

## AVIATION REGULATORY ALERT

### REMINDER: COMMENTS TO TARMAC DELAY RULE NPRM ARE DUE DEC. 24

Last month we reported that the U.S. Department of Transportation (DOT or Department) published a proposal to amend the Tarmac Delay Rule and related reporting requirements (14 CFR Parts 244 and 259) applying to both U.S. and foreign air carriers. The deadline for submission of public comments is December 24, 2019.

We recommend carriers participate in the comment process to highlight any existing or anticipated difficulties with the tarmac delay regulation. Please contact us if you would like more information or assistance in drafting comments.

### REMINDER: SECOND PHASE OF CANADIAN AIR PASSENGER PROTECTION REGULATIONS COMING INTO EFFECT

As we reported earlier in the year, Canada's 2019 Air Passenger Protection Regulations set new standards for passenger treatment and compensation for flights touching Canadian territory, including foreign air transportation and flights continuing on to non-Canadian destinations.

The regulations took effect in two stages, starting July 15, 2019, for tarmac delays, denied boarding, lost and damaged luggage, real-time notices, and associated penalties. The rest of the regulation comes into effect on December 15, 2019, and includes rules covering compensation for delays and cancellations, refunds, food service during tarmac delays, and seating children with their families. If not having already done so, carriers operating service to Canada should review the regulations and update their tariffs and policies accordingly.

### SENATE DEMOCRATS PROPOSE DATA PRIVACY PRINCIPLES, LEGISLATION

Earlier this month U.S. Senators Maria Cantwell (D-WA), Patty Murray (D-WA), Dianne Feinstein (D-CA), and Sherrod Brown (D-OH) published a policy memo entitled "Privacy and Data Protection Framework" to describe their goals for comprehensive data protection legislation. The memo asserts that existing laws have not kept up with technology and therefore, "a comprehensive federal privacy and data security law is essential to hold institutions accountable, restore consumer trust, and protect our privacy." Their principles were broadly framed:

- **Establish Data Safeguards**
  - Collection of data must be minimized, be tailored to its authorized use
  - Harmful, deceptive, and abusive collection and use must be prohibited
  - Clear rules must be established to limit data sharing with service providers and third parties except as authorized by consumers
  - Provide greater accountability and higher standards for security

## AVIATION REGULATORY ALERT

- **Invigorate Competition**
  - Consumers must have the ability to prevent their data from being commingled across separate businesses within an enterprise
  - Data should be portable from company to company
- **Strengthen Consumer Rights**
  - Consumers must have rights to know, access, delete, correct, and restrict records
  - Algorithms must be nondiscriminatory
- **Impose Real Accountability**
  - Companies should bear the burden of protecting privacy not consumers
  - Federal regulators should be given new enforcement powers and penalties
  - State and private lawsuits to enforce rights should be permitted

On November 26, 2019, Senator Cantwell introduced a comprehensive bill, the Consumer Online Privacy Rights Act (COPRA), to implement these principles. COPRA would, among other changes, provide for private lawsuits to enforce rights, expand sensitive personal information to include facial recognition, geolocation, and other biometric data, require data portability, and create a new enforcement office within the Federal Trade Commission (FTC). Hearings on the bill should take place in the coming weeks.

COPRA does not currently enjoy bipartisan support but senators of both parties continue to discuss how to move forward with data privacy legislation. A significant policy disagreement yet to be resolved is whether national legislation should preempt states from passing their own data privacy laws – most notably as California has done with the California Consumer Privacy Act (CCPA, taking effect January 1, 2020) – or whether states should be able to write consumer protections that go above and beyond federal standards.

### OFAC CIVIL ENFORCEMENT: APOLLO AVIATION GROUP, LLC

On November 7, 2019, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) announced a \$210,600 settlement with Apollo Aviation Group, LLC (Apollo), for alleged civil liability for violations of sanctions on Sudan. Apollo leased three aircraft engines to a United Arab Emirates company, which then subleased the engines to a Ukrainian airline, which then installed them on an aircraft wet leased to Sudan Airways. Sudan Airways is included on OFAC's SDN list due to its relation to the Government of Sudan.

