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FEBRUARY 2015

AVIATION REGULATORY UPDATE

FAA ISSUES UAS PROPOSED RULE; COMMENTS DUE APRIL 24

The FAA has released a Notice of Proposed Rulemaking (NPRM) that proposes to establish new rules for the commercial use of small unmanned aircraft systems (sUAS) in the United States. Comments on the NPRM are due by April 24, 2015.

The NPRM would establish a new part 107 to Title 14, Code of Federal Regulations, specifically for sUAS, which are defined as unmanned aircraft with a total weight at takeoff of less than 55 pounds that are flown for commercial or research purposes. The new part 107 rules would require that registered sUAS (see below) be operated only during daylight (sunrise to sunset local time) at heights below 500 feet and speeds less than 100 miles per hour, and the sUAS must remain within the visual range of sight of the sUAS operator at all times. Observers may be used but are not required, and may not be used to extend the range of the sUAS beyond the operator's visual range.

Operation of sUAS over persons on the ground (other than those involved in operating the sUAS) is generally prohibited. Operation is allowed in most areas, including over congested areas, with appropriate clearance from air traffic control in controlled airspace. In areas not subject to air traffic control or flight restrictions (i.e. stadiums or public events) no preclearance or notification is proposed to be required, subject to the restriction on operating over persons noted above.

The NPRM would also establish a special operator's license for sUAS in lieu of a private or commercial pilot's license. The sUAS operator license would require passing an FAA administered knowledge test on ten subject areas, including the part 107 rules, basic weather, basic information on the National Airspace System, basic flight rules for avoiding other aircraft, and load and balance information regarding sUAS. The process for obtaining an operator license is expected to take six to eight weeks and includes review by the Transportation Safety Administration for threats to national security.

The publication of this NPRM is a major milestone in opening up the United States to commercial use of sUAS. The rules proposed in the NPRM eliminate the most expensive and time consuming aspects of the existing exemption regime. The new rules could be especially beneficial to companies that conduct facilities inspections in hazardous or remote environments or that could benefit from aerial imagery to manage resources. One key benefit of the proposed rule is that existing employees with expertise in the facilities or resources being managed could be used because the proposed rule only requires a new sUAS operator’s license (which involves a written test) rather than a pilot’s license.

All sUAS will have to be registered in advance with the FAA just like other aircraft. Registration is limited to U.S. corporations and citizens in most cases, and includes a description of the sUAS (make, model and serial number) and its capabilities, proof of ownership (a bill of

sale, for example) and current address information. The NPRM does not require type or airworthiness certification for sUAS.

The proposed rule can be found at https://www.federalregister.gov/articles/2015/02/23/2015-03544/operation-and-certification-of-small-unmanned-aircraft-systems

Eckert Seamans has attorneys who can assist your company in understanding these proposed rules and providing timely comments to the FAA to address your unique operational requirements. Please contact us if you have any questions.

DOT TO AUDIT IMPACT OF TARMAC DELAY RULE

In accordance with a Congressional mandate included in the Federal Aviation Administration (FAA) Modernization and Reform Act of 2012, the Department of Transportation's (DOT) Assistant Inspector General for Surface Transportation Audits will conduct an intensive audit of DOT's tarmac delay rule. The audit, scheduled to commence in late February, will last an undetermined amount of time and assess the following: (1) the rule's effect on carriers' decisions to delay or cancel flights; and (2) OST's independent analysis of how flights have been impacted by the rule.

The tarmac delay rule, which prohibits domestic and international carriers from allowing an aircraft to remain on the tarmac without offering passengers an opportunity to deplane for three or four hours, respectively, has been in effect for several years. While evidence exists that the rule has reduced the number of tarmac delays – in the 12 months following the introduction of the rule, the number of tarmac delays exceeding 3 hours decreased from 693 to 20 – skepticism remains that these reductions are largely the result of increased cancellations. This is the issue on which DOT's audit will focus.

The question of increased cancellations was addressed in a recent study commissioned by DOT, which determined that while the tarmac delay rule did adversely impact cancellations in summer 2011, similar impacts were not seen in 2010 and 2012. Independent research, however, suggests that the industry has seen a strong surge in the number of flight cancellations under the current tarmac delay regulatory interpretation. One particular study noted that after accounting for the cost of hotel and airport fees lost, rebookings, crew accommodations, and offset fuel costs, compliance with the tarmac delay rule has been estimated to cost international carriers approximately $80 million each year, and approximately $907 million over the 10-year period from 2011-2020. Losses suffered by domestic carriers could potentially be much higher.

Coincidentally, in 2014, carriers reported the lowest number of tarmac delays longer than three hours on record. According to the Department's most recent Air Travel Consumer Report, 2014 saw 30 tarmac delays of more than three hours for domestic flights and nine tarmac delays of four hours or more on international service. This is down from the 2013 figures of 84 domestic

flight delays and 55 international flight delays. U.S. airlines canceled approximately 1.5% of scheduled domestic flights in the last month of 2014, up from .9% in November 2014.

We will continue to keep our readers updated on this issue and provide a summary of the findings of the Department's audit as soon as they become available.

PRESIDENT'S 2016 BUDGET INCLUDES PROPOSED INCREASE IN PASSENGER FACILITY CHARGE

A proposal in President Obama's 2016 budget would increase the Passenger Facility Charge (PFC), which is used to help fund airport improvement projects. PFCs have been capped at $4.50 since 2000 and generated $2.8 billion in 2013. The President's proposal would raise the maximum PFC to $8 per traveler per flight segment, which would result in and additional $2.3 billion in 2016 revenue.

Travel industry trade groups and airport operators support the proposed increase, arguing that airport improvements are needed and such improvements will boost the travel industry. To wit, Airports Council International-North America (ACI-NA) reported a backlog of $15.14 billion in airport improvement projects to date.

U.S. carriers oppose the increase, arguing it would discourage travelers from flying. Airlines for America said "…consumers are very price sensitive when it comes to air travel, an unnecessary tax increase will reduce demand." The trade group added that an increase in PFCs would set back job growth, have a negative impact on tourism because of decreased demand and possibly limit air service to small communities.

INTEREST GROUPS SEEK TO CAP CHANGE FEES IN FOREIGN AIR TRANSPORTATION AND BETTER REGULATE FUEL SURCHARGES

On February 11, 2015, FlyersRights.org, a nonprofit airline passenger organization, submitted a petition to DOT requesting that a $100 cap be placed on change fees for foreign air transportation. International change fees have increased to as much as $750 in recent years.

Carriers generally opposed the petition, arguing that lower change fees will encourage consumers to "speculatively" purchase tickets far ahead of actual travel, and that high change fees are necessary due to the potential lost revenue associated with customers purchasing cheaper regular fares rather than high priced flexible or refundable fares. Carriers further argue that change fees are meant to discourage itinerary changes after a purchase has been made.

FlyersRight.org notes that even if a passenger changes flights, the airline can resell the seat to another passenger and generate revenue from the original passenger on their new flight. FlyersRights.org also noted that on average, a refundable ticket is 350% more expensive than a

non-refundable ticket and purchasing refundable tickets at such a high cost is not an option for most customers.

A second initiative, targeted at the sizeable fuel surcharges charged by many airlines, was brought by the Business Travel Coalition (BTC). BTC argues that the industry practice of billing consumers for fuel surcharges violates DOT's 2012 guidance that such surcharges must be tied to the actual cost of fuel.

TSA PRECHECK PROGRAM SOLICITS PROPOSALS AND UNDERGOES GAO AUDIT

In December 2014, TSA announced that it will be soliciting proposals from the private sector to increase enrollment in its PreCheck program. TSA is seeking proposals to enroll and pre-screen applicants. TSA is specifically interested in proposals that would include options to collect fingerprints or iris scans to validate identity, and to perform a criminal history records check. The solicitation was originally posted on December 22, 2014, but due to an error, the solicitation was removed on February 6, 2015 and will be reposted once the issue is corrected.

In addition, the Government Accountability Office (GAO) released an audit report in December 2014 evaluating how TSA has expanded expedited screening. In assessing whether a passenger is eligible for expedited screening, TSA currently looks at (1) whether passenger is included on an approved TSA PreCheck list of known travelers; (2) results from the automated risk assessments of all passengers; and (3) threat assessments of passengers conducted at airport checkpoints known as Managed Inclusion. GAO cited concerns that TSA's use of Managed Inclusion (which uses different layers of security, including procedures that randomly select passengers for expedited screenings) had flaws and recommended that TSA take actions to strengthen the process by testing it and ensuring that it adheres to established evaluation design practices, among other things. In response to the report, several Congressmen cited concerns that Managed Inclusion was putting the aviation system at risk because behavioral indicators can often not be used to identify persons who may pose a threat to aviation security. TSA concurred with GAO's recommendations.

TSA REQUESTS PUBLIC COMMENT ON NEW INFORMATION COLLECTION REQUEST

Under the Secure Flight Program, the Transportation Security Administration (TSA) collects information from carriers which aids in identifying passengers who may be a lower risk to transportation security and therefore may be eligible for expedited screening. By law, TSA is required to collect public comment on its information collection proposal. TSA is requesting comments in order to (1) Evaluate whether the proposed information collection is necessary for TSA to perform its functions; (2) Evaluate the accuracy of TSA's estimate of the reporting burden; (3) Improve the quality, utility and clarity of the information to be collected; and (4)

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Minimize the burden of the information collection on those who respond using technological collection techniques.

Below is the information that TSA is collecting:

1. Secure Flight Passenger Data for passengers of covered domestic and international flights within, to, from, or over the continental United States.

2. Secure Flight Passenger Data for passengers of charter operators and lessors of aircraft with a maximum takeoff weight of over 12,500 pounds.

3. Certain identifying information for non-traveling individuals that U.S. airport operators or points of contact (POCs) seek in order to authorize entry into a sterile area (for example, to patronize a restaurant, to escort a minor or a passenger with disabilities or for another approved purpose).

4. Computer-Assisted Passenger Prescreening Systems (CAPPS) risk assessments. The assessments are generated by analyzing the underlying passenger and other prescreening data obtained by the aircraft operator when the passenger makes his or her reservation. TSA's Secure Flight receives only the assessment generated from the applicable data and NOT the underlying data.

5. Frequent Flier Code Words generated by aircraft operator to validate that a passenger is a Frequent Flier program member who may be eligible for expedited screening.

