



## DOT Enforcement of its Prohibitions on Unfair and Deceptive Practices, 2016 (December 2017)

When the Civil Aeronautics Board (CAB) was abolished in 1985, a significant portion of its authority was transferred to the Department of Transportation (DOT). One of the most noteworthy powers now exercised by DOT is to prohibit any “unfair or deceptive practice or an unfair method of competition in air transportation or the sale of air transportation.”<sup>1</sup> Indeed, DOT’s authority over these matters is exclusive; states and municipalities are preempted from imposing their own requirements “related to a price, route, or service of an air carrier.”<sup>2</sup> For 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 2016, DOT issued more than 30 consent orders, nominally assessing more than \$6.3 million in civil penalties.<sup>3</sup>

In the past year, DOT’s Office of Aviation Enforcement and Proceedings continued to closely monitor and investigate practices by air carriers, ticket agents, and other entities involved in the sale of air transportation. Although 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 requirements to DOT’s rules for passengers with disabilities to carrier reporting mandates.



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 documents that were issued by DOT in 2016, as well as certain related agency actions and court decisions, and also actions by other federal government agencies that affect the disclosures made by and practices of carriers and ticket agents.

## Enhanced Passenger Protection Requirements

In 2016, DOT issued a final rule in a proceeding entitled “Enhancing Airline Passenger Protections III,” its third round of rulemaking stated to have the purpose of increasing protections for air travelers and improving the air travel environment.<sup>4</sup> In promulgating this rule, DOT stated that it was focusing on the following issues:

- Expanding the pool of reporting carriers for service quality data;
- Requiring reporting carriers to include service quality data for domestic flights operated by code-share partners;
- Enhancing DOT’s code-share disclosure regulation to codify the statutory requirement that carriers and ticket agents disclose any code-share arrangements in the first online display presented in response to a search for a specific itinerary; and
- Prohibiting undisclosed bias based on carrier identity, by carriers and ticket agents, in any online displays of fare, schedule or availability information for multiple carriers.

DOT also published a notice, “Exploring Industry Practices on Distribution and Display of Airline Fare, Schedule, and Availability Information,”<sup>5</sup> based upon a finding that certain carriers were restricting the distribution and/or display of flight information by online travel agencies and metasearch sites. Based on this finding, DOT solicited information on the following issues:

- Whether these practices harmed consumers;
- Whether any entities were blocking access to critical resources needed for competitive entry into the air transportation industry; and
- Whether DOT action was necessary to promote competition and ensure that consumers have access to information necessary to make informed choices.

Although responses were initially due on December 30, 2016, DOT extended the deadline to March 31, 2017; subsequently, DOT withdrew the solicitation.<sup>6</sup>

Additionally, in 2016 DOT issued various 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.<sup>7</sup> In 2016, two carriers were fined for failing to comply with their plans,<sup>8</sup> and three carriers were fined because they failed to file accurate reports related to tarmac delays with DOT.<sup>9</sup>

DOT also announced a new enforcement policy regarding tarmac delays, based on a change in the underlying statute.<sup>10</sup> Specifically, DOT will not take action against carriers for departure tarmac delays so long as carriers “begin to return aircraft to the gate or another suitable

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disembarkation point” by the three-hour mark for domestic flights and the four-hour mark for international flights, “after the main aircraft door has closed in preparation for departure.”

Additionally, in 2016, DOT’s Office of Inspector General (“OIG”) issued a report assessing the impact of DOT’s tarmac delay rules on carrier decisions to delay or cancel flights.<sup>11</sup> The report concluded that cancellation rates had increased during the first three years following the implementation of the rules, but subsequently they had not affected cancellation rates.

