Aviation Regulatory Update

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

NEW USER FEE STRUCTURE FOR AQI PROGRAM GOES INTO EFFECT OCTOBER 1

On September 11, 2024, the U.S. Department of Agriculture's Animal and Plant Health Inspection Service ("APHIS") reminded stakeholders that a new user fee structure for its Agricultural Quarantine and Inspection ("AQI") program goes into effect October 1, 2024. In coordination with U.S. Customs and Border Protection ("CBP"), APHIS conducts the AQI program to intercept foreign agricultural pests and diseases. Doing so prevents harm to U.S. agriculture, trade, and wildlife. To recover the costs associated with AQI activity, the program's user fee regulations were amended by a final rule published on May 7, 2024. The new user fee regulations make notable changes to the reporting and remittance process. Previously, reporting and remittance was due on a quarterly basis. Beginning on October 1, 2024, reporting and remittances for relevant commercial aircraft and international air passenger fees will be due monthly. These fees are due 90 days after the end of each calendar month. The final rule also removes a provision exempting commercial aircraft with 64 seats or fewer from paying the commercial aircraft inspection fee. Removal of the small aircraft exemption only impacts international, not domestic, flights. Since small commercial aircraft were not previously subject to the fee and may need additional time to come into compliance, the effective date for removal of the exemption for aircraft with 64 or fewer seats will be delayed until April 1, 2025. Also, please note the updated USDA fees below.

AQI User Fee Category	Current Fee (Beginning December 1, 2022)	Beginning October 1, 2024	Beginning October 1, 2025	Beginning October 1, 2026	Beginning October 1, 2027
Commercial Aircraft	$225.00	$281.39	$300.78	$320.61	$340.90
International Air Passenger	$3.83	$3.71	$3.84	$3.98	$4.12

HERE COMES THE CORPORATE TRANSPARENCY ACT

The Corporate Transparency Act ("CTA") requires companies formed or registered to do business in the United States to file an initial Beneficial Ownership Information ("BOI") report with the U.S. Department of Treasury's Financial Crimes Enforcement Network ("FinCEN") by January 1, 2025, unless an exemption applies. A specific list of the 23 categories of companies which are exempt can be found within FinCEN's Small Entity Compliance Guide. The CTA's "large operating company" exemption is expected to be heavily relied upon. To qualify for the large operating company exemption, an entity must meet all three of the following requirements: (1) employ more than 20 full-time U.S. employees; (2) maintain an operating presence at a physical office in the U.S.; and (3) have previously filed a federal income tax return reporting more than $5 million in gross receipts or sales. Importantly, the third requirement focuses on a company's gross receipts or sales from U.S. sources. Gross receipts or sales from sources outside the United States are excluded from the calculation.

While there are currently nine ongoing cases challenging the CTA on constitutional grounds, reporting companies should be prepared to comply with CTA disclosure obligations as it is unlikely that the constitutional questions at issue in these cases will be decided prior to the January 1, 2025 submission deadline. Since the CTA's reporting requirements could require information from third parties, it is never too early to start preparing. To assist with timely reporting, FinCEN periodically releases frequently asked questions relating to the information required and the entities impacted. If a reporting company fails to comply with CTA's reporting requirements, there are potential civil and criminal penalties, including a $10,000 fine and imprisonment for up to two years. If you have any questions regarding the CTA, or need any help with complying with CTA requirements, please contact us and we would be happy to assist you.

DOT CLEARS MERGER BETWEEN ALASKA AND HAWAIIAN FOR TAKEOFF

On September 17, 2024, the U.S. Department of Transportation ("DOT") advanced the merger between Hawaiian Airlines and Alaska Airlines after both airlines agreed to consumer protection concessions. Pursuant to the agreement reached with DOT, Hawaiian and Alaska agreed not to devalue either airline's frequent flyer miles, continue to provide service on each nonstop overlap route where the airlines are the only competitors in the market, and guarantee family seating arrangements at no additional cost. To further protect customer reward miles against devaluation, DOT also secured commitments that neither airline will impose an expiration date on miles accrued under existing loyalty programs. The agreed-upon consumer protections will remain in place for six years following final DOT approval. This unusual step enabled DOT to approve an exemption that begins the merger process and permits the airlines to start merging business practices under common ownership. By obtaining DOT approval, the airlines cleared the last regulatory hurdle after securing U.S. Department of Justice approval last month. In a statement, the two airlines announced plans to "close their merger transaction in the coming days."

