, an investigation by the Department determined that MetJet and Heisman

failed to properly maintain an escrow account and did not timely process consumer refunds in violation of 14 C.F.R. Part 380, which requires that charter participants' funds be deposited into an escrow account at a depository bank that will maintain a separate account for each charter group. While no fine was issued, the order directs the Respondents to cease and desist from future similar violations and directs Mr. Heisman to cease and desist for a period of five years from the date of this order from being involved in public charter operations.

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.

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FAA APPROVES COMMERCIAL USE OF UAS IN HOLLYWOOD

The Federal Aviation Administration (FAA) on September 25, 2014 granted a "Part 333" regulatory exemption to Astraeus Aerial that permits the company to operate quadcopters in commercial service in connection with movie and TV production. This is one of six exemption requests facilitated by the Motion Picture Association of America. The other five requests, which remain outstanding, were filed on behalf of Aerial MOB, LLC, HeliVideo Productions, LLC, Pictorvision Inc., RC Pro Productions Consulting, LLC dba Vortex Aerial, and Snaproll Media, LLC.

Below is an in-depth summary of the Order. Because it is unusually detailed it will likely serve as a roadmap for other companies seeking to operate similar aircraft for commercial purposes. Here are some key takeaways:

- FAA agreed that the UAS could be piloted by a private pilot and rejected ALPA's argument that only commercial pilots should be permitted to operate UAS in a commercial setting. "The FAA considers the overriding safety factor for the limited operations proposed by the petitioner to be the airmanship skills acquired through UAS-specific flight cycles, flight time, and specific make and model experience, culminating in verification through testing."
- FAA agreed that UAS posed significantly less of a threat than the helicopters and fixed wing aircraft now being employed to film movies because they are a fraction of the size, carry no flammable fuel, and do not carry crew or passengers.
- All flights will be operated within visual line of sight (VLOS) of a pilot and/or observer, and the UA flights will be limited to a maximum altitude of 400 feet above ground level.
- This exemption does not require an electronic means to monitor and communicate with other aircraft, such as transponders or sense and avoid technology. Rather the FAA is mitigating the risk of these operations by placing limits on altitude, requiring stand-off distance from clouds, and permitting daytime operations only.

The one unique factor that could allow FAA to distinguish the Astraeus proposal from future applications is that the aircraft will be operated on a closed set. Nevertheless, this is an enormous liberalization of FAA's prior position on commercial UAS ops and should be the first of many exemptions granted. As of today, the agency is considering 40 requests for exemptions from other commercial entities.

A4A AND DOT MEET TO DISCUSS CONSUMER RULE 3

On August 7, 2014, Airlines For America (A4A) met with representatives from the U.S. Department of Transportation (DOT) regarding the Notice of Proposed Rulemaking (NPRM) on "Transparency of Airline Ancillary Fees and Other Consumer Protection Issues" Rulemaking (i.e. Consumer Rule 3). The following are some key points from a report that was recently published in Docket DOT-OST-2014-0056.

- Carriers are only required to provide ticket agents fare, schedule, availability and ancillary service information. They are not required to provide customer-specific information such as frequent flyer status, or the fee rules for particular passenger types. The reference to carriers being

required to provide ticket agents the fee rules for particular passenger types (e.g., military, frequent flyers, or credit card holders) was erroneous.

- Under the proposed rule, DOT would require carriers to provide ancillary fee information to ticket agents that is "useable, current, and accurate," but has not defined the terms. If a dispute arose between airlines and ticket agents about what constitutes a "useable" format, DOT indicated that it would prefer to interfere as little as possible in such disputes.
- Carriers cannot pre-select the "opt out" option of the rule proposed in requiring carriers and ticket agents to disclose basic ancillary fee information because the Department wants consumers to choose the information they do and do not see.
- DOT encouraged interested parties to file comments as to when in the search process a customer should receive an "opt in" choice if the Department decides to require ancillary service fee information only upon the consumer's request.
- DOT said that the proposed rule's prohibition on charging for distributing information via contract provisions would last as long as the existing contracts between airlines and GDSs -- DOT does not want to disrupt existing contracts. After that time, any price charged for distribution of ancillary service fee information would be negotiated by the parties involved, just like the price for distributing fare information.

To date, numerous parties have filed comments, including Air Transat, Aeroflot, The George Washington University Regulatory Studies Center, Virgin Atlantic Airways, AeroMexico, Google, Hipmunk, Tripadvisor LLC, and masFlight.

DOT AND FAA PROPOSE NEW RULES FOR ON-BOARD ACCEPTANCE OF PORTABLE OXYGEN CONCENTRATORS

On September 19, 2014 DOT published a NPRM concerning revised criteria for evaluating Portable Oxygen Concentrators (POCs) for use on board aircraft. The proposed rule would affect the use of POCs on board aircraft in operations conducted under 14 C.F.R. parts 121, 125, and 135, and also have tangential impacts on foreign carriers by virtue of compliance with the requirements of Part 382.

In 2005, the FAA established standards for the use of POCs on board aircraft through Special Federal Aviation Regulation (SFAR) No. 106—Rules for use of portable oxygen concentrator systems on board aircraft. The FAA has historically limited the carriage and use of POCs on board aircraft to only those models that have been pre-approved by the Administration. Each time a new POC is approved by the FAA, SFAR No. 106 must be amended to include the name of the newly approved POC. This is a long and arduous process that can in some cases take more than two years.

Rather than amend existing SFAR No. 106 every time, the proposed rule seeks to replace the existing FAA case-by-case POC approval process in SFAR No. 106 with an "acceptance criteria" methodology for POCs. Under the proposed rule, manufacturers of POC models not identified in SFAR No. 106 would have to ensure their POC satisfies the FAA's acceptance criteria before it may be used on board an aircraft. If a manufacturer determines that a new POC model meets these criteria, it would not need to seek FAA approval. Rather, it would need only to affix a label to the POC, indicating that it meets FAA

acceptance criteria. The FAA believes this proposed label would facilitate passenger and crew recognition by identifying the POC as safe for use in the cabin during all phases of flight.

