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## ATTORNEYS AT LAW

### DOT Enforcement of its Prohibitions on Unfair and Deceptive Practices, 2013 (January 2014)

When the Civil Aeronautics Board (CAB) was abolished in 1985, a significant portion of its authority was transferred to the Department of Transportation (DOT). One of the most noteworthy powers now exercised by DOT is to prohibit any “unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation.”<sup>1</sup> Indeed, DOT’s authority over these matters is exclusive; states and municipalities are preempted from imposing their own requirements “related to a price, route, or service of an air carrier.”<sup>2</sup> For nearly 30 years, DOT has exercised its authority under this statute and associated regulations to monitor and sanction practices by air carriers, ticket agents, and other entities involved in air transportation.

#### **DOT Oversight of Air Carriers, Ticket Agents, and Other Entities**

DOT has several regulatory tools at its disposal for responding to allegedly unfair or deceptive practices, including a private warning or cease-and-desist letter; a public consent order (pursuant to which the air carrier, agent, or other entity usually agrees to pay a fine and refrain from future violations); or a formal enforcement action before a DOT Administrative Law Judge (ALJ). DOT also periodically issues public notices setting forth its policies for advertising and other practices, and can issue new regulations via rulemaking proceedings. But consent orders are by far the most commonly used tool in DOT’s arsenal. In 2013, DOT issued 46 consent orders – the fewest since 2009, but still the fourth largest total in DOT history – with the nominal fines attached to them totaling more than \$7 million, a new record.<sup>3</sup>

In the past year, DOT’s Office of Aviation Enforcement and Proceedings continued to closely monitor and investigate practices by air carriers, ticket agents, and other entities involved in the sale of air transportation. Although DOT’s greatest area of concern in the past year continues to have been the “full fare rule” for advertising by air carriers and ticket agents, DOT also has taken enforcement action – and adopted new requirements – regarding an array of practices, ranging from tarmac delay and customer service plans to the reimbursement of passengers for lost baggage pursuant to domestic and international standards.<sup>4</sup>



The firm’s practice encompasses virtually every aspect of aviation law, including advising domestic and foreign airlines on compliance with the DOT’s rules on the advertising and sale of air transportation.

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# DOT Prohibitions on Unfair and Deceptive Practices, 2013

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This article briefly summarizes the consent orders and other public guidance that were issued by DOT in 2013, as well as certain related agency actions and court decisions.

A continued development in 2013 was the DOT's continued assertion of authority over unfair or deceptive practices by entities that had not traditionally been considered to fall within its jurisdiction. By statute, in addition to air carriers, DOT can regulate "ticket agents."<sup>5</sup> DOT took the position that a website which provided information about air transportation but did not itself sell tickets qualified as a "ticket agent," based on the circumstances of its operations, including its receipt of commissions. The website operator disputed DOT's reasoning, but agreed to enter into a consent order to conclude the matter.<sup>6</sup> At the same time, DOT apparently accepted that a website operated by an international airline alliance was not a "ticket agent" because actual sales were made through the reservation centers of member airlines.<sup>7</sup>

## Enhanced Passenger Protection Requirements

In 2011, DOT adopted a second set of "enhance[d] airline passenger protection" regulations ("EAPP II"), which extended certain existing requirements to foreign air carriers for the first time, and also imposed new requirements on both U.S. and foreign air carriers.<sup>8</sup> In 2013, several of the EAPP II requirements were the subject of DOT enforcement proceedings:

- **Tarmac Delay Plans.** Under these requirements, carriers must adopt tarmac delay plans that among other mandates generally prohibit aircraft from remaining on the tarmac for more than four hours (in the case of international flights) or three hours (in the case of domestic flights); require food and water to be distributed to passengers within two hours of the start of the delay; and require that passengers be notified every 30 minutes if they have an opportunity to deplane during a tarmac delay.<sup>9</sup> In 2013, six carriers were fined for violations of one or more of these requirements. Two carriers had allowed a tarmac delay for an international flight to continue for more than four hours,<sup>10</sup> and two carriers had on a total of fifteen occasions allowed a tarmac delay for a domestic flight to continue for more than three hours.<sup>11</sup> Additionally, two carriers failed to timely provide food and water to passengers during a tarmac delay,<sup>12</sup> and another carrier on two occasions failed to ensure that operable lavatories were provided during a tarmac delay.<sup>13</sup> Two carriers failed to notify passengers during a tarmac delay at a gate that they had an opportunity to deplane.<sup>14</sup> Finally, two carriers were fined because they had not posted their tarmac delay plans, on whole or in part, on their websites, as also required by DOT.<sup>15</sup>

Additionally, three requests were made by air carrier trade associations for a limited waiver of the tarmac delay rules: one based on sequestration-based furloughs of air traffic controllers that were anticipated in April 2013;<sup>16</sup> one based on delays that resulted from a landing incident at LaGuardia Airport on July 22, 2013;<sup>17</sup> and one based on delays that resulted from a shooting incident at Los Angeles International Airport on November 1, 2013.<sup>18</sup> DOT to date has not taken any action on the sequestration and Los Angeles requests, but has stated that under the applicable circumstances none of the LaGuardia delays amounted to a violation of the tarmac delay rule.<sup>19</sup> DOT also has taken no action on a related waiver request,<sup>20</sup> namely that DOT exclude flights delayed due to sequestration-based furloughs of air traffic controllers from the requirement that carriers submit reports about "chronically delayed flights" to DOT.<sup>21</sup>

- **Customer Service Plans.** The requirements include that carriers adopt customer service plans, addressing twelve specific issues – some of which cross-reference other DOT regulations, and some of which are new.<sup>22</sup> In 2013, two carriers were fined because they failed to comply with components of their customer service plan that cross-referenced existing requirements. One had failed to abide by its commitment to comply with DOT's separate regulatory requirements for the issuance of refunds,<sup>23</sup> and the other failed to abide by its commitment to comply with DOT's separate regulatory requirements for oversales.<sup>24</sup> An additional carrier was fined because it had not posted its customer service plan on its website, as also required by DOT.<sup>25</sup>

A new customer service plan requirement is that for reservations made one week or more before a flight's departure, airlines either allow reservations to be held without payment for 24 hours, or

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allow reservations to be cancelled without penalty for 24 hours.<sup>26</sup> In 2013, a carrier was fined because in a limited number of cases, it imposed cancellation fees for reservations for which a full refund should have been issued.<sup>27</sup> DOT also clarified that the 24-hour requirement should not just be included in customer service plans but also be disclosed in general cancellation policies and other discussions of refund conditions, as well as during certain telephone reservation calls.<sup>28</sup>

