

## Aviation Regulatory Update

### March 2022 Aviation Regulatory Update

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#### UPDATES ON U.S.-IMPOSED RUSSIAN SANCTIONS IN RESPONSE TO THE CONTINUING CRISIS IN UKRAINE

In recent days, the U.S. government, via the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC"), announced additional full blocking sanctions targeting over 400 Russian elites, Russian State Duma (one of the chambers of the Russian parliament) members, and Russian defense companies in further response to Russia's invasion of and ongoing war in Ukraine. This was done in combination with OFAC's issuance of Russia-related General Licenses 6A, 17A, 20 and 25, all [available here](#), which authorize the following transactions despite the current full blocking sanctions: (1) transactions related to (a) the exportation or reexportation of agricultural commodities, medicine, medical devices, replacement parts and components, or software updates, and (b) the prevention, diagnosis or treatment of COVID-19 (including research or clinical studies), or ongoing clinical trials and other medical research activities that were in effect prior to March 24, 2022; (2) transactions related to certain imports that are ordinarily incident and necessary to the importation into the U.S. of alcoholic beverages, non-industrial diamonds of Russian origin, and fish, seafood and preparations thereof of Russian origin pursuant to written contracts or written agreements entered into prior to March 11, 2022; (3) transactions ordinarily incident and necessary to the official business of third-country diplomatic or consular missions located in Russia; and (4) transactions of news reporting organizations that are U.S. persons and U.S. persons who are regularly employed by a news reporting organization as journalists or as supporting broadcast or technical personnel in the Crimea region of Ukraine, the so-called Donetsk People's Republic (DNR) or Luhansk People's Republic (LNR) regions of Ukraine, or such other regions of Ukraine as may be determined by the U.S. Secretary of the Treasury, in consultation with the U.S. Secretary of State (collectively, the "Covered Regions"), to the extent such transactions are ordinarily incident and necessary to their journalistic activities in the Covered Regions. In addition, President Biden's administration announced further sanctions including a ban on the import of Russian oil and gas, restrictions to forbid U.S. citizens and companies from doing business with the central bank of Russia, and sanctions on seven Russian entities that control media outlets as well as 26 individuals who work at these media outlets in response to Russian disinformation campaigns related to the invasion of Ukraine. Many of these new sanctions were coordinated with the European Union and the G7 and now bring the total number of individuals and entities sanctioned by the U.S. to over 600.

As background, the U.S., in coordination with allies including the U.K., Canada and the European Union, has imposed sanctions against Russia since 2014 in response to the Russian annexation of Crimea; however, the latest rounds of sanctions have been the most significant to date with an aim towards penalizing Russia economically and weakening its power in response to the Russian invasion of Ukraine, which began on February 24, 2022. For example, on the day the invasion began, OFAC imposed its first round of "full blocking" sanctions to target Russia's largest financial institutions with the intention of affecting those entities' ability to raise capital and participate in the global financial system. Specifically, the sanctions targeted nearly 80% of all banking assets in Russia, Russia's Central Bank, Russia's two largest banks, several other major Russian financial institutions, and almost 90 financial institution subsidiaries around the world. The U.S. and allies also moved to remove several Russian banks from the Society for Worldwide Interbank Financial Telecommunication ("SWIFT"), which is a Belgium-based interbank messaging service used to facilitate most financial transactions. According to OFAC, Russia's financial system is heavily dominated by state-owned actors who rely on the U.S. financial system to conduct their business activities both in Russia and internationally, and therefore, the

intended effect of sanctioning these entities was to cut off the Russian financial system and economy from critical financial infrastructure, the U.S. dollar, and participating in the world financial system.

