



DOT Enforcement of its Prohibitions on Unfair and Deceptive Practices, 2015 (February 2016)

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.”¹ 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.”² For more than 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); 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. Consent orders are by far the most commonly used tool in DOT’s arsenal. In 2015, DOT issued 15 consent orders – the fewest since 2000 – but the nominal fines attached to them totaled \$2,435,000.³

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 one of DOT’s areas of greatest concern continues to have been its “full fare rule” disclosure requirements for advertising by air carriers and ticket agents, DOT also has taken enforcement action regarding an array of other requirements, ranging from consumer protection rules newly adopted in 2011 to DOT’s long-standing rules for passengers with disabilities.



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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This article briefly summarizes the consent orders and other public guidance that were issued by DOT in 2015, as well as certain related agency actions and court decisions, and actions by other agencies that also will affect the disclosures made by and practices of carriers and ticket agents.

Enhanced Passenger Protection Requirements

In 2014, DOT released for public comment a set of proposals – organized in ten general categories – to adopt new regulations intended to further enhance its existing protections for passengers.⁴ The most significant proposals included:

- Codifying DOT's interpretation of the "ticket agents" over which it has jurisdiction to include metasearch engines and similar intermediaries;
- Requiring carriers to disclose information about ancillary fees for baggage and seat assignments to agents, and in turn requiring agents to display that information to consumers; and
- Requiring large agents to adopt customer service commitments, similar to certain of the commitments that carriers already are required to adopt.

As of the end of 2015, the rulemaking remains pending; DOT has indicated that its target date to publish a final rule is June 2016.⁵

Additionally, in 2015 DOT issued consent orders premised on passenger protection requirements that the agency previously had adopted.

- **Tarmac Delay Plans.** DOT requires carriers to 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.⁶ In 2015, DOT fined one carrier for 16 delays that exceeded the three-hour limit,⁷ and another carrier for a single delay that exceeded the three-hour limit and during which food and water was not distributed prior to the two-hour mark.⁸ DOT also reminded carriers of their obligation to resubmit their tarmac delay plans, as is required every three years by law.⁹
- **Customer Service Plans.** DOT requires that carriers adopt customer service plans, addressing twelve specific issues – some of which cross-reference other DOT regulations, and some of which are new; they include commitments that carriers will honor DOT's separate rules for baggage liability and denied boarding compensation.¹⁰ In 2015, DOT fined a carrier because it improperly limited the reimbursement to passengers whose baggage was delayed, in violation of both the separate rules and its customer service plan,¹¹ and fined another carrier that improperly limited the denied boarding compensation to passengers, in violation of both the separate rules and its customer service plan.¹²
- **Post-Purchase Price Increases.** Consumers must be provided a prominent warning if a price increase is possible prior to full payment, and written consent be obtained from consumers about the potential increase;¹³ 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.¹⁴ In 2015, a carrier was sanctioned because it did not honor "mistake" fares that had been held without payment for 24 hours rather than purchased outright – although strictly speaking, the violation was of the requirement to either allow fares to be held without payment or allow penalty-fee refunds for 24 hours,¹⁵ and not the prohibition of post-purchase price increases.¹⁶ But DOT also stated that it would not require a carrier to honor mistake fares that had been available only through a foreign point of purchase, not marketed to U.S. consumers.¹⁷ Subsequently, DOT announced a revision to its enforcement policy – apparently reflecting mounting evidence that "bad faith" purchases of mistake fares had

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become common – to the effect that carriers would not be required to honor mistake fares if they could be shown to be a “mistake” and if consumers were reimbursed for any verifiable out-of-pocket expenses incurred in reliance on such fares (e.g., non-refundable hotel reservations).¹⁸

- **Ancillary Fees.** Although DOT did not issue any new guidance regarding ancillary fees in 2015, a lawsuit against a U.S. carrier alleged that its ancillary fees were so deceptive and unfair as to constitute a violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act.¹⁹ The court dismissed the claims, but the plaintiffs have appealed.²⁰ Additionally, a petition was filed asserting that DOT had the authority to – and should – regulate the amount of change fees for international flights.²¹

Carrier and Agent Advertising

DOT also has continued to closely monitor airfare advertising. Generally, 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.”²²

