

Aviation Regulatory Update

By Evelyn Sahr, Drew Derco, and Jay Julien

DOT PUBLISHES TWO NEW RULEMAKINGS IN FEDERAL REGISTER; EFFECTIVE DATES BELOW

To follow up on our client alert from April 25, 2024, DOT recently published both the Refunds and Other Consumer Protections (“Refund Rule”) and the Enhancing Transparency of Airline Ancillary Service Fees (“Ancillary Service Fee Rule”) final rules in the Federal Register. These are significant rulemakings that will require action on carriers’ behalf to become compliant. We would encourage you to closely review our prior client alert, which provided a general overview of each rule’s requirements.

Among other provisions, the Refund Rule will require airlines to issue automatic refunds to the original form of payment when they cancel or make a significant change to a scheduled flight, provided the consumer is not offered (or rejects) alternative transportation, travel credits, vouchers, or other compensation. Airlines and ticket agents will be required to provide these refunds promptly and inform consumers of their right to a refund before making an offer for alternative transportation, travel credits, vouchers, or other compensation in lieu of a refund. The rule also allows passengers who are unable or advised not to travel due to a communicable disease to obtain a transferrable voucher or credit valid for five years. **The rule becomes effective June 25, 2024.**

The goal of DOT’s Ancillary Service Fee Rule is to ensure consumers are fully informed of the fees carriers charge for transporting a first checked bag, a second checked bag, and a carry-on bag, and for canceling or changing a reservation. Under the final rule, among other things, airlines and ticket agents will be required to clearly disclose passenger-specific or itinerary-specific fees (i.e., actual charges and not ranges) for these services to consumers whenever fare and schedule information is provided on a website, mobile app, or other marketing platform, including sales made by telephone. Covered entities will also have to provide useable, current, and accurate information regarding fees for these critical ancillary services to any entity that is required to disclose critical ancillary service fee information to consumers, such as third-party ticket agents. **The rule becomes effective July 1, 2024.**

If you have any questions regarding these final rules, please don’t hesitate to contact us.

DOT ANNOUNCES AIRLINE COMPLAINT PARTNERSHIP WITH STATE ATTORNEYS GENERAL

On April 16, DOT [launched](#) a joint venture with eighteen (18) state attorneys general to investigate airlines and ticket agents for violations of aviation consumer protection laws. The partnership creates a fast-track system for prioritizing alleged misconduct by airlines identified by state attorneys general and greatly expands the Department’s oversight abilities of airlines. In a signed Memoranda of Understanding (“MOU”) DOT’s Office of Aviation Consumer Protection (“OACP”) expressed its commitment to collaborate with regard to complaints involving unfair or deceptive practices by airlines and create a formal mechanism for state attorneys general to report airlines to DOT for failing to respond to requests for information as part of a state investigation into a customer or other complaint. The MOU also indirectly expands OACP’s manpower, by allowing states to use their resources towards making determinations as to whether

airlines are potentially violating federal aviation consumer protection requirements. So far, DOT has signed MOUs with the Attorneys General of California, Colorado, Connecticut, District of Columbia, Illinois, Maine, Maryland, Michigan, Nevada, New York, New Hampshire, North Carolina, the Northern Mariana Islands, Oklahoma, Pennsylvania, Rhode Island, the United States Virgin Islands, and Wisconsin. Delaware, Massachusetts, Minnesota, Oregon, Tennessee, Vermont, and Washington have also expressed an interest in signing an MOU.

NOTICE FOR REINSTATEMENT OF PREVIOUSLY APPROVED COLLECTIONS: SERVICE ANIMAL FORMS

On April 29, 2024, DOT [published](#) a Notice of and Request for Comments regarding the two forms carriers may require from passengers traveling with service animals. These two forms are the DOT Service Animal Air Transportation Form and the DOT Service Animal Relief Attestation Form, the latter of which can only be requested when a passenger is traveling with a service animal on a flight segment scheduled to take eight hours or more. The Service Animal Air Transportation Form is designed to ensure that a service animal is vaccinated against rabies and has been trained to behave in a public setting. The Service Animal Relief Attestation Form is designed to ensure that the service animal will not need to relieve itself on the flight or that the animal can relieve itself in a way that does not create a health or sanitation issue. Generally, these are the only documentation that a carrier is permitted to require from passengers traveling with service animals. The public has thirty (30) days for public comment after which the Agency will render a decision. Comments are invited concerning the renewal of the Relief Attestation Form and regarding the formatting and clarity amendments made to the Behavior and Health Attestation Form.

APHIS REVISES AQI PROGRAM AND FEES

On April 26, 2024 U.S Customs and Border Protection (“CBP”) published [updated](#) U.S. Department of Agriculture (“USDA”) Animal and Plant Health Inspection Service (“APHIS”) Agricultural Quarantine and Inspection (“AQI”) program user fees. These restructured fees, which were last updated in 2015, will go into effect on October 1, 2024 and are intended to allow the AQI program to recover the costs of carrying out safeguards required by The Food, Agriculture, Conservation and Trade (“FACT”) Act of 1990. The adjusted fee structure is as follows in U.S. dollars. Carriers should take note of the two highlighted fees which will change on October 1, 2024:

Final Fees Fee Service Activity	Current	October 1, 2024
Commercial Vessel (per vessel arrival)	825.00	2,903.73
Commercial Vessel (per vessel arrival) Great Lakes/Cascadia	N/A	837.51
Commercial Truck (per truck arrival)	7.29	12.40
Commercial Rail (per railroad car arrival)	2.00	6.51
Commercial Aircraft (per aircraft arrival)	225.00	281.39
Air Passenger (per passenger arrival)	3.83	3.71
Cruise Vessel Passenger (per passenger arrival)	1.68	1.25
Treatments (per enclosure)	237.00	240.60

LAWMAKERS REACH DEAL TO REAUTHORIZE FAA AND SET POLICY

The U.S. House and Senate have reached a tentative deal that would reauthorize the Federal Aviation Administration (“FAA”) and set aviation policy for the next five years. Here are some of the deal’s policy initiatives:

- 1,500-hour rule remains in effect which requires commercial pilots in training to record 1,500 hours in actual cockpit in order to become certified. The rule has come under significant scrutiny with an earlier version of the deal seeking to increase the amount of simulator time that could count towards the hours requirement.

