

AVIATION REGULATORY UPDATE

UPDATE ON U.S. GOVERNMENT SHUTDOWN

If congressional leaders and President Trump are unable to reach a compromise on funding for the President's proposed border wall, the U.S. federal government will partially shut down at midnight on Friday, December 21, 2018. Congress has already passed appropriations (funding) legislation for 75 percent of the government; however, funding for the remaining 25 percent will expire at midnight on Friday absent a compromise on the proposed border wall. The remaining 25 percent includes several high-profile agencies such as the Department of Homeland Security, the Department of Transportation (DOT), the Department of Commerce, the Department of Justice and the Department of State.

Law enforcement agency employees, including Transportation Security Administration (TSA) officers and Customs and Border Protection (CBP) agents, would be deemed "essential personnel" and would be required to work through a government shutdown. However, "non-essential personnel," such as thirty percent of DOT staff, would be furloughed and would not be permitted to work during a government shutdown.

If you have any questions regarding how this may impact your operations, please contact us.

SUMMARY REPORT OF DISABILITY-RELATED COMPLAINTS RECEIVED DURING CALENDAR YEAR 2018 DUE TO DOT BY JANUARY 28, 2019

Each January carriers are required to submit an annual report to DOT which includes a categorized summary of all disability-related complaints received by the airline during the prior calendar year. The summary is to be submitted to the Department's Aviation Consumer Protection Division (DOT ACPD) on or before the last Monday in January. This year's report, covering calendar year 2018, is due on January 28, 2019. We note that carriers that did not receive any written disability-related complaints in calendar year 2018 are still required to file a report showing no complaints.

Failure to comply with the reporting requirements for disability-related complaints likely will subject a carrier to a civil penalty of up to \$33,333 per violation. The Enforcement Office has taken action against a number of carriers in the past for failing to comply with these requirements. To date, twenty consent orders assessing civil penalties have been issued.

Please contact us if you have any questions on the submission process or require assistance in making your annual report.

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CUSTOMS AND BORDER PROTECTION EXPECTS BROAD EXPANSION OF BIOMETRIC TECHNOLOGY PROGRAM IN 2019

CBP is planning to accelerate the introduction of its biometric technology program, the United States Visitor and Immigrant Status Indicator Technology (US-VISIT), next year. Under the program, biometric facial recognition technology is used to identify travelers using a complex algorithm that recognizes each person's unique facial characteristics. CBP has stated that the technology is 98% effective and is more secure than traditional ID/passport verification protocols. Digital fingerprint technology is also utilized in some cases.

In support of the rollout, CBP has coordinated with a number of airports (DFW, LAX, MSP, MCO, IAD and ATL) and airlines (Southwest, United, American, Delta and JetBlue). The agency currently has pilot programs already underway at JFK, IAH, ORD, IAD, ATL and BOS. In partnership with CBP, airlines have made a commitment to purchase the technology which both CBP and the airlines can then use for ID verification purposes.

At ATL, Delta has partnered with the airport and CBP to implement a curb-to-gate biometric screening process through which passengers can check in, check luggage and have their ID verified by TSA—all by using facial recognition technology. Delta has stated that the technology can save nine minutes during the boarding process.

Outside the U.S., airports in Singapore, Amsterdam, Aruba, China and Japan have also implemented facial recognition technology. CBP has stated that it hopes to have facial recognition boarding at all U.S. airports serving international flights within three to four years. If you are interested in obtaining more information on how you or a foreign airport can be included in this program, please contact us.

DELTA AIR LINES PLACES MORE RESTRICTIONS ON SERVICE AND EMOTIONAL SUPPORT ANIMALS

Effective December 18, 2018, Delta is prohibiting service and emotional support animals (ESAs) under four months of age on any flight due to rabies vaccination requirements. Additionally, the airline is banning ESAs on flights longer than eight hours. If a passenger purchased their ticket prior to December 18, 2018 and requested to travel with an ESA, the passenger will be permitted to travel as originally ticketed. However, if a passenger's originating travel is on or after February 1, 2019, emotional support animals will not be accepted on flights longer than eight hours regardless of the booking date.

Delta has one of the most restrictive service and emotional support animal policies in the U.S. These recent changes appear to be partly intended to address the issue of animal waste during long flights. According to the airline, incidents involving service and support animals—including urination, defecation, and biting—increased 84% from 2016 to 2017.

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According to DOT rules, carriers must generally transport ESAs on flights longer than eight hours but “may, as a condition of permitting a service animal to travel in the cabin, require the passenger using the service animal to provide documentation that the animal will not need to relieve itself on the flight or that the animal can relieve itself in a way that does not create a health or sanitation issue on the flight.” (14 C.F.R. 382.117)

As a reminder, on May 23, 2018, DOT published an Interim Statement of Enforcement Priorities Regarding Service Animals, which detailed the agency’s current standards for how carriers can address ESAs:

- If passengers are traveling with an ESA, carriers may require proof of vaccination, training and/or behavior, in addition to a letter from a licensed medical/mental health professional.
- Carriers may require electronic submission of the ESA documentation through the carrier’s website (or email) 48 hours in advance of their trip, so the carrier may review the documentation before the flight. In the event the documentation is not satisfactory, the carrier may require that the passenger pay a pet fee to transport the animal.
- Carriers may impose restrictions on movement of ESAs in cabin area.
- Carriers may exclude animals that are too large or heavy to be accommodated in the cabin, pose a direct threat to the health or safety of others, or may cause a significant disruption of cabin service.
- Carriers may limit passengers to one ESA.