PANYNJ ANNOUNCES NEW PFC APPLICATION FOR INFRASTRUCTURE PROJECTS AT NEWARK AND JFK AIRPORTS

On September 19, 2024, the Port Authority of New York and New Jersey ("PANYNJ") held a consultation meeting to discuss a new passenger facility charge ("PFC") application for several infrastructure projects at Newark Liberty International Airport ("EWR") and John F. Kennedy International Airport ("JFK"). If approved by the Federal Aviation Administration ("FAA"), the new application plans to collect $1,410,050,000 in PFC funding at a collection level of $4.50 per eligible enplaned passenger. Citing projections that ridership will double by 2040, the PANYNJ's new application seeks to expand existing system capacity and modernize aging infrastructure. In response to its application, PANYNJ requests carriers provide written certification of agreement or disagreement

by **October 21, 2024**. Any carrier that fails to certify a position by the deadline will be considered to have certified its agreement. Airlines can send certifications of agreement or disagreement to Passenger_Facility_Charge@panynj.com.

TAX AUTHORITIES TURN UP THE HEAT ON AIRCRAFT TRANSACTIONS

After the Internal Revenue Service increased audits of business aircraft earlier this year, state tax authorities followed suit. For instance, the Florida Department of Revenue ("DOR") intensified its tax investigations in recent months, particularly focusing on sales and use tax compliance for aircraft transactions. Following the approach of federal authorities, the number of aircraft audits conducted by Florida's DOR exceeded industry expectations. To discourage sales tax avoidance and improve compliance among high-income taxpayers, auditors at both the state and federal level are focusing more than ever on aircraft owners, flight schools, and leasing entities. The FAA's Aircraft Registry makes it easier than ever before for auditors to determine aircraft registration and ownership arrangements. Whether deducting business expenses related to aircraft maintenance or contemplating an aircraft transaction, it is important for owners and operators to consider tax mitigation strategies like performing an internal audit to determine potential exposure as regulatory scrutiny reaches new heights. Should you have any questions regarding aircraft transactions, state sales/use tax, and state tax audits, including in the state of Florida, we would be happy to assist.

DOT PROBES AIRLINE REWARDS PROGRAMS

On September 5, 2024, DOT announced an investigation into whether airline rewards programs are anticompetitive or deceptive to consumers, in violation of the Department's prohibition on unfair and deceptive practices. After requesting records and documentation on rewards program policies from American Airlines, Delta Air Lines, Southwest Airlines, and United Airlines, Transportation Secretary Buttigieg expressed concern that airline rewards "are controlled by a company that can unilaterally change their value." In May 2024, DOT, in coordination with the U.S. Consumer Financial Protection Bureau, held a joint public hearing on potential enforcement action against major airlines' frequent flyer and loyalty programs. DOT seeks information from the major airlines on devaluations of earned reward points and to what extent, if any, rewards programs are impacted by airline mergers or partnership agreements. In other words, the Department fears that the major airlines are deceiving consumers by unilaterally changing the number of reward points required for a status upgrade and hopes to shed light on how airline rewards programs operate.

Industry participants like the U.S. Travel Association worry that the Department's priorities are misplaced because airline rewards programs are beloved by millions of travelers and any investigation will be fruitless given that the major airlines are already transparent about their rewards programs. DOT's probe of airline rewards programs comes as Congressional lawmakers are indirectly scrutinizing the airline industry. A proposed bill that seeks to crack down on credit card swipe fees for merchants is viewed by some in the airline industry as unfairly targeting reward programs. Opponents of the legislation argue that it would hinder consumer purchasing power by increasing travel costs for trips booked with reward points.

