

## AVIATION REGULATORY UPDATE

### DOT UPDATES CIVIL PENALTY AMOUNTS

On July 31, 2019, the U.S. Department of Transportation (DOT) increased civil penalty amounts for violations of certain DOT regulations. DOT emphasized that the final rule adjusts penalties prospectively, and therefore the penalty adjustments made by the rule will apply only to violations that take place after the rule becomes effective (July 31, 2019).

Below is an abbreviated summary of DOT's 2019 civil penalty adjustments. For a full list of the adjustments, the final rule is available here:

<https://www.federalregister.gov/documents/2019/07/31/2019-14101/revisions-to-civil-penalty-amounts>

Description	Citation	Existing penalty	New penalty
General civil penalty for violations of certain aviation economic regulations and statutes	49 U.S.C. 46301(a)(1)	\$33,333	\$34,174
Civil penalties for individuals or small businesses for violations of 49 U.S.C. 41712 or consumer protection rules and orders issued pursuant to that provision	49 U.S.C. 46301(a)(5)(D)	\$3,334	\$3,418
Violation of hazardous materials transportation law	49 U.S.C. 5123(a)(1)	\$79,976	\$81,993
Violation of hazardous materials transportation law resulting in death, serious illness, severe injury, or substantial property destruction	49 U.S.C. 5123(a)(2)	\$186,610	\$191,316
Violation by an individual or small business concern related to the transportation of hazardous materials	49 U.S.C. 46301(a)(5)(B)(i)	\$13,333	\$13,669

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### OFAC ISSUES IRAN-RELATED AVIATION INDUSTRY ADVISORY

On July 23, 2019, the Department of the Treasury's Office of Foreign Assets Control (OFAC) issued an Iran-Related Civil Aviation Industry Advisory to emphasize to the civil aviation industry the risk of enforcement actions or economic sanctions for U.S. and non-U.S. companies doing business in Iran or with Iranian interests.

According to the advisory, the Iranian government routinely relies on certain commercial airlines to supply fighters and material to militias and the government of Syria in support of President Bashar al-Assad. The advisory highlighted Mahan Air, which was blacklisted by the U.S. in 2011, alleging that the airline has played a role in providing financial, material and technological support to the Islamic Revolutionary Guard. The U.S. designated the Islamic Revolutionary Guard Corps as a terrorist organization in April.

The advisory also warns of Iran's "deceptive practices" with respect to the use of aviation entities to evade sanctions. These practices include but are not limited to the use of shell companies, pass-through entities and third-party suppliers. According to OFAC, Iran has also misrepresented the acquisition of licenses to business partners and sought to engage firms located in free trade zones that do not ordinarily deal in aviation goods.

### NTSB ISSUES GUIDANCE ON DISTRIBUTION AND CONTROL OF PASSENGER MANIFESTS

On July 18, 2019, the National Transportation Safety Board (NTSB) published new guidance for carriers and the emergency response community regarding the distribution and control of the passenger list/manifest to non-NTSB requesters following an accident involving an air carrier. NTSB's guidance will be posted on the TDA website and will be distributed across the family assistance response community, to airports, public safety agencies, and non-governmental organizations. It will also be incorporated into NTSB training materials going forward. The guidance contains helpful Q&As covering existing rules and procedures and also includes the below "additional considerations" for air carriers:

- The guidance does not preclude NTSB investigative requests under Title 49 Code of Federal Regulations Part 831 for manifest-related information including, the close-out/load manifest, interim documents, final passenger list/manifest, and procedures to account for people onboard the airplane.
- Air carriers should engage early with the public safety agencies involved in the victim accounting process. The NTSB Transportation Disaster Assistance Division (TDA) will support air carrier efforts to integrate into this process.
- Air carriers should develop procedures to consider requests and determine if appropriate information from the passenger list/manifest should be provided to the requesting agency. It is

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reasonable that once the air carrier shares information from the passenger list/manifest with the coordinating agency, all other requests be redirected to that coordinating agency.