- **Fuel and Other Carrier/Agent Surcharges.** One of the long-standing implications of the full-fare rule is that carrier- and agent-imposed surcharges must be included in advertised fares. In 2015, three carriers were fined because they had included carrier-imposed surcharges among what were described as “taxes” during the online booking process.²³
- **Fare Availability.** DOT also 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, although DOT has not set specific thresholds. In 2015, a carrier was fined because it briefly advertised certain fares on its website that technically were available but could not actually be purchased through the website.²⁴ Another carrier, in connection with an affinity credit card promotion, had listed fares on its website that were not actually available for purchase.²⁵
- **Accuracy.** DOT generally expects the information provided by carriers and ticket agents to be accurate. In 2015, a ticket agent was fined because its listing had identified the incorrect carrier for certain flights, as well as incorrectly identified certain connecting flights as being non-stop flights.²⁶

Passengers with Disabilities

In 2008, DOT substantially amended its regulations²⁷ which implement the Air Carrier Access Act (ACAA),²⁸ and which prohibit discrimination by air carriers against passengers on the basis of disability. Among the requirements are that larger U.S. and foreign carriers are required to file annual reports with DOT regarding disability-related complaints that they have received.²⁹ Although no consent orders or new guidance regarding carrier disabilities issues were released in 2015,³⁰ DOT did make available a guide intended to assist passengers with developmental disabilities,³¹ expanded a foreign carrier’s “equivalent alternative” exemption from the requirement for movable aisle armrests,³² and adopted new requirements for airports – intended to parallel certain requirements applicable to carriers, including for service animals relief areas and the captioning of audio-visual displays.³³ Additionally, the first phase of new accessibility requirements for carrier websites – adopted in 2013 – entered into effect on December 12, 2015,³⁴ and the first set of new requirements for kiosks will enter into effect on December 12, 2016.³⁵

Air Carrier Reporting

DOT is statutorily authorized to impose various reporting requirements on U.S. and foreign carriers,³⁶ including the timely reporting of general financial and operational data,³⁷ as well as data regarding oversales.³⁸ In 2015, two carriers were fined because they failed to report financial and operational data,³⁹ and a third carrier was the subject of an enforcement order because it filed inaccurate oversales reports.⁴⁰

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Additionally, DOT reminded U.S. carriers of revisions to the reporting requirements for incidents involving animals being transported, which entered into effect on January 1, 2015.⁴¹

Baggage Liability

The minimum liability limit for the loss or damage of baggage entrusted to air carriers on flights within the U.S. is \$3,500 per passenger.⁴² In 2015, a carrier was fined because it limited the reimbursement to passengers whose baggage was delayed to \$30 per day.⁴³ Additionally, DOT warned carriers that they should not exclude liability for damage to wheels, straps, and other protruding baggage parts on domestic flights, and suggested that the same should be the case for international flights, for which liability is set by the Montreal Convention. In the same guidance, DOT also warned carriers that all claims for damaged baggage should be accepted and reviewed, even if a carrier anticipates that a claim may lack merit.⁴⁴

Public Charters

DOT imposes various requirements on the sale and operation of public charter flights, above and beyond those generally applicable, primarily intended to protect payments made by consumers.⁴⁵ In 2015, a charter broker was fined for holding out services under its own name, even though it lacked air carrier authority.⁴⁶ DOT also reminded colleges and universities organizing flights to college bowl games and other special events that they should ensure that any public charter operator or charter broker that they utilize complies with DOT requirements, as well as that they must themselves comply with DOT's requirements for public charter operators if they resell individual seats on those flights; similar guidance also was provided to consumers generally.⁴⁷

Consumer Protection Committee

At the direction of Congress, in 2012 DOT established an Advisory Committee for Aviation Consumer Protection.⁴⁸ The committee held its seventh, eighth, and ninth meetings in 2015,⁴⁹ and issued a final set of recommendations, including that carriers should be allowed to decide for themselves whether to allow the in-flight use of cell phones for voice calls; that carriers should be required to disclose aircraft seat dimensions on their websites; that change/cancellation fees should be disclosed in booking paths; and that the FTC should require hotels to include all mandatory fees in their room rates.⁵⁰

