

## Aviation Regulatory Update

By Evelyn Sahr, Drew Derco, Jay Julien, Andrew Orr, and Samantha Walter

**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.**

### **FAA ISSUES FINAL RULE ON PILOT CERTIFICATION, AIRCRAFT CERTIFICATION, AND OPERATIONAL RULES FOR POWERED-LIFT AIRCRAFT**

On October 22, 2024, the Federal Aviation Administration ("FAA") released the draft version of a new final rule, [Integration of Powered-Lift: Pilot Certification and Operations; Miscellaneous Amendments Related to Rotorcraft and Airplanes](#). The final rule adopts a Special Federal Aviation Regulation ("SFAR") for a period of ten years to integrate powered-lift aircraft into the National Air Space System. Powered-lift aircraft are defined in the FAA regulations as "heavier-than-air aircraft capable of vertical takeoff, vertical landing, and low speed flight that depends principally on engine-driven lift devices or engine thrust for lift during these flight regimes and on nonrotating airfoil(s) for lift during horizontal flight," though these aircraft are more commonly referred to as Vertical Take-off and Landing ("VTOL") or Advance Air Mobility ("AAAM") aircraft. New air taxi companies like Archer and Joby are expecting to put these aircraft into service in cities across the U.S. in the very near future. The FAA also anticipates powered-lift aircraft to be used for air ambulances and transportation to offshore oil rigs.

The comprehensive 880-page powered lift final rule provides much needed guidance and structure on how pilots will be certified to operate these aircraft, how aircraft designs will be approved and certificated, and enables powered-lift operations. More specifically, the final rule maintains the current type certification process for powered-lift aircraft under the special class rules under 14 CFR § 21.17(b), requires qualification requirements for powered-lift pilots serving in part 135 operations, and permits aircraft operating under Visual Flight Rules to utilize helicopter minimums for powered-lift capable of conducting a landing in the vertical-lift flight mode. Once the final rule is officially published in the Federal Register, it will become effective after 60 days, except for amendatory instruction 50 (regarding instrument proficiency check requirements) which will become effective 240 days after publication.

### **DOT SETS NEW STANDARD FOR DISABILITY SERVICE VIOLATIONS**

On October 23, 2024, American Airlines was penalized \$50 million by the U.S. Department of Transportation ("DOT") for failing to provide adequate and dignified service to wheelchair users. Following an extensive investigation, DOT determined that American committed recurring violations of the Air Carrier Access Act

("ACAA") from 2019 through 2023. In addition to noting that American failed to provide passengers with disabilities sufficient wheelchair assistance when enplaning and deplaning, DOT also cited American for an ACAA violation which drew widespread public condemnation when American crew members were filmed mishandling a disabled passenger's wheelchair by sending the wheelchair crashing down and off a steep ramp. The airline has since introduced the American Airlines Accessibility Plan to improve the experience of passengers with disabilities. Since launching the two-year initiative, the mishandling rate for mobility devices on American flights declined 36 percent. In the last few years, DOT has assessed nearly \$225 million in penalties against airlines for consumer protection and civil rights violations, contrasted with only \$71 million over the prior two decades.

## **LUFTHANSA FINED FOR DISCRIMINATING AGAINST JEWISH PASSENGERS**

On October 15, 2024, DOT fined Lufthansa \$4 million for discriminating against 128 Jewish passengers. In May 2022, Jewish passengers were prevented from boarding a connecting flight over concerns that a few passengers were not wearing face masks. Rather than restricting only the tickets of noncompliant fliers, Lufthansa barred more than 100 Jewish passengers from traveling. The considerable penalty represents one of largest ever against an airline for civil rights discrimination. While penalties for customer service violations are common, enforcement actions related to civil rights violations are unusual because it is often challenging to prove discrimination. Following the incident, DOT's Office of Aviation Consumer Protection ("OACP") vowed to vigorously protect all passengers from discrimination through aggressive oversight of the airline industry.

## **BIDEN ADMINISTRATION SPRINTING THROUGH THE FINISH LINE ON CONSUMER PROTECTION FRONT**

On October 24, 2024, DOT, and the Antitrust Division of the U.S. Department of Justice ("DOJ") launched yet another inquiry into whether airline consolidation adversely impacts consumers. DOT is accepting comments on ticket prices, reward programs, and customer service until December 23, 2024. DOT and DOJ's Request for Information ("RFI") solicits responses from a myriad of aviation stakeholders including passengers, consumer advocates, pilots, airlines, and travel agents. In addition to requesting information on airline mergers, the RFI also seeks information on what impact consolidation in the manufacturing sector (i.e., Boeing, Airbus) plays in the commercial aviation market. Regulators are especially concerned with market consolidation among airlines and alleged unfair business practices between major carriers, travel agents, and purchasers of corporate travel services.

