

The Semiannual Regulatory Agenda For Transportation

Lisa A. Harig

On Jan. 7, 2013, many federal agencies published their Semiannual Regulatory Agendas, including the [Department of Transportation \(DOT\)](#), [Department of Homeland Security \(DHS\)](#), and [Federal Communications Commission \(FCC\)](#). Some of the significant transportation-related rulemakings that we can expect in the coming year include:

DOT – Office of the Secretary (OST)

Enhancing Airline Passenger Protections III: This rulemaking would address whether DOT should: (1) require a marketing carrier to provide assistance to its code-share partner when a flight operated by the code-share partner experiences a lengthy tarmac delay; (2) enhance disclosure requirements on code-share operations, including requiring on-time performance data, reporting of certain data code-share operations, and codifying the statutory amendment of 49 U.S.C. 41712(c) regarding website schedule disclosure of code-share operations; (3) expand the on-time performance “reporting carrier” pool to include smaller carriers; (4) require travel agents to adopt minimum customer service standards in relation to the sale of air transportation; (5) require ticket agents to disclose the carriers whose tickets they sell or do not sell and information regarding any incentive payments they receive in connection with the sale of air transportation; (6) require ticket agents to disclose any preferential display of individual fares or carriers in the ticket agent’s Internet displays; (7) require additional or special disclosures regarding certain substantial fees, e.g., oversize or overweight baggage fees; (8) prohibit post-purchase price increase for all services and products not purchased with the ticket or whether it is sufficient to prohibit post-purchase prices increases for baggage charges that traditionally have been included in the ticket price; and (9) require that ancillary fees be displayed through all sale channels.

Use of the Seat-Strapping Method for Carrying a Wheelchair on an Aircraft: This rulemaking would address whether carriers should be allowed to utilize the seat-strapping method to stow a passenger’s wheelchair in the aircraft cabin.

DOT – Federal Aviation Administration (FAA)

Operation and Certification of Small Unmanned Aircraft Systems (SUAS): This rulemaking would enable small unmanned aircraft to safely operate in limited portions of the national airspace system (NAS).

Flight Crewmember Mentoring, Leadership and Professional Development (HR 5900): This rulemaking would amend the regulations for air carrier training programs under 14 CFR Part 121 to ensure that air carriers establish or modify training programs that address mentoring, leadership, and professional development of flight crewmembers in Part 121 operations.

Qualification, Service, and Use of Crewmembers and Aircraft Dispatchers: This rulemaking would amend the regulations for crewmember and dispatcher training programs in domestic, flag, and supplemental operations to: (1) enhance traditional training programs by requiring the use of flight simulation training devices for flight crewmembers and

including additional training requirements in areas that are critical to safety; and (2) reorganize and revise the qualification and training requirements.

Pilot Certification and Qualification Requirements (Formerly First Officer Qualification Requirements) (HR 5900): This rulemaking would amend the eligibility and qualification requirements for pilots engaged in 14 CFR Part 121 air carrier operations and modify the requirements for an airline transport pilot certificate.

Safety Management Systems for Certificate Holders (Section 610 Review): This rulemaking would require each certificate holder operating under 14 CFR Part 121 to develop and implement a safety management system (SMS) to improve the safety of its aviation related activities.

DOT—Federal Motor Carrier Safety Administration (FMCSA)

Electronic Logging Devices and Hours of Service Supporting Documents: This rulemaking would establish: (1) Minimum performance standards for electronic logging devices (ELDs); (2) requirements for the mandatory use of the devices by drivers required to prepare handwritten records of duty status (RODS); (3) requirements concerning HOS supporting documents; and (4) measures to ensure that the mandatory use of ELDs will not result in harassment of drivers by motor carriers and enforcement officials.

Inspection, Repair, and Maintenance; Driver Vehicle Inspection Report (RRR): This rulemaking would rescind the requirement that commercial motor vehicle (CMV) drivers operating in interstate commerce submit, and motor carriers retain, driver-vehicle inspection reports when the driver has neither found nor been made aware of any vehicle defects or deficiencies.

Unified Registration System: This rule would establish a new Unified Registration System (URS) to replace three legacy systems in support of FMCSA’s safety and commercial oversight responsibilities.

DOT—Federal Railroad Administration (FRA)

Critical Incident Stress PLAN; “Critical Incident” Definition: This rulemaking would seek to define the term “critical incident” and seek to define program elements appropriate for the rail environment for certain railroad’s critical incident response programs, so that appropriate action is taken when a railroad employee is involved in or directly witnesses a critical incident.

