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# The UPDATE Report

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## Commerce Interprets Aircraft Parts Export Rule

The Commerce Department has issued an interpretation of the standards for distinguishing export jurisdiction over dual-use aircraft parts.

At issue is whether an export is subject to the State Department's International Traffic in Arms Regulations (ITAR) rules (which apply to defense-related articles) or the Commerce Department's Export Administration Regulations (EARs - which apply to civil aircraft parts). It has become increasingly important to have a clear distinction as the Air Force adopts more dual-use engines and airframes, and relies on more civilian aircraft parts as 'commercial off-the-shelf' alternatives. These practices have resulted in more and more parts become dual-use (meaning that they are used in both civilian and military aircraft).

In addition to knowing which regulatory structure to comply with, this distinction is important because most parts exported under Commerce jurisdiction do not need an export license, and most parts exported under State jurisdiction will need an export license.

Congress passed a law that reserved to Commerce Department control of the export of parts for civilian aircraft. That law had a time limit and expired, but was 'kept alive' by Executive Order under the Clinton and Bush Administrations. Its status as a creature of Executive Order has caused the State Department and Commerce Department to engage in some internal wrangling over which Department has the authority to create distinctions and clarifications.

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## INSIDE:

## MESSAGE FROM ASA'S PRESIDENT

Dear Colleagues,

The Department of Commerce's interpretation of the distinction that applies to dual-use parts is a positive step in clarifying export issues. ASA appreciates Commerce's recognition of the inconsistencies and their effort to fix it. The new interpretation is addressed in this newsletter and will also be discussed during the ASA Export Workshops which start this month in Miramar, Florida and Arcadia, California. If you are interested in attending please email Erika Schnure. There will be two more export workshops this year, held in Chicago and Dallas.

This month we have several short articles on meaning of serviceable, temporary import license exemption, 8130-F update and business and news articles. As with the article about the term serviceable many articles are generated by member questions or requests. If you have a topic areas that you would like to see an article about please contact us.

As expected the DC area is full of excitement, anticipation and anxiety with the new President coming to town and awaiting announcements to the new political team. The transition team has not yet announced the FAA Administrator. Many of you have called or emailed to find out the mood in Washington, or if we are renting our house for the inauguration or if we are even going to the inauguration. Since most people coming to the inauguration are not looking to sleep in a bunk bed or crib we figured our house was not marketable. As you can imagine DC is quickly transforming into its inaugural look with bleachers, stands, street vendors and street closure signs being placed all around the city. Even though ASA is a bit away from the Capital, the White House and the parade route we are still being impacted by the inaugural events and to be honest I think intentionally scared by the local politicians into closing the office to reduce the number of cars on the road. Well it worked. Yesterday it was announced that all bridges into DC from Virginia are being closed to cars on January 20th leaving access into DC through Maryland and conveniently passing ASA. So if you need to reach ASA staff on January 20th try emailing as we will be closed.

Take care, Michele


### THE UPDATE REPORT

is the newsletter of the Aviation Suppliers Association.

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ASA is committed to providing timely information to help members and other aviation professionals stay abreast of the changes within the aviation supplier industry.

**The UPDATE Report** is just one of the many benefits that ASA offers members. To learn more about our valuable educational programs, please contact ASA.

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## REGULATORY UPDATE

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In August, the State Department issued its own interpretation of the distinction, and that interpretation was potentially favorable to the civilian aerospace community. It provided a potentially narrow definition of standard equipment that could easily be read by the government to require State Department commodity jurisdiction requests.

ASA filed comments seeking better language in the State Department interpretation and when the State Department rejected the plea for better guidance, ASA spent time speaking with the Aerospace experts at the Commerce Department. In December, the Commerce Department issued its own interpretation of the distinction that applies to dual-use parts. It revised the existing guidance in section 770.2(j) of the EARs.

The December interpretation reiterates that:

- Civilian aircraft parts that are not within the specific scope of Category VIII or IX of the USML (e.g. certain avionics and other specified aircraft parts), remain subject to the Commerce Department export regulations;

- This includes "parts, accessories, attachments, components, and related training equipment."