This most recent probe comes after DOT announced plans last month to evaluate whether airline rewards programs employ anticompetitive or deceptive methods. In addition, DOT's Airline Passenger Protection Partnership continues to coordinate with state attorneys general ("AGs") to investigate consumer complaints against airlines. To date, AGs from 22 states including California, Colorado, Connecticut, the District of Columbia, Illinois, Maine, Maryland, Massachusetts, Michigan, Minnesota, Nevada, New York, New Hampshire, North Carolina, the Northern Mariana Islands, Oklahoma, Oregon, Pennsylvania, Rhode Island, the United States Virgin Islands, Washington, and Wisconsin have joined forces with DOT's OACP.

## **MAJOR AIRLINES REQUEST PART 234 RULEMAKING**

On October 18, 2024, Airlines for America ("A4A") petitioned DOT's Bureau of Transportation Statistics ("BTS") to immediately undertake rulemaking to revise 14 C.F.R. Part 234 ("Part 234"). Following the FAA Reauthorization Act of 2024 ("FAA Act"), BTS was tasked with creating a new "cause of delay" and cancellation category that tracks information on air carrier cancellations and delays caused by instructions from FAA's Air Traffic Control System ("ATC"). To ensure that information provided to BTS presents an accurate representation

of airline operations, A4A seeks revisions to on-time performance reporting regulations requiring certain carriers to submit monthly reports detailing on-time performance, delays, cancellations, and their causes. Given that the existing framework fails to capture delays and cancellations caused by FAA ATC instructions, A4A requests expedited consideration to modernize reporting requirements. Doing so will bring greater transparency to air carrier operations and provide consumers with reliable information on the causes of airline disruptions. DOT also stands to benefit from Part 234 revisions since “aviation policies and rulemaking based on faulty and inaccurate data are likely to be ineffective because they are not grounded in the actual and operational conditions or issues that they aim to address.” Regulators, air carriers, and passengers would gain from accurate Part 234 reporting to make informed decisions and well-reasoned policy.

## **POTENTIAL PASSENGER COMPENSATION RULE FACES UPHILL BATTLE**

On October 8, 2024, A4A [published](#) data on a forthcoming DOT proposal which could require airlines to offer cash compensation to passengers for significantly delayed or cancelled flights. Currently, the proposal is working its way through the “pre-rule” stage at the Office of Management and Budget (“OMB”). The potential rule could raise costs for millions of passengers if implemented but DOT regulators laude the proposal as an expansion of airline passengers’ rights. Similar consumer protections exist in Europe and Canada but A4A’s findings demonstrate that such protections are unnecessary in the U.S. market. When evaluating on-time performance, A4A asserts that that U.S. airlines display “better on-time performance than their European and Canadian counterparts” while noting that significantly delayed or cancelled flights are often outside a carrier’s control (i.e., weather delays, air traffic abnormalities). If regulators were serious about improving air transportation for millions of passengers, A4A recommends abandoning the ill-suited proposal for one with more practical utility such as remedying the ongoing air traffic controller problem. It remains to be seen whether the battle lines will hold when DOT announces its highly anticipated passenger compensation rule.

## **LIABILITY LIMITS INCREASED FOR DENIED BOARDING COMPENSATION AND MISHANDLED DOMESTIC DAMAGE**

On October 24, 2024, DOT published a final rule raising the liability limits for denied boarding compensation (“DBC”) and for mishandled baggage during domestic air transportation. The final rule increases the liability limits for denied boarding compensation from the current amounts of \$775 and \$1,550 to \$1,075 and \$2,150. It also raises the liability limit U.S. carriers may impose for mishandled domestic baggage from the current figure of \$3,800 to \$4,700. The new DBC and domestic baggage liability limits go into effect on January 22, 2025.

## **DOT AND FAA PROHIBIT CERTAIN FLIGHT OPERATIONS IN IRAN**

On October 3, 2024, DOT and the FAA issued a final rule extending the prohibition against certain flight operations in the Tehran Flight Information Region (“FIR”). Citing intensified military activities and rising political tensions in the Middle East, DOT and the FAA determined that there was an unacceptable risk to U.S. civil aviation. For instance, the FAA raised concerns about unannounced Iranian ballistic missile launches originating from Iran and targeting sites around the region. The initial prohibition was issued in January 2020 after Iran launched retaliatory missile strikes against U.S. air bases following the assassination of an Iranian military general. This final rule extends the expiration from October 31, 2024, through October 31, 2027. Importantly, the Tehran FIR prohibition only applies to U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when such persons are operating U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft.