6. Contact information or the data format/mechanism the aircraft operator uses to transmit Secure Flight Passenger Data.

Comments are due by April 6, 2015. Please let us know if you would like assistance in submitting a comment.

DOT FINES AIR EUROPA

In response to a third-party complaint alleging a violation of the Department's full fare advertising rule, DOT recently fined Air Europa Lineas, S.A.U. (Air Europa) $100,000 on December 16, 2013. The complaint alleged that Air Europa misrepresented carrier-imposed surcharges during the booking procedure and the Department agreed, finding that Air Europa committed unfair and deceptive trade practices by including a carrier-imposed fees within an amount described as "taxes" on its U.S. website. In addition to the monetary penalty, Air Europa was directed to cease and desist from further violations.

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FAA PROPOSES HAZMAT PENALTIES AGAINST TWO COMPANIES

The FAA recently proposed civil penalties of $54,000 and $96,800 against two companies for allegedly violating the Hazardous Materials Regulations (HMR). In both cases, the FAA alleged certain shipments were not accompanied by proper shipping papers to indicate the hazardous nature of their contents and were improperly marked, labeled or packed.

- $96,800 against Rheem Manufacturing Co. for shipping three shipments containing a total of 19 metal cans of flammable paint by air. The packages were not declared to contain hazardous materials and were not labeled, marked or packed in accordance with HMR requirements. The company also failed to provide hazardous materials training for its employees.

- $54,000 against Amazon.com for shipping a package containing a handgun cleaning kit by air. The kit included a two ounce plastic container of flammable, corrosive liquid. The shipment did not include shipping papers to indicate the nature or quantity of the hazardous material and Amazon did not provide required emergency response information.

ADDITIONAL FAA PROPOSED PENALTIES

In addition to those mentioned above, the FAA has proposed the following penalties:

- $1.6 million against Alaska Airlines, Inc. (two penalties) for allegedly operating aircraft that were not in compliance with Federal Aviation Regulations. The first penalty, for $900,000, involved the installation of systems to pulse external lights on 66 Boeing 737s without conducting proper ground and flight tests. The second, for $700,000, involved an improper repair to a cracked engine thrust lever that obstructed the pilot's access to the aircraft's take-off/go-around button.

- $147,375 against ExpressJet Airlines (two penalties) for allegedly violating drug and alcohol testing and aircraft maintenance regulations. The first penalty, for $97,375, involved a failure by ExpressJet to conduct required drug tests and receive verified, negative results before hiring or transferring four people into safety-sensitive positions and failed to include one of these employees in its random drug and alcohol testing pool. The second, for $50,000, alleged that ExpressJet failed to ensure that an Embraer EMB-145 regional jet underwent required testing and measurement of the aircraft surface in connection with the repainting of the jet.

- $122,000 against Trans States Airlines, Inc. for allegedly operating an aircraft that was not in compliance with Federal Aviation Regulations.

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SAVE THE DATE: NTSB TDA AIR CARRIER INDUSTRY DISASTER RESPONSE AND FAMILY ASSISTANCE MEETING

The National Transportation Safety Board's Transportation Disaster Assistance Division (NTSB TDA) will hold its 2015 NTSB TDA Air Carrier Industry Disaster Response and Family Assistance Meeting (Chicago Meeting) on May 21, 2015. The meeting will be hosted by Southwest Airlines at their headquarters in Dallas, TX. The meeting will be from 8:30 am to 3:30 pm. The address for the meeting: Southwest Airlines, 2702 Love Field, Dallas, TX 75235. Additional information will be released closer to the meeting date.

REMINDER – SUBSCRIBE TO ECKERT SEAMANS AVIATION BLOG

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To access and subscribe to the blog, click here.

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.

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MARCH 2015

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

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 GolbalJet 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

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.

To access and subscribe to the blog, click here.

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

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April 2015

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BOEING AND EX-IM BANK FIND SUPPORT IN FEDERAL COURT AS CONGRESSIONAL REAUTHORIZATION LOOMS

With its controversial reauthorization scheduled to be brought before Congress this June, the Export-Import Bank of the United States recently found support for its loan programs to foreign airlines in federal district court in Washington, D.C.

On March 30, 2015, the U.S. District Court for the District of Columbia rejected a lawsuit by Delta Air Lines and others challenging Export-Import Bank loan guarantees for the purchase of Boeing aircraft. According to Delta, those loan guarantees were harmful in that they effectively subsidized foreign airlines to the detriment of U.S. carriers.

This most recent legal challenge is particularly timely as the Bank's reauthorization, due June 30, 2015, is being hotly debated in Washington. Opponents accuse the Bank of "crony capitalism" – supporting Boeing to the detriment of domestic airlines. As they observe, the Bank issued $6.1 billion in loan guarantees to Boeing in 2014 alone. Critics also observe that only 11% of the Bank's loans and guarantees were necessary because the risks were too great for private financial institutions. Finally, some claim that the Bank's apparent financial independence is an accounting mirage, and that it actually is operating at a significant deficit.

Supporters of the Export-Import Bank, on the other hand, note the many benefits conferred on the public and U.S. businesses by the Bank, at no cost to American taxpayers. While a sizeable portion of the Bank's activities do support Boeing, some argue that this is merely a counterbalance to subsidies enjoyed by foreign aircraft manufacturers. Many small U.S. businesses also enjoy support from the Bank, with roughly 90% of its authorizations and $5.1 billion in funds going to those small businesses in 2014. Not only has the bank been self-sustaining since 2008, funding itself entirely from customer receipts, but it has generated close to $7 billion in excess revenues for the U.S. Treasury since 1992.

OFAC ISSUES FREQUENTLY ASKED QUESTIONS ON NEW CUBA POLICY

The Department of the Treasury's Office of Foreign Assets Control (OFAC) issued new and updated Frequently Asked Questions (FAQs) pertaining to its recent amendments to the Cuban Assets Control Regulations (CACR). Below are a few highlights from the FAQs pertaining to air carriers:

- The CACR allow air carriers subject to U.S. jurisdiction to provide air carrier services to, from or within Cuba, in connection with authorized travel, under a general license. While carriers do not need to obtain a specific license (as they did in the past), they must confirm that passengers traveling to Cuba fall within one of the twelve categories of authorized travel. In addition, air carriers wishing to provide service will still need to secure regulatory approvals from other concerned U.S. Government agencies, including the Department of Transportation (Office of the Secretary and the Federal Aviation Administration) and the Department of Homeland Security.

- Airlines and travel service providers subject to U.S. jurisdiction must retain for at least five years from the date of the transaction a certification from each customer indicating the provision of the CACR that authorizes the person to travel to Cuba. In the case of a customer traveling under a

specific license, a copy of the license must be maintained on file. The names and addresses of individual travelers must also be maintained on file for at least five years.

- Depository institutions, as defined in 31 CFR § 515.333, which include certain financial institutions other than banks, are permitted to open correspondent accounts at banks in Cuba.

- While U.S. depository institutions are permitted to open correspondent accounts at Cuban banks located in Cuba and in third countries, and at foreign banks located in Cuba, Cuban banks are not generally licensed to open such accounts at U.S. banks.

- Certain Cuban nationals who have taken up residence in the United States on a permanent basis and who meet the requirements set forth in 31 CFR § 515.505 are licensed as unblocked nationals, and may participate fully in the U.S. financial system.

- Persons subject to U.S. jurisdiction are prohibited from doing business or investing in Cuba unless licensed by OFAC.

- Trade delegations are authorized to travel to Cuba only if each member of the delegation meets the criteria of an applicable general license authorizing travel to Cuba or has obtained a specific license from OFAC. Authorized trade delegations generally fall under one of two general licenses for travel authorization; either (1) 31 CFR § 515.533(d), which authorizes travel-related and other transactions incident to the exportation of certain authorized goods from the U.S. to Cuba, specifically the conduct of "market research, commercial marketing, sales negotiation, accompanied delivery, or servicing in Cuba of items consistent with the export or report licensing policy of the Commerce Department," or (2) 31 C.F.R. § 515.564(a), which authorizes transactions related to professional research or professional meetings in Cuba.

TSA TO MAKE U.S. AIRPORT SECURITY ENHANCEMENTS

On April 20, 2015 DHS Secretary Jeh Johnson ordered the Transportation Security Administration (TSA) to immediately implement certain recommendations made by the Aviation Security Advisory Committee (ASAC) to address the insider threat posed by aviation employees at U.S. airports. The ASAC made these recommendations in a recently issued report on TSA's policies, procedures and resource allocations, prepared in response to a December 2014 incident whereby an FAA employee used his employment status to access a secure area at Atlanta International Airport and then flew to New York with a gun in his carry-on luggage.

In an effort to increase screening of airport and airline workers, the Secretary directed TSA to take the following immediate actions:

- Until TSA establishes a system for "real time recurrent" criminal history background checks for all aviation workers, require fingerprint-based Criminal History Records Checks every two years for all airport employee SIDA badge holders.

- Require airport and airline employees traveling as passengers to be screened by TSA prior to travel.

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- Require airports to reduce the number of access points to secured areas to an operational minimum.

- Increase aviation employee screening, to include additional randomization screening throughout the workday.

- Re-emphasize and leverage the Department of Homeland Security "If You See Something, Say Something™" initiative to improve situational awareness and encourage detection and reporting of threat activity.

TSA will continue to analyze the recommendations in the ASAC report and will identify additional measures for future implementation.

FAA USES SUMMARY GRANT PROCESS TO APPROVE 30 UAS EXEMPTIONS

The FAA recently issued 30 Section 333 UAS exemptions via the summary grant process. Pursuant to Section 333, the Secretary of Transportation has the ability to determine if certain low-risk UAS operations can be authorized prior to the finalization of the UAS rule. The FAA typically reviews each Section 333 application individually when issuing exemptions. While still having the ability to review applications on a case-by-case basis, the FAA can also issue a summary grant when it has already granted a previous exemption similar to a new request. The summary grant process increases efficiency because it does not require the FAA to perform as detailed an analysis, but instead allows the FAA to repeat the analysis performed for the original exemption on which it is based.

INDIA UPGRADED TO CATEGORY 1

The FAA recently announced that it has upgraded India's International Aviation Safety Assessment (IASA) rating to Category 1, which means that India's civil aviation authority complies with ICAO safety standards. A Category 1 rating also allows carriers from India to add flights to the U.S. using their own aircraft and to carry the code of U.S. carriers. India was first awarded a Category 1 rating in 1997, but was downgraded to a Category 2 in 2012 due to certain deficiencies in its Directorate General of Civil Aviation.