- Commercial airlines would be required to maintain cockpit voice devices able to record 25 hours of data, up from the current 2 hours. This was effectuated after a litany of near crashes on runways over the past two years.
- Increased hiring targets for Air Traffic Controllers. Legislators want to train more Air Traffic Controllers due to recent shortages and disputes between the FAA and the National Air Traffic Controllers Association.
- Improvements for runway and ground technology. The FAA would flag airports who are unable to bolster surface surveillance and detection systems in an effort to identify where upgrades are needed most.
- Following the Malaysia Airlines 370 incident, the FAA must now deliver a rule that enables for recovery operations for underwater crashes and the installation of underwater location devices that emit signal for at least 90 days.
- Annual inspections at foreign aircraft repair stations. This comes as the FAA considers whether to implement drug and alcohol testing for workers at foreign repair stations.
- Requirement of cash refunds owed passengers for canceled or significantly delayed flights which follows a recently issued DOT rule. Codifying this rule will likely have a significant impact on court challenges to the rule.

FAA ISSUES FINAL RULE REQUIRING SMS FOR CHARTER, AIR TOUR FLIGHTS

On April 22, 2024 the FAA issued a [final rule](#) updating its requirements for safety management systems (“SMS”) and requiring certain certificate holders and commercial air tour operators to implement SMS. SMSs are intended to provide an organizational approach to identifying potential safety issues, assessing and managing risks, and ensuring the viability of risk controls. SMS will now be applicable to all certificate holders operating under the rules for commuter and on-demand operations, commercial air tour operators, production certificate holders that are holders or licensees of a type certificate for the same product, and holders of a type certificate that license out that type certificate for production. The FAA notes that this rule is limited to “activities that directly affect aviation safety” and now aligns with IACO Standards and Recommended Practices. This rule becomes effective May 28, 2024.

DOT AND CFPB TO HOLD JOINT HEARING ON AIRLINE REWARD PROGRAMS

DOT and the Consumer Financial Protection Bureau (“CFPB”) announced that they will be holding a joint public hearing to examine airline reward and loyalty programs. Such programs are under scrutiny as lawmakers investigate whether the programs are potentially deceptive to consumers. The hearing is an opportunity to gather more information to determine whether “additional action is needed to ensure fair competition in these industries and a fair and transparent experience for passengers and cardholders.” In December of 2023, DOT announced that it was analyzing complaints related to airlines’ frequent flyer and loyalty programs for potential action under the agency’s “unfair and deceptive practices” regulations. Airlines for America, which represents most U.S. domestic carriers, opposes any additional restrictions on these loyalty programs. The hearing will be held 10 a.m. on May 9 at CFPB headquarters.

ACI-NA OPPOSES AIRLINES FOR AMERICA REQUEST FOR SLOT WAIVER EXTENSION

On April 19, 2024, Airports Council International-North America (“ACI-NA”) filed an opposition to extension of the U.S. airport slot waiver. After the COVID-19 pandemic, the FAA has provided waivers to the minimum usage of slots at airports. In 2023, air carriers petitioned the FAA to reinstate the slot waiver due to Air Traffic Control (“ATC”) delays, and the FAA granted a 10% slot waiver through October 26, 2024. On April 3, 2024, Airlines for America requested another extension through summer 2025 of the slot waiver at the John F. Kennedy International Airport, New York LaGuardia Airport, and Ronald Reagan Washington National Airport. In its comment, the ACI-NA argues that the slot

waiver unfairly protects incumbent airlines, regardless of whether they operate flights, at the expense of other airlines and the public at large. The ACI-NA further argued that there is no proven correlation between the slot waiver and alleviating issues caused by ATC delays. The ACI-NA requested that the FAA provide information and data to support its slot waiver approach. The comment also calls for the FAA to convene with air carriers, airports, and representative organizations, as well as to afford the public an opportunity to comment on the requested extension.

DISADVANTAGED BUSINESS ENTERPRISE AND AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM MODIFICATIONS

On April 9, 2024, DOT announced a [final rule](#) that seeks to modernize its Disadvantaged Business Enterprise (“DBE”) and Airport Concession Disadvantaged Business Enterprise (“ACDBE”) programs. These programs are designed to address potential discrimination in DOT-assisted contracting markets and airport concessions by allowing small businesses owned and controlled by socially and economically disadvantaged individuals the opportunity to compete for DOT funded contracts. The rule proposes significant changes to reporting requirements, centralizes bidder data into a searchable database, among other changes. Adjustments to certification appeal procedures were also suggested, aiming to enhance efficiency while ensuring fairness. The rule is set to become effective May 9, 2024.

If you have any questions, please contact Evelyn Sahr (esahr@eckertseamans.com; 202-659-6622), Drew Derco (dderco@eckertseamans.com; 202-659-6665), or Jay Julien (jjulien@eckertseamans.com; 202-659-6648).