- **Baggage and Ancillary Fees.** The requirements include that carriers must disclose their baggage fees and restrictions, as well as other ancillary fees; ticket agents also have a disclosure obligation, but it is limited to key baggage-related information such as the fees for the first and second checked bag and any carry-on bag.<sup>29</sup> In 2013, two ticket agents were fined because they failed to provide any information about baggage fees.<sup>30</sup> Additionally, a carrier was fined because it failed to provide information about either baggage fees or fees for other ancillary services.<sup>31</sup> Another carrier was fined because it promoted discounts for pre-paid baggage fees but failed to actually make those discounts available to all passengers.<sup>32</sup>
- **Complaints.** The requirements include that a carrier must acknowledge the receipt of complaints from consumers within 30 days and must provide a substantive response within 60 days.<sup>33</sup> A carrier was fined because it failed to respond to a large number of complaints submitted over an eight-month period.<sup>34</sup> Additionally, each carrier must provide on its website a mailing address, email address, and telephone number for the submission of complaints, as well as the website address and mailing address of DOT's Aviation Consumer Protection Division.<sup>35</sup> A carrier was fined because it failed to provide this information.<sup>36</sup>
- **Post-Purchase Price Increase.** The requirements include that a consumer be provided a prominent warning if a price increase is possible prior to full payment as well as that written consent be obtained from the consumer about the potential increase;<sup>37</sup> moreover, even if a warning is provided and consent is obtained, the only circumstance under which a price increase is permissible after full payment has been made is if it is due to an increase in a government-imposed tax or fee.<sup>38</sup> A ticket agent was fined because it failed to prominently disclose the possibility of a fuel surcharge-based price increase for an air tour package and further asserted that the price was subject to increase even after final payment.<sup>39</sup>
- **Contract of Carriage.** The requirements include that each carrier make its contract of carriage available in "easily accessible form" on its website.<sup>40</sup> A carrier was fined because it only made the contract of carriage available after a consumer had searched for a proposed itinerary.<sup>41</sup>

As discussed below, DOT also continued to closely monitor airfare advertising – and issued consent orders based on its new requirement for "all-inclusive" fare advertising.

## Air Carrier and Ticket Agent Advertising

### *All-Inclusive Fare Advertising*

DOT's "full fare rule" requires that advertising by air carriers or ticket agents state "the entire price to be paid by the customer to the air carrier, or agent, for such air transportation, tour, or tour component."<sup>42</sup> Historically, DOT interpreted this regulation to allow government-imposed taxes and fees that were assessed on a per-person basis (e.g., the September 11th Security Fee, federal segment taxes, airport Passenger Facility Charges, and U.S. immigration and customs fees)<sup>43</sup> to be listed separately from an advertised fare. However, the EAPP II rules adopted in 2011 revised the application of the full fare rule. Air carriers and ticket agents are no longer allowed to separately state government-imposed taxes and fees; all-inclusive advertising of fares is required (although information about the taxes and fees that are – and must be – included in the full price may be provided). In 2013, a ticket agent was fined because, before the revisions took effect, it had failed to adequately disclose the additional taxes and fees applicable to an air tour package.<sup>44</sup>

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## ***Government-Imposed Taxes and Fees***

In 2013, three ticket agents were fined because they advertised prices for air transportation or packages that included air transportation which did not disclose the applicable government taxes and fees.<sup>45</sup> Additionally, a carrier was fined because it generally did not include taxes and fees in advertised fares;<sup>46</sup> another carrier had advertised packages that included air transportation for which the September 11th Security Fee was disclosed separately and not included in the package price;<sup>47</sup> another carrier had failed to disclose in advertising that the September 11th Security Fee was applicable to promotional tickets provided to users of its co-branded credit card;<sup>48</sup> and another carrier had failed to disclose in advertising that the redemption of mileage-based tickets required the payment of the September 11th Security Fee, as well as the payment of certain international taxes for international flights.<sup>49</sup>

## ***Fuel and Other Surcharges***

Even before the changes implemented by EAPP II, carrier- and agent-imposed surcharges were required to be included in advertised fares. In 2013, DOT fined two ticket agents that advertised prices for air tour packages that excluded agent-imposed fees.<sup>50</sup> Additionally, a third-party complaint alleged that a carrier – through a website operated by an international airline alliance – misrepresented the nature of its fuel surcharges. Although the website included fuel surcharges in an all-inclusive price, they also were initially included in a “taxes” line item. DOT stated that the displays were non-compliant – but because the carrier and alliance took prompt remedial action, no civil penalty was assessed for the violations.<sup>51</sup> The same complainant also filed similar complaints against other air carriers, most of which remain pending,<sup>52</sup> but in one case the carrier and DOT entered into a consent order, premised on similar carrier practices of describing fuel surcharges as “taxes” on its website and during telephone reservation calls.<sup>53</sup>

## ***Air Tour Packages***

To the extent that a tour package includes an air transportation component, DOT asserts jurisdiction over the entire package. In 2012, DOT fined two ticket agents because they failed to disclose that a tour package’s price was conditioned on a double occupancy requirement, which DOT considered to require prominent disclosure even though it did not concern the airfare component of the package.<sup>54</sup> For one of the agents, DOT also noted that it also had failed to disclose that the prices were cash only.<sup>55</sup> Additionally, a petition for rulemaking was submitted, which requested that DOT clarify that mandatory hotel charges, such as “resort fees,” must be included in the prices quoted for air tour packages.<sup>56</sup> DOT to date has not taken any action on the request.

## ***Fare Availability***

DOT historically has required carriers and agents, when advertising a fare, to ensure that a “reasonable” number of seats are available at that fare for the period during which the fare is being offered, but DOT has not set specific thresholds. In 2013, a carrier was fined because a promoted sale did not make a “reasonable” number of seats available; as examples, DOT noted that in one market only 2% of seats were available at the sale fare, and in another only 1% were available at the sale fare. Additionally, DOT noted that another sale promoted a price that was not actually available on any date in the specified market.<sup>57</sup>

## ***“Free” Fares***

Because DOT now requires that fare advertising be all-inclusive, a fare cannot be advertised as “free” if any government-imposed taxes and fees – or mandatory carrier-imposed charges – are applicable. In 2013, DOT fined two carriers and a ticket agent that had promoted “free” fares that actually required the payment of government-imposed taxes and fees.<sup>58</sup> For one of the carriers, DOT noted that a fare could be advertised as “free of carrier charges” if the applicable taxes and fees were prominently disclosed, but the carrier at issue had neither used that phrase nor provided prominent disclosure of the taxes and fees that were applicable.<sup>59</sup>

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## **Public Charter Flights**

DOT imposes various requirements on the sale and operation of public charter flights, primarily intended to protect payments made by consumers.<sup>60</sup> In 2013, DOT fined a public charter operator that marketed public charter flights; a direct air carrier that operated public charter flights; and a bank that managed the escrow accounts for a public charter program for violations of its requirements. In the case of the public charter operator, it had advertised and sold flights without having applied for or obtained approval of a public charter prospectus from DOT.<sup>61</sup> In the case of the direct air carrier, it had failed to monitor the charter operator's compliance with the underlying regulations; failed to ensure that full payment was received before it operated flights; cancelled flights less than 10 days before departure; and failed to return passengers who had purchased round-trip flights after they had begun their outward journeys.<sup>62</sup> In the case of the bank, it had made premature disbursements of escrowed funds to both the charter operator and third party vendors, without the necessary documentation.<sup>63</sup>