FAA VOLUNTARY DISCLOSURE PROGRAM UNDER SCRUTINY

A recent investigation by a DOT-appointed inspector found that, in numerous instances, the FAA did not penalize U.S. carriers for carrying dangerous goods on aircraft when it should have. Under the FAA's Voluntary Disclosure Program (instituted in 2006), carriers are allowed to self-report violations to the Administration within 24 hours and avoid civil penalties, so long as the reporting carrier completes comprehensive mitigation and performs subsequent self-audits for compliance. The FAA, in turn, is required to evaluate reports submitted by carriers and determine whether the carrier's mitigation efforts are sufficient. If they are not, the FAA may initiate an enforcement action.

According to DOT's investigation, the FAA did not pursue enforcement action against numerous airlines under the program, and failed to provide documentation demonstrating that reporting carriers had in fact

instituted mitigation and performed the required self-audits. The FAA's failure to properly implement its Voluntary Disclosure Program resulted in carriers repeatedly shipping forbidden hazardous materials on passenger aircraft with no penalty because they self-reported.

The DOT inspector made recommendations for improving the program, including a requirement for air carriers to provide the FAA with sufficient evidence that mitigation and self-audits have been completed, that regional managers receive additional training, and that airlines be provided with more clarity on program requirements. The FAA expects to implement these and other recommendations by year-end.

VISA TO PROVIDE BREAKDOWN OF AIRLINE FEES ON CREDIT CARD STATEMENTS

In an effort to make airline ancillary fees more transparent to consumers, Visa will begin categorizing airline charges for ancillary services separately from those for the purchase of airfare. Charges that will be listed separately will include, but not be limited to, those assessed for checked bags, in-flight meals, and seat upgrades. Visa did not provide a specific date, but said that the new policy would be put in place in the coming months. American Express already breaks out such charges, and MasterCard has announced that it will soon offer the same service.

DOT FINES FLYBLADE FOR OPERATING WITHOUT PROPER AUTHORITY

On April 10, 2015, DOT fined FlyBlade, Inc. $80,000 for engaging in air transportation without the necessary economic authority. Flyblade is an air charter broker and provides air transport services by using Liberty Helicopters, Inc., a Part 135 on-demand air carrier, to operate flights for passengers seeking air transportation. An investigation by the Department's Office of Aviation Enforcement and Proceedings found that FlyBlade's website and smartphone applications contained language and pictures that could lead consumers to assume that FlyBlade was a direct carrier.

FAA ISSUES MORE HAZMAT PENALTIES

The FAA recently proposed civil penalties against three additional companies for alleged violations of the Hazardous Materials Regulations (HMR). In two of the cases - S. Vitale Pyrotechnic and Optisource - 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. The following penalties were issued:

- $170,000 against Optisource, for offering shipments containing ink remover and aerosol lens spray for shipment aboard a UPS aircraft. Both substances are flammable.

- $195,000 against S. Vitale Pyrotechic Industries, for offering a shipment containing four 20-gallon tanks containing propane for shipment aboard a Delta Air Lines passenger flight. Propane is a flammable gas, and FAA regulations prohibit propane from being transported on a passenger-carrying aircraft.

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- $96,200 against FedEx Corp., for accepting three shipments containing methanol, printer ink and sodium hydroxide. The shipments were not prepared in accordance with the HMR. The shipments were improperly marked, and the printer ink drums did not meet the minimum specifications for containers used to transport this type of substance.

FAA PROPOSES ADDITIONAL PENALTIES

- $1.54 million against Air Methods Corp. of Colorado for operating Eurocopter EC-130 helicopters that were not in compliance with FAA regulations. Air Methods is an emergency medical transport company and operated non-compliant helicopters on 83 flights over water when they lacked flotation devices and flotation gear for all occupants. The flights took place in and around Pensacola, Florida.

- Two civil penalties totaling $328,550 against Southwest Airlines for violating Federal Aviation Regulations:

- $265,800 – failure to complete mandatory inspection of an aircraft that had experienced a cabin depressurization. Southwest allegedly operated the aircraft on 123 more flights before completing the inspection.

- $62,750 – failure to accurately record repairs in an aircraft's logbook as required by regulations. Maintenance personnel tried to resolve a problem involving ice and water coming from a jetliner's galley vent which was traced to a faulty component in one of the jetliner's air-conditioning units. The FAA alleges Southwest did not comply with its FAA approved maintenance procedures and the mechanics improperly applied an MEL exemption to the situation.

- $430,000 against Beechcraft Corp. for failing to follow its FAA-approved quality control process. Customers reported fuel leaks on 43 aircraft recently manufactured by Beechcraft. Investigators found the leaks were caused by improperly installed fuel bladders.

- $142,750 against GoJet Airlines, LLC for allegedly violating drug and alcohol testing regulations. The FAA alleges that GoJet violated federal regulations by not including six employees (four pilot trainees and two aircraft dispatcher trainees) in the random drug and alcohol testing pool, and testing two other employees for drugs, but not alcohol, as part of its random testing program.

REMINDER – SUBSCRIBE TO ECKERT SEAMANS AVIATION BLOG

For those readers who have not yet subscribed, Eckert Seamans publishes an Aviation Blog, which offers information on developments in the U.S. aviation/regulatory area. Posts provide tactical and timely updates related to emerging legislation, regulations, cases, policies and trends, with a focus on relevant business opportunities and risks.

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).

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DOT ISSUES MISTAKEN FARES POLICY AHEAD OF THIRD FINAL RULE ON ENHANCING AIRLINE PASSENGER PROTECTIONS

On May 8, 2015, DOT issued its long-awaited Enforcement Policy Regarding Mistaken Fares. The newly published enforcement policy is temporary pending issuance of the Department's third Enhancing Airline Passenger Protections Rulemaking (i.e. "Transparency of Airline Ancillary Fees and Other Consumer Protection Issues") which will specifically address the issue of mistaken fares.

As background, DOT issued a final rule enhancing passenger protections on April 25, 2011. One of the provisions in that rule, aptly named the "Post-Purchase Price Increase rule", prohibited airlines and other sellers of tickets for air transportation from increasing the cost of a ticket after a the purchase has occurred. Under 14 C.F.R. § 399.88, a purchase occurs when the consumer pays the full agreed upon price.

On June 15, 2012, DOT responded to questions regarding the applicability of the post-purchase price increase rule to mistaken fares by stating that "if a consumer purchases a fare and receives confirmation of the purchase and the purchase appears on the consumer's credit card statement and/or online account summary, then there has been a purchase whether or not it was a mistaken fare and the post purchase price prohibition in section 399.88 applies". Since then, a number of mistaken fare incidents have occurred and the Enforcement Office has generally enforced the post purchase price increase rule to such fares. Noting how quickly mistaken fares are spread through postings on various websites and blogs, DOT's May 8, 2015 Enforcement Policy advises that the Department has discretion to decide whether to pursue enforcement action in a mistake fare situation and, as a matter of "prosecutorial discretion," will not enforce the post-purchase price increase rule in the case of erroneous fares if the carrier:

1. Demonstrates that the fare was a mistaken fare (the burden is on the carrier); and

2. Reimburses all consumers who purchased a mistaken fare ticket for "any reasonable, actual, and verifiable out-of-pocket expenses that were made in reliance upon the ticket purchase, in addition to refunding the purchase price of the ticket." These expenses include, but are not limited to, non-refundable hotel reservations, destination tour packages or activities, cancellation fees and visa or other international travel fees.

A final rule on this issue is expected once DOT completes its review of all comments filed in response to its Transparency of Airline Ancillary Fees and Other Consumer Protection Issues rulemaking.

FAA LAUNCHES NATIONAL CAPITAL REGION NO DRONE ZONE CAMPAIGN

The airspace around Washington, D.C. is extremely restricted by rules put in place after the 9/11 attacks, which establish "national defense airspace" over the area and limit aircraft operations to those with an FAA and Transportation Security Administration authorization. Violators face stiff fines and criminal penalties.

The FAA announced on May 13, 2015 that the Federal rules prohibiting aircraft from operating in the Flight Restricted Zone in and around Washington, D.C. will also apply to unmanned aircraft. In addition to the District of Columbia, the "No Drone Zone" includes cities and towns within a 15-mile radius of

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Ronald Reagan National Airport. In this zone all unmanned aircraft systems are prohibited. In an effort to help recreational unmanned aircraft operators be aware of the restricted areas, the FAA is developing a GPS-driven smartphone app which will be released later this year.

DOT FINES SRILANKAN AIRLINES FOR UNFAIR AND DECEPTIVE PRACTICES

In response to a third-party complaint alleging a violation of the Department's full-fare advertising rule, DOT recently fined SriLankan Airlines Limited ("SriLankan") $20,000. The DOT consent order in the case alleges that the price SriLankan displayed on its website for travel from New York City to Colombo was listed as $954.00 plus "taxes" of $587.60. The breakdown of "taxes" revealed that $500.00 was a fuel surcharge (YQAP) imposed by the airline. SriLankan's mischaracterization of its surcharge as a "tax" constituted, in the Department's opinion, an unfair and deceptive practice. DOT has previously issued guidance stating that carrier-imposed surcharges and other fees must be listed separately from taxes in fare advertisements and SriLankan has since changed its method of displaying such charges. Although SriLankan does not operate service to the U.S., it is still subject to DOT regulation since 1) it places its code on flights operated by another foreign carrier between a third country and the U.S.; and 2) its website is accessible to U.S. consumers.

DOT PENALTIES

INTER ISLAND AIRWAYS INC. FINED $20,000

On May 12, 2015, DOT directed Inter Island Airways Inc. ("Inter Island") to pay a civil penalty of $20,000 for failing to comply with the Department's accounting and reporting requirements. As a commuter air carrier, Inter Island must file Bureau of Transportation Statistics Form 298-C, "Report of Financial Data" and BTS Schedule T-100, "US Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market." Despite repeated requests by DOT for the information, Inter Island failed to make its required reports on time and was fined. Inter Island alleged that the delay in submitting the information was due to the fact that the information on was submitted by email rather than using the BTS e-Submit web-application.

HAWAIIAN AIRLINES, INC. FINED $160,000

On May 21, 2015, DOT assessed Hawaiian Airlines Inc. (Hawaiian) $160,000 in civil penalties for failing to adhere to domestic baggage liability rules and engaging in unfair and deceptive practices regarding advertising.