Further, on March 3, 2022, the U.S. Department of the Treasury announced that the U.S. Department of State would impose additional and substantial sanctions on Russia's defense enterprises including sanctioning 22 defense-related firms. These sanctions were meant to target a wide range of Russian defense enterprises, including entities that develop and produce fighter aircraft, infantry fighting vehicles, electronic warfare systems, missiles, and unmanned aerial vehicles for Russia's military. The U.S. Commerce Department also previously restricted exports of high-tech products such as computers, computer chips, and semiconductors to Russia with the goal of restricting its military capabilities. The export restrictions extend to goods produced in other countries using American technology. In addition, the U.S. also imposed sanctions against many Russian oligarchs, elites, and their families, and continues to add individuals to its sanctions list as needed. For example, several Russian politicians, oligarchs, and officials, including President Vladimir Putin, Russian Foreign Minister, Sergei Lavrov, and Dmitry Peskov, Putin's press secretary, have had their foreign-held assets frozen by the U.S. as well as the EU, U.K., Switzerland, Canada, and Japan. Some have even been banned from traveling to and from these countries as well. OFAC's press releases announcing new sanctions against Russian financial institutions and individuals, which includes the full list of companies and Russian politicians, oligarchs, and elites sanctioned can be found [here](#), [here](#) and [here](#). Additionally, OFAC's full updated Specially Designated Nationals list is [available here](#).

## **FAA ISSUES NOTICE OF PROPOSED EXTENSION OF SLOT USAGE RELIEF THROUGH OCTOBER 29, 2022**

On February 25, 2022, the U.S. Federal Aviation Administration ("FAA") finalized its decision to extend the slot usage waiver for Level 2 airports (EWR, LAX, ORD, SFO) and Level 3 airports (DCA, JFK, and LGA) through the upcoming Summer 2022 Season (March 27, 2022-October 29, 2022). The FAA's Notice, titled "[COVID-19 Related Relief Concerning International Operations at Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Newark Liberty International Airport, New York LaGuardia Airport, Ronald Reagan Washington National Airport, and San Francisco International Airport for the Summer 2022 Scheduling Season](#)" renews the terms and conditions contained in its most recent COVID-19 Waiver for the Winter 2021-22 season but limits the waiver to only foreign operations.

Generally, carriers that hold FAA approved time slots at the highest density U.S. airports (Level 3 airports) must utilize their slots at a rate of 80%, or risk losing them the following season (Winter or Summer). Carriers that operate to the second highest density airports (Level 2), which do not require specific FAA approved slots times must submit their schedules to the FAA for approval to prevent overcrowding. Carriers that do not operate according to the approved schedule risk being able to operate a similar schedule the following season.

In recognition of the record low traffic to these high-density airports caused by the COVID-19 pandemic, the FAA has allowed carriers to obtain waivers from the traditional "use or lose" usage requirements. The FAA has continued to renew the Notice since the start of the pandemic in 2020, which establishes the process to request the usage waiver, and is now extending the Notice throughout the Summer 2022 Season. However, the waiver is not available for:

- Domestic operations.
- Slots that were recently allocated by the FAA for Summer 2022 use, and
- Slots that were recently transfer to another carrier for Summer 2022 use.

Permitting carriers to obtain a waiver for the Sumer 2022 season will allow them to maintain their highly coveted slots at high-density airports without being forced to operate empty flights to meet the usage requirements. Moreover, it allows opportunities for other carriers to operate ad hoc operations during the times that were previously reserved for slots but later returned to the FAA. Making the waiver available for the Sumer 2022, will allow for the most efficient use of the high-density airports during this uniquely difficult time for the aviation industry.

**DOT ANNOUNCES PROPOSED RULE TO IMPROVE ACCESSIBILITY OF LAVATORIES ON SINGLE-AISLE AIRCRAFT**

On March 18, 2022, the U.S. Department of Transportation (“DOT”) announced via [press release](#) that it published a Notice of Proposed Rulemaking (“NPRM”) with the intention of improving the accessibility of lavatories for passengers with disabilities traveling on new single-aisle aircraft. The new NPRM is the second part following DOT’s 2020 issuance of an NPRM titled “Accessible Lavatories on Single-Aisle Aircraft: Part 1”, [available here](#), which included a number of accessibility improvements but did not involve expanding the size of onboard lavatories themselves.