In 2012, DOT announced new standards for its review and approval of public charter prospectuses, intended to reduce the likelihood of a public charter operator and/or direct air carrier defaulting on their obligations.<sup>64</sup> In 2013, DOT solicited comments on the new standards,<sup>65</sup> and subsequently made minor revisions to them. But generally, a charter prospectus now will be approved only if a charter operator provides certain assurances to DOT, including that: (i) the contract between the charter operator and the direct air carrier is for the full price of air transportation (e.g., vendors are not paid by the charter operator), with a limited exception for so-called ACMI (Aircraft, Crew, Maintenance, and Insurance) agreements; (ii) the charter operator will share its reservation records with the direct air carriers (so they have the information necessary to repatriate passengers if needed); and (iii) the charter operator will accept debit cards only if the same chargeback protections are provided that credit card users receive.<sup>66</sup> DOT later solicited comments on the exact form that the newly required assurances should take.<sup>67</sup>

Subsequently, an escrow agent submitted a petition for rulemaking, proposing that escrow agents be allowed to manage the security and depository requirements for public charter programs,<sup>68</sup> in order to address the problem that many were not willing to do so given the extensive recordkeeping and compliance requirements.<sup>69</sup> DOT to date has not taken any action on the request.

DOT re-issued an advisory to consumers interested in purchasing sports event-related charter flights, such as to football bowl games. Generally, the DOT warned that the organizer of the charter must have appropriate authorization and the company marketing a package that includes game tickets (irrespective of whether a charter flight was at issue) must have the tickets in hand or a written contract for the tickets before advertising the package.<sup>70</sup>

Additionally, in 2013 DOT proposed new consumer protection requirements for single-entity charters and for charter brokers. Notably, air taxis and commuter air carriers would be required to provide certain disclosures if they enter into a contract for a single-entity charter that actually would be operated by another carrier. In regard to brokers, DOT would now allow them to act as principals and not just as the agent of the carrier or charterer, so long as they complied with newly proposed regulations, including disclosure requirements.<sup>71</sup>

## **Passengers with Disabilities**

In 2008, DOT substantially amended its regulations<sup>72</sup> which implement the Air Carrier Access Act ("ACAA"),<sup>73</sup> and which prohibit discrimination by air carriers against passengers on the basis of disability.<sup>74</sup> In 2013, four carriers were fined for violations of the revised requirements. One had failed to properly load a passenger's electric wheelchair, which resulted in damage to the wheelchair and subsequent injury to the passenger when it malfunctioned.<sup>75</sup> One had failed to provide a dispositive response to disability-related complaints within 30 days, including a specific admission or denial of whether a violation had occurred.<sup>76</sup> The third had failed to provide captioning for its in-flight safety videos, which at the time of their creation were required to include either open captioning or a sign language inset, unless doing so would interfere with the presentation or be too small to be readable; DOT concluded that open captioning in fact was feasible.<sup>77</sup> Finally, a carrier was fined because it consistently



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had failed to provide adequate assistance to passengers with disabilities in moving within the terminal at two of its hubs, which resulted in passengers missing connecting flights and other “egregious” violations.<sup>78</sup>

DOT also made further changes to its disabilities regulations in 2013. First, it revised its requirements for the in-cabin stowage of wheelchairs<sup>79</sup> to allow air carriers to “strap” a foldable wheelchair across a row of seats as an alternative to storing it in a devoted in-cabin compartment, subject to certain conditions.<sup>80</sup> At the same time, DOT provided that if a devoted in-cabin compartment is used, a prominent sign must indicate that wheelchairs and other assistive devices have priority for the use of the space.<sup>81</sup> Second, it for the first time set forth requirements to ensure that air carrier websites and kiosks at U.S. airports are accessible to passengers with disabilities.<sup>82</sup> Generally, “core” website features must be accessible by December 12, 2016 and all pages by December 12, 2016; kiosks installed after December 12, 2016 must be accessible and at least 25% of kiosks at each airport location must be accessible by December 12, 2023.<sup>83</sup> DOT also established certain ancillary requirements related to websites and kiosks, including that: (i) although ticket agent web sites are not subject to DOT’s accessibility standards, larger agents must make webfares available to disabled passengers who cannot use their websites,<sup>84</sup> and (ii) larger airports share responsibility with air carriers to ensure that shared-use kiosks are made accessible.<sup>85</sup>

DOT also issued two notices that provided guidance regarding the implementation of certain existing rules for passengers with disabilities. First, in regard to preboarding, DOT reminded carriers that passengers with disabilities who request preboarding must be allowed to do so before all other passengers. Additionally, although a preboarding announcement for passengers with disabilities is not required, DOT recommends the practice if preboarding announcements are made for other types and classes of passengers.<sup>86</sup> Second, in regard to portable dialysis machines, DOT reminded carriers that they are an assistive device that generally must be transported without charge but with qualifications, including that case-by-case determinations may be necessary based on the machine’s weight/size, and such machines generally are not approved for use during flight.<sup>87</sup>

DOT also granted equivalent alternative determinations and conflict-of-law waivers to various carriers. In regard to the equivalent alternative determinations, the agency determined that three carriers had proposed adequate alternate procedures for providing accessible seats without movable armrests,<sup>88</sup> and two carriers had proposed adequate alternate procedures for transporting wheelchairs in the hold instead of in-cabin.<sup>89</sup> In regard to the conflict-of-law waivers, DOT granted a waiver from the relevant sections of the ACAA regulations to a carrier that under its homeland law was required to provide individualized safety briefings to disabled passengers and to limit the total number of disabled passengers on a flight,<sup>90</sup> but denied various other waiver requests on the basis that there was not an actual conflict between the ACAA regulations and foreign law.<sup>91</sup>

Finally, complaints were filed against three air carriers that served Philadelphia International Airport by employees of the contractor that provided wheelchair and other assistive services to passengers with disabilities. The employees alleged that they had not been adequately trained and that they lacked equipment in working condition, in violation of federal regulatory requirements.<sup>92</sup> Subsequently, the carriers provided evidence that the employees had been trained and that they had contracts with a third party to maintain wheelchairs and other equipment. DOT dismissed the complaints as meritless, with a warning to the union that had represented the complainants that further unprofessional conduct could result in it being barred from practicing before DOT.<sup>93</sup>

## **Air Carrier Authority**

Citizens of the United States generally are required to obtain authority from DOT before they can engage directly or indirectly in the domestic transportation of passengers or property by aircraft for compensation.<sup>94</sup> In 2013, a third-party complaint was filed against an Alaska-based carrier, alleging that it was engaging in interstate air transportation without proper authority. DOT dismissed the complaint, finding that the carrier’s practices – such as maintaining a website and a toll-free telephone number – did not amount to the holding out of interstate transportation, and there was no evidence that in practice it carried more than *de minimis* number of passengers traveling in interstate air transportation.<sup>95</sup>

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DOT sanctioned an indirect air carrier that provided air ambulance services.<sup>96</sup> Although such service providers are subject to a blanket exemption that allows them to hold out air ambulance services to the public in their own right,<sup>97</sup> they nevertheless may not convey the impression that they are direct air carriers.

