



Accommodation Of Individuals With Disabilities At Commercial Service Airports—A Primer

James I. Briggs, Jr.

People in the air transportation industry understand that a commercial service airport is the most complicated piece of real estate in the country, not just from the operational standpoint but also from the regulatory standpoint. Numerous public and private entities conduct activities and operations at a commercial service airport; numerous federal laws and regulations apply to these entities; and numerous federal agencies have jurisdiction over activities at an airport. One area that not only typifies the regulatory complexity at a commercial service airport, but also has received quite a bit of scrutiny lately, is the laws and regulations that ensure access for people with disabilities. This article provides a very brief overview of this complex “web” of evolving, and sometimes conflicting, laws and regulations that distributes accessibility responsibilities among not only the various entities operating at an airport but also among various federal regulatory agencies.

The Players

Who are the entities operating within the passenger terminal side of a commercial service airport? The two main parties are, of course, the public entity (e.g., a municipality, county, state, or authority) that operates the airport facility and the airlines that operate the aircraft and provide the air transportation. Additional enterprises include public and private ground transportation providers (e.g., rail, buses, shuttles, taxis, and limousines), rental car companies, and retail establishments (e.g., food and gift shops). Then there are the federal entities that perform screening of passengers (i.e., Transportation Security Administration) and conduct immigration and customs activities (Customs & Border Patrol).

An added complication is that the regulatory responsibility in the disability arena at airports is distributed among several federal agencies, including the Department of Transportation, the Federal Aviation Administration, the

Department of Justice, the Equal Employment Opportunity Commission, the Department of Labor, and the U.S. Access Board. This mixture of responsible federal agencies along with the various public and private entities operating at an airport complicates the determination of which rules of which federal agency apply in which area of the airport.

Applicable Laws

A variety of federal laws and regulations for ensuring access for people with disabilities apply to operations and facilities at commercial service airports. Which law applies depends upon whether the entity involved is the airport operator, other public entity, a private business, or an air carrier. These laws and regulations include the following:

1. Title II of the Americans with Disabilities Act of 1990 (ADA) and the ADA Amendments Act of 2008 (42 U.S.C. 12101, et seq.) and the Department of Justice (DOJ) Title II rules (28 CFR part 35) apply to airport terminal facilities operated by public entities. The ADA broadly protects the rights of individuals with disabilities in employment, access to state and local government services, places of public accommodation, transportation, and other areas.
2. Title III of the ADA and DOJ Title III rules (28 CFR part 36) apply on airports to private places of public accommodation or commercial facilities that serve the general public (e.g., hotels, restaurants, and gift stores). The 2010 ADA Standards for Accessible Design promulgated by DOJ are the physical accessibility standards that apply throughout the airport to both Title II and Title III regulated entities.
3. Department of Transportation (DOT) Title II and

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Chair's Corner

Monica R. Hargrove, Chair

Transportation and Transportation Security Law Section Members:

As Chair of the Transportation and Transportation Security Law Section, I am pleased to write my first "Chair's Corner" for the 2013 winter issue of *TransLaw*!

The section has a variety of interesting programs and activities planned for 2013, and is already off to a booming start! We held a great Holiday Meet and Greet, the new leadership Happy Hour on Dec. 12, 2012, at the Social Reform Kitchen and Bar in Washington, D.C. On Jan. 28, 2013, we held our first Lawyers' Luncheon program of the year featuring representatives of the Transportation Research Board and the Airport Cooperative Research Program, both affiliates of the National Academy of Sciences. The program also featured two recent authors of transportation research digests, David Bannard of Foley & Lardner and Ron Frazier of Countermeasures Assessment & Security Experts, LLC.

On Tuesday, Feb. 12, 2013, the section held its third annual Transportation Security Law Forum at the Transportation Security Administration's (TSA) headquarters in Arlington, Virginia. The program was coordinated by TSA's Senior Counsel for Policy and Industry Engagement Susan Prosnitz, and sponsored by David Ralston, chair of the section's Transportation Security Law Committee, and partner at the law firm of Foley & Lardner.

We were delighted to have Francine Kerner, TSA's chief counsel, and TSA Administrator John Pistole as our opening speakers for the forum. We enjoyed a very enlightening legislative panel discussion introduced by John Wasowicz, TSA legislative counsel and moderated by TSA's Assistant Administrator-Legislative Affairs Sarah Dietch. The panel featured several house and senate Transportation Security sub-committee and committee staff members: Richard Swayze (senate commerce); Justin Wein (associate staff for Homeland Security, Rep. David Price) and Amanda Parikh (house subcommittee staff director, Committee on Homeland Security). Following the stimulating and informative legislative session on key transportation security initiatives and anticipated priorities of the 113th Congress, some of the attendees participated in a tour of the Transportation Security Systems Integration Facility at Ronald Reagan Washington National Airport. Last but not least, the event ended with a networking happy hour reception sponsored by Leonard Street and Deinard at the airport's TGI Friday's.

Stay tuned: A number of other exciting programs and activities are in the pipeline for the next several months!

In the meantime, if you have ideas, questions or concerns for the Section's consideration, please direct them to any of the members of the section's board.

The section's leadership group for 2013 includes the following persons:

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- **T&TSL Steering Committee Members:** Bern Diederich, Nancy Kessler, John Anderson, and Hector Huezo, Immediate Past-Chair

Join us as we explore issues facing all the transportation modes—from aviation to highways to rail to transit to maritime to trucking—we are planning to cover developments in each of these areas, and more, in 2013!

Monica R. Hargrove is the chair of the Transportation and Transportation Security Law Section and the general counsel of Airports Council International-North America. You can reach her at mhargrove@aci-na.org. ❖

Letter From the Editor

Lisa A. Harig

I'm pleased to present the Winter 2013 issue of *TransLaw*. This is my first issue as editor and I want to extend my warmest thanks to Alice Koethe for her dedication and hard work as editor of this publication in 2012, as well as her assistance with my transition into the editor slot for 2013. A big thanks also goes out to the entire Transportation and Transportation Security Law Section Board for their ongoing support of *TransLaw*.

