

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 ADJUSTS CIVIL PENALTY AMOUNTS FOR 2025

As calendar year 2024 concluded, the U.S. Department of Transportation ("DOT") [increased](#) civil penalty amounts for 2025. Adjustments to civil penalty amounts are statutorily prescribed and are revised periodically to deter regulatory violations. Please note that revised civil penalty amounts apply prospectively, and only future violations are subject to recently adjusted amounts. DOT's maximum civil penalty amount for violations of most aviation statutes, including 49 U.S.C. § 41712 ("Section 41712") which prohibits among other things carriers from engaging in unfair and deceptive trade practices, was significantly increased from \$41,577 per violation to \$75,000 per violation. This particular statute is cited when an airline violates regulations such as DOT's consumer protection rules, the tarmac delay rule, the new refund rule, etc. Violations can be calculated on a per passenger or per day basis, depending on the nature and extent of the alleged violation. Under the former administration, DOT was extremely aggressive in enforcing compliance by U.S. and foreign air carriers, especially for disability-related violations, refunds, and flight delays, having issued more than \$64,000,000 in civil penalties last year. At this point it is unknown whether these trends will continue during the Trump administration.

U.S. SENATE CONFIRMS NEW TRANSPORTATION SECRETARY

On January 28, 2025, the U.S. Senate [confirmed](#) Sean Duffy, a former congressman from Wisconsin, to lead DOT during President Trump's second term. Secretary Duffy sailed through Senate confirmation unlike other political appointees and specifically mentioned an interest in addressing aviation matters during his tenure. For instance, Secretary Duffy plans to focus on the current air traffic controller shortage while also working to restore trust in Boeing following widely publicized safety concerns. In addition to the air traffic control shortage and aviation safety, Secretary Duffy also intends to tackle aging physical and technological infrastructure nationwide. After resigning from the U.S. House of Representatives in September 2019, Secretary Duffy worked briefly as a lobbyist representing domestic airlines. While his experience in the aviation industry was short-lived as the Covid-19 pandemic grounded air travel in March 2020, Secretary Duffy is expected to work well with airlines and passengers alike.

FIFTH CIRCUIT HALTS BIDEN-ERA ANCILLARY FEES DISCLOSURE RULE

On January 28, 2025, the U.S. Court of Appeals for the Fifth Circuit (“Fifth Circuit”) [blocked](#) the Biden-era [ancillary service fees disclosure rule](#) which was previously stayed on July 29, 2024, pending further judicial review. For reference, the rule required airlines to disclose ancillary fees which were infamously labeled “junk fees” by airline critics. While the Fifth Circuit determined that DOT had authority to issue rulemaking targeting unfair or deceptive fees, the court ruled that regulators failed to comply with procedural requirements pursuant to the Administrative Procedure Act (“APA”) by relying on cost-benefit data from a study that was not available during the notice-and-comment period. In other words, the Fifth Circuit identified procedural errors under the APA since the new data was outside the administrative record and thus airlines did not have an opportunity to submit comments on the data. Accordingly, the Fifth Circuit remanded the rule to DOT to remedy the procedural shortcoming. Since the rulemaking was first issued, the U.S. regulatory regime has shifted from a robust consumer protection approach to a more business-friendly environment. Going forward, this rule and others will face uncertain futures as Secretary Duffy implements the current administration’s agenda.

PRESIDENT TRUMP SLOWS REGULATORY ACTIVITY

On January 20, 2025, President Trump began his second term by issuing a [regulatory freeze](#) across all executive departments and agencies which will allow new leadership an opportunity to assess recent regulatory activity. In addition to slowing rulemaking activity across the federal government and kickstarting President Trump’s deregulatory agenda, the freeze could hinder action undertaken by the Biden administration. Agencies are instructed to “consider postponing . . . the effective date for any rules that have been published in the Federal Register, or any rules that have been issued in any manner but have not taken effect” for a 60-day period after January 20, 2025. Since proposed rules do not have effective dates, agencies can withdraw proposed rulemaking at any time. It is currently unclear which Biden-era DOT regulations the Trump administration will target but many expect the [Airline Passengers Rights](#) and the above-mentioned [Enhancing Transparency of Airline Ancillary Service Fees](#) rulemakings to face uphill battles.