- **Customer Service Plans.** DOT requires that carriers adopt customer service plans, addressing twelve specific issues – some of which cross-reference other DOT regulations; they include commitments that carriers will honor DOT’s separate rules for baggage liability and denied boarding compensation.<sup>12</sup> In 2016, DOT fined five carriers for violating their plans. Three were fined for failing to produce complete and accurate copies of the required denied boarding statement, as well as for providing ticket notices and displaying signage at airports, which purported to limit their domestic baggage liability below \$3,500.<sup>13</sup> DOT also fined one carrier for failing to provide compensation to passengers denied boarding involuntarily, violating both the separate rules and its customer service plan,<sup>14</sup> and fined another carrier that failed to produce complete and accurate copies of the required denied boarding statement upon request.<sup>15</sup>
- **Ancillary Fees.** Although DOT did not issue any new guidance concerning ancillary fees in 2016, the U.S. Court of Appeals for the Eleventh Circuit resolved a lawsuit which alleged that a carrier’s ancillary fees were so deceptive and unfair as to comprise a violation of the Racketeer Influenced and Corrupt Organizations (RICO) Act.<sup>16</sup> The plaintiffs contended that the carrier implied that its passenger usage fee was government-imposed, rather than carrier-imposed. But the Eleventh Circuit affirmed that the complaint failed to state a claim, on the basis that the plaintiffs’ did not allege proximate cause between the carrier’s representation and their decision to purchase tickets; nor did they properly plead the existence of a RICO enterprise.<sup>17</sup>

## Carrier and Agent Advertising

DOT’s “full fare rule” long has required that advertising by air carriers and ticket agents state “the entire price to be paid by the customer to the air carrier, or agent, for such air transportation, tour, or tour component.”<sup>18</sup>

- In 2016, DOT imposed fines on four carriers for various violations of the rule. One carrier was fined for excluding taxes and fees from its advertised fares,<sup>19</sup> and another and an affiliated agent were fined for displaying advertisements with prices listed that did not state the entire price to be paid.<sup>20</sup> Two additional carriers were fined, following third party complaints, for displaying taxes, fees, and carrier charges that did not reflect the entire price<sup>21</sup> and misrepresenting surcharges or fees as taxes.<sup>22</sup>
- **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 2016, DOT on its own initiative fined a carrier for a violation of this requirement.<sup>23</sup> Additionally, DOT ruled upon a third-party complaint, finding that a carrier misrepresented carrier-imposed surcharges as “taxes” and in so doing had violated a prior cease-and-desist order.<sup>24</sup>
- **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 2016, DOT fined a carrier because it failed to make a reasonable number of seats available for an advertised fare and failed to take prompt action to discontinue the advertisement when a reasonable number of seats were no longer available.<sup>25</sup>

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- DOT also acted upon a petition for rulemaking, which had argued that DOT should apply the full fare rule to resort fees that are charged and collected by hotels. DOT concluded that while the rule requires that fare advertisements must disclose the full price to be paid by the customer, it does not require taxes and fees that sellers of air transportation do not collect from the customer to be included in the advertised fare.<sup>26</sup>

## **Passengers with Disabilities**

In 2008, DOT substantially amended its regulations<sup>27</sup> implementing the Air Carrier Access Act (ACAA),<sup>28</sup> which prohibit discrimination by air carriers against passengers on the basis of disability.

- In 2016, six carriers were fined for violations of these requirements. One carrier was fined \$2 million based on significant failures to provide enplaning and deplaning assistance and to properly handle wheelchairs, mobility aids, and other assistive devices.<sup>29</sup> Three carriers were fined for failing to provide dispositive responses to written disability-related air travel complaints.<sup>30</sup> An additional carrier was fined for violating both the complaint requirement and also failing to allow certain passengers to travel with service animals in the cabin.<sup>31</sup> An additional carrier was fined for failing to adequately train its Complaint Resolution Officials (CRO) and failing to make a trained CRO available to customers at each airport served.<sup>32</sup>
- DOT also reached a settlement with a carrier concerning its compliance with DOT's airport kiosk rule, which requires kiosks at U.S. airports with 10,000 or more annual enplanements to meet certain technical accessibility standards.<sup>33</sup> Under the settlement, DOT granted the carrier an extension to comply with the rule, with certain strings attached, including plan compliance and mitigation, as well as verification and certification of plan implementation. The U.S. Court of Appeals for the District of Columbia also dismissed, on procedural grounds, a case that had sought to challenge the adequacy of the kiosk rules.<sup>34</sup>
- After receiving public comment,<sup>35</sup> DOT established a negotiated rulemaking committee to consider amendments to DOT's disability regulations – in particular, whether 1) to require accessible inflight entertainment and strengthen accessibility requirements for other in-flight communications; 2) to require an accessible lavatory on new single-aisle aircraft; and 3) to amend the definition of “service animals” that may accompany passengers with disabilities.<sup>36</sup>
- Finally, DOT revised the standards for the in-flight use of portable oxygen concentrators (POCs) on board aircraft.<sup>37</sup> Notably, the rule replaced the prior FAA case-by-case approval process for each make and model of POC, and allows passengers to use a POC if it meets FAA's general acceptance criteria.

