

# Alert

November 20, 2017



## Aviation Regulatory Update

### November 2017 Update on Significant DOT, FAA and Other Federal Agencies' Aviation-Related Regulatory Actions

This edition of the Cozen O'Connor Aviation Regulatory Update discusses new restrictions on Cuba travel, DOT's Small Community Air Service Development Grant Program, new DOT drug testing requirements for safety-sensitive transportation employees, the FAA's proposed amendments to helicopter certification standards, the Bombardier aircraft trade dispute between the U.S. and Canada, and the latest DOT and FAA enforcement actions.

#### Department of State

##### State Department Outlines Trump Administration's Policy Toward Cuba Travel

The Department of State published a notice outlining the Trump administration's policy toward Cuba as set forth in a Presidential Memorandum entitled "Strengthening the Policy of the United States Toward Cuba" issued on June 16, 2017. The new policy requires the U.S. Treasury Department, in coordination with the State Department, to "initiate a process to adjust current regulations to ensure adherence to the statutory ban on tourism to Cuba." Treasury is required to amend its regulations to require that educational travel be for "legitimate educational purposes" under the "auspices of an organization subject to [U.S.] jurisdiction," with all such travelers accompanied by a representative of the sponsoring organization. The amended regulations will also require that those traveling for non-academic education or to provide support for the Cuban people (people-to-people travel): "(A) engage in a full-time schedule of activities that enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people's independence from Cuban authorities; and (B) meaningfully interact with individuals in Cuba." In addition, the Departments of State, Treasury, Commerce, and Transportation are required to review their enforcement of all categories of permissible travel within 90 days of the Treasury Department's issuance of revised travel regulations. The Treasury Department will also be required to regularly audit travel to Cuba to ensure travelers' compliance with relevant statutes and regulations.

#### Office of Foreign Assets Control and Bureau of Industry and Security

##### OFAC and BIS Amend Cuban Sanctions Rules to Tighten U.S.-Cuba Travel Restrictions

In response to the State Department's policy notice, the Treasury Department's Office of Foreign Assets Control (OFAC) and the Department of Commerce's Bureau of Industry and Security (BIS) issued final rules amending their Cuban Sanctions regulations. OFAC issued a final rule requiring that certain categories of OFAC-authorized educational travel be undertaken only under the auspices of an organization that is subject to U.S. jurisdiction and that all travelers be accompanied by a person who is an employee, paid consultant, agent, or other representative of that sponsoring organization, except when the traveler is an employee, paid consultant, agent, or



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other representative traveling individually (not as part of a group) if such individual obtains a letter from the sponsoring organization. OFAC also restricted “people-to-people travel” by requiring such travel to also be conducted under the auspices of an organization that is subject to U.S. jurisdiction and that such travelers be accompanied by a person who is an employee, paid consultant, agent, or other representatives of that sponsoring organization. In addition, OFAC restricted direct financial transactions with certain Cuban government entities and hotels that such entities own that are listed on the State Department’s [Cuba Restricted List](#). These include Cuban government agencies and military groups that hold interests in tourism-related facilities. OFAC’s new rules “grandfather” travel that “previously was authorized where the traveler has already completed at least one travel-related transaction (such as purchasing a flight or reserving accommodation)” prior to June 16, 2017, for people-to-people travel and November 9, 2017, for educational travel. OFAC is also requiring that each traveler “engage in a full-time schedule of activities that result in meaningful interaction with individuals in Cuba and that enhance contact with the Cuban people, support civil society in Cuba, or promote the Cuban people’s independence from Cuban authorities.” OFAC’s revised rules became effective on November 9, 2017. BIS issued a [final rule](#) that clarifies that it will generally deny applications for the export or reexport of items for use by certain entities the State Department has identified on its Cuba Restricted List unless such transactions are determined to be consistent with U.S. policy. The revised BIS rules also prohibit the export of gift parcels and “consumer communications devices” to Cuban government or military officials. The BIS final rule became effective on November 9, 2017.

## Department of Transportation

### Regulatory

#### DOT Extends Comment Period on Comprehensive Review of Aviation Regulations

DOT issued a [notice](#) extending the comment period for its [Notification of Regulatory Review](#) by 30 days. The Notification requested comments on existing DOT modal agencies’ rules and other agency actions that are “good candidates for repeal, replacement, suspension, or modification.” Comments are now due December 1, 2017.

#### DOT Solicits Community Proposals for Small Community Air Service Development Program Grants

DOT issued a [notice](#) soliciting community proposals for grants under the Small Community Air Service Development Program. DOT plans to award grants totaling \$10 million for FY 2017 to small hub airports to address insufficient air carrier service or unreasonably high airfares in small communities. Communities currently without commercial air service may also participate in the solicitation. The grant program is designed to provide financial assistance to small communities in order to help them improve their air service. Grants will be awarded to no more than 40 communities or consortia of communities and no more than four communities or consortia of communities from the same state may receive grants. DOT’s individual grants made in the past under the program have ranged from \$20,000 to nearly \$1.6 million. Grant applications are due by December 15, 2017.