Other Issues

- ***DOT Jurisdiction.*** The agency dismissed a complaint against a foreign carrier to the extent it was premised on how taxes and surcharges were displayed on the carrier's home country website, which was not marketed to U.S. consumers.⁵¹ But in two other cases involving foreign carriers, DOT found that foreign carrier websites were within its jurisdiction, for reasons including that they displayed prices in U.S. dollars and/or were targeted at U.S. consumers.⁵²
- ***Discrimination.*** In an undocketed letter, DOT advised a foreign carrier that it had violated a U.S. statute⁵³ by refusing to sell a ticket to an Israeli citizen for travel between the U.S. and a third country, even though the foreign carrier's homeland laws may have prohibited it from accepting the passenger.⁵⁴ After a subsequent exchange of correspondence with DOT,⁵⁵ the foreign carrier filed an administrative appeal of the decision, which was denied.⁵⁶
- ***Air Carrier Authority.*** Both air carriers that are citizens of the United States and foreign air carriers are required to obtain authority from DOT before they can engage directly or indirectly in the U.S.-related transportation of passengers or property for compensation.⁵⁷ In 2015, a foreign carrier was fined for operating a charter flight to the U.S. despite its lack of U.S. authority.⁵⁸
- ***Denied Boarding Compensation.*** In the event a flight is oversold, passengers involuntarily denied boarding are entitled to compensation of up to \$1,350, depending on the circumstances.⁵⁹ In 2015, a carrier was fined because a group of 11 passengers were denied boarding without

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compensation, and the carrier subsequently miscalculated the compensation to which they were entitled.⁶⁰

- **Musical Instruments.** DOT implemented regulations governing the carriage of musical instruments by U.S. carriers, as directed by Congress, and also issued an FAQ explaining the new rules.⁶¹ Generally, the rules are intended to make it easier for musicians to transport musical instruments as carry-on or checked baggage, and to limit the fees that U.S. carriers can charge for them.
- **Price Gouging.** The Secretary of Transportation, in a press release, announced that the agency was investigating whether five U.S. carriers had raised their fares in the wake of a train derailment in Philadelphia, which disrupted travel in the northeastern U.S., which he alleged would constitute an unfair practice.⁶²
- **Essential Air Service.** DOT subsidizes certain carriers that provide service to small communities pursuant to the Essential Air Service (EAS) program.⁶³ In 2015, a carrier was fined because it suspended service in an EAS market without complying with the applicable statutory and regulatory requirements.⁶⁴
- **Conflict Zones.** DOT reminded carriers that in addition to the operational restrictions imposed upon them by the FAA (i.e., prohibitions on operating in conflict zones), they also may not code-share on flights operated by foreign carriers that transit airspace for which the FAA had issued flight prohibitions.⁶⁵
- **Seating Requirements.** In 2015, the FAA adopted a new requirement that U.S. carriers – but not foreign carriers or ticket agents – disclose on their websites information about the width of seats on their aircraft, to enable passengers to determine which child restraint systems can be used.⁶⁶
- **Flight Sharing.** The U.S. Court of Appeals for the District of Columbia Circuit affirmed an FAA interpretation letter which held that a “flight sharing” website could be operated only if the pilots offering their services had commercial pilot licenses, because they would be holding out common carriage.⁶⁷
- **Hazardous Materials.** The Pipeline and Hazardous Materials Safety Administration (PHMSA), in coordination with the FAA, previously required carriers to ensure that passengers, at the time of ticket purchase, were provided information about hazardous materials prohibited aboard aircraft. In 2015, PHMSA made revisions to the requirements, including reduced requirements for ticket sales made by telephone.⁶⁸ Additionally, PHMSA subsequently announced a safety-based prohibition on the carriage of battery-powered electronic smoking devices in checked baggage, and a prohibition on charging such devices and/or their batteries on board aircraft.⁶⁹
- **European Union Consumer Protection Rules.** The U.S. Court of Appeals for the Seventh Circuit affirmed a district court ruling that the European Union’s consumer protection regulations for airline passengers could not be enforced in a U.S. court, because they were not incorporated into a carrier’s contract of carriage and the regulations only provided for their enforcement in E.U. member states.⁷⁰

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 – both by continuing to enforce newly-enacted rules and proposing further regulations. 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

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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.