## **Air Carrier Reporting**

- DOT is statutorily authorized to impose various reporting requirements on U.S. and foreign carriers,<sup>38</sup> including the timely reporting of general financial and operational data.<sup>39</sup> DOT fined a carrier because it failed to submit timely and complete reports, despite repeated requests from the Bureau of Transportation Statistics.<sup>40</sup> Additionally, as discussed above, DOT's “Enhancing Airline Passenger Protections III” rulemaking going forward will impose additional reporting requirements on carriers.
- In 2016 DOT also revised its regulations for mishandled baggage reporting; going forward, they are to be based on the number of enplaned and mishandled bags, and not the number of enplaned passengers. This rule change also has implications for passengers with disabilities, because it requires separate statistics to be collected for mishandled wheelchairs and scooters.<sup>41</sup>

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## 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.<sup>42</sup>

- In 2016, DOT fined three carriers because they provided ticket notices or displayed signage which purported to limit the carrier's domestic baggage liability to amounts less than \$3,500.<sup>43</sup> An additional charter carrier was fined because its operator-participant contract outlined over two dozen categories of items for which it disclaimed liability in the event of loss or damage, in violation of the Montreal Convention, the treaty which governs carrier liability on most international flights.<sup>44</sup>
- DOT also solicited public comment regarding how it should implement a requirement that carriers refund checked baggage fees if they failed to deliver bags in a timely manner, as required by the FAA Extension, Safety, and Security Act of 2016.<sup>45</sup>

## Public Charters

DOT imposes various requirements on the sale and operation of public charter flights, above and beyond those generally applicable to carrier operations, primarily intended to protect payments made by consumers.<sup>46</sup> DOT fined a carrier in 2016, because it failed to ensure that passengers' funds received via travel agents were deposited into an escrow account in a timely manner.<sup>47</sup>

DOT also issued guidance for consumers traveling to sporting events – often arranged in conjunction with a charter flight.<sup>48</sup> Notably, DOT advised that if a tour is described as including a game ticket, and a ticket is not provided, the consumer is entitled to a full refund of the entire package price even if they already traveled to the city where the game will take place. DOT also reminded colleges, universities, and other organizations offering flights to college bowl games and other special events to take reasonable steps to ensure that any public charter operator or charter broker that they utilize complies with DOT requirements.<sup>49</sup>

## Other Issues

- **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, and DOT also imposes disclosure requirements related to denied boarding compensation.<sup>50</sup> As discussed above, five carriers were fined for denied boarding compensation-related violations in 2016, which also were deemed to comprise violations of their customer service plan-related obligations.
- **Optional Services.** A carrier was fined for utilizing an opt-out method for selling optional services, despite DOT's requirement that optional services only be offered on an opt-in basis, and also not disclosing on its website information about the fees for optional service, contrary to DOT requirements.<sup>51</sup>
- **Refunds to Consumers.** DOT fined a carrier because it failed to issue timely refunds to consumers who had made purchases by credit card, a practice which DOT noted violated not only the applicable regulation, but also the carrier's contract of carriage and customer service plan.<sup>52</sup>
- **Prohibition on Smoking.** Although smoking already is prohibited on most flights, DOT extended the ban to include charter flights where a flight attendant is a required crewmember.<sup>53</sup> DOT also clarified that the use of electronic cigarettes is banned on all flights where smoking is banned, although DOT already had informally advised that the use of electronic cigarettes was prohibited.

