DOT Enforcement of its Prohibitions on Unfair and Deceptive Practices, 2011 (January 2012)

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 local jurisdictions are preempted from imposing their own requirements "related to a price, route, or service of an air carrier."[2] For more than 25 years, DOT has exercised its authority under this statute, as well as 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 enforcement 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 2011, DOT issued 59 consent orders –the most in DOT history – with the nominal fines attached to those orders totaling more than $6 million.[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 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 carrier liability for lost or damaged baggage to the disclosure of information about flights operated by a carrier's code-share partner.

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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One especially notable development in 2011 has been DOT's emphasis that principals in the sale of air transportation can be held liable for the actions of their agents, and vice versa – even if one was not necessarily aware of what the other was doing. While this is an already established principle of DOT jurisprudence, its boundaries have not been clear. But in the past year DOT has applied it in various contexts, including cases involving carriers (i.e., by holding a carrier liable for ads on an agent's website that did not comply with DOT fare advertising requirements);[4] Global Distribution Systems (i.e., by holding ticket agents liable for a GDS's failure to provide complete code-share data to them);[5] and public charters (i.e., by holding public charter operators liable for non-compliant advertising by their agents).[6] In a similar vein, DOT has proposed a new regulation which – if adopted – would charge carriers with the responsibility for ensuring that ticket agent websites were accessible to passengers with disabilities.[7]

This article briefly summarizes the consent orders and other public guidance that were issued by DOT in 2011, as well as certain related agency actions and court decisions.

Enhanced Passenger Protections

In 2010, DOT adopted new regulations intended to "enhance airline passenger protections," and further initiated a proceeding to adopt a second round of new requirements. The second round of regulations were finalized in 2011, with some entering into effect on August 23, 2011, and others scheduled to enter into effect on January 24, 2012 and January 26, 2012.[8] Generally, the rules extend the existing requirements for the first time to foreign air carriers, as well as impose new requirements on both U.S. and foreign air carriers:

- ***Tarmac Delay Contingency Plans.*** Foreign air carriers for the first time are required to adopt contingency plans for tarmac delays at U.S. airports, and to post the plans on their websites – requirements that already apply to U.S. carriers. Generally, all carriers must not allow tarmac delays of more than four hours for international flights or three hours for domestic flights, and must provide updates to passengers every 30 minutes during a tarmac delay.

- ***Tarmac Delay Data Reporting.*** Previously, only U.S. carriers that accounted for at least 1% of domestic scheduled passenger revenues were required to report data about tarmac delays. Now, virtually all U.S. and foreign carriers that operate flights to, from, or within the U.S. are obligated to report tarmac delay data to the Bureau of Transportation Statistics.

- ***Customer Service Plans.*** Foreign air carriers for the first time are required to adopt customer service plans for flights to/from the U.S., and to post the plans on their websites – requirements that already apply to U.S. carriers. Generally, carriers must inform passengers of their policies regarding twelve specific service areas – and for some of these areas, DOT has set new minimum standards. Notably, carriers must provide a prompt refund of any fees paid by a passenger for services that he is unable to use (i.e., due to a denied boarding situation or flight cancellation); and for reservations made more than 7 days in advance of a flight, passengers must be allowed to "hold" reservations for at least 24 hours without penalty.

- ***Contracts of Carriage.*** Foreign air carriers for the first time are required to post their contracts of carriage on their websites – a requirement that already applies to U.S. carriers.

- ***Response to Consumer Problems.*** Foreign air carriers for the first time are required to publicize how complaints can be submitted, acknowledge complaints within 30 days, and substantively respond to complaints within 60 days – requirements that already apply to U.S. carriers. DOT also has clarified that carriers need not respond to complaints posted on social media sites, if they post a disclaimer and alternate contact information for complaints.

- ***Denied Boarding Compensation.*** DOT has increased the maximum compensation that is due to a passenger who is involuntarily denied boarding of a flight within or departing from the U.S. by a U.S. or foreign carrier to $1300. The exact compensation due to a passenger depends on whether the flight is domestic or international, and other circumstances. DOT also has revised

the disclosures that must be provided to passengers who are involuntarily denied boarding by a U.S. or foreign carrier, as well as those that must be provided when a carrier solicits volunteers.

- ***Full Fare Advertising.*** DOT previously allowed U.S. and foreign carriers, as well as ticket agents, to exclude from advertised fares any government-imposed taxes and fees that are assessed on a per-passenger basis, subject to disclosure requirements. DOT now will require all-inclusive advertising of fares; all taxes and fees must be included in the advertised price. Ads still will be allowed to specify what taxes and fees are included in the total price, but the details must be less prominent than the total price. DOT also will codify and expand its existing policy on how fares may be advertised on an "each-way" or "one-way" basis if a round-trip purchase is required, and DOT for the first time has prohibited "opt-out" provisions in advertising (i.e., the pre-selection of ancillary services such as insurance, rental cars, and premium seats is not permitted).

- ***Baggage Fees.*** U.S. and foreign air carriers now are required to prominently disclose any fees for carry-on or checked baggage on their websites, as well as to provide a prominent warning about baggage fees in the online booking process and in e-ticket confirmations. Ticket agents, unlike carriers, are not required to provide specific information about baggage fees, but must provide a prominent warning about baggage fees and alert consumers as to where they can obtain specific information. Additionally, carriers now must refund any baggage fees that they have collected if a bag is lost, and carriers now must apply the same baggage fees and rules to all segments of an itinerary, including segments involving interline and code-share partners.

- ***Other Optional Fees.*** DOT also now requires U.S. and foreign air carriers to comprehensively disclose fees for optional services (i.e., meals, cancelling or changing reservations, or advanced or upgraded seating) on their websites, as well as to disclose any difference between their optional services and fees and those of the operating carrier for a code-share flight.

