Flight Standards Certificate Holding District Office.

Related Information

(m) EASA airworthiness directive 2006–0223, dated July 21, 2006, also addresses the subject of this AD.

Issued in Renton, Washington, on November 24, 2006.

Kalene C. Yanamura,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. E6–20851 Filed 12–7–06; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

14 CFR Part 399

[Docket No. OST–2003–15759]

RIN: 2105–AD25

Actual Control of U.S. Air Carriers

AGENCY: Office of the Secretary, DOT.

ACTION: Withdrawal of certain proposed amendments.

SUMMARY: Current law requires that U.S. citizens actually control each U.S. air carrier, that U.S. citizens own or control at least 75 percent of the shareholders' voting interest, and that the president and two-thirds of the directors and the managing officers must be U.S. citizens. The Department interprets this law in conducting initial and continuing fitness reviews of U.S. air carriers. We are withdrawing a proposal to modify by regulation the standards we apply in those cases where ''actual control'' by U.S. citizens is at issue.

The proposal being withdrawn would have narrowed the scope of our inquiry in such cases to those core matters affecting compliance with U.S. requirements affecting safety, security, national defense and corporate governance. These rationalized standards for deciding whether U.S. citizens maintained ''actual control'' of a carrier would have applied only to proposed transactions involving investors whose countries have an open-skies air services agreement with the United States and offer reciprocal investment opportunities to U.S. citizens. Our interpretation of other aspects of the statutory citizenship requirement would have been unchanged.

Although we are withdrawing the current proposal, we will continue to consider other ways to rationalize and simplify our domestic investment regime. The need for greater certainty and transparency in our requirements and administrative process has become very apparent. Indeed, public comment in this docket has only served to confirm the Department's growing concern that the current regime is so unduly complex and burdensome that it needlessly inhibits the movement of capital that otherwise would flow into the U.S. airline industry and thus interferes with the legitimate needs of U.S. carriers to attract strategic investors from overseas markets. The Department notes that most of the American economy has progressed well beyond the antiquated notions that continue to apply to the airline industry because of our administrative interpretations of the current statute. In a modern, global industry such as aviation, we believe that the United States should not shut its doors to foreign investment by perpetuating archaic and time-consuming administrative practices that serve neither a statutory purpose nor an identifiable policy interest of the United States.

The Department had also proposed amendments to 14 CFR Part 204, the rules governing the data used in fitness determinations, and invited comment on the procedures used in fitness cases. The Department will publish a separate decision on those matters.

FOR FURTHER INFORMATION CONTACT: William M. Bertram, Chief, Air Carrier Fitness Division (X–56), Office of Aviation Analysis, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590; (202) 366–9721.

SUPPLEMENTARY INFORMATION:

Introduction

Under Title 49 of the U.S. Code, only ''citizens'' of the United States may obtain certificate authority to provide air transportation within the United States or operate as a U.S. air carrier on international routes. (49 U.S.C. 41102 or 41103.) The Department proposed to modify its interpretation of ''actual control,'' an element in the statutory definition of a citizen of the United States, 49 U.S.C. 40102(a)(15), because it believes that modernizing its policies so as to allow more foreign investment in U.S. carriers would better reflect the realities of a global aviation industry, strengthen the U.S. air transportation system, and encourage other countries to open their own air services and investment markets.

Our proposal would not have and could not have altered the statutory test for citizenship nor was it an attempt to do so. We stated our intention to continue vigorous enforcement of the statute's express requirements. We did propose, however, to eliminate certain *additional* citizenship restrictions that had been established administratively over the course of decades in individual fitness cases and that in our view are anachronistic, overly complex, and unduly burdensome. Accordingly, the net result of our proposal would have been to end a long-standing, extraneous administrative prohibition against foreign investors having even a ''semblance'' of control over airline commercial decisions; the revised approach would have applied only to investors whose home countries had open-skies agreements with the United States and provided reciprocal investment opportunities for U.S. citizens. The proposal would have maintained the prohibition against foreign citizen control of decisions on corporate governance, safety, security, and participation in the Civil Reserve Air Fleet program and other national defense airlift programs (for simplicity, referred to as ''CRAF'' hereafter). To ensure control by U.S. citizens, as an added measure we would have required that any delegation of authority by U.S. citizens to foreign investors be fully revocable by the shareholders or board of directors.

