

AVIATION REGULATORY UPDATE

DOT ISSUES CONFLICT ZONE FLIGHT PROHIBITION NOTICE

On March 19, 2015, at the request of the Federal Aviation Administration (FAA), the U.S. Department of Transportation (DOT) issued a Conflict Zone Flight Prohibition Notice.

The notice serves as a reminder of the Department's February 1995 Order 95-2-34, which requires that existing and future statements of authorizations authorizing foreign air carriers to conduct code-sharing operations on which a U.S. carrier's code is carried on a foreign carrier's aircraft include a standard condition that states:

Notwithstanding any provisions in the contract between the carriers, our approval here is expressly conditioned upon the requirement that the operating carrier shall not permit the code of its U.S. code-sharing partner to be carried on any flight that enters, departs, or transits the airspace of any area for whose airspace the Federal Aviation Administration has issued a flight prohibition.

The FAA requested that carriers be reminded of their obligations under Order 95-2-34 due to growing concerns about an increased number of worldwide regional conflict zones. Foreign carriers that carry the code of a U.S. carrier to, from, or over a conflict zone subject to an FAA flight prohibition render themselves liable to enforcement action by DOT.

The FAA currently has flight prohibitions in place for numerous countries, including Afghanistan, Egypt, Iran, Iraq, Kenya, North Korea, and Somalia. If you have any questions about which regions are classified by the FAA as "conflict zones" and how the Department's notice could impact your operations, please feel free to contact us.

AIR CARRIER FAMILY ASSISTANCE PLANS SUBMISSION/UPDATE GUIDANCE

The National Transportation Safety Board recently issued guidance concerning when airlines should update their family assistance plans. According to the guidance, a carrier's family assistance plan should be updated when any of the following events occur:

- A change in the carrier's 24-Hour Emergency Contact Number or dispatch/operations center number. This includes a change in the carrier's designated person for addressing emergency situations.
- A change in the carrier's name on the FAA operating certificate or a change in the business name of the air carrier.
- A change in the carrier's operator or business partner agreement (d.b.a.).
- A change or update in family assistance services provided under an agreement associated with the operator's codeshare alliance or partnership.

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- Required by the DOT under revision of the Public Law governing Aviation Disaster Family Assistance Act of 1996 or the Foreign Air Carrier Family Support Act of 1997.

International carriers are required, under the Foreign Air Carrier Family Support Act of 1997, as amended by the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (AIR-21) and the Vision 100-Century of Aviation Reauthorization Act (and 49 U.S.C. 41313), to develop a Family Assistance Plan for dealing with aviation disasters in the U.S. that result in the loss of life.

DOT FINAL RULE ON THE CARRIAGE OF MUSICAL INSTRUMENTS BECOMES EFFECTIVE

As we reported earlier this year, on January 5, 2015 DOT issued a final rule regarding the carriage of musical instruments as carry-on or checked baggage on commercial passenger flights. The rule applies to all U.S. certificated and commuter air carriers, air taxis, and U.S. indirect carriers such as public charter operators that operate scheduled and charter flights to, from or within the United States.

The rule, which became effective on March 6, 2015 applies to the carriage of small instruments as carry-on baggage, the carriage of large instruments as carry-on baggage, and the carriage of large instruments as checked baggage.

Below is a link to the most frequently asked questions concerning enforcement of the Musical Instruments rule.

http://www.dot.gov/sites/dot.gov/files/docs/DOT_Musical_Instruments_FAQ_2_0.pdf

GOODYEAR PAYS \$16M TO SETTLE FCPA CHARGES

Goodyear Tire & Rubber Co. has agreed to pay approximately \$16 million to settle charges by the U.S. Securities and Exchange Commission (SEC) that two of Goodyear's subsidiaries paid bribes in violation of the Foreign Corrupt Practices Act (FCPA) to facilitate tire sales in Africa.

According to the SEC's investigation, Kenyan Goodyear subsidiary Treadsetters Tyres Ltd. and Angolan Goodyear subsidiary Trentyre Angola Ltd. paid bribes on a routine basis to government officials in their respective countries to obtain tire sales.

The settlement represents the profits Goodyear made as a result of the alleged bribes and does not include a monetary penalty due to the fact that Goodyear self-reported its actions and fully cooperated with the SEC investigators. Under the settlement, Goodyear must also report its FCPA remediation efforts to the SEC for the next three years.

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OFAC UPDATES SDN AND BLOCKED PERSONS LIST

This month, the Department of Treasury's Office of Foreign Asset Controls (OFAC) made significant changes to its list of Specially Designated Nationals and Blocked Persons (SDN List). The changes included new designations under the Kingpin Act and removals of certain Cuban interests. OFAC, in its efforts to enforce the U.S. sanctions regime, regularly publishes a list of individuals and companies that are owned or controlled by targeted countries, as well as individuals, groups, and entities (e.g., terrorists and drug trafficking organizations). The assets of entities included on the SDN List are blocked, and U.S. persons are generally prohibited from dealing with them.

OFAC's recent additions to the SDN List were made under the Kingpin Act, which became law on December 3, 1999. According to OFAC, the Act's "purpose is to deny significant foreign narcotics traffickers, their related businesses, and their operatives access to the U.S. financial system and to prohibit all trade and transactions between the traffickers and U.S. companies and individuals." Entities removed from the list were de-listed in response to the U.S. Government's easing of certain sanctions against Cuba including, notably, some travel restrictions.

The latest version of the SDN list is available at:

<http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>

U.S. ISSUES PENALTIES UNDER IRAN SANCTIONS

The United States government recently issued its first penalties under the new Iranian sanctions regime, which was put in place to prevent foreign investment in Iran's oil and gas sector and to persuade Iran to limit its nuclear program.