The proposed acceptance criteria are:

- The POC manufacturer complies with all FDA requirements to legally market the device in the United States; and
- The POC may not contain any hazardous materials subject to the Hazardous Materials regulations (49 CFR parts 171 through 180) except as provided for in the exceptions for crewmembers and passengers (49 CFR 175.10); and
- The maximum oxygen pressure generated by the POC must fall below the threshold for the definition of a compressed gas per the HMR; and
- The POC electromagnetic emissions must fall below the threshold permitted in RTCA standard 160G, Section 21, Category M.

Devices previously approved for use on board aircraft would be grandfathered in.
Comments on the NPRM must be submitted before November 18, 2014. The FAA is considering an effective date of 90 days after the final rule's publication in the Federal Register.

GREENHOUSE GAS EMISSIONS FROM AIRCRAFT - EPA POISED TO ACT?

This month, the Environmental Protection Agency (EPA) submitted a paper to the International Civil Aviation Organization (ICAO) that details its plans to address greenhouse gas emissions under the Clean Air Act. In it, the EPA announced that it would comply with a recent D.C. District Court ruling ordering the agency to make a formal determination under the Clean Air Act on whether greenhouse gas emissions from aircraft cause or contribute to air pollution that may be reasonably anticipated to endanger public health or welfare. If a positive endangerment and cause or contribute findings are made, EPA will be obligated by the terms of the Clean Air Act to set GHG emission standards for aircraft.

According to the paper, the EPA's endangerment findings proposal will be based on its 2009 findings for on-road vehicles and will rely on previous peer-reviewed science from
the U.S. Global Change Research Program, National Research Council, and the Intergovernmental Panel on Climate Change. (IPCC), along with updated reports from the same major climate change assessments. At the same time as it releases its proposed findings, EPA will issue an advanced notice of proposed rulemaking (ANPRM) providing an overview of ICAO/CAEP efforts to reduce greenhouse gas emissions and, if EPA makes a positive finding regarding aircraft emissions, the potential use of ICAO standards to guide U.S. regulation.

EPA projects that it will release its aircraft emissions ANPRM in April, 2015.

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CESSATION OF AVIATION INFRASTRUCTURE SECURITY FEES

In 2001, the Aviation and Transportation Security Act (ATSA) authorized TSA to impose a fee to defray the government's costs for providing U.S. civil aviation security services. In 2002, TSA issued a rule (49 C.F.R. 1511) which required carriers to pay the Aviation Infrastructure Security Fee (ASIF). The fee was never imposed on carriers that were not in existence in 2000. In the 2013 Budget Act, Congress repealed TSA's authority to collect the fee effective October 1, 2014. The period ending September 30th will be the last for which carriers will be liable for the fee, with payment being due on October 31st.

FAA PROPOSES HAZMAT PENALTIES AGAINST THREE MORE COMPANIES

The FAA recently proposed civil penalties ranging from $57,400 to $63,000 against three companies for violating the Hazardous Materials Regulations (HMR). In each case, the FAA alleged certain shipments were not accompanied by shipping papers to indicate the hazardous nature of their contents and were improperly marked, labeled or packed. The FAA further alleged that certain packages were not adequate for shipping and that the various companies failed to provide emergency response information and ensure their employees had received required training in packaging and shipping hazardous materials.

The cases include the following:

- $63,000 against Mattoon Rural King Supply, Inc. of Mattoon, Ill. for offering to UPS two 2.5-gallon plastic containers of herbicide for shipment by air. Herbicides are considered to be a flammable liquid.
- $63,000 against MidContinental Chemical Company Inc. of Olathe, Kan. and its subsidiary, MCC Chemical Services, LLC of Hammond La. for offering to UPS two 3-ounce containers of flammable petroleum distillates and two 3-ounce containers of flammable Kerosene for shipment by air in packages that ultimately leaked.
- $57,400 against Aeroplus Interiors, Inc. of Rosharon, Texas for offering for shipment aboard FedEx aircraft three undeclared packages containing metal cans of flammable JetGlo Contrail White Aircraft Paint. This type of paint is considered to be a hazardous material because it is flammable.

REMINDER – SUBSCRIBE TO ECKERT SEAMANS AVIATION BLOG

For those readers who have not yet subscribed, Eckert Seamans publishes an Aviation Blog, which offers information on developments in the U.S. aviation/regulatory area. Posts provide tactical and timely updates related to emerging legislation, regulations, cases, policies and trends, with a focus on relevant business opportunities and risks.

The substantive information on the constantly evolving aviation marketplace is navigated by the attorneys of Eckert Seamans' Aviation department, which serve the full range of participants in the airline and airport sector.

To access and subscribe to the blog, click here.

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FINES UPDATE

The below additional fines have recently been issued by DOT and FAA:

Gulfstream Aerospace Corp. - $425,000
The FAA has proposed a $425,000 fine against Gulfstream Aerospace Corp. for allegedly failing to comply with Federal Aviation Regulations (FAR) related to training aircraft mechanics. A series of inspections by FAA investigators revealed that certain company mechanics did not complete required training within the company's re-established time limits. Additionally, the FAA inspectors noted discrepancies with the company's employee training records. The FAA alleges that the violations compromised safety since mechanics maintained aircraft without receiving required recurrent training. Gulfstream Aerospace Corp. has 30 days to respond to the agency.

