

The UPDATE Report



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BIS Offers Email Notification Service for Export Lists

In a helpful service to U.S. exporters, the Bureau of Industry and Security (BIS) now allows you to register to receive email updates when one of the BIS “Denied” lists is updated. Denied lists detail the parties with whom U.S. exporters are forbidden to transact export business. It is important to keep on top of changes to these Denied lists to avoid inadvertently breaking the export regulations and becoming subject to civil and criminal penalties.

Generally, you should be checking your customer names against the lists before you commit to engaging in a transaction with them. With the BIS email updates, it will become easier to keep on top of any changes to the lists that affect your current lists of customers.

Remember that State Department regulated export articles (defense-related articles) – also known as ITAR-controlled items - are subject to a different set of prohibition lists, and that the BIS email notification will not inform you when those State Department lists change. To sign up for email notification, visit <https://www.bis.doc.gov/forms/emailnotification.htm>.

Discrimination Lawsuit Standards are Changing – Be Sure You Change With Them!

The Lilly Ledbetter Fair Pay Act was recently signed into law, changing the time period an employee has to bring a lawsuit against their employer for alleged wage discrimination. Prior to the Act, the Supreme Court had interpreted a statutory provision on pay discrimination to read that an employee only had

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MESSAGE FROM ASA'S PRESIDENT

THE UPDATE REPORT

is the newsletter of the Aviation Suppliers Association.

OUR COMMITMENT

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

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Dear Colleagues,

With the economy the focal point of news coverage, we wait to see if the stimulus package will be beneficial to ASA members and other small businesses. If your company's sales are down, you are not alone. ASA does not collect sales data from members so we have no true scientific data to share, but we can note that all companies that I have spoken to are significantly down. No one seems surprised by the drop as once again operators are reducing their service and parking planes.

We have seen downturns before and have learned challenges lead to opportunities. Aviation will rebound. Customers will look towards partnerships to help reduce costs. In the next few months there are several events that provide great venues for networking and developing business – MRO Americas, Purchasing Conference in London, CCMA in Cartagena, AAPA in Vietnam and ASA in Orlando. ASA Staff or Directors will be at all these events.

ASA will be hosting two more export workshops (Dallas and Chicago) and hosting a regulatory workshop in London/Stansted area. Registration information is on our website.

Soon, ASA will be announcing its Keynote and general session speakers for the ASA Annual Conference. While ASA will always continue to focus on material management and quality assurance issues in its conferences, this year's conference will include a special emphasis on business issues designed to help ASA's members thrive—not just survive—as our economy recovers. Opportunities to exhibit and sponsor are still available. Registration is open and the form is on the website.

Take care,
Michele

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REGULATORY UPDATE

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180 days to file a claim against an employer for unfair pay, and that the 180-day period began to run from the time the alleged wage discrimination began (when the employer started to pay the employee less than the employee's counterparts doing the same work).

Under the new law, an employee will have 180 days to file suit for wage discrimination, but the 180-day period will not start until the date of the last discriminatory paycheck. Essentially, each new allegedly unfair paycheck would begin the 180-day period to file over again. Proponents of the new law argue that it is often hard for an employee to know precisely when their employer begins discriminating against them and paying a counterpart more for the same job. Changing the statute of limitations for filing a wage discrimination action makes it more likely that workers will have an avenue to pursue against their employer when they have been the victims of wage discrimination.

The new law is named for Lilly Ledbetter, a woman who worked at Goodyear for nearly two decades at a wage less than that earned by her male counterparts. Ledbetter is the complainant the Supreme Court had ruled against in last year's case, finding that she had not brought her wage discrimination claim in the 180-day period required by statute after Goodyear began to pay her a lesser, unfair wage than her similarly situated co-workers.

How will the change in the law affect companies?

It will now be easier for workers to bring wage discrimination lawsuits. They do not need to even consider such a suit until the 180 days after they are terminated (after they get their last discriminatory paycheck).

