

## July 2020 Aviation Regulatory Update

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### TRANSPORTATION INDUSTRY ASKS DOT TO PROMULGATE MANDATORY MASK REGULATION

On July 27, 2020, the Transportation Trades Department, AFL-CIO (TTD), including 33 of its affiliated unions, filed a petition for rulemaking, [available here](#), with the U.S. Department of Transportation (DOT or the Department). The petition asks DOT to expeditiously promulgate regulations mandating the usage of masks or face coverings for passengers travelling with DOT-regulated commercial transportation providers during the course of the Presidential Declaration of Emergency for COVID-19. TTD believes that DOT has the broad authority to take this action to improve workforce health and safety to protect workers from dangerous health conditions such as COVID-19. TTD argues that the current patchwork of state and local requirements is insufficient to protect frontline transportation workers, as evidenced by the numerous cases of infections and deaths reported to TTD by its associated unions. TTD is also asking DOT to exercise its authority under Section 553(b)(3)(B) of the Administrative Procedure Act (APA), allowing DOT to suspend the normally required notice and comment period and proceed to an immediately effective Interim Final Rule. This order is set to expire on **December 31, 2020**, unless continued further.

### FAA ORDERS EMERGENCY INSPECTIONS OF 2,000 BOEING 737S

On July 23, 2020, the FAA issued an emergency airworthiness directive (AD), [available here](#), for owners and operators of Boeing model 737-300, -400, -500, -600, -700, -700C, -800, -900, and -900ER series airplanes, but not the 737 Max which has remained grounded since March 2019. The AD was prompted by four recent reports of single-engine shutdowns due to engine bleed air 5th stage check valves being stuck open. This condition, if not addressed, could result in compressor stalls and dual-engine power loss without the ability to restart, which could cause a forced off-airport landing. Per the AD, airlines must inspect the aircraft for valve corrosion, and if corrosion is found, the valves must be replaced before the aircraft is returned to service. As FAA regulations only require owner/operators of U.S.-registered aircraft to comply with the requirements of ADs issued by the FAA, operators of foreign registered aircraft are not required to comply.

### DOT UPDATES JUNE 22 INDIAN AIR CARRIER ORDER

On July 17, 2020, DOT issued a new order, [available here](#), notifying the National Aviation Company of India Limited d/b/a Air India that it is rescinding restrictions that were previously placed on the airline. By Order 2020-6-13, served June 22, 2020, DOT notified Air India that it would be required, effective 30 days after the service date of that order, to obtain prior approval from DOT in the form of a statement of authorization before operating any Third- and/or Fourth-Freedom charter flights to or from the United States because the Government of India (GoI) had imposed restrictions that prevented U.S. air carriers from making full use of their charter rights in the U.S.-India market. Due to recent negotiations with the GoI, DOT has determined that the restrictions are no longer necessary.

### **NTSB MAKES FINAL DETERMINATION ON ATLAS AIR CRASH**

On July 14, 2020, the National Transportation Safety Board (NTSB) determined during a public board meeting that Atlas Air flight 3591 crashed in Trinity Bay, Texas because of the first officer's inappropriate response to an inadvertent activation of the airplane's go-around mode, resulting in his spatial disorientation that led him to place the airplane in a steep descent from which the crew did not recover. The NTSB cited the captain's failure to adequately monitor the airplane's flightpath and to assume positive control of the airplane to effectively intervene during the crash. The NTSB also cited the pilot selection and performance measurement practices as a contributing factor after finding that the first officer took deliberate actions to conceal his history of performance deficiencies, and that Atlas failed to evaluate the first officer's unsuccessful attempt to upgrade to captain at his previous employer. The NTSB further found that the pilot records database, which the FAA failed to meet the deadline for implementing, would have provided the relevant information about the first officer's long history of training performance deficiencies.

Based on the investigation, the NTSB issued six new safety recommendations to the FAA and reiterated six previously issued safety recommendations to the FAA. The new safety recommendations concern flight crew performance, industry pilot hiring process deficiencies such as the implementation of the pilot records database, and adaptations of automatic ground collision avoidance system technology. The reiterated safety recommendations seek the installation of cockpit imaging recorders on all aircraft operated under Parts 121 or 135 required to have cockpit voice and flight data recorders and address maintaining accurate pilot training records.

### **FAA EXPANDS TEMPORARY CERTIFICATE RENEWAL GRACE PERIOD**

On June 29, 2020, the FAA issued an amendment to Special Federal Aviation Regulation (SFAR) 118, [available here](#), expanding on temporary provisions issued in April which extended relief for pilots and other certificated industry professionals who have certain qualifications, medical certificates and training due for renewal during the COVID-19 pandemic. The amendment recognizes that airmen continue to experience difficulty complying with certain training, recency, checking, testing and duration requirements even as stay-at-home orders are being rescinded. The amendment extends additional medical certificate relief that the original SFAR provided and expands medical relief to people whose certificates will expire in the coming months. It also expands relief to a new population of airmen who may be unable to satisfy training and qualification requirements due to disruptions caused by COVID-19.