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

² 49 U.S.C. § 41713. In 2015, a court found that claims by airport porters related to their tips were preempted, Overka v. American Airlines, Inc., 790 F.3d 36 (1st Cir. 2015), but another court found that municipal minimum wage requirements were not preempted, Filo Foods, LLC v. City of SeaTac, 357 P.3d 1040 (Wash. 2015).

³ 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, and also sometimes waives a portion of the penalties that is commensurate with mitigation expenses; the specific penalties and waivers assessed in 2015 are noted throughout this article.

⁴ Transparency of Airline Ancillary Fees and Other Consumer Protection Issues, 79 Fed. Reg. 29970 (May 23, 2014); Transparency of Airline Ancillary Fees and Other Consumer Protection Issues, 79 Fed. Reg. 45731 (August 6, 2014); Transparency of Airline Ancillary Fees and Other Consumer Protection Issues, 79 Fed. Reg. 57489 (September 25, 2014).

⁵ Report on Significant DOT Rulemakings (December 2015). Additionally, late comments were docketed on the proposals in 2015 by Airlines for America, Charles River Associates, Open Allies for Airfare Transparency, and Travelers United (docket DOT-OST-2014-0056).

⁶ 14 C.F.R. § 259.4.

⁷ In re Southwest Airlines Co., Consent Order, Order 2015-1-10 (January 15, 2015) (assessing a penalty of \$1.6 million, but with \$269,000 credited to compensation provided to passengers, \$431,000 credited to mitigation costs, and \$300,000 suspended on condition of compliance during the subsequent year).

⁸ In re Spirit Airlines, Inc., Consent Order, Order 2015-8-16 (August 27, 2015) (assessing a penalty of \$100,000, but with half suspended on condition of compliance during the subsequent year).

⁹ 49 U.S.C. § 42301; Submission of U.S. Carrier Updated Tarmac Delay Contingency Plans to Department of Transportation for Approval, 80 Fed. Reg. 23329 (April 27, 2015). Additionally, FlyersRights.org filed a petition on October 15, 2015 asking that DOT require carriers to more clearly inform passengers of their rights under the Montreal Convention for delays related to international flights (docket DOT-OST-2015-0256).

¹⁰ 14 C.F.R. § 259.5.

¹¹ In re Hawaiian Airlines, Inc., Consent Order, Order 2015-5-17 (May 21, 2015) (assessing a penalty of \$160,000, but with half suspended on condition of compliance during the subsequent year).

¹² In re American Airlines, Inc., Consent Order, Order 2015-9-10 (September 16, 2015) (assessing a penalty of \$20,000).

¹³ 14 C.F.R. § 399.89.

¹⁴ 14 C.F.R. § 399.88.

¹⁵ 14 C.F.R. § 259.5.

¹⁶ In re American Airlines, Inc., Consent Order, Order 2015-11-3 (November 5, 2015).

¹⁷ Office of Aviation Enforcement and Proceedings Determination Regarding United Airlines Mistaken Fare (February 23, 2015).

¹⁸ Enforcement Policy Regarding Mistaken Fares (May 8, 2015). DOT simultaneously amended § XI(8) of its FAQ to reflect its new position. Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (EAPP #2) (May 8, 2015).

¹⁹ 18 U.S.C. § 1962.

²⁰ Ray v. Spirit Airlines, Inc., S.D.Fla. no. 12-CV-61528 and 11th Cir. no. 15-13792.

²¹ Docket DOT-OST-2015-0031 (FlyerRights.org, February 11, 2015). A complaint concerning change fees also was filed in docket DOT-OST-2015-0189.

²² 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

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also relied upon § 399.84.