- ***Post-Purchase Price Increases.*** DOT has expanded its restrictions on U.S. and foreign carriers increasing the price of a ticket or air tour package after purchase. Generally, after payment in full, the price can be increased only due to an increase in a government-imposed tax or fee, and only if the passenger agreed to the potential for such an increase prior to purchase. Before payment in full, the price can be increased only if the passenger agreed to the potential for such an increase prior to purchase. This prohibition also applies to fees for carry-on bags and first/second checked bags, but DOT has clarified that it does not apply to other ancillary services.[9]

- ***Flight Status Changes.*** U.S. and foreign carriers are required to promptly notify consumers of flight delays of 30 minutes or more; cancellations; and diversions. The notice must be provided within 30 minutes of the carrier becoming aware of the change, and must be provided in their U.S. boarding gate areas; through their telephone reservations systems; on their websites; and on airport display boards under their control.

- ***Choice-of-Forum Provisions***. DOT has codified its existing policy, which prohibits choice-of-forum provisions that require passengers to bring any claims against a carrier in a specific court.

In 2011, DOT issued the first consent order that sanctioned a carrier for non-compliance with the new regulations – specifically, for allowing fifteen domestic flights to remain on the tarmac for more than three hours, without providing an opportunity for the passengers to deplane.[10] DOT also issued non-public warnings to various carriers, noting apparent compliance issues on their websites.

DOT later issued a list of "Frequently Asked Questions" which provided additional guidance and clarification about its new rules.[11] Additionally, Allegiant Air, Spirit Airlines, Southwest Airlines, and the American Society of Travel Agents subsequently challenged the validity of some – but not all – of the new regulations in the U.S. Court of Appeals for the District of Columbia Circuit; the case remains pending.[12]

Air Carrier and Ticket Agent 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."[13]

Historically, DOT has interpreted this regulation to allow government-imposed taxes and fees that are assessed on a per-person basis (i.e., the September 11th Security Fee, federal segment taxes, airport Passenger Facility Charges, and U.S. immigration and customs fees)[14] to be listed separately from an advertised fare. However, the amount of those taxes and fees must be clearly stated elsewhere in the advertisement – or, online, be available via a prominent hyperlink that leads directly to the disclosure, with a warning signal such as an asterisk proximate to the fare. In contrast, taxes and fees that are not assessed on a per-passenger basis (such as the 7.5% federal excise tax) or are imposed by carriers or ticket agents (such as fuel surcharges and services fees) generally must be included in advertised fares.

However, the enhanced airline passenger protection rules adopted in 2011 revised the full fare rule. Effective January 26, 2012, carriers and agents will no longer be allowed to separately state any taxes and fees; "all-inclusive" advertising will be required. In addition to stating an all-inclusive price, advertising will be allowed to specify what taxes and fees are included in the total price, but the details must be less prominent than the total price, and must be accurate.[15]

Additionally, there are other long-standing DOT requirements applicable to fare advertising, including for round-trip purchase conditions and the availability of the offered fares.

Government-Imposed Taxes and Fees

A failure to adequately identify government-imposed taxes and fees that were not included in advertised fares was the single most common advertising violation sanctioned by DOT in 2011:

- Fourteen carriers[16] and five agents[17] were sanctioned for failing to adequately disclose the taxes and fees that had been excluded from fares advertised on their websites; i.e., by either providing full information about the nature and amount of taxes and fees on the same page, or by warning consumers that taxes and fees were additional and providing a hyperlink that led directly to a statement of the nature and amount of those taxes and fees.

- Examples of non-compliant practices included: (i) providing a hyperlink to a page on which full information was provided about taxes and fees, but a consumer was required to scroll to the bottom of the page;[18] (ii) providing a hyperlink that led directly to full information, but because the warning and hyperlink was merely a plus sign ("+"), it did not provide adequate notice to consumers that taxes and fees were additional;[19] (iii) providing full information about taxes and fees only after a consumer had clicked through multiple web pages, just prior to purchase;[20] and (iv) providing only a general statement such as "(*) fare are exclusive of taxes and fees" but no information or a hyperlink.[21]

- Two agents also were sanctioned for failing to include the ad valorem (i.e., not assessed on a per-passenger basis) 7.5% federal excise tax in advertised fares.[22]

- Finally, a carrier was sanctioned for advertisements on truck-borne billboards which promoted fares but stated only that "[a]dditional taxes, fees, terms and conditions apply." The same carrier also was sanctioned for hand-held posters which promoted fares but only placed an asterisk next to each fare.[23]

DOT also warned carriers and agents that the requirement to either fully disclose taxes and fees, or to provide a warning and direct hyperlink, also applies to social media sites (until all-inclusive advertising becomes mandatory on January 26, 2012). On sites with character constraints, such as Twitter, the warning can appear as "gov't taxes/fees extra" or ""+gov taxes/fee," or similar language.[24] A carrier was sanctioned for including an asterisk but no other tax/fee disclaimer in tweets.[25]

September 11th Security Fee

TSA regulations require that if the September 11th Security Fee is not included in an advertised fare, it must be identified by its full name.[26] Although the fee is imposed under the authority of a different agency, DOT considers a violation of this TSA requirement to also constitute an unfair or deceptive practice that violates DOT requirements. In 2011, DOT sanctioned four carriers[27] and four agents[28] for failing to identify the September 11th Security Fee, in all cases as part of a broader failure to adequately disclose the taxes and fees that were applicable to fares advertised on their websites.