WestJet - $50,000
On September 5, 2014 DOT fined Westjet $50,000 for allegedly violating 49 U.S.C. § 41301 and 49 U.S.C. § 41712. An investigation by the Department's Office of Aviation Enforcement and Proceedings found that China Eastern had engaged in unauthorized foreign air transportation by virtue of its marketing and sale of unauthorized codeshare flights operated by another foreign air carrier that did not hold proper authority from the Department.

China Eastern Airlines Co., Ltd. - $40,000
DOT on September 5, 2014 fined China Eastern Airlines $40,000 for allegedly violating 49 U.S.C. § 41301 and 49 U.S.C. § 41712. An investigation by the Department's Office of Aviation Enforcement and Proceedings found that China Eastern had engaged in unauthorized foreign air transportation by virtue of its marketing and sale of unauthorized codeshare flights operated by another foreign air carrier that did not hold proper authority from the Department.

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.

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UPDATE ON EBOLA

As the global Ebola outbreak persists, the United States Centers for Disease Control and Prevention (CDC) has issued significant guidance to air carriers regarding Ebola and how passengers who are suspected of having the disease should be handled. Many countries, including the United States, UK, Canada, France and the Czech Republic have also begun actively screening passengers traveling from the West African nations affected by Ebola - Liberia, Guinea and Sierra Leone. In the U.S., screenings began this month at the John F. Kennedy International Airport, Washington Dulles International Airport, Newark Liberty International Airport, Chicago O'Hare International Airport and Hartsfield—Jackson Atlanta International Airport.

On October 15, 2014, the CDC issued updated guidance for Airline Crews, Cargo Personnel and Cleaning Personnel, which is available here: http://www.cdc.gov/quarantine/air/managing-sick-travelers/ebola-guidance-airlines.html.

In addition:

- Remember that under U.S. Department of Transportation rules, airlines are permitted to deny boarding to air travelers with serious contagious diseases that could spread during flight, including travelers with possible Ebola symptoms. This rule applies to all flights of U.S. airlines, and to direct flights (no change of planes) to or from the United States by foreign airlines.
- When providing direct care to a sick traveler who came from a country with an Ebola outbreak, wear a surgical mask (to protect from splashes or sprays), face shield or goggles, and protective apron or gown. Treat all body fluids as though they are infectious. Ebola spreads through direct contact with body fluids – it does not spread through the air like flu.
- Airplanes traveling to countries affected with Ebola should carry Universal Precaution Kits, as recommended by ICAO for managing ill travelers.
- If in-flight cleaning is needed, cabin crew should follow routine airline procedures using personal protective equipment available in the Universal Precautions Kit. If a traveler is confirmed to have had infectious Ebola on a flight, CDC will conduct an investigation to assess risk and inform passengers and crew of possible exposure.
- Any airline crew, cleaning, or cargo personnel who think they were exposed to Ebola either through travel, assisting an ill traveler, handling a contaminated object, or cleaning a contaminated aircraft should notify their employer immediately and self-monitor their health for 21 days, paying particular attention to possible symptoms of Ebola: fever (temperature of 101.5°F/38.6°C or higher), severe headaches, muscle pain, diarrhea, vomiting, stomach pain, unexplained bleeding or bruising.

NTSB MEETS WITH AIRLINE COUNSEL

At the request of the National Transportation Safety Board (NTSB), select outside counsel for Part 129 [foreign] carriers met with NTSB's Transportation Disaster Assistance Division to discuss airline responses to air disasters. Below are bullet point highlights of the meeting:

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- The NTSB considers an accident to fall within the statutory requirement to implement a family assistance plan (49 USC § § 41113 and 41313) if there is "more than one" loss of life. Because the carrier cannot predict the outcome in an incident where initially there are no fatalities or only one fatality the carrier should "lean forward" and start implementing its plan immediately.
- Carriers should follow the official NTSB "Air Carrier Tasks" checklist and, in the first 24 hours following an accident, should: (1) Notify the NTSB Communications Center of the accident; (2) Publish a reliable toll-free telephone number and have adequate staff to handle call volume; and (3) Coordinate public notification of the toll-free number with various media (television, radio, Internet).
- In codeshare situations, carriers should agree and plan in advance with their partners as to family assistance obligations in the event of a disaster. Ultimately, the operating carrier has responsibility and could be the subject of a DOT enforcement proceeding if family assistance obligations are not satisfied. The NTSB does appreciate that foreign carriers may need to rely on their U.S. partners for certain services in the first 48 hours, but the operating carrier is nevertheless responsible for the notifications above and should be primarily in charge after the first 48 hours.
- Carriers are not required, and are in fact discouraged, from filing their entire emergency response manual. Only the statutorily required 18 assurances need be filed with DOT and NTSB. Assurances should be amended or updated as frequently as needed to keep contact information current. The 24-hour contact number (which can be the airline's dispatch number) must remain current. If carriers provide contact information for their vendors, which is not required and also is discouraged, that information should be updated whenever a vendor changes.

DOT INCREASES REACH AND FINES CATHAY PACIFIC FOR ADVERTISING VIOLATIONS

On October 17, 2014, the United States Department of Transportation (DOT) fined Cathay Pacific Airways Limited (Cathay Pacific) $260,000 for violating 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.

Pursuant to 14 C.F.R. 399.84(a), carriers must ensure that advertised prices for passenger air transportation include all government-imposed fees and taxes and all mandatory airline and ticket-agent imposed fees. The applicable regulation applies to advertisements on carrier websites that are "marketed to U.S. consumers". In determining whether a website is marketed to U.S. consumers, DOT analyzes each site on a case-by-case basis and considers several factors, including: (1) whether fares are marketed in U.S. dollars; (2) whether the language on the site is English; and (3) whether the seller has an option on its website that differentiates sites or pages designed for U.S. or other consumers.