²³ Third Party Complaint of Benjamin Edelman v. Air Europa Lineas Aereas, S.A.U., Consent Order, Order 2015-2-3 (February 6, 2015) (assessing a penalty of \$100,000, but with half suspended on condition of compliance during the subsequent year); Third Party Complaint of Benjamin Edelman v. SriLankan Airlines Limited, Consent Order, Order 2015-5-1 (May 5, 2015) (assessing a penalty of \$20,000, but with half suspended on condition of compliance during the subsequent year); Third Party Complaint of Benjamin Edelman v. Middle East Airlines Airliban, Consent Order, Order 2015-11-4 (November 5, 2015) (assessing a penalty of \$10,000, but with half suspended on condition of compliance during the subsequent year). A similar complaint was filed in docket DOT-OST-2015-0001, and a complaint alleging that a carrier overcharged the applicable taxes was filed in docket DOT-OST-2015-0087. Additionally, the Business Travel Coalition sent a letter dated February 9, 2015 to DOT, asking that it investigate whether the fuel surcharges imposed by carriers generally were unreasonable, given reductions in fuel costs.

²⁴ In re Lufthansa German Airlines, Consent Order, Order 2015-1-17 (January 22, 2015) (assessing a penalty of \$30,000, but with half suspended on condition of compliance during the subsequent year).

²⁵ Hawaiian Airlines, Inc., Order 2015-5-17.

²⁶ In re Fareportal, Inc., d/b/a CheapOair, Consent Order, Order 2015-3-5 (March 13, 2015) (assessing a penalty of \$185,000, but with half suspended on condition of compliance during the subsequent year). A complaint alleging that a carrier's prices increased after their initial display was filed in docket DOT-OST-2015-0004. In further regard to accuracy, in 2015 adjustments were made for inflation to the excise tax imposed on international flights, Rev. Proc. 2015-53, § 3.37, Internal Revenue Bulletin no. 2015-44 (November 2, 2015) – but the Animal and Plant Health Inspection Service reduced the amount of its fee for international passengers, based on a review of the associated costs. User Fees for Agricultural Quarantine and Inspection Services, 80 Fed. Reg. 66748 (October 29, 2015). A federal court also denied a challenge to the expansion of the September 11th Security Fee. Airlines for America v. TSA, 780 F.3d 409 (D.C.Cir. 2015).

²⁷ 14 C.F.R. Part 382.

²⁸ 49 U.S.C. § 41705. The ACAA typically has been interpreted to preempt disability claims from being brought against air carriers under state law. But in two decisions rendered in 2015, courts found that the ACAA did not entirely preempt state law claims. Stevens v. Moore, 2015 WL 1637953 (E.D.Cal. April 13, 2015); Baugh v. Delta Air Lines, Inc., 2015 WL 761932 (N.D.Ga. February 23, 2015).

²⁹ 14 C.F.R. § 382.157. In 2015, 36 U.S. carriers and 137 foreign air carriers filed reports for 2014; the U.S. carriers received 24,044 disability-related complaints and the foreign carriers received 3,512 disability-related complaints, for a total of 27,556 – an increase of approximately 9% over 2013. DOT noted that 12,977 of the complaints – more than 47% – specifically alleged a failure to provide adequate assistance to passengers using wheelchairs.

³⁰ DOT has stated that it plans to solicit comments on captioning requirements for in-flight entertainment and other disabilities issues not resolved in 2008. Report on Significant DOT Rulemakings (December 2015). DOT also announced that it was exploring the possibility of conducting a negotiated rulemaking for these and other disabilities issues. Nondiscrimination on the Basis of Disability in Air Travel: Consideration of Negotiated Rulemaking Process, 80 Fed. Reg. 75953 (December 7, 2015). The deadline for comments subsequently was extended. Nondiscrimination on the Basis of Disability in Air Travel: Consideration of Negotiated Rulemaking Process, 81 Fed. Reg. 71935953 (January 5, 2016).

³¹ Guide: Air Travelers with Developmental Disabilities, (July 29, 2015).

³² Letter from Livaughn Chapman, Jr., Chief, Aviation Civil Rights Compliance Branch (July 30, 2015). Apart from requests for new or expanded equivalent alternative determinations, a request (later withdrawn) was filed in docket DOT-OST-2015-0063 for a short-term exemption from the accessible lavatory requirements of 14 C.F.R. § 382.63.