The addition of language including parts, accessories, attachments, components, and related training equipment makes it clear that non-ITAR civilian aircraft parts are meant to fall under the exclusive jurisdiction of the Commerce Department, and cannot be dragged in to the State Department's jurisdiction.

The complete update to the interpretive rule can be reviewed online at http://edocket.access.gpo.gov/2008/E8-28654.htm.

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# ASA Members Ask: What Does "Serviceable" Mean?

## *Have you ever wondered what the word "serviceable" means?*

Many air carriers use this term to denote parts that have been removed from an airworthy aircraft within their fleet and that are still considered to be acceptable for installation on another aircraft within that same fleet.

One of our members recently wrote to us to inquire about the meaning of the term. He indicated that he had purchased an aircraft part. The seller had pledged to provide a unit in "serviceable condition," and the part was actually accompanied by a SPEC 106 form that indicated that the condition of the unit was "SV." SV is the common industry abbreviation for the term "serviceable."

The problem was that the unit had been assigned a shelf-life by the manufacturer, and the shelf-life had expired over a year before the sale!

When the ASA member went back to the seller to complain that the out-of-time part was not serviceable, the seller offered an interesting argument. The seller suggested that the term "serviceable" meant that the unit was in need of service. He suggested that by using this phrase, he was connoting that the component needed to be serviced by a FAA Part 145 repair station and issued an 8130-3 before it could be used on an aircraft.

While clever, the seller's definition was inconsistent with both industry use and government use of the term "serviceable."

The term "serviceable" has never been precisely defined. The FAA refused to permit the use of this term in the status/work block of the 8130-3 tag, and the original publication of SPEC 106 failed to define the term. Despite a lack of published definitions, though, most people in the industry will agree that a serviceable unit is one that is capable of being fitted to an aircraft and used.

Where a unit has a hard time assigned by the manufacturer (such as a shelf-life-limit or a time assigned under the airworthiness limitations section of the instructions for continued airworthiness), and that time has expired, it is generally not appropriate for use on an aircraft. Such a unit is generally not considered "serviceable." So the out-of time unit should have been declared "unserviceable," and not "serviceable."

Industry conventional wisdom, though, is not the only source of guidance for the meaning of the term "serviceable."

FAA Order 8120.11 used the term "serviceable," and although it is not specifically defined in that order, the term is clearly used in a context that is meant to imply "capable of being used

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on an aircraft." Order 8120.11 also uses the term "unserviceable" to connote a part that is in need of service.

You can find FAA Order 8120.11 online at:

http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgOrders.nsf/0/517999D93BFBD84786256ABF006F362B?OpenDocument&Highlight=8120.11

# Executive Order Puts NextGen System in Motion

On November 18, President Bush signed Executive Order 13479, meant to hasten the implementation of the Next Generation Air Transportation System (NextGen). NextGen is a modernization project that will include an overhaul of the U.S. aviation system's approach to safety.

The essential premise of the NextGen system is that the current U.S. aviation system has served the nation well since the 1950s, but is inherently limited in its ability to grow and adapt. In a time when boats and cars routinely use GPS systems, planes in the Unites States are still guided by World War II-era radar. The four basis tenets of NextGen are coping with the increased demand for air transportation, improving current levels of safety and security, minimizing environmental impacts, and ensuring that the overall changes to the National Airspace System (NAS) are economically viable.

The executive order mandates that the Secretary of Transportation establish within the Department of Transportation a support staff to help implement the NextGen system not later than 60 days after the date of the order. Additionally, the order requires that the Secretary establishes an advisory committee to provide advice to the Secretary on implementing the NextGen system not later than 180 days after the date of the order.

It is important to note that this time frame means that the NextGen support staff will be established prior to President-elect Obama taking office. With the NextGen program underway at the start of the new administration, it would be up to President-elect Obama to affirmatively dismantle the support staff for the NextGen program with an executive order of his own, if he wished to stop NextGen from moving forward.

