

Aviation Regulatory Update

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DOT ANNUAL REPORT OF DISABILITY-RELATED COMPLAINTS RECEIVED IN 2023 DUE BY JANUARY 30, 2024

Each January carriers are required to submit an annual report to the U.S. Department of Transportation (“DOT” or the “Department”) which includes a categorized summary of all disability-related complaints received by the airline during the prior calendar year. The summary is to be submitted to the Department’s Aviation Consumer Protection Division (“DOT ACPD”) on or before the last Monday in January. This year’s report, covering calendar year 2023, is **due no later than January 30, 2024**. Carriers that did not receive any written disability-related complaints in calendar year 2023 are still required to file a zero-report indicating that no complaints were received.

Failure to comply with the reporting requirements can result in DOT taking enforcement action, and DOT has historically penalized numerous carriers for failing to comply with this important reporting mandate. Please contact us if you have any questions on the submission process or require assistance in making your annual report.

THE CORPORATE TRANSPARENCY ACT GOES INTO EFFECT JANUARY 1, 2024

On January 1, 2024, the Corporate Transparency Act (“CTA”) will come into effect which will require reporting companies to disclose beneficial ownership information (“BOI”) to the U.S. Treasury’s Financial Crimes and Enforcement Network (“FinCEN”). An initial disclosure report is due by December 31, 2024. **Failure to comply with the CTA can result in civil and criminal penalties.** Please let us know if you need any assistance in completing and submitting the required reports.

FEDS HIT SOUTHWEST AIRLINES WITH \$140M FINE FOR 2022 HOLIDAY TRAVEL FIASCO

DOT recently assessed the largest consumer protection penalty in the agency’s history against Southwest Airlines for “failing to provide adequate customer service assistance, flight status notifications and refunds in a prompt and proper manner during its 2022 holiday meltdown.” The penalty, part of a consent order which Southwest was notified of in October 2023, is 30 times larger than any previous consumer protection penalty. The violations occurred when Southwest “canceled 16,900 flights and stranded more than two million passengers.” Southwest is required to pay \$35 million to the U.S. Treasury and DOT respectively, and set up a \$90 million compensation system for future vouchers that will be given to passengers who experience a “controllable” cancellation or delay. For example, vouchers worth \$75 will be given to passengers who arrive more than three hours after their original scheduled arrival time in addition to rebooking hotel, and food accommodations. DOT reviewed thousands of complaints and interviewed Southwest officials.

DOT CONSIDERS AMENDING ACCESSIBILITY REQUIREMENTS FOR TRANSPORTATION FACILITIES

The United States DOT recently issued a [request for information](#) on whether it should amend the accessibility requirements for transportation facilities under the Americans with Disabilities Act (“ADA”). Transportation agencies, passengers with disabilities, advocacy groups, technology companies, and other transportation stakeholders are encouraged to provide suggestions on what improvements DOT should consider when examining the ADA standards for transportation buildings and facilities. More precisely, DOT is looking for feedback on how to improve access beyond the minimum standards contained in Appendix A to DOT’s regulations governing transportation services for individuals with disabilities. DOT specifically seeks comments from transportation stakeholders on vertical access, communications, wayfinding, and other technological developments such as real-time transcription of speech to enable effective access within transportation facilities.

Comments in response to DOT’s request for information are due by **January 5, 2024**.

FAA ISSUES NPRM REQUIRING DRUG TESTING FOR FOREIGN AVIATION-REPAIR STATIONS

The Federal Aviation Administration (“FAA”) issued a [notice of proposed rulemaking](#) that would require aviation-repair stations in foreign countries to conduct drug and alcohol testing for employees. The proposed rule covers all employees performing safety-sensitive maintenance functions for U.S. airlines, impacting some 977 repair stations in over 65 countries. The FAA aims to level the economic playing field between mechanics in the United States who must comply with drug and alcohol testing and those foreign aviation-repair stations that do not incur the costs associated with maintaining a testing program. To comply with foreign privacy and employment laws which conflict with U.S. drug and alcohol testing requirements, the proposed rule permits aviation-repair stations operating in countries where mandatory testing is against the law to apply for an exemption.

The FAA is currently accepting comments on the NPRM until **February 5, 2024**. Comments can be made in the relevant docket, [available here](#).

