

Aviation Regulatory Update

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DOT PUBLISHES NOTICE OF PROPOSED RULEMAKING ON FAMILY SEATING

On August 9, 2024, the U.S. Department of Transportation ("DOT" or "the Department") published a Notice of Proposed Rulemaking ("NPRM") in the Federal Register which would require air carriers to seat young children adjacent to at least one accompanying adult at no additional cost beyond the fare, subject to four limited exceptions. The Department views family seating as a "basic service, essential for the provision of adequate air transportation." Thus, the NPRM proposes to require carriers to provide adjacent seating for young children (age 13 and under) and an accompanying adult (age 14 and over). The NPRM proposes to define "adjacent" as two seats next to each other in the same row. DOT would not consider two seats separated only by an aisle as "adjacent."

The NPRM provides four limited exceptions to the family seating requirement when:

- The young child is not traveling with an accompanying adult;
- The booking party or accompanying adult declines to accept the adjacent seats or chooses to sit apart from the young child;
- The number of young children traveling makes it impossible to provide adjacent sets due to the layout of the aircraft; or
- The young child and/or accompanying adult do not comply with the carrier's check-in or boarding requirements.

Under the third exception, carriers are still required to seat young children and accompanying adult across the aisle from each other or seat the young child directly in front of or behind the accompanying adult. Open seating carriers such as Southwest would be required to board passengers in a manner that allows a young child and accompanying adult to secure adjacent seats on the flight. Assigned seating carriers would be required to provide adjacent seat assignments at the time of booking, if available. If adjacent seating is not available, the carrier would be required to offer the party the choice between: (1) a full refund or, (2) the option to wait for family seating to become available for the booked flight closer to the scheduled departure.

When a booking party chooses to wait for available family seating, and adjacent seats become available before the first passenger boards the aircraft, the carrier would be required to notify the booking party and assign the adjacent seats to a young child and accompanying adult as soon as the seats become available. Alternatively, if adjacent seats do not become available, the carrier would be required to offer the booking party and/or the accompanying adult the choice between free rebooking on the next flight available with family seating at no additional cost, or continuing travel in seats that are not adjacent.

Lastly, the NPRM proposes that carriers be required to clearly and conspicuously disclose their family seating policies on their public facing online platforms, and in some cases when a customer calls the carrier's reservation center. Violation of this rule would subject the carrier to civil penalties on a per child basis, and if the carrier charged a fee for family seating, on a per fee basis.

DOT is accepting public comments until October 8, 2024. Please let us know if you have any questions or would like us to draft and file a comment about the NPRM on your behalf.

FAA S25 SCHEDULE DEADLINE: OCTOBER 10, 2024

On August 20, 2024, the Federal Aviation Administration ("FAA") announced that the submission deadline for S25 flight schedules at ORD, JFK, LAX, EWR, JFK, and SFO will be **October 10, 2024**. Therefore, all schedules should be submitted by the deadline to 7-AWA-slotadmin@faa.gov. Schedule information must include the marketing or operating carrier, flight number, scheduled time of operation, frequency, aircraft equipment, and effective dates. The FAA notes that schedule information may be subject to disclosure under the Freedom of Information Act ("FOIA"). Any information deemed by a carrier to be confidential should be clearly marked "PROPIN" (proprietary information). The FAA is limiting the maximum number of scheduled arrivals or departures respectively at EWR, to forty-one (41) in an hour and twenty-two (22) in a half-hour. However, the FAA will accept flights above these maximum limits if the carrier operated the same flight in S24. Lastly, the FAA made note of runway construction planned at EWR for 2025 and will evaluate the impact on EWR's runway compacity and issue any scheduling relief as needed.