What will NextGen mean for the aviation industry? Who will be financially responsible for the required safety improvements? The Joint Planning and Development Office's (JPDO) Aircraft Working Group has developed a 72-page guide, the "NextGen Avionics Roadmap Version 1.0," which is available for download on the JPDO website. The Roadmap is meant to communicate to the aviation community how the proposed NextGen changes correlate to aircraft capabilities and functions, and how these capabilities and functions evolve over time.

The primary focus of version 1.0 of the Roadmap is on improved air carrier and air transport operations through 2018, though JPDO indicates that the Roadmap will grow and evolve over time to take into account the entire aviation industry. The JPDO website states that the Roadmap is intended as "a starting point and a first step to help focus the discussion and debate needed to grow consensus in the aviation community."

The JPDO is accepting comments on the Roadmap until February 27, 2009. A comment form can be found on the JPDO website http://www.jpdo.gov/newsArticle.asp?id=105.

# Continental Air, Others, to Stand Trial for Concorde Crash

U.S. air carrier Continental Air, along with five individuals, will stand trial for involuntary manslaughter in the crash of an Air France Concorde on July 25, 2000. The defendants include two senior members of the Concorde program.

The crash, which occurred when a New York-bound supersonic airliner went down in flames minutes after take-off from Paris' Charles de Gaulle airport, killed all 109 passengers on board as well as four people on the ground.

A French inquiry into the crash concluded that the disaster was partly caused by a titanium strip that fell on the runway from a Continental Airlines plane that took off immediately before the Concorde. The Concorde ran over the titanium strip, shredding one of its tires and causing a blowout. The blowout resulted in debris flying into the Concorde's engine and fuel tank. The inquiry also placed blame for the crash on the Concorde's delta-shaped wings, which held its fuel tanks.

The two Continental employees charged in connection with the crash are John Taylor, the mechanic who allegedly fitted the non-standard strip, and Stanley Ford, the airline's chief of maintenance.

The Concorde officials charged are Henri Perrier, the director of the first Concorde program at Aerospatiale, now part of the EADs aerospace group, and Jacques Herubel, Concorde's former chief engineer. The fifth defendant is Claude Frantzen, the former director of technical services at the French civil aviation authority DGAC. These last three defendants are charged in connection with the alleged flaw found in the Concorde's wing.

Concorde's two operators, British Airways and Air France, took the plane out of service in 2003.

# Temporary Import License Exemptions for Aircraft Parts

So your company has successfully exported aircraft parts controlled by the International Traffic in Arms Regulations (ITAR). What happens when these parts need to be returned to the U.S. for repair? What steps does your company need to take to subsequently re-export the newly repaired parts while still complying with export regulations?

Your company's exported parts may qualify under ITAR for a temporary import license exemption. This exemption allows temporary import of an item for a period of up to four years, as well as subsequent re-export of the item.[1]

## *What Parts Qualify?*

To qualify for this ITAR temporary import license exemption, your company's parts must be unclassified U.S.-origin defense items.[2] This includes items manufactured abroad pursuant to U.S. government approval[3]. Next, the parts need to be imported and then serviced. Service is defined as "inspection, testing, calibration or repair, including overhaul, reconditioning and one-to-one replacement of any defective items, parts or components". However, ITAR's definition of service does not include any sort of modification or improvement that changes the basic performance of the imported item[4].

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[1] 22 CFR §123.4(a)
[2] 22 CFR §123.4(a)
[3] 22 CFR §123.4(a)
[4] 22 CFR §123.4(a)(1)

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Following service, the imported parts must subsequently be returned to the country from which they were imported. Shipment of the item may be made by the U.S. importer or a foreign government representative from the country from which the parts were imported.[5]

Certain other criteria must be met to qualify for the temporary import license exemption. The importer must meet the eligibility requirements set out in 22 CFR §120.1(b).[6] Additionally, at the time the parts are re-exported, the ultimate consignee named on the Shipper's Export Declaration (SED) must be the same as the foreign consignee or end-user of record named at the time of import.[7] Also, the temporary import must not be from or on behalf of a proscribed country (as listed in 22 CFR §126.1), unless an exception has been granted in accordance with 22 CFR §126.3.[8]