FAA FINALIZES NEW POLICY ON AIR CARRIER INCENTIVE PROGRAMS

On December 7, 2023, the FAA issued a [final policy statement](#) regarding the agency’s Air Carrier Incentive Program (“ACIP”). In addition to offering incentives to new entrant carriers to begin service at an airport, the FAA policy also incentivizes incumbent carriers at an airport to add new routes. The new policy supersedes the FAA’s “Air Carrier Incentive Program Guidebook” which was first issued in 2010. Due to the development of ACIPs since the guidebook’s first publication, the new policy aims to provide greater flexibility for airport sponsors to design incentive programs while obeying federal obligations regarding economic discrimination, reasonable fees, and use of airport revenue.

More specifically, the new policy modified the definition of new service to include “a significant increase in capacity on preexisting service to a specific airport destination.” While airport sponsors have leeway to define “significant” in an ACIP based on local circumstances, the FAA encourages airport sponsors offering incentives for frequency increases to consider identifying a specific threshold percentage increase to qualify for incentives. The new policy also outlines the agency’s position that it is not unjustly discriminatory for an ACIP to distinguish between passenger and cargo carriers. Even after receiving public comments opposing the proposed policy’s view that a waiver or assumption of costs that would ordinarily be charged to a third-party would be considered impermissible for an ACIP, the FAA did not change its position. The final policy notes that the FAA is concerned

that permitting waivers of charges because doing so “would cross a line into subsidies prohibited by the requirements for use of airport revenue.”

The policy permits FAA-compliant carrier incentives initiated prior to the December 7, 2023, issuance date and up to 60 days thereafter to continue as implemented until they expire. Any incentives initiated 60 days after the issuance date must comply with the guidance included in FAA’s final policy statement.

A4A AND IATA SUBMIT COMMENTS IN SUPPORT OF DOT EMERGENCY CLEARANCE REGARDING SERVICE ANIMALS

On December 27, 2023, Airlines for America (“A4A”) and the International Air Transportation Association (“IATA”), on behalf of their members submitted comments in relation to DOT’s notice of request for emergency Office of Management and Budget (“OMB”) approval, *Agency Request for Emergency Clearance to Extend Information Collection Request Related to Traveling by Air with Service Animals*. The transportation groups expressed their approval in support of an emergency clearance that will extend DOT’s information collection request (“ICR”) as it relates to permitting airlines to continue to collect service animal forms from passengers with disabilities intended to ensure the safety of passengers and crew members. In addition, this emergency clearance will allow airlines to fulfill their rights and obligations under Part 382 which protects accessibility in air travel and specifically addresses the transportation of service animals.

KNOW YOUR CARGO: REINFORCING BEST PRACTICES TO ENSURE THE SAFE AND COMPLIANT TRANSPORT OF GOODS IN MARITIME AND OTHER FORMS OF TRANSPORTATION

On December 11, 2023, the Department of Justice (“DOJ”), Department of Homeland Security’s Homeland Security Investigations, Department of the Treasury’s Office of Foreign Assets Control (“OFAC”) and other U.S. agencies issued a [joint compliance note](#) detailing common tactics by malicious actors in numerous transportation industries. The note details how various entities in the transportation chain must implement rigorous risk based internal compliance programs in order to avoid illicit conduct. The agencies caution entities to pay particular attention when conducting business in high-risk areas and warn that cargo is susceptible to falsified bills, invoices, and proof of insurance. They also warned of the potential for bad actors to manipulate Automatic Identification Systems (“AIS”) to obfuscate the origin of cargo shipments. To avoid these vulnerabilities, “private sector entities should develop, implement, and adhere to written standardized, risk-based operational compliance policies, procedures, standards of conduct, and safeguards.” The note provides insight into DOJ’s first ever criminal action against a crude oil tanker carrying contraband Iranian oil as well as detailing civil forfeiture actions against a scheme to covertly ship Iranian oil to Venezuela.

FAA TO SET NEW PW1100G MAINTENANCE REQUIREMENTS AFTER LEARNING MORE PARTS COULD FAIL

The FAA is preparing to enact [new maintenance requirements](#) on airlines following further information that components in Pratt & Whitney (P&W) PW1100G engines may be affected by a powder-metal manufacturing problem. The FAA’s proposed requirements allege that PW1100G “rotors, hubs and air seals will need accelerated replacement due to the manufacturing issue.” This requirement will affect 430 Airbus A320neo who use PW1100Gs. This comes after a P&W recall earlier this year for about 1,200 PW1100Gs which required inspection or replacement of high-pressure turbine and compressor disks. As a result, hundreds of A320neo-family jets will need to be grounded in the coming year for inspections and parts replacements.