Companies may also see an increase in frivolous suits being filed following the termination of workers. Under the prior law, an employee

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generally needed to notice that he or she was paid a different amount while still at the company. Under the new law, there is no need to consider suing until the employee is terminated, and at that point the employee can “reach-back” to the first paycheck. This makes such suits potential gold mines for employment lawyers, who may be willing to take speculative cases on contingency.

Protect Your Company

One way companies can protect themselves from even the appearance of impropriety in regard to workers' wages is to institute a company-wide system of pay banding. Under a pay banding system, functions within the company would be slotted into specific bands, with acceleration in pay based almost completely on worker experience (or some other defensible lock-step method). Employees would need to change job functions in order to change pay bands (so that you would not have two employees doing the same work but in two different paybands, which might be viewed as discriminatory). A downside to this pay banding system is that it limits an employer's ability to base wages on merit and to reward especially outstanding and excellent workers.

Because of the likelihood that lawyers will target this change in the law as an opportunity, ASA members should review their payroll paradigms to be sure that they remain protected from suit. 

Who Will Be the New Head of the FAA?

The aviation community is waiting expectantly to see who will be appointed the new Administrator of the Federal Aviation Administration (FAA), a choice that seems far from obvious at the moment.

Early on, Duane Woerth, a former president of the Air Line Pilots Association, was considered the top pick in the race to see who would be put in charge of the FAA. However, recently, veteran Senate aide Robert T. Herbert appears to be gaining on Woerth, his labor establishment-backed rival, muddying the waters for those trying to predict who the next Administrator will be.

Herbert, the new contender, is the transportation, homeland security, and defense advisor to Senate Majority Leader Harry Reid. Reid has supported Herbert's bid for the position, including sending a letter indicating his support of Herbert to the Obama transition team. Both Herbert and his rival, Woerth, are considered by those in the aviation industry to possess the necessary qualifications to run the FAA.

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Information for SUCCESS

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In his quest to win the top spot, Herbert has been reaching out to the leadership of industry unions, and also recently met with Ray LaHood, the new Transportation Secretary.

Secretary LaHood has seemed unimpressed with both candidates, and has asked that additional candidates be considered for the position. One of those new candidates is Randy Babbitt, an aviation consultant and former union boss. He has Woerth’s union credentials, but is also described as a happy person who is easy to work with (and of course is very knowledgeable about aviation). Union credentials are considered important, because in addition to negotiating contracts, the new Administrator will have to handle major pressure from pilot union groups to revise flight-time and duty-time regulations. 

The President Brings Change to Public Information Standards

President Obama, in an attempt to deliver on his campaign pledges to bring more transparency to the government, has said he is directing federal agencies that evaluate Freedom of Information Act (FOIA) requests to change their standard of evaluation. This announcement was made on his first day in office.

The Freedom of Information Act, or FOIA, is the law that permits ordinary people to ask the government for any document in its possession. Under the FOIA, the government is supposed to provide the public with any government document unless it falls into one of the narrow exceptions (like national security-sensitive documents or private sector trade secrets).

FOIA is frequently used by those interested in discovering how and why government decisions were made, such as the media and various public interest groups. ASA has used it to track issues that are important to the aviation distribution community.

While FOIA was meant to provide the public with the opportunity to scrutinize the government’s actions, the standards associated with FOIA have shifted over the years. FOIA officers – those charged with separating releasable government documents from those that were not releasable – often seemed to be searching for reasons not to release documents. In at least one case, a FOIA officer who favored broad releasability was quietly moved into another position.

Thus, the *de facto* standard was for federal agencies to look for reasons to turn down a request to make information public under FOIA. President Obama has altered this policy by instructing agencies to reverse this standard, and instead err on the side of making the information requested under FOIA public.

For the aviation community, this change may carry both positive and negative features. FOIA continues to feature an exception preventing the release of trade secrets and privileged and confidential commercial and financial information. Companies that provide the FAA with this sort of data rely on this sort of protection. The new emphasis on releasability could cause the government to err on the side of release though, so it is important to take steps to protect your data that is held by the government.