We provided several opportunities for interested parties to comment on the proposal, including a supplemental notice of proposed rulemaking (SNPRM) that further clarified our proposed modified interpretation of ''actual control.'' 71 FR 26425 (May 5, 2006). In the supplemental notice, we made refinements to our proposal reflecting further consultations with our Federal Aviation Administration (FAA), the Department of Homeland Security (DHS), and the Department of Defense (DOD). We also acknowledged requests by members of Congress, who wanted us to provide time for more public comment on the proposal and for Congressional hearings on the topic.

The additional comments that we received in response to the SNPRM confirmed our earlier determination that the Department's historic interpretation of the actual control requirement did not serve the public interest well.

During the rulemaking we also proposed several technical changes to the rules governing the data for fitness determinations, 14 CFR Part 204. Those proposals were unopposed. We also requested public comment on the procedures used by us in resolving citizenship issues. We will publish our decision on those proposals in a separate rulemaking document.

Background

A firm may not be certificated as an air carrier to operate within the United

States or as a U.S. carrier on international routes unless it is a citizen of the United States. 49 U.S.C. 40102(a). We examine carrier citizenship primarily in two situations. First, when a firm applies for authority to operate as a U.S. carrier, we conduct an initial fitness review, which necessarily includes a review of the carrier's citizenship. We conduct initial fitness reviews through adjudicatory proceedings for which a public record is maintained in our docket. Second, we conduct a continuing fitness review if a carrier undergoes a substantial change in ownership, operations, or management. We usually conduct continuing fitness investigations without a public proceeding and thus without a public record or an opportunity for public comment. In some continuing fitness cases, we may decide to use procedures that are more public so that there will be a public record and an opportunity for public comment. We may amend, modify, suspend, or revoke the carrier's license, or begin an enforcement action if a carrier no longer meets the citizenship test. See 71 FR 26426–26427. The statute defines the requirements for United States citizenship. 49 U.S.C. 40102(a)(15)(C). For many years that statute required only that the president and at least two-thirds of the board of directors and other managing officers be citizens of the United States, and that at least 75 percent of the voting interest be owned or controlled [1] by persons that are citizens of the United States. Our predecessor agency in administering this statute, the Civil Aeronautics Board (the Board), created an additional requirement not then required by the text of the statute: the requirement that U.S. citizens must ''actually control'' each U.S. carrier. *Willye Peter Daetwyler, d.b.a. Interamerican Air Freight Co., Foreign Permit,* 58 CAB 118, 120–121 (1971).

In order to determine citizenship to verify compliance with the actual control requirement, both the Department and the Board have employed a fact-specific method of inquiry. *See* 71 FR 26437, citing 68 FR 44675, 44676 (July 30, 2003). Each decision considered the ''totality of circumstances'' of the airline's organization, including its capital structure, management, and contractual relationships, in determining whether U.S. citizens actually control a carrier. We developed our policies on interpreting the actual control requirement through our decisions in individual cases, based on the facts and circumstances of each case, and did not establish a specific definition of ''actual control'' through any rulemaking. We have continually modified our interpretation over time in light of changing conditions. *See* 71 FR 27437, citing *Northwest Airlines Acquisition by Wings Holdings,* Order 91–1–41 (January 23, 1991), and a more recent decision enabling Hawaiian Airlines to complete its reorganization with some foreign investment.

Neither the Department nor the Board has administered the actual control requirement in a way that barred U.S. carriers from having substantial commercial relationships with foreign carriers and other foreign firms. For instance, we have held that a U.S. airline continued to satisfy the actual control requirement when it had an alliance relationship with a foreign airline that necessarily enabled the foreign partner airline to influence the U.S. airline's commercial decisions. *Acquisition of Northwest Airlines by Wings Holdings, Inc.,* Order 92–11–27 (November 16, 1992), at 16–17.

Nonetheless, the Department's and the Board's interpretations of ''actual control,'' by effectively prohibiting foreign investors from enjoying any meaningful participation in the decision-making of U.S. airlines, has left foreign investors with a very limited ability to protect their interests as minority investors. We at times implemented the ''actual control'' requirement as barring foreign investors from having any ''semblance'' of control, which effectively relegated them to being passive investors, unable to participate in carrier commercial decisions that affected the value of their own investment.