U.S. WANTS GLOBAL STANDARD FOR PASSENGER DATA SHARING

Last month at the International Civil Aviation Organization’s (ICAO) high-level aviation security conference, U.S. representatives pressed for a global unified standard for the collection of passenger information. Currently, ICAO recommends that its members collect passenger record data, but the U.S. is pressing for the recommendation to become a standard by the end of the year.

The passenger data includes personal identifiable information, credit card information, and passenger itineraries. U.S. representatives argued that this information is highly valuable in the prevention of terrorism and the identification of patterns of suspicious travel. The proposal was supported by Canada, the Netherlands, Switzerland, New Zealand, the U.K., South Africa, Saudi Arabia and Nigeria.

Several other countries, including members of the EU, cautioned that more work should be done before the proposal is taken up by the full ICAO assembly, citing concerns about the protection of passenger privacy and the protection of fundamental rights, particularly when this information is shared with other countries. The EU instituted comprehensive data privacy regulations earlier this year, the General Data Protection Regulation (GDPR), which went into effect on May 25, 2018.

The collection of passenger data was a major issue at the two-day ICAO conference, where the U.N. and ICAO finalized an arrangement to cooperate on passenger information gathering. The agreement is

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expected to be signed on December 20, 2018 at a U.N. Security Council Counter-Terrorism Committee briefing on aviation security.

EUROPEAN UNION IMPOSES OPERATING RESTRICTIONS AND BANS ON ADDITIONAL CARRIERS

More than a decade ago the European Union adopted Regulation (EC) No 2111/2005, which was enacted to fulfill two goals. First, it sought to establish a “Community List” of carriers that fail to meet relevant safety requirements. These airlines are then subjected either to operational restrictions throughout the EU, or to specific and complete operating bans. Second, it was to ensure that carriers bring the list of banned airlines to the attention of passengers, and inform the traveling public of the identity of those carriers on which restrictions/bans have been imposed. This is because passengers have a right of reimbursement/rerouting if their flight is cancelled as a result of the operating carrier being placed on the Community List.

Last month, the European Commission updated the list of carriers that are subject either to an operating ban or operational restrictions on flights within the European Union. The latest update, which took effect on November 28, 2018, listed the banned or restricted carriers in Annexes A and B. Annex A includes those carriers whose entire operations are subject to a ban and Annex B lists the carriers that are subject to operational restrictions.

Annex A includes all carriers certified by the authorities of the following countries: Afghanistan, Angola (except TAAG put in annex B), Republic of Congo, Democratic Republic of Congo (DRC) Djibouti, Equatorial Guinea, Eritrea, Gabon (except Afrijet and SN2AG put in Annex B), Kyrgyz Republic, Liberia, Libya, Nepal, Sao Tome and Principe, Sierra Leone, and Sudan.

In addition, the following six airlines are also listed in Annex A, meaning they cannot operate to the EU: Avior Airlines (Venezuela), Blue Wing Airlines (Suriname), Iran Aseman Airlines (Iran), Iraqi Airways (Iraq), Med-View (Nigeria), and Air Zimbabwe (Zimbabwe).

Annex B lists those carriers that are subject to operational restrictions, and includes: Afrijet and Nouvelle Air Affaires SN2AG (Gabon), Air Koryo (Democratic People's Republic of Korea), Air Service Comores (the Comoros), Iran Air (Iran) and TAAG Angola Airlines (Angola). These airlines may only operate to the EU with specific, pre-authorized aircraft types.

The full November 28, 2018 update is available here: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2018.304.01.0010.01.ENG&toc=OJ:L:2018:304:TOC

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RECENT OFAC CIVIL COMPLAINT SETTLEMENT FOR SANCTION VIOLATIONS

On December 12, 2018, the U.S. Office of Foreign Assets Control (OFAC) announced a \$2,774,972 million settlement between Yantai Jereh Oilfield Services Group Co. Ltd. (Jereh Group), its affiliated companies and subsidiaries worldwide, and the U.S. Department of Commerce's Bureau of Industry and Security.

Specifically, from on or about October 2, 2014 to on or about March 4, 2016, the Jereh Group violated provisions of the Iranian Transaction and Sanctions Regulations (ITSR) on at least 11 occasions when it exported or re-exported, or attempted to export or re-export, U.S.-origin goods ultimately intended for end-users in Iran by way of China. The goods in question include oilfield equipment such as spare parts, coiled tubing strings, and pump sets. Consequently, OFAC determined that the violations constituted an egregious case warranting the nearly \$3 million dollar settlement.

FAA PROPOSES \$624,000 CIVIL PENALTY AGAINST STEELE AVIATION OF BEVERLY HILLS, CALIFORNIA

On December 4, 2018, the U.S. Department of Transportation's Federal Aviation Administration (FAA) proposed a \$624,000 civil penalty against Steele Aviation of Beverly Hills, California, for allegedly conducting illegal passenger-carrying flights.

In the latest case, the FAA alleged that between October 2016 and February 2018, Steele Aviation conducted 16 for-hire flights when the company did not have the air carrier certificate required for these operations.

Steele Aviation had previously been issued a civil penalty for the same violation when it operated a Gulfstream IV and a British Aerospace 125 on at least 78 for-hire passenger-carrying flights between September 17, 2015 and June 13, 2016. Additionally, the FAA further alleged the pilots who conducted the majority of these flights did not meet applicable training requirements for that type of operation.

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; Alexander Matthews at amatthews@eckertseamans.com or 202.659.6633.