³³ Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance, 80 Fed. Reg. 46508 (August 5, 2015)

³⁴ But in communications directly with carriers, DOT stated that it would not enforce the website accessibility requirements until June 30, 2016 if carriers had temporary measures in place to assist passengers with disabilities, including at least a devoted telephone number and email address. However, the original deadline remains in effect for the requirement to provide a means via carrier websites to request disability accommodations on future flights.

³⁵ 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) and 14 C.F.R. § 382.43 and § 382.57. Two petitions for exemptions from the kiosk requirements have been filed, in dockets DOT-OST-2015-0161 and DOT-OST-2015-0225. Additionally, challenge to the scope of the kiosk regulations was dismissed on the grounds that it had been filed in the

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incorrect court, but that decision has been appealed. National Federation of the Blind v. DOT (D.D.C. no. 14-CV-0085 and D.C.Cir. no. 15-1026).

³⁶ 49 U.S.C. § 41708.

³⁷ 14 C.F.R. Part 298.

³⁸ 14 C.F.R. § 250.10.

³⁹ In re Inter Island Airways, Inc., Consent Order, Order 2015-5-7 (May 12, 2015) (assessing a penalty of \$20,000, but with half suspended on condition of compliance during the subsequent year); In re Charter Air Transport, Inc., Consent Order, Order 2015-6-2 (June 3, 2015) (assessing a penalty of \$30,000, but with half suspended on condition of compliance during the subsequent year).

⁴⁰ American Airlines, Order 2015-9-10.

⁴¹ Reports by Air Carriers on Incidents Involving Animals During Air Transport (January 13, 2015); Reports by Air Carriers on Incidents Involving Animals During Air Transport (December 29, 2015). See also 14 C.F.R. Part 235. As of the end of 2015, the reports submitted by U.S. carriers for January-October recounted 30 deaths, 21 injuries, and 3 losses of animals transported.

⁴² This figure was effective August 25, 2015. Revisions to Denied Boarding Compensation, Domestic Baggage Liability Limits, and Civil Penalty Amounts, 80 Fed. Reg. 30144 (May 27, 2015). See also 14 C.F.R. § 254.4.

⁴³ Hawaiian Airlines, Order 2015-5-17.

⁴⁴ Notice Regarding Damage to Wheels, Handles, and Other Components of Checked Baggage (November 25, 2015). Additionally, a lawsuit was filed against a U.S. carrier, asserting that its refusal to transport hunting trophies violated its common carriage obligations. Conservation Force v. Delta Air Lines, Inc., N.D.Tex. no. 15-CV-3348.

⁴⁵ 14 C.F.R. Part 212 and Part 380.

⁴⁶ In re FlyBlade, Inc., Consent Order, Order 2015-4-6 (April 10, 2015) (assessing a penalty of \$80,000, but with half suspended on condition of compliance during the subsequent year). DOT also issued an exemption from generally-applicable charter rules for presidential election campaigns (Order 2015-12-1) and issued a letter approving certain modifications to an exemption from generally-applicable charter rules that it had issued to the National Basketball Association (docket DOT-OST-1998-3557). Additionally, the DOJ indicted the former CEO and Managing Partner of a former charter operator, whom they accused of wire fraud and conspiracy in their handling of its finances (D.N.J. no. 15-CR-622).

⁴⁷ Notice to Colleges, Universities, and Other Organizations Offering Flights to College Bowl Games and Other Special Events (December 16, 2015); Notice to Consumers Purchasing Tickets to Special Events that Include Air Transportation (December 16, 2015).

⁴⁸ Pub. L. 112-95, § 411.

⁴⁹ Notice of Seventh Meeting of Advisory Committee, 80 Fed. Reg. 16723 (March 30, 2015); Notice of Eighth Meeting of Advisory Committee, 80 Fed. Reg. 31454 (June 2, 2015); Notice of Ninth Meeting of Advisory Committee, 80 Fed. Reg. 49312 (August 17, 2015).

⁵⁰ Although the final recommendations have not been docketed (DOT-OST-2012-0087), a video of the ninth meeting is available at <https://www.youtube.com/watch?v=HPc0IW-nreg>. DOT has stated that it plans to propose rules for voice calls in April 2016. Report on Significant DOT Rulemakings (December 2015).

⁵¹ Air Europa, Order 2015-2-3.