Three years ago Congress amended the citizenship definition by expressly adding an actual control requirement to the statute. As a result, the statute provides that a corporation can only be a citizen of the United States if it is ''under the actual control of citizens of the United States.'' Vision 100—Century of Aviation Reauthorization Act, P.L. 108–176, § 807, 117 Stat. 2490 (2004). Congress chose not to define ''actual control.''

Notice of Proposed Rulemaking

We proposed our modified interpretation of ''actual control'' in order to facilitate efforts by U.S. airlines to remain competitive in the global airline industry. We grounded our proposal on three premises: *first,* that in view of the changes taking place in the global economy, U.S. air carriers should have the broadest access to the global capital markets permitted by law; *second,* that our historical interpretation of the term ''actual control'' has failed to keep pace with the changes in the global economy; and *third,* that in order to provide U.S. carriers with more flexibility to compete in the global economy, we should not maintain an interpretation of ''actual control'' that is more restrictive than necessary to meet statutory requirements. 71 FR 26427–26429; 70 FR 67393–67394. In sum, we acted on the policy that we should remove unnecessary restrictions on U.S. carriers seeking access to global capital markets.

In 2003, we issued an Advance Notice of Proposed Rulemaking (ANPRM) that sought comment on our standards and procedures for determining whether U.S. citizens actually control a carrier. 68 FR 44675 (July 30, 2003). After considering the comments, we issued a Notice of Proposed Rulemaking (NPRM) concerning our interpretation of ''actual control'' and use of informal procedures in most continuing fitness reviews. 70 FR 67389 (November 7, 2005). The Department proposed to update our interpretation of ''actual control'' so as to end restrictions on foreign involvement that, in our view, needlessly interfere with the ability of U.S. carriers to access international capital markets and thus to compete effectively in the global marketplace. Under our proposal, U.S. citizens would remain in control of the carrier through their authority over corporate governance and those areas of airline operations subject to significant government regulation: Safety, security, and CRAF participation. This modification would apply only if the foreign investors' home country had an open-skies air services agreement with the United States and, further, provided investment reciprocity for U.S. citizens wishing to invest in that country's airlines, or where the United States' international obligations otherwise required the same approach.

Supplemental Notice of Proposed Rulemaking

We issued a Supplemental Notice of Proposed Rulemaking (SNPRM) to address comments received on the NPRM, and to propose additional refinements to the proposal in order to definitively clarify that U.S. citizens would still retain actual control of U.S. carriers under the Department's proposal. 71 FR 26425 (May 5, 2006).

The SNPRM retained our proposal to allow carriers to delegate decision-making responsibilities to foreign citizens (except for organizational documents, safety, security, and CRAF

[1] We and the Board have always interpreted this part of the statute as ''owned and controlled.''

participation matters). However, we added language to make clear that such delegations would have to be revocable by the board of directors or shareholders—whose votes would be controlled by U.S. citizens. The right to revoke delegations of management authority, we felt, was intrinsic to the requirement that U.S. citizens maintain actual control of the carrier. We further proposed in the SNPRM to broaden the scope of decision-making in the areas of safety, security, and CRAF participation that must remain under the actual control of U.S. citizens. The proposed revisions would unequivocally ensure that safety and security decisions generally, not just those related to FAA and TSA safety and security requirements, as well as all decisions on national defense airlift commitments, not just CRAF commitments, remained firmly under the actual control of U.S. citizens. Our refinement of our proposals on safety, security, and CRAF participation reflected as well our discussions with the FAA, DHS, TSA, and DOD.

We determined that we have the authority to interpret the statutory definition of ''actual control,'' because we are responsible for administering it; that authority enables us to modify our interpretations when changing industry conditions and policies require doing so; and our proposed modified interpretation would be consistent with the language and purpose of the statute. We further stated that we should change our interpretation when the past interpretation has become inconsistent with commercial developments and the public policy goals set by our statute, 49 U.S.C. 40101(a). Finally, we noted that neither the statute nor its legislative history indicated that Congress had intended to freeze our earlier interpretations of ''actual control.'' 71 FR 26436–26439.