- Label your trade secrets and other confidential information when you provide it to the government, so that it will be recognized as potentially protected. Simply placing the phrase “trade secret” on the top of your documents that match this description will help to assure that they are reviewed for applicability of the appropriate exception.

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- If the government contacts you to say that they have received a request for documents that may include your data, write a legal argument explaining why the law protects this information from release – this is known as a “reverse FOIA” action and you ought to rely on a lawyer’s help to accomplish this. This is an opportunity to prevent the release of your confidential information.
- If you can recover your data (so that it is not held by the government), then do so. Most aviation laws and regulations require information to be reviewed by the FAA but they do not require the FAA to hold the data permanently. If the FAA does not have your data, then they cannot release it.

Companies have complained that their proprietary data was illegally released by the U.S. government. Under these circumstances, it may be difficult or even impossible to recover the “secrecy” of the data once it is released, leaving the original data provider with no recourse other than a lawsuit against the U.S. government for converse of private property to public use (and after legal fees, such lawsuits are unlikely to yield a satisfactory measure of damages).

For members of the community seeking government information, the change may represent a real benefit. Agencies evaluating a FOIA request for information that does not fit neatly into one of the statutory exceptions will now be more likely to release the documents, rather than seeking a different reason to deny the request. This could result in the release of information that some companies do not want made public (information that falls short of the definition of a trade secret or privileged and confidential information) but that nonetheless deserves to be in the public forum. 

The President’s Energy Policy Seeks to Lower Emissions

Soon the U.S. could see new programs meant to limit greenhouse gas emissions. President Obama’s energy policy is expected to include a cap-and-trade system for carbon dioxide (CO₂) meant to do just that.

Already in use in Europe, cap-and-trade system first sets a cap on carbon dioxide emissions. Then, companies are issued emissions credits in the form of permits allowing them to emit a certain amount of CO₂. The permits may be traded between companies in an open market. Thus, a company that is able to lower its emissions below the threshold set by the government can sell its excess credits, and a company that cannot lower its emissions below the government thresholds can purchase credits.

A company whose CO₂ emissions exceed its CO₂ credits would face fines or other penalties, which would help encourage such companies

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to purchase excess credits on the market. Gradually, the number of permits issued would drop, forcing companies to find ways to emit less over time.

Implementing a cap-and-trade system in the U.S. could double the size of the current global commodities derivative market. The U.S. market would be worth approximately \$2.3 trillion, and would be the largest global market. Currently, a cap-and-trade program is used in the U.S. to reduce the amount of sulfur dioxide emitted by coal-fired power plants, allowing companies to choose to either reduce

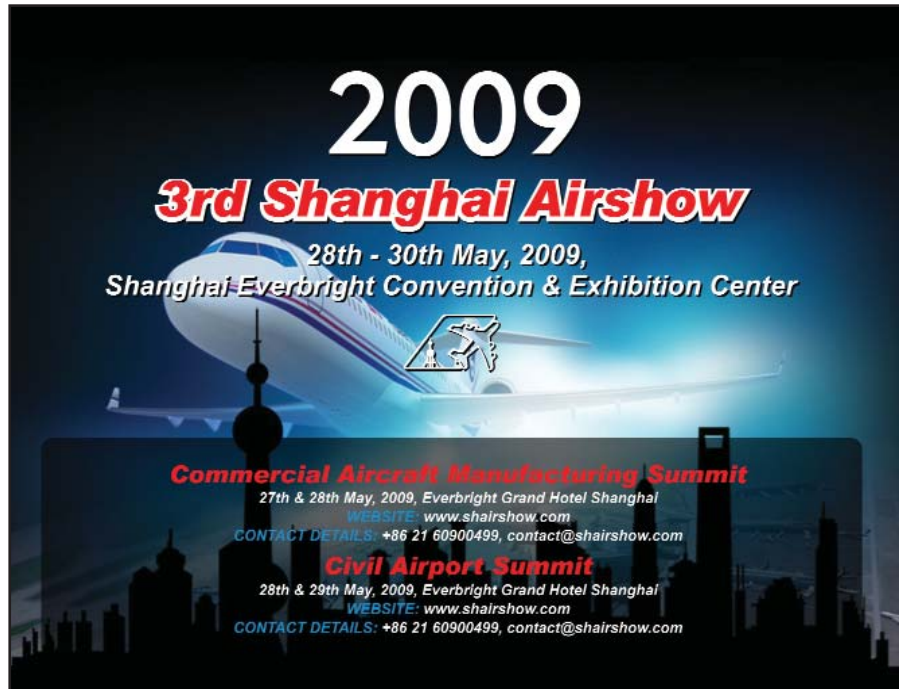
emissions or buy emission allowances. As the available permits have been reduced in number, the emission of sulfur dioxide has decreased. The Environmental Protection Agency estimates that the emissions of sulfur dioxide in the U.S. are now 30 percent below 1990's levels (despite any industrial growth).