AIRLINE INDUSTRY CHALLENGES CHICAGO'S PAID LEAVE ORDINANCE

Effective July 1, 2024, the Chicago Paid Leave and Paid Sick and Safe Leave Ordinance ("the Ordinance") entitles eligible employees to paid leave. Chicago employers with more than one employee must offer paid leave to employees that work at least 80 hours within a 120-day period within the city limits.

Paid Leave

Employees accrue one hour of paid leave for every 35 hours worked, up to a maximum of 40 hours, in a 12-month period. This leave can be used for any purpose, although employers may deny the requests at their discretion. Employers may require employees to take this leave in at least four-hour increments. Employers must allow employees to carry over up to 16 hours of unused paid leave, unless employers "frontload" the leave by granting covered employees 40 hours of paid leave on their first day of employment or the first day of the 12-month accrual period. Until July 1, 2025, all employers with 51 to 100 employees are required to payout up to 16 hours of unused paid leave upon termination from employment, while employers with more than 100 employees are required to payout all unused paid leave upon termination. After July 1, 2025, all employers with over 50 employees must pay all unused paid leave upon termination.

Paid Sick and Safe Leave

Similar to paid leave, employees are entitled to one hour of paid sick and safe leave for every 35 hours worked, up to a maximum of 40 hours, in a 12-month period. This leave can be used to recover from illness, take care of a family member, address domestic violence, and during public health emergencies. Employers may require employees to take this leave in at least two-hour increments. Employers must allow employees to carry over up to 80 hours of paid sick leave. Unlike paid leave, employers are not required to payout unused sick leave upon termination from employment.

Airlines Challenge the Ordinance

In June, Airlines for America ("A4A") challenged the Ordinance in the United Stated District Court for the Northern District of Illinois, arguing that the Ordinance is preempted by the Airline Deregulation Act and the Railway Labor Act. Airlines and airline associations have challenged similar paid leave laws in other jurisdictions on similar grounds, yielding mixed results. Notably, A4A successfully challenged a Massachusetts sick leave law and Delta Air Lines won a case against New York City's paid sick leave law, while A4A lost its challenge against Washington's paid sick leave law.

The Chicago case is still pending, and the Ordinance remains in effect for employers, including those in the airline industry.

DOT UPDATES SERVICE ANIMAL FORMS TO SIMPLIFY COMPLETION

On September 20, 2024, DOT amended the Service Animal Air Transportation Form and the Service Animal Relief Attestation Form following DOT's Notice of and Request for Comments earlier this year. In addition to minor formatting changes, the updated forms reduce the number of questions asked, include specific completion instructions, and provide answers to frequently asked questions. Aside from the Service Animal Air Transportation Form and the Service Animal Relief Attestation Form, airlines are unable to request additional documentation from passengers traveling with service animals. Pursuant to the Air Carrier Access Act ("ACAA"), DOT alerted stakeholders that additional changes to the service animal forms may be forthcoming when its ACAA Advisory Committee reconvenes.

ELON MUSK'S STARLINK MEETS DEMAND FOR IN-FLIGHT INTERNET

As demand for in-flight internet intensifies among leisure and business travelers, airlines have struggled to keep up with expectations. Passengers often complain that Wi-Fi remains unreliable and spotty, especially over oceans and other remote areas. United Airlines and other airlines are turning to Elon Musk's Starlink internet

service for solutions. Using a fleet of more than 6,300 satellites, Starlink provides internet connection that is often more dependable than conventional methods. In addition to retrofitting planes with power outlets and seat back screens for the comfort of plugged-in travelers, United is among several airlines planning to outfit its entire 1,000 plane fleet with Starlink internet service. Doing so will mirror what travelers have come to expect on the ground when downloading in-flight entertainment or browsing social media. If the FAA certifies the equipment for in-flight use, United will become Starlink's largest airline customer yet, following prior agreements with Hawaiian Airlines and Qatar Airways. At the conclusion of operational testing early next year, United plans to rollout Starlink's technology on passenger flights by late 2025.

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; Jay Julien at 202.659.6648 or jjulien@eckertseamans.com; or Samantha Walter at 412.566.1920 or swalter@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.