Fuel Surcharges

The full fare rule prohibits air carriers and ticket agents from listing fuel surcharges separately from an advertised fare; as discussed above, surcharges that are self-imposed generally must be included. In 2011, DOT sanctioned an agent for failing to include fuel surcharges in fares posted on its website and in email,[29] as well as four air carriers for failing to include fuel surcharges in fares posted on their websites.[30]

Other Surcharges

The full fare rule likewise generally prohibits air carriers and ticket agents from listing any self-imposed surcharge separately from an advertised fare – not only fuel surcharges. In 2011, two agents were sanctioned because they advertised fares that did not include their service fees;[31] a carrier was sanctioned because it advertised fares that did not include an insurance surcharge;[32] and another carrier was sanctioned because it advertised fares that, for certain routes, did not include an unspecified surcharge.[33]

Round-Trip Purchase Conditions

DOT previously has advised carriers and agents that if an advertised "one-way" or "each-way" fare is only available when a round-trip is purchased, that requirement must be disclosed prominent and proximate to the advertised fare. The enhanced airline passenger protection rules adopted in 2011 have codified and expanded this requirement, effective January 26, 2012.[34] Notably, for such advertising, the use of the phrase "one-way" no longer will be allowed, although the phrase "each-way" may be used.[35] In addition, DOT has warned carriers and agents that this disclosure requirement applies to social media sites, including sites with character constraints, such as Twitter.[36] A carrier was sanctioned for including an asterisk but no disclaimer about a round-trip purchase requirement for fares promoted in tweets.[37]

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. In 2011, DOT sanctioned an agent for advertising fares that it described as having been found by other users in the past 24 hours, but in fact had not been updated.[38] Notably, in its mitigation statement, the agent stated that its understanding was that there was no restriction on advertising fares found by other users, which might no longer be available; the problem was that it did not describe them accurately. DOT did not disagree.

Air Tour Packages

To the extent that a tour package includes an air transportation component, DOT asserts jurisdiction over the entire package. In 2011, DOT sanctioned a carrier and an agent for failing to disclose in advertising, at the point where a price was first listed, one of the significant conditions applicable to the air tour packages – namely, that the advertised price was premised on a double occupancy requirement.[39]

Additionally, DOT acknowledged that because carriers' fares vary over time, ticket agents that arrange air tours can have difficulty in advertising their packages. DOT has advised that brochures can warn consumers that fare availability may be limited and refer them to a source of current fare information. But

fares that are advertised online and in newspapers must be current and available; when a specific price is advertised, reasonable inventory must be available for a reasonable time period.[40]

Code-Sharing Disclosures

DOT regulations for many years have required air carriers and ticket agents to disclose to consumers, prior to purchase, if a flight involves a code-share arrangement.[41] 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." [42] In 2011, DOT issued a notice providing guidance as to how carriers and agents could comply with this requirement.[43] 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.

In 2011, twelve ticket agents were sanctioned for failing to adequately disclose code-share arrangements. In all but one case, for at least certain flights involving a code-share arrangement, no disclosures were provided at all.[44] In the remaining case, code-share disclosure was provided before purchase, but not at the initial stage of the online booking process, which DOT found to be a violation of its existing regulations.[45]

In the cases in which no code-share disclosure was provided, the agents all took the position that the GDS from which they obtained flight information ultimately was at fault. DOT subsequently fined a GDS for providing software to agents that could easily be mis-configured so as to not display code-share information for all flights.[46] But DOT did not consider the GDS's mistake to absolve any of the agents.

Additionally, a carrier was sanctioned for creating advertisements which identified the trade name of its code-share partners but did not identify the carrier as the actual operator of the flights, even though the ads were provided to the carrier to airports at no charge for use in local airport promotional campaigns, and their actual distribution was extremely limited.[47]

Passengers with Disabilities

In 2008, DOT substantially amended its regulations[48] which implement the Air Carrier Access Act ("ACAA"),[49] and which prohibit discrimination by air carriers against passengers on the basis of disability. Notable changes – most of which took effect in 2009 – include expanded requirements for carriers to provide enplaning and deplaning assistance to passengers, and revisions to the regulations to explicitly extend most of the requirements to foreign air carriers.

In 2011, DOT fined three carriers for non-compliance. All three had failed to provide adequate enplaning and deplaning assistance to passengers with disabilities.[50] In addition, two had failed to adequately respond to disabilities-related complaints that they had received,[51] and one had failed to adequately categorize and account for all of the issues in the disabilities-related complaints that it had received.[52] Notably, two of the carriers operated code-share flights on behalf of the third carrier, which they asserted had exclusive responsibility over the contractors that provided wheelchair services and/or for responding to complaints; nevertheless, DOT held them at fault (perhaps influenced by the fact that a "substantial" number of the violations by the mainline carrier were "egregious" violations).[53]

Additionally, DOT initiated three new disabilities-related rulemaking proceedings. First, DOT sought comments as to whether carriers should be allowed to continue "strapping" wheelchairs across a row of seats as an alternative to establishing a designated space (i.e., a closet or similar compartment) sufficient to stow at least one wheelchair in the cabin of newly-acquired aircraft.[54] Second, DOT proposed to require carriers and ticket agents to make their websites accessible to consumers with visual and other disabilities, and for carriers to make airport kiosks accessible to consumers with visual and other disabilities.[55] Finally, DOT proposed to require U.S. airports to comply with certain requirements that already apply to carriers – including the provision of service animal relief areas and captioned audio-

visual displays – and also requested comments as to whether the requirements for both carriers and airports should be revised.[56] All of the proceedings remain pending.

Charter Flights

DOT imposes various requirements on the operation and sale of charter flights.[57] In two 2011 cases, public charter operators had allowed ticket agents to publicize the flights without making adequate disclosures to consumers (i.e., by either providing them with or referring them to the operator-participant contract for the flights).[58] One of them also had failed to file a prospectus with DOT before advertising and operating certain flights.[59]

DOT also sanctioned a direct air carrier for operating flights on behalf of a public charter operator,[60] even though the carrier only had authority to engage in "private carriage."[61] DOT also sanctioned the public charter operator that had hired the direct air carrier, for "facilitating" the latter's violations.[62] Additionally, DOT sanctioned a different direct air carrier – which had been hired to operate flights on behalf of a different public charter operator – because it cancelled a flight less than 10 days before its scheduled departure (a practice which is prohibited unless it is "physically impossible" to operate the flight).[63]

Additionally, since 2004 DOT has entered into numerous consent orders with air charter brokers (i.e., entities that link prospective charter customers with direct air carriers). DOT takes the position that brokers must act on behalf of either the direct air carrier or the charter customer(s); as a result, a broker must not hold out air transportation in its own right (i.e., as a principal) without DOT economic authority.[64] In 2011, DOT sanctioned an entity and its individual owner for holding out air transportation in its own right, as well as for facilitating violations by a direct air carrier that only had authority to engage in private carriage.[65]

