

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

This edition of the Cozen O'Connor Aviation Regulatory Update includes an overview of the FAA's new contract maintenance rules, DOT and FAA notices on flight prohibitions in conflict zones, the latest news on the integration of unmanned aircraft into the National Airspace System, Congressional hearings on FAA reauthorization and air traffic control modernization, and DOT and FAA enforcement actions.

Department of Transportation

Regulatory

DOT Proposes Conditions on Delta's Retention of Its Haneda Slot Pair

DOT issued a *show cause order* proposing to allow Delta Air Lines to retain its U.S.-Tokyo Haneda slot pair for daily scheduled Seattle-Haneda service. Both American Airlines and Hawaiian Airlines had contested Delta's retention of the slot pair based on Delta's limited use of the slots. DOT agreed with American and Hawaiian that Delta provided minimal Seattle-Haneda service, and cited Delta's "virtual abandonment" of the route as justification for DOT's institution of a proceeding to determine if the slot pair should be reallocated for better use by another carrier. DOT's proposed decision to allow Delta to retain the slot pair was based on Delta's assurances that it would resume a full, daily service pattern on March 29, 2015, and continue daily service throughout the year. However, DOT proposed to require Delta to obtain a waiver prior to not operating its Seattle-Haneda service "on each and every day of every week (7 days a week, 365 days a year)" or risk enforcement action. DOT also proposed to require Delta to obtain such a waiver prior to not operating Seattle-Haneda flights on two days of any seven-day period (365 days a year) or risk permanently losing its Seattle-Haneda slot pair. DOT tentatively selected American for backup authority for American's proposed Los Angeles-Haneda services in the event that Delta is unable to maintain its service or fails to meet DOT's service requirements.

DOT Reminds Carriers of Conflict Zone Flight Prohibitions

DOT issued a notice reminding foreign air carriers of the condition contained in their code-share statements of authorization that prohibits foreign air carriers from displaying a U.S. air carrier's code on a foreign carrier's flights operated in any airspace in which the FAA has issued a flight prohibition. The notice was issued in response to the FAA's "growing concerns" about regional conflict zones around the world. Carriers failing to comply with this condition could be subject to DOT enforcement action. The FAA maintains a *detailed list* of countries where FAA-imposed flight restrictions or prohibitions are currently in place.

DOT Publishes FAQs on Enforcement of Its Musical Instruments Transportation Rule

DOT published *answers to frequently asked questions* regarding DOT's enforcement of its recently issued rule on the air transportation of musical instruments under 14 C.F.R. Part 251 (see the January 2015 edition of the Cozen O'Connor Aviation Regulatory Update for additional information on the musical instruments rule).

DOT Inspector General Releases Audit Report Critical of FAA's Hazardous Materials Voluntary Disclosure Reporting Program

DOT's Inspector General's Office released an *audit report* criticizing the FAA's Hazardous



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Related Practice Areas

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Materials Voluntary Disclosure Reporting Program, which allows air carriers to voluntarily disclose hazardous materials safety violations without penalty. The report contends that the FAA lacks an adequate framework to carry out the program effectively and has insufficient internal controls, including oversight, training and guidance, to ensure that air carriers have implemented required fixes to prevent hazardous materials violations from recurring. The report also states that the FAA fails to use program data to identify safety risks, and that it foregoes opportunities to combine program data with other source data to identify trends that could impact safety.

Enforcement

DOT Takes Enforcement Action Against CheapOair for Alleged Unfair Advertisements

DOT issued a consent order assessing \$185,000 in civil penalties against Fareportal, Inc., d/b/a CheapOair for holding out an itinerary as being non-stop when it contained one or more stops and advertising a flight as being operated by one carrier when it was operated by another. Fareportal was ordered to pay \$92,500 of the penalty within 30 days of the issuance of the order, with the remainder due only if, within one year of the issuance of the order, Fareportal violates the consent order's cease and desist provisions or fails to comply with the order's penalty payment requirements.