Following a consumer complaint, the Department's Enforcement Office found that Cathay Pacific advertised, on its U.S. customer-facing website, certain fares for travel beginning outside the United States that did not include mandatory taxes and fees. DOT determined that this practice constituted a violation of the full-fare advertising rule.

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In mitigation, Cathay Pacific highlighted several relevant factors, including that its website did display the full fare to be paid for all travel originating in the United States. For fares originating outside the United States, it reasonably believed that those fares were not marketed to U.S. consumers because people who purchase fares for travel originating in a foreign country are generally located in that country. Cathay Pacific explained that it did not consider people who used the U.S. website to book transportation originating and/or terminating outside the United States to be "U.S. consumers" for purposes of complying with the full fare advertising rule. Cathay Pacific also highlighted the fact that its U.S. website displayed fares originating outside the United States in the currency of the country in which the fare originated, not U.S. dollars, and that its website and the servers used to operate its website are located in Hong Kong.

This fine represents somewhat of a departure from DOT enforcement history for two reasons. First, it is much higher than similar fines that have been levied against foreign carriers (in the past, violations of the full-fare advertising rule by foreign carriers have led to fines, for the most part, in the $50,000 - $80,000 range). Second, it is an example of DOT's arguably extraterritorial application of its regulations in the sense that the Department fined Cathay Pacific for selling airfare originating, and in some cases, terminating, in foreign jurisdictions.

U.S. AND MEXICO AGREE TO MUTUAL RECOGNITION

On October 17, 2014, U.S. Customs and Border Protection (CBP) Commissioner R. Gil Kerlikowske and Mexico's Tax Administration Service (SAT) Chief Aristóteles Núñez Sánchez signed a mutual recognition arrangement that will allow for stronger collaboration between CBP's Customs-Trade Partnership Against Terrorism (C-TPAT) program and SAT's New Certified Companies Scheme (NEEC).

The mutual recognition arrangement should provide a necessary link between the two programs, so as to create a unified and sustainable security posture that can assist in securing and facilitating global cargo trade, particularly between the United States and Mexico.

Under the new arrangement, members of both C-TPAT and NEEC will enjoy fewer examinations when shipping cargo, a faster validation process, common standards, efficiency for Customs and business, transparency between Customs administrations, business resumption, front-of-the-line processing, and marketability.

C-TPAT is a voluntary government-business initiative aimed at building cooperative relationships in order to strengthen and improve international supply chain security. This new arrangement marks the U.S.' ninth such endeavor. In addition to Mexico, the United States also has mutual recognition arrangements with New Zealand, Canada, Japan, Korea, Israel, Jordan, the European Union and the Taipei Economic and Cultural Representative Office.

FAA ADMINISTRATOR HUERTA CALLS FOR SECURITY PROTOCOL AND CONTINGENCY PLAN REVIEW

On September 26, 2014, a Federal Aviation Administration (FAA) contract employee set fire to a Chicago-area air traffic control center, causing significant and ongoing operational issues at Chicago's

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O'Hare International and Midway airports. Following the incident, FAA Administrator Michael Huerta stated the FAA would begin a 30 day review of airport contingency plans and security protocols for its major facilities.

Beginning this month, the FAA will begin working with air traffic control staff at major facilities to ensure preparations are in place to assure the safety of aircraft and the efficiency of air traffic control system. To facilitate the project, the FAA will begin by reviewing security protocols at impacted facilities to make sure that each has the most robust policies and practices in place possible.

Following the fire, Administrator Huerta reminded the industry that the recent attempt to shut down the Chicago facility is a reminder why FAA is working toward an even more robust and scalable system in NextGen, which will incorporate satellite-based technology for tracking and routing air traffic.

AIRPORTSUNITED.COM WEBSITE LAUNCHED

In preparation for the 2015 expiration of the FAA's current reauthorization legislation, the American Association of Airport Executives (AAEE) and Airports Council International-North America (ACI-NA) have developed and launched a website aimed at creating a unified advocacy voice on behalf of U.S. airports leading up to the FAA reauthorization in 2015.

The website, http://www.airportsunited.com/, is designed to function as a repository for background information and other materials that are key to both the 2015 FAA reauthorization and current issues impacting the airport and transportation industries. The site will also include airport economics data and testimonials from partners beyond the airport industry, as well as a media and action center through which users can advocate for their airport priorities directly with a congressional delegation via letters and social media.

FLYERSRIGHTS.ORG INTEREST GROUP WEIGHS IN ON IN-FLIGHT USE OF CELL PHONES

On October 25, 2014, Flyersrights.org, the largest nonprofit airline passenger organization, sent a formal opposition letter to the U.S. DOT Advisory Committee for Aviation Consumer Protection regarding the use of cell phones for voice communications on airliners.

In its correspondence, Flyersrights.org President Paul Hudson highlighted the fact that airline passengers, as well as flight crew members, overwhelmingly oppose the idea of allowing passengers to have cell phone conversations within the passenger cabin. To support this statement he pointed out that the Federal Communications Commission (FCC) Notice of Proposed Rulemaking that would allow airlines to decide this issue closed in May 2014 and received over 1,400 public comments, of which 98% were in opposition.

He also raised safety and security concerns, such as the possibility of terrorists using cell phones to coordinate attacks, interfere with pilot and crew communications or trigger bombs, and the fact that passengers already have access to internet email using laptops and tablet computers so there is little reason to support a need for voice communications within the cabin.

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October 2014

AVIATION REGULATORY UPDATE

FAA PROPOSES HAZMAT PENALTIES AGAINST SIX MORE COMPANIES

The FAA recently proposed civil penalties ranging from $54,000 to $227,500 against six companies for allegedly violating the Hazardous Materials Regulations (HMR). In each case, the FAA alleged certain shipments were not accompanied by shipping papers to indicate the hazardous nature of their contents and were improperly marked, labeled or packed. The FAA further alleged that the affected companies failed to provide emergency response information and ensure their employees had received required training in packaging and shipping hazardous materials.