### **NEW EMERGENCY HEALTH ORDER IN PLACE FOR OUT-OF-STATE TRAVELERS ARRIVING IN NEW YORK**

On July 13, 2020, the New York Department of Health issued a new emergency health order, [available here](#), requiring all out-of-state travelers arriving in New York from U.S. [states designated](#) by Executive Order 205 to fill out a form in an effort to identify those individuals who are subject to the order. Enforcement teams will be stationed at airports throughout the state to ensure that forms have been completed, and travelers who leave the airport without completing the form will be subject to a \$2,000 fine and may be brought to a hearing and ordered to complete mandatory quarantine. Forms can be distributed to passengers by airlines before they board planes or after they disembark in New York. This emergency health order also applies to travelers coming to New York by trains and cars and these travelers are expected to out the form online, which is [available here](#).

**SITA AGREES TO PAY \$7 MILLION OFAC PENALTY FOR GTSR VIOLATIONS**

On February 26, 2020, the Office of Foreign Assets Control (OFAC) announced that Société Internationale de Télécommunications Aéronautiques SCRL (SITA) had settled a potential civil liability claim for apparent violations of the Global Terrorism Sanctions Regulations, 31 C.F.R. part 594 (GTSR). Specifically, SITA was alleged to have violated §§ 594.201 and 594.204 of the GTSR between April 2013 and February 2018 when it provided commercial services and software that were subject to U.S. jurisdiction and benefitted certain airline customers after OFAC designated those airlines as specially designated global terrorists (SDGTs) pursuant to Executive Order 13224. SITA agreed to pay \$7,829,640 to settle its potential civil liability for 9,256 apparent violations which had a statutory maximum civil monetary penalty of \$2,453,077,327.

SITA provides commercial telecommunications network and information technology services to the civilian air transportation industry, and membership in the organization is generally open to industry operators worldwide and consists of air transport industry companies and organizations. OFAC initiated an investigation into SITA after discovering that Mahan Air, Syrian Arab Airlines, and Caspian Air — entities previously designated by OFAC as SDGTs — were members of SITA, and that these SDGT airlines may have received or benefitted from SITA's goods, services, and technology in the form of: (1) Type B messaging (TBM) services; (2) Maestro DCS Local ("Maestro"); and (3) WorldTracer, in violation of U.S. sanctions.

**AMAZON AGREES TO PAY \$134,523 SETTLEMENT FOR ALLEGED SANCTIONS VIOLATIONS**

On July 8, 2020, the Office of Foreign Assets Control (OFAC) issued a settlement agreement, [available here](#), through which Amazon agreed to pay \$134,523 for alleged violations of U.S. sanctions. OFAC alleged that the violations were related to deficiencies in Amazon's sanctions screening processes, which resulted in Amazon providing goods and services to persons sanctioned by OFAC, to persons located in the sanctioned region or countries of Crimea, Iran, and Syria, and to individuals located in or employed by the foreign missions of countries sanctioned by OFAC. Specifically, OFAC alleges that from on or about November 15, 2011, to on or about October 18, 2018, persons located in Crimea, Iran, and Syria placed orders or otherwise conducted business on Amazon's websites for consumer and retail goods and services, and also accepted and processed orders on its websites for persons located in or employed by the foreign missions of Cuba, Iran, North Korea, Sudan, and Syria. Amazon is also alleged to have improperly delivered to individuals on OFAC's List of Specially Designated Nationals and Blocked Persons.

Amazon self-reported the alleged violations after conducting an internal investigation, assisted with OFAC's own investigation of the transactions, and admitted that the company's automated sanctions screening procedures had failed to properly detect the transaction. As part of the settlement, Amazon will also undertake remedial measures, including a revamp of its compliance program, introducing additional screening controls, and increasing training for employees.

**FAA PROPOSES \$101,250 CIVIL PENALTY AGAINST EXODUS AIRCRAFT**

On July 10, 2020, the FAA proposed a \$101,250 civil penalty against Exodus Aircraft LLC, of Wilmington, Delaware, for allegedly violating multiple aircraft-operation regulations. Specifically, the FAA alleged that between May 5, 2019, and Dec. 27, 2019, Exodus operated an Embraer EMB-145EP airplane on 10 flights when the aircraft had not undergone required inspections, the company lacked the required certificate or operations specifications to operate the aircraft, crewmembers had not passed required tests and competency checks, required flight and policy manuals were not prepared, and flight calculations and load manifests had not been completed. Exodus has thirty days to respond to the allegations.

**DOT FINES VOLARIS FOR VIOLATING TARMAC DELAY RULE**

On July 10, 2020, DOT fined Concesionaria Vuela Compañía de Aviación (Volaris) \$70,000 for violating rules prohibiting long tarmac delays. An investigation by DOT's Office of Aviation Consumer Protection found that Volaris Flight 881 on September 13, 2017, from JFK to Mexico City International Airport, experienced a tarmac delay of four hours and 21 minutes prior to departure from JFK, during which passengers were not provided an opportunity to deplane. In addition, Volaris did not provide food to passengers during the entirety of the tarmac delay. Volaris was also ordered to cease and desist from future similar violations.

This Aviation Regulatory Update is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact author Evelyn Sahr at 202.659.6622 or [esahr@eckertseamans.com](mailto:esahr@eckertseamans.com); Drew Derco at 202-659-6665 or [dderco@eckertseamans.com](mailto:dderco@eckertseamans.com); or Andy Orr at 202-659-6625 or [aorr@eckertseamans.com](mailto:aorr@eckertseamans.com) or any other attorney at Eckert Seamans with whom you have been working.