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- **Air Carrier Authority.** Both U.S. and foreign carriers are required to obtain appropriate authority from DOT before they can engage directly or indirectly in the U.S.-related transportation of passengers or property for compensation.<sup>54</sup> In 2016, DOT fined two U.S. carriers for engaging in air transportation without the requisite economic authority,<sup>55</sup> and a foreign carrier for displaying a U.S. carrier's code in foreign flight information regions while an FAA flight prohibition on U.S. carrier operations in those regions was in effect.<sup>56</sup>
- **DOT Enforcement Jurisdiction.** In 2016, DOT found that a foreign ticket agent was subject to DOT advertising regulations (including the full fare rule), because its website targeted U.S. consumers.<sup>57</sup>
- **Essential Air Service.** In 2016 DOT fined a carrier for failing to comply with the requirement that it continue to provide air transportation services to small communities, pursuant to the terms of the federal program which subsidized the services, until a replacement had been selected.<sup>58</sup>
- **Nationality-Based Discrimination.** DOT dismissed a third-party complaint filed against a foreign carrier which asserted that the carrier's failure to clarify whether Israeli passengers could travel on its flights transiting through Doha constituted an unfair practice; DOT found that the assertions of unlawful discrimination relied on assumptions and unsupported conclusions.<sup>59</sup>
- **Price Gouging.** In 2015, DOT announced that it 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.<sup>60</sup> In 2016, DOT informed the carriers that it had found no evidence of unfair manipulation of airfares or capacity, nor evidence of unconscionable increases in fares beyond normal pricing levels, and thus no violation of 49 U.S.C. § 41712 had occurred.
- **Seating Requirements.** In 2016, FAA denied a petition for rulemaking, which requested that the agency regulate the size of passenger seats and cabin configurations of passenger-carrying aircraft, concluding that the issue raised by the petition did not meet the criteria to pursue rulemaking.<sup>61</sup> Subsequently, a federal court remanded the petition to FAA for further review.
- **Advisory Committee for Aviation Consumer Protection.** This Committee was established at the direction of Congress in 2012, and issued a final report in 2015. In 2016, DOT announced that it intended to continue the committee on a discretionary basis, and solicited nominations and applications for members.<sup>62</sup>
- **Frequent Flyer Programs.** DOT's Inspector General recommended that DOT define what "constitutes reasonable notice for consumers regarding changes to frequent flyer programs' terms and conditions, and require airlines to provide such notice."<sup>63</sup> Additionally, DOT dismissed a third-party complaint, which had alleged that a carrier had improperly withdrawn some of his frequent flyer miles and accused him of making fictitious bookings.<sup>64</sup>

## Conclusion

DOT's authority to regulate the practices of air carriers, ticket agents, and other entities involved in the aviation industry is wide-ranging. Although DOT's historic focus has been on advertising, the agency monitors other areas of industry activity, and in recent years has begun to emphasize consumer-oriented "passenger rights" issues – 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 themselves with DOT's regulations and interpretations; to review their practices in light of DOT's guidance; and to keep abreast of new developments, such as those reviewed above.

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

<sup>2</sup> 49 U.S.C. § 41713. See, e.g., People ex rel. Harris v. Delta Air Lines, Inc., 202 Cal.Rptr.3d 395 (Cal. App. 2016); Conservation Force v. Delta Air Lines, Inc., 190 F.Supp.3d 606 (N.D. Tex. 2016).

<sup>3</sup> However, DOT often waives a portion of the penalties if the subject of a consent order complies with its terms and conditions during the subsequent year, or another period designated by DOT, and also sometimes waives a portion of the penalties that is commensurate with mitigation expenses; the specific penalties and waivers assessed in 2016 are noted throughout this article.

<sup>4</sup> Enhancing Airline Passenger Protections III, 81 Fed. Reg. 76800 (November 3, 2016).

<sup>5</sup> Exploring Industry Practices on Distribution and Display of Airline Fare, Schedule, and Availability Information, 81 Fed. Reg. 75481 (October 31, 2016).

