Aviation Regulatory Update

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TRUMP SEEKS TO REPEAL REGULATIONS

On April 9, 2025, the Trump administration issued a Presidential Memorandum (the "Memo") directing federal agencies to repeal unlawful regulations pursuant to recent U.S. Supreme Court decisions. This "review-and-repeal effort" focuses on regulations which relied on now-superseded Supreme Court precedent. As readers might recall, President Trump ordered federal agencies earlier this year to review existing regulations with an eye towards whether any conflict with White House policy priorities or exceed an agency's statutory authority. Following the recent *Loper Bright* decision in which the U.S. Supreme Court overturned the decades old *Chevron* doctrine, regulations are now subject to greater scrutiny, especially if the regulation at issue departs from the statutory text.

Interestingly, these plans to repeal unlawful regulations could be implemented without following standard Administrative Procedure Act ("APA") practice. Generally, when repealing regulations, federal agencies must adhere to the same notice-and-comment procedures they used when issuing the regulation in the first place. In justifying this approach, the Administration cites a statutory exception to that general rule (i.e., the good-cause exception) which allows an agency to forgo ordinary repeal procedures when "good cause" exists such that adherence to the notice-and-comment process would be impracticable, unnecessary, or contrary to the public interest.

TURBULENCE AHEAD FOR AVIATION INDUSTRY AMID NEW TARIFFS

A week after President Trump announced that the United States was implementing reciprocal tariffs on 57 named countries, the administration changed course on April 9, 2025, and paused the application of reciprocal tariffs for 90 days, except for those imposed on China which were raised to an unprecedented 125 percent. While most reciprocal tariffs are on pause during negotiations between foreign trading partners and the U.S., the global baseline tariff of 10 percent will remain in full force. Importantly, the Trump administration did not rescind the elimination of the de minimis exemption for Chinese imports which was announced on April 2, 2025. The de minimis exemption previously allowed duty-free entry for low-value shipments under $800 yet those in the aviation industry, especially cargo carriers, should note that this exemption will be eliminated, effective **May 2, 2025**.

In response to these uncertain times and the looming threat of additional tariffs, airlines are pausing aircraft deliveries and revising expansion plans due to higher prices for aircraft parts and international goods. For instance, Delta recently announced plans to defer any aircraft deliveries subject to a tariff, and major Chinese carriers have stopped accepting Boeing aircraft deliveries as the U.S.-China trade war continues. If other airlines follow suit and delay fleet expansions, route capacity reductions could follow, leading to fewer flight options and increased costs for travelers.

For cargo carriers, tariffs have been and will continue to be a focal point in the months to come. The U.S. Customs and Border Protection ("CBP") has issued Cargo Systems Messaging Service ("CSMS") notices on each tariff implementation update in the Automated Commercial Environment ("ACE") and will continue to communicate updates and related technical information via CSMS to system users. The ACE/CSMS updates can also be viewed here.

Readers should take note of the following recommended actions to consider during the 90-day pause of reciprocal tariffs:

- Review contractual obligations with vendors and suppliers to assess exposure to tariffs; Special attention should be paid to terms of cancellation in charter agreements including the circumstances under which a shipper can cancel a charter flight and any associated cancellation fees or penalties;
- Review ACE/CSMS system for updated tariff implementation messages;
- Monitor ongoing tariff negotiations between the U.S. and foreign trading partners such as China;
- Evaluate regulatory changes to exclusions, exemptions, or carve-outs that may impact cross-border transaction activity;
- Examine sector and country specific operations to mitigate tariff exposure where possible; and
- Be prepared for unexpected delays in customs clearance as tariffs may lead to increased scrutiny by CBP or backlogs in processing cargo clearance.

Please contact us if you have any questions about new U.S. tariffs and aviation-related impacts.