Additionally, DOT determined that an air taxi did not comply with U.S. citizenship requirements.<sup>98</sup> Although the carrier met the prerequisites of the law pertaining to the citizenship of its owners, directors, and officers, DOT concluded that it was not under the actual control of U.S. citizens based on the totality of the circumstances surrounding its relationship with foreign entities. Going forward, DOT directed that its authority be revoked,<sup>99</sup> and additionally entered into a consent order with the carrier regarding its past operations.<sup>100</sup>

## **Code-Sharing Disclosures**

DOT regulations for many years have required air carriers and ticket agents to disclose to consumers, prior to purchase, whether a flight involves a code-share arrangement.<sup>101</sup> But, in 2010, Congress added a further disclosure requirement – namely that for online bookings, the identity of the operating carrier must be disclosed “on the first display of the Web site following a search of the requested itinerary in a format that is easily visible to a viewer.”<sup>102</sup> In 2011, DOT issued a notice providing guidance as to how carriers and agents could comply with this requirement. Generally, code-share disclosure now must be made on the same screen as, and immediately adjacent to, an itinerary; disclosure through a hyperlink or rollover is not sufficient.<sup>103</sup> In 2013, six ticket agents were fined for failing to disclose code-share arrangements in response to telephone inquiries – in most cases, even when prompted by the caller.<sup>104</sup> Additionally, a ticket agent was fined for failing to disclose code-share arrangements in its online itinerary results.<sup>105</sup>

## **Air Carrier Reporting**

DOT is statutorily authorized to impose various reporting requirements on U.S. and foreign carriers, including timely reporting of statistics related to their finances and traffic, and other operational data.<sup>106</sup> Additionally, larger U.S. and foreign carriers are required to file annual reports with DOT regarding disability-related complaints that they have received.<sup>107</sup> In 2013, two carriers were fined because they had failed to timely file statistical reports.<sup>108</sup> Five additional carriers were fined because they had provided inaccurate and/or tardy reports about tarmac delay incidents to DOT.<sup>109</sup> An additional carrier had failed to file accurate reports about mishandled baggage, incidents involving the loss, injury or death of an animal in air transportation, and passengers involuntarily denied boarding; but because the reporting errors were disclosed on the carrier’s own initiative, no civil penalty was assessed for the violations.<sup>110</sup>

## **Baggage Liability**

DOT policy is that for international flights to which the Montreal Convention<sup>111</sup> applies, air carriers may not disclaim or arbitrarily limit liability for the loss, damage, or delay of valuable items – or for the loss or delay of fragile items – in checked baggage. Accordingly, DOT has warned that air carrier tariffs and contracts of carriage which disclaimed liability for high-value contents (including, but not limited to, electronics, cameras, and jewelry) must be modified.<sup>112</sup> In 2013, a carrier was sanctioned for non-compliance, including by limiting reimbursement of incidental expenses due to baggage delays to between \$50 and \$150 per day regardless of actual expenses, and refusing liability for the loss of items in checked baggage.<sup>113</sup> Additionally, DOT adjusted for inflation the minimum liability limit for domestic baggage, to \$3,400 per passenger.<sup>114</sup>

## **Refunds**

A carrier was fined because in a three-month period it failed to process over 9,000 refund requests in a timely manner,<sup>115</sup> as required by DOT regulations.<sup>116</sup> But DOT dismissed a third-party complaint which alleged that a carrier had not processed refund requests as required; the DOT concluded that minor violations had occurred in the processing of the complainant’s complex transactions, but there was no

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pattern of violations.<sup>117</sup> Additionally, an air taxi and its principals entered into a consent order with DOT – based on its failure to process refund requests from consumers who had purchased but not received air transportation – that imposed no fine.<sup>118</sup> Finally, DOT filed an enforcement complaint against an additional air taxi and its principal, alleging that it had failed in some cases to process credit card refunds in a timely manner, and in some cases to issue refunds at all.<sup>119</sup>

## **Oversales**

DOT regulations require air carriers to compensate passengers who are denied boarding involuntarily (i.e., “bumped”), and set out additional requirements for providing information about denied boarding compensation to passengers and for soliciting volunteers before involuntarily denying boarding to passengers.<sup>120</sup> In 2013, a carrier was fined because it failed to solicit volunteers before involuntarily denying boarding to passengers, failed to advise passengers involuntarily denied boarding of their rights, and failed to provide appropriate compensation to passengers involuntarily denied boarding.<sup>121</sup>

## **Tariffs**

A third-party complaint alleged that a carrier had taken the position that its publicly-available contract of carriage did not apply to travel to and from the U.S. based on the terms of the tariffs it had filed with DOT. DOT held that the inconsistencies between the publicly available contract of carriage and the carrier’s tariff filings – and thus the carrier’s unclear policy regarding compensation for delayed and cancelled flights – was an unfair and deceptive practice.<sup>122</sup> DOT also noted that the carrier had failed to comply with the requirement that it make the text of its tariff available for public inspection.<sup>123</sup>

## **Consumer Committee**

At the direction of Congress, in 2012 DOT established an Advisory Committee for Aviation Consumer Protection,<sup>124</sup> which submitted a set of recommendations to DOT later in the year.<sup>125</sup> In 2013 the committee held its fourth and fifth meetings, at which it reviewed the status of recommendations and also discussed additional issues including concerns about the privacy of data collected from passengers.<sup>126</sup>

## **Ticket Agent Search Results**

Consistent with one of the committee recommendations, DOT advised online ticket agents that they should not imply that no search results exist that satisfy a consumer’s search criteria, if flights are available from an airline that is not displayed by that website. For such an itinerary, an online agent should not state that “no flights are available” but could state “no flights are available from the airlines we search.”<sup>127</sup>

## **IATA Resolution 787**

The International Air Transport Association (IATA) submitted to DOT for approval a resolution adopted at an international conference that would establish new standards for the distribution of airfare-related information. IATA and its allies asserted that the changes would be pro-competitive; opponents argued that the new standards would make airfares less transparent and urged DOT to reject the resolution, for reasons including that it allegedly would facilitate deceptive practices. The application remains pending.<sup>128</sup>

## **False Pleadings**

An entity that was not a certificated air carrier submitted a proposal to provide Essential Air Service at Macon, Georgia under the name of a certificated carrier. The carrier subsequently disavowed any connection with the entity, and stated that the representations made in the proposal were false. The matter subsequently was referred to the Office of Aviation Enforcement and Proceedings.<sup>129</sup>



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## **Hazardous Materials**

In 2011, the FAA and the Pipeline and Hazardous Materials Safety Administration (PHMSA) jointly adopted a regulation which required air carriers to ensure that passengers, at the time of ticket purchase, are provided information about hazardous materials prohibited aboard aircraft during the purchase process. Additionally, as originally adopted the regulation would have required passengers to affirmatively indicate that they understand the requirements before completing the purchase process, effective January 1, 2013.<sup>130</sup> But at the start of 2013, FAA and PHMSA delayed the effective date of the affirmation requirement until January 1, 2015.<sup>131</sup>

## **Conclusion**

DOT's authority to regulate the practices of air carriers, ticket agents, and other entities involved in the aviation industry is wide-ranging. Although DOT's historic focus has been on advertising, the agency monitors other areas of industry activity, and in recent years has begun to emphasize consumer-oriented "passenger rights" issues, most notably tarmac delay requirements and customer service plans. As set forth above, DOT's regulations and enforcement policies are extensive and complex. Those who provide, sell, or otherwise arrange air transportation should take care to familiarize themselves with DOT's regulations and interpretations; to review their practices in light of DOT's guidance; and to keep abreast of new developments, such as those reviewed above.