DOT STARTS 2025 LIKE IT ENDED 2024 – SIGNIFICANT ENFORCEMENT ACTIONS AND LAWSUITS

On December 30, 2024, DOT ended the year by issuing consent orders against [Lufthansa](#) and [Swiss](#) for operating flights carrying United’s UA* designator code in airspace that U.S. operators and airmen were prohibited from operating. The Federal Aviation Administration (“FAA”) is authorized to issue flight prohibitions for U.S. civil aviation in airspace other countries manage due to safety risks and other hazards. In October 2020, the FAA amended and extended a flight prohibition relating to Baghdad. Following an investigation, DOT determined that both Lufthansa and Swiss violated conditions of their statements of authorization(s) by operating flights carrying the UA* designator code in prohibited Baghdad airspace. Lufthansa was fined \$220,000 while Swiss was penalized \$200,000.

To start the new year, DOT [fined](#) JetBlue \$2,000,000 on January 3, 2025, for operating chronically delayed flights in 2022 and 2023. The penalty represents the first time that DOT has penalized an airline for chronic delays. DOT defines a “chronically delayed flight” as any domestic flight that is operated at least 10 times a month and arrives more than 30 minutes late (including cancelled flights) more than 50 percent of the time during that month. DOT’s investigation determined that JetBlue held out four chronically delayed flights from June 2022 through November 2023 at least 145 times and thus violated the above-mentioned Section 41712 for unfair and deceptive trade practices. Regulators contend that JetBlue scheduled flights it could not realistically operate and thus provided unreliable flight information to the flying public. In response, JetBlue argued that ongoing air-traffic control problems have contributed to delays beyond its control, but DOT dismissed JetBlue’s explanation declaring that flight schedules should reflect reality.

After JetBlue, DOT turned to Frontier and [fined](#) the ultra-low-cost carrier \$650,000 for holding out three chronically delayed flights between August 2022 and April 2023. After alleging that Frontier held out the flights at least 63 times DOT reasoned that Frontier failed to provide reliable arrival time information and thus harmed passengers, including those who rely purported arrival times when making connecting flights. While the carrier explained that several of the flights at issue were delayed by uncontrollable events, DOT was once again unmoved and found that a violation occurred regardless of the cause.

If it was unclear that chronic delays are DOT's new enforcement focus, the Department's recently filed lawsuit against Southwest makes it crystal clear that this issue is a "hot topic" for regulators. On January 15, 2025, DOT [sued](#) Southwest, alleging the carrier operated chronically delayed flights in 2022 and provided unrealistic scheduling when marketing tickets to passengers. Citing regulations prohibiting flight schedules that do not reflect actual departure and arrival times, the lawsuit claims that Southwest engaged in unfair or deceptive practices and unfair methods of competition in air transportation. If successful, DOT intends to seek "maximum civil penalties" against Southwest to deter purported consumer protection violations. In any event, carriers are advised to take note and monitor flight scheduling to avoid chronically delayed flight claims which could be viewed by DOT as an unfair or deceptive practice.

TURKISH AIRLINES PENALIZED FOR FAILING TO PROVIDE TIMELY REFUNDS

On January 16, 2025, DOT [fined](#) Turkish Airlines \$1,300,000 for failing to provide timely refunds to passengers and for violating the Convention for the Unification of Certain Rules for International Carriage by Air ("Montreal Convention"). Between March 2020 and September 2021, DOT's investigation determined that Turkish Airlines routinely failed to provide refunds to passengers for flights that the carrier cancelled or significantly changed during the Covid-19 pandemic. In some instances, Turkish Airlines took more than 100 days to process refunds which DOT considered extreme. Furthermore, since Turkey and the United States are signatories of the Montreal Convention, DOT noted that Turkish Airlines was governed by the proscribed liability restrictions for mishandled checked baggage. By arbitrarily limiting reimbursements for delayed or lost baggage to an amount far less than required by the Montreal Convention, DOT concluded that Turkish Airlines was unfairly deceptive and adversely affected thousands of passengers.

REVISED LIABILITY LIMITS FOR OVERSALES AND MISHANDLED DOMESTIC BAGGAGE ARE NOW EFFECTIVE

In late 2024, DOT issued a [final rule](#) increasing liability limits for denied boarding (i.e., oversales) compensation that U.S. and foreign air carriers may impose as well as raising the liability limit U.S. carriers may impose for mishandled baggage in domestic air transportation. For reference, the compensation limits for oversales and mishandled domestic baggage are adjusted for inflation every two years. The denied boarding compensation that U.S. and foreign air carriers may impose rose from \$775 and \$1,550 to \$1,075 and \$2,150. Likewise, the liability limit U.S. carriers may impose for mishandled baggage in domestic air travel increased from \$3,800 to \$4,700. Carriers should note that revised amounts became effective January 22, 2025, and thus all flights on or after that date will be subject to the increased dollar amounts.