Federal Aviation Administration

Regulatory

FAA Issues Annual Forecast Projecting Continued, Steady Growth in Air Travel

The FAA published its *Aerospace Forecast for Fiscal Years 2015 to 2035*. It shows the U.S. aviation system continuing to grow over the next two decades. The forecast calls for Revenue Passenger Miles growth for U.S. air carriers to average 2.5 percent per year over the 20-year forecast, U.S. carrier load factors to grow from 83.4 percent in 2014 to 84.2 percent by 2035, and U.S. carrier passenger totals to increase from an estimated 756.3 million passengers carried in 2014 (up by 2.3 percent from 2013) to an estimated 1 billion passengers to be carried in 2029 and 1.14 billion by 2035. The forecast also projected that Revenue Ton Miles will grow to 72.6 billion by 2035 at an average annual growth rate of 3.6 percent during the forecast period. Also, landings and take-offs at FAA-operated towered airports and FAA-contracted towered airports are expected to increase from an estimated 49.6 million operations in 2014 to 59.9 million operations in 2035.

FAA Issues Final Rule on U.S. Air Carrier Contract Maintenance Requirements

The FAA issued a final rule amending its aircraft maintenance regulations to require Part 121 and Part 135 air carriers and operators (those operating aircraft with 10 or more seats) to develop policies and procedures for the performance of maintenance, preventive maintenance or alteration contracted to an outside source, and to include such policies and procedures in their maintenance manuals. The rule also requires carriers and operators to provide its local FAA Certificate Holding District Office a list of the names and the physical addresses where the contracted work would be carried out for each maintenance provider it uses, and a description of the type of maintenance the contractor performs, and to keep such list current. The final rule was mandated by the FAA Modernization and Reform Act of 2012, Pub. Law 112-95 (February 14, 2012). The final rule is effective May 4, 2015 except for the new requirements under 14 C.F.R. §§ 121.368 and 135.426 regarding the FAA's collection of information regarding contracted maintenance providers, which has not yet been approved by OMB.

FAA Extends Comment Period on New York Area Airport Slots Rulemaking

The FAA issued a notice extending the comment period to May 8, 2015, for its rulemaking to amend the slot management regulations for New York's LaGuardia Airport, John F. Kennedy International Airport, and Newark Liberty International Airport. (Additional information on the rulemaking can be found in the January 2015 edition of the Cozen O'Connor Aviation Regulatory Update.)

FAA Streamlines Grants of Certificates of Waiver or Authorization for Unmanned Aircraft Flights At or Below 200 Feet

The FAA announced an interim policy to expedite the granting of Certificates of Waiver or Authorization (COA) to unmanned aircraft operators with a Section 333 exemption to allow unmanned aircraft operations at or below 200 feet for aircraft that weigh less than 55 pounds, operate during daytime Visual Flight Rules (VFR) conditions, operate within visual line of sight of the pilots, and stay certain distances away from airports or heliports.

FAA Publishes Recommendations for Facilities Realignment to Support Transition to NextGen

The FAA issued a notice announcing the publication of its “National Facilities Realignment and Consolidation Report” that discusses the FAA’s plan for realigning and consolidating its facilities in an effort to support the transition to NextGen. The FAA requested comments on the report, which are due May 11, 2015.

FAA Extends Prohibitions on Flight Operations in Libyan Airspace

The FAA issued a final rule extending its prohibition of flight operations within the Tripoli, Libya (HLLL) Flight Information Region by U.S. air carriers; U.S. commercial operators; persons exercising the privileges of an airman certificate issued by the FAA, except when operating a U.S.-registered aircraft for a foreign air carrier; and operators of U.S.-registered civil aircraft, except when such aircraft are being operated for foreign air carriers. The FAA cited continuing concerns regarding the security and safety of U.S. civil aviation operations in Libya as the basis for its decision to extend the period during which Special Federal Aviation Regulation (SFAR) No. 112, scheduled to expire on March 20, 2015, through March 20, 2017.

FAA Prohibits Fixed-Wing Special Visual Flight Rules Operations at Washington-Dulles International Airport

The FAA issued a final rule prohibiting fixed-wing special visual flight rules operations at Washington-Dulles International Airport (IAD), one of the busiest airports in the United States, formalizing current FAA practice at that airport. The FAA stated that given the “volume and complexity of instrument flight rules (IFR) traffic” in the IAD surface area of the Washington Tri-Area Class B airspace, any requests to operate special visual flight rules (SVFR) at Dulles would be denied for safety reasons. The FAA said that the use of SVFR operations could potentially affect the safe and efficient movement of traffic in the IAD Class B surface area. The final rule is effective May 26, 2015.