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<sup>1</sup> 49 U.S.C. § 41712 (formerly § 411 of the Federal Aviation Act of 1958).

<sup>2</sup> 49 U.S.C. § 41713. For example, in an unpublished decision a California trial court held that preemption barred the application of a state privacy law to an air carrier's mobile application; the state has appealed the decision. See California v. Delta Air Lines, Inc., San Francisco Superior Court docket no. CGC-12-526741. In contrast, a federal district court found that claims that an air carrier's fuel surcharges were excessive (i.e., because they did not reflect the actual cost of fuel) were not preempted, because they were premised on contractual terms between the airline and its passengers and were not premised on state (or DOT) standards. See Dover v. British Airways, PLC, 2013 WL 5970688 (E.D.N.Y. November 8, 2013). Additionally, the Supreme Court granted certiorari to determine if a claim premised on a covenant of good faith and fair dealing was preempted; a decision is expected in 2014, which could provide further guidance as to the overall scope of federal preemption. See Ginsberg v. Northwest, Inc., 133 S.Ct. 2387 (2013).

<sup>3</sup> However, DOT often waives a portion of the penalties if the subject of a consent order complies with its terms and conditions during the subsequent year, or another period designated by DOT; the specific penalties and waivers assessed in 2013 are noted throughout this article.

<sup>4</sup> An additional significant development in 2013 was that DOT announced that Samuel Podberesky – who had been its Assistant General Counsel for Aviation Enforcement and Proceedings since 1986 – would retire in 2014.

<sup>5</sup> 49 U.S.C. § 40102(a)(45) ("a person ... that as a principal or agent sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for air transportation").

<sup>6</sup> In re Hipmunk Inc., Consent Order, Order 2013-8-8 (August 20, 2013) (assessing a penalty of \$30,000, half suspended on condition of compliance during the subsequent year).

<sup>7</sup> Third Party Complaint of Benjamin Edelman v. Cathay Pacific Airways Limited, Consent Order and Order of Dismissal, Order 2013-8-23 (August 29, 2013). See also Answers to Questions, docket DOT-OST-2013-0027 (May 9, 2013).

<sup>8</sup> Enhancing Airline Passenger Protections, 76 Fed. Reg. 23110 (April 25, 2011); Enhancing Airline Passenger Protections: Limited Delay of Effective Date for Certain Provisions, 76 Fed. Reg. 45181 (July 28, 2011); Enhancing Airline Passenger Protections: Limited Extension of Effect Date for Full Fare Price Advertising, 76 Fed. Reg. 78145 (December 16, 2011); Enhancing Airline Passenger Protections: Full Fare Price Advertising Requirements, 76 Fed. Reg. 82115 (December 30, 2011).

<sup>9</sup> 14 C.F.R. § 259.4.

<sup>10</sup> In re Aerovias del Continente Americano S.A. (Avianca), Consent Order, Order 2013-8-9 (August 21, 2013) (assessing a penalty of \$100,000, half suspended on condition of compliance during the subsequent year); In re Caribbean Airlines Limited, Consent Order, Order 2013-3-15 (March 29, 2013) (assessing a penalty of \$100,000, half

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suspended on condition of compliance during the subsequent year).

<sup>11</sup> In re United Airlines, Inc., Consent Order, Order 2013-10-13 (October 25, 2013) (thirteen flights; assessing a penalty of \$1.1 million, of which \$185,000 was credited to refunds provided to affected passengers and \$440,000 was credited to expenditures to improve compliance); In re American Eagle Airlines, Inc., Consent Order, Order 2013-7-18 (July 23, 2013) (two flights; assessing a penalty of \$200,000, half suspended on condition of compliance during the subsequent year).

<sup>12</sup> In re Alaska Airlines, Inc., Consent Order, Order 2013-11-17 (November 22, 2013) (assessing a penalty of \$30,000, half suspended on condition of compliance during the subsequent year); Caribbean Airlines, Order 2013-3-15.

<sup>13</sup> United Airlines, Order 2013-10-13.

<sup>14</sup> In re Air China Limited, Consent Order, Order 2013-5-3 (May 2, 2013) (assessing a penalty of \$90,000, half suspended on condition of compliance during the subsequent year); In re United Air Lines, Inc., Consent Order, Order 2013-2-9 (February 11, 2013) (assessing a penalty of \$130,000, half suspended on condition of compliance during the subsequent year).

<sup>15</sup> VRG Linhas Aereas S.A. d/b/a GOL Linhas Aereas Inteligentes, Consent Order, Order 2013-11-23 (November 26, 2013) (assessing a penalty of \$250,000, half suspended on condition of compliance during the subsequent year); Air China, Order 2013-5-3.

<sup>16</sup> Docket DOT-OST-2013-0084.

<sup>17</sup> Docket DOT-OST-2013-0152.

<sup>18</sup> Docket DOT-OST-2013-0152.

<sup>19</sup> Letter from Samuel Podberesky, Assistant General Counsel for Aviation Enforcement and Proceedings, to David A. Berg, Airlines for America, Response to A4A Request for Limited Waiver of 14 C.F.R. § 259.4 Related to Runway Closures at LaGuardia International Airport on July 22, 2013 (December 6, 2013).

<sup>20</sup> Docket DOT-OST-2013-0112.

<sup>21</sup> 14 C.F.R. § 399.81.

<sup>22</sup> 14 C.F.R. § 259.5.

<sup>23</sup> In re United Airlines, Inc., Consent Order, Order 2013-8-27 (August 30, 2013) (assessing a penalty of \$350,000, half suspended on condition of compliance during the subsequent year). See also 14 C.F.R. Part 374.

<sup>24</sup> In re Delta Air Lines, Inc., Consent Order, Order 2013-6-18 (June 26, 2013) (assessing a penalty of \$750,000, of which \$425,000 was credited to expenditures to improve compliance). See also 14 C.F.R. Part 250.

<sup>25</sup> GOL Linhas Aereas Inteligentes, Order 2013-11-23.

<sup>26</sup> 14 C.F.R. § 259.5(b)(4).

<sup>27</sup> In re JetBlue Airways Corporation, Consent Order, Order 2013-6-20 (June 28, 2013) (assessing a penalty of \$60,000, half suspended on condition of compliance during the subsequent year).

