U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

June 20, 2013

Alais L. M. Griffin
Greenberg Traurig, LLP
2101 L Street, N.W.
Suite 1000
Washington, D.C. 20037

Dear Ms. Griffin:

This responds to your letter dated March 5, 2013, to Marc Warren, Acting Chief Counsel, Federal Aviation Administration. In your letter you pose three related questions:

1. If foreign commercial aircraft operating in U.S. airspace are not in compliance with FAA standards under TSO-C127a, are those foreign aircraft in violation of the pertinent U.S. rules (notwithstanding the laws in the foreign country) unless they have been granted some temporary administrative waiver that is consistent with U.S. Federal laws and regulations? If those foreign carriers have intentionally violated those standards with intent to deceive or misrepresent the facts could the penalties imposed be even stronger to serve as a warning?

2. Is it a violation of U.S. rules if non-domestic aircraft that fly into and out of U.S. airports utilize seat covers and related fabrics that are improperly labeled as "TSO-C127a" compliant when they have not met FAA-required and approved manufacturing and testing standards?

3. And do U.S. rules apply to such non–domestic carriers whether or not the airline company is based in a foreign country that signed the Chicago Convention?

You believe that these issues are governed by the provisions of Airworthiness Directive (AD) 2011-12-01, Koito Industries, Ltd., Seats and Seating Systems Approved Under Technical Standard Order (TSO) TSO-C39b, TSO-C39c, or TSO-C127a (76 FR31803; June 2, 2011). The AD summary notes that:

> This AD was prompted by a determination that the affected seats and seating systems may not meet certain flammability, static strength, and dynamic strength criteria. Failure to meet static and dynamic strength criteria could result in injuries to the flightcrew and passengers during emergency landing conditions. In the event of an

in-flight or post-emergency landing fire, failure to meet flammability criteria could result in an accelerated fire.

You further note that in response to a request to withdraw the proposed AD, the FAA stated that "certification of these seats was obtained through false pretenses, and thus, until the seats are re-certified in whole they need to be appropriately marked and actions must be done in accordance with this AD." You believe that these provisions apply to all commercial aircraft operating in the U.S. regardless of the laws of the nation where the aircraft are based or where the aircraft flew from before entering U.S. airspace.

You state that Title 14, Code of Federal Regulations (14 CFR) § 25.603 makes clear that suitability of materials in aircraft "must conform to approved specifications such as . . . Technical Standard Orders . . ." and 14 CFR § 25.853 (and Appendix F to Part 25) sets forth detailed flammability test requirements, including that seat cushions and related textiles, padding, and fabrics be self-extinguishing. You further assert that Title 14 echoes the AD's comments on the unacceptable practice of obtaining certification of airline seats under false pretenses. You also believe that the Chicago Convention applies to this situation.

The FAA notes that section 4.2 of Annex 8 to the Convention on International Civil Aviation specifies that "[t]he State of Registry shall develop or adopt requirements to ensure the continued airworthiness of the aircraft during its service life" and [t]he continuing airworthiness of an aircraft shall be determined by the State of Registry in relation to the appropriate airworthiness requirements in force for that aircraft."

In your letter the FAA assumes that your reference to "foreign commercial aircraft" means non-U.S.-registered aircraft operated by a foreign air carrier under the provisions of 14 CFR part 129. As the continuing airworthiness of these aircraft is subject to the requirements of the State of Registry of the aircraft, compliance with those standards would be determined by that State, and not the FAA. Additionally, this determination would not be affected by the State of the Operator of the aircraft.

The provisions of AD 2011-12-01 do not directly apply to non-U.S.-registered aircraft. Commenters to this AD recognized this limitation, noting that "it is also well understood that the FAA's and EASA's jurisdiction covers only those air carriers operating aircraft on the U.S. Register and in the 27 countries in the European Union, respectively." Commenters, however, also recognized that "it is common practice for airworthiness authorities to adopt . . . [an] FAA airworthiness directive" and the FAA specifically acknowledged this practice by noting that "we do recognize this AD could affect the non-U.S.-registered fleet if mandated by other countries. However, this AD does not directly impact non-U.S.–operators.''

As U.S. airworthiness standards do not directly apply to foreign-registered aircraft, such aircraft could not be found to be "in violation of the pertinent U.S. rules" even if operating in U.S. airspace. Accordingly, since these standards do not directly apply, any specific intent of an operator to "violate" those standards or "deceive or misrepresent the facts" would not be applicable to any consideration of the matter.

The airworthiness standards that you reference in your letter (14 CFR §§ 25.603 and 25.583) must be met for an aircraft design that incorporates these standards in its certification basis to receive a U.S. design approval. An aircraft issued an airworthiness certificate on the basis of compliance with such a design approval must continue to meet these standards. Foreign aviation authorities frequently issue airworthiness certificates based on compliance with a design approval that they issue on the basis of their acceptance of a corresponding U.S. design approval. Any issue of non-compliance relating to a non-U.S. registered aircraft, however, would be determined by the results of the foreign airworthiness authority's review of the aircraft's conformity to its own design approval.

If U.S. airworthiness standards form the basis for a foreign authority's design approval, or if U.S. rules (e.g. AD's) have been adopted by the foreign authority that is the State of Registry for an aircraft, that foreign-registered aircraft could be determined to be in non-compliance with those foreign authority's provisions – not the corresponding U.S. rules. In such an instance you may wish to contact the Civil Aviation Authority of the State of Registry of the aircraft so that appropriate action may be taken.

This interpretation was prepared by Paul Greer, an attorney in the International Law, Legislation, and Regulations Division of the Office of the Chief Counsel, and was coordinated with the Aircraft Maintenance Division (AFS-300) of the Flight Standards Service and the Aircraft Engineering Division (AIR-100) of the Aircraft Certification Service. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Mark W. Bury
Acting Assistant Chief Counsel for International
Law, Legislation, and Regulations