Positive Train Control Systems: De Minimis Exception, Yard Movements, En Route Failures; Miscellaneous Grade Crossing/Signal and Train Control Amendments (RRR): This rulemaking would revise Positive Train Control regulations by defining the de minimis exception and en route failures, proposing exceptions relating to yard movements that may not be considered on the main line system, and amending regulations governing grade crossing and signal and train control systems.

Training Standards for Railroad Employees (RRR): This rulemaking would: (1) establish minimum training standards for each class or craft of safety-related employee and equivalent railroad contractor and subcontractor employee that require railroads, contractors, and subcontractors to qualify or otherwise document the proficiency of such employees in each such class and craft regarding their knowledge and ability to comply with Federal railroad safety laws and regulations and railroad rules and procedures intended to implement those laws and regulations, etc.; (2) require submission of railroads', contractors', and subcontractors' training and qualification programs for FRA approval; and (3) establish a minimum training curriculum and ongoing training criteria, testing, and skills evaluation measures for track and equipment inspectors employed by railroads and railroad contractor and subcontractors.

DOT—Pipeline and Hazardous Materials Safety Administration (PHMSA)

Hazardous Materials: Revisions to Requirements for the Transportation of Lithium Batteries: This rulemaking would amend the Hazardous Materials Regulations (HMR) to comprehensively address the safe transportation of lithium cells and batteries.

DOT—Maritime Administration (MARAD)

Regulations To Be Followed by All Departments, Agencies and Shippers Having Responsibility to Provide a Preference for U.S.-Flag Vessels in the Shipment of Cargoes on Ocean Vessels (RRR): This rulemaking would revise and clarify the Cargo Preference rules that have not been revised substantially since 1971, including an updated purpose and definitions section along with the removal of obsolete provisions.

DHS—U.S. Customs and Border Protection (CBP)

Importer Security Filing and Additional Carrier Requirements: This rulemaking amended CBP Regulations to require carriers and importers to provide to CBP, via a CBP-approved electronic data interchange system, information necessary to enable CBP to identify high-risk shipments to prevent smuggling and insure cargo safety and security. Under the rule, importers and carriers must submit specified information to CBP before the cargo is brought into the United States by vessel.

DHS—Transportation Security Administration (TSA)

General Aviation Security and Other Aircraft Operator Security: This rulemaking would address security requirements for the general aviation industry. TSA is considering the following proposed provisions: (1) type of aircraft subject to TSA regulation; (2) compliance oversight; (3) watch list matching of passengers; (4) prohibited items; (5) scope of the background check requirements and the procedures used to implement the requirement; and (6) other issues. TSA also plans to propose security measures for foreign aircraft operators commensurate with measures for U.S. operators.

Aircraft Repair Station Security: This rulemaking would propose regulations to improve the security of domestic and foreign aircraft repair stations. The NPRM proposed to require certain repair stations that are certificated by the FAA to adopt and carry out a security program. The proposal will codify the scope of TSA's existing inspection program. The proposal also provides procedures for repair stations to seek review of any TSA determination that security measures are deficient.

FCC—Wireless Telecommunications Bureau

Review of Part 87 of the Commission's Rules Concerning Aviation: This proceeding would streamline, consolidate, and revise FCC's part 87 rules governing the Aviation Radio Service in an effort to ensure these rules reflect current technological advances.

Amendment of the Rules Regarding Maritime Automatic Identification Systems: This action would adopt additional measures for domestic implementation of Automatic Identification Systems (AIS), an advanced marine vessel tracking and navigation technology that can significantly enhance U.S. homeland security as well as maritime safety. ♦

Lisa A. Harig is a partner in the Aviation practice group of McBreen & Kopko and Managing Partner of the firm's Washington, DC office. She is the current editor of TransLaw.

VESSEL continued from page 10

⁸49 U.S.C. § 114(f).

⁹49 U.S.C. § 44903(j)(2)(A). CAPPS is a pre-screening system run by the aircraft operators according to directions from TSA. CAPPS uses passenger information in the operators' reservation systems; TSA does not have access to the information. Depending on the CAPPS analysis, a passenger and/or his/her property may be subject to additional screening.

¹⁰49 U.S.C. § 44903(j)(2)(C)(ii).

¹¹For a general explanation of Secure Flight, see the Secure Flight Final Rule, 73 Fed. Reg. 64018 (Oct. 28, 2008). TSA's

Secure Flight regulations are codified at 49 CFR part 1560.

¹²Some passengers will not be able to receive a boarding pass and to go past the security checkpoint because they are matched to the No Fly List.

¹³49 U.S.C. § 114(f).

¹⁴49 C.F.R. § 1560.3. See the preamble to the Secure Flight Final Rule for further explanation of this concept. 73 Fed. Reg. 64018, 64034 (Oct. 28, 2008).

¹⁵49 C.F.R. § 1560.101(a)(2)