- Domestic Baggage Liability: Hawaiian by virtue of its operations is subject to the requirements in 14 C.F.R. Parts 254 and 259. Part 254 states that "an air carrier shall not limit its liability for provable direct or consequential damages resulting from the disappearance of, damage to, or delay in delivery of a passenger's baggage to an amount less than $3,300 per passenger for travel before June 6, 2013, and $3,400 for travel on or after June 6, 2013."

  In response to a consumer complaint, DOT investigated Hawaiian's procedures regarding handling claims for mishandled checked baggage on domestic flights. DOT found numerous occasions where Hawaiian limited reimbursement for damages associated with delayed baggage to $30 per day with a maximum of three days regardless of the facts of the claim. DOT also

found that the carrier did not comply with its Customer Service Plan, which is available on the carrier's website and states Hawaiian will compensate passengers for all reasonable expenses that result due to delay in delivery according to domestic and international agreements.

- Advertising Requirements: DOT investigated a promotional program associated with the Hawaiian Visa Signature credit card program and found that between May 2013 and July 2013 the carrier advertised airfares that could not be purchased. As part of a promotion to promote its Visa Signature credit program, Hawaiian advertised a "one-time 50% round-trip companion travel discount" for flights between North America and Hawaii to consumers who signed up for the credit card. The promotion could be redeemed by searching for and booking the flight through the carrier's website and entering an eCertificate code prior to payment. When passenger searched the site, the website initially advertised fares that were the lowest fare supposedly available. However, after entering the code, a much higher price was presented and the discount was applied to the higher price.

FAA PROPOSED PENALTIES

- $150,000 against Ameriflight, LLC of Burbank, California for operating a Beech BE-99 while not in compliance with FAA regulations. Ameriflight mechanics allegedly patch sealed a windshield in two instances due to water leakage, rendering the aircraft unairworthy, but nevertheless continued to operate flights.

- $227,000 against Amplachem Inc., of Carmel, Indiana for violating Hazardous Materials Regulations. FAA alleges that on April 10, 2013, AmplaChem for shipment via FedEx air transportation an undeclared shipment that included Boron Tribomide. Boron Tribomide is a corrosive material and toxic inhalation hazard that is forbidden from being transported aboard a commercial aircraft. The shipment also included two other corrosive materials. The material was discovered smoldering and burning when unloaded at the destination.

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

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HAZMAT REGISTRATION FOR TRANSPORT OF CERTAIN CARGO DUE JULY 1, 2015

Although carriers are not required to register with DOT's Pipeline and Hazardous Materials Safety Administration, registration is required for carriers who ship specific types (e.g., explosive, radioactive, toxic) and quantities (e.g., bulk shipments and shipments requiring placarding) of cargo. Specifically, carriers are required to register with DOT's Pipeline and Hazardous Materials Safety Administration if they ship:

(1) radioactive material;

(2) more than 25kg (55 pounds) of an explosive material that has a mass explosion hazard, a projection hazard, or a combination of a fire hazard and a minor projection or minor blast hazard;

(3) more than one L (1.06 quarts) per package of material that is extremely toxic by inhalation;

(4) a quantity of hazardous materials in bulk packaging greater than 13,248 L (3,500 gallons) for liquids or gasses or more than 13.24 cubic meters (468 cubic feet) for solids;

(5) a shipment of hazardous materials greater than 2268kg (5000 pounds), in other than bulk packaging, for which placarding is required; or

(6) any quantity of hazardous materials that requires placarding.

Registration allows a carrier greater flexibility in the types of hazardous materials that can be transported. The registration cost is $2,600 for one year, $5,175 for two years and $7,750 for three years. The registration period runs from July 1 to June 30 and the fee is not prorated. If your carrier would like to register for the 2015-2016 period, please contact us.

CBP EXPANDS PRECLEARANCE TO TEN NEW SITES

CBP recently announced that it would enter into negotiations to expand preclearance operations at ten new non-U.S. airports. The ten foreign airports identified for possible preclearance locations are: 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.

Currently, CBP Preclearance provides for the U.S. border inspection and clearance of commercial air passengers and their goods at 15 locations in 6 foreign countries. A preclearance inspection is essentially the same inspection an individual would undergo at a U.S. port of entry and preclearance travelers do not have to undergo a second CBP inspection upon arrival in the United States. Successful CBP programs are already being carried out at airports in: Dublin and Shannon in Ireland; Aruba; Freeport and Nassau in The Bahamas; Bermuda; Calgary, Toronto, Edmonton, Halifax, Montreal, Ottawa, Vancouver, and Winnipeg in Canada; and Abu Dhabi, United Arab Emirates. CBP and the national governments of the selected airports are expected to begin negotiations soon which could result in final air preclearance agreements.

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U.S. DOT ISSUES DENIED BOARDING COMPENSATION FINAL RULE; NEW AMOUNTS ARE $675/$1,350

To account for inflation, the Department of Transportation recently issued a final rule raising the maximum denied boarding compensation amounts from the current figures of $650/$1300 to $675/$1350 effective August 25, 2015. As a reminder, denied boarding compensation must be provided to passengers who are denied boarding involuntarily on a domestic flight by a carrier who offers alternate transportation and such transportation is planned to arrive at the passenger's first stopover or final destination more than one hour but less than two hours after the planned arrival time. In such an instance, the denied boarding compensation must be 200% of the fare to the passenger's destination or first stopover, with a maximum of $675. Denied boarding compensation must also be provided for passengers who are denied boarding and are rerouted to reach their destination two hours or more after their planned arrival time. In this case, the compensation must be 400% of the passenger's fare, with a maximum of $1350.

The inflation adjustment also applies to passengers involuntarily denied boarding on an international flight outbound from a U.S. airport. In those cases, passengers who are denied boarding and are provided alternate transportation to their destination that is scheduled to arrive more than one hour, but less than four hours, after the planned arrival time must be offered compensation that is 200% of the fare with a maximum of $675. Similarly, passengers who are rerouted to arrive four hours or more after their original arrival time must be compensated 400% of the fare, with a maximum of $1350.

SENATOR BLUMENTHAL REQUESTS DOJ INVESTIGATION

Last week, Senator Richard Blumenthal (D-CT) urged the U.S. Department of Justice ("DOJ") to investigate allegedly anti-competitive behavior and collusion among airlines. In his letter to DOJ's antitrust chief, Senator Blumenthal requested the investigation citing the coordinated behavior of airlines to reduce capacity and artificially raise fares. The Senator discussed the recent IATA conference in Miami, where the leaders of Delta, Air Canada and American Airlines made comments which indicated that they were aligning fares and/or coordinating behavior to prevent smaller airlines from expanding capacity and cutting prices. Referencing a report in the New York Times that Southwest had reversed course on its plans to expand capacity (and potentially cut fares), the Senator cited his concern that Southwest had been pressured by the other airlines at the conference to take this action.

The Senator also noted that the "unprecedented consolidation" of airlines has resulted in four airlines accounting for eighty percent of all domestic travel. He went on to point out statements made in DOJ's antitrust lawsuit complaint, filed in 2013 to block the proposed US Airways/American Airlines merger, detailing instances of coordinated behavior. He urged DOJ to conduct a full-length investigation of the practices of the airline industry, paying special attention to pricing patterns of airlines and the comments of the executives at the conference, and to enforce antitrust laws to punish the airlines if their behavior towards Southwest was found to be collusive.

EPA PROPOSES RULE ON GREENHOUSE GASES

The Environmental Protection Agency on June 10, 2015 issued a proposed rule finding that greenhouse gas emissions from certain classes of aircraft engines are contributing to air pollution and endangering public health. The proposed rule seeks input on a variety of issues related to: setting an international CO2

standard for aircraft; ICAO's progress in establishing global aircraft standards that achieve meaningful reductions in CO2 emissions; and the potential use of section 231 of the Clean Air Act to adopt and implement corresponding aircraft engine GHG emission standards domestically (provided the EPA promulgates findings that engine emissions contribute to air pollution). A deadline for comment submissions has not yet been set.

The EPA will hold a public hearing on August 11, 2015 in Washington, DC, at the William Jefferson Clinton East Building, Room 1153. The last day to pre-register in advance to speak at the hearing will be August 6, 2015. The hearing will start at 10:00 am local time and continue until everyone has had a chance to speak.

Please let us know if you would like further information on the rule or are interested in submitting comments.

NORWEGIAN AIR INTERNATIONAL LIMITED

On June 1, 2015, Norwegian Air International Limited ("Norwegian") filed a motion for expedited treatment with DOT in regard to its longstanding application for a foreign air carrier permit. Citing the average processing time for similar applications to be 55 days, Norwegian stated that it has been over 15 months since its application was filed. In addition, the United States has an international legal obligation under the U.S.-EU (Iceland, Norway) Air Transport Agreement of 2011 to "grant appropriate authorizations and permissions with minimum procedural delay."

Norwegian went on to note that it saw no reason for DOT to delay granting its permit application as Norwegian has committed to use only European and U.S. pilots and crews on transatlantic flights (except if compelled by extraordinary and unforeseen operational reasons). Norwegian emphasized that its addressing the pilot issue should resolve any concerns raised by opponents to its application.

Among those filing comments in opposition were Scandinavian Airline System, Allied Pilots Association, Air Line Pilots Association, Transportation Trades Department, AFL-CIO, European Cockpit Association, Association of Flight Attendants-CWA, International Association of Machinists and Aerospace Workers and Transport Workers Union of America. Comments in support were filed by Federal Express, the U.S. Travel Association and the Port of Oakland.

DOT PENALTIES

Charter Air Transport, Inc. Fined $30,000

DOT recently fined Charter Air Transport, Inc. ("CAT") $30,000 for failing to submit reports required under Part 298 in a timely matter. Specifically, CAT failed to file BTS Form 298-C "Report of Financial Data" and Schedule T-100 "U.S. Air Carrier Traffic and Capacity Data by Nonstop Segment and On-Flight Market" in a timely manner. CAT states that at the time DOT discovered CAT's noncompliance, CAT was in the process of relocating its offices and the person responsible for such filings failed to coordinate the continued submission of the reports with the employee's successor, or anyone else. The Director of Finance was then assigned responsibility for filing the reports and, with the help of others, did so within two days of contact from DOT.

