

Aviation Regulatory Update

By Evelyn Sahr, Drew Derco, Jay Julien, and Tyler Myers

Eckert Seamans has prepared the information in this update for educational purposes only. It does not constitute legal advice nor substitute for legal advice. Neither your receipt of information from this website nor your use of this website to contact Eckert Seamans or one of its attorneys creates an attorney-client relationship, as the firm may, for example, already represent another party involved in your matter. Accordingly, you should not provide confidential information to Eckert Seamans. Persons seeking legal advice should consult a licensed professional attorney in their state. The firm's Terms of Use, Legal Notice, and Disclaimer detailed herein are expressly incorporated into the Aviation Regulatory Update.

DOT EXERCISES ENFORCEMENT DISCRETION PENDING REVIEW

On February 20, 2025, the U.S. Department of Transportation ("DOT" or the "Department") announced that it will temporarily pause enforcement action against those failing to comply with the [Ensuring Safe Accommodations for Air Travelers With Disabilities Using Wheelchairs](#) requirements as well as the [Periodic Revisions to Denied Boarding Compensation and Domestic Baggage Liability Limits](#). For reference, the wheelchair requirements and new liability limits for denied boarding compensation apply to both U.S. and foreign air carriers, while the liability limit for mishandled baggage in domestic air transportation applies only to U.S. air carriers. As our readers may recall, President Trump issued a [regulatory freeze](#) on January 20, 2025, across all executive departments and federal agencies in order to evaluate whether recent regulatory activity aligned with his priorities. DOT will therefore exercise its enforcement discretion and not enforce compliance with these two rules until **March 20, 2025**. Doing so provides an opportunity for recently confirmed DOT officials to review finalized language and evaluate the future of these regulations.

IATA SEEKS TERMINATION OF BIDEN-ERA CONSUMER PROTECTION RULES

On February 11, 2025, the Department released a letter sent to Secretary Duffy by the International Air Transport Association ("IATA") itemizing industry concerns about purported regulatory overreach during the former Obama and Biden administrations. The IATA letter contends that the Department, under President Obama and most recently under President Biden, strayed considerably from free market principles underpinning the Airline Deregulation Act of 1978 ("ADA"). For instance, IATA claims the two administrations exceeded DOT's narrow authority under the ADA and pointlessly imposed exorbitant costs on the industry without understanding how airlines operate. Citing deregulation efforts undertaken during the first Trump administration, IATA requests immediate action to either terminate or modify rulemaking related to passenger rights and consumer protections. Deregulatory actions requested by IATA include:

- Terminate the "[Airline Passenger Rights](#)" Advance Notice of Proposed Rulemaking
- Terminate the "[Enhancing Transparency of Airline Ancillary Service Fees](#)" Rule
- Terminate the "[Competition in Air Transportation](#)" Request for Information

- Modify the “[Refunds and Other Consumer Protections I](#)” Rule
- Modify the “[Family Seating in Air Transportation](#)” Notice of Proposed Rulemaking
- Review Disability Rights Regulations such as the “[Ensuring Safe Accommodations for Air Travelers with Disabilities Using Wheelchairs](#)” Rule

In addition to the above, IATA also provided commentary on timely aviation-related issues impacting its 350 members in more than 120 countries. A few issues, among others, include modernizing U.S. air traffic control equipment/facilities, supporting the Worldwide Airport Slot Guidelines adoption, and raising the mandatory retirement age for pilots. IATA also took issue with how broadly the prior administrations interpreted the “unfair and deceptive practices” standard and urged DOT to adopt a narrower reading as originally intended.

No action has been taken by the Department to date on these rules, or on IATA’s requests, but we will continue to closely monitor the situation and keep you updated on any new developments.