In this issue, James Briggs presents a comprehensive primer on the Americans with Disabilities Act (ADA) and its impact on airports. John Vergelli and Mai Dinh authored an article about the legal foundation and history of TSA Pre✓™.

Kathryn Gainey contributed a case note regarding *Lozman v. City of Riviera Beach, Florida* (which answers the question "is a floating home a 'vessel'?"). In addition to the Chair's Corner, T&TSL Section Chair Monica Hargrove submitted reviews of recent section activities and awards. Finally, I wrote a short piece on the transportation-related semiannual regulatory agendas for Department of Transportation, Department of Homeland Security, and Federal Communications Commission. Thank you to all of our excellent authors.

Please contact Sherwin Valerio at svalerio@fedbar.org with ideas, case notes, book reviews, or to submit an article for future issues of *TransLaw*. ♦

DISABILITIES continued from page 1

Title III ADA rules (49 CFR part 37) apply to transportation services and facilities provided by public entities (e.g., public rail, buses, and shuttles) and by private entities (taxis, shuttles, and buses) that serve an airport. Generally, however, airlines and the airport itself are not considered "public transportation."

4. Title I of the ADA and the Equal Employment Opportunity Commission Title I rules (29 CFR part 1630) prohibit employment discrimination against qualified individuals with disabilities by both public and private employers and require employers to provide reasonable accommodation to an employee or job applicant with a disability.
5. The Air Carrier Access Act of 1986 (ACAA) (49 USC §41705, et seq.) and the DOT ACAA rules (14 CFR part 382) apply to airline services and to airline owned, leased, or controlled terminal facilities (e.g., ticket counters, baggage claim areas, and gates) and prohibit discrimination in airline service on the basis of disability. Note that the ACAA was enacted four years prior to the ADA.
6. Architectural Barriers Act of 1968 (as amended) (42 USC 4151) and General Services Administration (GSA) regulations (41 CFR subpart C) apply to federal space in airports and to portions of airports that were constructed or altered with certain federal grants or loans. Such funds trigger compliance with the 2006 GSA ABA Standard.
7. Section 504 of the Rehabilitation Act of 1973 (as amended) (29 U.S.C. §794) and the DOT Section 504 regulations (49 CFR 27.71) require airport operators to comply with the DOJ ADA requirements and apply to terminal facilities owned by public entities that receive DOT financial assistance (i.e., Airport Improvement Program funds) and to airport facilities of air carriers that received Essential Air Service funds.

8. Section 503 of the Rehabilitation Act of 1973 (as amended) and the Department of Labor Section 503 rules (41 CFR 60-741) prohibit discrimination by covered federal contractors and subcontractors against individuals on the basis of disability and require affirmative action on behalf of qualified individuals with disabilities.

DOT Regulations

In 2008, DOT issued a revised ACAA Rule (14 CFR Part 382)¹, which became effective on May 13, 2009. The revised rule at §382.91 clarifies the assistance airlines, both domestic and foreign, must provide to passengers with a disability in moving within an airport terminal building. Basically, the airline must assist passengers with a disability from "curb to curb" at airport terminal buildings.

Some of the accessibility requirements that an airline must provide at facilities that the airline owns, leases, or controls at a U.S. airport include the following: captioning of audio-visual displays (§382.51); for passengers needing visual or hearing assistance, prompt access to the same information provided to other passengers (§382.53); and relief areas for service animals accompanying passengers, including escorting the passenger to the relief area (§382.51; §382.91).

DOT has a current rulemaking in process² regarding airline website accessibility and the accessibility of automated kiosks used by airports and airlines for flight check-in, printing of boarding passes, bag tag printing, rebooking, and reporting lost luggage. Under the current ACAA rule, if a carrier's automated kiosks in an airport terminal are not readily accessible by a passenger with a disability, the carrier must provide equivalent services to the passengers. Equivalent services would be permitting the passenger to go to the front of the line at the ticket counter or providing airline staff to assist with the kiosk (§382.57). The current NPRM is proposing that all kiosks must provide accessibility to individuals with visual, mobility, tactile, and hearing disabilities. Also, the NPRM is proposing as

the accessibility standard for airline websites the “Website Content Accessibility Guidelines 2.0 Success Criteria” and all Conformance Requirements at Level A and Level AA developed by the World Wide Web Consortium Web Accessibility Initiative (www.w3.org).

Another current DOT rulemaking is a proposal that includes amending 49 CFR Part 27 to require airport operators to work with airlines to establish relief areas for service animals that accompany passengers with disabilities and whether to require airport operators to display on video monitors the messages broadcast over public address systems.³ The current DOT ACAA rules already require air carriers to provide these service animal relief areas.

For matters involving passengers with disabilities, air carriers fall primarily under the jurisdiction of DOT pursuant to the Air Carrier Access Act. Airport operators, on the other hand, fall primarily under the jurisdiction of DOJ pursuant to the Americans with Disabilities Act.

DOJ ADA Title II & III Regulations

In 2010, the DOJ published amended ADA regulations implementing Title II⁴, covering state and local government entities, and Title III⁵, covering public accommodations and commercial facilities. These revisions took effect on March 15, 2011.

Along with the amended regulations, DOJ adopted revised accessibility design standards “2010 ADA Standards for Accessible Design”⁶ and assembled a guidance document “Guidance on the 2010 ADA Standards for Accessible Design”.⁷ After March 15, 2012, all newly constructed or altered Title II and Title III facilities must comply with these 2010 Standards.⁸

The public entities that operate commercial service airports are subject to the DOJ Title II ADA regulation⁹ while places of public accommodation and commercial facilities in an airport (e.g., restaurants, gift shops, and hotels) are subject to the DOJ Title III ADA regulation. On the other hand, airlines are subject to the DOT ACAA regulation.¹⁰

Topics that are new to the DOJ ADA regulation or were the subject of considerable attention include: accommodation of service animals, accommodation for wheelchairs and other power-driven mobility devices, and effective communication with individuals with hearing or sight impairments.