- $227,500 against Shanghai Yancui Import for shipping a package which contained a bottle of Titanium Tetrachloride and two bottles of Benzodioxole on a DHL Express Worldwide cargo flight. The package was not labeled, marked or packed in accordance with HMR requirements and was not shipped with papers to show the contents were hazardous nor was emergency response information provided. The company also failed to provide hazardous materials training for its employees.
- $66,000 against Quaker City Plating for shipping a box containing five one-gallon containers of paint on board a FedEx flight. Paint is a flammable liquid.
- $65,000 against Freedom Manufacturing LLC for offering for shipment aboard a FedEx aircraft a box containing six small packages, each holding approximately 1,000 bullets. Bullets are considered to be explosives and must be shipped in accordance with the HMR.
- $57,000 against International Dental Supply for shipping a package containing 20 eight-ounce bottles of acrylic on a UPS cargo flight. Acrylic is a flammable and workers at the destination sorting facility discovered the package was leaking.
- $54,000 against Saudi Chem Crete Co., Ltd for offering for shipment by air via UPS two one-gallon containers and two one-quart containers of epoxy resin, which is a corrosive liquid. The FAA determined that the contents of the package exceeded the amount of epoxy resin that can safely be shipped on a cargo aircraft.
- $54,000 against Passport Health for offering for shipment by air via UPS three 2.5-ounce containers of flammable, liquid hand sanitizer.

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FINES UPDATE

In addition to those mentioned above, the following fines were issued this month:

Air Canada Rouge - $90,000
On October 28, 2014 Air Canada Rouge was fined $90,000 for failing to adhere to the assurances in its contingency plan for lengthy tarmac delays. In January 2014, a Rouge flight was diverted to Buffalo International Airport due to severe weather, where the aircraft remained on the tarmac for more than four hours without offering passenger the opportunity to deplane. Based on its investigation, the Enforcement Office concluded that Rouge failed to provide passengers with an opportunity to deplane before the tarmac delay exceeded four hours, did not provide food to all of its passengers within two hours, and did not have sufficient resources available to implement its contingency plan as the carrier did not have adequate snacks on board to distribute to passengers during the delay.

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.

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NOVEMBER 2014

AVIATION REGULATORY UPDATE

WINTER HAS ARRIVED…ARE YOU PREPARED FOR TARMAC DELAYS?

Under the U.S. Department of Transportation's (DOT) Enhancing Airline Passenger Protections rule all carriers that operate to the U.S. must develop and implement a Contingency Plan for Lengthy Tarmac Delays. 14 C.F.R. 259.4. Pursuant to Section 259.4, carriers must coordinate their Plan with the Transportation Security Administration (TSA), Customs and Border Protection (CBP), and the relevant airport authority at all of the U.S. airports to which they operate.

Notwithstanding the above, when the snow starts to fall and airports begin to close, minimal coordination efforts will in most cases not help carriers avoid a lengthy tarmac delay. We therefore recommend you take the time now to discuss and implement internal procedures with your airport staff, station managers, and ground handlers to determine what actions will be taken when a flight is diverted or delayed due to inclement weather. For instance, documentation of all communications and other efforts with CBP, the airport and/or terminals to deplane the passengers are crucial to a successful defense of a DOT tarmac delay investigation. These extra efforts are very important, as DOT has the statutory ability to fine carriers up to $27,500 per passenger in the event that a tarmac delay exceeds three or four hours (for U.S. and international carriers, respectively).

In addition to the rule's general prohibition against tarmac delays, carriers are also 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 U.S. and foreign carriers alike. 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.

NTSB DETERMINES FAA CAN FINE UAS OPERATORS

The NTSB recently issued an important decision in the developing area of who has authority to regulate unmanned aircraft systems (UAS). The NTSB found that UAS are "aircraft" under the plain language of the law, and that FAA rules prohibiting "careless or reckless" operation of

aircraft apply to UAS operators. The NTSB decision overturns an earlier ruling by an administrative law judge. The case involved Raphael Pirker, a UAS operator who had been hired to film the University of Virginia campus. During the filming Pirker allegedly operated a small UAS in close proximity to numerous individuals, buildings, and other structures in a reckless manner. As a result the FAA issued Pirker a $10,000 fine.

An administrative law judge vacated the fine after ruling that the FAA had not historically enforced its aircraft regulations against model aircraft, which would include the UAS at issue, and that therefore the FAA could not issue a fine because it had not issued any regulations specifically for UAS. The NTSB overruled the administrative law judge on November 18, 2014 by finding that the UAS did meet the definition of "aircraft," that there was no exclusion in the definition for model aircraft, and that therefore the FAA could take enforcement action against a UAS operator. The NTSB remanded the case to the administrative law judge to determine if Pirker's UAS was in fact operated carelessly or recklessly. The case is a big win for the FAA, but there continues to be increased pressure on the FAA to publish proposed rules for small UAS. The NTSB decision can be found at http://www.ntsb.gov/legal/pirker/5730.pdf.

DOT REPORTS INCREASE IN CONSUMER COMPLAINTS; REMINDER ABOUT ANNUAL DISABILITY REPORTS

In early November, the U.S. Department of Transportation's (DOT) Aviation Consumer Protection Division reported a significant uptick in consumer complaints as compared to last year. From January to September 2014, the Department received 12,350 consumer complaints, up from the total of 10,444 filed during the first nine months of 2013. This represented an 18.2 percent increase. DOT investigates each of the complaints it receives to determine the extent to which carriers are in compliance with federal aviation consumer protection regulations and routinely discusses with individual carriers spikes or significant variations in complaint types or complaint levels.