Under the proposed rule, airlines would be required to make at least one lavatory accessible on any new single-aisle aircraft with an FAA-certificated maximum seating capacity of 125 or more passenger seats that are: (1) ordered 18 years after the effective date of the final rule; (2) delivered 20 years after the effective date of the final rule; or (3) of a new type certificated design filed with the FAA or a foreign carrier’s aviation safety authority more than one year after the effective date of the final rule. According to the NPRM, such aircraft will be required to have lavatories large enough to permit a passenger with a disability, with the help of an assistant, if necessary, to approach, enter, and maneuver within the aircraft lavatory, use all facilities in the lavatory, and leave the lavatory using the aircraft’s onboard wheelchair. The proposed rule also requires that the lavatory have certain accessible interior features identical to those that DOT proposed in the Part 1 NPRM (applicable to new single-aisle aircraft delivered three years after the effective date of the final rule derived from that NPRM) including accessible door locks, flush handles, call buttons, faucets, and assist handles.

There is currently no requirement that lavatories on single-aisle aircraft be accessible to individuals with disabilities. Members of the public and interested parties can submit comments on the new Part 2 NPRM through May 17, 2022.

**FAA ISSUES FINAL RULE PROVIDING CIVIL PENALTY ADJUSTMENTS FOR 2022**

On March 21, 2022, DOT’s Office of the Secretary and the FAA published a final rule in the Federal Register to give notice of the statutorily-prescribed 2022 adjustment to civil penalty amounts that may be imposed for certain violations of DOT regulations. A summarized list of FAAs adjusted civil penalties for 2022 is as follows:

Office of the Secretary of DOT 2022 Adjustments:

Description	Citation	Existing Penalty	New Penalty(Existing Penalty X 1.06222)
General civil penalty for violations of certain aviation economic regulations and statutes (i.e., general civil penalty imposed for violations committed by larger businesses and entities)	49 U.S.C. 46301(a)(l)	\$35,188	\$37,377
General civil penalty for violations of certain aviation economic regulations and statutes involving an individual or small business concern	49 U.S.C. 46301(a)(l)	\$1,548	\$1,644

Civil penalties for individuals or small businesses for violations of 49 U.S.C. 41719 and rules and orders issued pursuant to that provision	49 U.S.C. 46301(a)(5)(C)	\$7,037	\$7,475
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*FAA 2022 Adjustments:*

Description	Citation	Existing Penalty	New Penalty (Existing Penalty x1.06222)
Violation of hazardous materials transportation law	49 U.S.C. 5123(a)(l)	\$84,425	\$89,678
Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction	49 U.S.C. 5123(a)(2)	\$196,992	\$209,249
Physical or sexual assault or threat to physically or sexually assault crewmember or other individual on an aircraft, or action that poses an imminent threat to the safety of the aircraft or individuals on board	49 U.S.C. 46318	\$36,948	\$39,247

**U.S. DISTRICT COURT DISMISSES CLASS ACTION SUIT AGAINST AMERICAN CITING ADA PREEMPTION**

On March 22, 2022, the U.S. District Court for the Northern District of Illinois issued a decision in a class action suit against American Airlines (“American”) in which American was accused of allegedly obtaining customer service hotline callers’ voiceprints without their written consent in violation of the Illinois Biometric Information Privacy Act (“BIPA”).

As background, in July 2011, American began using “Interactive Voice Response” software for its customer support hotline to better respond to customers and reduce call agent volumes. The plaintiffs who sued American citing violations of the BIPA each called American’s customer service hotline in 2019 and 2020, respectively. According to their complaint, the individuals later became aware that American had allegedly obtained their voiceprints without written consent and then disclosed their information to a software vendor for cloud storage purposes without their consent. As a result, the plaintiffs filed suit asserting three claims under the Illinois BIPA, which was enacted to protect individuals’ privacy interests

in their biometric information. The case was removed to federal court, where two of the claims were allowed to proceed. Once removed to federal court, American made a motion to dismiss the plaintiffs' remaining two claims arguing that both claims were preempted by the Airline Deregulation Act ("ADA") as the plaintiffs' BIPA claims concerning the use of interactive voice response software in its customer service hotline related to the services American provides its customers. The Court granted American's motion to dismiss as it found that no evidence was presented to dispute the idea that a customer service hotline would be considered a service under the ADA and where the state-law claims directly impacted American's interactions with its customers and directly regulated its provision of services, it inherently interfered with the ADA's purpose.