Enforcement

FAA Revokes GlobalJet’s Air Carrier Certificate for Unauthorized Operations

The FAA revoked GlobalJet’s air carrier certificate for alleged unauthorized operations for compensation or hire in violation of Federal Aviation Regulations. In a release, the FAA stated that GlobalJet operated a Cessna 550 jet for compensation or hire when it was not authorized to do so, and allegedly provided falsified logs to the FAA showing the flights were not for compensation, and withheld invoices showing it had in fact been paid for them. The FAA also alleged that GlobalJet conducted such flights during a 12-month period when it did not have a qualified chief pilot and used crew members unqualified for for-compensation or for-hire operations. GlobalJet surrendered its certificate to the FAA, but has appealed the FAA’s certificate revocation to the NTSB.

FAA Proposes Civil Penalties Against Southwest Airlines for Inspection and Maintenance Record Violations

The FAA proposed civil penalties totaling \$328,550 against Southwest Airlines for allegedly violating the agency’s maintenance inspection and recordation regulations. In a release, the FAA alleged that Southwest failed to properly inspect a B737 aircraft that lost cabin pressure during a Boston-St. Louis flight that required an emergency landing in Baltimore. The FAA stated that after the depressurization event, Southwest mechanics failed to complete a mandatory inspection to

check whether the change in cabin pressure damaged the aircraft and to ensure used oxygen bottles were replaced. The airline allegedly operated the plane on 123 flights before completing the inspection. The FAA also alleged that Southwest failed to comply with regulations requiring accurate recording of repairs in the aircraft's logbook.

FAA Proposes Civil Penalties Against Companies for Alleged Hazmat Violations

The FAA issued a [release](#) proposing civil penalties of \$96,000 and \$63,000 against Home Depot, Inc. and Chemique, Inc., respectively, for alleged violations of the FAA's Hazardous Materials Regulations. The FAA alleges that both companies attempted to ship hazardous materials without shipping papers indicating the hazardous nature of their contents and without properly marking, labeling or packaging the shipments. The FAA also issued a [release](#) proposing \$116,250 in civil penalties against Neovia Logistics Services, LLC of Irving, Texas, for allegedly offering a shipment containing corrosive liquid to UPS for shipment by air, which was only discovered when the shipment began leaking.

FAA Alleges Two Companies Violated Drug and Alcohol Testing Regulations

The FAA issued a [release](#) proposing \$105,500 in civil penalties against Servisair LLC of Las Vegas for alleged violations of the agency's drug and alcohol testing regulations. The FAA alleges that Servisair failed to conduct drug and alcohol tests to the minimum required percentage of employees in 2013, and failed to immediately add employees to its random testing pool after they completed their ground coordinator training. The FAA also issued a [release](#) proposing \$74,553 in civil penalties against Gardner Aviation Specialist, Inc., of Peachtree City, Ga., alleging the company violated drug and alcohol testing rules by failing to conduct pre-employment drug tests, failing to receive verified negative results before hiring certain employees to perform safety-sensitive functions, and allowing an employee to repair aircraft after testing positive for drugs during a pre-employment drug test that the company administered after he was hired.

FAA Alleges Three Companies Violated Hazmat Regulations

The FAA issued a [release](#) alleging that air shipments tendered by China Express International Express, Bridgewater International, Inc., and Crow Works, LLC were not accompanied by shipping papers indicating the hazardous nature of their contents and were not marked or labeled in accordance with the Hazardous Materials Regulations. The FAA also alleged the companies failed to ensure their employees received required hazardous materials training and did not provide emergency response information with the packages. The FAA proposed civil penalties ranging from \$66,000 to \$82,500.

International Trade Commission

Regulatory

ITC Reschedules Hearing on Cuba Travel Restrictions and U.S. Exports of Goods and Services to Cuba

The U.S. International Trade Commission issued a [notice](#) rescheduling its hearing on U.S. restrictions on Cuban imports of goods and services from the United States, including restrictions on U.S. citizen travel to Cuba. ITC has set the following revised hearing and reporting schedule: a May 18, 2015 deadline for filing requests to appear at the public hearing; a May 20, 2015 deadline for filing prehearing briefs and statements; June 2, 2015 as the date for the public hearing; a June 9, 2015 deadline for filing post-hearing briefs and statements; a June 19, 2015 deadline for filing all other written submissions; and September 15, 2015 as the date for transmittal of ITC's report requested by the Senate Finance Committee.