It is therefore very important not only to track and maintain a record of each consumer complaint that is received, but to ensure that all complaint response deadlines are met. 14 C.F.R. Part 382 requires that disability-related complaints be responded to, in writing, within 30 days. Pursuant to the Department's "Enhancing Airline Passenger Protection" regulations, all other complaints must be acknowledged, in writing, within 30 days and a written substantive response must be provided to the complainant within 60 days. DOT is focusing its attention on this topic and recently fined Turkish Airlines $300,000 for systematically failing to meet its complaint response obligations.

Moreover, under 14 C.F.R. Part 382, carriers are required to report to DOT all disability-related complaints they received in 2014 for U.S. originating or destined passengers. This report must be submitted no later than January 26, 2015.

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Carriers that did not receive any written disability–related complaints in calendar year 2014 are still required to file a "zero" report that shows no complaints. Failure to comply with the reporting requirement may subject a carrier to significant civil penalties. Both foreign and U.S. carriers have been fined by DOT in the past for failing to submit the required report.

The form must be filed through the following website: http://382reporting.ost.dot.gov/. If you do not already have a BTS account to complete this on-line filing, you can register to create an account on the website as well.

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

FLYERS RIGHTS GROUPS PUSH FOR MORE ACCOUNTABILITY DURING TARMAC DELAYS

Under DOT's infamous tarmac delay rule, carriers face civil penalties of up to $27,500 per passenger if an aircraft remains on the tarmac for more than three (for U.S. carriers) or four (for foreign carriers) hours without giving passengers the opportunity to deplane. Since the Department's tarmac delay regulation became effective, DOT has issued cease-and-desist orders assessing civil penalties in 15 cases involving 43 flights for violations of the tarmac delay rule. Total civil penalties to date are approximately $4,000,000.

Current laws require any money collected from airlines in such proceedings be paid to the U.S. Treasury. Nothing in the regulation requires carriers to make payments directly to affected consumers. This is because regulations affecting tarmac delays and accommodating passengers with disabilities don't require the airlines to compensate passengers directly. Other rules, notably those for denied boarding, force an airline to pay passengers when they're in violation.

Consumers rights' groups are critical of the current procedures for paying fines in tarmac delay situations and would like to see airlines compensate passengers directly. A leading aviation consumer protection group, FlyersRights, is pushing for a new Passenger Bill of Rights that would give half the fines imposed for violating DOT's tarmac delay rules to affected passengers. It also sets minimum fines for such delays. While nothing in DOT's prior or current rulemakings suggest that it will change its position with respect to this issue, it is nevertheless worth noting and would certainly make passengers more vigilant about reporting violations of the tarmac-delay rule, or any other government regulation.

ALPA PRESSING CONGRESS TO PREVENT NORWEGIAN AIR INTERNATIONAL FROM OPERATING IN THE U.S.

The Air Line Pilots Association (ALPA) recently sent a letter to the U.S. Senate asking for approval of prior legislation passed by the House of Representatives that would prohibit federal funds from being used to approve foreign air carrier permits for any airline that would violate

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U.S. law or the U.S.-EU open-skies agreement. The legislation in question was specifically directed at the foreign air carrier permit submitted by Norwegian Air International almost one year ago. The application, which has received scrutiny from numerous interests including U.S. carriers and pilots' associations, remains pending with DOT's Office of International Aviation.

FAA ISSUES FINAL POLICY ON AVIATION FUEL TAX REVENUE

On November 21, 2013, the Federal Aviation Administration (FAA) published a proposed amendment to its Revenue Use policy which in part addressed the use of revenue from taxes on aviation fuel imposed after December 30, 1987. Airports Council International North America (ACI-NA) filed comments on the proposed amendment, which were taken into account by the drafters of the final Revenue Use policy.

The Administration's final policy states that proceeds from state or local taxes on aviation fuel must be used for airport-related purposes. The policy affects those airport operators that have accepted Federal assistance and any state and local governments that impose taxes on aviation fuel. Some key issues of the policy are:

- State or local taxes on aviation fuel imposed after December 30, 1987 are subject to revenue use requirements. Revenues from a State tax on aviation fuel may be used to support a State aviation program, and airport revenues may be used on or off the airport for noise mitigation; and

- Based on a comment by ACI-NA that it would be unfair to penalize airport sponsors for misuse of revenues from taxes imposed and used by another entity, the FAA has revised the policy to recognize the difference between taxes controlled by the airport sponsor and those that are not, for compliance purposes.

The Federal notice regarding the final policy is available at the following link: http://www.gpo.gov/fdsys/pkg/FR-2014-11-07/pdf/2014-26408.pdf

RECENTLY ISSUED PENALTIES

The following penalties were issued in November 2014:

Saudi Arabian Airlines Corporation (Saudia) was fined $50,000 on November 26, 2014 for selling air service between Jeddah, Saudi Arabia, and Los Angeles, California, prior to receiving economic authority from the Department. On March 3, 2014, Saudia filed an application for exemption authority to provide scheduled foreign air transportation between Saudi Arabia and the United States, which was granted by DOT's Office of International Aviation on March 24, 2014. Prior to receiving authority from DOT, however, Saudia launched an advertising campaign about its proposed service via the carrier's website, emails, newspapers, magazines,

and social media sites. Despite the fact that Saudia did not operate service on the proposed route prior to receiving authorization, DOT determined the carrier's advertising campaign violated sections 41301 and 41712 and fined Saudia $50,000.

McCauley Propeller Systems (McCauley) was fined $238,000 for allegedly violating the Hazardous Materials Regulations (HMR). McCauley offered two undeclared packages hazardous materials to FedEx for shipment by air. After conducting an investigation the FAA determined that McCauley did not declare the hazardous materials, nor were the shipments properly classed, described, packaged and marked in accordance with HMR requirements. In addition, the company failed to provide emergency response information with the packages and did not ensure its employees received proper training for shipping hazardous materials.

