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AGENCIES SET ADDITIONAL DEADLINE IN GULF CARRIER SUBSIDY PROBE

On July 1st, the Departments of Commerce, State and Transportation issued a supplemental federal register notice with new deadlines in the Gulf Carrier alleged subsidy probe. In April, the three Departments announced that they were soliciting information and views regarding assertions that Emirates, Etihad and Qatar were receiving market-distorting subsidies. The July 1st notice requests that information be filed by Monday August 3rd and that any comments in response be filed by August 24th, and specifically notes that the Departments may establish additional deadlines at a later date. In a separate Questions-and-Answers document, the Departments indicated that "No decision has been made on next steps" and noted that although they are establishing deadlines if a party wants its views to be considered, it does not appear that the dockets will close in August. The dockets have received over 1,500 comments from individuals, airports, airlines and others.

DEPARTMENT OF JUSTICE LAUNCHES INVESTIGATION OF FOUR U.S. AIRLINES

The Department of Justice (DOJ) has launched an investigation into possible collusion among four U.S. airlines—American, Delta, Southwest and United. The airlines have confirmed that they have received civil investigative demands—essentially a civil subpoena—ordering them to turn over documents and other information to DOJ. The investigation appears to center around public comments made by certain airline executives about "capacity discipline" at the recent IATA Annual General Meeting in Miami. In June, Senator Richard Blumenthal (D-CT) sent a letter to DOJ urging it to investigate this very topic. The Connecticut Attorney General has also launched a state investigation. The government investigations have resulted in nearly 40 class action lawsuits.

DEPARTMENT OF LABOR PROPOSES TO EXPAND FEDERAL OVERTIME PAY REGULATION

The Department of Labor has unveiled a proposed rule that would broaden federal regulations regarding overtime pay. The proposed rule would raise the salary threshold to qualify for a "white collar" exemption under the Fair Labor Standard Act (FLSA) to $50,440 per year and could affect foreign airlines operating to the United States. Under the FLSA, employers must pay their employees at least the federal minimum wage ($7.25 per hour) for their hours worked, unless the employees are exempt from the minimum wage provisions of the FLSA. The exemption covers certain employees of airlines subject to the provisions of Title II of the Railway Labor Act. The FLSA exemption, however, is not available to an airline's airport and flight personnel if they devote more than 20 percent of their time to activities unrelated to transportation activities, such as flight instruction and sales of planes or parts.

The Department of Labor expects that the proposed rule would automatically and immediately switch almost five million people to nonexempt status, and result in approximate $1.5 billion in additional overtime compensation in the first year and an average of about $1.2 billion in new overtime pay in each of the following nine years. The deadline for public comment on the proposed rule is September 4, 2015.

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NEW OPEN-SKIES AGREEMENT WITH UKRAINE

The United States and Ukraine have signed an Open-Skies Agreement, making Ukraine the 117th Open-Skies partner of the United States. The Open-Skies Agreement will enter into force after both governments complete internal procedures and will replace the 2000 U.S.-Ukraine Air Transport Agreement.

CONGRESSIONAL BILL ON CBP PRECLEARANCE ADVANCES

The U.S. House of Representatives Committee on Homeland Security announced plans to advance legislation requiring U.S. Customs and Border Protection (CBP) to assess the impact that any future preclearance facility will have on security, passengers, the economy and customs staffing at U.S. airports. The bill, H.R. 998, would add various notification and economic impact reporting requirements before CBP could open new preclearance facilities. For example, before opening any new preclearance facility, CBP would have to certify that at least one United States passenger carrier operates at the airport and that the establishment of a preclearance facility in a particular foreign country will not significantly increase customs processing times at airports in the United States.

CBP recently identified ten foreign airports as possible sites for future preclearance locations: Brussels Airport, Belgium; Punta Cana Airport, Dominican Republic; Narita International Airport, Japan; Amsterdam Airport Schipol, Netherlands; Oslo Airport, Norway; Madrid-Barajas Airport, Spain; Stockholm Arlanda Airport, Sweden; Istanbul Ataturk Airport, Turkey; and London Heathrow Airport and Manchester Airport, United Kingdom.

CBP ANNOUNCES ACE EXPORT MANIFEST FOR AIR CARGO TEST

CBP has announced the ACE Export Manifest for Air Cargo Test, which is a voluntary test in which participant carriers and freight forwarders agree to submit export manifest data electronically four hours or more prior to loading cargo onto an aircraft departing from the U.S. Currently, the complete manifest is required to be submitted by an airline on paper using CBP Form 7509 four days after the aircraft's departure. The test is designed to target high-risk air cargo and allow CBP to inspect shipments prior to the loading of the cargo to ensure compliance with U.S. laws.