<sup>6</sup> Exploring Industry Practices on Distribution and Display of Airline Fare, Schedule, and Availability Information: Extension of Response Deadline for Request for Information, 81 Fed. Reg. 94021 (December 22, 2016).

<sup>7</sup> 14 C.F.R. § 259.4.

<sup>8</sup> In re American Airlines, Inc., Consent Order, Order 2016-12-10 (December 14, 2016) (assessing a penalty of \$1.6 million, but with \$602,000 credited to compensation provided to passengers, and \$303,000 in mitigation costs also credited); In re United Airlines, Inc., Consent Order, Order 2016-1-2 (January 7, 2016) (assessing a penalty of \$750,000, but with half credited to mitigation costs).

<sup>9</sup> In re Philippine Airlines, Inc., Consent Order, Order 2016-10-6 (October 14, 2016) (assessing a penalty of \$20,000, but with half suspended on condition of compliance during the subsequent year); In re Royal Jordanian Airlines, Consent Order, Order 2016-11-20 (November 30, 2016) (assessing a penalty of \$35,000, but with half suspended on condition of compliance during the subsequent year); In re Delta Air Lines, Inc., Consent Order, Order 2016-12-3 (December 9, 2016) (assessing a penalty of \$40,000, but with half suspended on condition of compliance during the subsequent year).

<sup>10</sup> Enforcement Policy on Extended Tarmac Delays (November 22, 2016).

<sup>11</sup> Effects of the Tarmac Delay Rule on Flight Cancellations and Delays, Docket DOT-OST-2017-0003 (October 26, 2016).

<sup>12</sup> 14 C.F.R. § 259.5.

<sup>13</sup> In re American Airlines, Inc., Consent Order, Order 2016-8-30 (August 26, 2016) (assessing \$45,000 in civil penalties); In re Alaska Airlines, Inc., Consent Order, Order 2016-8-32 (August 26, 2016) (assessing \$40,000 in civil penalties); In re Southwest Airlines Co., Consent Order, Order 2016-8-33 (August 26, 2016) (assessing \$40,000 in civil penalties, but with half suspended on condition of compliance during the subsequent year).

<sup>14</sup> In re JetBlue Airways Corporation, Consent Order, Order 2016-12-4 (December 9, 2016) (assessing \$40,000 in civil penalties, but with half suspended on condition of compliance during the subsequent year).

<sup>15</sup> In re United Airlines, Inc., Consent Order, Order 2016-8-31 (August 26, 2016) (assessing \$35,000 in civil penalties, but with half suspended on condition of compliance during the subsequent year).

<sup>16</sup> 18 U.S.C. § 1962.

<sup>17</sup> Ray v. Spirit Airlines, Inc., 836 F.3d 1340 (11th Cir. 2016).

<sup>18</sup> 14 C.F.R. § 399.84. Additionally, an overlapping prohibition for public charter operators appears at 14 C.F.R. § 380.27, and an overlapping prohibition for ticket agents appears at 14 C.F.R. § 399.80(f). Historically, the latter prohibition rarely was cited by DOT, but it has been included in some – but not all – orders involving ticket agents that also relied upon § 399.84.

<sup>19</sup> In re Frontier Airlines, Consent Order, Order 2016-12-5 (December 9, 2016) (assessing \$60,000 in civil penalties, but with half suspended on condition of compliance during the subsequent year).

<sup>20</sup> In re Porter Escapes, Inc., Consent Order, Order 2016-3-7 (March 4, 2016) (assessing \$10,000 in civil penalties, but with half suspended on condition of compliance during the subsequent year); In re Porter Airlines, Inc., Consent Order, Order 2016-3-8 (March 4, 2016) (assessing \$40,000 in civil penalties, with \$19,000 credited for compensation to affected consumers, and \$10,000 suspended on condition of compliance during the subsequent year).

<sup>21</sup> Third Party Complaint of Benjamin Edelman v. British Airways PLC, Consent Order and Order of Dismissal, Order 2016-3-9 (March 4, 2016) (assessing \$40,000 in civil penalties, but with half suspended on condition of compliance during the subsequent year).

