



## COMMITTEE ON AERONAUTICS NEWSLETTER

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**From the Committee Chair:**

Alan D. Reitzfeld  
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Committee Chair

*[Sound of bottle of champagne gently tapping airplane strut for roll-out ceremony.]* Welcome, Committee Members and alumni, to the roll-out issue of the Aeronautical Committee Newsletter. Many thanks to the Subcommittee Chairs and to the Committee Secretary for their submissions to the Newsletter. The Committee had its first meeting of the “new semester” on September 12th, and Committee Secretary Sarah Passeri promptly prepared and distributed the meeting minutes (which are available on the Committee’s City Bar Central page). Our second meeting was held on October 11th. Among other Committee business, there were two presentations at the meeting: (1) Erin Applebaum, Chair of the Commercial Airline Casualty Subcommittee, made a presentation on the recent decision in *Doe v Etihad Airways*, No. 16-1042 (6th Cir. Aug. 30, 2017); and (2) Albert J. Pucciarelli, Chair of the General Aviation Subcommittee (and a former Committee Chair), made a presentation on Temporary Flight Restrictions. Our next monthly meeting will be held on November 16th, from 4:30 pm to 6:00 pm, at the offices of Holland & Knight LLP, 12th Floor, 31 West 52nd Street. Stay tuned for more information about upcoming Committee activities.

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**From the Committee Secretary:**

Sarah G. Passeri  
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Committee Secretary

A reminder that the Invoice for Committee Dues was distributed on September 17, 2017. If you have not done so already, please bring your dues payment to the next meeting or send it to me by mail at:

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Thank you very much.

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## RECENT DECISIONS

### **Recent Montreal Convention Case Involving the Definition of “Bodily Injury”**

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This will report on a rather unique Montreal Convention case involving the definition of an “accident”. The plaintiffs are mother and son who were traveling to Nigeria for a funeral on an international air carrier. It is claimed the son has a medical condition which requires special prescribed nutrition.

The mother had enough of this nutrition in her carry-on for the flight but checked the rest of it in her luggage. The bags never arrived in Nigeria but were ultimately returned to her at her residence in the US. The complaint alleges that the delay of the luggage constituted an “accident” under Art. 17(1) which caused the mother emotional distress and the son physical injury in the form of “dehydration” as he was deprived of his special nutrition due to the baggage delay. The mother returned to the US with the son earlier than planned and missed the funeral because of the son’s condition.

The defendant moved to dismiss arguing that (i) the delay of luggage cannot be considered an accident, or else Art. 19 (which provides for liability for baggage delay) would be mere surplusage, nor does it constitute an “abnormal or unusual condition external to the passenger” as defined in the *Saks* case (ii) if the delay could be considered an accident, the injury did not happen while embarking, on board or disembarking, since the son’s “dehydration” developed well after the flight arrived and (iii) “dehydration” is not “physical injury” under the Convention, citing several cases where hunger or thirst suffered by passengers who were delayed on a flight did not constitute physical injury, which is meant to cover some physical trauma or damage to the body and not just deprivation of food or drink. On October 2, the US District Court for the Southern District of New York agreed with our position and dismissed the case. *Angela Ojide et al. v. Air France et al*, U.S.D.C. S.D.N.Y., case no. 17-civ-3224 (KBF)(dec. Oct. 2, 2017). The court did not address the issue of whether the baggage delay was an accident, but held that dehydration or food deprivation was not a “bodily injury” and, even if they could be so construed, the injury did not occur on board the aircraft or “in the course of any of the operations of embarking or disembarking”. The court further held that emotional distress absent physical injury was not recoverable under the Convention, citing *Ehrlich v. Am. Airlines Inc.*, 360 F.3d 366 (2d Cir 2004). The decision is a very useful reconfirmation of the definition of bodily injury under the Convention.

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## Recent Decision: Taylor v. Heurta

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*Taylor v. Heurta*, 856 F.3d 1089 (DC Cir. 2017) determined that the Federal Aviation Administration (FAA)'s drone registration program was facially invalid because it contradicted explicit statutory law that forbids such regulation. The court reasoned that the FAA Drone Registration Rule (See: Unmanned Aircraft Operations in the National Airspace System, 72 Fed. Reg. 6689 (Feb. 13, 2007)) violated Section 336(a) of the FAA Modernization and Reform Act where it stated that the FAA "may not promulgate any rule or regulation regarding a model aircraft." Pub. L. No. 112-95, § 336(a), 126 Stat. 11, 77 (2012) (codified at 49 U.S.C. § 40101 note). The court held that the FAA drone registration program was clearly a rule or regulation regarding a model aircraft.