ELON MUSK AND DOGE INSPECT EXISTING FEDERAL REGULATIONS

On February 19, 2025, President Trump [issued](#) yet another executive order (the “EO”) aimed at shrinking the size of government and preventing regulatory overreach by federal bureaucrats. The EO directs all federal agencies, in coordination with the Department of Government Efficiency (“DOGE”), to review federal regulations within their jurisdictions and identify those which violate President Trump’s priorities, among other factors. Federal agencies are instructed to submit their list of regulations warranting modification or termination to the Office of Management and Budget (“OMB”) within 60 days. It is important to note that the EO broadly defines “regulation” to include traditional notice-and-comment rulemaking but also agency guidance documents. While media coverage relating to DOGE continues to focus on cutting the federal workforce and eliminating superfluous government spending, the EO demonstrates that Elon Musk and his team are working directly with agency officials to not only put guardrails on future regulatory activity but also to dismantle existing regulatory frameworks.

PRESIDENT TRUMP SEEKS TO ELIMINATE DEI IN THE SKIES

Following the fatal accident at Reagan National Airport, President Trump emphasized his [Keeping Americans Safe in Aviation](#) order suspending diversity, equity and inclusion (“DEI”) initiatives, including those pertaining to recruitment and hiring, within DOT and the Federal Aviation Administration (“FAA”). The order directs Secretary Duffy and the acting FAA Administrator to review the performance of all individuals in critical safety positions and ensure any incapable individuals are immediately replaced. As background, President Trump issued several DEI-related orders during the first week of his administration to broadly eliminate DEI initiatives across the federal government. While the orders do not currently apply to private sector employers, please note that these orders broadly discourage DEI initiatives in the private sector, and federal agencies have been directed to identify the “most egregious and discriminatory DEI practitioners” in the private sector. Moving forward, federal agencies are advised to recommend private sector organizations for potential civil investigations and assess whether private employers with DEI initiatives are using “illegal preferences and discrimination” when hiring/promoting employees. Opponents fear that the move could further hinder recruiting, aviation safety, and retention across the industry at a time when the FAA faces air traffic controller shortages nationwide.

On January 30, 2025, President Trump also issued his [Immediate Assessment of Aviation Safety](#) order to further rescind DEI initiatives which were implemented during the former Obama and Biden administrations. While Secretary Duffy and the acting FAA Administrator evaluate employee performance in critical safety positions, staffing shortages at air traffic control facilities continue to delay air travel for millions of passengers. DOT and the FAA will need to work

quickly to implement President Trump's merit-based recruitment, hiring, and promotion directive to better equip air traffic control facilities throughout the United States.

FIVE MAJOR U.S. AIRLINES SUE DOT OVER NEW WHEELCHAIR RULE

On February 18, 2025, American, Delta, JetBlue, Southwest, and United in coordination with Airlines for America ("A4A") filed a [lawsuit](#) against DOT arguing the [Ensuring Safe Accommodations for Air Travelers With Disabilities Using Wheelchairs](#) rule (effective January 16, 2025), exceeded DOT's statutory authority and thus violated the Administrative Procedure Act ("APA"). The lawsuit was filed in the U.S. Court of Appeals for the Fifth Circuit ("Fifth Circuit") which blocked another Biden-era rule last month (i.e., [Enhancing Transparency of Airline Ancillary Service Fees](#)). According to A4A, the Fifth Circuit should "hold unlawful and set aside" the rulemaking, in whole or in part, to remedy the regulatory overreach which occurred when the former administration finalized the rule in December 2024. Specifically, A4A and the plaintiffs claim certain provisions are arbitrary and capricious under the APA. A4A and the airline plaintiffs are expected to raise issue with how the rulemaking defines discrimination. Disability advocates on the other hand contend that rule holds airlines accountable for wheelchair damages by making mishandling wheelchairs a *per se* violation of the Air Carrier Access Act. As the lawsuit against DOT proceeds, we will continue to monitor for developments to the extent that either the Fifth Circuit or new DOT leadership concede to industry resistance.

