Aviation Regulatory Update

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

PRELIMINARY NTSB REPORT URGES IMMEDIATE ACTION FOLLOWING FATAL DCA ACCIDENT

On March 11, 2025, the National Transportation Safety Board ("NTSB") issued a preliminary report following the fatal midair collision at Ronald Reagan Washington National Airport ("DCA"). While NTSB Chair Jennifer Homendy noted that the information provided was preliminary and subject to change, the report raised grave concerns about future midair collisions at DCA unless regulators take immediate action. For reference, between October 2021 and December 2024, NTSB determined that there were more than 15,000 near misses between commercial airplanes and helicopters at or around DCA. Like the fatal incident at issue, the preliminary report found that most close calls occurred at night with many involving helicopters flying above the restricted altitude. To mitigate the likelihood of future midair collisions at DCA, NTSB urgently recommended that the Federal Aviation Administration ("FAA") permanently prohibit helicopter operations near the airport and designate an alternative helicopter route that can be safely used to facilitate travel.

Following NTSB's urgent recommendations, the FAA acted on March 14, 2025, to permanently restrict non-essential helicopter operations around DCA and eliminate helicopter and fixed-wing mixed traffic. The FAA also permanently closed the helicopter route at issue between Hains Point and the Wilson Bridge with only a narrow exception for vital missions (e.g., lifesaving medical, priority law enforcement, or Presidential transport). Moving forward, the FAA plans to assess safety risks at other airports with high volumes of mixed traffic, including but not limited to Boston, New York, the Baltimore-Washington area, Detroit, Chicago, Dallas, Houston, and Los Angeles. Charted helicopter routes at and around airports in those cities will likely be subject to increased scrutiny as the NTSB and the FAA work to reduce non-essential helicopter operations at and around high-density airports to promote safety.

FAA ANNOUNCES SUBMISSION DEADLINE FOR WINTER 2025/2026 SCHEDULES

On March 19, 2025, the FAA announced a submission deadline for Winter 2025/2026 flight schedules at Chicago O'Hare International Airport ("ORD"), John F. Kennedy International Airport ("JFK"), Los Angeles International Airport ("LAX"), Newark Liberty International Airport ("EWR"), and San Francisco International Airport ("SFO"). Carriers serving these capacity-constrained airports should promptly submit schedules for the Winter 2025/2026 season. Those submissions ought to include sufficient details on the name of the marketing or operating carrier, flight number, scheduled time of operation, frequency, aircraft equipment, and effective dates for flights to be operated. As a

reminder, the Winter 2025/2026 season runs from October 26, 2025, to March 28, 2026. Schedules should be submitted no later than **May 15, 2025**.

TREASURY NARROWS CTA SCOPE TO FOREIGN REPORTING COMPANIES

On March 26, 2025, the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") adopted an interim final rule narrowing the Corporate Transparency Act's ("CTA") beneficial ownership information ("BOI") reporting obligations to foreign companies. Backlash from small businesses nationwide prompted FinCEN to revise the requirements such that it will not enforce BOI guidelines or penalties against U.S. citizens or domestic reporting companies. After months of uncertainty, legal challenges, and shifting compliance deadlines, domestic and foreign reporting companies sought relief from the never-ending CTA roller coaster. Unfortunately, the twists and turns are far from over for foreign reporting companies. Unless legal action is taken to suspend or overturn the interim final rule, non-exempt foreign reporting companies must submit initial BOI reports or update previously reported BOI by **April 25, 2025**.

MEASLES OUTBREAK RAISES PUBLIC HEALTH CONCERNS FOR AIRLINES

On March 7, 2025, the Centers for Disease Control and Prevention ("CDC") issued a Health Alert Network ("HAN") Health Advisory to inform potential travelers on prevention and monitoring efforts following recent measles outbreaks across the United States. Our readers may remember prior CDC orders relating to the Ebola virus disease in which airlines were required to conduct contact tracing and passenger funneling to designed U.S. airports for passengers arriving from at risk destinations. Like prior Ebola outbreaks, U.S. public health officials are working with foreign air carriers to mitigate exposure.