DOT PROVIDES UPDATE ON AVIATION COMPLAINT, ENFORCEMENT, AND REPORTING SYSTEM

DOT's Office of Aviation Consumer Protection ("OACP") recently provided an update on the Aviation Complaint, Enforcement, and Reporting System ("ACERS"). The system is getting a refresh and complaint handling protocols will change. The first implementation phase focuses exclusively on complaint submission and handling. Please note that airlines will now receive notification emails through ACERS via oacp@dot.gov when passengers submit complaints. For carriers that received 15 or more complaint submissions a month, OACP will forward the submissions via a secure

large file transfer solution (i.e., ShareFile). If a carrier received 14 or fewer complaint submissions a month or if DOT received a physical letter, OACP will assign a generic code (so long as the submissions do not relate to civil rights, which will be coded in the traditional manner) and will forward submissions individually to the carrier.

OACP requests that airlines provide a copy of responses to all air travel service complaints that were referred to the airline by OACP. Please be advised that this differs from prior DOT practice, where the Department did not always request a copy of the carrier's response. While copies of responses to consumer complaints should be provided to OACP within 60 days of receipt, copies of responses to civil rights complaints must be provided within 30 days. Copies of responses should be submitted to OACP via email (acpd-complaints@dot.gov). Carriers must ensure that each complaint forwarded by DOT receives a response with a copy provided to DOT. When implemented, DOT can easily monitor compliance with new procedures and thus carriers are encouraged to incorporate this new requirement into compliant handling processes.

FAA DELAYS COMPLIANCE DATE FOR APPLICANTS WITH ONLY FOREIGN ADDRESSES TO DESIGNATE U.S. AGENT FOR SERVICE

On January 3, 2025, the FAA [extended](#) the compliance deadline for applicants with no physical U.S. address to designate a U.S. agent for service. As our readers may recall from prior updates, in October 2024, the FAA issued a [final rule](#) requiring individuals holding or applying for certain certificates, ratings, or authorizations to designate a U.S. agent for service of FAA documents. While the initial compliance deadline for applicants without a U.S. address to designate a U.S. agent was January 6, 2025, the deadline is now extended until **April 2, 2025**. For individuals with only foreign addresses who currently hold certain certificates, ratings, or authorizations, the compliance date remains July 7, 2025.

TSA REQUIRES STRICTER SECURITY SCREENING FOR CHARTER OPERATORS

The Transportation Security Administration ("TSA") recently [announced](#) changes to its Twelve Five Standard Security Program requiring that public charter operators at private airports implement security screening protocols like those at commercial airports. The Twelve-Five refers to aircraft with a maximum takeoff weight from 12,500 – 100,310 pounds. The change applies to FAA Part 135 certified carriers and comes after SkyWest Charter applied to conduct scheduled passenger operations as a Part 135 carrier using a 30-seat aircraft. Critics called for the application's rejection, arguing that approval would allow the charterer to skirt stricter security standards required of Part 121 carriers. Part 135 charter operator selling individual seats under Part 380 will still be able to operate out of private terminals. Security will not be conducted by TSA screeners, but TSA liquid rules will apply. Business aviation participants expect changes to the Twelve-Five Program to become effective in six months and involve passenger and bag searches and potential biometric screening at small general aviation airports. It is also possible that the changes could require fixed-base operators to create sterile areas where security screening takes place. Separately, the FAA is drafting a new "135 Plus" regulation which would require Part 135 operators of 10-30 seat aircraft to comply with the safety requirements of scheduled operators.

COMMERCE DEPARTMENT CONSIDERS RULEMAKING RELATED TO U.S. DRONE TECHNOLOGY

On January 3, 2025, the U.S. Department of Commerce (the "Commerce Department") [announced](#) an Advance Notice of Proposed Rulemaking ("ANPRM") to secure the U.S. drone technology supply chain and prohibit foreign adversaries from accessing sensitive information. The Commerce Department's Bureau of Industry and Security ("BIS") seeks comments following increased drone encounters and serious concerns from U.S. lawmakers.

The ANPRM solicits public comments on potential rulemaking to protect the information and communication technology and services (“ICTS”) supply chain for unmanned aircraft systems (“UAS”), or drones. Citing national security concerns relating to the influence of foreign adversaries like China and Russia in the commercial drone marketplace, BIS is considering rulemaking aimed at certain transactions involving ICTS that are designed, developed, manufactured, or otherwise controlled by foreign adversaries. The Commerce Department is primarily concerned that the involvement of foreign adversaries could pose risks to U.S. national security and exploit private market participants. BIS is also considering whether to create a process for requesting authorization to engage in otherwise prohibited transactions involving foreign ICTS if the parties can demonstrate adequate mitigation efforts.