After we issued the SNPRM, the Aviation Subcommittee of the Senate Committee on Commerce, Science, and Transportation held a hearing on our proposal on May 9, 2006. The Aviation Subcommittee of the House Transportation and Infrastructure Committee had held a hearing on our proposal on February 8, 2006, based on the NPRM. Jeffrey N. Shane, the Department's Under Secretary for Policy, testified at both hearings.

Several members of Congress have written letters to the Secretary that contend that our proposal is unwise and a significant departure from what they perceive as existing precedent. These concerns were also raised at hearings and in proposed legislation.

Summary of Comments

We invited comments on the proposal as refined by our SNPRM. We received 21 comments on the SNPRM from carriers, labor parties, and industry associations, and three comments from individuals.

The majority of commenters supported the policy change as a way to strengthen the U.S. airline industry and encourage the liberalization of international aviation. The Department received general support for its proposed changes from Airports Council International— Europe (ACI), Airports Council International— North America (ACI–NA), Association of European Airlines (AEA), bmi, Delta Air Lines (Delta), DePaul University College of Law International Aviation Law Institute (DePaul), Federal Express (FedEx), Hawaiian Airlines (Hawaiian), International Air Transport Association (IATA), United Air Lines (United), United Parcel Service (UPS), United States Airports for Better International Air Service (USA–BIAS), U.S. Airways, and the Washington Airports Task Force (WATF).

Other commenters—notably the Aircraft Mechanics Fraternal Association (AMFA), Air Line Pilots Association (ALPA), British Airways, Continental Airlines (Continental), Independent Pilots Association (IPA), Transportation Trades Department AFL–CIO (TTD), and Virgin Atlantic Airways (Virgin Atlantic)—opposed our proposal, claiming that the proposed rule would be unlawful, impracticable, ineffective in achieving the desired result, or harmful to the airline industry and its unionized employees.

Both supporters and opponents of our proposal asserted that the rule, as proposed, provided inadequate guidance to carriers and potential foreign investors and that our final decision should provide examples of the kind of business relationships that would or would not be permitted by a final rule. *See, e.g.*, AEA Comments at 4; British Airways Comments at 3–4; IATA Comments at 6; Virgin Atlantic Comments at 5–6; ACI Comments at 2. Other commenters asserted that it was not clear whether our proposed revocability requirement—the requirement that a U.S. carrier have the practicable ability to revoke any delegation of decision-making authority to a foreign investor—would be consistent with standard commercial practices in other industries, which make a firm's ability to revoke a contract with its investors subject to conditions limiting the ability to revoke in order to protect the investors' legitimate interests. *See, e.g.*, FedEx Comments at 7–9; ACI–NA Comments at 4; DePaul Comments at 4; US–BIAS Comments. Some commenters contended that our proposals were too restrictive; Delta, for example, asserted that the revocation requirement was ''flatly inconsistent'' with our goal of encouraging foreign investment. Delta Comments at 6–7.

Our Final Decision

We have decided to withdraw the proposal on interpretation of ''actual control.'' We still believe there are significant benefits to be realized by liberalizing and rationalizing our domestic investment regime for U.S. air carriers. Nonetheless, our policy could gain from additional public insight into the practical advantages and drawbacks of particular administrative reforms.

We maintain that our past administration of the ''actual control'' requirement is obsolete and the notion has needlessly precluded foreign investment in the U.S. airline industry to its detriment. In the Department's view, retention of the anachronistic administrative standard for determining actual control serves no discernible policy interest of the United States. Instead, it has prevented U.S. carriers from entering into sound and desirable business relationships with foreign allies ''relationships that U.S. corporate management concluded would benefit their carrier, their employees and shareholders. *See, e.g.*, FedEx Comments at 2; Atlas & Polar Comments on NPRM at 3; United Comments at 3. We continue to believe we need a way to enable strategic investors ''interested in long-term gain, not short-term arbitrage—to participate more meaningfully in the decision-making at U.S. carriers, as such investors would ''more likely be concerned about a U.S. airline's product quality, market strategy, and its capital reinvestment plans than short-term investors who view airlines merely as trading vehicles.'' 71 FR 26428. An up-to-date approach towards administering the ''actual control'' requirement that takes into account the realities of modern capital markets would permit our carriers to catch up with increasingly competitive and financially stronger foreign airlines in terms of integrating their operations and services with those of marketing partners. It would also enable investments abroad by U.S. air carriers and the formation of durable business relationships with foreign carriers, such as Continental, for example, enjoys with COPA, a leading Latin American airline. Continental Airlines, SEC Report on Form 10–Q (July 21, 2006) at 34. In our view, we

should encourage additional foreign investment in the U.S. airline industry, give U.S. carriers freedom in developing beneficial business relationships across borders and eliminate outdated restrictions on business conduct.