DOT REQUESTS INFORMATION ON OBSOLETE OR UNNECESSARY REGULATIONS

On April 3, 2025, the U.S. Department of Transportation ("DOT" or the "Department") published a Request for Information ("RFI") seeking comments on which existing regulations, guidance, paperwork requirements, and other regulatory obligations should be modified or repealed. DOT specifically wants to identify existing regulations, guidance, or reporting requirements which may be obsolete or unnecessary. To streamline the Department's review, stakeholders across the U.S. transportation system are encouraged to submit comments on which DOT-imposed obligations are most in need of reform or elimination such that the Department can tailor limited resources to ensure safety for millions of travelers while minimizing regulatory burdens. For example, the Department seeks information on whether data reporting obligations imposed on transportation providers are overly burdensome given the fact that new technologies exist to collect data without saddling operators with yet another reporting requirement. In response to a similar request during the first Trump administration, one regulation on the proverbial chopping block included the requirement pursuant to 14 C.F.R. 250.9 for written statements explaining the terms, conditions, and limitations of denied boarding compensation, and describing a carrier's boarding priority criteria. Commenters aptly noted that written requirements may no longer be necessary in a world dominated by electronic communication. Paper-based requirements impose significant costs on airlines and thus regulatory changes permitting airlines to furnish electronic versions of required documents directly to consumers would be welcomed. If there are existing regulations, guidance, paperwork requirements,

or other regulatory obligations that you would like to identify as obsolete or unnecessary, we can surely assist in submitting a comment by the RFI deadline of on or before **May 5, 2025**.

FEDERAL PROSECUTORS TARGET SHAM DRY LEASE SCHEMES

On April 4, 2025, the U.S. Attorney's Office for the Southern District of Texas filed a civil penalty action against Texas based Prairie Flower Air Asset Company LLC ("Prairie Flower"), alleging that Prairie Flower was operating an illegal charter service using deceptive aircraft leasing practices. According to the complaint, between 2019 and 2023, Prairie Flower was purportedly operating as a direct air carrier even though the company's sole owner knew that Prairie Flower did not hold the required Federal Aviation Administration ("FAA") certification. The complaint asserts that Prairie Flower used "sham dry leases" to supposedly lease aircraft to other parties when in fact Prairie Flower itself retained operational control. Absent an FAA-issued certificate, Prairie Flower allegedly chartered at least 237 flights via bogus dry leases under which the company was operating as a direct air carrier. Those operating under aircraft leases must pay particular attention to which party maintains operational control because Prairie Flower and its sole owner could face millions in penalties if convicted. DOT's Office of Inspector General and the FAA regularly conduct investigations to ensure that aircraft operators are not performing unauthorized charter services. For example, federal prosecutors secured a $700,000 settlement last year from a now defunct aircraft leasing business after investigators uncovered similar sham dry leases made on behalf of the North Carolina-based company in regard to passenger-carrying flights.

PRIVATE AIRCRAFT OWNERS CAN NOW WITHHOLD CERTAIN INFORMATION

The FAA announced last month that private aircraft owners and operators can now withhold certain ownership information (e.g., names and addresses) from public view. Prior to this announcement, the name and address of aircraft owners was publicly disclosed on the FAA's Aircraft Registration Branch website. If interested, the FAA detailed the process by private aircraft owners can submit requests to withhold ownership information through FAA's Civil Aviation Registry Electronic Services. Comments are also encouraged by **May 5, 2025**, on the impact if the FAA removed such information for private aircraft owners categorically and permitted owners to request copies of their information rather than removing such information only upon individual request.

REPUBLIC AIRWAYS AND MESA AIR GROUP ANNOUNCE MERGER AGREEMENT

On April 7, 2025, Republic Airways ("Republic") and Mesa Air Group ("Mesa") announced an all-stock merger transaction in which the combined entity as proposed would maintain a single fleet of approximately 310 Embraer 170/175 aircraft with over 1,250 daily departures. If finalized and approved by regulators, the combined entity would be managed by Republic's management team while continuing to serve key partners, including American Airlines, Delta Air Lines, and United Airlines. Republic and Mesa expect the transaction to close in late 2025 pending both shareholder and DOJ approval. The announcement comes at a time when the man posed to lead the combined airline (i.e., Republic CEO Bryan Bedford) is expected to leave the company once confirmed as the next FAA Administrator. We are closely monitoring this proposed transaction for potential impacts on the aviation industry.