According to CDC, if a passenger presents symptoms compatible with measles (e.g., fever, cough, coryza (runny nose), and conjunctivitis (pink eye), rash) while onboard, air carriers should consider the following control measures when managing sick travelers:

- Ask the sick person to wear a face mask. If a face mask is not available or the sick person cannot tolerate a mask, ask the passenger to cover his or her mouth and nose with tissues when coughing or sneezing.
- Minimize contact of passengers and cabin crew with the sick person.
- Treat any body fluids (including sputum or other respiratory secretions) as potentially infectious.
- Separate infants, travelers who may have a weakened immune system, and pregnant passengers without known immunity to measles as far as possible from the sick person.
- Upon arrival, ventilation systems should be kept running and CDC health officials or airport emergency medical services should promptly board the aircraft to rapidly assess the sick person.
- The possibility of transmission to other passengers and crew on board the aircraft should be assessed by public health officials upon arrival.

Please be advised that deaths and illnesses that occur on domestic flights and international flights arriving in the United States must be reported to CDC. Should you have any questions about this public health concern, please let us know. Otherwise, we will monitor the situation closely and provide updates as necessary.

FAA TO STEP UP SMALL AIRCRAFT SCRUTINY AFTER CLOSE-CALL BETWEEN SOUTHWEST 737 AND BUSINESS JET

On March 7, 2025, the FAA announced that it would be taking steps to address safety concerns after a near-miss incident that took place at Chicago Midway International Airport. The FAA is initiating a "safety-risk analysis" related to close encounters between pilots flying visually and pilots flying under the direction of air traffic control. The February 25, 2025 incident occurred when a Southwest Airlines flight was "forced to abort a landing at Chicago Midway and narrowly avoided a collision with a business jet that entered the runway without authorization." This incident is one of many that have occurred over the last two years, highlighting concerns regarding understaffed air traffic control operations and the safety protocols in place for U.S. aviation. The FAA reminds pilots to "check notices for situations they can encounter during flight, be familiar with their destination airport, avoid complacency by paying attention to pre-flight checklists and pay close attention to onboard collision warnings."

APHIS ONCE AGAIN DELAYS REMOVAL OF SMALL AIRCRAFT EXEMPTION UNTIL JUNE 2, 2025

On March 21, 2025, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS") further postponed the removal of the small aircraft exemption for 60 days, from April 1, 2025, to **June 2, 2025**. The small aircraft exemption from Agricultural Quarantine and Inspection ("AQI") user fees was set to expire on April 1, 2025, yet APHIS further delayed implementing the removal in accordance with President Trump's regulatory freeze issued January 20, 2025. In addition to deferring the effective date, APHIS issued a Request for Information ("RFI") regarding the risk posed by small commercial passenger aircraft in introducing invasive pests and animal diseases into the United States. The RFI seeks factual data to assess whether commercial passenger aircraft with 64 or fewer seats warrant reduced or waived AQI user fees, which cover inspection expenses of aircraft exteriors, cargo, and international mail.

Small aircraft operators contend that their aircraft pose minimal risk due to the absence of cargo holds and should therefore be subject to lower AQI fees. In light of these concerns, APHIS invites stakeholders to submit empirical evidence supporting an alternative fee structure before APHIS removes the small aircraft exemption on **June 2, 2025**. If interested, APHIS requests information about whether:

- Small commercial passenger aircraft predominately operate (and seldom depart from) a distinct geographical or environmental area;
- Aircraft departures and arrivals are often more frequent than those of larger commercial aircraft;
- There is information that indicates that these small commercial passenger aircraft take the same or substantially similar routes per flight;
- There is information that indicates that these small commercial passenger aircraft carry the same or substantially similar cargo per shipment and that the cargo carried does not present a significant sanitary or phytosanitary risk;
- There are any other considerations that could help us differentiate aircraft into categories based on sanitary and phytosanitary risk; and
- There are other ways that the fee could be structured differently, in a manner commensurate with the services being provided, and evidence to support any alternate fee structures.

For those who plan to comment on whether APHIS should modify the AQI fee structure for small commercial passenger aircraft, you can submit comments via www.regulations.gov (Docket No. APHIS-2022-0023) by **April 21, 2025**.

FAA PROPOSES PENALTY FOR PURPORTED DRUG AND ALCOHOL TESTING VIOLATION

On March 20, 2025, the FAA proposed a $65,000 civil penalty against Maine Instrument Flight ("Maine") for allegedly violating the drug and alcohol testing regulations. Specifically, the FAA contends that four Maine pilots were not subject to drug and alcohol testing on revenue generating flights conducted between February and September 2023. Maine, one of the oldest civilian flight schools in the United States, will discuss the facts alleged at an upcoming meeting with FAA officials. In the meantime, the proposed civil penalty should serve as a warning that the FAA takes drug and alcohol testing seriously. The investigation also presents an opportunity to remind industry stakeholders that the FAA recently issued a final rule requiring certificated Part 145 repair stations located outside the U.S. to implement a drug and alcohol testing program. The requirement applies to employees who perform safety-sensitive maintenance functions on Part 121 aircraft and the rule also directs repair stations located outside the U.S. to comply with the FAA's Drug and Alcohol Testing Program as well as DOT's Procedures for Transportation Workplace Drug Testing Programs. If no waivers or exemptions are requested, Part 145 repair stations located outside of the U.S. must comply by **December 20, 2027**.