Critics of the use of a cap-and-trade system for reducing CO2 emissions argue that instituting a tax on emissions would be a more effective system. Essentially, proponents of a tax-based emissions plan would impose a fee on companies for every ton of CO2 the companies produced through the use of fossil fuels. This tax would affect facilities, like refineries and power plants (thus affecting your power bill) and it would affect mobile sources, like aircraft. The tax would be gradually increased over time to increase incentive to lower emissions.

The aviation industry has criticized the program, because it makes no allowance for pre-program gains. The aviation engine community has spent decades creating cleaner, more environmentally-friendly engines. They feel that current technology does not allow a significant decrease in emissions without decreasing performance. Furthermore, certain biofuels that are being explored as alternatives to petroleum-based fuels would still yield significant CO2 emissions – although the farmers could generate credits for using CO2 in creating the biofuels, the users still would have to pay for the CO2 emissions caused by burning them.

The plus side of a tax-based plan would be that the cost of the plan is readily predictable to businesses, and the program itself could be less expensive and complicated to implement and oversee. However, some experts feel that a cap-and-trade plan seems more likely to get passed by Congress in the current political climate than a tax-based plan.

Ultimately, no matter what sort of action Congress takes, it seems that the environment and the lowering of emissions is going to become a priority in the new administration.



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Air Force to Investigate Biofuels, Engage in Significant Testing


Every time the price of a barrel of oil goes up \$1, it costs the U.S. Air Force \$60 million. Seeking a solution to this costly problem, Air Force officials have decided to look to the future of aviation - the green future - to save money while saving the environment.

The Air Force is beginning a new regime of testing fuel derived from plants, with the goal of certifying two types of biofuel for use in a 50/50 blend in the next four years. A longer-term goal of the Air Force is to have half of its domestic aviation fuel contain a 50 percent biofuel blend by the year 2016, only seven short years away.

While the Air Force has been testing a blend of synthetic fuel for the last few years, including three test flights on various aircraft using a 50/50 synthetic blend, the refining process for synthetic fuels can result in the release of more greenhouse gases. The Air Force's new plan, which will start with selecting two types of biofuels and acquiring around 160,000 gallons of each, is much more eco-friendly.

The two selected biofuels will be subjected to flight testing, engine testing, and lab analysis over the next few years. The Air Force's planned biofuel investigation plan will greatly exceed any testing done to date by airlines, and will require production of the selected biofuels at an unprecedented level. Luckily, biofuels can be produced and processed in already existing petroleum refineries.

The Air Force's biofuels program looks like it will result in great progress forward on the biofuels front. Commercial aviation will some day be able to reap the benefit of the Air Force's expensive and time consuming biofuels research and testing to save money on fuel while reducing the emission of greenhouse gases.

