



International Civil Aviation Organization

North American, Central American and Caribbean Office

Second Meeting of North American, Central American and Caribbean Directors of Civil Aviation (NACC/DCA/2)

Tegucigalpa, Honduras, 11 – 14 October 2005

NACC/DCA/2-WP/23

18/08/05

Agenda Item 2: Safety Oversight

2.5 Safety – Related topics

OVERSIGHT OF FOREIGN AIR OPERATORS: THE U.S. SYSTEM

(Presented by the United States of America)

SUMMARY

Last May, as the result of ramp inspections, the Dutch civil aviation authority (CAA) banned Onur Air, a Turkish airline, from continuing to provide service to the Netherlands. Within hours of the announcement of this ban, the French, German and Swiss CAAs apparently imposed their own restrictions on this airline. While Onur Air's situation may have warranted such precipitous action, there appears to have been little, if any, effort to involve Turkey's CAA in the fact-finding and decision-making processes by the States that imposed these bans and limitations. Indeed, the government of Turkey reacted strongly to the Dutch ban in particular and initially threatened retaliatory action against airlines from countries imposing such restrictions on Onur Air.

There is no substitute for timely, constructive and direct dialogue among the States and operators concerned in resolving identified safety issues. This paper describes the system used by the United States and its Federal Aviation Administration (FAA), one that recognizes ICAO obligations and not only allows for, but requires, appropriate collaboration among all the parties involved in any situation that poses a threat to international aviation safety.

1. INTRODUCTION

1.1 One of the major achievements of last fall's 35th ICAO Assembly was the endorsement of the new unified strategy to resolve identified safety-related deficiencies. One of the major features of this concept is transparency and increased disclosure with respect to important safety-related information. Along these lines, the resolution (A35-16/1) adopted by the Assembly encouraged Contracting States to:

- share with each other “critical safety information which may have an impact on the safety of international air navigation and to facilitate access to all relevant safety information”
- make full use of “available safety information when performing their safety oversight functions, including during inspections as provided for in Article 16 of the Convention”, and
- be mindful of the “need for surveillance of all aircraft operations, including foreign aircraft within their territory and to take appropriate action when necessary to preserve safety”

1.2 The U.S. heartily endorses this Resolution, including these specific directive clauses in recognizing and reinforcing the oversight obligations of States with respect to the operation of foreign aircraft within their airspace. In the actual implementation of these measures in specific situations in which safety issues arise, a key ingredient is constructive and timely dialogue between foreign air operators and civil aviation authorities (CAAs), including the CAA that issued the air operator certificate (AOC) and the CAA with responsibility for the affected airspace. The following discussion portion of this paper describes the system used in the United States by which the Federal Aviation Administration (FAA) exercises its safety oversight responsibilities with respect to the operation of foreign aircraft, both directly with the foreign air operators and with the AOC-issuing CAA.

2. FOREIGN AIR OPERATOR OVERSIGHT UNDER PART 129 OF THE FEDERAL AVIATION REGULATIONS

2.1 The title of the regulation that applies to such operations within the United States is “Operations: Foreign Air Carriers and Foreign Operators of U.S.-Registered Aircraft in Common Carriage” (14 CFR 129). Along with some fundamental requirements, it also mandates foreign operator compliance with the Standards and Recommended Practices in ICAO Annex 6, Part I. Part 129 also requires that any such operator seek and obtain operations specifications from the FAA prior to commencing any U.S. operations, a document that specifies several elements, including authorized airports, routes, and aircraft to be used in their operations. Foreign operators normally apply for such operations specifications from the FAA International Field Office (IFO) with geographic responsibility for the State of the operator. With regard to the Caribbean and South American Regions, foreign air operators must apply to the FAA IFO in Miami, Florida. Once issued by the IFO, usually subsequent to this issuance of an economic license by the U.S. Department of Transportation, the operator may commence service to and from the airports listed in its operations specifications. Along with other FAA flight standards field offices, the IFO commences follow-on surveillance of the operator, usually in the form of ramp inspections when the operator’s aircraft arrive at U.S. airports.

