

Aviation Regulatory Update

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UPDATED TARMAC DELAY CONTINGENCY PLANS FOR U.S. AIR CARRIERS DUE DECEMBER 13, 2024

On November 22, 2024, the U.S. Department of Transportation's ("DOT" or the "Department") Office of Aviation Consumer Protection ("OACP") published a notice reminding U.S. air carriers about their statutory obligation to submit updated tarmac delay contingency plans ("Contingency Plan for Lengthy Tarmac Delays"). Every three years, U.S. air carriers operating scheduled passenger service or public charter service using aircraft with 30 or more seats must submit updated plans to DOT for review and approval. This statutory obligation only applies to U.S. air carriers and not to foreign air carriers. The submission and review process began on November 26, 2024, and the Department's OACP will have 60 days from receipt of a carrier's updated plan to either approve the plan or require modifications. If DOT fails to either approve a plan or require modifications within the 60-day timeframe, the carrier's updated plan will be deemed approved. U.S. air carriers are required to submit updated contingency plans to the OACP via email (TarmacDelayEmailAccount@dot.gov) by **December 13, 2024**.

DOT ANNUAL REPORT OF DISABILITY-RELATED COMPLAINTS IN 2024

The Department requires carriers to submit an annual report summarizing all disability-related complaints received by the airline during the prior calendar year. The report is to be submitted to DOT's OACP on or before the last Monday in January. This year's report, covering calendar year 2024, is due no later than **January 27, 2025**. If a carrier did not receive any written disability-related complaints in calendar year 2024, DOT still requires the carrier to submit a zero-report noting that no complaints were received. The Department's OACP has traditionally undertaken enforcement actions and subsequently penalized carriers that have failed to comply with the reporting requirements. For instance, the Department's OACP fined Etihad Airways \$200,000 for failing to accurately report the number of disability-related complaints it received over several years ([Consent Order 2022-11-7](#)). Carriers are advised to implement protocols that properly categorize passenger complaints as being disability-related complaints when applicable. Please contact us if you have any questions on the submission process or require assistance in making your annual report.

CTA FILING DEADLINE APPROACHES

To combat money laundering and other illicit activities, the Corporate Transparency Act (“CTA”) imposes reporting requirements on domestic and foreign companies unless an exemption applies. Nonexempt companies must file their beneficial ownership information (“BOI”) report online with the Financial Crimes Enforcement Network (“FinCEN”) by **January 1, 2025**. In addition to the initial filing deadline, there is a 30-day deadline for reporting any BOI changes to previously filed information and for correcting errors in previous reports. Failure to comply is punishable by a civil penalty of up to \$500 per day, and criminal penalties, including imprisonment for up to two years and a fine of up to \$10,000. If you have not yet filed your initial BOI report, and need any assistance, please contact us.

FAA EASES HAITI FLIGHT RESTRICTIONS

On November 21, 2024, the Federal Aviation Administration (“FAA”) eased flight restrictions on U.S. airlines operating to Haiti by allowing flights over the northern parts of the country. This comes shortly after the FAA previously [barred](#) U.S. airlines from operating flights to Haiti for at least 30 days after commercial aircraft operated by several U.S. air carriers were struck by gunfire. The revised ban on flights to Haiti permits U.S. air carriers to fly to six airports in the northern region: Cap-Haïtien International Airport (CAP), Port-de-Paix Airport (PAX), Pignon Airport (PGN), Jérémie Airport (JEE), Antoine-Simon Airport (CYA) and Jacmel Airport (JAK). As for flights to Haiti’s capital, the FAA plans to keep the ban in place until at least December 12, 2024. American, JetBlue, and Spirit aircraft all came under gunfire on November 11, 2024, while flying over Port-au-Prince due to increased gang violence. The U.S. Department of State currently considers Haiti to be in a state of emergency and advises against travel to the country, especially Port-au-Prince given that the capital is a focal point for armed activity.

USDA ISSUES IMPORT ALERTS RELATING TO NEW WORLD SCREWWORM

On November 1, 2024, the U.S. Department of Agriculture’s (“USDA”) Animal and Plant Health Inspection Service (“APHIS”) issued an [import notice](#) restricting the importation of animal commodities from Guatemala due to New World screwworm (“NWS”) concerns. Screwworms, also known as blowflies, are the larvae of a parasitic fly which burrows into the flesh of warm-blooded animals. The larvae can kill livestock and wildlife and can also infest humans. While APHIS prohibited the importation of live ruminants, swine, and their germplasm from Guatemala, it will permit the importation of dogs and horses from Guatemala if the animals satisfy certain import requirements. If transporting dogs imported from a country listed on APHIS’ list of regions affected by screwworms, a carrier must confirm that all dogs traveling from the affected region to the U.S. are accompanied by a certificate signed by a full-time veterinary official stating that the dog has been inspected for screwworm within the past 5 days. The certificate must state that the dog is free from screwworm or if the dog was infested with screwworm, that it was held in quarantine and treated until free from screwworm.