To date the U.S. has targeted Naftiran Intertrade Co., which is a Swiss subsidiary of Iran's national oil company. The government's actions will prevent Naftiran Intertrade Co. from receiving loans in excess of \$10 million from any U.S. bank. Through these sanctions U.S. officials also hope to discourage foreign companies from doing business with the Naftiran Intertrade Co. for fear they may also be penalized.

The Obama administration granted waivers to four European energy companies (Total of France, Statoil of Norway, Eni of Italy, and Anglo-Dutch Shell) which are in the process of withdrawing from the Iranian market.

FAA ISSUES FINAL RULE ON AIR CARRIER MAINTENANCE REQUIREMENTS

The FAA on March 4, 2015 issued a final rule that amends select portions of 14 C.F.R. Parts 121 and 135. The impacted sections are 121.368, 121.369, 135.426, and 135.427. The rulemaking was needed because the FAA Modernization and Reform Act of 2012 (the Act) addressed

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contract maintenance work performed on aircraft operated by part 121 certificate holders but did not address similar work performed on aircraft operated by Part 135 certificate holders.

According to the FAA, the changes are necessary to remedy performance deficiencies by contract maintenance providers and because contract maintenance accounts for approximately 70 percent of all maintenance performed on aircraft operated under Parts 121 and 135.

In addition to including those requirements already mandated under the Act, the FAA's final rule requires that affected air carriers and operators:

- Develop policies, procedures, methods, and instructions for performing contract maintenance that are acceptable to the FAA, and to include them in their maintenance manuals; and
- Provide a list to the FAA of all persons with whom they contract their maintenance and a description of the type of maintenance the contractor would perform.

A full copy of the final rule is available at: <https://federalregister.gov/a/2015-04179>

FAA PROPOSES HAZMAT PENALTIES AGAINST FIVE MORE COMPANIES

The FAA, which has been extremely aggressive in enforcing the Hazardous Materials Regulations (HMR) over the past six months, recently proposed five additional civil penalties ranging from \$63,000 to \$82,500 against companies for alleged violations of the HMR. In each case, the FAA alleged that certain shipments were not accompanied by shipping papers to indicate the hazardous nature of their contents and were improperly marked, labeled or packed. The FAA further alleged that the affected companies failed to provide emergency response information and ensure their employees had received required training in packaging and shipping hazardous materials.

- \$63,000 against Chemique, Inc., for offering for shipment six, 8-ounce containers of liquid rust remover and restoration cleaner aboard a FedEx aircraft. Both substances are corrosive poisons.
- \$66,000 against Crow Works, LLC, for offering a shipment containing petroleum miner spirits, rubbing alcohol, flammable aerosols and paint for shipment aboard a FedEx aircraft.
- \$67,070 against Bridgewater International, Inc., for offering a shipment containing polyester resin, acetone, organic peroxide and constriction adhesives for shipment aboard a FedEx aircraft.

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- \$82,500 against China Express International Express, for a shipping one Lithium-ion battery pack on United Airlines.
- \$96,000 against The Home Depot, Inc. for a shipment containing 58 two-quart containers of flammable charcoal lighter fluid and four lighter packs, each containing three flammable lighters.

FAA PROPOSES ADDITIONAL PENALTIES FOR DRUG AND ALCOHOL VIOLATIONS

- \$74,553 against Gardner Aviation Specialist for failing to conduct pre-employment drug tests and obtaining verified negative results before hiring personnel to perform safety-sensitive functions. One of the company's new hires tested positive during a pre-employment drug test and was allowed to work on two aircraft without being evaluated by a substance abuse specialist and completing the required paperwork before returning to work. Additionally, the company failed to request information from twelve employees regarding previous positive drug or alcohol tests or refusals to be tested. The company also failed to provide written drug and alcohol educational materials to all of its employees and did not train the person who was required to make determinations about reasonable suspicion drug testing.
- \$105,500 against Servisair LLC for failing to administer drug and alcohol tests to the minimum required percentage of employees in 2013. During that year Servisair did not add five employees to its random drug testing pool after they had completed their ground coordinator training. Additionally, Servisair also failed to distribute educational material regarding drug use following a move to a new terminal.

FAA REVOKES AIR CARRIER CERTIFICATE OF GLOBALJET

The FAA recently revoked GlobalJet NA, LLC's certificate for allegedly conducting unauthorized operations. In taking this action, the FAA alleged GlobalJet operated a Cessna 550 jet on at least 47 flights without proper authorization. In response to an FAA request for information, the company allegedly provided falsified logs showing the flights were not for compensation and also failed to produce any invoices related to the service. GlobalJet also did not have a qualified chief pilot during the time period in question and used crew members who were not qualified for for-compensation or for-hire operations on over 140 revenue flights.

DOT ISSUES NEW FULL FARE ADVERTISING PENALTY

On March 13, 2015, Fareportal, Inc., d/b/a as CheapOair, was fined \$185,000 by DOT for offering erroneous and misleading information in connection with fare advertisements on its website. An investigation by the Department's Office of Aviation Enforcement and Proceedings

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determined that the fare matrix on Fareportal's website displayed that the same carrier operated the outbound and return flights when in fact a different carrier operated one of the flights. Also, the fare matrix displayed the flights as non-stop, when they actually had multiple stops.

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The substantive information on the constantly evolving aviation marketplace is navigated by the attorneys of Eckert Seamans' Aviation department, which serve the full range of participants in the airline and airport sector.

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

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 or 202.659.6622 or Drew Derco at dderco@eckertseamans.com or 202.659.6665.