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- <sup>22</sup> Third Party Complaint of Benjamin Edelman et al. v. American Airlines, Inc., Consent Order and Order of Dismissal, Order 2016-12-12 (December 14, 2016) (assessing \$65,000 in civil penalties).
- <sup>23</sup> In re Aeroenlaces Nacionales, S.A. de C.V., d/b/a VivaAerobus, Consent Order, Order 2016-5-3 (May 5, 2016) (assessing \$150,000 in civil penalties, but with half suspended on condition of compliance during the subsequent year).
- <sup>24</sup> Third Party Complaint of Benjamin Edelman, et al. v. American Airlines, Inc., Consent Order and Order of Dismissal, Order 2016-12-12 (December 14, 2016) (assessing a penalty of \$65,000).
- <sup>25</sup> In re Aeroenlaces Nacionales, S.A. de C.V., Order 2016-5-3.
- <sup>26</sup> Letter from Molly J. Moran, Acting General Counsel, to Edward L. Perkins, Re: Petition for Rulemaking, Docket DOT-OST-2013-0058 (December 14, 2016).
- <sup>27</sup> 14 C.F.R. Part 382.
- <sup>28</sup> 49 U.S.C. § 41705
- <sup>29</sup> In re United Airlines, Inc., Consent Order, Order 2016-1-3 (January 7, 2016) (assessing \$2 million in civil penalties, but with \$650,000 credited to compensation provided to passengers, and \$650,000 credited to mitigation costs).
- <sup>30</sup> Lufthansa German Airlines, Consent Order, Order 2016-4-7 (April 14, 2016) (assessing \$200,000 in civil penalties, but with half suspended on condition of compliance during the subsequent year); In re British Airways Plc, Consent Order, Order 2016-4-8 (April 14, 2016) (assessing \$150,000 in civil penalties, but with half suspended on condition of compliance during the subsequent year); In re Société Air France, Consent Order, Order 2016-4-9 (April 14, 2016) (assessing \$200,000 in civil penalties, but with \$55,000 credited to compensation provided to passengers, and \$5,000 credited to mitigation costs).
- <sup>31</sup> In re Air Canada, Consent Order, Order 2016-8-29 (August 26, 2016) (assessing \$225,000 in civil penalties, but with half suspended on condition of compliance during the subsequent year).
- <sup>32</sup> In re Dynamic Airways LLC, Consent Order, Order 2016-3-23 (March 16, 2016) (assessing \$200,000 in civil penalties, but with half suspended on condition of compliance during the subsequent year).
- <sup>33</sup> Agreement by and between Southwest Airlines Co. and U.S. Department of Transportation, Docket DOT-OST-2016-0202 (November 1, 2016).
- <sup>34</sup> National Federation of the Blind v. DOT, 827 F.3d 51 (D.C. Cir. 2016).
- <sup>35</sup> Nondiscrimination on the Basis of Disability in Air Travel: Consideration of Negotiated Rulemaking Process, 81 Fed. Reg. 193 (January 5, 2016).
- <sup>36</sup> Nondiscrimination on the Basis of Disability in Air Travel: Establishment of a Negotiated Rulemaking Committee, 81 Fed. Reg. 20265 (April 7, 2016).
- <sup>37</sup> Acceptance Criteria for Portable Oxygen Concentrators Used On Board Aircraft, 81 Fed. Reg. 33098 (May 24, 2016).
- <sup>38</sup> 49 U.S.C. § 41708.
- <sup>39</sup> 14 C.F.R. Part 298.
- <sup>40</sup> In re Orange Air, LLC, Consent Order, Order 2016-6-1 (June 2, 2016) (assessing a penalty of \$20,000).
- <sup>41</sup> Reporting of Data for Mishandled Baggage and Wheelchairs and Scooters Transported in Aircraft Cargo Compartments, 81 Fed. Reg. 76300 (November 2, 2016).
- <sup>42</sup> 14 C.F.R. § 254.4.
- <sup>43</sup> In re American Airlines, Inc., Order 2016-8-30; In re Alaska Airlines, Inc., Order 2016-8-32; In re Southwest Airlines Co., Order 2016-8-33.
- <sup>44</sup> In re Dynamic Airways LLC, Order 2016-3-23.
- <sup>45</sup> Refunding Baggage Fees for Delayed Checked Bags, 81 Fed. Reg. 75347 (October 31, 2016). See also Refunding Baggage Fees for Delayed Checked Bags, 81 Fed. Reg. 85906 (November 29, 2016).
- <sup>46</sup> 14 C.F.R. Part 212 and Part 380.
- <sup>47</sup> In re Dynamic Airways LLC, Order 2016-3-23.