CBP is accepting applications from air carriers and freight forwarders for the test, which will run for two years beginning August 10, 2015. The test is open to nine participants: between 3 and 6 air carriers and between 3 and 6 freight forwarders. CBP will accept applications on a rolling basis until it has received applications from nine parties that meet all the test participant requirements.

Applicants must be able to transmit export manifest data to CBP and receive response message sets via Cargo-IMP, AIR CAMIR, XML, or Unified XML and must successfully complete certification testing with their client representative.

As part of the test, participants agree to:

- submit export manifest data electronically to CBP at least 4 hours prior to the loading of the cargo on the aircraft;

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- establish operational security protocols that respond to CBP hold messages, and respond to CBP confirming that responsive action was taken;
- respond promptly with complete and accurate information when contacted by CBP with questions regarding the data submitted;
- comply with any "Do Not Load" instructions; and
- participate in any teleconferences or meetings with CBP as necessary.

Benefits of participating in the test include:

- reduction in costs associated with generating copies, transportation, and storage of paper manifest documentation;
- increases in security through targeted screening by CBP;
- the ability to provide input to CBP regarding the implementation of the electronic export manifest system; and
- facilitation of corporate preparedness for future mandatory implementation of electronic export manifest submission requirements.

Please contact us if you would like additional information or to apply to participate in the test program.

FAA PROPOSES HAZMAT PENALTY OF $52,500

The FAA recently proposed a civil penalty of $52,500 against Gaffoglio Family Metalcrafters Inc. for violation of Hazardous Materials Regulations (HMR). The FAA alleges that a Gaffoglio employee offered for shipment on a passenger flight a bag containing undeclared hazardous materials. The shipment contained containers of flammable liquid adhesive, a can of flammable aerosol and a can of non-flammable aerosol which was discovered when security officers screened the shipment.

The FAA alleges the shipment was not accompanied by shipping papers to indicate the hazardous nature of its contents and was not improperly marked, labeled or packed. The FAA further alleges that Gaffoglio failed to provide the required hazardous materials training to the employee.

FAA PROPOSES CIVIL PENALTIES

- $$77,000 penalty against National Air Cargo Group for failing to comply with requirements for loading and securing heavy cargo. The FAA alleges that in March and April 2013, National loaded heavy military vehicles on two jetliners. The jetliners were flown on seven flights while loaded with at least one or more Mine Resistant Ambush Protected Vehicles (MRAPS) weighing between 23,001 pounds and 37,884 pounds. The FAA alleges the cargo was not properly restrained to prevent shifting. On April 29, 2013, one of the jetliners crashed after takeoff while loaded with five MRAPS, killing the seven crewmembers and destroying the aircraft.

- $55,000 against MayaAir LLC for allegedly using an unauthorized aircraft for commercial operations. The FAA alleges that in 2014, MayaAir flew paying passengers aboard a Beechjet 400A when the operating instructions did not authorize the use of the aircraft for commercial purposes.

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- $173,100 against Eaton Corporation Aerospace operations for allegedly violating drug and alcohol testing regulations. The FAA alleges that Eatons' random drug and alcohol testing pool did not include all employees who performed safety-sensitive work. Also, Eaton did not conduct pre-employment drug tests upon transferring individuals to safety-sensitive positions and did not retest employees who received negative drug test results that indicated the employees had drank large amounts of water prior to the testing. Additionally, the FAA alleges Eaton did not use DOT testing forms for some individuals and did not ensure the testing laboratory provided all the required summaries.

- $420,000 against Avion Research Inc. for allegedly producing and advertising unauthorized items for installation on certified aircraft. The FAA alleges that Avion manufactured glare shields that did not comply with regulations for modification or replacement on certified aircraft and that the company advertised items on its website that were not authorized for installation on certified aircraft and claimed the items were acceptable for use on certified aircraft.

The FAA has proposed two penalties against Skywest Airlines totaling $1,231,000.

- $320,000 for allegedly operating an aircraft that was not in compliance with federal aviation regulations. The FAA alleges that Skywest operated an aircraft on over 6,700 flights when the inspections for certain main landing components were overdue.

- $911,000 for allegedly operating two aircraft that were not in compliance with federal aviation regulations. The FAA alleges that Skywest did not inspect the cargo doors on two CL-600 jets at required intervals as required by an Airworthiness Directive (AD) issued in 2006. The AD was issued following the discovery of cracks in the cargo door skin of a CL-600 during fatigue testing. Skywest allegedly operated the jets on 15,969 flights when the inspections were overdue.

If you have any questions, please contact Evelyn Sahr (esahr@eckertseamans.com, 202-659-6622), Drew Derco (dderco@eckertseamans.com, 202-659-6665), or Reese Davidson (rdavidson@eckertseamans.com, 202-659-6633).