According to OFAC's announcement, "Apollo did not periodically monitor or otherwise verify its lessee's and sub lessee's adherence to the lease provision requiring compliance with U.S. sanctions laws during the life of the lease. As a result, Apollo learned where its engines had actually flown only after the engines were returned to Apollo at the end of the lease." OFAC considered Apollo's sophistication to be an aggravating factor, but its subsequent compliance to be a mitigating factor, when calculating the civil penalty. OFAC concluded, "This enforcement action highlights the importance of companies operating in high-risk industries to implement effective, thorough and on-

## **AVIATION REGULATORY ALERT**

going, risk-based compliance measures, especially when engaging in transactions concerning the aviation industry.”

### **HOUSE COMMITTEE APPROVES BILL ON AIRCRAFT REPAIR STATIONS**

On November 20, 2019, the House Transportation Committee marked up a bill, the “Safe Aircraft Maintenance Standards Act” (H.R. 5119), aimed at closing perceived safety gaps related to use of foreign repair stations for maintenance of U.S. aircraft. The bill proposes new unannounced FAA inspections of foreign aircraft repair stations, and would impose monthly and annual requirements on U.S. air carriers to report on the types of maintenance performed at foreign repair stations. For instance, heavy maintenance in countries with an IASA Category 2 rating would be prohibited, and persons working on U.S.-registered aircraft would have to meet new requirements. Though Republican members of the House Transportation Committee expressed concerns that such new requirements might harm relations with partner countries, the bill was approved and now moves to the full House for further consideration.

### **REP. DEFAZIO CALLS FOR OVERSIGHT OF DOMESTIC REPAIR STATIONS**

During the same markup session, House Transportation Committee Chairman, Representative Peter DeFazio (D-OR), stated that he was sending a letter to the DOT Inspector General (IG) to request an audit of the FAA’s oversight of domestic repair stations. The letter dated November 20, 2019, expresses concern that 729 FAA inspectors overseeing more than 4,000 repair stations in the U.S., which account for 61% of U.S. airline maintenance spending, may not be sufficient to ensure safety. The DOT IG previously studied oversight of repair stations in 2013, and Rep. DeFazio asked whether recommendations from that previous report have been implemented. Additionally, the letter suggested that improper oversight at U.S. repair stations contributed to last year’s crash of Lion Air 610 and the induction of used airplanes of unknown airworthiness into Southwest Airlines’ fleet. The DOT IG will ultimately decide whether a new audit is warranted.

### **HOUSE REPUBLICANS WARN DHS, TSA NOT TO DEPLOY COUNTER-UAS TECHNOLOGY NEAR AIRPORTS**

On November 14, 2019, Representative Sam Graves (R-MO) and Representative Mike Rogers (R-AL), Ranking Members of the House’s Transportation and Homeland Security Committees, respectively, published a letter to DHS cautioning the agency against improper deployment of unmanned aircraft system (UAS) countermeasure technologies near commercial airports. Both FAA and TSA are studying whether to equip TSA’s Federal Air Marshal Service with counter-UAS (C-UAS) systems to protect airports from errant or threatening drones. Reps. Graves and Rogers stated, “We believe this concept of operations is wholly inconsistent with, and contrary to the legislative intent of, the limited C-UAS authority provided by Congress to DHS.”

## AVIATION REGULATORY ALERT

Congress included several sections in the 2018 FAA Reauthorization Act related to safe integration of commercial UAS technology into the U.S. airspace system. One such provision allows the U.S. government to deploy C-UAS systems to protect certain types of sensitive facilities. However, Reps. Graves and Rogers do not believe this authority allows TSA to operate C-UAS systems around airports. They expressed concern that such deployment could be hazardous given TSA's lack of experience with such technology, but said they welcomed discussion about whether DHS needs additional authority to protect airports and the U.S. airspace system.

### DHS WANTS NEW TECHNOLOGY TO STREAMLINE REAL ID BACKLOG

The Department of Homeland Security (DHS) and the Transportation Security Administration (TSA) are preparing for a key statutory deadline that will have significant impacts for the U.S. traveling public in less than one year. On **October 1, 2020**, TSA airport checkpoints will no longer permit travelers to present identification cards that are not REAL ID Act-compliant. Concerns are growing because it is estimated that only around 27% of Americans have upgraded to REAL ID Act-compliant cards. TSA Deputy Administrator Patricia Cogswell testified before Congress in October that her agency needs to continue to educate the public about the need to update old drivers' licenses. The U.S. Travel Association recently asked Congress to permit alternative screening procedures next year to prevent travelers from being turned away at the airport.