APHIS issued another [alert](#) on November 25, 2024, given that NWS is endemic in Cuba, Haiti, and the Dominican Republic with cases spreading to Costa Rica, Nicaragua, Honduras, Guatemala, and most recently Mexico. While NWS was eradicated in the United States in 1966, USDA wants to prevent any such re-introduction, especially after Mexico’s Chief Veterinary Officer recently confirmed that NWS was found in a cow in southern Mexico. Until Mexican veterinary authorities determine the size and scope of the infestation, APHIS announced on November 22, 2024, that it will [restrict](#) the importation of animal commodities originating from or transiting Mexico effective immediately. When transporting animal species from regions affected by NWS, carriers should check with the Centers for Disease Control and Prevention, U.S. Fish and Wildlife Services,

and/or APHIS to comply with specific import requirements when applicable. Carriers can find a complete list of regions APHIS recognizes as affected by NWS on the [USDA APHIS Animal Health Status of Regions](#) website.

USDA RESTRICTS IMPORTS FROM CANADA DUE TO BIRD FLU CONCERNS

On November 26, 2024, the USDA's APHIS [issued](#) an import alter restricting the importation of certain avian commodities due to highly pathogenic avian influenza. Also known as bird flu, avian influenza is a highly contagious viral disease that primarily infects birds but can also infect humans. Citing recent cases of highly pathogenic avian influenza among domestic birds in Canada, APHIS is prohibiting the importation of poultry, commercial birds, ratites, avian hatching eggs, unprocessed avian products and byproducts, and certain fresh poultry products originating from or transiting certain Canadian zones (i.e., British Columbia, Saskatchewan, and Alberta). For pet birds and zoo birds entering the United States by air, USDA requires an APHIS-issued import permit and further mandates that pet birds and zoo birds traveling from a restricted zone must be flown directly to John F. Kennedy International Airport or Miami International Airport to undergo a 30-day quarantine.

CBP ADJUSTED CUSTOMS USER FEES FOR INFLATION

U.S. Customs and Border Protection ("CBP") released a [general notice](#) earlier this year announcing that it was adjusting the Customs Inspection User Fee ("CUF") for inflation. The CUF rate is now **\$7.20** per passenger and this change went into effective on October 1, 2024. Given that CUFs are reported quarterly, carriers are reminded that the new \$7.20 rate applies to tickets for which fees were collected in October, November, and December of this year. A carrier's first quarterly report reflecting the new rate is due January 31, 2025. There were no corresponding changes to the Immigration Inspection User Fee.

DHS AND DOL EXPECT TO SUPPLEMENT H-2B VISA CAP FOR FY 2025

On November 15, 2024, the U.S. Department of Homeland Security ("DHS"), in coordination with the U.S. Department of Labor, [released](#) plans to make an additional 64,716 H-2B temporary nonagricultural worker visas available for Fiscal Year ("FY") 2025. While 66,000 H-2B visas are available each fiscal year, Congress authorizes DHS to supplement the H-2B visa cap when necessary. The additional H-2B visas represent the maximum permitted and match the supplemental temporary visas provided in FY 2024. Through the H-2B visa program, eligible employers can hire noncitizens to perform labor and/or services in the United States on a temporary basis. Any employment under the H-2B visa program must be temporary in nature, such as a one-time occurrence, seasonal need, or intermittent need. After a total of three years, an individual within the United States on H-2B nonimmigrant status must depart and remain outside the United States for an uninterrupted three-month period. After departing the United States and fulfilling the waiting period, readmission as an H-2B nonimmigrant is permitted.

DHS APPROVES QATAR INTO VISA WAIVER PROGRAM

On November 21, 2024, CBP announced that the Electronic System for Travel Authorization will now accept applications from Qatari citizens wishing to travel to the United States for tourism or business purposes. On September 24, 2024, DHS designated Qatar into the Visa Waiver Program ("VWP"). The VWP permits citizens or nationals of participating countries to travel to the United States for stays of less than 90 days without first obtaining a visa. CBP noted that any Qatari citizen traveling under the VWP must have a round-trip or onward ticket departing the United States as well as a biometrically enabled passport book. Following Qatar's approval, there are now 42 countries participating in the VWP.