In other biofuel news, it looks like President Obama's administration will be investing heavily in alternative fuels, with the Department of Energy and the Department of Agriculture to put \$25 million towards the development of biofuels not made from food crops. This money is on top of the \$80 million dollar loan the government announced in the final days of the Bush Administration to Range Fuels. Range Fuels is a company that uses a thermo-chemical process to convert cellulose to ethanol, and the loan money is set to go towards building a new refinery. 

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Ohio Expands Sales Tax Exemption to Include Non-Part 145 Aviation Repair Facilities

Ohio recently expanded an exemption on sales tax on parts and labor involved in the repair and maintenance of aircraft to include all "Federal Aviation Administration Certified" repair stations, effective February 1st.

Last year, the governor of Ohio had approved legislation lifting the sales tax on parts and labor for FAA Part 145 aeronautical repair stations.

The new, expanded tax exemption applies to facilities working on aircraft either used specifically in general aviation operations, or aircraft with a maximum takeoff weight of 6,000 pounds.

This means that mechanics who are not working at a Part 145 repair station, or who are working as independent contractors, would still qualify for the tax break on parts and labor.

Prior to these changes to the tax law, aircraft owners in Ohio were flying their aircraft to other states without the sales tax on parts/labor to save money on repair and maintenance. Now, however, Ohio repair facilities can reclaim the business that the state was losing to other states, while saving aircraft owners money.

This expanded tax exemption was a wise move on Ohio's part to keep more aircraft maintenance business in the state during these troubled economic times.



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What Could the Current Economic Stimulus Bill Mean for Your Company?

On January 28th, the House passed an \$819 billion economic stimulus bill, the American Recovery and Reinvestment Act of 2009. The Bill contains many provisions that could be economically beneficial for businesses if it becomes law.

For example, the Bill would increase the expensing limit for small companies to \$250,000 of capital expenditures. Expensing means that the company can obtain the tax deduction in the same year the business asset is bought and put into service, instead of depreciating the capital expenditure over time. Being able to use this allowance assumes that the company has the money or the credit to make the purchase, though.

The Bill also would increase the number of years a company could carry back operating expenses from 2 years to 5 years, allowing businesses that are now losing money in the poor economy, but at one time were profitable, to generate cash for their operations through tax refunds.

Businesses would receive a total \$20 billion in tax cuts under the Bill, which the U.S. Chamber of Commerce has stated they believe is not enough to significantly grow the battered economy. However, the Chamber has indicated that they are hopeful that there will be more tax cuts and benefits to business in the Senate version of the Bill.

Much of the focus of the House Bill is on individual economic benefits, including extended unemployment benefits, health care subsidies for unemployed workers, and a \$500 tax break for low and middle income workers. Additionally, the Bill includes money to fund investment into alternative energies and infrastructure projects that could result in the creation of jobs.

The Senate is at work on a similar economic stimulus bill and hopes to get it passed and ready for the President to sign in February. Recently, executives from corporations including JetBlue Airways met with President Obama at the White House to discuss key points about their respective industries and to urge a quick passage of an economic stimulus package. The CEO of JetBlue indicated that the airlines in the meeting urged Obama to help the industry by developing an energy strategy and accelerating spending on air traffic control modernization.

The Senate Bill is expected to be significantly different from the House Bill. Part of the reason for this was that the Senate needed to generate some conservative support for the Bill – both Republicans and Conservative Democrats had expressed some reservations over some of the aspects of the House Bill. On February 9th, the Senate invoked cloture on the Senate Bill. Cloture is a formal end to debate on the bill, and it permits an immediate vote on the bill (it makes a filibuster impossible). Three Republicans voted to end debate: Senators Collins (R-ME), Snowe (R-ME), Specter (R-PA).

The differences between the Senate Bill and the House Bill will have to be negotiated in a conference between the two chambers. Such a conference will have to be sensitive to the fact that the Senate is trying to hold together votes from both Democrats and Republicans who questioned whether certain elements of the legislation would achieve the stimulus purpose that they are supposed to achieve.