### *What Procedures Must be Followed?*

At the time of the temporary import, your company must file and annotate the applicable U.S. Customs and Border Protection document (e.g. Form CF 3461, 7512, 7523, or 3311) to read "This shipment is being imported in accordance with and under the authority of 22 CFR 123.4(a)(1)".[9] Also at the time of import, your company must include a complete list and description of the defense articles being imported, including quantity and U.S. dollar value, on the invoice or other appropriate documentation.[10]

At the time of re-export, the Directorate of Defense Trade Controls (DDTC) registered and eligible exporter, or an agent acting on the filer's behalf, must electronically file the export information using the Automated Export System (AES), and identify 22 CFR §123.4 as the authority for export. The DDTC or agent must also provide, as requested by U.S Customs and Border Protection, the entry document number or a copy of the U.S. Customs and Border Protection Document under which the article was exported.[11]

If these procedures are followed, your company should have no trouble returning eligible exported aircraft parts to the U.S. for service and subsequently re-exporting them without a license.

[5] 22 CFR §123.4(a)(1)
[6] 22 CFR §123.4(c)(1)
[7] 22 CFR §123.4(c)(2)
[8] 22 CFR §123.4(c)(3)
[9] 22 CFR §123.4(d)(1)(i).
[10] 22 CFR §123.4(d)(1)(ii)
[11] 22 CFR §123.4(d)(2)

## "Inpected/Tested" Language in 8130.21F Meant to Harmonize with EASA Form One

Have you taken a look at FAA Order 8130.21F lately? If you have, you may have noticed that some of the 8130.21 language has been changed in the newest F revision of the Order.

One instance of changed language is the use of the dual term "Inspected/Tested" in Chapter 3 of the Order. The dual term "Inspected/Tested" appears in the table describing what terms can be entered into Block 12 of an 8130-3 form for Approval for Return to Service. In the prior E version of 8130.21, the word "Inspected" alone was listed as an option, with no mention of the word "Tested" (either joined or alone). Now, the dual term "Inspected/Tested" appears as an option.

What is the meaning of this changed language? The use of the dual term "Inspected/Tested" reflects a compromise between the European Aviation Safety Agency (EASA) and the FAA. The FAA and EASA have been involved in efforts to harmonize the FAA's 8130-3 form with EASA's equivalent form, Form 1.

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# Quantum Control

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## Inventory Management*

The cornerstone for the Quantum Control system. The parts summary screen provides a central viewpoint for all information and activity related to a given part.

## The StockMarket

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## Quotation Processing*

Manages the customer quotation process and the recording of supplier responses from outgoing RFQs.

## Vendor Quotes*

Provides a tool to locate sources for part procurement and send out requests for quotes to multiple vendors, including multiple lines.

## Sales Orders*

Manages the customer order process to include back order management, invoice preparation and product returns.

## Invoice Management*

Provides the opportunity to manage the invoice process by viewing system wide for open sales orders and determining if these can be expedited or consolidated with existing invoices, etc.

## Purchase Orders & Requests*

Manages the purchasing process including request routing and approval by dollar amount and employee position. Manages purchasing activity for stock, non-stock and exchange.

## Purchase Management*

Provides the capability to manage purchasing activities by being able to review all parts needed for procurement based upon sales order requirements and below minimum level stock quantities.

## Integrated Accounting

The Accounting Module includes General Ledger, Accounts Receivable, Accounts Payable, and more - all integrated with Sales, Purchasing, Repair, Exchange, Work Order and Invoicing modules.

## Physical Inventory*

Manages the physical inventory process. Generates count sheets for manual or barcode counting efforts.

## Receiving and Inspection*

The receiving module is a powerful tool for efficient, cost-saving receiving, intermediate and final inspection, and defect recording.

## Shipping Management

Manages the shipping and order consolidation process to include user defined stages and statuses. Creates custom invoices, packing slips and certification forms within one shipment.

## Demand Planning

Optimizes material and production planning by analyzing historical usage and projecting future demand. Recommends minimum and maximum order quantities based on lead time and forecasted demand.

## Lot Costing

Manages lot purchases and assembly teardowns. Provides total tracking of acquisition costs, overhaul expenses, component part sales, profit margins and full traceability.