CBP ANNOUNCES GLOBAL ENTRY PARTNERSHIP WITH EL SALVADOR

On April 15, 2025, CBP announced a Global Entry ("GE") partnership with El Salvador, allowing approved low-risk citizens of El Salvador to benefit from expedited arrival processing, reduced wait times, and improved customer experience. As one of CBP's four Trusted Traveler Programs, GE expediates entry into the United States for millions of passengers a year by providing access to TSA PreCheck for eligible members and offering prompt security screening at participating U.S. airports. The GE application process involves thorough vetting

by U.S. and Salvadoran authorities as well as an in-person interview before initial enrollment. Other GE partner countries include Argentina, Australia, Bahrain, Brazil, Colombia, Croatia, the Dominican Republic, Germany, Japan, India, Mexico, the Netherlands, Panama, the Republic of Korea, Singapore, Switzerland, Taiwan, the United Arab Emirates, and the United Kingdom.

DOJ WADES INTO SOUTHWEST "DISCRIMINATION" LAWSUIT

On April 10, 2025, the U.S. Department of Justice ("DOJ") filed a proposed statement of interest ("SOI") in an ongoing lawsuit against Southwest in which the American Alliance for Equal Rights ("AAER") contends that the airline's travel voucher system offering free roundtrip flights to and from school for low-income Hispanic students unlawfully discriminated against non-Hispanic students. The voucher system, known as the ¡Lánzate! or Take Off! Travel Award Program, was discontinued by Southwest, but AAER declined to dismiss the case. While legal proceedings between Southwest and AAER continue in federal court, the SOI provides yet another example of the DOJ's efforts to eliminate purported diversity, equity, and inclusion ("DEI") initiatives in both the public and private sector. Other organizations have challenged President Trump's DEI-related actions in court with mixed results so many expect DOJ to continue filing SOIs in cases where officials identify "racially exclusionary practices" contrary to federal law. AAER filed a similar lawsuit against American Airlines in February targeting the airline's supplier-diversity programs, in which AAER claims that the airline unlawfully excluded potential contractors on the basis of race by reserving certain opportunities for companies owned by individuals from specific racial groups.

BILL REINTRODUCED TO UPDATE PART 380 PUBLIC CHARTER SECURITY

On March 27, 2025, members of the House Aviation Safety Caucus reintroduced the Safer Skies Act which aims to update the security requirements for Part 380 public charter operators to parallel those of Part 121 scheduled airlines. The bill, which was first proposed in August 2024, comes on the heels of the Transportation Security Administration's ("TSA") January 2025 announcement of increased security requirements for Part 380 public charter flights. Proponents of the bill laude it as a necessary measure to "close a loophole that has allowed certain operators, like ticketed charter flights, to bypass the rigorous screening requirements that ensure the safety of all passengers." If enacted, the legislation would require the TSA to further update its security requirements for Part 135 and Part 380 operators that sell individual seats on aircraft with more than nine passenger seats to follow the same security standards as scheduled airlines. The bill has received support from the NetJets Association of Shared Aircraft Pilots, "which shares similar screening requirements to those operations using Part 380 economic authority."

DOJ UNVEILS ANTICOMPETITIVE REGULATIONS TASK FORCE

On March 27, 2025, DOJ announced the creation of an Anticompetitive Regulations Task Force (the "Task Force") broadly tasked with eliminating anticompetitive state and federal laws and regulations deemed harmful to competition. In addition to the housing, healthcare, and energy sectors, the Task Force will focus on laws and regulations in the transportation sector that undermine free market competition and harm consumers. Notably, the Task Force will specifically examine the process by which DOT grants antitrust immunity to airlines. While not clear what jurisdiction the federal Task Force can or will try to exercise over state laws and regulations, the announcement in the early days of the Trump administration furthers a broader deregulatory appetite across all federal agencies. That said, Assistant Attorney General Slater, head of the DOJ's Antitrust Division and former policy advisor to Vice President Vance, remains a corporate consolidation skeptic, especially among global technology companies. Those interested in the Task Force's work can submit public comments here until **May**

26, 2025, at which time the Task Force will begin proposing regulatory changes to remove barriers to competition.