In 2011 DOT also re-issued an advisory letter, previously released in 2006, which provided guidance to colleges and other organizations interested in arranging charter flights, such as to football bowl games. Generally, DOT noted that the direct air carrier must have appropriate authority, as well as that additional requirements or concerns may be applicable if seats are sold to the general public and/or a broker is used to arrange the transportation.[66] Additionally, if tickets to a game or other special event are offered in conjunction with a flight, the entity offering them must be in physical possession of the tickets or have a written contract, directly traceable to the game/event sponsor, for sufficient tickets.[67]

International Baggage Liability

DOT policy is that for international flights, the Montreal Convention[68] does not allow air carriers to 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 denied liability for electronics, cameras, jewelry, etc. must be modified.[69] In 2011, three carriers were sanctioned for maintaining a policy of refusing to reimburse passengers for items lost or damaged in international transit, and actually refusing to reimburse passengers for items lost or damaged in international transit.[70]

DOT also sanctioned three carriers for imposing other limitations on reimbursement, including: requiring baggage claims to be filed before a passenger left the airport, denying claims for damage to baggage, and limiting compensation for expenses incurred by passengers due to delayed baggage to $25-$75 per day for up to four days;[71] providing little or no compensation for expenses incurred by passengers due to delayed baggage;[72] and reimbursing only 50% of the expenses incurred by passengers due to delayed baggage.[73] An additional carrier was fined for failing to update its ticket wallets to reflect the inflation adjustment to baggage liability under the Montreal Convention – from 1,000 Special Drawing Rights (SDRs) to 1,131 SDRs – that took effect on December 30, 2009.[74]

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 transportation of passengers or property by aircraft for compensation.[75] In 2011, DOT fined an air taxi that had operated publicized scheduled services which required it to obtain a DOT license as a commuter air carrier.[76] DOT also sanctioned an indirect air carrier that provided air ambulance services;[77] although air ambulance operators are subject to a blanket exemption that allows them to hold out certain services to the public,[78] they nevertheless may not convey the impression that they are direct air carriers, licensed to sell air transportation in their own right.

Additionally, foreign air carriers generally are prohibited from taking on, for compensation, at a place in the U.S., passengers or cargo destined for another place in the U.S., a practice known as "cabotage."[79] In 2011, DOT sanctioned two Canadian carriers for conducting services during which certain passengers were transported solely between points within the U.S.[80]

Denied Boarding Compensation

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.[81] Additionally, as discussed above, the enhanced airline passenger protection rules adopted in 2011 updated the rules, both increasing the minimum compensation due to bumped passengers and requiring that additional disclosures be provided to both bumped passengers and volunteers.[82] Additionally, in 2011 a carrier was sanctioned for failing to warn volunteers that the redemption of the travel vouchers provided to them would require the payment of a ticketing fee.[83]

GDS Display Bias

In 2011, DOT sent two letters to GDSs, cautioning them that displays which intentionally bias carrier fare and/or schedule information comprise an unfair or deceptive practice unless the bias is adequately disclosed to the agents that use them.[84] DOT reiterated that it had jurisdiction over GDSs,[85] and explained that biased displays, if they mislead agents, could in turn mislead consumers. However, DOT noted that agents could be warned about any display bias in various ways, including via mail/email communications and statements on the displays themselves.

Air Carrier Reporting

DOT is authorized to impose various reporting requirements on U.S. and foreign air carriers, including timely reporting about their financial performance and other operational data.[86] In 2011, DOT sanctioned a carrier for failing to submit such reports.[87] Additionally, U.S. and foreign air carriers are required to file annual reports with DOT regarding disability-related complaints that they had received.[88] In 2011, DOT sanctioned a carrier for failing to submit such reports.[89]

On-Time Performance Information

Larger U.S. air carriers (specifically, carriers that account for 1% or more of domestic passenger revenues) are required to disclose on their websites on-time performance information for domestic flights.[90] In 2011, DOT sanctioned three carriers for failing to display such information, even though in two cases the information was not displayed only for a "short period."[91]

Electronic Cigarettes

In 2011, DOT took the position that its existing anti-smoking regulations[92] already prohibited the use of electronic cigarettes upon scheduled flights to, from, and within the U.S., by both U.S. and foreign air carriers.[93] Later in the year, DOT initiated a proceeding to formally amend its regulations to prohibit

electronic cigarettes, and also requested comments as to whether it should require the prohibition of smoking (including of electronic cigarettes) on charter flights.[94]

Miscellaneous

- ***Discrimination.*** In addition to the prohibition on unfair or deceptive practices, another statute enforced by DOT prohibits a carrier from engaging in discrimination based on race, color, national origin, religion, sex or ancestry.[95] In 2011, a carrier was sanctioned for refusing to allow six passengers – who were of Arab or Middle Eastern descent – to re-board an aircraft. DOT noted that while there was insufficient evidence to conclude that the initial decision to remove them for secondary screening was impermissible, the carrier's failure to allow them to continue on the same flight was discriminatory.[96]

- ***Cash Purchase Requirement.*** DOT sanctioned a ticket agent for failing to disclose – "prominently and proximately" – that its advertised prices for air tour packages were available just for cash purchases; only later did it disclose that a $200 per-person fee applied to purchases that used any form of credit.[97]

- ***Pricing and Re-routing.*** DOT also rejected a petition requesting that it require air carriers to offer lower-priced "excursion" fares, instead of their full fares, when consumers built itineraries from carriers in different alliances. The petition also requested that carriers be required to procure alternative air transportation from other carriers when a passenger's flight is cancelled. DOT noted that it had no authority to regulate domestic fares, as well as that its long-standing policy was to permit the marketplace to govern how carriers price their fares and re-route passengers affected by flight irregularities.[98]

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, including tarmac delay requirements. As this article demonstrates, 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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[1] 49 U.S.C. § 41712 (formerly § 411 of the Federal Aviation Act of 1958).