⁵² SriLankan Airlines, Order 2015-5-1; Middle East Airlines, Order 2015-11-4.

⁵³ 49 U.S.C. § 41310. A prior DOT ruling had concluded that the foreign carrier was not in violation of 49 U.S.C. § 40127. The passenger then appealed that decision to federal court (D.C.Cir. no. 14-1040), which placed the case in abeyance when DOT stated that the agency would reconsider its decision, and subsequently dismissed the case.

⁵⁴ Letter from Blane A Workie, Assistant General Counsel for Aviation Enforcement and Proceedings (September 30, 2015). Additional complaints alleging discrimination by foreign carriers were filed in dockets DOT-OST-2015-0093, DOT-OST-2015-0094, DOT-OST-2015-0143, and DOT-OST-2015-0168.

⁵⁵ Letter from Evelyn D. Sahr, Counsel for Kuwait Airways Company (October 13, 2015) and Letter from Blane A Workie, Assistant General Counsel for Aviation Enforcement and Proceedings (October 22, 2015).

⁵⁶ Petition of Kuwait Airways Corporation for Review of Staff Action (November 2, 2015) and Letter from Kathryn B. Thomson, General Counsel (November 9, 2015). The carrier has appealed to federal court (D.C.Cir. no. 15-1429).

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⁵⁷ 49 U.S.C. § 41101 and § 41301.

⁵⁸ In re Beijing Capital Airlines d/b/a Deer Jet, Consent Order, Order 2015-9-11 (September 18, 2015) (assessing a penalty of \$40,000, but with half suspended on condition of compliance during the subsequent year). The carrier noted that the aircraft had been leased to a charter broker; for further discussion of the perils of charter brokerage, see the text accompanying endnote 46.

⁵⁹ This figure was effective August 25, 2015. Revisions to Denied Boarding Compensation, Domestic Baggage Liability Limits, and Civil Penalty Amounts, 80 Fed. Reg. 30144 (May 27, 2015). See also 14 C.F.R. Part 250.

⁶⁰ American Airlines, Order 2015-9-10.

⁶¹ Carriage of Musical Instruments, 80 Fed. Reg. 161 (January 5, 2015) and Answers to Frequently Asked Questions Concerning Enforcement of the Musical Instruments Rule (14 CFR Part 251) (March 4, 2015).

⁶² U.S. DOT Requests Information on Airline Pricing Response to Amtrak Derailment (July 24, 2015). A complaint alleging that a carrier had overcharged a passenger in violation of its tariff rules for calculating fares also was filed in docket DOT-OST-2015-0254.

⁶³ 49 U.S.C. § 41731, et seq.

⁶⁴ Great Lakes Aviation, Inc., Consent Order, Order 2015-7-10 (July 22, 2015) (assessing a penalty of \$40,000). See also 49 U.S.C. § 41734 and 14 C.F.R. Part 323.

⁶⁵ Notice (March 19, 2015).

⁶⁶ Disclosure of Seat Dimensions to Facilitate Use of Child Safety Seats on Airplanes During Passenger-Carrying Operations, 80 Fed. Reg. 58575 (September 30, 2015). Additionally, the FAA updated its guidance for the use of child safety seats, Use of Child Restraint Systems on Aircraft, Advisory Circular 120-87C (September 24, 2015), and FlyersRights.org filed a petition on August 26, 2015 asking that the FAA set a minimum width and pitch for aircraft seats (docket FAA-2015-4011). See also the text accompanying endnote 50.

⁶⁷ Flytenow, Inc. v. FAA, 2015 WL 9258798 (D.C.Cir. December 18, 2015).

⁶⁸ Hazardous Materials: Harmonization with International Standards, 80 Fed. Reg. 1076 (January 8, 2015).

⁶⁹ Hazardous Materials: Carriage of Battery-Powered Electronic Smoking Devices in Passenger Baggage, 80 Fed. Reg. 66817 (October 30, 2015). DOT has stated that it plans to propose consumer protection-based rules on the use of electronic cigarettes in February 2016. Report on Significant DOT Rulemakings (December 2015).

⁷⁰ Volodarskiy v Delta Airlines, Inc., 784 F.3d 349 (7th Cir 2015).

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