Department of Commerce

NTIA Requests Comments on Privacy, Transparency Issues Regarding Commercial and Private Use of Unmanned Aircraft

The Department of Commerce's National Telecommunications and Information Administration

(NTIA) issued a notice requesting comments on privacy, transparency and accountability issues relating to the commercial and private use of unmanned aircraft systems. The notice was issued in response to President Obama's February 15, 2015, Presidential Memorandum "Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems," which requires NTIA to establish a "multistakeholder engagement process" to develop and communicate best practices for privacy, accountability and transparency issues regarding commercial and private UAS use in the National Airspace System. Comments are due on April 20, 2015.

BEA Requires U.S. Airlines to File Quarterly Reports on Foreign Revenues and Expenses

The Bureau of Economic Analysis (BEA) issued a notice announcing that BEA will be conducting a mandatory "Quarterly Survey of U.S. Airline Operators' Foreign Revenues and Expenses (BE-37)." U.S. passenger and all-cargo airlines with total foreign revenues and/or expenses of \$500,000 or more in 2014, or total foreign revenues and/or expenses expected to be \$500,000 or more during 2015, will be required to report such revenues and/or expenses to BEA 45 days after the end of each calendar quarter. The report information will be granted confidential treatment and withheld from public disclosure. U.S. airlines required to report will be contacted individually by BEA, and those airlines not contacted by BEA will have no reporting responsibilities.

BEA Notifies Foreign Air Carriers of Quarterly Survey of U.S. Revenues and Expenses

BEA also issued a notice informing foreign air carriers that it was conducting the agency's mandatory survey titled "Quarterly Survey of Foreign Airline Operators' Revenues and Expenses in the United States (BE-9)," which requires the U.S. offices, agents or representatives of foreign airlines that transport passengers or cargo to/from the United States to report their U.S.-derived revenues and expenses if their total covered revenues or total covered expenses were \$5,000,000 or more during 2014, or are expected to be \$5,000,000 or more in 2015. Such reports are due 45 days after the end of each calendar quarter. However, only entities contacted individually by BEA are required to report and entities not contacted by BEA have no reporting responsibilities.

Department of Health and Human Services

CDC Publishes Criteria for Requesting Federal Travel Restrictions for Public Health Purposes

The Department of Health and Human Services' Centers for Disease Control and Prevention (CDC) published a notice to inform the public of the criteria CDC considers for requesting federal travel restrictions for public health purposes, including for use of the "Do Not Board (DNB) List" and "Public Health Border Lookout" records. Use of the DNB List is used for persons with communicable diseases that would pose a public health threat to other travelers if the infected person is permitted to board a flight. Once a person is placed on the DNB List, airlines are instructed not to issue a boarding pass to the individual for any commercial domestic flight or for any commercial international flight arriving in/departing from the United States. The Public Health Border Lookout records assist in ensuring that a person placed on the DNB List is detected if he or she attempts to enter or depart the United States through a port of entry. The notice was effective on March 27, 2015.

Pipeline and Hazardous Materials Safety Administration

PHMSA Clarifies HazMat Rules for Spare Fuel Cell Cartridges Transported by Air

DOT's Pipeline and Hazardous Materials Safety Administration (PHMSA) issued a notification providing a "more definitive statement" on its prohibition on airline passengers and crew carrying flammable gas fuel cell cartridges in their checked baggage. The clarification arose from Lilliputian Systems, Inc.'s court challenge to PHMSA's 2011 final rule in which the agency decided not to harmonize its hazmat regulations with international regulations on the issue of the carriage of spare fuel cell cartridges in passenger and crew member checked baggage. PHMSA has limited the

scope of spare fuel cell cartridge chemistries allowed in checked baggage by excluding fuel cell cartridges containing Division 2.1 (flammable gas) and Division 4.3 (dangerous when wet) material for safety reasons. PHMSA has also decided to continue the longstanding limitations in the Hazardous Materials Regulations for Division 2.1 (flammable gas) on passenger-carrying aircraft and has maintained its existing prohibition on the transport of spare fuel cells containing Division 2.1 (flammable gas) in checked baggage. However, PHMSA continues to allow two spare Division 2.1 fuel cell cartridges in carry-on baggage. PHMSA defended its prohibitions, stating that when it makes a decision on whether to allow an item on a passenger-carrying aircraft, it only tolerates “extraordinarily low levels of risk.”