In light of the above TSA, on November 7, 2019, published a Request for Information in the Federal Register seeking ideas on how to ease the backlog in getting REAL IDs to Americans. Interested parties can submit responses to the request through **December 9, 2019** in Docket No. DHS-2019-0056. The request, Automated Solutions for the Submission of REAL ID Source Documents, seeks input on "how the development and deployment of additional capabilities or technologies can assist in streamlining the process for individuals to submit the required documentation and information when applying for a [REAL ID]." Key questions being asked by TSA center on the readiness, costs, security, and management of such solutions.

### FAA DOWNGRADES CIVIL AVIATION AUTHORITY OF MALAYSIA

On November 11, 2019, the FAA announced that its International Aviation Safety Assessment (IASA) program had downgraded the Civil Aviation Authority of Malaysia (CAAM) from IASA Category 1 to IASA Category 2. FAA's IASA program periodically assesses the civil aviation authorities of countries whose air carriers apply for or are conducting operations to the U.S., or whose air carriers are engaging in code-share operations with U.S. partners. A Category 2 rating reflects the FAA's analysis that a foreign civil aviation authority deviates from International Civil Aviation Organization (ICAO) safety standards in some significant aspect.

Malaysia's CAAM first achieved Category 1 status in 2003 and was most recently reassessed in April 2019. As a consequence of the downgrade, Malaysian air carriers can continue existing service to the U.S. but cannot establish any new service.

## AVIATION REGULATORY ALERT

### CBP PLANS TO MERGE TRUSTED TRAVELER APPLICATION PROCESSES

U.S. Customs and Border Protection (U.S. CBP) announced this month that it plans to harmonize the fees and application procedures for several of its trusted traveler programs. The three initiatives expected to be partially combined are the Secure Electronic Network for Travelers Rapid Inspection (SENTRI) program (relating to the U.S. southern border), the Global Entry program (relating to international air arrivals), and the NEXUS program (relating to the northern border). Each program currently has a standalone enrollment process but has a similar mission to expedite processing of low-risk travelers at ports of entry. A Notice of Proposed Rulemaking on merging the application processes is scheduled for release and public comment in January 2020.

### FAA EXPECTED TO ISSUE UAS REMOTE ID NPRM NEXT MONTH

The Federal Aviation Administration (FAA) is on track to finalize its Notice of Proposed Rulemaking on Remote Identification of Unmanned Aircraft Systems in the coming weeks (RIN: 2120-AL31, currently scheduled for publication on December 20, 2019). The forthcoming rule is expected to set out standards and policies for unmanned aircraft systems to operate in U.S. airspace and to address safety and security concerns raised by stakeholders such as law enforcement during the comment period. The FAA has said it views the forthcoming remote ID scheme as the key framework for integration of advanced UAS operations into U.S. airspace.

### PILOTS CONTINUING TO ADVOCATE FOR SECONDARY COCKPIT BARRIERS

Last month marked the one-year anniversary of the 2018 FAA Reauthorization Act, a landmark bill with many assignments to federal agencies for rulemaking and data reporting. Section 336 of the Act directed the FAA to require installation of secondary cockpit barriers on newly manufactured aircraft for domestic passenger service no later than one year after the date of enactment of the Act. This deadline passed last month, but FAA has yet to finalize such an order, though FAA Deputy Administrator Dan Elwell told Congress at a hearing in September whose subject was Act implementation that the agency was working on the issue.

In response to the missed deadline, the Air Line Pilots Association, International (ALPA) released a statement criticizing the FAA and demanding prompt issuance of an order pursuant to Section 336. ALPA has criticized the FAA's use of a working group to develop standards for the secondary barriers as an "unnecessary delay."

*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](mailto:esahr@eckertseamans.com) or 202-659-6622; **Drew Derco** at [dderco@eckertseamans.com](mailto:dderco@eckertseamans.com) or 202-659-6665; **Eric Felland** at [efelland@eckertseamans.com](mailto:efelland@eckertseamans.com), 202-659-6677.*