EXPEDIA OWES $30 MILLION IN DAMAGES TO CUBAN AMERICANS

On April 18, 2025, a federal jury in the Southern District of Florida awarded $29.8 million in damages against Expedia and three related entities for violating the Helms-Burton Act (the "Act"). By creating a private right of action, the Act authorizes U.S. citizens with claims to confiscated property in Cuba to file suit in federal court against persons and corporate entities that may be "trafficking" in that property. While prior presidents implemented a statutory suspension halting the filing of new lawsuits under the Act, President Trump lifted the suspension in 2019 and allowed the private right of action to proceed as part of his efforts to sanction the Cuban regime. Since the suspension was lifted, federal courts have experienced a rise in claims related to property confiscated by the Cuban government with implications for the travel industry. Like a prior suit filed against Royal Caribbean Cruises, the plaintiff in this case alleged that Expedia promoted and sold hotel bookings on land which was previously confiscated by the Castro regime. *See generally Havana Docks Corp., v. Royal Caribbean Cruises, Ltd.*, 119 F.4th 1276 (11th Cir. 2024) (explaining that owners of terminal facilities at Port of Havana sued under the Act alleging that cruise line operators engaged in trafficking by having ships dock at port confiscated by Cuban government). It is important to understand that the Act allows for treble damages when a defendant received prior notice of the claim and did not cease the conduct in question or compensate the owners of the confiscated property. For those promoting services to Cuba, the verdict should serve as a reminder that private parties can bring lawsuits against traffickers in property confiscated by the Cuban government and that damages can be substantial.

JUSTICE DEPARTMENT PROPOSES CHANGES TO FARA REGULATIONS

As our readers may recall, DOJ issued a Notice of Proposed Rulemaking ("NPRM") earlier this year proposing changes to regulations governing compliance with the Foreign Agents Registration Act ("FARA"). Absent an exemption under the FARA, any person that acts as an agent of a foreign principal and engages in certain covered activity within the U.S. must register and file periodic reports with the DOJ. Foreign governments and political parties are well understood to be "foreign principals" and the growing use of state-owned enterprises for geopolitical and strategic purposes complicates application of FARA regulations. Accordingly, the NPRM proposes several changes to the current regulations seeking to clarify a foreign agent's obligations and whether any statutory exemptions apply. A commonly used exemption is known as the "commercial" exemption which permits activities on behalf of foreign principals that are private and nonpolitical in furtherance of a bona fide trade or commerce. One proposed change to the commercial exemption, among others, would create a set of four exclusions to the exemption. If finalized, an agent would be categorically precluded from obtaining the exemption if:

1. the intent or purpose of the activities is to benefit the political or public interests of the foreign government or foreign political party;

2. the foreign government or political party "influences" the activities;

3. the principal beneficiary of the activities is a foreign government or political party; or

4. the activities are undertaken on behalf of an entity that is directed or supervised by a foreign government or foreign political party (such as a state-owned enterprise) and promote the political or public interests of that foreign government or political party.

In the event that the set of four exclusions does not preclude exemption, the NPRM recommends that DOJ adopt a totality-of-the-circumstances test to determine whether the activities at issue predominantly serve a foreign or domestic interest using a set of non-exhaustive factors. The NPRM as written, could impact foreign air carriers, especially those who are owned by foreign governments. Determining whether specific activities trigger registration under the FARA is highly fact dependent. Should carriers have questions on FARA compliance, they should promptly seek counsel on how to evaluate the nature of their activities and whether any statutory exemptions may apply.

ECKERT SEAMANS ATTORNEYS AT LAW

This Aviation Regulatory Update is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact Evelyn Sahr at 202.659.6622 or esahr@eckertseamans.com; Drew Derco at 202.659.6665 or dderco@eckertseamans.com, Andrew Orr 202.659.6625 or aorr@eckertseamans.com; Jay Julien at 202.659.6648 or jjulien@eckertseamans.com; or Tyler Myers at 202.659.6642 or trmyers@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.