[2] 49 U.S.C. § 41713. In 2011, courts held that federal preemption barred a variety of allegations brought against air carriers by passengers under state law, including claims grounded in ticket kiosks inaccessible to the blind, Nat'l Fed'n of the Blind v. United Air Lines, Inc., 2011 WL 1544524 (N.D. Cal. Apr. 25, 2011); air carrier gift certificates with expiration dates, Restivo v. Continental Airlines, Inc., 947 N.E. 2d 1287 (Ohio App. 2011); and the "bumping" of passengers from overbooked flights, Reed v. Delta Air Lines, Inc., 2011 WL 1085338 (S.D.N.Y. Mar. 23, 2011).

[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; the specific penalties and waivers assessed in 2011 are noted throughout this article.

[4] In re South African Airways PTY Limited, Consent Order, Order 2011-10-12 (October 24, 2011) (assessing a penalty of $55,000).

[5] In re Amadeus IT Group, S.A., Consent Order, Order 2011-9-12 (September 15, 2011) (assessing a penalty of $95,000). Eleven agents – apparently all affiliated with Amadeus – were sanctioned by DOT; see footnote 44, infra.

[6] In re Viajes Galiana, Inc., Consent Order, Order 2011-10-19 (October 26, 2011) (assessing a penalty of $10,000, half suspended on condition of compliance during the subsequent year); In re Aviation Advantage, Inc., Consent Order, Order 2011-8-13 (August 10, 2011) (assessing a penalty of $150,000, half suspended on condition of compliance during the subsequent year).

[7] Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at U.S. Airports," Supplemental Notice of Proposed Rulemaking, 76 Fed. Reg. 59307 (September 26, 2011); Extension of Comment Period and Clarification of Proposed Rule, 76 Fed. Reg. 71914 (November 21, 2011).

[8] "Enhancing Airline Passenger Protections," Final Rule, 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).

[9] "Guidance on Price Increases of Ancillary Services and Products not Purchases with the Ticket," (December 28, 2011) (http://airconsumer.dot.gov/rules/Notice%20on%20Post-Purchase%20Price%20Increase%20of%20Ancillary%20Services%20Not%20Purchased%20with%20Air%20Transportation%20Final%20Dec%2028.doc). DOT also noted that it intended to release for public comment in 2012 a proposed third tranche of passenger protection regulations, which would consider if the same prohibition should apply to fees for other ancillary services.

[10] In re American Eagle Airlines, Inc., Consent Order, Order 2011-11-13 (November 14, 2011) (assessing a penalty of $900,000, $250,000 of which was allocable to remedial measures).

[11] "Answers to Frequently Asked Questions Concerning the Enforcement of the Second Final Rule on Enhancing Airline Passenger Protections (EAPP #2)" (August 19, 2011, revised September 6, 2011 October 19, 2011, and January 11, 2012) (http://airconsumer.ost.dot.gov/rules/EAPP_2_FAQ_10-19-2011.pdf). DOT also made publicly available five PowerPoint presentations that were made at forums that were held for carriers and other interested parties in July 2011 (http://airconsumer.dot.gov/rules/April2011Amendments.htm), and the Bureau of Transportation Statistics provided guidance for the new reporting requirements (http://www.bts.gov/programs/airline_information/accounting_and_reporting_directives/number_303a.html).

[12] See dockets nos. 11-1219 and 11-1222. The Air Transport Association, International Air Transport Association, and Interactive Travel Services Association also were authorized to participate in the case on an amicus curiae basis.

[13] 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.

[14] On November 7, 2011, the IRS announced inflation adjustments for certain air transportation taxes, effective for tickets issued on or after January 1, 2012 (Rev. Proc. 2011-52). The fee for domestic segments was increased from $3.70 to $3.80, international arrival and departure taxes increased from $16.30 to $16.70, and the tax for domestic segments beginning or ending in Alaska or Hawaii increased from $8.20 to $8.40. Additionally, the customs fee of $5.50 for passengers arriving in the U.S. long had exempted passengers arriving from Canada, Mexico, and the Caribbean, but the exemption was repealed effective November 5, 2011. See P.L. 112-42, § 601 (modifying 19 U.S.C. § 58c). Also, between July 23, 2011 and August 5, 2011, Congress allowed the authority for certain air transportation taxes to lapse. Although Congress subsequently re-enacted them retroactively, see P.L. 112-27, on September 26, 2011, the IRS stated that it generally would not attempt to collect them retroactively (Notice 2011-69).

[15] "Enhancing Airline Passenger Protections," 76 Fed. Reg. 23110.

[16] In re LAN Airlines, S.A., Consent Order, Order 2011-10-18 (October 26, 2011) (assessing a penalty of $50,000, half suspended on condition of compliance during the subsequent year); South African Airways PTY Limited, Order 2011-10-12; In re Virgin Atlantic Airways, Ltd., Consent Order, Order 2011-9-18 (September 26, 2011) (assessing a penalty of $50,000, half suspended on condition of compliance during the subsequent year); In re JetBlue Airways, Ltd., Consent Order, Order 2011-8-25 (August 30, 2011) (assessing a penalty of $50,000, half suspended on condition of compliance during the subsequent year); In re Thai Airways International Public Company Limited, Consent Order, Order 2011-8-21 (August 25, 2011) (assessing a penalty of $70,000, half suspended on condition of compliance during the subsequent year); In re Ethiopian Airlines Enterprise, Consent Order, Order 2011-8-20 (August 18, 2011) (assessing a penalty of $50,000, half suspended on condition of compliance during the subsequent year); In re Air Canada, Consent Order, Order 2011-8-8 (August 4, 2011) (assessing a penalty of $50,000, half suspended on condition of compliance during the subsequent year); In re China Airlines, Ltd., Consent Order, Order 2011-6-20 (June 21, 2011) (assessing a penalty of $80,000, half suspended on condition of compliance during the subsequent year); In re TACA International Airlines, S.A., Consent Order, Order 2011-6-4 (June 3, 2011) (assessing a penalty of $55,000, half suspended on condition of compliance during the subsequent year); In re US Airways, Inc., Consent Order, Order 2011-6-2 (June 2, 2011) (assessing a penalty of $45,000); In re OpenSkies SAS, Consent Order, Order 2011-4-26 (April 29, 2011) (assessing a penalty of $20,000, half suspended on condition of compliance during the subsequent year); In re Cayman Airways, Ltd., Consent Order, Order 2011-3-25 (March 18, 2011) (assessing a penalty of $40,000, half suspended on condition of compliance during the subsequent year); In re Virgin America,