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FAA PROPOSED PENALTIES

- $75,000 against Murray Aircraft Manufacturing, LLC ("Murray") for operating an aircraft that was not in compliance with FAA regulations. The FAA's investigation revealed that Murray operated a Jetstream 3101 on 300 flights when 11 required maintenance checks had not been performed. Under FAA regulations, maintenance checks are required every 200 flight hours.

- $84,700 against Image Air of Florida for allegedly allowing an unqualified pilot to fly one of its aircraft. The FAA alleges that between June and September of 2014 the pilot flew at least 16 revenue flights. The pilot had not passed an FAA required competency check within the past 12 months for the category, class and type of aircraft he was operating.

- $91,500 against Air Methods Corp. ("Air Methods") for operating a Bell 407 helicopter in an unairworthy condition. Air Methods operated the helicopter four times when a required torque check inspection on its tail rotor drive shaft components was overdue. In addition, the FAA alleges that Air Methods did not update the aircraft log books to show completion of the inspection and the next inspection deadline.

- $266,375 against Allegiant Air, LLC ("Allegiant") for violating drug and alcohol testing regulations. According to the FAA, Allegiant failed to include 25 employees in its drug and alcohol testing pools. These employees were in safety-sensitive positions, and 11 of these employees performed safety-sensitive duties on multiple occasions. In addition, another employee's follow-up test was not observed directly after the employee had previously tested positive for drug use. The employee continued to perform safety-sensitive duties following the improperly observed test.

- $735,000 against Volaris of Mexico for returning a U.S.-registered Airbus A319 to service after performing a heavy maintenance inspection despite its mechanics not performing certain required safety inspections including: removing and replacing an emergency slide, verifying that ailerons were properly rigged, and verifying the aircraft's weight and balance calculations. FAA inspectors reviewed the carrier's maintenance records and requested that the required inspections be done. At another inspection two weeks later, Volaris allegedly performed the required inspections on the slide and aileron tasks, but not the weight and balance calculation and had allegedly failed to perform the required inspections for two additional tasks related to the heavy maintenance: a right wing slat seal edge replacement and a nose landing gear spring nut replacement. The FAA alleges that Volaris flew the aircraft on a total of 121 passenger flights before bringing the aircraft into compliance.

FAA PROPOSES HAZMAT PENALTIES AGAINST SIX COMPANIES

The FAA recently proposed civil penalties ranging from $70,050 to $81,669 against six companies for allegedly violating the Hazardous Materials Regulations (HMR). In each case, the FAA alleged 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.

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- $81,669 against DGI Menard Inc. for offering for shipment aboard a FedEx aircraft undeclared hazardous materials. The shipment included eight cans of Lubemaster's Fire up, a flammable liquid, and six bottles of Diesel Mate All Seasons, a flammable petroleum distillate.
- $71,500 against Sherwin-Williams for offering undeclared hazardous material shipments for transport on two separate FedEx flights. Each shipment contained two gallons of HP Primer, two gallons of Epoxy Primer, two quarts of catalyst for the Epoxy Primer and two gallons of paint. The catalyst is corrosive and flammable. The FAA also alleges the shipments exceeded the allowable quantity for air transportation.
- $70,050 against the University of Wisconsin-Madison. The FAA alleges that a university official offered an undeclared hazardous material shipment on a Delta passenger flight. The shipment, which contained 1.89 liters of ethyl alcohol, which is highly flammable, and 120 milliliters of Epofix hardener, a corrosive material, was in the passenger's checked baggage.
- $70,000 against Home Depot for offering nine cans of flammable aerosol spray paint to UPS for transportation by air.
- $63,000 against CTC Battery for offering an undeclared shipment of four rechargeable lithium ion phosphate batteries to UPS for shipment.
- $58,600 against FedEx Corp. for accepting a box containing 1.7 liters of flammable liquid for air transportation. The box did not list the proper shipping name of the hazardous materials. The FAA also alleges the company later accepted a hazardous material shipment where the shipping papers incorrectly listed the amount of the shipment. The FAA further alleges that FedEx did not provide the pilots-in-command with accurate information about the amount of hazardous materials on several flights in 2014. Those shipments contained radioactive and flammable materials.
- $54,000 against Aqua-Chem, Inc. for offering UPS an undeclared shipment containing six plastic containers of corrosive phosphoric acid solution.
- $54,000 against Rust-Oleum Corp. for offering four containers of spray paint for shipment aboard a FedEx aircraft.

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

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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).

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DOT ISSUES FINAL RULE FOR AIRPORT DISABILITY ACCESS

The Department of Transportation issued a final rule entitled "Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance." It amends 49 CFR Part 27, which deals with regulatory requirements for U.S. airports to ensure the availability of lifts to provide level-entry boarding for passengers with disabilities. As a result of the 2008 amendments to Part 382, including extending its application to foreign carriers, the requirements in Part 27 no longer mirrored the requirements in the modified Part 382. This new rule addresses those inconsistencies.

The Department declined to adopt specific requirements with respect to the dimensions, design, materials, and maintenance of service animal relief areas, with the exception that such service animal relief areas be wheelchair accessible (which was already a requirement imposed on airports by the Americans with Disabilities Act). The Department, however, decided to require airports to provide at least one service animal relief area in each airport terminal and decided to use "airport terminals as the standard upon which airports must determine the number of required service animal relief areas, rather than using the amount of time it would take for an individual with a disability to reach a service animal relief area from a particular gate." In addition to requiring airports to have at least one service animal relief area per terminal, the Department also mandated that, with limited exceptions, the relief areas be located in the sterile areas of terminals. Airports will have one year to comply with this requirement.

Several other miscellaneous issues were addressed in the new rule. The Department decided not to adopt a proposed revision that would require airports to specify the location of such service animal relief areas on airport websites and on other signage throughout the airport. Airports operators will, however, be required to ensure "high-contrast captioning at all times on televisions and other audio-visual displays capable of displaying captions located in any gate area, ticketing area, first-class or other passenger lounge provided by a U.S. or foreign carrier, or any common area of the terminal to which passengers have access." Finally, the Department also finalized a proposed rule that will require airports to negotiate with foreign carriers, in addition to U.S. carriers, to ensure adequate provision of lifts, ramps and other devices used for boarding and deplaning of aircraft when level-entry boarding is not available. This requirement has already existed for airport operations with U.S. carriers; the rule will now apply for airport operators with foreign carriers as well.

DOT TARMAC DELAY CONSENT ORDER

Spirit Airlines, Inc. was fined $100,000 for violating the Department's tarmac delay rules, 14 C.F.R. Part 259 and 49 U.S.C. § 41712 and 42301. On July 17, 2014, a Spirit flight was diverted to Houston George Bush Intercontinental Airport (IAH) while en route from Baltimore/Washington Thurgood Marshall International Airport (BWI) to Dallas/Fort Worth International Airport (DFW) due to severe weather at DFW. The aircraft was parked at a hardstand at IAH for 2 hours and 42 minutes. The investigation revealed that 1 hour and 57 minutes into the delay, flight attendants began selling food and beverages to the passengers aboard the flight. The aircraft took off 51 minutes later – three hours and 38 minutes into the delay. Approximately 3 hours and 45 minutes later, when the aircraft reached 10,000 feet,

flight attendants distributed the food and water that was part of Spirit's tarmac delay kit. The investigation found passengers were not offered snacks within the required two hour mark.

CONGRESSIONAL BILL ON CBP PRECLEARANCE ADVANCES IN HOUSE OF REPRESENTATIVES

The U.S. House of Representatives passed H.R. 998, the Preclearance Authorization Act, by voice vote. The Act provides specific requirements that must be met and reviewed by Congress before CBP can establish more preclearance and other customs facilities outside of the U.S. Currently, CBP plans to open facilities in nine more countries.

Under the Act, plans for preclearance facilities must be submitted to Congress for approval. Congress is then charged with assessing the potential benefits, costs, security vulnerabilities and impacts on U.S. air carriers and workers.

In addition, the Act requires CBP to measure the average entry processing time at the 25 U.S. airports with the highest volume on a monthly basis. If those processing times are longer than the processing times at preclearance facilities, CBP will be required to submit a remediation plan and implement it in order to reduce such processing times. If CBP does not submit such a plan within the prescribed time frame, CBP will be barred from conducting negotiations with interested countries or opening new preclearance facilities.

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.

The bill next goes to the Senate for review.

FAA PROPOSES HAZMAT PENALTIES AGAINST FOUR COMPANIES

The FAA recently proposed civil penalties ranging from $54,000 to $63,000 against four companies for allegedly violating the Hazardous Materials Regulations (HMR). In each case, the FAA alleged 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 Sherwin-Williams Company for offering for shipment aboard a FedEx flight 10 cans of flammable paint. The shipment was discovered leaking by FedEx employees at a sorting facility.

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- $63,000 against Rock Water Energy Solutions for offering for shipment aboard an Envoy Airlines passenger flight five spray cans of flammable aerosol paint in a checked baggage. The cans released paint in the cargo hold.

- $58,350 against Buschur Racing for offering for shipment aboard a UPS flight 10 cans of flammable aerosol spray. The shipment was discovered at a UPS sorting facility.

- $54,000 against X-Chem, LLC for offering for shipment aboard a FedEx flight five bottles of flammable liquids and one bottle of corrosive material.

FAA PROPOSES CIVIL PENALTIES

- 380,600 against Leading Edge Aviation Services, an aircraft repair station, for allegedly violating drug and alcohol testing regulations. The FAA alleges that the company hired 29 individuals for safety-sensitive positions but did not include them in the company's random drug and alcohol testing pools as required. Also, Leading Edge did not ask 18 employees in safety-sensitive positions about their DOT pre-employment drug or alcohol testing at other companies they had applied to for safety-sensitive positions in the past two years. The FAA also alleges that the company hired 6 individuals for safety-sensitive prior to receiving verified negative pre-employment tests and finally, the company improperly used DOT forms to document drug tests.

- $325,000 against Southwest Airlines for allegedly operating an aircraft that was not in compliance with Federal Aviation Regulations. During an aging aircraft inspection, an FAA inspector found that Southwest improperly recorded a temporary repair to the aircraft's rear cargo door as a permanent repair This fuselage damage was initially reported in Southwest's maintenance records in May of 2002 and the temporary repair was made. Southwest was required to complete a permanent repair within 24,000 flights and inspect the temporary repair every 4,000 flights. The FAA alleges Southwest operated the aircraft on 24,831 flights without the required periodic inspections and operated the plane beyond the 24,000 flights without performing a permanent repair.