Our proposal has become controversial, as to both the questions of whether our interpretation of ''actual control'' should be changed and whether our specific proposal will effectively accomplish our objectives. In addition, as noted, letters sent by members of Congress have urged the Department not to adopt the proposal without further discussion. In this particular instance, we have concluded that the expressions of concern support the concept that more public discussion of the underlying issues is warranted. By withdrawing the proposal, we will be free to engage in broad-ranging dialogue without the constraints of a specific rulemaking proposal.

Rulemaking Analyses and Notices

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) (5 U.S.C. 601–612), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, requires federal agencies, as part of each rule, to consider regulatory alternatives that minimize the impact on small entities while achieving the objectives of the rulemaking. Because we are withdrawing our proposal, we are not adopting any final rule requiring a regulatory flexibility analysis.

Trade Impact Assessments

The Trade Agreement Act of 1979 prohibits federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that U.S. standards be compatible. The Department has assessed the potential effect of this withdrawal of the proposed rule and has determined that it will have no effect on any trade-sensitive activity.

International Compatibility

In keeping with U.S. obligations under the Convention on International Civil Aviation, it is the Department's policy to comply with International Civil Aviation Organization (ICAO) Standards and Recommended Practices to the maximum extent practicable. The Department has determined that there are no ICAO Standards and Recommended Practices that correspond to this withdrawal notice.

Unfunded Mandates Reform Act of 1995

The Unfunded Mandates Reform Act of 1955 (the Act) is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in an expenditure of $100 million or more (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.'' This withdrawal notice is not a final or proposed rule. The requirements of Title II of the Act, therefore, do not apply.

Executive Order 13132, Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 13132, dated August 4, 1999 (64 FR 43255). This withdrawal notice does not have a substantial direct effect on, or significant federalism implications for the States, nor would it limit the policymaking discretion of the States.

It will not directly preempt any State law or regulation, or impose burdens on the States. This action will have not a significant effect on the States' ability to execute traditional State governmental functions. The agency has therefore determined that this withdrawal notice does not have sufficient federalism implications to warrant either the preparation of a federalism summary impact statement or consultations with State and local governments.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501 et seq.) requires federal agencies to obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct, sponsor, or require through regulation. Because this is a withdrawal notice, it will not impose any additional requirements. Thus, there is no change in the paperwork collection, as it currently exists.

Issued in Washington, DC on December 5, 2006.

Andrew B. Steinberg,

Assistant Secretary for Aviation and International Affairs.

[FR Doc. 06–9603 Filed 12–5–06; 12:39 pm]

BILLING CODE 4910–62–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–54863; File No. S7–19–06]

RIN 3235–AJ41

Proposed Amendments to Municipal Securities Disclosure

AGENCY: Securities and Exchange Commission (''Commission'').

ACTION: Proposed rule.

SUMMARY: The Commission is publishing for comment proposed amendments to a rule under the Securities Exchange Act of 1934 (''Exchange Act'') relating to municipal securities disclosure which would delete references to the Municipal Securities Rulemaking Board (''MSRB'') as a recipient of material event notices filed by or on behalf of issuers of municipal securities or other obligated persons.

DATES: Comments should be received on or before January 8, 2007.

ADDRESSES: Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form (*http://www.sec.gov/rules/proposed.shtml*); or
- Send an e-mail to *rule-comments@sec.gov.* Please include File No. S7–19–06 on the subject line; or
- Use the Federal eRulemaking Portal (*http://www.regulations.gov*). Follow the instructions for submitting comments.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549–1090.

All submissions should refer to File No. S7–19–06. This file number should be included on the subject line if e-mail is used. To help us process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site (*http://www.sec.gov/rules/proposed.shtml*). Comments are also available for public inspection and copying in the Commission's Public Reference Room, 100 F Street, NE., Washington, DC 20549. All comments received will be posted without change; we do not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly.