

An Update on FAA Regulatory Revisions, DOT and FAA Enforcement Actions, and Other Aviation-Related Regulatory Matters

This edition of the Cozen O'Connor Aviation Regulatory Update provides an overview of recent FAA regulatory initiatives involving crew pairing, alcohol and drug testing rates, the use of aviation fuel taxes by airports and state governments, airport environmental grants, and de-icing standards for new aircraft. We also provide an update on recent DOT and FAA enforcement actions, plus recent developments in the *Pirker v. Huerta* case involving the operation of small unmanned aircraft. Additionally, Congress is beginning its deliberations regarding next year's FAA reauthorization. Finally, two new lawsuits were filed challenging certain airports' implementation of labor-related rules that airlines and airport service providers contend are preempted under federal law.

Department of Transportation

Regulatory

DOT Announces New Liberalized U.S.-Mexico Bilateral Agreement

DOT announced the United States and Mexico initialed a new liberalized air transport services agreement that would, among other things, eliminate limitations on the number of air carriers that may be designated to provide air service in U.S.-Mexico city pairs. The agreement enters into force on January 1, 2016, after both countries complete their approval processes.

Enforcement

Saudia Assessed Civil Penalties for Alleged Sale of Air Services Prior to Obtaining Operating Authority

DOT issued a consent order imposing \$50,000 in civil penalties against Saudi Arabian Airlines (Saudia) for the carrier's alleged advertisement and sale of air services between Jeddah, Saudi Arabia and Los Angeles prior to obtaining the requisite DOT economic authority. Saudia was ordered to pay \$25,000 within 60 days of the issuance of the consent order, with the remainder payable only if further similar violations are committed by Saudia.

DOT Assesses Civil Penalties Against Air Canada Rouge for Alleged Tarmac Delay Violations

DOT issued a consent order assessing \$90,000 in civil penalties against Air Canada rouge for alleged violations of the tarmac delay rules. DOT said that an Air Canada rouge flight that was diverted to Buffalo, N.Y., on January 11, 2014 remained on the tarmac for 4 hours and 31 minutes. DOT concluded that the carrier did not provide an opportunity for passengers to deplane before the tarmac delay exceeded four hours and failed to provide food to all of its passengers within two hours after the aircraft's arrival, both in violation of the carrier's tarmac delay contingency plan and DOT regulations. Air Canada rouge was required to pay \$45,000 within 30 days of the issuance of the consent order, with the remainder payable only if further violations are committed relating to tarmac delays.

China Eastern Assessed \$10,000 in Civil Penalties for Tarmac Delay Reporting Violations

DOT issued a consent order assessing \$10,000 in civil penalties against China Eastern Airlines for



David Heffernan

Vice Chair,
Transportation
& Trade

dheffernan@cozen.com
Phone: (202) 463-2537
Fax: (202) 640-5985



Mark W. Atwood

Member

matwood@cozen.com
Phone: (202) 463-2513
Fax: (202) 912-4830

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alleged violations of DOT's tarmac delay reporting rules. DOT found that in February 2014, a China Eastern flight to New York JFK diverted to Washington Dulles International Airport, where it experienced a tarmac delay of 4 hours and 10 minutes. DOT alleges that China Eastern failed to timely file the required "Tarmac Delay Report" with DOT's Bureau of Transportation Statistics. DOT did not penalize the carrier for the tarmac delay itself because of mitigating circumstances, but only issued a warning for the actual delay. China Eastern was required to pay \$5,000 of the penalty amount within 60 days of the issuance of the consent order, with the remaining \$5,000 only due and payable in the event the carrier violates the order's cease and desist or payment provisions within one year.

DOT has so far assessed civil penalties against 12 foreign air carriers for violating the tarmac delay rules:

Carrier	Penalty Amount	Date
China Eastern Airlines	\$10,000	November 19, 2014
Air Canada rouge	\$90,000	October 28, 2014
Air Europa	\$140,000	May 14, 2014
British Airways	\$225,000	April 8, 2014
VRG Linhas Aéreas (GOL)	\$250,000*	November 26, 2013
Jet Airways	\$10,000	October 22, 2013
Avianca	\$100,000	August 21, 2013
Air China	\$90,000	May 2, 2013
Caribbean Airlines	\$100,000	March 29, 2013
Copa Airlines	\$150,000	December 31, 2012
Pakistan International Airlines	\$150,000	September 19, 2012
Air India	\$80,000	May 3, 2012

* Also includes non-tarmac delay-related civil penalties.

Federal Aviation Administration

Regulatory

FAA Revises Rules on Part 121 Pilot Age Limit Crew Pairing

The FAA issued a [notice](#) amending its Part 121 pilot age limit crew pairing regulations, which require any person between the ages of 60 and 65 serving as pilot in command of an aircraft operated under Part 121 in international commercial air transport operations to be paired with a pilot younger than 60 years of age. The crew pairing requirement also applies to certain other international air service and air transportation operations using U.S.-registered aircraft (14 C.F.R. Sections 121.383(d) and (e), 61.3(j) and 61.77(g)). The FAA regulations mirror ICAO Standard 2.1.10 under ICAO Annex 1 (Personnel Licensing), Chapter 2 (Licenses and Ratings for Pilots). However, ICAO recently amended this standard by removing the pilot pairing requirement to allow all pilots serving on aircraft in international commercial air transport operations with more than one pilot to serve beyond 60 years of age (until age 65) without being paired with a pilot under 60 years of age. With this change, the FAA is amending its regulations to allow all pilots on multi-pilot crews serving in Part 121 international air transport commercial operations to continue to fly without being paired with a pilot under 60 years of age as long as they have not reached 65 years of age. ICAO's amendment does not affect the maximum age permitted for pilots engaged in single-pilot operations, who must be below 60 years of age. The FAA cautioned that if implementation of ICAO's revised standard is delayed, the FAA will amend its effective date for the policy change to reflect the implementation delay.

FAA Issues Final Supplemental Regulatory Impact Analysis on Flightcrew Member Duty and Rest Requirements

The FAA published a Notification of Availability of its Final Supplemental Regulatory Impact Analysis (SRIA) for its final rule amending the FAA's flight, duty and rest regulations applicable to certain certificate holders and their flight crew members. The final SRIA adjusts the methodology the FAA used to estimate the costs and benefits of applying the final flight, duty and rest rule to cargo-only operations. It concludes that the benefits of applying the rule to cargo-only operations would be between \$3 million and \$10 million, while the costs of applying the rule to cargo-only operations would be about \$452 million. Based on its findings that the cost of mandating all-cargo operation compliance with the new flight, duty and rest rule would significantly outweigh the benefits, the FAA determined that no revisions to add all-cargo operations to the final rule were warranted. The FAA's initial SRIA had requested comments on whether the FAA was statutorily foreclosed from considering costs and benefits as part of its flight, duty and rest rulemaking.

FAA Approves Five Exemptions for Four More Commercial UAS Operators

The FAA issued a release announcing the agency's approval of five exemptions granted to four commercial operators that plan to fly UASs weighing less than 55 pounds for aerial surveying, construction site monitoring and oil rig flare stack inspections. The companies receiving the exemptions from regulations governing general flight rules, pilot certificate requirements, manuals, maintenance and equipment mandates are Trimble Navigation Limited, VDOS Global, LLC, Clayco, Inc., and Woolpert, Inc. (two exemptions). The FAA said that it has received 167 requests for exemptions from commercial operators.

FAA Publishes 2015 Drug and Alcohol Testing Percentage Rates

The FAA published a notice announcing that the minimum random drug and alcohol testing percentage rates for 2015 will remain at 25 percent of safety-sensitive employees for random drug testing and 10 percent of safety-sensitive employees for random alcohol testing.

FAA Amends Policy on Use of Proceeds From Aviation Fuel Taxes

The FAA issued an amendment to its *Policy and Procedures Concerning the Use of Airport Revenue* that confirms its long-standing policy on requirements for the use of proceeds from aviation fuel taxes. Under the amended policy, airport operators or state governments submitting an Airport Improvement Program application are required to provide assurances that revenues from state and local aviation fuel taxes (except taxes in effect on December 30, 1987) will be used for certain aviation-related purposes, including airport capital and operating costs. Revenues from state aviation fuel taxes may also be used for state aviation programs, and airport revenues may be used on or off the airport for noise mitigation. For aviation fuel taxes imposed by non-sponsor state governments and other local jurisdictions, airport sponsors are expected to inform taxing authorities of federal requirements for use of aviation fuel tax revenues and to take "reasonable action" within their power to influence state and local tax laws to conform to those requirements. The policy amendment is effective December 8, 2014.

FAA Corrects Final Rule on Repair Stations

The FAA issued a notice correcting its final rule governing repair stations, which was published on August 12, 2014 (see the August 2014 edition of the Cozen O'Connor Aviation Regulatory Update). The FAA mistakenly removed the word "serious" from 14 C.F.R. § 145.221(a) in the final rule, resulting in the FAA unintentionally requiring repair stations to report all failures, malfunctions and defects" of any aircraft, airframe, engine, propeller, appliance or component part in their Service Difficulty Reports instead of reporting only serious failures, malfunctions and defects as the FAA intended. The correction was made in response to a petition filed by the Aeronautical Repair Station Association, Aerospace Industries Association, Aircraft Electronics Association, Airlines for America, Cargo Airline Association, General Aviation Manufacturers Association, National Air Carrier Association and National Air Transportation Association.

FAA Awards Environmental Grants to Airports Through Voluntary Airport Low Emission (VALE) Program

The FAA issued a press release stating that a total of \$10.2 million in grants had been awarded to Albuquerque International Sunport, Hartsfield-Jackson Atlanta International Airport, Chicago

O'Hare International Airport, Dallas-Fort Worth International Airport, Seattle-Tacoma International Airport, and Yeager Airport in West Virginia to assist them in reducing airport ground emissions and improving air quality through the FAA's Voluntary Airport Low Emission (VALE) program. The VALE program allows airport sponsors to use Airport Improvement Program funding and passenger facility charges to help acquire low-emission vehicles, refueling and recharging stations, gate electrification and other airport-related air quality improvements. The FAA's VALE website provides information about the program, including a list of eligible airports and projects.

FAA Issues Final Rule Updating Aircraft De-Icing Standards for New Aircraft

The FAA issued a final rule updating its requirements for aircraft de-icing. The revised standards require U.S. manufacturers to show that transport aircraft can operate safely in conditions of freezing drizzle or freezing rain that constitute the icing environment known as "supercooled large drops," as well as in ice crystal weather conditions. A supercooled large drops operating environment is less common than standard small droplet icing and can produce ice on airplanes that exceeds the capability of current ice protection systems. The rule requires that certain newly manufactured transport category aircraft most affected by supercooled large drops icing conditions meet updated safety standards. The final rule affects new aircraft certification projects that begin after January 5, 2015, the effective date of the rule. The rule also changes icing certification requirements for engines, engine installations and certain airplane systems on all transport airplanes such as angle of attack and airspeed indicating systems, which will be required to perform in freezing rain, freezing drizzle, mixed phase and ice crystal conditions.

FAA Chief Counsel's Office Issues Legal Interpretation on Passenger Use of Knee Defender Devices

FAA Assistant Chief Counsel Mark Bury issued a legal interpretation letter regarding passenger use of "knee defender" devices on board aircraft. The FAA said the device, used to allow a passenger on board a commercial aircraft to prevent the seat in front of him or her from reclining, does not violate FAA regulations unless an individual uses the device against the express instructions of the flight crew. The letter stated that there is no regulation specifically prohibiting a passenger from interfering with an aircraft seat's reclining function and that doing so poses no safety issue. However, the letter cautioned that if an air carrier's policy or an individual crewmember directs that a passenger refrain from using the knee defender, passengers must comply or they will be in violation of the FAA's prohibition on interfering with a crewmember.

Enforcement

FAA Proposes the Assessment of Civil Penalties Against Skywest Airlines

The FAA proposed \$100,000 in civil penalties against SkyWest Airlines for allegedly failing to inspect critical parts on a Bombardier CL-600 aircraft at the required intervals and operating the aircraft when it was not in compliance with federal aviation regulations.

Three Companies Alleged to Have Violated FAA Regulations

The FAA proposed civil penalties against Parker Hannifin Corp. of Irvine, Calif., Vanair Manufacturing, Inc. of Michigan, Ind., and Brim Aviation, Inc. of Ashland, Ore., for violations of FAA regulations. Parker Hannifin is potentially facing a \$160,500 civil penalty for allegedly violating drug and alcohol testing rules. The FAA proposed to assess a \$141,000 civil penalty against Vanair for allegedly violating Hazardous Materials Regulations. Brim Aviation is potentially facing a \$220,000 civil penalty for allegedly conducting unauthorized external load operations.

FAA Proposes Civil Penalties Against Chinese Company for Alleged Hazmat Violations

The FAA issued a release proposing \$227,500 in civil penalties against Shanghai Yancui Import and Export Co., of Shanghai, China, for allegedly violating Hazardous Materials regulations. The FAA alleges that on July 16, 2013, the company shipped a package containing Titanium Tetrachloride and Benzodioxole on a DHL Express Worldwide cargo flight. The FAA alleges that the company did not mark, label or pack the shipment in accordance with hazmat regulations, and the package lacked the requisite shipping papers indicating the hazardous nature of its contents. In addition,

hazmat regulations prohibit the shipping of Titanium Tetrachloride, a poisonous and corrosive material, on passenger or cargo aircraft.

FAA Proposes Civil Penalties Against Five Companies for Alleged Hazmat Violations

The FAA issued a [release](#) proposing civil penalties ranging from \$54,000 to \$66,000 against five companies, Quaker City Plating of Whittier, Calif., Freedom Manufacturing LLC, of Fremont, Ohio, International Dental Supply (IDS) of Hialeah, Fla., Saudi Chem Crete Co., Ltd. of Saudi Arabia, and Passport Health of Scottsdale, Ariz., for allegedly violating the Hazardous Materials Regulations. The FAA alleges that the companies failed to include proper shipping papers with the shipments, failed to properly mark, label or pack the shipments in accordance with the Hazardous Materials Regulations, failed to provide emergency response information with the packages, and failed to ensure their employees had received the required hazardous materials training.

FAA Alleges Medstar Health, Inc. Violated Hazmat Regulations

The FAA issued a [release](#) proposing a \$168,000 civil penalty against MedStar Health, Inc., of Columbia, Md., for alleged violations of the Hazardous Materials Regulations. The FAA alleges that MedStar Health offered a package containing lithium-ion batteries to FedEx Corp. for air shipment without proper packaging to prevent possible short-circuiting, without declaring the hazardous materials, and without properly classifying and labeling the shipment.

FAA Proposes Civil Penalties Against McCauley Propeller Systems for Hazmat Violations

The FAA issued a [release](#) proposing a \$238,000 civil penalty against McCauley Propeller Systems of Wichita, Kan., for alleged violations of the Hazardous Materials Regulations. The FAA alleges that McCauley offered two undeclared packages of hazardous materials to FedEx for shipment by air, and failed to properly class, describe, package, mark or label the packages for shipment.

IBC Airways Alleged to Have Performed Unauthorized Scheduled Operations

The FAA issued a [release](#) proposing to assess \$97,500 in civil penalties against IBC Airways, Inc., an on-demand carrier, for allegedly operating as a scheduled air carrier without the requisite FAA certification.

National Transportation Safety Board

NTSB Remands Pirker Unmanned Aircraft Case to ALJ for Further Review

The NTSB issued a [decision](#) remanding the *Huerta v. Pirker* case to the administrative law judge for a “full factual hearing” on the issue of whether Raphael Pirker operated a small unmanned aircraft “in a careless or reckless manner so as to endanger the life or property of another” in violation of 14 C.F.R. § 91.13(a). The FAA has assessed a \$10,000 penalty against Pirker for his allegedly “careless or reckless” operation of an unmanned aircraft over the campus of the University of Virginia in 2011. In March 2014, an ALJ upheld Pirker’s appeal of the penalty on the basis that the FAA lacked the requisite authority under its own regulatory scheme to make its findings of a violation. The NTSB reversed part of the ALJ’s decision and ruled that unmanned aircraft and “model aircraft” are covered under § 91.13(a). The FAA issued a [statement](#) lauding the NTSB for affirming the FAA’s position that unmanned aircraft “meet the legal definition of ‘aircraft,’” and that the agency may take enforcement action against anyone who operates a UAS or model aircraft in a careless or reckless manner.” Meanwhile, Jim Williams, manager of the FAA’s UAS integration office, expects the FAA’s highly anticipated proposed rule on the operation of small unmanned aircraft to be issued before the end of this year.

Department of Homeland Security/Customs and Border Protection Regulatory

DHS Updates ESTA Information Requirements

DHS and CBP issued a [notice](#) updating the information required to be provided by those traveling to the United States under the Visa Waiver Program as part of the Electronic System for Travel Authorization (ESTA) program. DHS/CBP are revising the categories of individuals covered by ESTA and the records in the system to include revised eligibility questions and additional data elements collected on the ESTA application. The new ESTA information sought includes additional passport data, other country of citizenship, expanded contact information, and other potential names or aliases. The categories of covered individuals is being updated to more accurately reflect information in the system that could pertain to U.S. citizens, U.S. businesses or entities, and lawful permanent residents. The changes are being implemented due to DHS concerns about foreign citizens from VWP countries traveling to fight in Syria and Iraq, and then traveling to the United States at the behest of violent extremist groups. The new requirements are effective immediately.

Congressional Action Impacting Aviation

House Transportation and Infrastructure Committee Holds Hearing on FAA Reauthorization

The House Transportation and Infrastructure Committee held a [hearing](#) to discuss FAA reauthorization and air traffic control modernization. The committee heard testimony from DOT Inspector General Calvin Scovel, III, Airlines for America President Nicholas Calio, Aircraft Owners and Pilots Association President Mark Baker, ALPA President Lee Moak, Business Roundtable President John Engler and National Air Traffic Controllers Association President Paul Rinaldi.

Senate Passes Legislation to Limit Passenger Security Fees

The Senate passed H.R. 5462, a bill that would limit the amount of security fees paid by airline passengers to \$11.20 per round trip. The bill was passed by unanimous consent and now heads to the White House for signature.

Court Action Potentially Impacting Aviation

A4A, Baggage Airline Guest Services Challenge Seattle Airport Worker Resolution

Airlines for America and Baggage Airline Guest Services, Inc. filed a preemption-related complaint challenging the Port of Seattle's recent passage of a resolution and the Port Aviation director's announced plans to issue rules that would mandate new hiring, training, English language proficiency, compensation and benefit standards for certain airline service workers and airline-contracted service providers who have (a) an airport badge granting Air Operations Area (AOA) access, and (b) job responsibilities within the AOA and/or jobs related to "passenger and facility safety and security." The plaintiffs contend that the resolution and planned rules conflict with federal and state law and collective bargaining agreements and are preempted by federal statute because they mandate hiring and training standards and increases in minimum wages, compensation and benefits for airline service workers at Seattle-Tacoma International Airport that will raise airlines' operating costs and directly impact air carrier prices and services. *Air Transport Association of America Inc. v. Port of Seattle*, No. 14-cv-01733 (W.D. Wash. filed Nov. 10, 2014).

Airlines, Airport Service Providers File Lawsuit Against Los Angeles World Airports

The Airline Service Providers Association and Airlines for America filed a complaint in U.S. District Court for the Central District of California against the City of Los Angeles and the Los Angeles World Airports. The complaint alleges that a provision of the 2014 Certified Service Provider License Agreement imposed by the airport on airline service providers (ASPs) would unlawfully require ASPs to enter into so-called "Labor Peace Agreements" with labor organizations, which their employees have not chosen to represent them, that would require the ASP employees to, among other things, abide by a no-strike clause and agree to mandatory arbitration for any unresolved issues between the ASP and the labor organizations. The plaintiffs contend that such a requirement would essentially regulate the labor relations and collective bargaining functions of ASPs, as well as the airlines' selection of ASPs, in violation of federal labor laws and the federal

preemption provisions of the Airline Deregulation Act. *Airline Service Providers Association v. Los Angeles World Airports*, No. 14-cv-08977 (C.D. Cal. filed Nov. 20, 2014).

Please contact David Heffernan or Mark Atwood, members of the Cozen O'Connor Aviation Regulatory Practice Group, for more information.