The DOJ regulation defines “service animal” as “any dog that is individually trained to do work or perform tasks for the benefit of an individual with a disability, including a physical, sensory, psychiatric, intellectual, or other mental disability.” However, animals used for emotional support or comfort are not included. The rule does permit the use of trained miniature horses as an alternative to dogs. A person using a service animal may be asked if the animal is required because of a disability and what work or tasks the animal is trained to perform. However, a person using a service animal may not be required to provide proof of service animal certification, be asked about the person’s disability, or be required to pay a surcharge as a condition of having a service animal in the facility. In addition, a service animal

may be removed from the premises if the animal is out of control or not housebroken (28 CFR §35.136 & §36.302).

The DOJ “service animal” definition does not affect the obligations of air carriers under the DOT ACAA regulation, which does include emotional support animals and animals other than dogs as service animals. However, if an animal is a service animal under the ACAA but not under the ADA, the ADA does not prohibit an airport from allowing an airline passenger with a disability to bring the ACAA service animal into the airport facility even though the airport could lawfully exclude the animal under the ADA.¹¹

The DOJ regulation makes a distinction between (1) wheelchairs and (2) other power driven mobility devices (such as the Segway® PT) not designed for but used by individuals with mobility impairments. Entities must permit the use of wheelchairs and other devices designed for use by people with mobility impairments. In addition, entities must permit the use of other power-driven mobility devices unless the entity demonstrates that the devices cannot be operated within legitimate safety requirements. (28 CFR §35.137 & §36.311).

The basic rule for communication with individuals with disabilities is that the communication must be effective (28 CFR §35.160, §35.161, & §36.303). An entity’s obligation to ensure effective communication extends to companions who are individuals with disabilities. When needed for effective communication, the entity, not the individual, is responsible for providing auxiliary communication aids and services and may not require an individual with a disability to provide an interpreter.

A few of the major design standard changes in the DOJ 2010 Standards applicable to operations at commercial service airports include the following:

- In passenger terminals, the boarding and debarkation, loading and unloading, baggage claim, dining facilities, and other public common areas must be on an accessible route from an accessible entrance (28 CFR §36.401(D)(2)(II) & §36.404(a)).
- Passenger terminals with long, continuous passenger loading-zones must provide one accessible passenger loading zone every 100 linear feet (§209 & §217).
- The requirement for detectable warnings identifiable by cane and underfoot is eliminated for curb ramps and hazardous vehicular areas but is retained for transit platform edges (§705). However, the U.S. Access Board has proposed regulations for 36 CFR 1190 to adopt detectable warnings for curb ramps, pedestrian refuge islands, rail crossing, and transit stops.¹²
- For elevators, an automatic verbal annunciator shall announce the floor at which the elevator car is about to stop. An audible signal or verbal annunciator shall indicate the direction in which the elevator is traveling (§407).

DISABILITIES *continued from page 5***Department Of Labor**

Most public entities that operate commercial service airports are “federal contractors”. The acceptance of federal grants (e.g., Airport Improvement Program grants from the Federal Aviation Administration) is not what makes airport operators federal contractors; the lease agreements and other contractual arrangements with federal agencies make airport operators federal contractors. As federal contractors, airport operators become subject to a whole additional set of federal requirements beyond the more familiar assurances associated with federal grants. These additional requirements include regulations promulgated by the U.S. Department of Labor’s Office of Federal Contract Compliance Programs (OFCCP).

Currently, OFCCP is processing a proposed rule to revise its regulations implementing Section 503 of the Rehabilitation Act of 1973, which obligates most federal contractors and subcontractors to ensure equal employment opportunity for qualified workers with disabilities.¹³ The proposed OFCCP rule would impose stronger affirmative action and reporting obligations and require federal contractors to set a goal of having seven percent of their employees be qualified workers with disabilities.¹⁴

Conclusion

This article only generally summarizes some of the federal laws, regulations, and agencies involved with individuals with disabilities at commercial service airports; but, it should be sufficient to show the complexity at an airport of even this single subject.¹⁵ Awareness is the key to ensuring accessibility for individuals with disabilities at airports. It is just good customer service to provide for the inclusion of everyone in the activities, programs, and services offered by both public and private entities at airports. Of course, improving accessibility for individuals with disabilities has the added benefit of making the air transportation system even more accessible for everyone. An airport is a very complex piece of real estate with responsibilities allocated among numerous public and private entities. Because all these activities occur on the piece of real estate managed by an airport operator, the airport operator is left with the responsibility of trying to coordinate the activities of all these various parties. ❖

James I. Briggs, Jr., is a member of the editorial board of The Federal Lawyer and is the Vice-President of Legal Affairs at Airports Council International – North America, a Washington, D.C., based trade association for passenger service airports in the United States and Canada. He received his J.D. with high honors from Florida State University in 1985, his M.S. Summa Cum Laude from The University of Missouri-Columbia in 1980, and his B.S. Summa Cum Laude from Louisiana Tech University in 1976.

Endnotes

¹73 Fed.Reg. 27614 (May 13, 2008) (www.gpo.gov/fdsys/pkg/FR-2008-05-13/pdf/08-1228.pdf) as modified by Correction Notice of 74 Fed.Reg. 11469 (March 18, 2009) (www.gpo.gov/fdsys/pkg/FR-2009-03-18/pdf/E9-5606.pdf) and Correction Notice of 75 Fed.Reg. 44885 (July 30,

2010) (www.gpo.gov/fdsys/pkg/FR-2010-07-30/pdf/2010-18531.pdf).

²76 Fed.Reg. 59307 (9/26/2011); www.gpo.gov/fdsys/pkg/FR-2011-09-26/pdf/2011-24298.pdf; www.regulations.gov under Docket Number DOT–OST–2011–0177.

³76 Fed.Reg. 60426 (09/29/2011); www.gpo.gov/fdsys/pkg/FR-2011-09-29/pdf/2011-24849.pdf; www.regulations.gov under Docket Number DOT–OST–2011–0182.