#### DOT Amends Drug Testing Requirements for Safety-Sensitive Transportation Personnel

DOT issued a [final rule](#) amending its drug testing requirements for safety-sensitive transportation industry employees. The final rule amends DOT’s drug testing regulations by adding hydrocodone, hydromorphone, oxycodone, and oxycodone to its drug-testing panel, removing methylenedioxyethylamphetamine (MDEA) as a confirmatory test analyte from the existing drug-testing panel, and adding methylenedioxyamphetamine (MDA) as an initial test analyte. DOT is also removing from Part 40 the requirements for blind specimen testing. The final rule harmonizes DOT rules with revised U.S. Department of Health and Human Services Mandatory Guidelines for Federal drug-testing programs for urine testing. The final rule also removes certain provisions that are no longer necessary (such as obsolete compliance dates), moves the content of certain provisions out of Part 40 and onto the DOT Office of Drug and Alcohol Policy and Compliance’s

website, and updates definitions and web links where necessary. The final rule is effective January 1, 2018.

## Federal Aviation Administration

### Regulatory

#### FAA Issues Proposed Rules to Amend Certification Standards for Helicopters

The FAA issued a [notice of proposed rulemaking](#) that would reduce or eliminate the need for certain special conditions required to obtain certification of rotorcraft and incorporate the requirements of an equivalent level of safety findings that the FAA has imposed as conditions for approving certain rotorcraft design features. The proposed rule would revise regulations in 14 C.F.R. Part 27 (Airworthiness Standards: Normal Category Rotorcraft) and Part 29 (Airworthiness Standards: Transport Category Rotorcraft) related to the certification of rotorcraft. The FAA stated that current regulations, which were originally published in 1964, do not adequately address new advancing technologies that are being applied to rotorcraft or increasing design complexity. Comments on the proposed rules are due January 30, 2018.

### Enforcement

#### FAA Proposes Civil Penalties Against Manufacturer of ADS-B Navigation Units

The FAA issued a [release](#) proposing to assess \$3.685 million in civil penalties against NavWorx Inc. of Rowlett, Texas, a manufacturer of Automatic Dependent Surveillance-Broadcast (ADS-B) navigation equipment, for allegedly selling navigation units that did not meet FAA requirements and allegedly misleading customers about those products. The FAA found that NavWorx produced certain ADS-B units with an internal Global Positioning System (GPS) chip that did not meet FAA standards. The FAA alleges that the company knowingly altered the units' internal software to transmit a code that indicated the units met the FAA's new System Integrity Level (SIL) standards even though they did not and subsequently refused to comply with the FAA's direction to modify the software to transmit an accurate code. According to the FAA, NavWorx also advertised to customers that its units met the FAA's tighter standards, but omitted and materially misrepresented the fact that the units contained a GPS chip that was unable to meet the FAA's standards. In November 2016, the FAA issued an emergency order suspending the company's Technical Standard Order Authorization (TSOA) that enabled it to produce components for use on aircraft. In June 2017, the FAA issued a final Airworthiness Directive that required owners to either remove or disable these ADS-B units or modify them by linking them with a GPS unit that contains a certified chip that meets FAA standards.

#### FAA Proposes Civil Penalties Against Compass Airlines for Failure to Provide Its Flight Crews With Complete Weather Information

The FAA proposed to assess \$869,125 in civil penalties against Compass Airlines according to an [FAA release](#). The FAA alleges that Compass Airlines, which operates as a Delta Connection carrier, operated 47 flights in 2015 without correctly using an approved system for obtaining weather forecasts and reports of adverse weather. The FAA found that Compass flew to/from Monterrey, Mexico, without the required Mexican Significant Meteorological Information in its flight weather packages. The FAA also alleges that Compass failed to notify its operations personnel about potentially hazardous meteorological conditions.

## Department of Commerce – International Trade Administration

### ITA Issues a Preliminary Affirmative Determination on Bombardier Aircraft Sales

The Department of Commerce's International Trade Administration (ITA) issued a [Preliminary Affirmative Determination](#) regarding Bombardier's sales of 100- to 150-seat civil aircraft, finding that Bombardier aircraft are being, or are likely to be, sold in the U.S. at less than fair market value. The determination stated that because Bombardier "failed to provide information requested in the Department's questionnaire," ITA preliminarily determined to base Bombardier's dumping margin on "adverse facts available" and applied the highest dumping margin calculated for these Canadian

exports as contained in Boeing's petitions for the imposition of antidumping and countervailing duties, which is 79.82 percent. The antidumping investigations were requested in petitions filed on April 27, 2017, by Boeing. ITA said that it would instruct U.S. Customs and Border Protection to "require a cash deposit equal to the estimated weighted-average dumping margin" from exporters for imports into the U.S. of Bombardier's 100- to 150-seat civil aircraft. ITA intends to issue a final determination no later than 75 days after the October 2, 2017, date of its preliminary determination. The International Trade Commission issued a notice scheduling the final phase of its antidumping and countervailing duty investigation regarding these aircraft. A hearing on these investigations is scheduled for December 18, 2017, at the U.S. International Trade Commission Building and requests to appear at the hearing were requested to be filed by December 13, 2017.

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**Please contact David Heffernan, Mark Atwood, or Jennifer Urban members of the Cozen O'Connor Aviation Regulatory Practice Group, for more information regarding aviation regulatory issues. For additional information regarding legislative developments affecting aviation, please contact Robert Freeman, Government Relations Principal of Cozen O'Connor Public Strategies.**