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, Drew Derco at dderco@eckertseamans.com or 202.659.6665 or Reese Davidson at rdavidson@eckertseamans.com or 202.659.6633.

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CONGRESS EXTENDS FAA FUNDING; PREVENTS GOVERNMENT SHUTDOWN

The United States Senate and U.S. House of Representatives voted yesterday to adopt H.R. 3614, the Airport and Airway Extension Act of 2015, which is a stopgap measure to extend the current programs and policies of the Federal Aviation Administration (FAA) through March 31, 2016. Without this action, the FAA's current authorization, which expires on September 30, 2015, would have lapsed, likely resulting in a government shutdown. Many had expected Congress to conclude a long-term FAA bill by September 30, 2015 that addressed contentious issues such as air traffic control reform and passenger facility charges, but Congress was unable to do so. With passage by Congress, the bill now goes to President Obama, who is expected to sign the measure into law. Congressional leaders anticipate that with this extra time they will be able to develop a final long-term FAA reauthorization bill that will gain support in both the House and Senate.

UPDATE ON IRAN AND CUBA SANCTIONS

Ongoing diplomatic efforts between the United States and Cuba and Iran are likely to continue to impact aviation regulatory matters. Details of recent developments with Iran and Cuba are below.

Cuba: The U.S. Departments of Treasury and Commerce issued new regulations on September 21, 2015 regarding Cuba in a continued push to loosen the sanctions regime against that country. The most relevant update concerns the Department of Commerce's amended rule on the export and re-export of items related to aviation safety. Under the rule, Commerce will consider export license applications that relate to items intended to ensure the safety of Cuban civil aviation. Items that will be reviewed pursuant to this policy include aircraft parts and components related to safety of flight, weather observation stations, airport safety equipment, and commodities used for security screening of passengers.

A U.S. negotiating team traveled to Havana this week to engage in talks about a new U.S.-Cuba air services agreement and we will keep you updated on any new developments.

Iran: The emerging diplomatic agreement with Iran will likely result in a near-term lifting of sanctions against Iran. Sanctions are likely to be lifted sometime in 2016 when the International Atomic Energy Agency certifies that Iran has complied with its obligations under the agreement (the so-called "Implementation Day"). Until then, non U.S.-persons involved in the export of U.S.-origin goods may apply for specific licenses authorizing export of such goods that are related to the inspection and repair and/or servicing of commercial aircraft in Iran. Secretary of State John Kerry has also announced that Ambassador Stephen Mull will be the U.S. Lead Coordinator on implementing the Iran deal.

FAA PROPOSES NEW OVERFLIGHT FEES

Operators of aircraft that transit U.S. airspace without taking off or landing in the United States must pay overflight charges based on their individual operations. The FAA recently proposed an increase in overflight charges, as the relevant rates were last set in 2011. Specifically, the FAA is proposing an

across-the-board increase of 9% for all overflight fees, beginning in October 2017. A copy of the notice of proposed rulemaking can be found here. Comments on the proposal are due on or before October 27, 2015.

DOT CLARIFIES MEANING OF "IN EASILY ACCESSIBLE FORM"

The U.S. Department of Transportation's Enhancing Airline Passenger Protections; Final Rule (Consumer Rule 2) requires carriers to post on their website copies of their tarmac delay plans, customer service plans and conditions of carriage. These documents must be made available to the travelling public and posted on-line "in easily accessible form." Industry stakeholders interpreted this requirement in myriad ways, which led DOT to issue updated guidance as to its specific interpretation of the term "in easily accessible form" in the context of the above-referenced requirement. DOT's updated guidance notes that the purpose of the requirement is to ensure that consumers can easily find those documents and suggested that carriers consider placing links on their homepage that would take consumers to those relevant documents. It would not be acceptable for a carrier to make its tarmac delay plan, customer service plan, or conditions of carriage available only after a consumer clicks through numerous links or pages on the website. DOT's guidance is useful in determining how DOT will evaluate carrier websites and how it will assess possible enforcement action for non-compliance.

DOT EXTENDS COMMENT PERIOD FOR PART 382 INFORMATION COLLECTION

On November 12, 2013, the Department published a final rule amending 14 C.F.R. part 382, to require airlines to ensure that their websites are accessible to individuals with disabilities. Among numerous other requirements, the final rule established the following two new information collection requirements: (1) by December 12, 2015, carriers must provide an online mechanism for passengers to request disability accommodation services (e.g., enplaning/deplaning assistance, deaf/hard of hearing communication assistance, escort to service animal relief area, etc.) for a particular flight; and (2) by December 12, 2016, carriers must ensure that when a user activates a link on a carrier's primary Web site to embedded third-party software or to an external Web site, a disclaimer is displayed notifying the user that the application or web site may not be accessible.

DOT provided 60 days for interested parties to submit comments on either (or both) of these new information collection requirements. The Department received no comments and has elected to extend the comment period for an additional 30 days to give the public additional time to comment.

Comments are now due by October 28, 2015.

FAA SIGNS TWO NEW INTERNATIONAL AGREEMENTS

The FAA has announced two new agreements with the following international regulatory partners: European Aviation Safety Agency (EASA) and Transport Canada (TCCA). The agreements aim to eliminate duplicate processes, have safety enhancing equipment installed on aircraft more quickly, and

lead to cost and time savings by allowing the safety authorities to rely on each other's respective regulatory systems.

As a result of the new agreements, producers of equipment approved under Technical Standard Orders (TSOs) or Supplemental Type Certificates (STCs) will in most cases only have to go through the regulatory process once, whether that process is completed in the U.S., Canada or one of the European countries that fall under EASA's regulations.

FAA SUMMER 2016 SCHEDULING SEASON DEADLINE IS OCTOBER 8, 2015

The FAA has announced a submission deadline of October 8, 2015 for summer 2016 flight schedules at Los Angeles International Airport (LAX), Chicago O'Hare International Airport (ORD), San Francisco International Airport (SFO), John F. Kennedy International Airport (JFK), and Newark Liberty International Airport (EWR) in accordance with the International Air Transport Association (IATA) Worldwide Slot Guidelines. The October 8, 2015 deadline coincides with the schedule submission deadline for the IATA Slot Conference for the summer 2016 scheduling season. Carriers with operations at any of these airports must submit their schedules to the FAA Slot Administration Office by that date.

DOT CONSENT ORDERS

- Denied Boarding Compensation - American Airlines was fined $20,000 for failing to comply with DOT's oversales rule, 14 C.F.R. Part 250. Following an investigation of a complaint filed with the Aviation Consumer Protection Division (ACPD), the Department found that American violated Part 250 in the manner it handled Ms. Doe and 12 other members of her party after they were involuntarily denied boarding at Miami International Airport. The passengers flew from Orlando to Miami where they were scheduled to connect to an onward flight to London's Heathrow Airport. The reservations for the group on the Heathrow leg were confirmed and they received boarding passes in Orlando. When the group arrived at the gate in Miami, however, they were pulled aside and told they could not board the Heathrow flight and were directed to the rebooking desk to reschedule their flight. Two of the passengers eventually obtained seats on the flight, but Ms. Doe and the remaining passengers had to rebook on another set of flights departing the next day to London via Barcelona.

- American Airlines acknowledged in its initial response that Ms. Doe's group held valid, confirmed tickets and were entitled to denied boarding compensation (DBC). American stated that each adult was entitled to either a check for $168 or a $209 travel voucher, and each child passenger was entitled to either a check for $125 or a $156 travel voucher. American responded to Ms. Doe and the Enforcement Office on several occasions in response to questions by the Enforcement office on American's calculation of DBC. In its final response regarding the complaint, American reached the conclusion that each passenger should receive $848 in compensation.

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- The Department conducted an oversales complaint investigation in February 2015 and found that since at least 2008, American had misclassified involuntarily denied boardings as voluntary denied boardings which violated sections 250.10 and 49 U.S.C. § 41708. Because this misclassification impacted the accuracy of American's data on oversales as reflected in the DOT Air Travel Consumer Reports (ATCR), DOT concluded that it constitutes unfair and deceptive practice and unfair method of competition in violation of 49 U.S.C. § 41712.

- Economic Authority – Beijing Capital Airlines d/b/a Deer Jet was fined $40,000 for operating unauthorized air transportation between the United Kingdom and the United States in violation of 49 U.S.C. §§ 41301 and 41712. Beijing Capital did not hold a foreign air carrier permit or an exemption from the DOT's permit requirements when it operated a charter flight between the United Kingdom and the United States on September 10, 2014.

FAA PROPOSES DRUG AND ALCOHOL TESTING CIVIL PENALTIES

The FAA recently proposed several civil penalties ranging from $173,500 to $211,000 against three companies for alleged violations of the federal drug and alcohol testing regulations.

- $173,500 against Servisair LLC for failing to include ten of its safety-sensitive employees in random drug and alcohol testing pools in 2013. The FAA further alleged that the company conducted eight random drug tests in 2013 when it should have conducted 19 random drug tests.

- $174,600 against Mesa Airlines for failing to place six employees hired for safety-sensitive positions in its random drug and alcohol testing pools. The FAA further alleged that the company failed to notify the agency when an FAA certified mechanic refused to submit to a drug test within the two day period specified in the regulations, and that Mesa used a DOT drug testing form when conducting a non-DOT drug test. Finally, Mesa allegedly failed to ensure its contract for Medical Review Officer (MRO) services included a provision requiring the company to transfer records, including those related to positive drug results, to a new MRO Mesa might hire.

- $211,000 against Dukes Aerospace Inc. for failing to: (1) include four of its safety sensitive employees in random drug and alcohol testing pools; (2) receive verified negative reports prior to transferring nine employees into safety sensitive positions; (3) ask ten safety sensitive employees required drug and alcohol testing questions; (4) use a valid method of random selection for a drug test, and conduct a random drug test on two employees rather than the alcohol test they were selected for; (5) properly conduct a urine specimen collection; and (6) maintain required elements in the company's drug and alcohol testing policy.

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ADDITIONAL CIVIL PENALTIES PROPOSED BY FAA

The FAA recently imposed the following, additional civil penalties:

- $735,000 against the City of Cleveland for failing to meet FAA requirements for maintaining a safe airport during winter weather. The FAA alleged that over a 15 month period ending in March 2015, the managers at Cleveland's Hopkins International Airport failed on numerous occasions to keep the runways and taxiways safe and clear of snow and ice.