⁴“Nondiscrimination on the Basis of Disability in State and local Government Services”; 75 Fed.Reg. 56164 (09/15/2010); www.gpo.gov/fdsys/pkg/FR-2010-09-15/pdf/2010-21821.pdf.

⁵“Nondiscrimination on the Basis of Disability by Public Accommodations and in Commercial Facilities”; 75 Fed.Reg. 56236 (09/15/2010); www.gpo.gov/fdsys/pkg/FR-2010-09-15/pdf/2010-21824.pdf.

⁶Available on DOJ ADA website at www.ada.gov/regs2010/2010ADASTandards/2010ADASTandards.htm#titleIII.

⁷Available on DOJ ADA website at www.ada.gov/regs2010/2010ADASTandards/Guidance2010ADASTandards.htm.

⁸Information regarding the DOJ revised ADA regulations implementing Title II and III are available on the DOJ ADA website at www.ada.gov/regs2010/ADAREgs2010.htm.

⁹75 Fed.Reg. at 56167.

¹⁰“The public airport operator is required to comply with the title II requirements, but is not covered by the ACAA. Conversely, the air carrier is required to comply with the ACAA, but is not covered by title II of the ADA.” 75 Fed. Reg. at 56166.

¹¹75 Fed.Reg. at 56166. See 14 CFR 382.7 et seq.; see also Department of Transportation, Guidance Concerning Service Animals in Air Transportation, 68 Fed.Reg. 24874, 24877 (05/09/2003) (discussing accommodation of service animals and emotional support animals on aircraft).

¹²“Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way”; 76 Fed.Reg. 44664 (07/26/2011); www.gpo.gov/fdsys/pkg/FR-2011-07-26/pdf/2011-17721.pdf.

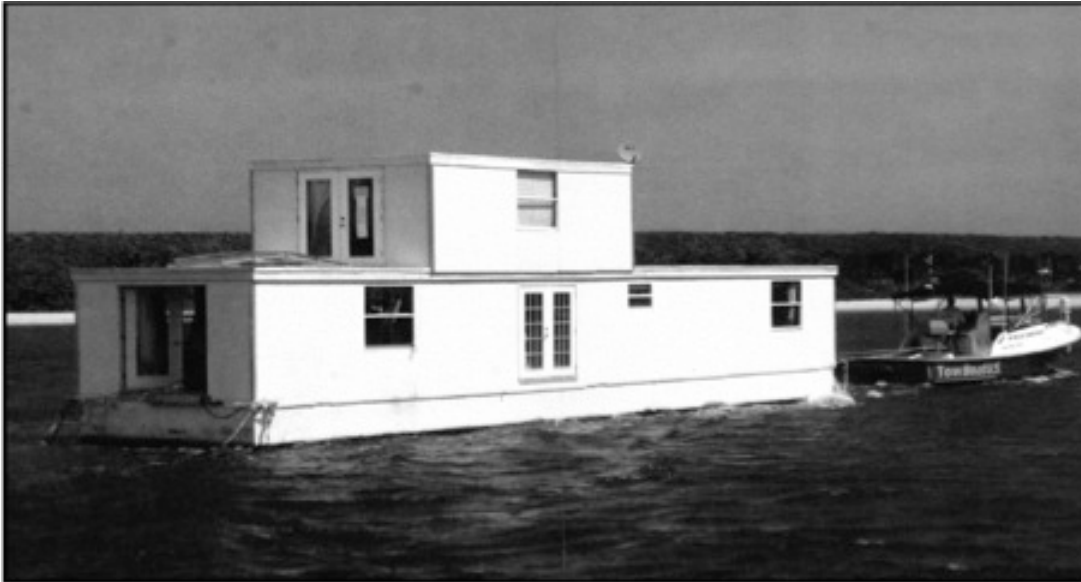
¹³“Affirmative Action and Nondiscrimination Obligations of Contractors and Subcontractors Regarding Individuals With Disabilities”, 76 Fed.Reg. 77056 (12/09/2011); www.gpo.gov/fdsys/pkg/FR-2011-12-09/pdf/2011-31371.pdf.

¹⁴Information regarding this proposed rule can be found on the OFCCP website at www.dol.gov/ofccp/503/ and on www.regulations.gov under Document ID OFCCP-2010-0001-0130.

¹⁵General ADA Resources: ADA Disability and Business Tech. Asst. Center at www.adata.org/. Cornell University Employment & Disability Institute at www.hrtps.org. Department of Justice at <http://www.ada.gov>. Dept. of Labor, Office of Disability Employment Policy at www.dol.gov/odep. Equal Employment Opportunity Commission at www.eeoc.gov/. FCC Disability Rights Office at www.fcc.gov/cgb/dro. Job Accommodation Network at www.askjan.org. National Council on Disability at www.ncd.gov/. National Disability Rights Network at www.ndrn.org/. U.S. Access Board at www.access-board.gov/.

Defining the Scope of Admiralty Jurisdiction: Is a Floating Home a “Vessel”?

Kathryn Gainey



Picture of Fane Lozman’s floating home. Source: *Lozman v. City of Riviera Beach, Florida*, 568 U.S. ___, slip op. at 16 (2013).

Is Fane Lozman’s floating home (pictured above) a “vessel” subject to federal admiralty jurisdiction? A majority of the U. S. Supreme Court recently answered “no” in *Lozman v. City of Riviera Beach, Florida*, 568 U.S. ___ (Jan. 15, 2013). The majority reasoned that a “reasonable observer, looking to the home’s physical characteristics and activities, would not consider it to be designed to any practical degree for carrying people or things on water.” Slip op. at 1.

The floating home was made of plywood with an empty space underneath the main floor that kept it afloat. It was docked in the marina in the city of Riviera Beach. After the city tried to evict the floating home from the marina and failed to do so, the city filed an admiralty suit in federal court against the floating home seeking dockage fees. Lozman argued that the court lacked admiralty jurisdiction and moved for dismissal.