SECOND CIRCUIT AFFIRMS PRIORITY PAYMENT OF BROKER FEES INCLUDED IN AIRCRAFT LEASES

The U.S. Court of Appeals for the Second Circuit (the "Second Circuit") recently affirmed that an airline who filed for bankruptcy is responsible for commission due under an aircraft lease unless and until the lease is rejected within the statutory grace period. On May 10, 2020, the Latin American airline, Avianca, filed for Chapter 11 bankruptcy. Prior to this petition, Avianca had entered into twenty (20) aircraft leases brokered by two broker partner companies. Importantly, these leases included "scheduled additional rental payments." After filing for bankruptcy, Avianca modified its agreements and ceased making the additional rental payments, causing the broker partner companies to initiate litigation. The bankruptcy court sided with the broker partner companies, holding that Avianca had missed its opportunity to reject the leases within the 60-day grace period which was upheld by the district court. Upon review, the Second Circuit agreed with the previous decisions and clarified that "debtors cannot avoid post-petition, pre-rejection lease payments simply because the lease and related obligations were executed pre-petition." Any airline involved in a bankruptcy proceeding must thoroughly understand their lease requirements and properly identify obligations to be rejected early in the bankruptcy process to avoid lease payment obligations.

AMERICAN SEEKS SCOTUS REVIEW TO RELITIGATE NORTHEAST ALLIANCE

On March 3, 2025, American Airlines ("AA") petitioned the Supreme Court of the United States ("SCOTUS") to reverse a United States Court of Appeals for the First Circuit ("First Circuit") ruling which invalidated the now abandoned Northeast Alliance ("NEA") formed between AA and JetBlue. According to AA, the First Circuit flouted basic antitrust principles and misapplied antitrust law's "rule of reason" analysis. For instance, the airline argues that the First Circuit ignored established precedent that mere collaboration between joint venture participants is not itself enough to render an agreement violative of antitrust laws. In contrast to joint ventures that harm consumers by raising prices, reducing output, or decreasing quality, AA asserts that output increased at NEA airports without any increase in price. If not reviewed by the nine justices, AA warns of a perilous circuit split which could chill future pro-consumer airline collaborations merely because antitrust enforcers and courts like the First Circuit have weaponized the Sherman Act to invalidate agreements under the guise of consumer protection. The airline industry will surely watch to see whether

SCOTUS takes the case, especially as leadership changes at the U.S. Department of Justice forecast business-friendly views among regulators.

CALIFORNIA PREVAILS IN LANDMARK PRIVACY ENFORCEMENT ACTION

On March 12, 2025, American Honda Motor Co. ("Honda") reached a settlement with the California Privacy Protection Agency ("CPPA") following claims that Honda, among other alleged conduct, required consumers to provide excessive personal information when verifying their identity. The CCPA allows consumers to opt out of transactions or sharing of their personal data without undergoing an identity verification process, yet Honda's system allegedly obstructed consumers attempting to exercise this right. Moreover, the CCPA contended that the process to opt-out of sharing through Honda's cookie management tool required more steps than to opt back in. In any event, Honda agreed to pay $632,500 to settle the enforcement action. Aside from the financial penalty, the settlement also requires Honda to implement robust compliance measures and make specific technical improvements to its privacy systems. As regulators, especially those at the state level, undertake enforcement actions to uphold privacy laws, companies handling consumer data must ensure that consumers can exercise their privacy rights without unnecessary hurdles. Air carriers must pay particular attention to privacy compliance given the fact that most operate across a patchwork of privacy regimes at the state, federal, and international levels.

ECKERT SEAMANS ATTORNEYS AT LAW

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 at 202.659.6622 or esahr@eckertseamans.com; Drew Derco at 202.659.6665 or dderco@eckertseamans.com; Patrick Bornstein at 407.625.4050 or pbornstein@eckertseamans.com, Jay Julien at 202.659.6648 or jjulien@eckertseamans.com; or Tyler Myers at 202.659.6642 or trmyers@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.