Inc., Consent Order, Order 2011-2-5 (February 7, 2011) (assessing a penalty of $40,000, half suspended on condition of compliance during the subsequent year); In re Aerovias de Mexico, S.A., Consent Order, Order 2011-1-1 (January 4, 2011) (assessing a penalty of $60,000, half suspended on condition of compliance during the subsequent year).

[17] In re Destination Southern Africa, Inc. and Destination Southern Africa d/b/a South African Airways Vacations, Consent Order, Order 2011-10-11 (October 24, 2011) (assessing a penalty of $20,000, half suspended on condition of indefinite compliance); In re Orbitz Worldwide, LLC, Consent Order, Order 2011-10-5 (October 17, 2011) (assessing a penalty of $60,000); In re Globester, LLC, Consent Order, Order 2011-6-33 (June 30, 2011) (assessing a penalty of $40,000, half suspended on condition of compliance through January 15, 2013); In re Expedia, Inc., Consent Order, Order 2011-4-18 (April 21, 2011) (assessing a penalty of $29,000); In re Tour Beyond Inc., d/b/a China Spree Travel, Consent Order, Order 2011-2-6 (February 9, 2011) (assessing a penalty of $35,000, half suspended on condition of compliance during the subsequent year).

[18] Virgin Atlantic Airways, Ltd., Order 2011-9-18.

[19] Expedia, Inc., Order 2011-4-18.

[20] Thai Airways International Public Company Limited, Consent Order 2011-8-21.

[21] Globester, LLC, Order 2011-6-33.

[22] In re LBF Travel, Inc., Consent Order, Order 2011-6-34 (June 30, 2011) (assessing a penalty of $30,000, half suspended on condition of compliance through September 15, 2012); Globester, LLC, Order 2011-6-33.

[23] In re Spirit Airlines, Inc., Consent Order, Order 2011-11-23 (November 23, 2011) (assessing a penalty of $50,000, half suspended on condition of compliance during the subsequent year). DOT previously had advised that for roadside billboards, a sum of the taxes and fees should be legible to drivers passing the billboard at the posted speed limit. Price Advertising, Withdrawal of Notice of Proposed Rulemaking, 71 Fed. Reg. 55398 (September 22, 2006).

[24] "Advertising Air Fares on Social Media Sites" (October 3, 2011) (http://airconsumer.dot.gov/rules/2011-10-03%20Twitter%20Notice.pdf).

[25] Spirit Airlines, Inc., Order 2011-11-23. DOT also noted that that the link in the tweet did not lead directly to full information about taxes and fees.

[26] 14 C.F.R. § 1510.7.

[27] Aerovias de Mexico, S.A., Order 2011-1-1; China Airlines, Ltd., Order 2011-6-20; Ethiopian Airlines Enterprise, Order 2011-8-20; Thai Airways International Public Company Limited, Order 2011-8-21; South African Airways PTY Limited, Order 2011-10-12.

[28] China Spree Travel, Order 2011-2-6; Globester, LLC, Order 2011-6-33; LBF Travel, Inc., Order 2011-6-34; South African Airways Vacations, Order 2011-10-11.

[29] China Spree Travel, Order 2011-2-6.

[30] Aerovias de Mexico, S.A., Order 2011-1-1; In re Continental Airlines, Inc., Consent Order, Order 2011-6-1 (June 2, 2011) (assessing a penalty of $120,000, half suspended on condition of compliance during the subsequent year); Ethiopian Airlines Enterprise, Order 2011-8-20; Thai Airways International Public Company Limited, Order 2011-8-21.

[31] Globester, LLC, Order 2011-6-33; LBF Travel, Inc., Order 2011-6-34.

[32] Thai Airways International Public Company Limited, Order 2011-8-21.

[33] Cayman Airways, Ltd., Order 2011-3-25.

[34] 14 C.F.R. § 399.84(b).

[35] "Enhancing Airline Passenger Protections," 76 Fed. Reg. 23110.

[36] "Advertising Air Fares on Social Media Sites" (October 3, 2011) (http://airconsumer.dot.gov/rules/2011-10-03%20Twitter%20Notice.pdf).

[37] Spirit Airlines, Inc., Order 2011-11-23.

[38] Orbitz Worldwide, LLC, Order 2011-10-5.

[39] South African Airways PTY Limited, Order 2011-10-12; South African Airways Vacations, Order 2011-10-11.

[40] China Spree Travel, Order 2011-2-6.

[41] 14 C.F.R. Part 257.

[42] 49 U.S.C. § 41712(c).

[43] "Guidance on Disclosure of Code-Sharing Service Under Recent Amendments to 49 U.S.C. § 41712" (January 10, 2011) (http://airconsumer.dot.gov/rules/Notice.41712.codeshare.8.pdf).