FAA PROPOSES CHANGES TO IASA PROGRAM

On August 16, 2024, the FAA [published](#) changes to its International Aviation Safety Assessment ("IASA") program. The FAA cites confusion over changes it made to the program in September 2022 which created a process for "informal engagement" with countries believed to have safety issues. During this informal engagement, countries and their civil aviation authorities ("CAAs") would have an opportunity to address risks before the FAA launched a formal IASA audit. These latest changes drop the informal engagement process and instead implement a 90-day window for CAAs to develop plans to mitigate noncompliance. "If the FAA determines that the foreign CAA has not corrected its oversight deficiencies after the conclusion of the final discussion, the country will ... receive an official determination of Category 2 status." A Category 2 status indicates noncompliance with ICAO standards and subjects such country's airlines to operational restrictions for any operations which include U.S. destinations. The FAA also introduced "Category 1*" status. The asterisk indicates that a country has been notified of a risk of noncompliance. The asterisk may be removed only after a reassessment is completed which would move the country into either Category 1 or Category 2 status. The FAA also did away with a previous change that froze levels of service to the U.S. upon determination that reassessment of a Category 1 country was necessary. Now, service will only be frozen upon completion of a reassessment and a downgrade to Category 2 status.

ALASKA AIRLINES AND HAWAIIAN AIRLINES MERGER CLEARS CRITICAL HURDLE

On August 20, 2024, the Department of Justice (“DOJ”) [indicated](#) that it would not attempt to block the proposed merger between Alaska Airlines and Hawaiian Airlines. The \$1.9 billion dollar deal would be the first airline industry merger allowed under the Biden administration and would be the first since Alaska Airlines and Virgin Airlines merged in 2016. The deal still requires approval by other regulators such as DOT. Both agencies had been investigating the tie-up since it was announced in December 2023, and DOT has not yet indicated whether it would approve the merger. Last year the two agencies joined to oppose the merger between JetBlue and Spirit.

NTSB FINALIZES REVISED GUIDANCE FOR PASSENGER LIST/MANIFEST DISTRIBUTION & CONTROL

On August 1, 2024, the National Transportation Safety Board (“NTSB”) issued its revised Guidance for Passenger List/Manifest Distribution and Control. The revisions come as a result of the May 2024 FAA Reauthorization Act of 2024 which made changes to family assistance legislation for carriers and the emergency response community related to the distribution of the passenger list/manifest following an accident involving an air carrier or foreign air carrier.

The NTSB makes the following changes to previously released guidance in order to conform with the FAA Reauthorization Act of 2024:

- When the NTSB receives a passenger list from a carrier involved in an accident, the NTSB may now share that information with a “local, Tribal, State, or Federal agency responsible for determining the whereabouts or welfare of a passenger.” However, these collaborating agencies may not release this information without the express permission of NTSB. These agencies may release this information if it was lawfully obtained by other means.
- The American Red Cross may not release information on a passenger list unless it is providing it to the family of a passenger and only in circumstances that it coordinates with the NTSB and carrier.
- Clarifies how Local, Tribal, State, or Federal agency with direct victim accounting responsibility should submit requests for passenger list information to the NTSB Transportation Disaster Assistance Division.
- Clarifies that only Local, Tribal, State, or Federal agency with direct victim accounting responsibility should submit requests for passenger list information.
- Carriers are already free to independently share passenger list information with response agencies when requested, but revised guidance clarifies that carriers should notify NTSB when they deny such requests.

The complete guidance will be available at the following link: <https://www.nts.gov/tda/Pages/tda-library.aspx>

If you have any questions about the guidance or your obligations in the event of an accident, please let us know.

AM. AIRLINES, INC. V. SKIPLAGGED, INC.

On July 31, 2024, the U.S. District Court for the Northern District of Texas ruled on Motions for Summary Judgment filed by both parties to the above-referenced action. The Defendant, Skiplagged, is a national travel logistic company that offers discounted airline tickets through “hidden-city ticketing.” Rather than purchasing a direct flight, it is sometimes cheaper to buy an airline ticket with a layover at the intended destination and then