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<sup>48</sup> News Digest DOT 07-16, DOT Cautions Consumers on Super Bowl Air Travel Game Ticket Scams (January 29, 2016). See also Notice to Consumers Purchasing Tickets to Special Events that Include Air Transportation (December 16, 2016).

<sup>49</sup> Notice to Colleges, Universities, and other Organizations Offering Flights to College Bowl Games and other Special Events (December 16, 2016).

<sup>50</sup> 14 C.F.R. Part 250.

<sup>51</sup> In re Aeroenlaces Nacionales, S.A. de C.V., Order 2016-5-3.

<sup>52</sup> In re Silver Airways LLC, Consent Order, Order 2016-9-18 (September 29, 2016) (assessing a penalty of \$25,000).

<sup>53</sup> Use of Electronic Cigarettes on Aircraft, 81 Fed. Reg. 11415 (March 4, 2016).

<sup>54</sup> 49 U.S.C. § 41101 and § 41301.

<sup>55</sup> In re GoJet Airlines, LLC, Consent Order, Order 2016-3-27 (March 23, 2016) (assessing a penalty of \$40,000, but with half suspended on condition of compliance during the subsequent year); In re Compass Airlines, LLC, Consent Order, Order 2016-3-28 (March 23, 2016) (assessing a penalty of \$70,000, but with half suspended on condition of compliance during the subsequent year).

<sup>56</sup> In re Qatar Q.C.S.C., Consent Order, Order 2016-11-11 (November 10, 2016) (assessing a penalty of \$185,000, but with half suspended on condition of compliance during the subsequent year).

<sup>57</sup> In re Porter Escapes, Inc., Order 2016-3-7.

<sup>58</sup> In re SeaPort Airlines, Inc., Consent Order, Order 2016-4-5 (April 12, 2016) (assessing a penalty of \$30,000).

<sup>59</sup> In re Formal Third Party Complaint and Request to Commence Enforcement Proceedings of Eldad Gatt, Order Dismissing Third Party Complaint and Request to Commence Enforcement Proceedings, Order 2016-6-3 (June 3, 2016). Three court cases similarly involving allegations of discrimination based on nationality – including undocketed guidance from DOT to a foreign carrier – were dismissed, either by the court or stipulation. Nektalov v. Kuwait Airways Corporation, 2016 WL 5678549 (E.D.N.Y. September 30, 2016); Gatt v. Foxx (D.C. Cir. No. 14-1040); Kuwait Airways Corporation v. DOT (D.C. Cir. No. 15-1429).

<sup>60</sup> U.S. DOT Requests Information on Airline Pricing Response to Amtrak Derailment (July 24, 2015).

<sup>61</sup> Letter from Dorenda D. Baker, Director, Aircraft Certification Service, to Paul Hudson, President, FlyersRights, Docket FAA-2015-4011 (February 1, 2016).

<sup>62</sup> Advisory Committee for Aviation Consumer Protection, 81 Fed. Reg. 33733 (May 27, 2016).

<sup>63</sup> Improvements Needed in DOT's Process for Identifying Unfair or Deceptive Practices in Airline Frequent Flyer Programs, AV-2016-068 (June 16, 2016).

<sup>64</sup> Third Party Complaint of Joel Hayes, Order of Dismissal, Order 2016-12-11 (December 14, 2016).

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