OFF AGAIN, ON AGAIN: THE CORPORATE TRANSPARENCY ACT FUSS

Back-and-forth relating to the constitutionality of the Corporate Transparency Act ("CTA") continues after a federal judge in Texas granted the federal government's motion on February 18, 2025 to stay his nationwide injunction pending appeal. In short, the CTA and its reporting obligations are once again enforceable against reporting companies and in a further development on February 19, 2025, the Financial Crimes Enforcement Network ("FinCEN") responded to the court decision by [extending the reporting deadline](#) for most reporting companies until **March 21, 2025**. However, FinCEN will determine over the next few weeks whether further deadline modifications are warranted to reduce regulatory burdens on small, low risk businesses. Around the same time as the decision in Texas, another federal judge in Maine ruled that the CTA was constitutionally justified. For those keeping score at home, there are now appeals pending in the Fourth, Fifth, Ninth, and Eleventh circuits with two of those four district court decisions concluding that the CTA was likely constitutional. Many legal observers forecast a circuit split on the constitutional issue. If correct, nine justices on the Supreme Court of the United States will likely decide the outcome unless U.S. lawmakers repeal the statute or extend the compliance deadline prior to judicial adjudication.

DOJ CLAIMS AEROSPACE COMPANY VIOLATED RUSSIAN SANCTIONS

On February 13, 2025, the U.S. Department of Justice ("DOJ") [indicted](#) Flighttime Enterprises Inc. ("Flighttime"), an Ohio-based subsidiary of a Russian aircraft parts supplier, along with three of its current and former employees, for violating Russian export restrictions. As background, the indictment asserts multiple counts of violating and conspiring to violate the Export Control Reform Act ("ECRA"). The ECRA was initially signed into law by President Trump in August 2018 and empowers federal agencies to implement stringent export controls to impede access to the technologies and other items enabling Russia's destabilizing conduct. According to DOJ, following the Russian invasion into Ukraine, Flighttime and its employees intentionally evaded export restrictions imposed on Russia by mislabeling shipments, providing false certifications, and obscuring end users for aircraft parts via intermediary shell companies. One such example involved a Flighttime employee falsely certified in a signed Russia end-user certificate that an auxiliary power unit from an American supplier would be used in West Chester, Ohio yet the part was illegally exported to Russia without the required license. If convicted, the three Flighttime employees could face up to 20 years

in prison. Now more than ever, those in the aviation industry must establish robust export control compliance systems to avoid illicit transactions and safeguard supply chains from inadvertent vulnerabilities.

SMALL AIRCRAFT EXEMPTION FROM AQI FEES EXPIRES APRIL 1, 2025

Air carriers are reminded that the small aircraft exemption from Agricultural Quarantine and Inspection (“AQI”) user fees expires on **April 1, 2025**. For reference, the U.S. Department of Agriculture’s Animal and Plant Health Inspection Service (“APHIS”) published a [final rule](#) in May 2024 which implemented a new user fee structure for the AQI program. Prior to the rulemaking, the commercial aircraft user fee was not applied to the international arrivals of certain commercial aircraft with 64 or fewer seats (i.e., the small aircraft exemption) but the rule removed the exemption. APHIS delayed the effective date for removal until April 1, 2025 to provide sufficient time for operators to come into compliance. Please note the exemption removal only affects international arrivals because domestic flights are not subject to the commercial aircraft fee.

COMMENT PROBES LOGIC FOR LIMITING CHINESE CARRIER FREQUENCY

On January 31, 2025, an anonymous submission was published on the DOT docket dedicated to Chinese carrier frequencies. The comment noted that no action has been taken by the Department in two years to increase frequencies for Chinese carriers and suggested that an April 2024 letter from A4A influenced the Department’s lack of action. The anonymous commenter concedes that the Department may have non-Covid related reasoning for requiring Chinese carriers to file schedules and limit flights, yet the commenter seeks further clarification on the lack of action. A4A was joined by unions representing pilots and flight attendants last year when it wrote former Transportation Secretary Buttigieg requesting limits on the number of Chinese flights operating to the U.S. According to A4A and the labor groups, Chinese carriers have an unfair competitive advantage by continuing to operate in Russian airspace. United and other U.S. carriers contended that all flights serving the U.S., including those operated by Chinese carriers, should be banned from flying over Russian airspace. The comment, while limited in scope, underscores an urgency to revisit prior policy with fresh eyes in the early day of the second Trump administration.