<sup>28</sup> Guidance on the 24-hour reservation requirement (May 31, 2013) ([http://www.dot.gov/sites/dot.dev/files/docs/Notice\\_24hour\\_hold\\_final20130530.pdf](http://www.dot.gov/sites/dot.dev/files/docs/Notice_24hour_hold_final20130530.pdf)).

<sup>29</sup> 14 C.F.R. § 399.85.

<sup>30</sup> In re Raj Travel, Inc., Consent Order, Order 2013-9-1 (September 3, 2013) (assessing a penalty of \$10,000, half suspended on condition of compliance during the subsequent 13 months); In re Hipmunk, Order 2013-8-8.

<sup>31</sup> GOL Linhas Aereas Inteligentes, Order 2013-11-23.

<sup>32</sup> In re British Airways Plc., Consent Order, Order 2013-7-11 (July 12, 2013) (assessing a penalty of \$40,000, half suspended on condition of compliance during the subsequent year).

<sup>33</sup> 14 C.F.R. § 259.7.

<sup>34</sup> In re Southwest Airlines Co., Consent Order, Order 2013-5-1 (May 1, 2013) (assessing a penalty of \$150,000, of which \$115,000 was credited to refunds provided to affected passengers).

<sup>35</sup> 49 U.S.C. § 42302 and 14 C.F.R. § 259.7.

<sup>36</sup> GOL Linhas Aereas Inteligentes, Order 2013-11-23.

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<sup>37</sup> 14 C.F.R. § 399.89.

<sup>38</sup> 14 C.F.R. § 399.88.

<sup>39</sup> Laurus Travel, Order 2013-12-7.

<sup>40</sup> 14 C.F.R. § 259.6.

<sup>41</sup> GOL Linhas Aereas Inteligentes, Order 2013-11-23.

<sup>42</sup> 14 C.F.R. § 399.84. Additionally, an overlapping prohibition for public charter operators appears at 14 C.F.R. § 380.27, and an overlapping prohibition for ticket agents appears at 14 C.F.R. § 399.80(f). Historically, the latter prohibition rarely was cited by DOT, but it has been included in some – but not all – orders involving ticket agents that also relied upon § 399.84.

<sup>43</sup> On November 18, 2013, the IRS announced inflation adjustments for certain air transportation taxes, effective for tickets issued on or after January 1, 2014 (Rev. Proc. 2013-2013-35). The fee for domestic segments was increased from \$3.90 to \$4.00, international arrival and departure taxes increased from \$17.20 to \$17.50, and the tax for domestic segments related to Alaska or Hawaii increased from \$8.60 to \$8.70.

<sup>44</sup> Laurus Travel Incorporated, d/b/a Laurus Travel, Consent Order, Order 2013-12-7 (assessing a penalty of \$26,000, half suspended on condition of compliance during the subsequent 18 months). This case also was unusual because the agent was located in Canada, but DOT asserted that Laurus Travel was within its jurisdiction because it marketed to U.S. consumers.

<sup>45</sup> Alpha Media Group, LLC d/b/a AlphaFlightGuru, Consent Order, Order 2013-9-19 (assessing a penalty of \$60,000, half suspended on condition of compliance during the subsequent year); Raj Travel, Inc., Order 2013-9-1; In re Legendary Journeys, Inc., Consent Order, Order 2013-1-16 (January 25, 2013) (assessing a penalty of \$40,000, half suspended on condition of compliance during the subsequent year).

<sup>46</sup> GOL Linhas Aereas Inteligentes, Order 2013-11-23.

<sup>47</sup> JetBlue Airways, Order 2013-6-20.

<sup>48</sup> In re AirTran Airways, Inc., Consent Order, Order 2013-5-14 (May 22, 2013) (assessing a penalty of \$100,000, half suspended on condition of compliance during the subsequent year).

<sup>49</sup> In re Frontier Airlines, Inc., Consent Order, Order 2013-7-28 (August 1, 2013) (assessing a penalty of \$80,000, of which half was creditable to refunds to affected passengers and half was suspended on condition of compliance during the subsequent year).

<sup>50</sup> Laurus Travel, Order 2013-12-7; Legendary Journeys, Order 2013-1-16.

<sup>51</sup> Cathay Pacific, Order 2013-8-23.

<sup>52</sup> Docket DOT-OST-2013-0025 (British Airways), Docket DOT-OST-2013-0214 (Air Europa); Docket DOT-OST-2013-0215 (Middle East Airlines); Docket DOT-OST-2013-0216 (TAROM).

<sup>53</sup> Third Party Complaint of Benjamin Edelman v. American Airlines, Inc., Consent Order and Order of Dismissal, Order 2013-12-6 (December 11, 2013) (assessing a penalty of \$60,000). A supplemental complaint subsequently was filed against the carrier, alleging that its website continued to be non-compliant. See Docket DOT-OST-2013-0213.

<sup>54</sup> Laurus Travel, Order 2013-12-7; In re Bloomspot, Inc., Consent Order, Order 2013-7-27 (July 31, 2013) (assessing a penalty of \$20,000, half suspended on condition of compliance during the subsequent year).

<sup>55</sup> Laurus Travel, Order 2013-12-7.

<sup>56</sup> Docket DOT-OST-2013-0058.

<sup>57</sup> In re Southwest Airlines Co., Consent Order, Order 2013-7-20 (July 30, 2013) (assessing a penalty of \$200,000, half suspended on condition of compliance during the subsequent year).

<sup>58</sup> In re American Airlines, Inc., Consent Order, Order 2013-11-6 (November 7, 2013) (assessing a penalty of \$20,000, half suspended on condition of compliance during the subsequent year); JetBlue Airways, Order 2013-6-20; Legendary Journeys, Order 2013-1-16.

<sup>59</sup> American Airlines, Order 2013-11-6.

<sup>60</sup> 14 C.F.R. Part 212 and Part 380.

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<sup>61</sup> In re PrimeSport, Inc., Consent Order, Order 2013-7-15 (July 18, 2013) (assessing a penalty of \$60,000, half suspended on condition of compliance during the subsequent year). See also 14 C.F.R. § 380.25.

<sup>62</sup> In re SkyKing, Inc., Consent Order, Order 2013-2-7 (February 7, 2013) (assessing a nominal penalty of \$500,000, but acknowledging that the carrier was reorganizing in bankruptcy). See also 14 C.F.R. § 212.3, § 380.11, § 380.34, § 380.40, and § 380.43.

<sup>63</sup> In re Valley National Bank, Consent Order, Order 2013-9-2 (September 4, 2013) (assessing a penalty of \$125,000, half suspended on condition of compliance during the subsequent year). See also 14 C.F.R. § 380.34. This was the first DOT consent order premised on a bank's oversight of charter escrow accounts in nearly 25 years.

<sup>64</sup> Guidance on Review and Approval of Public Charter Prospectuses (November 13, 2012) (<http://www.dot.gov/sites/dot.dev/files/docs/direct%20air%20policy%20notice%20final.docx>).