The district court found that the floating home constituted a “vessel” and that it had admiralty jurisdiction. The district court subsequently held a bench trial, awarded approximately \$3,000 to the City for dockage fees, and ordered the home sold to pay those fees. The Eleventh Circuit affirmed, and the Supreme Court granted *certiorari*. In a 7-2 decision, the majority concluded that Lozman’s floating home is not a “vessel,” meaning that the federal court did not have admiralty jurisdiction.

This case turns upon whether Lozman’s floating home constitutes a “vessel” under the Rules of Construction Act. Under that statute, “vessel” is defined as including “every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.” 1 U.S.C. § 3. If a structure constitutes a “vessel,” then it falls within the scope of admiralty jurisdiction.

Writing for the majority, Justice Breyer focused on the statutory phrase “capable of being used ... as a means of transportation on water.” Slip op. at 3. The majority interpreted this language as inquiring whether a “reasonable observer, looking to the home’s physical characteristics and activities, would consider it designed to a practical degree for carrying people or things over water.” *Id.* at 5. Under this test, characteristics such as design, actual use, self-propulsion, and physical alteration are relevant, but not determinative. For example, an owner may actually use a floating structure for transportation, even if it was not designed for transportation.

The majority analyzed two previous Supreme Court cases that reached opposite conclusions whether a particular structure was a “vessel.” In *Evansville & Bowling Green Packet Co. v. Chero Cola Bottling Co.*, 271 U.S. 19 (1926), the Court determined that a wharfboat was not a “vessel” where the wharfboat “floated next to a dock, ... was used to transfer cargo from ship to dock and ship to ship; ... was connected to the dock with cables, utility lines, and a ramp; and] was towed each winter to a harbor to avoid river ice.” Slip op. at 6-7.

By contrast, in *Stewart v. Dutra Construction Co.*, 543 U.S. 481 (2005), the Court held that a dredge was a “vessel” where it was a “massive floating platform from which a suspended clamshell bucket would remove silt from the ocean floor;” had a “captain and crew, navigational lights, ballast tanks, and a crew dining area;” and “moved over water every couple of hours,” even though it “could navigate only by manipulating its anchors and cables or by being towed.” Slip op. at 7 (internal quotation marks omitted). The majority explained that *Stewart* stands for the proposi-

tion that a structure may constitute a “vessel” where it “has some other *primary* purpose, where it is stationary at relevant times, and where it is attached—but not permanently attached—to land.” *Id.* at 8.

The majority reconciled the determination that the dredge in *Stewart* was a vessel and the wharfboat in *Evansville* was a non-vessel by considering the use and design of the structure: “the dredge was regularly, but not primarily, used (and designed in part to be used) to transport workers and equipment over water while the wharfboat was not designed (to any practical degree) to serve a transportation function and did not do so.” *Id.* The majority recognized that there could be instances “where ‘capacity’ to transport over water is in doubt” with respect to a particular structure, but its decision “should offer guidance in a significant number of borderline cases.” *Id.* at 13.

In this case, the majority concluded that Lozman’s floating home was not a “vessel” because the structure would not “lead a reasonable observer to consider it designed to a practical degree for ‘transportation on water.’” *Id.* at 6. Although the home floated in the water, it had no rudder, no steering mechanism, no ability to generate electricity, and could travel only when it was towed, which occurred four times.

The majority disagreed with the city’s argument that Lozman’s floating home was actually used for transportation and thus constituted a “vessel.” The majority concluded that the home had “far too little *actual* ‘use’” to constitute a “vessel.” *Id.* at 14 (emphasis in original). The majority emphasized that the home lacked self-propulsion, was towed “significant distances only twice in seven years,” and “when it moved, it carried ... only its own furnishings, its owner’s personal effects, and personnel present to assure the home’s safety.” *Id.* at 14.

The majority thus rejected the Eleventh Circuit’s conclusion—that Lozman’s floating home is a “vessel”—as “too broad.” *Id.* at 4. The majority also distinguished what it described as an “anything that floats” approach under which some lower courts have concluded that structures such as a “so-called ‘houseboat’ lacking self-propulsion,” a “floating dormitory,” and a “derrick anchored in the river engaged in building a bridge” constituted vessels. *Id.* at 9-10.

Justice Sotomayor authored a dissenting opinion joined by Justice Kennedy. The dissent, like the majority, believed that the Eleventh Circuit’s approach was too broad, that an owner’s subjective intent is irrelevant, and that the vessel determination should be based on “an objective assessment of a watercraft’s purpose or function.” Slip op. at 1 (Sotomayor, J., dissenting). However, the dissent disagreed with the majority’s “reasonable observer” test, as well as the application of that test to this case since the dissent believed that a remand was necessary.

The dissent emphasized that the Supreme Court has treated “any watercraft practically capable of maritime transportation” as a “vessel” with the touchstones being

“its usage history” and the “physical characteristics of a vessel (such as its structure, shape, and materials of construction).” *Id.* at 2 (internal quotation marks omitted). The dissent agreed that the vessel determination with respect to Lozman’s floating home “hinges on whether that craft had any maritime transportation purpose or function,” but it contended that the majority’s “reasonable observer” inquiry “introduces a subjective component.” *Id.* at 6. The dissent also believed that the majority failed to articulate why the floating home “was not ‘practically capable’ of maritime transport” since the majority agreed that it “traveled hundreds of miles while ‘carrying people or things.’” *Id.* at 7.

The dissent believed that the majority’s opinion could increase uncertainty in lower courts because the majority “specifically disapproves of ... decisions dealing with much larger ships” and questions decisions treating “houseboats that lacked self-propulsion” as vessels. *Id.* at 9, 12. In the dissent’s view, this “works real damage to what has long been a settled area of maritime law” and upsets the expectations of the maritime industry participants, such as marinas or lenders, who now lack “clear and predictable legal rules for determining which ships are vessels.” *Id.* at 10-11.

The dissent recognized that Lozman’s floating home may not constitute a “vessel.” However, the dissent believed that remand was necessary to develop information “about the craft’s capabilities and what did or did not happen on its various trips.” For example, the dissent suggested that if a craft “can carry large appliances” and personal effects, then it is “much more like a mobile home (and therefore a vessel) than a firmly rooted residence.” *Id.* at 8.

The majority declined to adopt the dissent’s suggested approach that looked to “the size of the items in question.” *Lozman*, slip op. at 13 (Breyer, J., opinion of the Court). Instead, the majority distinguished “between items being transported from place to place (e.g., cargo) and items that are mere appurtenances.” *Id.* The majority explained that it focused on “objective evidence of a waterborne transportation purpose”—“physical attributes and behavior of the structure” as perceived by a “reasonable observer”—and not an owner’s subjective intent. *Id.* at 12. Finally, the majority concluded that a remand was unnecessary because neither party requested it.

The opinion is available from the Court’s website: www.supremecourt.gov/opinions/12pdf/11-626_p8k0.pdf. ❖

Kathryn Gainey is of counsel at Steptoe & Johnson LLP in the Washington, DC office. Gainey is the chair of the Surface Transportation Committee of the Transportation & Transportation Security Law Section. You can reach her at kgainey@steptoe.com.

TSA Pre[✓]™: An Intelligence-Driven, Risk-Based Approach to Passenger Screening

John Vergelli and Mai Dinh

In 2011, the Transportation Security Administration (TSA) announced its “Risk-Based Security” (RBS) strategy that includes the “TSA Pre[✓]™” initiative. This initiative has already affected a significant number of airports, airlines, and travelers. As TSA Pre[✓]™ expands, we are increasingly hearing and using terms like “expedited screening,” and “trusted traveler,” “known traveler,” “trusted passenger,” and other variations on that theme. Many of us, however, are uncertain about the big picture. Is RBS synonymous with TSA Pre[✓]™? Is a “trusted traveler” the same thing as a “known traveler?” This article introduces and explains TSA Pre[✓]™, including its legal foundation, history, and the relationship between them.

TSA Pre[✓]™ is the RBS initiative that TSA is deploying for passenger screening at the airport security checkpoints. TSA Pre[✓]™ is a structure of technology and processes that allows passengers to voluntarily provide more information about themselves, which in turn helps TSA to apply intelligence-driven, risk-based analysis to identify lower-risk travelers who are eligible for expedited screening. TSA Pre[✓]™ enables TSA to focus efforts on passengers who are more likely to pose a higher risk to our transportation network to mitigate the threat, while providing expedited screening and a better travel experience for those low-risk passengers that TSA knows the most about. At the conceptual level, RBS and TSA Pre[✓]™ are based on the following premises:

- The majority of airline passengers are low risk.
- By having passengers voluntarily provide more information about themselves, TSA can better segment the population in terms of risk.
- Behavior detection and interviewing techniques should be strengthened in the screening process.
- TSA must accelerate its efforts to optimize screening processes and use of technology to gain system-wide efficiencies.
- Increase security by focusing on unknowns; expedite known and trusted travelers.

At the outset, it is important to understand two closely related concepts: physical screening and pre-screening. Physical screening at the security checkpoint is the public face of TSA. It is vitally important because it is a last line of defense against terrorists who are threats to aviation and national security. Prescreening is using *information* to make decisions *before* a passenger arrives at the airport about what level of physical screening the passenger will receive when he or she arrives at the airport. Prescreening allows TSA to evaluate threat and risk and can help mitigate the costs of physical screening by identifying passengers eligible for TSA Pre[✓]™.

TSA’s Authority to Screen Passengers

Before we delve into TSA Pre[✓]™, understanding TSA’s authority to apply different screening to different travelers is useful. The Aviation and Transportation Security Act of 2001 (ATSA),¹ which created TSA, establishes the agency’s broad

responsibility for “security in all modes of transportation.”² Specifically with respect to aviation, TSA is required to “oversee the implementation, and ensure the adequacy, of security measures at airports,”³ and “provide for the screening of all passengers and property, including U. S. mail, cargo, carry-on and checked baggage, and other articles, that will be carried aboard a passenger aircraft.”⁴ For a few circumstances, Congress has statutorily specified the method of screening.⁵ In most instances, however, the statutes are silent with regard to the particular methods that TSA must use to screen.⁶ In the absence of such statutory specificity, TSA has discretion with regard to how it will conduct screening. Some variability in the physical screening of passengers is inherent in this discretion vested in TSA.⁷ For example, TSA conducts enhanced screening on passengers who may pose threat to aviation security. It also modifies its screening process for travelers with physical disabilities.

TSA’s screening authority, however, extends beyond physical screening at the checkpoint. TSA has broad authority to use *information* to screen passengers. ATSA provides that TSA shall “receive, assess, and distribute intelligence information related to transportation security,” “assess threats to transportation,” “develop policies, strategies, and plans for dealing with threats to transportation security,” and “identify and undertake research and development activities necessary to enhance transportation security.”⁸ Moreover, Congress has expressly directed TSA to employ two specific forms of such information-based pre-screening that segment passengers for different levels of physical screening: the Computer Assisted Passenger Prescreening System (CAPPS),⁹ and Secure Flight.¹⁰

Understanding Secure Flight¹¹ is helpful to understanding TSA Pre[✓]™. Under Secure Flight, aircraft operators transmit certain information about each passenger to TSA when the passenger makes his or her reservation. TSA uses that information to match the passenger’s identity against governmental watch lists to determine the type of screening—standard, expedited, or enhanced—for that passenger.¹² Prior to passengers receiving their boarding passes, Secure Flight sends instructions to the airlines for each passenger indicating the type of screening—standard, expedited, or enhanced—he or she will receive at the security checkpoint.

Secure Flight is perhaps the best example of how TSA currently uses information to prescreen passengers. Secure Flight proves that information-based pre-screening can be accomplished effectively and efficiently on a large scale. Also, Secure Flight demonstrates that information-based pre-screening can be used to segment the passenger population in terms of risk to determine whether a passenger will receive standard, expedited, or enhanced screening at the airport security checkpoint.

TSA Pre[✓]™: Identifying Lower-risk Passengers for

Possible Expedited Screening

One of the core principles of RBS is that the majority of passengers are lower-risk. Nevertheless, the task of identifying a given passenger as lower-risk must be approached judiciously because that passenger may receive expedited physical screening. The TSA Pre[✓]™ initiative is designed to help in identifying these lower-risk passengers who may be eligible for expedited screening. The expedited screening means the passenger may not have to remove his or her shoes, belt, or light outerwear or jacket, or remove a laptop from its bag, a 3-1-1 compliant bag from a carry-on.

TSA has two sources of statutory authority for identifying, segmenting, and differentially screening lower-risk passengers. First, as noted above, TSA possesses broad statutory authority to use various sources of information to assess threats to transportation security, develop plans to address those threats, enforce requirements related to security, and oversee implementation of security measures at airports. Under this broad grant of authority, TSA generally has discretion to vary the physical screening of all passengers based on intelligence and other factors.¹³

Second, TSA is authorized to establish trusted traveler programs for commercial aviation travel under section 109(a) (3) of the Aviation and Transportation Security Act (ATSA), which permits the Administrator of TSA to “[e]stablish requirements to implement trusted passenger programs and use available technologies to expedite security screening of passengers who participate in such programs, thereby allowing security screening personnel to focus on those passengers who should be subject to more extensive screening.”

In the Secure Flight regulations, TSA provided for a Known Traveler Number (KTN), which is a unique number assigned to “an individual for whom the Federal government has conducted a security threat assessment and determined does not pose a security threat.”¹⁴ While passengers are not required to provide a KTN (if they have one) when they make reservations, they may do so, and the aircraft carrier will transmit it to TSA with the rest of the passenger’s data.¹⁵

There are currently two ways in which a passenger may opt-in to TSA Pre[✓]™ and obtain a KTN. First, members of U.S. Customs and Border Protection’s (CBP) Global Entry, SENTRI, and NEXUS programs are automatically assigned KTN. Membership in each of these programs requires vetting of the member’s background by CBP, which TSA leverages to identify the traveler as lower risk. To trigger their eligibility for TSA Pre[✓]™, the Global Entry, SENTRI, or NEXUS members must enter their unique membership number (called a PASS ID) in the “Known Traveler Number” field when making their reservations with the aircraft operator.

Certain frequent flyers on certain airlines may also opt-in to TSA Pre[✓]™. The airlines currently participating in TSA Pre[✓]™ are Alaska Airlines, American Airlines, Delta Air Lines, United Airlines, and US Airways, and TSA is currently working with other airlines to include them into TSA Pre[✓]™. The airlines provide the opted-in passenger’s frequent flyer information to TSA through Secure Flight.

Having a KTN or opting into TSA Pre[✓]™ through an airlines’ frequent flyer program does not guarantee that a

passenger will receive expedited screening. TSA will include certain randomization factors in the process, introducing a measured level of unpredictability as a security feature. As a result, only passengers who are selected as TSA Pre[✓]™-eligible passengers may receive expedited screening on a given flight. For TSA Pre[✓]™-eligible passengers, TSA uses Secure Flight to instruct airlines to indicate this selection on their boarding passes. Passengers use their boarding passes to access the TSA Pre[✓]™ lane at the security checkpoint to receive expedited screening.

Currently, TSA Pre[✓]™ has been implemented at 35 airports nation-wide with 5 additional airports slated for implementation in the coming months. These airports have been chosen based on a number of factors, including whether they host operations by participating TSA Pre[✓]™ carriers, and the availability of checkpoints that can be configured for TSA Pre[✓]™ operations.

The Future of TSA Pre[✓]™

TSA’s goal is to have 50% of passengers be TSA Pre[✓]™-eligible by the end of 2014. TSA is working with partners inside and outside the government to create avenues to TSA Pre[✓]™-eligibility for more and more of America’s air passengers. For example, TSA is working with the Department of Defense towards TSA Pre[✓]™-eligibility for qualifying service men and women. TSA is also reaching out to the private sector by recently issuing a request for information about how private firms can create solutions by which customers might obtain a Known Traveler Number.

TSA is also working with industry to qualify more aircraft operators for participation in TSA Pre[✓]™, and to add TSA Pre[✓]™ lanes at more airports. These and other efforts are at varying stages of completion. They represent TSA’s commitment to make the best possible use of its resources and improving the traveling experience of the public and are part of TSA’s evolution into a high performing counter-terrorism organization. ❖

John Vergelli is an attorney-advvisor and Mai Dinh is an assistant chief counsel for Regulations and Security Standards in the TSA Office of Chief Counsel. The views expressed in this article do not necessarily reflect the views of TSA or its Office of Chief Counsel.

Endnotes

¹Pub. L. No. 107-71, 115 Stat. 597 (2001).

²49 U.S.C. § 114. ATSA transferred to TSA all the aviation security authorities of chapter 449 and other provisions of title 49, United States Code, that were originally vested in the Federal Aviation Administration.

³*Id.* § 114(f)(11).

⁴49 U.S.C. § 44901(a).

⁵*See, for example,* 49 U.S.C. § 44901(d)(1) (prescribing use of explosive detection systems to screen all checked baggage).

⁶*Electronic Privacy Information Center v. Dep’t of Homeland Security*, 653 F.3d 1, 2 (D.C. Cir 2011) (“The Congress generally has left it to the agency to prescribe the details of the screening process ...”)

⁷*See* 49 U.S.C. § 114(f).

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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.

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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)

Highlights of the Transportation and Transportation Security Law Section's 2012 Counsels' Reception and Honors Award Ceremony

The Transportation and Transportation Security Law Section held its 2012 Counsels' Reception, in honor of the Transportation and Transportation Security Law general counsels and chief counsels and the recipients of the section's awards, on the evening of Thursday, October 18, at the Rayburn House Building in Washington, D. C.

The FBA's Transportation and Transportation Security Law Section annually sponsors this reception on Capitol Hill to honor the DOT and DHS General Counsels, the TSA chief counsel, and the Chief Counsels of the various transportation related agencies, and their staffs.