- $154,000 against G&B Investment Management (G&B), N3344D Partners, LLC, Two Five Delta, LLC, and Gene Curtis for conducting commercial flight operations in violation of the Federal Aviation Regulations. Each of the above mentioned entities was controlled by Gene Curtis. The FAA alleged Mr. Curtis entered into an agreement under which he offered air transportation for compensation using two aircraft owned and operated by Curtis and G&B. These services were provided on 12 occasions. The aircraft were operated without an air carrier certificate, DOT economic authority and operations specifications. The FAA also alleged Mr. Curtis and the entities did not comply with operational and maintenance rules relating to commercial operations and advertised the operations without FAA authority.

- $360,000 against Empire Airlines, Inc. for operating an aircraft not in compliance with Federal Aviation Regulations. One of the airline's aircraft experienced a lightning strike and the aircraft maintenance manual required the propeller be removed from service and inspected for damage following such an event. The FAA alleged that Empire inspected the aircraft but did send the propeller to an authorized repair station. The airline operated the aircraft on 35 revenue flights before sending the propeller to an authorized repair station.

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DOJ WEIGHS IN ON GULF CARRIER DISPUTE; DELTA TO LEAVE TRADE GROUP

The Department of Justice (DOJ) has raised concerns about demands by American, Delta and United that the U.S. government take action in response to the alleged receipt of government subsidies by Emirates, Etihad and Qatar Airways. DOJ does not have jurisdiction over the dispute and did not file any comments in the public DOT docket that was open until August. According to press reports, DOJ was asked specific questions by the three agencies charged with evaluating the dispute (the Departments of Commerce, State and Transportation). In response, DOJ antitrust officials warned of higher airfares and fewer choices for customers if DOT took any action to block flights by the three Gulf carriers. So far, the U.S. Government has not taken any action nor has it announced a timeline for completing its review of the subsidy allegations.

In other news, Delta announced that it will leave the U.S. airline trade group Airlines For America (A4A) effective April 2016. Delta's departure comes amidst strong policy differences with A4A over the Gulf Carrier dispute, Air Traffic Control reform, and the role of the Export-Import Bank. In Europe, several carriers have left the Association of European Airlines (AEA) and are in the midst of creating their own trade group. There are plans to call the new trade group Airlines for Europe (A4E) to mirror the name of the U.S. trade group.

DELTA FILES LAWSUIT AGAINST REGIONAL PARTNER

Delta has filed a lawsuit against regional partner Republic Airways alleging that Republic has failed to fly certain Delta Connection flights as required under the parties' contract. Republic has been facing a pilot shortage that has forced it to curtail certain flying. In a state court filing in Atlanta, Delta alleged that it has suffered millions in lost profits because of Republic's inability to operate all of the flights promised in the two airlines' contract. The dispute comes at a time of great uncertainty as the regional airline industry faces new FAA requirements for minimum number of hours of flight experience before regional airlines can hire pilots. This has in turn exacerbated a pilot shortage.

FAA BACKS BAN ON SHIPPING LITHIUM BATTERIES ON PASSENGER PLANES

U.S. officials will support a proposed international ban on shipping rechargeable lithium batteries as cargo on passenger airlines. The U.S. will back the proposed ban at an International Civil Aviation Organization (ICAO) meeting on the safety of lithium battery shipments and is the first time that the U.S. has taken an official position on the issue.

Pursuant to a 2012 Congressional statute, the FAA cannot act on its own to bar lithium battery shipments unless ICAO issues more stringent regulations. The passenger airline ban could mean that some places will not receive battery shipments because cargo airlines often pay passenger airlines to transport shipments to destinations they do not serve. The ban would not apply to cargo airlines or to lithium-ion batteries that are packed inside equipment. There is no firm timeline for when ICAO might adopt the proposed ban.

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FAA ISSUES COMPLIANCE PHILOSOPHY DE-EMPHASIZING ENFORCEMENT

On October 15, 2015, Administrator Michael Huerta announced a new FAA "Compliance Philosophy" that aims to de-emphasize enforcement as a means of ensuring compliance in favor of a more collaborative approach that is intended to identify and resolve problems before they result in an accident.

The new policy recognizes that "most operators voluntarily comply with both the rules and the core principles" and that even the most compliance-oriented operators will make unintentional errors. The agency will now rely to a greater extent on training or documented improvements to the extent a deviation from the rules results from flawed procedures, simple mistakes, a lack of understanding, or diminished skills. "We don't want operators who might inadvertently make a mistake to hide it because they have a fear of being punished .... [i]f there is a failing, whether human or mechanical, we need to know about it, to learn from it and make the changes necessary to prevent it from happening again."

Huerta emphasized that FAA will continue to have a zero-tolerance policy for intentionally reckless behavior and inappropriate risk taking and will take enforcement action in cases of "willful or flagrant violations, or for refusal to cooperate in corrective action." The FAA will train all employees on the new Compliance Policy, will use "data, not calendar dates" to guide its surveillance and inspection programs, and has emphasized to its inspectors that they must work with operators to identify risks and the most appropriate tools needed to permanently fix the problems.

CBP ISSUES INTERIM FINAL RULE ON ACS REPLACEMENT

On November 1, 2015, the Automated Commercial Environment (ACE) will be a CBP-authorized Electronic Data Interchange (EDI) System. CBP's Automated Commercial System (ACS) is being phased out as an authorized EDI System for the processing of electronic entry and entry summary filings. ACE will replace the ACS as the authorized EDI system for processing commercial trade data.

The ACS is currently used by CBP to track, control, and process all goods imported into the United States. By the end of 2016, ACE will become the primary system through which the trade community will report imports and exports and the government will determine admissibility.

DOT ISSUES INTERIM FINAL RULE ON E-CIGARETTES

On October 23, 2015, DOT issued an interim rule prohibiting passengers and crewmembers from carrying battery-powered portable electronic smoking devices (e.g., e-cigarettes, e-cigs, e-cigars, e-pipes, e-hookahs, personal vaporizers and electronic nicotine delivery systems) in checked baggage and also prohibits passengers and crewmembers from charging the devices and/or the batteries while on board the aircraft. However, these devices may continue to be carried in carry-on baggage.

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FAA PROPOSES CIVIL PENALTY AGAINST UAS OPERATOR

The FAA has proposed a civil penalty of $1.9 million against UAS operator SkyPan International for endangering airspace safety. This is the largest civil penalty the FAA has proposed against an Unmanned Aircraft Systems (UAS) operator to date.

The FAA alleged that SkyPan conducted 65 commercial unauthorized UAS flights involving aerial photography between March 2012 and December 2014. The flights took place in New York City and Chicago. The company flew 43 of the 65 flights in restricted New York Class B airspace without receiving air traffic control clearance to access the airspace.

The FAA further alleged that the aircraft used in all 65 flights lacked an airworthiness certificate, effective registration and that SkyPan did not have a Certificate of Waiver or Authorization for the flights.

DOJ EMPHASIZES INDIVIDUAL ACCOUNTABILITY FOR CORPORATE MISCONDUCT

The DOJ has issued a memorandum (the Yates memorandum) announcing its intention to target individuals for corporate misconduct. The memo with the new rules was issued to prosecutors across the country and states that fighting corporate fraud and other misconduct is a top priority for the DOJ. In order to carry out its mission, DOJ noted that one of the most effective ways to fight corporate misconduct is to seek accountability from the individuals who perpetrated the misconduct. The new policy is designed to make sure all attorneys across the DOJ are consistent in efforts to hold individuals responsible for illegal corporate actions and is in response to criticism that DOJ often targets corporations but does not hold individuals accountable for corporate malfeasance.

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November 2015

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ICAO REJECTS BAN ON LITHIUM BATTERIES IN PASSENGER JETS

In an 11-7 vote, an International Civil Aviation Organization (ICAO) panel voted down a ban on lithium battery shipments in the cargo holds of passenger planes, despite the support of the United States, China, Brazil and other countries and groups. The U.S. had recently taken its first-ever official position on the issue and supported a ban on shipments in the cargo holds of passenger aircraft. Because the Federal Aviation Administration (FAA) is statutorily barred from adopting more stringent lithium battery regulations than ICAO, the FAA finds itself in a bind. However, dozens of U.S. and foreign air carriers have voluntarily stopped carrying lithium battery shipments in the cargo holds of passenger flights.

LOW-COST CARRIERS URGE GREATER SLOT ACCESS

Representatives of five low-cost carriers (Alaska, Allegiant, Frontier, Spirit and Virgin America) wrote a letter to the U.S. Department of Transportation on November 3rd urging the Department to reform the slot allocation process at slot-restricted airports around New York City. The Department recently sought public comment on a Notice of Proposed Rulemaking (NPRM) that would alter the slot allocation procedures at JFK, LGA and EWR airports. The letter from the five carriers urged the Department to implement the rule in order to maximize opportunities for new-carrier entry. They noted that New York City is the largest and most important travel market in the country and that each of the carriers had been unsuccessful in obtaining slots to expand service at those airports. Specifically, the five carriers urged the Department to: tighten the slot utilization rule, allocate unused slots to new entrants, establish a robust secondary market for slots, review slot transactions for anti-competitive effects, allocate slots via statutory exemption and evaluate proposals for a minimum average seat requirement.

DOJ SUES TO PREVENT UNITED-DELTA SLOT SWAP

Days after the five low-cost carriers sent the above letter complaining about the lack of slot access at New York City airports, the U.S. Department of Justice (DOJ) filed a lawsuit seeking to block a slot-swap agreement between Delta and United. DOJ claimed that the deal, which would involve United acquiring 24 slots from Delta at EWR, would further contribute to United's dominant position at the airport and lead to higher airfares and fewer choices for the 35 million passenger a year who use EWR. DOJ also alleged that United does not use as many as 82 slots a day that could otherwise be used by competitors. DOJ chose not to challenge a related deal that involves Delta acquiring a similar number of slot pairs from United at JFK; DOJ noted a different competitive environment at JFK to explain its enforcement posture.

FAA UAS TASKFORCE ISSUES NEW RECOMMENDATIONS

In sharp contrast to DOT's protracted rulemaking on small unmanned aircraft systems ("SUAS"), FAA's task force on UAS registration issues, formed in late October 2015 in response to an alleged and highly-publicized increase in unsafe UAS operations, issued a set of recommendations on November 21. The task force solicited public comments on the registration of small unmanned aircraft systems ("SUAS") and took it into account and the participants - who represented UAS manufacturers, model aircraft

operators, sUAS interest groups, retail companies seeking to operate sUAS for commercial purposes, general aviation, and the airline industry - met for three days before coming to a consensus recommendation.