Boeing Suffers First Cancellation of a Major 787 Contract


It comes as no surprise that in the current recession airlines are seeking to cut costs to stay afloat. In fact, in December, it was widely reported that China had ordered its state-owned airlines to delay delivery on new aircraft orders as a result of the global slowdown in travel.

Now, the Russian airline S7 has become the first airline to cancel a major contract with Boeing for the purchase of 787 Dreamliners. The cancelled order was for 15 Dreamliners, to be delivered in 2014. 15 Dreamliners, at list price, are worth a total of approximately \$2.4 billion.

S7 did not cite a reason for the cancellation, but Russia's airlines are facing their worst-ever financial crisis, after being hit hard by last year's high oil prices and by the global economic downturn. In fact, the Russian government formed a new state airline, Russian Airlines, last year, with the purpose of consolidating and absorbing other carriers left financially unable to operate.

S7 indicated that it still would like to utilize the Dreamliner in its operations, and would look into leasing the 787s instead of purchasing them. It is unclear what sort of penalties S7 might face from Boeing as a result of the cancelled contract.

Boeing is currently aiming to deliver the first Dreamliner in December of 2010, following a series of delays due to design problems, machinists' strikes, and part shortages. Depending on the delivery date set in Boeing's contracts with individual airlines, this delayed delivery may mean that Boeing is liable to pay penalties to its customers, or to in some way discount the price of the late aircraft. Boeing is also expecting additional cancellations of orders by other financially-pressed airlines.


With the world looking at cancellations on new aircraft, ASA members should be looking at ways to provide support to the older aircraft that will continue to be flown. 

Airbus Says It Won't Bid to Make Next Air Force One

January 28th was the deadline for companies to bid to manufacture the next Air Force One planes. Prior to the deadline, Airbus' parent company, EADS, indicated that it would not be bidding, leaving Boeing as the only possible manufacturer for the aircraft. No manufacturers besides Boeing and Airbus currently have the capabilities to manufacture an aircraft as large and technologically sophisticated as Air Force One is required to be.

The news that Boeing would be the manufacturer for Air Force One comes as little surprise. The company has been manufacturing presidential jets for around 40 years. Currently, the Air Force is looking to buy three new planes for Air Force One to replace a pair of Boeing 747 jumbo-jets manufactured two decades ago.


EADS' decision not to bid on the Air Force One project has led to speculation that the company wanted to avoid a political fight over the prospect of potentially having the U.S. President flying in a French-made aircraft. In fact, in the days leading up to the deadline, there was a fair amount of buzz in Congress from those who support the notion of "buy American." It is likely that EADS would prefer to invest its political capitol in a deal that will yield a larger contract.

Last year, the Air Force faced criticism after awarding the KC-135 (tanker) replacement deal to a team composed of EADS and Northrop Grumman, who were proposing an Airbus A330 variant. The award was overturned for procedural reasons, but EADS has indicated that they will fight to win that contract back. 

Unprecedented Plunge in Cargo Traffic For 2008

The International Air Transport Association (IATA) has announced that global air cargo traffic volumes fell 22.6% in December of 2008, compared with the same time period in 2007. In contrast, international passenger traffic only dropped 4.6% in December, though airlines struggling to cope with decreased demand had managed to reduce capacity 1.5% for December year-on-year.

IATA stated that international cargo air traffic fell 4% for the entirety of 2008. The drop in cargo traffic reflects the international economic slowdown. Air freight plays an important role in the global trade of goods, accounting for about 35% of the value of internationally traded goods. Thus, the drop in cargo numbers is an alarming indicator of the global economy.

For ASA members, it is an alarming indicator of the health of the companies buying parts for their cargo aircraft! 

CONTACT US!

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

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CALENDAR OF EVENTS!

ASA Events

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

Regulatory Workshop

March 3, 2009 London, England

Export Workshops

March 19, 2009 Chicago, IL
April 20, 2009 Dallas, TX