- Air carriers should ensure that corporate and local (i.e. station) emergency response plans include procedures to vet requests from the response community for the passenger list/manifest and that air carrier personnel at the corporate and local levels are adequately trained to implement these procedures.
- Participate in MCI response planning efforts within geographic areas of operation to develop an understanding of the overarching response and the victim accounting process. Identify key points of contact within the response community who will serve in a leadership role during an MCI victim accounting operation and who will likely request information from the passenger list/manifest.

The complete guidance is available at the following link:

<https://www.nts.gov/tda/TDADocuments/NTSB-Passenger-List-Distribution-Guidance-7-23-19.pdf>

If you have any questions about the guidance or your obligations in the event of an accident, please let us know.

### **BIPARTISAN GROUP OF U.S. HOUSE MEMBERS INTRODUCE “FAIR AND OPEN SKIES ACT”**

On July 9, 2019, U.S. House of Representatives Transportation and Infrastructure Committee Chair Peter DeFazio (D-OR), Aviation Subcommittee Chair Rick Larsen (D-WA), Aviation Subcommittee Vice Chair Sharice Davids (D-KS), Representative Rodney Davis (R-IL), and Representative Drew Ferguson (R-GA) introduced the Fair and Open Skies Act (H.R. 3632).

The Act addresses airline labor standards by preventing foreign carriers operating to the United States from using so-called “flags of convenience”. A “flag of convenience carrier” is defined in the legislation as “a foreign air carrier that is established in a country other than the home country of its majority owner or owners in order to avoid regulations of the home country.” The legislation also specifically references “preventing the undermining of labor standards”.

The Fair and Open Skies Act is similar to the Flags of Convenience Don’t Fly Here Act (H.R. 2150) that was introduced in the previous session of Congress. This legislation was ultimately blocked from inclusion in the FAA Reauthorization Act, in part due to opposition from industry groups such as Airports Council International-North America. Those opposed to such legislation argue that it could negatively impact air service at U.S. airports due to an arguable breach of the existing Open Skies agreement between the United States and the European Union.

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### PFAS AMENDMENT TO THE NATIONAL DEFENSE AUTHORIZATION ACT

On July 12, 2019, the U.S. House of Representatives passed its version of the National Defense Authorization Act, which came shortly after the U.S. Senate passed its own version in June. Both bills contain provisions that would allow the Environmental Protection Agency (EPA) to take action against per- and polyfluoroalkyl substances (PFAS). However, the House version contains a PFAS-related amendment that would negatively impact airports, as the amendment would designate all PFAS as hazardous substances under the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA).

The ACI-NA has pushed back strongly against the amendment's inclusion in any final legislation, as the FAA requires airports to use aqueous film forming foam (AFFF), the firefighting foam used to suppress fires at airports which contains PFAS, and the FAA has not approved any alternative, non-fluorinated firefighting foam. The ACI-NA has argued that if this amendment were to be enacted, airports would be stuck between an FAA requirement mandating the use of firefighting foams containing PFAS and a new EPA requirement that could classify those compounds as a hazardous substance.

The next step for the legislation is for negotiators from the House and Senate to meet and agree on a final version that would then be brought before the House and Senate for a final vote before it ultimately goes to the President's desk.

### FAA OBJECTIONS TO THE BANKRUPTCY BID PROCEDURE IN ONE AVIATION CORP.'S CHAPTER 11 REORGANIZATION

The FAA has objected to the bidding procedures proposed by bankrupt aircraft maker One Aviation Corp. that would transfer the company's aircraft and repair station certificates to the highest bidder. FAA certificates allow the holder to manufacture certain types of aircraft and airplane parts and to perform repairs and maintenance on those vehicles.

The certificates come with restrictions on how and when they can be transferred to another person or entity, and the FAA has argued that the One Aviation has not satisfied the stringent requirements that would allow the certificates to be given to the buyer of its assets. In its objection, the FAA stated that anyone or any entity seeking to receive a certificate to approve a specific type of aircraft design must provide substantial information to the FAA and then must apply for and receive a production certificate to begin manufacturing the craft.

In the agreement proposed by One Aviation, the manufacturer stated that it would cooperate with the purchaser of its assets in seeking new certificates and that the buyer bears the risk of not receiving the certificate. However, the FAA believes that the agreement treats the transfer of the assets as a certainty. The FAA has asked for new provisions to be included in the bidding procedures that preserve the agency's sole authority to transfer or issue new certificates.