According to the recommendations, "the Task Force undertook the task to develop and recommend a registration process that ensures accountability for users of the NAS and encourages a maximum level of compliance with the registration requirement, while not unduly burdening the nascent UAS industry and its enthusiastic owners and users of all ages." And while FAA's October 22 notice and request for comments clarified that the statutory requirements regarding aircraft registration of UAS apply to aircraft used for recreational or hobby purposes, the final recommendations acknowledge that the task force lacked time to assess the impact of a registration requirement on the recreational operation of model aircraft.

The Task Force's recommendations are non-binding. FAA's eventual registration requirements may differ in one or more important respects from those suggested by the Task Force, although nothing in the recommendations indicates that FAA is opposed to any of the suggested approaches; if changes are eventually made, it is likely they will address the scope of the registration requirement and the recommendation that all sUAS weighing more than 250 grams - which would include a variety of so-called "toy sUAS" - be subject to a registration obligation.

DOT CONSENT ORDERS

- Violation of the 24-hour Reservation Hold Rule – The Enforcement Office found that American Airlines violated the 24 hour reservation hold rule, 14 CFR § 259.5(b)(4) and the statutory prohibition against unfair and deceptive trade practices, 49 U.S.C. § 41712, following the airline's cancellation of 605 tickets placed on hold after a mistaken fare sale.

American Airlines experienced a technical error on its U.S. website on March 17, 2015 between 5:00 pm and 10:00 pm EDT ("sale period). During this period, full fare business class tickets (including taxes, fees and surcharges) between select U.S. cities and Shanghai or Beijing China, were offered for sale at between $400 and $800 per ticket. The average full fare cost of the same tickets on American Airlines for the city pairs during the days immediately before and after the sale ranged between $4,500 and $5,000. A total of 1194 reservations were made during the sale period, while only 100 reservations per day were made in the five days prior to the sale. American attributed this disparity to social media, which publicized the mistaken fares. Of the 1194 reservations made during the sale, 809 were purchased immediately and the remaining 605 reservations were placed on a 24 hour hold. American honored the purchased tickets and canceled the tickets that were on hold.

American Airlines and DOT reached a settlement and American agreed to compensate the holders of the cancelled reservations by either offering a zero dollar economy class ticket, (plus taxes and fees), or a reduced price business class ticket to China between the same city pairs as the cancelled tickets

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- Violation of Full-Fare Rule – Middle East Airlines (MEA) was fined $10,000 and ordered to cease and desist similar violations of 49 U.S.C. §41712 and 14 CFR § 399.84. DOT found that MEA violated the full-fare rule by including a carrier-imposed fee within an amount described as "taxes" on its U.S. directed website.

In December of 2013, a third party complaint was filed against MEA for allegedly violating DOT's full-fare price rule. The complainant states he used MEA's website to obtain coach-class travel from New York, New York, to Beirut, Lebanon. The site displayed a ticket price of $633.00 plus taxes of $734.84 for a final cost of $1,397.84. The complainant stated there is no tax of $734.84 and alleged MEA mischaracterized a carrier-imposed fee or surcharge as a tax, which is in violation of DOT regulations. MEA answered in January of 2014 and took corrective action to modify the website to confirm to DOT requirements.

MEA argued that because it does not have DOT economic authority, does not operate to the United States directly or in a codeshare arrangement and is not a ticket agent, DOT did not have jurisdiction to enforce section 399.94. However, DOT found that MEA is a ticket agent because it "sells, offers for sale, negotiates for, or holds itself out as selling, providing, or arranging for, air transportation" and is therefore subject to section 399.84.

CIVIL PENALTIES PROPOSED BY FAA

- $68,000 against Unical Aviation Inc. for allegedly violating Hazardous Materials Regulations. The FAA alleges that on July 21, 2015, Unical knowingly offered undeclared hazardous material shipments to FedEx for transport by air. The shipments contained Protective Breathing Equipment Units, which contain an oxygen generator chemical. The chemical can cause or enhance combustion of other materials. The FAA further alleged that in addition to failing to declare the hazardous materials being transported, the company also failed to properly class, describe, package, mark, and label the shipments as containing hazardous materials, and did not provide emergency response information with the shipments.

- $200,000 against Detroit's Wayne County Airport Authority (WCAA) for allegedly failing to maintain safe airfield conditions during a November 2014 storm. The FAA alleged that WCAA, which operates Detroit Metro-Wayne County International Airport (DTW), did not follow the FAA-mandated Snow and Ice Control Plan (SICP) during the November storm and allowed various DTW airfield surfaces to become unsafe. WCAA also did not limit air carrier operations to safe portions of the airfield. The FAA further alleged that WCAA did not notify airlines of changing runway conditions, failed to activate the DTW "snow desk", and did not conduct frequent runway inspections during the storm.

- $240,000 against Helicopter Transport Services for allegedly operating a helicopter not in compliance with Federal Aviation Regulations. The FAA alleged that on October 8, 2012, Helicopter Transport Services installed an unauthorized gearbox in a Sikorsky S61R10 and operated the helicopter 37 times when it was not in airworthy condition.

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- $509,180 against Martinaire Aviation LLC, for allegedly violating Hazardous Materials Regulations. The FAA alleged the cargo carrier failed to comply with Notification to Pilot-In-Command (NOPIC) requirements for carrying hazardous materials onboard an aircraft. The purpose of NOPIC is to "provide pilots and emergency responders with complete information about hazardous materials on aircraft for emergency response purposes." The FAA alleged that the company did not comply with NOPIC on board its aircraft for 43 flights between October and December 2013. The cargo on those flights included toxic, corrosive and flammable materials as well as ammunition.

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CONGRESS TO TIGHTEN VISA WAIVER PROGRAM

On December 18, the U.S. House of Representatives passed the Visa Waiver Program Improvement and Terrorist Travel Prevention Act when it passed its fiscal year 2016 Omnibus Appropriations Bill. The appropriations bill was later signed into law by President Obama. The Terrorist Travel Prevention legislation includes wide-ranging reforms of the Visa Waiver Program intended to prevent persons with ties to countries that support terrorism from gaining entry to the U.S. as citizens of countries participating in the Visa Waiver Program. (Residents of participating countries are permitted to enter the U.S. without first obtaining a Visa.)

The most prominent provision of the Act prohibits citizens of Syria, Iraq, Iran, or Sudan, or travelers who have visited these countries within the last four years, from entering the U.S. under the terms of the waiver program. While the Department of Homeland Security has expressed some concern over its ability to enforce this particular travel restriction, carriers providing transportation to the U.S. should assume that the restrictions will become effective as proposed. In addition to the restrictions discussed above, the bill includes a number of additional modifications to the VWP, such as:

- Starting April 1, 2016, persons traveling under the VWP must present electronic passports that comply with international standards, are machine readable, and include biometric information on the passenger.
- No later than 270 days after the bill becomes law, participating countries must certify that they are consulting Interpol databases and information sources to screen each non-citizen entering or exiting their country for "unlawful activities" and that they are sharing any relevant information collected with the U.S.; countries that do not comply with the screening and sharing requirements may be lose their designation as a VWP participant.
- The bill mandates that the Secretary of the Department of Homeland Security, Secretary of State, and National Security Director determine within 60 days of the bill becoming law (i.e., after the bill is signed by President Obama) whether any other countries constitute "areas of concern" based on their support for terrorism and/or policy of harboring terrorists.
- Within 60 days of the bill becoming law, the Secretary of Homeland Security shall submit a report to Congress evaluating each VWP participant country's potential terrorist threat to the U.S. and whether any participant country presents a "high risk" of terrorism to the U.S. and should be prohibited from participating in the VWP.
- The bill further requires that the Secretary of Homeland Security submit a report to Congress within 90 days of the bill becoming law on each VWP participant country's compliance with the program's requirements and the potential threat to U.S. security each country's participation in the program may or may not represent.

DOT CONSIDERS NEGOTIATED RULEMAKING FOR PASSENGERS WITH DISABILITIES

The U.S. Department of Transportation has announced the hiring of a neutral convenor, Richard Parker of the University of Connecticut School of Law, to evaluate a negotiated rulemaking that would develop

additional requirements to ensure that passengers with disabilities enjoy equal access in the air transportation system. The additional requirements might include issues that the Department deferred final action on in its 2008 final rule and also account for developments since 2008. The Department specifically noted several areas that the negotiated rulemaking will consider including:

- Ensuring that in-flight entertainment is accessible to passengers with disabilities
- Increasing access for passengers dependent on in-flight medical oxygen
- Clarifying the definition of a service animal
- Ensuring that passengers wishing to travel with pets cannot falsely claim that they are service animals
- Evaluating whether premium economy is a different class of service for disability rule purposes

Under a negotiated rulemaking, a neutral convenor assists an agency to determine the scope of issues appropriate for a rulemaking process. If the Department decides to proceed, it then invites interested parties likely to be affected to work with the agency on an advisory committee to help form a consensus on the appropriate rule. The Department noted that interested parties might include advocacy groups and organizations, airlines, airports, manufacturers, service animal training organizations and more. If consensus is reached, the Department can then issue a proposed rule for public comment under routine rulemaking procedures.

FAA ISSUES UNMANNED AIRCRAFT SYSTEMS (UAS) REGULATIONS

Under new Federal Aviation Administration (FAA) UAS regulations, persons who operate UAS weighing more than 0.55 pounds (250 grams) and less than 55 pounds (approx. 25 kilograms) for hobby and recreational purposes must register with FAA using either a paper application or web-based application. The rule does not cover operators who either fly or plan to fly UAS in connection with a commercial activity and is limited to those persons who operate UAS as "model aircraft." The rule requires any owner of a small UAS who has previously operated an unmanned aircraft exclusively as a model aircraft prior to December 21, 2015 to register no later than February 19, 2016 while owners of any other UAS purchased for use as a model aircraft after December 21, 2015 must register before the first flight outdoors. Upon submission of their name, home address, and email, UAS registrants will receive a Certificate of Aircraft Registration/Proof of Ownership and unique identification number that is valid for three years and may be used in connection with each of the registrant's UAS. FAA is waiving the $5.00 registration fee from Dec. 21, 2015 to Jan 20, 2016 to encourage model aircraft/UAS operators to register with the agency. According to FAA's press release, an online registration system to support registration of UAS used for commercial purposes will be launched by spring of 2016.

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