As the Commerce Department considers its options, U.S. lawmakers are also pushing to limit the reach of foreign drones in the U.S. marketplace. Legislation was introduced last year which would have banned Chinese DJI products from operating using U.S. communications infrastructure. The Commerce Department will accept comments on the ANPRM until **March 4, 2025**. Since the ANPRM was announced in the final weeks of the Biden administration, President Trump’s administration will be responsible for advancing any potential rulemaking.

DHS WELCOMES ROMANIA INTO VISA WAIVER PROGRAM

On January 10, 2025, Romania became the 43rd member of the Visa Waiver Program (“VWP”) after the U.S. Department of Homeland Security (“DHS”) announced that the country satisfied the stringent security requirements. Following the announcement, U.S. Customs and Border Protection (“CBP”) expects that online applications via the Electronic System for Travel Authorization (“ESTA”) will be updated by March 31, 2025. While U.S. citizens already benefit from visa-free travel to Romania, CBP notes that Romanian citizens will soon apply to travel to the United States for tourism or business purposes for up to 90 days without first obtaining a U.S. visa. During the last administration, Croatia, Israel, Qatar, and Romania were all designated by DHS as participating countries in the VWP. For those interested, ESTA applications may be completed at esta.cbp.dhs.gov or by downloading the ESTA Mobile application through the App Store or the Google Play store.

CBP ANNOUNCES GLOBAL ENTRY PARTNERSHIP WITH AUSTRALIA

On January 17, 2025, CBP [announced](#) a new [Global Entry](#) (“GE”) partnership with Australia, allowing approved Australian citizens to benefit from expedited arrival processing, reducing wait times, and improving customer experience. As one of CBP’s four Trusted Traveler Programs, GE expedites entry into the United States for millions of passengers a year by providing access to TSA PreCheck for eligible members and offering quicker security screening at participating U.S. airports. The GE application process involves thorough vetting by U.S. and Australian authorities as well as an in-person interview before initial enrollment. In addition to Australia, other GE partner countries include Argentina, 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 PROPOSES CHANGES TO FOREIGN AGENTS REGISTRATION ACT

On January 2, 2025, the U.S. Department of Justice (“DOJ”) [published](#) a Notice of Proposed Rulemaking (“NPRM”) seeking to modernize the administration and enforcement of the Foreign Agents Registration Act (“FARA”). Since FARA regulations were last amended in 2007, DOJ published an ANPRM in December 2021 soliciting public comments on 19 questions pertaining to revisions. The recently issued NPRM addresses previously received comments to better understand how DOJ can clarify and modernize existing regulations. For instance, DOJ proposes new exemptions to FARA’s registration requirement pertaining to the commercial exemption, the exemption for persons whose activities do not serve predominantly a foreign interest, and the exemption for persons qualified to practice law.

The NPRM would also, for the first time, define “informational materials” in the regulations as “any material that the person disseminating it believes or has reason to believe will, or which the person intends to in any way, influence any agency or official of the Government of the United States or any section of the public within the United States, with reference to formulating, adopting, or changing the domestic or foreign policies of the United States or with reference to the political or public interests, policies, or relations of a government of a foreign country or a foreign political party.” This definition would include materials distributed in print, online, or by any other method.

OFAC AUTHORIZES CERTAIN SYRIAN TRANSACTIONS THROUGH JULY 7, 2025

On January 6, 2025, the U.S. Department of Treasury’s Office of Foreign Assets Control (“OFAC”) released [Syria General License 24](#), titled “Authorizing Transactions with Governing Institutions in Syria and Certain Transactions Related to Energy and Personal Remittances.” In essence, Syria General License 24 authorizes certain transactions through July 7, 2025, including transactions with governing institutions in Syria following December 8, 2024, as well as transactions that are ordinarily incident and necessary to processing the transfer of noncommercial, personal remittances to Syria, including through the Central Bank of Syria. While OFAC is authorizing certain transactions through July 7, 2025, please note that other transactions are still prohibited as provided by the [Syrian Sanctions Regulations](#). For instance, transactions involving military or intelligence entities in Syria, or any persons acting for or on behalf of such entities, as well as transactions for or on behalf of the Government of the Russian Federation or the Government of Iran remain prohibited. To assist entities with OFAC compliance, [eight new Syria Frequently Asked Questions](#) (“FAQs”) and [one amended Syria FAQ](#) were published along with Syria General License 24.