## Data Services

Provides flexible tools to manage the process of both importing and exporting data to/from the Quantum database. Integration points include ILS, USA Info, Partsbase and AvRef.

## Management Reports*

Produces hard copy and screen oriented reports supporting all modules throughout the system.

## Crystal Reports 11 Pro

Create flexible, feature-rich reports allowing unlimited reporting from Quantum, using the de facto standard for business reporting today.

## Aircraft Maintenance

Manages on wing maintenance and includes Engineering Configuration Management, Maintenance Program Management, Maintenance Recording, Technical Records and Flight Log Processing Modules.

## Shop Control

Manages the complete Component and Assembly Repair and Overhaul process. Includes real-time Cost and Schedule Management functions that put you in complete control of your shop's activity.

## Manufacturing

The Manufacturing Module addresses all aspects of the manufacturing process including product lines, floor control, inspections, materials planning, purchasing and outside servicing.

## Repair Orders*

Manages the preparation, pulling from inventory, shipping and receiving of components sent out for repair. The Repair Order module provides historic as well as current repair cost per component, detailed by parts, labor and miscellaneous charges.

## Contact Management

This module provides a tool for sales, service or support centers to record, track, status and assign contact activity. Email list management and broadcasting is also included.

## Document Imaging

Provides the ability to attach images or documents against part number, stock line, work order, and company.

## Company Management*

Contains both customer and vendor information including pre-defined settings such as payment terms, preferred method of shipping, discounts, tax and more. It can also group vendors and suppliers for marketing purposes and provide detailed history information for each vendor and supplier.

## Internet Quantum™ (iQ)

The Internet Quantum module (iQ), utilizes StockMarket technology to allow customers to login to your website and view, RFQ, or purchase from your existing stock in real-time. Information such as condition, time & cycles remaining, tag info, scanned documents, delivery time and more is available to assist users in their purchasing decisions.

## Max-Q

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## Bar Coding

Prints bar codes and allows for the scanning of physical inventory to track and manage stock and account for all parts when shipping, receiving, etc.

## Repair Manual Tracking

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The Rental and Leasing module has the versatility to handle all of your rental and leasing transactions including flight-time based billing.

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Additionally, you may have noticed that in all the chapters in the newest revision of the Order, the person filling out the 8130 form is instructed to enter the term "N/A" in Block 9 of the form. This is because the international agreement calls for the removal of Block 9 of the 8130. However, the U.S. is waiting for completion of EASA's Notice of Proposed Amendment (NPA), and thus temporarily Block 9 is still a part of the form but can be safely disregarded.

It is worthwhile to note that not all of the FAA's guidance has yet caught up with the new international harmonization agreement. For example, the instructions for applying to a DAR for an 8130-3 still ask for the Block 9 information to be collected. This is just one example of the way the industry can expect some bumps in the road in the near future as the international community moves towards harmonization.

## New IRS Key Employee Insurance Reporting Requirements

The loss of a key employee by death or disability can financially cripple a business. Many companies use "key employee" or "key person" insurance to guard against losses until the employee can return to work or a replacement can be found and trained. Employer-owned life insurance contracts are required to be reported to the IRS under Section 60391 of the Internal Revenue Code.

The IRS has recently published a final regulation on "Information Reporting on Employer-Owned Life Insurance Contracts." This final regulation goes into effect on November 6, 2008 and provides taxpayers with guidance as to how the requirements of Section 60391 should be applied.

The new regulation also includes the addition of Section 101(j) which defines an employer-owned life insurance contract as a life insurance contract that is:

- Owned by a person engaged in a trade or business (including a corporation);
- Under which that policy holder is the direct or indirect beneficiary under the contract; and

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- Covering the life of an insured who is an employee with respect to the trade or business on the date the contract is issued.

This regulation defines an "applicable policyholder" as a person who owns an employer-owned life insurance contract.

Every taxpayer owning one or more employer-owned life insurance contracts issued after August 17, 2006 is required to file a return by completing IRS Form 8925. This return is due at the same time as the policy-holder's income tax return, and should be filed with that return.