This reception is also the occasion at which the section presents an award to the transportation lawyer of the year and/or to the transportation security lawyer of the year, an award program that began in 1990. These awards recognize attorneys, in either government service or private practice, who have made significant contributions to the field in the previous year or who have distinguished themselves through consistent professional activity during their careers.

Past award recipients include the following:

- 2011**
- Gillian Flory, Assistant Chief Counsel, Transportation Security Administration, Department of Homeland Security
- 2010**
- Jason E. Schlosberg, Trial Attorney, Office of the Chief Counsel, Federal Railroad Administration
- 2009**
- C.J. "Jonathan" Benner, Partner, Troutman Sanders LLP
 - Charles V. "Bud" Darr, Office of Maritime and International Law, U.S. Coast Guard
 - Jeffrey A. Klang, Regional Counsel Great Lakes Region, Office of the Chief Counsel, Federal Aviation Administration
- 2008**
- Paul V. Mifsud, VP Government & Legal Affairs, USA KLM Royal Dutch Airlines
 - Rebecca MacPherson, Assistant Chief Counsel for Regulations, Federal Aviation Administration
 - Steven L. Basha, Associate Chief Counsel (Enforcement), U.S. Customs and Border Protection, Department of Homeland Security
- 2007**
- Terence W. Carlson, Senior Attorney, Office of the General Counsel, U.S. Department of Transportation
 - Kathryn Sinniger, Senior Attorney, U.S. Coast Guard
 - Hattie Broussard, Senior Attorney, Transportation Security Administration, Department of Homeland Security
- 2006**
- Ronald S. Battocchi, General Counsel, National Transportation Safety Board (retired)
- Anthony Giovannello, Acting Assistant Chief Counsel, Transportation Security Administration, Department of Homeland Security
- 2005**
- James "Jay" S. Dillman, Assistant Chief Counsel (retired), Federal Aviation Administration
 - Christine Beyer, Attorney, Transportation Security Administration, Department of Homeland Security
- 2004**
- Edmund T. "Ned" Sommer, Chief, Division of General Law, International Law and Litigation, Maritime Administration, U.S. Department of Transportation
 - Mardi Ruth Thompson, Deputy Chief Counsel, Transportation Security Administration, Department of Homeland Security
- 2003**
- Patricia A. McNall, Assistant Chief Counsel, Procurement Law Division, Federal Aviation Administration
- 2002**
- Dave Tochen, Deputy Assistant General Counsel for Environmental, Civil Rights, and General Law, Office of the General Counsel, U.S. Department of Transportation
- 2001**
- James Whitlow, Deputy Chief Counsel, Federal Aviation Administration
 - Joe Corrao, VP-Law, Helicopter Association
 - Benetta Mansfield, National Mediation Board Attorney
- 2000**
- Robert S. Goldner, Acting Deputy Assistant Secretary for Aviation and International Affairs, U.S. Department of Transportation
 - Craig M. Keats, Associate General Counsel and Counsel to the Chairman, Surface Transportation Board
- 1999**
- Thomas W. Herlihy, Assistant General Counsel for Legislation, Office of the General Counsel, U.S. Department of Transportation
- 1998**
- Frank L. Calhoun, Assistant Chief Counsel for Legislation and Regulations, Federal Highway Administration
- 1997**
- Louis Mackall, Senior Attorney, Surface Transportation Board
- 1996**
- None

- 1995
 - David Heymsfeld, Minority Staff Director, House Committee on Transportation and Infrastructure
- 1994
 - Edward V. A. Kussy, Federal Highway Administration Deputy Chief Counsel
- 1993
 - Edward H. Bonekemper, III, RSPA Assistant Chief Counsel for Hazardous Materials Safety Research and Technology Law Division
- 1992
 - None
- 1991
 - Robert S. Klothe, Senior Attorney, Office of the General Counsel, U.S. Department of Transportation
- 1990 (first year)
 - Frederick Burgess, Captain, U.S. Coast Guard

The 2012 award recipients were:

Transportation Lawyer of the Year: Marc L. Warren, Deputy Chief Counsel, Federal Aviation Administration.

Marc L. Warren had previously served in the U.S. Army Judge Advocate General’s Corps, from which he retired in 2007 after having been selected for promotion to brigadier general. He is a professorial lecturer in law (adjunct professor) at the George Washington University Law School.

He was the American Bar Association outstanding young army lawyer, received the Florida Bar Association Clayton B. Burton award of excellence, and is in the University of Florida Hall of Fame.

Meritorious Award: Office of Aviation Enforcement and Proceedings U.S. Department of Transportation

A new Meritorious Award was presented to the U. S. Department of Transportation’s Office of Aviation Enforcement and Proceedings in recognition of demonstrated initiative, innovation, integrity and commitment in protecting the interests of air travel consumers and enhancing competition and consumer choices in the air transportation marketplace during 2012.

The Transportation & Transportation Law Section also presented an award recognizing its outgoing chair, Hector Huezo, Office of the General Counsel, U. S. Department of Transportation, for the outstanding leadership he provided to the section during 2012.

The ceremony was well attended by the section’s members and invited guests. We were honored that several of the chief counsels and deputy chief counsels of the federal transportation departments and agencies attended the reception. We appreciate the efforts undertaken by Stacie Tiongson of the section’s 2012 leadership team, in making the reception a memorable event! ❖



A) 2012 Counsels’ Reception and Honors Award Ceremony attendees. **B)** H. Huezo, M. Warren, M. Hargrove **C)** H. Huezo, M. Hargrove **D)** B. Workie, S. Podberesky, H. Huezo **E)** 2012 T&TSL Section Leadership

CONGRATULATIONS!

Alice Koethe: 2012 Outstanding Newsletter Recognition Award. The Federal Bar Association’s Newsletter Recognition Awards Committee recognizes the outstanding work of the section’s newsletter as a way to communicate!

Hector O. Huezo: 2012 Section Chair Award. This award recognizes distinguished service to the Federal Bar Association and the sections or divisions.