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### NTSB CALLS FOR INCREASED PART 135 STANDARDS

At a July 17, 2019 hearing before the U.S. House of Representatives Transportation and Infrastructure Committee, the NTSB reiterated its call for increased standards in Part 135 in testimony from NTSB Office of Aviation Safety acting director Dana Shulze. Acting director Shulze told Members of the Committee that Part 135 safety is on the NTSB's "most wanted" list, noting that "[r]egardless of the purpose of the flight or the type of aircraft, all passenger-carrying flights should be safe. However, currently, air medical service, air taxi, charter, and on-demand operators are not required to meet some of the same safety requirements that have proven effective at enhancing the safety of commercial airline operations."

Acting director Shulze highlighted certain recommendations the NTSB has made in the wake of its investigation of the May 15, 2017 crash in Teterboro, New Jersey, including improvements to flight data monitoring and safety management systems. Shulze noted that the NTSB recommendations were made in connection with previous accidents, including those in 2016 in Togiak, Alaska and in 2015 in Akron, Ohio.

According to Shulze, the NTSB has initiated an additional 13 investigations into Part 135 accidents and incidents, all beginning after the NTSB completed its investigation into the accident in Teterboro and issuing safety recommendations. The NTSB is also increasingly concerned over recent crashes of flights that involved paying passengers but were not conducted under Part 135, including a June 21, 2019 crash of a skydiving flight in Hawaii that killed all 10 passengers and a March 11, 2019 sightseeing flight in New York City.

### COMMENT PERIOD EXTENDED FOR FAA NPRM ON COMMERCIAL SPACE LAUNCH AND REENTRY REQUIREMENTS

The FAA issued an NPRM on the commercial space launch licensing process on April 15, 2019. The rule is intended to streamline the federal commercial space transportation requirements for future launch, reentry, and launch-site providers, while maintaining safety during launches and reentries. This proposed rule will follow the "Space Policy Directive 2", which called on DOT's Secretary to revise the regulations governing space launch and re-entry licensing regulations.

The comment period for this NPRM was first extended to July 30, 2019, and was recently extended to August 19, 2019. This will be a significant rule change for space launches as it will consolidate and revise multiple regulatory parts and apply a single set of licensing and safety regulations across several types of operations and vehicles.

### IATA AND ATA JOIN FORCES TO IMPLEMENT CEIV LIVE ANIMALS

On July 10, 2019, the International Air Transport Association (IATA) and the Animal Transport Association (ATA) joined forces to encourage industry adoption of the Center of Excellence for Independent Validators for Live Animals Logistics (CEIV Live Animals) through a Memorandum of Understanding (MoU) signed between IATA and ATA at the latter's 49th Annual Conference in Budapest, Hungary.

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CEIV Live Animals is a standardized global certification program designed to help ensure that best practices are in place to protect the welfare of animals when they travel by air. Under the terms of the MoU, both organizations will collaborate to improve the handling and transport of animals worldwide and ensure access to adequate training for all stakeholders involved.

### FAA REVOKES CERTIFICATE OF PORTERFIELD PROPELLERS OF ABERNATHY, TEXAS

On July 12, 2019, the FAA issued an Emergency Order revoking the repair station certificate of Porterfield Propellers for intentionally falsifying records and conducting improper inspections. In one occasion Porterfield Propellers knowingly falsified records to indicate it had used required equipment while inspecting two propellers for a Piper Aztec. More recently, Porterfield Propellers serviced five propeller blades with equipment that had not undergone required overhauls. Additionally, the company had not validated the equipment by conducting required evaluations of parts on which it had been used.

*This Aviation Regulatory Update is intended to keep readers current on matters affecting the industry, and is not intended to be legal advice. If you have any questions, please contact Evelyn Sahr at [esahr@eckertseamans.com](mailto:esahr@eckertseamans.com) or 202-659-6622; Drew Derco at [dderco@eckertseamans.com](mailto:dderco@eckertseamans.com) or 202-659-6665; Alexander Matthews at [amatthews@eckertseamans.com](mailto:amatthews@eckertseamans.com) or 202.659.6633.*