## **DOT AND FAA REQUIRE DESIGNATION OF U.S. AGENT FOR INDIVIDUALS WITH FOREIGN ADDRESSES ONLY**

On October 8, 2024, DOT and the FAA issued a [final rule](#) to require individuals holding or applying for certain certificates, ratings, or authorizations to designate a U.S. agent for service of FAA documents. The rulemaking only applies to applicants and holders of any certificate, rating, or authorization issued under Parts 47, 61, 63, 65, 67, or 107 and who have no physical U.S. address on file with the FAA. To ensure prompt and cost-effective service of process, the final rule seeks to provide notice of safety-critical and time-sensitive documents to individuals abroad through designated U.S. agents. The compliance date for applicants is January 6, 2025, while holders have until July 7, 2025, to comply with the final rule.

## **JETBLUE AND FLORIDA ARGUE OVER STATUTORY INTERPRETATION**

In a recently filed [motion for summary judgment](#) in Florida state court, JetBlue argues that the state's Department of Revenue ("DOR") violates the commerce clause of the United States Constitution by imposing a tax on flight miles occurring outside the state. According to JetBlue, the method used by DOR counts miles flown outside the state for tax assessment purposes. In response, Florida argues that the authority to determine how taxes are apportioned rests within its plenary power and further asserts that the notion that states "must strictly look to geographical boundaries when determining the source of that income" has consistently been rejected by higher courts. A challenge to Florida's method for apportioning income arose after JetBlue included only revenue miles flown within the state's border, leading to a \$630,000 tax bill from tax authorities.

## **FEDERAL JUDGE GRANTS UNITED'S MOTION FOR SUMMARY JUDGMENT IN NEGLIGENCE LAWSUIT**

On October 15, 2024, the United States District Court for the Northern District of California issued an opinion granting summary judgment for Defendant United Airlines after finding that plaintiffs had failed to produce evidence linking United's alleged breach to the passenger's death. During a cross-country United Airlines flight, a wheelchair belonging to a passenger with quadriplegia was damaged and the passenger elected to rent a temporary replacement wheelchair from her longtime supplier rather than obtain a replacement wheelchair through United's vendor. The passenger's chronic open sore worsened several months after the cross-country flight, and she passed away after several hospitalizations. Her successor in interest sued United alleging that the airline negligently damaged the passenger's wheelchair and that her use of an ill-fitting temporary replacement wheelchair caused her preexisting pressure sore to widen and become fatally infected.

United conceded during oral arguments that it breached a duty to return the passenger's wheelchair in its original condition as required by federal regulations. The disputed issue in the case turned on whether a reasonable jury could conclude that the damaged caused to the wheelchair by United was the direct and proximate cause of the passenger's death. The Court pointed out that it was the passenger, not United, who picked the ill-fitting replacement wheelchair, and that the passenger never alerted United of her preexisting condition. The Court found it "difficult to understand how United could foresee that [the passenger] might select—and continue to use—a replacement wheelchair that would worsen her pre-existing injury." The Court reasoned that the passenger's actions broke the causal chain following United's breach and therefore granted the airline's motion for summary judgment.

**SIKORSKY CANNOT LITIGATE FATAL ACCIDENT LAWSUIT ABROAD**

A federal judge in the United States District Court for the Eastern District of Pennsylvania recently ruled that Sikorsky Aircraft, an American aircraft manufacturer, must litigate a lawsuit filed by the estates of Canadian military personnel at home rather than abroad. In July 2023, the families and estates of deceased Canadian Air Force personnel filed a lawsuit against Sikorsky relating to a fatal helicopter crash in Greece. While Sikorsky initially sought to dismiss the lawsuit on forum non conveniens grounds by arguing that Nova Scotia was a more convenient forum, the Court sided with the family members of the deceased. Since the purportedly defective helicopter was designed, manufactured, and upgraded in Pennsylvania and witnesses who worked on the flight control system reside in the state, the Court reasoned that both public and private factors favor keeping the case in the United States.

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); [Andy Orr](mailto:aorr@eckertseamans.com) at 202.659.6625 or [aorr@eckertseamans.com](mailto:aorr@eckertseamans.com); [Jay Julien](mailto:jjulien@eckertseamans.com) at 202.659.6648 or [jjulien@eckertseamans.com](mailto:jjulien@eckertseamans.com); or [Samantha Walter](mailto:swalter@eckertseamans.com) at 412.566.1920 or [swalter@eckertseamans.com](mailto:swalter@eckertseamans.com), or any other attorney at Eckert Seamans with whom you have been working.