BUS TRANSPORT DOES NOT CONSTITUTE EMBARKING OR DISEMBARKING FOR PURPOSES OF MONTREAL CONVENTION LIABILITY

On December 13, 2023, the United States District Court for the Eastern District of Pennsylvania dismissed a *pro se* complaint against American Airlines (“American”) alleging that American violated Articles 17 and 19 of the Montreal Convention when a passenger contracted COVID-19 during a bus ride arranged by American to a nearby hotel. Since the alleged injury did not occur on an airplane, near a departure gate, in an airport terminal, or even between airport terminals, the Court reasoned that the plaintiff’s alleged injury was spatially and temporally removed from any activity that would constitute embarking or disembarking from his flight. As such, the Court dismissed the plaintiff’s claims under Articles 17 and 19 of the Montreal Convention because he failed to show that his injury took place on board the aircraft or while embarking or disembarking.

In addition to finding that the plaintiff did not plausibly allege a claim for liability against American pursuant to the Montreal Convention, the Court also denied the plaintiff’s motion to amend his complaint since several allegations in the amended complaint directly contradicted the initial complaint. For instance, the plaintiff first alleged that he contracted COVID-19 on the bus ride to the hotel but later changed his tune to claim that he contracted the virus on his American flight. Being that this would be the plaintiff’s ninth attempt to plead a claim against American, the Court concluded that the plaintiff had more than enough opportunities and held that the motion to amend was filed in bad faith.

MADE IN AMERICA MEETS U.S. DEFENSE POLICY

On December 7, 2023, Congressional lawmakers unveiled the 3,000-page National Defense Authorization Act (“NDAA”), representing a compromise between earlier versions passed by the Republican-controlled House and Democratic-controlled Senate. While the proposed NDAA language requires more United States military equipment to be made in America, it departs from more stringent Senate-passed language which required every U.S. Navy ship to be manufactured using 100 percent domestically produced materials. The proposed legislation builds upon President Biden’s 2021 executive order requiring 60 percent of each product bought with American taxpayer dollars to contain parts made in the United States.

Aerospace Industries Association and other defense-related organizations voiced opposition to such domestic content requirements, citing negative impacts on foreign relations and rising costs for American made defense products. On the other hand, domestic content requirement proponents point to national security risks associated with sole-source suppliers of critical parts across acquisition programs as evidence that domestic content mitigates the U.S. military’s exposure at home and abroad.

SUSTAINABLE AVIATION FUEL AND THE NEW GREEN ERA

On December 15, 2023, the United States Department of Treasury (“Treasury”), in coordination with the Departments of Transportation, Agriculture, Energy, and the Environmental Protection Agency, issued [new guidance](#) on sustainable aviation fuel (“SAF”) and corresponding tax credits. To qualify for a \$1.25 tax credit per gallon under the new guidance, eligible SAFs must achieve an emissions reduction of at least 50 percent when compared to petroleum-based fuel. While Treasury officials primarily drafted the guidance to implement provisions of the Inflation Reduction Act, it also furthers the Biden administration’s effort to encourage emissions reduction strategies in carbon-intensive sectors. Congressional leadership and department officials also plan to announce updates to the Department of Energy’s Greenhouse Gases, Regulated Emissions, and Energy Use in Transportation model in the coming months.

CONGRESS PUSHES TO TRANSITION TO FLUORINE-FREE FOAM AT U.S. AIRPORTS

As lawmakers work to pass the FAA Reauthorization Act, the issue of transitioning to fluorine-free firefighting foam across U.S. airports is gaining steam. Sections 626 and 627 of the proposed FAA Reauthorization Act establish a grant program to support U.S. airports in the move to fluorine-free foams and mandate progress reports every six months on a national transition plan. The provisions come at a time when airports and military bases alike are facing the environmental and health dangers of perfluoroalkyl and polyfluoroalkyl substances (PFAS) releases. To mitigate the risks from PFAS releases at U.S. airports, several House lawmakers are supporting the inclusions of Sections 626 and 627 when the legislative body returns to session in the new year.

More broadly, the Senate recently passed the final version of the FAA Reauthorization Act on December 19, 2023. To ensure safe and efficient operation of America's aviation system, House lawmakers are discussing various provisions of the legislation including those related to PFAS and firefighting foam.

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](mailto:Esahr@eckertseamans.com); [Drew Derco](mailto:Dderco@eckertseamans.com) at 202.659.6665 or [dderco@eckertseamans.com](mailto:Dderco@eckertseamans.com); [Jay Julien](mailto:Jjulien@eckertseamans.com) at 202.659.6648 or [jjulien@eckertseamans.com](mailto:Jjulien@eckertseamans.com), or any other attorney at Eckert Seamans with whom you have been working.