The following information must be reported using IRS Form 8925:

- The number of employees of the applicable policyholder at the end of the year;
- The number of such employees insured under employer-owned life insurance contracts at the end of the year;
- The total amount of insurance in force at the end of the year under such contracts;
- That the applicable policyholder has a valid consent for each insured employee; or if consents have not been obtained, the number of insured employees for whom such consent was not obtained;
- The name, address and taxpayer identification number of the applicable policyholder and the type of business the policyholder is engaged in.

# Will Future Planes Run on Algae?

Proponents of developing airplane fuel out of algae are gearing up to convince the new administration that algae can be the basis of an important alternative fuel of the future. The Algal Biomass Organization (ABO) is gearing up to make their case that algae deserves the tax breaks, market incentives, loans and research and development backing that other biofuel sectors, such as corn and soybean, already receive.

Commercial airplanes burn 70 million gallons of aviation fuel a year. With the recent instabilities in the price of fuel, and the growing concern over the greenhouse gases produced by jet engines, the time is right for a green solution. But is algae the answer?

The Department of Energy studied algae as a fuel source as far back as the 1970s, but abandoned that research in 1996. However, last year's energy bill required the Department to report back to Congress on the feasibility of using algae as a biofuel.

Biofuels made from soybeans, corn, sunflower seeds, and rapeseed are less than ideal because they take up valuable agricultural land and can result in deforestation in developing countries. Additionally, the demand for these products has driven up the price of food, even causing food shortages in some instances. On the other hand, algae can grow anywhere and will flourish in saltwater, freshwater, or brackish water. Sapphire Energy, a San Diego company, has already produced a gasoline using algae that meets fuel quality standards. It achieved a 91 octane rating.

The Boeing Corporation was instrumental in forming the ABO and has emerged as one of the leaders in the effort to develop algae-based fuel. Boeing has also looked into other potential sources of green fuel, such as halophytes (salt tolerant plants such as seashore mallow) and jatropha (a bush that grows in arid environments and requires little water yet yields more oil than corn).

In fact, Virgin Atlantic successfully tested a biofuel based on jatropha on a 747 flight from London to Amsterdam. Recently, Continental, in conjunction with Boeing and GE, announced its intention to do a biofuel test flight in the first part of 2009. And Air New Zealand successfully completed a test flight of one of its aircraft, running a 50-50 mix of jatropha and standard jet fuel. As implausible as fueling an engine with algae or any other plant may seem, it looks as though the aviation industry may begin to utilize biofuels in the not-too-distant future.

# Stay Issued in New York LaGuardia, New York Kennedy, and Newark Airports Slots Auctioning Case

A planned auction of take-off and landing slots at New York LaGuardia, New York Kennedy, and Newark airports was blocked by a stay granted by the U.S. Court of Appeals for the District of Columbia December 8th. The stay was granted only one day before the federal rules permitting the auctions were to become effective. The U.S. Department of Transportation (DOT) had scheduled the auction of the slots for January 12th.

The stay stems from a suit filed in August by the Port Authority of New York and New Jersey, which operates the three airports at issue and owns the terminals and other airport infrastructure. The Port Authority believes that auctioning off the slots would raise ticket prices for customers without doing anything to address flight delays, and argues that the DOT lacks the authority to auction the slots.

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The DOT, on the other hand, argues that the auctions present a good way to allocate scare resources and believes the auctions would encourage airlines to operate larger jets at the New York airports.

The judges stated in their ruling that the Port Authority's lawyers had "satisfied the stringent standards required for a stay pending court review."

Under the auction plan, airlines would have been forced to surrender 10% of their take-off and landing slots over the next five years, for auction to the highest bidder. The airlines have also come out adamantly against the slot auctions.

## CONTACT US!

ASA Staff is always interested in your feedback. Please contact us with any comments or suggestions.

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### ASA Events

**July 11-14, 2009** . . . . . ASA Annual Conference
Orlando, FL

### Regulatory Workshop

**March 3, 2009** . . . . . London, England

### Training Workshops

**January 15, 2009** . . . . . Miramar, FL
**January 28, 2009** . . . . . Los Angeles, CA
**March 19, 2009** . . . . . Chicago, IL
**April 20, 2009** . . . . . Dallas, TX