### **U.S. COURT OF APPEALS RULES IN FAVOR OF SOUTHWEST AIRLINES CITING ADA PREEMPTION OF CLAIMS**

On March 11, 2022, the U.S. Court of Appeal for the Second District (the "Court") issued a decision affirming the lower court in a case brought by SwiftAir, LLC ("SwiftAir") against Southwest Airlines ("Southwest") alleging breach of contract, fraud, misappropriation of trade secrets, and various other causes of action.

Litigation was preceded by a 2011 agreement between SwiftAir and Southwest through which SwiftAir was to develop a software platform to offer certain inflight deals to Southwest passengers in exchange for Southwest's testing of the software to determine whether to license it. The trial court who heard the case initially granted a motion made by Southwest for summary adjudication on SwiftAir's non-contract causes of action based on the ground that they were preempted by the federal ADA while a jury later determined that Southwest was not liable for breach of contract since

On appeal, the Court affirmed the lower court's decision finding that SwiftAir's non-contract claims were preempted by the ADA. Specifically, the Court found that because SwiftAir's non-contract claims expressly referred to Southwest's services, the ADA preempted SwiftAir's claims because the ADA preempts causes of action if they relate to an airline's prices, routes, or services either by expressly referring to them or by having a significant economic effect upon them.

### **U.S. DISTRICT COURT DENIES PLAINTIFFS' LATEST MOTIONS IN CASE AGAINST FRONTIER AIRLINES REGARDING PANDEMIC RELATED REFUNDS**

On March 1, 2022, the United States District Court for the District of Colorado (the "Court") issued a decision in the matter of *in re Frontier Airlines Litigation* denying the plaintiff-passengers' motion to reopen the case against Frontier Airlines,

In 2021, several passengers who booked tickets with Frontier filed suit after their flights were cancelled due to the COVID-19 pandemic. The passengers alleged that Frontier had not fulfilled its obligations to provide refunds for the cancelled flights as it merely provided travel vouchers for future travel that expired 90 days after issuance and were therefore unusable during the pandemic due to travel restrictions, and that in some instances, Frontier had attempted to dissuade passengers from obtaining refunds. The passengers also alleged that in some cases Frontier encouraged passengers to preemptively cancel their own flights in exchange for future travel credit and an additional voucher, but Frontier failed to disclose that if the passengers had simply waited for Frontier to cancel the flights, the passengers would have been entitled to a full monetary refund. Some passengers also alleged that after they preemptively cancelled their Frontier flights, Frontier did not provide them with any refunds, travel credits, or other means of compensation. In initial proceedings, the Court determined that Frontier's Contract of Carriage (the "Contract") did not require that monetary refunds be provided to passengers who cancel their own flights prior to departure, and therefore, the Court found no breach on the part of Frontier for not providing refunds to passengers who had cancelled their own flights. The Court also reasoned that no "prevention or hinderance" was evident in Frontier's actions of allegedly emailing passengers to dissuade them from obtaining refunds because the passengers had failed to explain what term of the Contract, they were impeded from performing in their Complaint. Accordingly, the Court initially dismissed the passengers' breach of contract claims with prejudice, a decision which the passengers sought to have the Court reconsider. The Court again dismissed the passengers' motions as it found that (1) the new allegations alleged against Frontier were available to the passengers when they filed their earlier complaint in 2021 and the passengers provided no reason as to why the allegations were left

out of the complaint initially, (2) there was no error in the Court's previous order dismissing the passengers' claims with prejudice, and (3) the passengers would not suffer manifest injustice as alleged if the case was not reopened.

### **FAA ISSUES \$175,500 PENALTY AGAINST AIRTRONICS, INC., FOR UNAPPROVED MAINTENANCE OPERATIONS**

On Wednesday, March 2, 2022, the FAA issued a [press release](#) announcing that it proposed a \$175,500 civil penalty against Airtronics, Inc., a Colorado company, for allegedly conducting unapproved maintenance operations. Specifically, FAA alleged that Airtronics had performed maintenance operations on roughly 20 aircraft between August 15, 2019, and November 20, 2020, at a facility that was not approved under the company's FAA-issued operations specifications. FAA also alleged that Airtronics continued to perform the unauthorized maintenance operations at the same unapproved facility despite receiving numerous warnings from the FAA that its operations may be in violation of Federal Aviation regulations. Airtronics has 30 days to respond following receipt of the FAA's enforcement letter.