AAR Aircraft Services (AAR) was fined $150,000 for alleged aircraft maintenance violations. A FAA investigation determined that AAR used an unqualified repairman to perform at least 18 maintenance tasks on a major air carrier's aircraft between September 2012 and 2013. FAA found that the repairman performed maintenance that was not authorized by his repairman certificate and fined AAR $150,000.

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REMINDER: PART 382 ANNUAL REPORTS DUE TO DOT ON JANUARY 26, 2015

The U.S. Department of Transportation requires all carriers to report to DOT all disability-related complaints for U.S. originating or destined passengers in 2014. The report must be submitted no later than January 26, 2015.

Carriers that did not receive any written disability-related complaints in 2014 are still required to file a "zero" report that shows no complaints. Failure to comply with the reporting requirement may subject a carrier to significant civil penalties. Both foreign and U.S. carriers have been fined by DOT in the past for failing to submit the required report and for submitting inaccurate information in the report, including improperly categorizing complaints.

The form must be filed through the following website: http://382reporting.ost.dot.gov/. If you do not already have a BTS account to complete this on-line filing, you can register to create an account on the website as well.

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

NEW YORK EMPLOYER RESPONSIBILITIES UNDER WAGE THEFT PREVENTION ACT IN 2015

Carriers with New York-based employees are required to provide annual notifications to those employees between January 1st and February 1st under the "Wage Theft Prevention Act". Employer notifications must include the following information:

- The employee's rate or rates of pay;
- The overtime rate of pay, if the employee is subject to overtime regulations;
- The basis of wage payment (per hour, shift or week, piece rate, commission, etc.);
- Any allowances the employer intends to claim as part of the minimum wage including tip, meal, and lodging allowances;
- The regular pay day;
- The employer's name and any names under which the employer does business (DBA);
- The physical address of the employer's main office or principal place of business and, if different, the employer's mailing address; and
- The employer's telephone number.

Each notification must be signed by both the employee and the employer and be retained for six years. Employers that fail to meet these requirements may face lawsuits from employees of up

to $2,500, plus attorneys' fees. Please let us know if you need sample notification forms or require further guidance on New York's Wage Theft Prevention Act.

SENATE PASSES BILL TO LIMIT AIRLINE SECURITY FEES

President Obama on December 22, 2014 signed into law H.R. 5462, which caps Transportation Security Administration (TSA)-imposed passenger security fees for US-based round-trip itineraries at $11.20.

Federal airline security fees were increased from $2.50 to $5.60 per one-way trip as part of the Balanced Budget Act of 2013 but TSA has routinely imposed the $5.60 tax for each stopover (a break in travel of more than four hours between two domestic flights) as opposed to the entire trip, which disproportionally hurt customers traveling from remote locations who commonly used more one-way trips to reach their final destination.

The bill, originally sponsored by Rep. Richard Hudson (R-North Carolina), passed both chambers of Congress unanimously and stipulates that "[fees] shall be $5.60 per one-way trip … except that the fee imposed per round trip shall not exceed $11.20." While the legislation does cap the total cost of each one way trip at $11.20, it makes no mention of nor changes the final destination for collected fees, which under the Balanced Budget Act are directed to the government's general fund. A4A estimates the new law will eliminate $60 million in potential revenue for the TSA.

DOT PUBLISHES GUIDANCE FOR UPCOMING COLLEGE BOWL SEASON

On December 15, 2014, DOT published the following guidance pertaining to the 2014-2015 college bowl season:

- *Notice to Colleges and Universities Organizing Flights to College Bowl Games and Other Special Events*

  This particular notice provides guidance to colleges, universities, and similar organizations that may want to arrange charter flights to special events such as bowl games or the NCAA basketball playoffs. DOT seeks through its guidance to assist such organizations in avoiding: (1) unknowingly contracting with airlines that do not have economic authority from the Department and are not subject to FAA oversight; (2) reselling individual seats on charter flights without first complying with DOT Public Charter rules; and (3) using a Public Charter Operator or a charter broker that does not fully comply with DOT and FAA rules.

  The relevant guidance is available at:
  https://cms.dot.gov/sites/dot.gov/files/docs/BowlGameGuidance2014_ORGANIZERS.pdf

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- *Notice to Consumers Purchasing Tickets to Special Events that Include Air Transportation*

The Department's second notice provides guidance to air travelers and other consumers that seek to purchase tickets to special events that are offered as part of a package that also includes air transportation. DOT regulations consider such packages to be "Special Event Tours."

A Special Event Tour operator that offers a flight together with tickets to a special event must be in physical possession of the tickets being offered as part of the package or have a written contract for them. DOT encourages consumers to get their tickets ahead of time if possible or, alternatively, obtain written confirmation for the ticket at the time of purchase if a travel agent or other tour representative states that a ticket is included. Consumers may be entitled to a full refund if a tour operator does not have physical possession of the tickets or a written contract for the tickets at the time the tickets are sold.

The relevant guidance is available at:
https://cms.dot.gov/sites/dot.gov/files/docs/BowlGameGuidance2014_consumers.pdf

IATA PUBLISHES GUIDANCE ON THE CARRIAGE OF LITHIUM ION BATTERIES

Earlier this month IATA published a guide on the carriage of lithium batteries. The first edition guidance material is available for free and provides airline operators with important information to help them safely and securely handle and transport lithium batteries by air.

Lithium batteries power myriad portable electronic devices that are commonly carried aboard aircraft, both in the cabin and as cargo. Common devices carried in the cabin include laptop computers, tablets, and mobile phones, as well as respiratory assistance devices. In the United States, DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) Hazardous Materials Regulations (HMR) govern the packaging, labeling, and transport of lithium batteries along with all other kinds of hazardous materials.