CBP TRANSITIONS JAPAN TO FULL GLOBAL ENTRY PARTNERSHIP

On November 26, 2024, CBP elevated Japan from a limited Global Entry (“GE”) pilot arrangement to a full partnership. Doing so makes GE benefits available to more Japanese travelers and demonstrates enhanced security cooperation between the United States and Japan. Prior to transitioning to full GE partnership, there were applicant limits on Japanese travelers, but now Japanese citizens will be permitted to apply for the GE program through the standard application process. Upon arrival to the United States, approved travelers can use GE processing technology such as the GE Mobile Arrival App to streamline the arrival process. Given that the GE Mobile App is now available at all 77 GE locations, CBP encourages those currently enrolled in GE to download the mobile app. It is available from the Google Play Store or the Apple App Store. The list of full GE partner countries now includes Argentina, Bahrain, Brazil, Colombia, Croatia, the Dominican Republic, Germany, India, Japan, Mexico, the Netherlands, Panama, the Republic of Korea, Singapore, Switzerland, Taiwan, the United Arab Emirates, and the United Kingdom.

FIRST CIRCUIT GROUNDS THE NORTHEAST ALLIANCE

On November 8, 2024, the United States Court of Appeals for the First Circuit (“First Circuit”) affirmed a lower court ruling that American and JetBlue’s Northeast Alliance (“NEA”) unlawfully reduced competition in violation of the Sherman Act. The First Circuit agreed that American and JetBlue went from competitors to partners in the NEA region which further concentrated market participants in what was already a consolidated marketplace. The fact that the NEA’s schedule-coordinating provisions caused American and JetBlue to function as one airline “when choosing which routes to fly, when to fly them, and which aircraft (and which partner) [would] do so” undercut American’s arguments on appeal. Although the First Circuit recognized that one colorable “procompetitive rationale” for the NEA was more flexible loyalty benefits for frequent fliers, a unanimous three-judge panel found American’s arguments unavailing, especially since any procompetitive benefits realized by the NEA could have been achieved through less restrictive means. After remarking that horizontal agreements allocating markets between substantial competitors are generally treated as per se illegal, the First Circuit placed the NEA’s market allocation near the anticompetitive end of the competition spectrum. It further rejected American’s alleged procompetitive justifications, noting that “American all but abandons any serious attempt to dispute the district court’s conclusion that the rest of its claimed benefits ‘lack evidentiary support entirely or find support only if an artificially narrow lens is applied.’” In other words, the unanimous three-judge panel found that the NEA’s purported procompetitive effects “wither under even the slightest scrutiny.” The First Circuit concluded that an arrangement like the West Coast International Alliance (“WCIA”) between American and Alaska could have served American and JetBlue’s objective without unlawfully restricting competition in the NEA region. Citing the fact that the WCIA did not involve carrier cooperation regarding capacity, scheduling, network planning, or market allocation, the First Circuit looked favorably on a more limited WCIA-style arrangement in contrast to the now grounded NEA. Although the First Circuit affirmed the finding that the joint venture between American and JetBlue violated federal antitrust law, savvy advocates are expected to mimic WCIA-style arrangement to avoid the NEA’s fate.

SCOTUS DECLINES TO REVIEW DISMISSAL OF LAWSUIT RELATED TO AIRPORT SEARCHES

On November 12, 2024, the Supreme Court of the United States (“SCOTUS”) [declined](#) to review the dismissal of a lawsuit in which a Muslim family alleges that they were subjected to extensive searches and interrogations while traveling to Jordan in 2018. The family, who are of Jordanian descent, believe that they were wrongly placed on a terrorist watch list based on extensive airport searches yet the federal government refuses to confirm whether the family is included on any such list. The searches at issue lasted for more than two hours at the

airport in Los Angeles followed by another two-hour interrogation when the family arrived in Jordan. A federal district judge initially dismissed the lawsuit for lack of standing. On appeal, the circuit court affirmed noting that any family member not on the list lacked standing to seek forward-looking relief absent a showing of a concrete future injury. Citing an ex parte declaration by a Federal Bureau of Investigation special agent, the circuit court ruled that the family was unable to demonstrate concrete plans to travel with a listed family member and could not show a “sufficiently imminent and substantial” likelihood of being included on any terrorist watch list going forward. SCOTUS ultimately left the circuit court’s decision untouched by declining to review.

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 [Tyler Myers](mailto:Tmyers@eckertseamans.com) at 202.659.6642 or [tmyers@eckertseamans.com](mailto:Tmyers@eckertseamans.com), or any other attorney at Eckert Seamans with whom you have been working.