[44] BusinessJet Class, LLC, Consent Order, Order 2011-11-10 (November 9, 2011) assessing a penalty of $40,000, half suspended on condition of compliance through July 1, 2013); LBF Travel, Inc., Order 2011-6-34; Globester, LLC, Order 2011-6-33; In re Atkinson & Mullen Travel II, LLC; AVW II, LLC; AMCAL Vacations II, LLC; and ABV, LLC d/b/a Apple Vacations, Consent Order, Order 2011-6-32 (June 30, 2011) (assessing a penalty of $50,000, half suspended on condition of compliance during the subsequent year); In re Fareportal, Inc., Consent Order, Order 2011-5-6 (May 6, 2011) (assessing a penalty of $50,000, half suspended on condition of compliance during the subsequent year); In re AirGorilla, LLC, Consent Order, Order 2011-5-5 (May 6, 2011) (assessing a penalty of $30,000, half suspended on condition of compliance during the subsequent year); In re American Travel Solutions, LLC, Consent Order, Order 2011-5-4 (May 6, 2011) (assessing a penalty of $45,000, half suspended on condition of compliance during the subsequent year); In re Automobile Club of New York, Inc. d/b/a AAA New York, Consent Order, Order 2011-5-3 (May 6, 2011) (assessing a penalty of $20,000, half suspended on condition of compliance during the subsequent year); In re Wholesale Travel Center, Inc., Consent Order, Order 2011-5-2 (May 6, 2011) (assessing a penalty of $30,000, half suspended on condition of compliance during the subsequent year); In re Airtrade International, Inc., Consent Order, Order 2011-4-21 (April 26, 2011) (assessing a penalty of $50,000, half suspended on condition of compliance during the subsequent year); In re Flythere4less.com, Consent Order, Order 2011-4-3 (April 5, 2011) (assessing a penalty of $40,000, half suspended on condition of compliance during the subsequent year).

[45] In re Lowestfare.com, LLC, Consent Order, Order 2011-9-13 (September 16, 2011) (assessing a penalty of $50,000, half suspended on condition of compliance during the subsequent year). This order apparently concerned only conduct which took place before the enactment of 49 U.S.C. § 41712(c).

[46] Amadeus IT Group, S.A., Order 2011-9-12.

[47] In re SkyWest Airlines, Inc., Consent Order, Order 2011-11-25 (November 22, 2011) (assessing a penalty of $40,000, half suspended on condition of compliance during the subsequent year).

[48] 14 C.F.R. Part 382.

[49] 49 U.S.C. § 41705. The ACAA typically is interpreted to preempt disability claims from being brought against air carriers under state law, see, e.g., Foley v. JetBlue Airways Corp., 2011 WL 3359730 (N.D. Cal. Aug. 3, 2011), and not to create a private right of action, see, e.g., Lopez v. JetBlue Airways, 2011 WL 5988443 (2d Cir. December 1, 2011).

[50] In re Atlantic Southeast Airlines, Consent Order, Order 2011-7-4 (July 11, 2011) (assessing a penalty of $200,000, $75,000 of which was allocable to remedial measures); In re Delta Air Lines, Inc., Consent Order, Order 2011-2-10 (February 17, 2011) (assessing a penalty of $2 million, $1.25 million of which was allocable to remedial measures); In re Mesaba Aviation, Inc., Consent Order, Order 2011-1-4 (January 7, 2011) (assessing a penalty of $125,000).

[51] In re Delta Air Lines, Inc., Order 2011-2-10; In re Mesaba Aviation, Inc., Order 2011-1-4.

[52] Delta Air Lines, Order 2011-2-10.

[53] Additionally, in 2011 a formal complaint was publicly docketed at DOT, asserting that a carrier had refused to allow a passenger to travel with a service animal; the carrier has responded but DOT has not yet ruled on the complaint. See Williams v. Southwest Airlines Co., Docket DOT-OST-2011-0149.

[54] "Nondiscrimination on the Basis of Disability in Air Travel; Accessibility of Aircraft and Stowage of Wheelchairs," Notice of Proposed Rulemaking, 76 Fed. Reg. 32107 (June 3, 2011).

[55] "Nondiscrimination on the Basis of Disability in Air Travel: Accessibility of Web Sites and Automated Kiosks at U.S. Airports," Supplemental Notice of Proposed Rulemaking, 76 Fed. Reg. 59307 (September 26, 2011).

[56] "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance (U.S. Airports)," Notice of Proposed Rulemaking, 76 Fed. Reg. 60426 (September 29, 2011).

[57] 14 C.F.R. Part 380.

[58] Viajes Galiana, Inc., Order 2011-10-19; Aviation Advantage, Inc., Order 2011-8-13 (August 10, 2011).

[59] Aviation Advantage, Inc., Order 2011-8-13.

[60] In re Capital Airways, LLC, Consent Order, Order 2011-1-2 (January 5, 2011) (assessing a penalty of $175,000, half suspended on condition of compliance during the subsequent year).

[61] 14 C.F.R. Part 125.

[62] Aviation Advantage, Inc., Order 2011-8-13 (the direct air carrier was Capital Airways; see footnote 60, supra).

[63] In re Swift Air, LLC, Consent Order, Order 2011-8-14 (August 10, 2011) (assessing a penalty of $100,000, half suspended on condition of compliance during the subsequent year).

[64] 49 U.S.C. § 41101. However, in CSI Aviation Services, Inc. v. DOT, 637 F.3d 408 (D.C.Cir. 2011), the court held that DOT did not have jurisdiction to prohibit CSI from acting as an air charter broker, because CSI was providing services solely to the federal government. Accordingly, the court held that CSI was not engaged in "common carriage" which required it either to be licensed by DOT as an indirect air carrier in its own right, or to be an agent of either the direct air carrier or charter customer.

[65] In re Global Airline Services, Inc. and Harold J. Pareti, Consent Order, Order 2011-6-3 (June 2, 2011) (assessing a penalty of $120,000, half suspended on condition of indefinite compliance; the direct air carrier was Capital Airways; see footnote 60, supra).

[66] "Notice of Department of Transportation Requirements Regarding Flights to College Bowl Games and other Special Events," (December 5, 2011) (http://airconsumer.dot.gov/rules/Bowl%20Game%20Guidance%202011%20Final%20one.pdf).

[67] 14 C.F.R. Part 381.

[68] Convention for the Unification of Certain Rules for International Carriage by Air, done at Montreal on May 28, 1999.

[69] "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).