2.2 When safety issues arise in the course of such inspections or due to other circumstances, FAA inspectors attempt to resolve them at the lowest possible level, beginning with direct dialogue with the flight crew and the operator's station manager at the airport. In the very rare situation when such dialogue is not productive, FAA inspectors will advise these operator's personnel that they may be in violation of U.S. regulations but they will not normally ground the aircraft. If the operator chooses to commence the flight with significant unresolved safety issues, FAA will then likely begin an immediate enforcement action against the operator to prohibit further flights, if appropriate. The IFO, as issuer and manager of the FAA operations specifications to this operator, may also choose in some situations, if necessary, to bring this matter to the attention of its management level point of contact for this operator. And, as a last resort, the IFO may even begin a dialogue with officials of the CAA that issued an AOC to this operator, in order to bring further pressure to bear to successfully resolve remaining safety issues.

2.3 It is also important to note that the U.S., in the form of the bilateral air transport agreements it executes with other governments, provides for a consultative process under Article 6 that, unless immediate action is essential to preserve safety, is to be undertaken between the two parties when circumstances require such formal high-level government-to-government dialogue. While Article 4 of such agreements empowers either party to take immediate action to "revoke, suspend or limit" an air operator's operational authorization for non-compliance with safety standards, such actions are not normally to be taken, with the exception noted above, until these consultations have occurred between the two governments.

3. SAFETY OVERSIGHT PROVIDED BY AOC-ISSUING CIVIL AVIATION AUTHORITIES

3.1 In line with the direction of Resolution A35-16/1, FAA seeks and utilizes safety information from its own International Aviation Safety Assessment (IASA) Program, as well as that from other reliable sources such as the ICAO Universal Safety Oversight Audit Program (USOAP) with the objective to "preserve safety" of operations within U.S. airspace. In the IASA process, FAA is required to make periodic determinations, utilizing ICAO Standards and Recommended Practices as benchmarks, as to whether or not a State is providing for adequate safety oversight of a foreign air operator that serves, or seeks to serve, the United States or participate in a reciprocal code share arrangement with a U.S. air operator. In the course of such assessments, FAA gathers relevant data, usually from direct dialogue with the CAA, its management personnel as well as an air operator or two subject to oversight by this CAA.

3.2 If, as a result of this fact-finding effort, FAA believes the CAA is not complying with its safety oversight obligations under the Chicago Convention and its annexes, it commences the consultative process described above in paragraph 2.3. Article 6 of the bilateral air transport agreement indicates that "either party may request consultations concerning the safety standards maintained by the other Party relating to aeronautical facilities, aircrews, aircraft, and operation of the designated airline." FAA officials then meet with their counterparts to notify them of their assessment findings, provide an opportunity for the CAA's reaction, and to specify any need for residual corrective actions to be taken by the CAA. Article 6 also empowers either party to withhold, revoke, or limit operations into its territory if the other party does not take appropriate corrective action within a reasonable time. Pending the completion of any necessary corrective actions, FAA assigns a public Category 2 IASA rating to this State, i.e. not in compliance with ICAO safety oversight provisions. The United States Congress mandates the public notification of category information to the traveling public.

4. CONCLUSION

4.1 As reflected in Resolution A35-16/1, ICAO Contracting States must take appropriate actions to preserve the safety of all operations in their airspace, including those conducted by foreign operators. While safety is of paramount importance, however, States should also acknowledge the respective obligations that the State of the Operator also has as the issuer of an AOC to an operator. Unless situations involving foreign operators pose imminent and serious threats to safety that require immediate action by an oversight authority, they should be resolved through direct and constructive dialogue among the operator and States concerned. Precipitous and unwarranted license and certificate actions should generally not be taken before all the facts are available and subjected to appropriate scrutiny by State oversight authorities.

5. ACTION BY THE CONFERENCE

5.1 The Conference is invited to:

- a) note the contents of this paper, and
- b) urge States in the Caribbean and South America Regions to provide oversight of foreign air operators in close coordination, when necessary, with other appropriate States, particularly the State of the Operator that issued the air operator certificate (AOC).

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