Government Accountability Office

GAO Publishes Report on Security Weaknesses in FAA’s Air Traffic Control Systems

GAO issued a report that identifies a number of cyber-security control weaknesses threatening the FAA’s air traffic control systems. These weaknesses include lack of certain controls needed to prevent, limit and detect unauthorized access to computer resources, such as controls for protecting system boundaries, identifying and authenticating users, authorizing users to access systems, encrypting sensitive data, and auditing and monitoring activity on FAA’s ATC systems. GAO said that the FAA’s implementation of a required agency-wide information security program was incomplete and that the agency had not fully established an integrated, organization-wide approach to managing information security risk that is aligned with its mission. The report stated that until the FAA effectively implements security controls, establishes stronger agency-wide information security risk management processes, fully implements its NAS information security program, and ensures that remedial actions are addressed in a timely manner, the safe and uninterrupted operation of the U.S. air traffic control system is at increased and unnecessary risk.

GAO Report Says TSA Should Obtain Greater Stakeholder Input When Modifying Its Prohibited Items List

GAO published a report that contends that TSA does not effectively solicit feedback from relevant external stakeholders, including airlines and labor groups, on TSA’s decisions to modify its list of items that are prohibited from being carried onboard aircraft. In March 2013, TSA announced it would modify the Prohibited Items List to allow small knives and certain sporting equipment onto aircraft, but several aviation industry groups opposed the decision, leading TSA to reverse its decision to implement the change. GAO recommended that TSA establish a formal process for soliciting input from relevant external stakeholders on proposed modifications to the Prohibited Items List before making changes to it.

Notable Aviation-Related Court Action

U.S. District Court Dismisses Delta Air Lines’ Case Against Ex-Im Bank.

The U.S. District Court for the District of Columbia issued a decision dismissing a lawsuit filed by Delta Air Lines, Hawaiian Airlines and the Air Line Pilots Association (ALPA), which challenged the U.S. Export-Import Bank’s loan guarantees provided to foreign air carriers to purchase U.S.-manufactured aircraft. The court dismissed plaintiffs’ allegations that Ex-Im Bank had violated its statutory authority by implementing certain “economic impact procedures” used to assess the economic effects of aircraft loan transactions within its process of determining whether to approve applications for Ex-Im Bank financing. The plaintiffs alleged that such financing distorts competition between U.S. and foreign air carriers by providing easier access for foreign carriers to less costly aircraft financing terms than what U.S. carriers can obtain in the commercial market.

Congressional Action Impacting Aviation

House Transportation & Infrastructure Committee Holds Hearing on FAA Reauthorization

The House Transportation and Infrastructure Committee held a hearing on March 3, 2015, to

discuss the FAA's efforts to modernize the U.S. air traffic control system, its implementation of NextGen, and proposed increases in the amount of Passenger Facility Charges, as part of the committee's ongoing series of hearings on FAA reauthorization. The only witness was FAA Administrator Michael Huerta.

House Aviation Subcommittee Holds Hearing on Air Traffic Control Modernization

The House Aviation Subcommittee held a hearing on March 24, 2015 on air traffic control modernization and NextGen. The subcommittee heard testimony from Matt Hampton, assistant inspector general for Aviation Audits, DOT Office of the Inspector General; Doug Parker, chairman and CEO of American Airlines on behalf of Airlines for America; Robert Poole, director of transportation policy, Reason Foundation; Paul Rinaldi, president of the National Air Traffic Controllers Association; David Grizzle, former chief operating officer of the FAA's Air Traffic Organization; Dorothy Robyn, member of the Eno Transportation Center's NextGen Working Group; and Craig Fuller, vice chairman, FAA Management Advisory Council.

Senate Aviation Subcommittee Holds Hearing on Unmanned Aircraft Operations

The Senate Aviation Subcommittee held a hearing on March 24, 2015 on unmanned aircraft systems and related safety and privacy issues. The hearing reviewed the FAA's efforts to safely integrate unmanned aircraft into the NAS and considered potential privacy concerns associated with UAS operations. Hearing witnesses included: Peggy Gilligan, FAA associate administrator for aviation safety; John B. Morris, Jr., associate administrator, Office of Policy Analysis and Development, National Telecommunications and Information Administration; Dr. Gerald Dillingham, GAO director of civil aviation issues; Professor John Villasenor, nonresident senior fellow, The Brookings Institution; Paul Misener, vice president of global public policy, Amazon, Inc.; and Jeff VanderWerff, VWO, LLC., representing the American Farm Bureau Federation.

Please contact David Heffernan or Mark Atwood, 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.