PHMSA is in the midst of an initiative to amend the HMR to maintain alignment with international standards and has made numerous changes to proper shipping names, hazard classes, packing groups, special provisions, packaging authorizations, air transport quantity limitations, and vessel stowage requirements as noted in its regulations. As part of this program, PHMSA seeks to promote uniformity with numerous international standards, including the International Maritime Dangerous Goods Code, the International Civil Aviation Organization's Technical Instructions for the Safe Transport of Dangerous Goods by Air, and the United Nations Recommendations on the Transport of Dangerous Goods—Model Regulations. IATA's

recently published guidance conforms with recent changes to the HMR on lithium batteries and is an excellent resource for all those who commonly transport such goods.

A full copy of the guidance is available at:
http://www.iata.org/publications/Documents/lithium%20battery-risk-mitigation-guidance-for-operators-1st-ed.pdf

U.S.-EU JOINT COMMITTEE MEETS TO DISCUSS NAI

DOT recently published minutes from the November 25, 2014 meeting of the U.S.-EU Joint Committee, which met to discuss Norwegian Air International's (NAI) pending DOT application. During the meeting the European delegation reiterated its belief that the Department's handling of the application was inconsistent with the "minimum procedural delay requirement in Article 4" of the U.S.-EU Air Transport Agreement (ATA) and stated that the EU and its Member States reserve the right "to take all possible measures permissible under the ATA." Predictably, the U.S. delegation did not provide a deadline or estimated date for further action on the application, but assured the Europeans that NAI's application was actively being considered.

CBP AIMS TO EXPAND PRECLEARANCE PROGRAM IN 2015

CBP's preclearance program allows for CBP clearance to occur abroad, prior to passengers boarding a direct flight to the United States, and without further CBP processing or security screening upon their arrival to the United States. U.S. preclearance operations began in 1952 at Toronto Pearson International Airport and currently take place at 15 foreign airports in six different countries (Canada, Ireland, UAE, Bermuda, Aruba, Bahamas).

Beginning in 2015, the United States will enter into negotiations in order to expand air preclearance operations to new locations. Foreign airport authorities that are interested in initiating the process to establish preclearance operations at their location have been encouraged to submit letters of interest to CBP.

Any country can apply for membership in the program, so long as it has diplomatic relations with the U.S. and is a party to the 1951 Convention Relating to the Statutes of Refugees or the 1967 Convention relating to the Status of Refugees or the 1967 Protocol Relating to the Status of Refugees. Interested applicants are evaluated based on numerous factors, including the feasibility of the preclearance service the airport intends to provide and the likelihood that the airport will be able to meet the minimum preclearance requirements. While each airport's preclearance model can be customized to some extent, it must follow a basic structure of operations.

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Other factors that are evaluated in CBP's determination are (i) joint security and economic benefit; (ii) reimbursement for expenses incurred by CBP in establishing and maintaining preclearance services; (iii) signed Memorandum of Cooperation between TSA and relevant foreign Civil Aviation Authority; (iv) at least one U.S. passenger air carrier operating at location; and (v) aviation security screening comparable to TSA standards.

CBP and other proponents laud the program because it allows U.S. and international partners to identify and address threats at the earliest possible point, can be customized to meet the needs of individual airports, improves the overall passenger experience (quicker connections, less hassle upon arrival in U.S., reduced wait times at U.S. airports, etc.), increases safety because aviation security screening during the preclearance process must be maintained at a level comparable with TSA standards, and has the potential to increase capacity and growth of airports both in the U.S. and abroad.

FAA PROPOSES HAZMAT PENALTIES AGAINST SEVEN MORE COMPANIES

The FAA recently proposed civil penalties ranging from $54,000 to $91,000 against seven companies for allegedly violating the HMR. In each case, the FAA alleged certain shipments were not accompanied by shipping papers to indicate the hazardous nature of their contents and were improperly marked, labeled or packed.

- $91,000 against New Chapter, Inc. for allegedly offering a shipment containing a five-gallon metal drum filled with a flammable resin solution to UPS for air transportation to Ohio that was not packaged in accordance with the HMR. Workers at a UPS sort facility discovered that approximately three gallons of the resin had leaked from the drum and subsequently notified the FAA.
- $81,000 against Q.G. Investments, LLC for allegedly shipping 46 packages of sparklers to United Airlines for air transportation from Orlando to Tanzania, Africa. Sparklers are explosive fireworks, which are forbidden aboard passenger-carrying aircraft. United Airlines' contract cargo handling company discovered the shipment at Orlando International Airport.
- $78,000 against Click Bond, Inc. for allegedly offering a nylon bag containing eight packets totaling one ounce of polyester resin adhesive to UPS for air transportation from North Carolina to Ft. Lauderdale. Polyester resin adhesive is a flammable liquid.
- $66,500 against All Tire Supply Co. for allegedly offering a shipment containing four one-gallon metal cans of paint, which is a flammable liquid, to DHL Worldwide Express for air transportation to Sydney, Australia.
- $65,000 against Kretek International, Inc. for allegedly offering a shipment containing twelve 10.15-ounce aerosol cans of highly flammable butane gas to UPS for air transportation from California to Florida.

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- $55,000 against Harland Clarke Holdings Corp. for allegedly offering one box containing twelve 11-ounce aerosol cans of silicone, which is a flammable gas, for transportation aboard a UPS cargo flight from Georgia to Puerto Rico. Workers at the UPS sort facility in Jacksonville discovered the package and notified FAA.
- $54,000 against Quimica Bicentenario de la Ind. for allegedly offering a box containing 500 fireworks to FedEx for air transportation from Mexico to Florida. Workers at a FedEx sort facility in Tennessee discovered and reported the package to FAA.

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