[70] In re Caribbean Airlines Limited, Consent Order, Order 2011-10-20 (October 28, 2011) (assessing a penalty of $60,000, half suspended on condition of compliance during the subsequent year); In re Aerovias de Integracion Regional, AIRES S.A., Consent Order, Order 2011-10-2 (October 7, 2011) (assessing a penalty of $25,000, half suspended on condition of compliance during the subsequent year); In re Emirates, Consent Order, Order 2011-8-24 (August 30, 2011) (assessing a penalty of $100,000, half suspended on condition of compliance during the subsequent year)

[71] Caribbean Airlines, Order 2011-10-20.

[72] Emirates, Order 2011-8-24.

[73] In re Deutsche Lufthansa AG, Consent Order, Order 2011-6-18 (June 17, 2011) (assessing a penalty of $50,000, half suspended on condition of compliance during the subsequent year).

[74] In re United Air Lines, Inc., Consent Order, Order 2011-8-7 (August 4, 2011) (assessing a penalty of $20,000, half suspended on condition of compliance during the subsequent year). See also "Inflation Adjustments to Liability Limits Governed by the Montreal Convention Effective December 30, 2009," Notice, 74 Fed. Reg. 59017 (November 16, 2009).

[75] 49 U.S.C. § 41101.

[76] In re Air Charters, Inc. d/b/a Air Flamenco, Consent Order, Order 2011-8-16 (August 12, 2011) (assessing a penalty of $10,000, half suspended on condition of compliance during the subsequent year).

[77] In re Trinity Air Ambulance International LLC, Consent Order, Order 2011-2-9 (February 15, 2011) (assessing a penalty of $10,000, half suspended on condition of compliance during the subsequent year).

[78] In re Blanket Exemption to Indirect Air Carriers Serving as Air Ambulance Operators, Order Granting Blanket Exemption, Order 83-1-36 (January 12, 1983).

[79] 49 U.S.C. § 41703.

[80] In re The Craig Evans Corporation d/b/a Flightexec, Consent Order, Order 2011-8-22 (August 25, 2011) (assessing a penalty of $10,000, half suspended on condition of compliance during the subsequent year); In re Cameron Air Services, Inc., Consent Order, Order 2011-6-19 (June 17, 2011) (assessing a penalty of $20,000, half suspended on condition of compliance during the subsequent year).

[81] 14 C.F.R. Part 250.

[82] "Enhancing Airline Passenger Protections," 76 Fed. Reg. 23110; "Written Explanation of Denied Boarding Compensation and Boarding Priorities" (August 5, 2011) (http://airconsumer.dot.gov/rules/Notice%20on%20DBC%20statement%20variation-final.docx).

[83] In re American Airlines, Inc., Consent Order, Order 2011-2-14 (February 28, 2011) (assessing a penalty of $90,000, half suspended on condition of compliance during the subsequent year).

[84] "Guidance re GDS/OTA display bias" (March 4, 2011) (http://airconsumer.dot.gov/rules/GuidanceGDSOTA.pdf); "Warning letter re GDS/OTA display bias" (February 1, 2011) (http://airconsumer.dot.gov/rules/OTAGDSDisplayBiasWarning.pdf).

[85] Sabre v. DOT, 429 F.3d 1113 (D.C.Cir. 2005); "Computer Reservation Systems (CRS) Regulations," Final Rule, 69 Fed. Reg. 976 (January 7, 2004).

[86] 49 U.S.C. § 41708.

[87] In re Aerovias de Integracion Regional, AIRES S.A., Consent Order, Order 2011-3-9 (March 3, 2011) (assessing a penalty of $20,000, half suspended on condition of compliance during the subsequent year).

[88] 14 C.F.R. § 382.157. In 2011, 50 U.S. carriers and 120 foreign air carriers filed reports for 2010; the U.S. carriers received 19,347 disability-related complaints and the foreign carriers received 1,654 disability-related complaints, for a total of 21,001 – an increase of 23% over 2009. DOT noted that 10,638 of the complaints – more than 50%– alleged a failure to provide adequate assistance to passengers using wheelchairs. See Annual Report on Disability-Related Air Travel Complaints (http://airconsumer.dot.gov/publications/Gateway1-2010.htm).

[89] In re Icelandair Group, a/k/a Flugledir, h.f., d/b/a Icelandair, Consent Order, Order 2011-5-13 (May 16, 2011) (assessing a penalty of $30,000, half suspended on condition of compliance during the subsequent year).

[90] 14 C.F.R. § 234.11.

[91] In re Frontier Airlines, Inc., Consent Order, Order 2011-6-10 (June 9, 2011) (assessing a penalty of $40,000, half suspended on condition of compliance during the subsequent year); In re AirTran Airways, Inc., Consent Order, Order 2011-4-2 (April 5, 2011) (assessing a penalty of $30,000, half suspended on condition of compliance during the subsequent year); In re Southwest Airlines Co., Consent Order, Order 2011-3-20 (March 15, 2011) (assessing a penalty of $50,000, half suspended on condition of compliance during the subsequent year).

[92] 14 C.F.R. Part 252.

[93] "DOT policy on e-cigarettes" (February 11, 2011) (http://airconsumer.dot.gov/rules/PolicyOnECigarettes.pdf).

[94] "Smoking of Electronic Cigarettes on Aircraft," Notice of Proposed Rulemaking, 76 Fed. Reg. 57008 (September 15, 2011).

[95] 49 U.S.C. § 40127(a). See also 49 U.S.C. § 41702 and 49 U.S.C. § 41310.

[96] In re United Air Lines, Inc., Consent Order, Order 2011-11-2 (November 1, 2011) (assessing a penalty of $60,000). The removed passengers happened to be members of an armed forces delegation from the United Arab Emirates.

[97] China Spree Travel, Order 2011-2-6.

[98] Petition for Rulemaking and Unfair-Practice Complaint of Donald L. Pevsner / Petition for Rulemaking and Request for Sanctions Against Delta Air Lines, Inc., Order Dismissing Petitions and Complaint, Order 2011-10-13 (October 19, 2011).

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