abandon the rest of the route. For example, “a ticket from Dallas to New York with a layover in Charlotte may be cheaper than a ticket straight from Dallas to Charlotte.” Skiplagged acts as a middleman, purchasing the ticket, and then sending the end consumer the flight information, a business model disliked by airlines. This system also required Skiplagged to coach up customers in order to avoid detection from suspicious airline personnel. This included teaching customers key phrases to prevent luggage from being checked, since checked luggage is processed to arrive at the final destination listed on the ticket. As a result, Skiplagged has faced many lawsuits from airlines dating back to 2014. In August of 2023, American Airlines filed its own lawsuit for trademark and copyright infringement, breach of contract, tortious interference with contract, and unfair competition. The parties both filed for a Motion for Summary Judgment which resulted in a mixed result for the parties. The Court held that Skiplagged was entitled to summary judgment on American’s breach of contract claim, reasoning that the statute of limitations had run as this claim was tied to date that American first learned of Skiplagged’s conduct. The Court also held that American was entitled to summary judgment on its claim for copyright infringement. The Court explained that the use of American’s flight symbol on Skiplagged’s website and marketing materials was not fair use. Lastly, the Court found summary judgment to be improper regarding American’s claim for trademark infringement and unfair competition. The Court explained that there exists a genuine issue of material fact as to whether American Airlines delayed filing suit, prejudicing Skiplagged, and whether Skiplagged intentionally infringed on American’s trademark. Ultimately, this mixed decision guarantees that the litigation will continue.

CLASS ACTION DISMISSED AGAINST UNITED FOR ‘GREENWASHING’

On August 13, 2024, a U.S. District Court in Maryland dismissed a class action lawsuit filed against United Airlines for alleged deceptive advertising of the “true environmental impact and scale of its sustainable aviation program.” The lawsuit, filed in November 2023, was brought under Maryland’s Consumer Protection Act. The claimant instituted the action after he alleged that he had paid a premium to fly with United under the belief that the airline was utilizing more sustainable aviation fuel (“SAF”). The claimant asserted that United had falsely represented its SAF usage and therefore mislead consumers. United argued that the central issue of the action, higher prices, meant that the lawsuit was preempted by the Federal Airline Deregulation Act. The Court agreed, citing Supreme Court precedence, and dismissed the claim with prejudice.

DUTCH DATA PROTECTION AUTHORITY FINES UBER €290M

On August 26, 2024, the Dutch Data Protection Authority (“Authority”) issued its largest penalty ever against Uber Technologies Inc. (“Uber”) for alleged violations of the European Union’s (“EU”) General Data Protection Regulation (“Regulation”). The €290M penalty denotes the third time that the Authority has fined Uber. The Authority found that Uber had failed to “adequately protect sensitive data it collected from European drivers” by sending driver information to Uber’s U.S. headquarters for storage. Previously, the EU had deemed U.S. data protections inadequate and therefore required companies which send EU data to the U.S. to implement additional safeguards and contractual measures to protect data. Uber had previously been in compliance with the Regulation, until 2020, when a high court in the EU struck down its policies as ineffective. The Authority determined that Uber had not, for the period between August 2021 and late 2023, implemented any replacement safeguards, despite having had continued the practice of transferring data to the U.S.

FAA REFERS MORE UNRULY PASSENGER CASES TO THE FBI

To date in 2024 the FAA has [referred](#) more than forty-three (43) unruly passenger cases to the Federal Bureau of Investigation (“FBI”) for criminal prosecution. Under a [partnership](#) that began November 2021, the FAA has referred, in total, more than 310 cases to the FBI related to unruly passengers. Some recent referrals include:

an attempt to breach the flight deck, physical assault of another passenger, and sexually inappropriate behavior towards a crewmember. The FAA noted that while “the rate of unruly passenger incidents has dropped by over 80 percent since record-highs in early 2021,” unacceptable behavior by passengers continues to occur, and will be met with criminal enforcement action and civil penalties of up to \$37,000 per violation.

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](mailto:esahr@eckertseamans.com) at 202.659.6622 or esahr@eckertseamans.com; [Drew Derco](mailto:dderco@eckertseamans.com) at 202.659.6665 or dderco@eckertseamans.com; [Jay Julien](mailto:jjulien@eckertseamans.com) at 202.659.6648 or jjulien@eckertseamans.com, [Andrew Orr](mailto:aorr@eckertseamans.com) at 202-659-6625 or aorr@eckertseamans.com, or [Samanta Walter](mailto:swalter@eckertseamans.com) at 412.566.1920 or swalter@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.