<sup>65</sup> Request for Comments on Draft Clarification of November 2012 Guidance on Review and Approval of Public Charter Operations and Prospectuses (January 4, 2013) ([http://www.dot.gov/sites/dot.dev/files/docs/Direct%20Air%20-%20rev%20380%20policy%20notice\\_revised.pdf](http://www.dot.gov/sites/dot.dev/files/docs/Direct%20Air%20-%20rev%20380%20policy%20notice_revised.pdf)).

<sup>66</sup> Public Charter Prospectuses, 78 Fed. Reg. 5239 (January 24, 2013).

<sup>67</sup> Request for Comments on Draft Sample Assurances Relating to Department's Guidance on Public Charter Prospectuses, (January 25, 2013) ([http://www.dot.gov/sites/dot.dev/files/docs/SampleP\\_C\\_AssurancesJan25.pdf](http://www.dot.gov/sites/dot.dev/files/docs/SampleP_C_AssurancesJan25.pdf)) and docket DOT-OST-2013-0002.

<sup>68</sup> 14 C.F.R. § 380.34.

<sup>69</sup> Docket DOT-OST-2013-0107.

<sup>70</sup> Consumers Cautioned on Air Tours to College Bowl Games, (December 6, 2013) (<http://www.dot.gov/briefing-room/news-digest-dot-101-13>).

<sup>71</sup> Enhanced Consumer Protections for Charter Air Transportation, 78 Fed. Reg. 59880 (September 30, 2013).

<sup>72</sup> 14 C.F.R. Part 382.

<sup>73</sup> 49 U.S.C. § 41705. The ACAA typically has been interpreted to preempt disability claims from being brought against air carriers under state law. However, in Gilstrap v. United Air Lines, Inc., 709 F.3d 995 (9th Cir. 2013), the court found that even if only federal law can set standards of care, state law remedies for violations of those standards are not necessarily preempted.

<sup>74</sup> In practice, DOT's jurisdiction over disabilities-related issues can overlap with that of the FAA. For example, in 2013 the FAA issued guidance to operators regarding the acceptance and in-flight use of compressed oxygen, portable oxygen concentrators, and liquid oxygen. See Acceptance of Passenger Supplied Medical Oxygen Aboard Aircraft, InFO 13005 (April 22, 2013).

<sup>75</sup> In re American Airlines, Inc., Consent Order, Order 2013-12-4 (December 6, 2013) (assessing a penalty of \$20,000, half suspended on condition of compliance during the subsequent year). See also 14 C.F.R. § 382.129.

<sup>76</sup> Southwest Airlines, Order 2013-5-1. See also 14 C.F.R. § 382.155.

<sup>77</sup> In re Virgin America, Inc., Consent Order, Order 2013-9-7 (September 10, 2013) (assessing a penalty of \$150,000, half suspended on condition of captioning being added before September 30, 2013). See also 14 C.F.R. § 382.69 (which further provides that captioning is mandatory for safety videos created on or after November 10, 2009).

<sup>78</sup> In re US Airways, Inc., Consent Order, Order 2013-11-4 (November 4, 2013) (assessing a penalty of \$1,200,000, \$700,000 was credited to expenditures to improve compliance). See also 14 C.F.R. § 382.91.

<sup>79</sup> 14 C.F.R. § 382.67.

<sup>80</sup> Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Aircraft and Stowage of Wheelchairs, 78 Fed. Reg. 67918 (November 12, 2013).

<sup>81</sup> The deadline for the installation of the placards is January 13, 2014. But the trade associations Airlines for America and the International Air Transport Association have requested that the deadline be extended until October 13, 2014, for reasons including that approval for the installation of the signage would be required from the FAA and/or foreign civil aviation authorities. See docket DOT-OST-2011-0098. Additionally, at an invitation-only forum on December 11, 2013, the government clarified that the placards should include the predominant languages in which an air carrier communicates with its passengers.

<sup>82</sup> 14 C.F.R. § 382.43 and § 382.57.

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<sup>83</sup> Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at Airports, 78 Fed. Reg. 67882 (November 12, 2013). At an invitation-only forum on December 11, 2013, the government clarified that although as published the latter deadline for kiosks was stated to be December 12, 2022, the deadline was intended to be December 12, 2023 and a correction would be forthcoming.

<sup>84</sup> 14 C.F.R. § 399.80. In the process of amending this regulation, DOT appears to have unintentionally rendered subsection 399.80(n) ineffective, because its applicability is not discussed in the new introduction to the section.

<sup>85</sup> 49 C.F.R. § 27.71.

<sup>86</sup> Additional Guidance on the Application of Preboarding Requirements for Air Travelers with Disabilities, (May 29, 2013) (<http://www.dot.gov/sites/dot.dev/files/docs/Preboarding%20Notice%20Final.pdf>).

<sup>87</sup> Guidance on Transport of Portable Dialysis Machines by Air Travelers with Disabilities (June 3, 2013) ([http://www.dot.gov/sites/dot.dev/files/docs/Portable\\_Dialysis\\_Machine\\_Notice.pdf](http://www.dot.gov/sites/dot.dev/files/docs/Portable_Dialysis_Machine_Notice.pdf)).

<sup>88</sup> Docket DOT-OST-2008-0273 (Air Pacific, Etihad, and Virgin Atlantic).

<sup>89</sup> Docket DOT-OST-2008-0273 (TACA and Volaris).

<sup>90</sup> Docket DOT-OST-2008-0272 (South African Airways).

<sup>91</sup> Docket DOT-OST-2008-0272 (Aer Lingus (14 C.F.R. § 382.19), Air France (14 C.F.R. § 382.19, § 382.25, and § 382.27), Alitalia (14 C.F.R. § 382.1 and § 382.7), Iberia (14 C.F.R. § 382.1 and § 382.7), LAN (14 C.F.R. § 382.29), and Swiss International (14 C.F.R. § 382.61 - § 382.69)).

<sup>92</sup> 14 C.F.R. § 382.141 and § 382.51.

<sup>93</sup> Frank Drum, et al. v. Southwest Airlines Co. and PrimeFlight Airline Services, Order Terminating Proceeding, Order 2013-8-17 (August 23, 2013); Kyla Thorington, et al. v. United Airlines, Inc. and PrimeFlight Airline Services, Order Terminating Proceeding, Order 2013-8-16 (August 23, 2013); Onetha McKnight, et al. v. US Airways, Inc. and PrimeFlight Airline Services, Order Terminating Proceeding, Order 2013-8-15 (August 23, 2013).

<sup>94</sup> 49 U.S.C. § 41101.

<sup>95</sup> Third Party Complaint of Pacific Airways, Inc. and PM Air, LLC Against Scott Air, LLC d/b/a Scott Air Express, Order of Dismissal, Order 2013-4-4 (April 10, 2013).

<sup>96</sup> In re BestCare EMS, Ltd., Consent Order, Order 2013-11-14 (November 20, 2013) (assessing a penalty of \$15,000, half suspended on condition of compliance during the subsequent year).

<sup>97</sup> In re Blanket Exemption to Indirect Air Carriers Serving as Air Ambulance Operators, Order Granting Blanket Exemption, Order 83-1-36 (January 12, 1983).

<sup>98</sup> 49 U.S.C. § 40102(a)(15).

<sup>99</sup> In the matter of the cancellation of the Air Taxi authority issued to VIH Cougar Helicopters, Inc. pursuant to the provisions of 14 C.F.R. § 298.24, Final Order, Order 2013-6-8 (June 11, 2013).

<sup>100</sup> In re VIH Cougar Helicopters, Inc., Consent Order, Order 2013-11-16 (November 22, 2013) (assessing a penalty of \$300,000).

<sup>101</sup> 14 C.F.R. Part 257.

<sup>102</sup> 49 U.S.C. § 41712(c).

<sup>103</sup> Disclosure of Code-Share Service by Air Carriers and Sellers of Air Transportation, 76 Fed. Reg. 2744 (January 14, 2011).

<sup>104</sup> In re Frosch International Travel, Inc., Consent Order, Order 2013-10-10 (October 22, 2013) (assessing a penalty of \$65,000, half suspended on condition of compliance during the subsequent year); In re Carlson Wagonlit Travel, Inc., Consent Order, Order 2013-10-9 (October 22, 2013) (assessing a penalty of \$125,000, half suspended on condition of compliance during the subsequent year); In re STA Travel, Inc., Consent Order, Order 2013-8-26 (August 29, 2013) (assessing a penalty of \$40,000, half suspended on condition of compliance during the subsequent year); In re FC USA, Inc., d/b/a Liberty Travel, Consent Order, Order 2013-8-25 (August 29, 2013) (assessing a penalty of \$100,000, half suspended on condition of compliance during the subsequent year); AAA Mid-Atlantic, Inc., Consent Order, Order 2013-8-24 (August 29, 2013) (assessing a penalty of \$40,000, half suspended on condition of compliance during the subsequent year); In re JTB USA, Inc., Consent Order, Order 2013-5-15 (May 23, 2013) (assessing a penalty of \$60,000, half suspended on condition of compliance during the subsequent year).

<sup>105</sup> Hipmunk, Order 2013-8-18.



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<sup>106</sup> 49 U.S.C. § 41708.

<sup>107</sup> 14 C.F.R. § 382.157.

<sup>108</sup> In re Virgin America, Inc., Consent Order, Order 2013-12-16 (December 26, 2013) (assessing a penalty of \$60,000, half suspended on condition of compliance during the subsequent year); In re Etihad Airways, Inc., Consent Order, Order 2013-8-7 (August 20, 2013) (assessing a penalty of \$20,000). See also 14 C.F.R. Part 217 and Part 241.

<sup>109</sup> In re GoJet Airlines, LLC, Consent Order, Order 2013-11-11 (November 14, 2013) (assessing a penalty of \$10,000, half suspended on condition of compliance during the subsequent year); Shuttle America Corporation, Consent Order, Order 2013-11-10 (November 14, 2013) (assessing a penalty of \$10,000, half suspended on condition of compliance during the subsequent year); In re Jet Airways (India) Ltd., Consent Order, Order 2013-10-11 (October 22, 2013) (assessing a penalty of \$10,000, half suspended on condition of compliance during the subsequent year); Avianca, Order 2013-8-9; United Air Lines, Order 2013-2-9.

<sup>110</sup> In re United Airlines, Inc., Consent Order, Order 2013-8-27 (August 30, 2013) (assessing a penalty of \$350,000 for other violations, half suspended on condition of compliance during the subsequent year). See also 14 C.F.R. § 234.6, § 234.13, and § 250.10.

<sup>111</sup> Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on May 28, 1999.

<sup>112</sup> Providing Guidance on Airline Baggage Liability and Responsibilities of Code-Share Partners Involving International Itineraries, 74 Fed. Reg. 14837 (April 1, 2009). Although not explicitly cited by DOT, the CAB advised that the Warsaw Convention – the Montreal Convention’s predecessor – similarly did not allow air carriers to deny liability for valuable or fragile items carried on international flights. See Trans International Airlines, Inc. Enforcement Proceeding, Order on Petition for Discretionary Review of Initial Decision, Order 77-8-116 (August 23, 1977).

<sup>113</sup> In re Korean Air Lines Co., Ltd., Consent Order, Order 2013-7-5 (July 5, 2013) (assessing a penalty of \$60,000, half suspended on condition of compliance during the subsequent year).

<sup>114</sup> Domestic Baggage Liability, 78 Fed. Reg. 14913 (March 8, 2013). See also 14 C.F.R. § 254.4.

<sup>115</sup> United Airlines, Order 2013-8-27.

<sup>116</sup> 14 C.F.R. Part 374.

<sup>117</sup> Third Party Complaint of F. Bennett Cushman II v. British Airways Plc, Order of Dismissal, Order 2013-7-17 (July 22, 2013).

<sup>118</sup> In re Locair, Inc. and Brian L. Hall, Rory C. Crews, and Pedro E. Baez, docket DOT-OST-2013-0065, Consent Order and Final Judgment (December 5, 2013).

<sup>119</sup> In re Friendship Airways, Inc. d/b/a Yellow Air Taxi and Christopher Behnam, docket DOT-OST-2013-0066, Notice of Enforcement Proceeding and Proposed Assessment of Civil Penalties (April 2, 2013).

<sup>120</sup> 14 C.F.R. Part 250.

<sup>121</sup> In re Delta Air Lines, Order 2013-6-8.

<sup>122</sup> Third Party Complaint of Michael Gurevich and Elena Gurevich v. Compagnia Aerea Italiana, S.p.A., Consent Order and Order of Dismissal, Order 2013-3-12 (March 28, 2013) (assessing a penalty of \$125,000, half suspended on condition of compliance during the subsequent year).

<sup>123</sup> 14 C.F.R. § 221.101 and § 221.103.

<sup>124</sup> Pub. L. 112-95, § 411.

<sup>125</sup> Report of the Advisory Committee on Aviation Consumer Protection, doc. no. DOT-OST-2012-0087-0119 (October 22, 2012).

<sup>126</sup> Docket DOT-OST-2012-0087.

<sup>127</sup> Display of Search Results on Ticket Agent Websites (August 19, 2013) ([http://www.dot.gov/sites/dot.dev/files/docs/Disclosure\\_of\\_other\\_flights\\_guidance\\_081213.pdf](http://www.dot.gov/sites/dot.dev/files/docs/Disclosure_of_other_flights_guidance_081213.pdf))

<sup>128</sup> Docket DOT-OST-2013-0048.

<sup>129</sup> Essential Air Service at Macon, Georgia, Order Selecting Carrier and Establishing Subsidy Rates, Order 2013-2-26 (February 27, 2013).

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<sup>130</sup> Hazardous Materials: Harmonization with the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations, International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, 76 Fed. Reg. 3308 (January 19, 2011).

<sup>131</sup> Hazardous Materials: Harmonization with the United Nations Recommendations on the Transport of Dangerous Goods: Model Regulations, International Maritime Dangerous Goods Code, and the International Civil Aviation Organization Technical Instructions for the Safe Transport of Dangerous Goods by Air, 78 Fed. Reg. 1101 (January 7, 2013).

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