Separately, the court held that the plaintiff did not timely file his objection to the FAA's prohibition on drones flying within certain restricted zones (found in Advisory Circular 91-57A). The court found that the plaintiff was not timely in filing his appeal to the advisory circular and dismissed his complaint as to that advisory circular.

Ultimately, any future drone registration program would have to be authorized by Congress.

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## ARTICLES

### **The National Space Council: Revising the Regulatory Burden Regarding Space Exploration**

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In August, the President enacted an executive order to create the National Space Council (the "Space Council"), to help coordinate "all aspects of the nation's space power – national security, commerce, international relations, exploration, and science."<sup>1</sup> On October 5, 2017, the Space Council met for the first time at the Smithsonian National Air and Space Museum in Chantilly, Virginia.<sup>2</sup> Numerous scientific, political, industrial, and military leaders attended the meeting to help map out the future of U.S. space exploration.

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<sup>1</sup> NASA Statement on National Space Council, NASA (June 30, 2017) <https://www.nasa.gov/press-release/nasa-statement-on-national-space-council>.

<sup>2</sup> First Meeting of the National Space Council, NASA (Oct. 5, 2017) <https://www.nasa.gov/image-feature/first-meeting-of-the-national-space-council>.

Vice President Mike Pence, the chair of the Space Council, opened the meeting by setting the goals of the future of U.S. space exploration as: (1) developing a permanent presence in low Earth orbit; (2) returning to the Moon; and (3) using the Moon as a jumping off point to go to Mars.<sup>3</sup> It became clear during the meeting that achieving these goals necessarily requires changing the legal and regulatory framework regarding space exploration, so as to promote innovation and investment.

Numerous Space Council speakers expressed their desire for regulatory reforms with respect to export controls, launch regulations, and the rules governing the United States acting as a partner with private industry. Gwynne Shotwell, the COO of SpaceX, expounded that in order to spur progress in space, the U.S. government must “remove bureaucratic practices that run counter to innovation and speed” by reforming regulations so that the government can operate more like a commercial buyer. She also advocated reforming the regulatory scheme regarding space launches by streamlining the licensing process in order to allow for a more rapid cadence of launches. This would help the U.S. space launch industry keep up with new technologies and increased demand. Bob Smith, the CEO of Blue Origin, suggested that the Departments of State and Commerce perform regular reviews of the export regime in place around the space industry; this would help encourage technological advancement and commerce.

Additionally, the Space Council discussed the future of regulation as we move beyond low Earth orbit. Any regulations regarding deep space necessarily requires international cooperation to shape the laws governing space. Marillyn Hewson, the CEO of Lockheed Martin, hoped that the U.S. government would help shape any international regulatory framework for international partnerships and operations in outer space. Ms. Shotwell added that the private space industry should work with rule makers to shape any future regulatory scheme so as to allow companies to work in a rapid and innovative manner.

During the meeting, Vice President Pence declared that it was time for a full review of the regulatory framework regarding commercial space enterprise, with an eye towards reducing barriers on American innovation through streamlining regulations and lessening bureaucratic hurdles. One can’t help but hope this meeting of the Space Council was a first step to modernizing and reforming the regulatory scheme surrounding space exploration. This reformation will help to spur innovation and make it so the nation and the world can achieve goals in space beyond our wildest dreams.

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## **In Its Final Report, Australian Government Calls the Disappearance of MH370 “Almost Inconceivable”**

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<sup>3</sup> A full video of the October 5, 2017 meeting of the National Space Council is available at *Vice President Pence Hosts National Space Council*, YOUTUBE (Oct. 5, 2017) [https://www.youtube.com/watch?v=4\\_izFqcZ67U](https://www.youtube.com/watch?v=4_izFqcZ67U).

**October 3, 2017**

On October 3, 2017, the Australian Transport Safety Bureau (ATSB) released a 440-page Final Report detailing its unsuccessful investigation into the disappearance of Malaysia Airlines Flight 370.<sup>4</sup> MH370 vanished on March 8, 2014 during a routine flight from Kuala Lumpur, Malaysia to Beijing, China with 227 passengers and 12 crew members aboard. Despite a years-long exhaustive search conducted by hundreds of investigators from around the world, the fate of MH370 remains unknown. Its disappearance is commonly considered to be one of the biggest mysteries in modern aviation.

Expressing “deep regret” over its failure to locate the aircraft, the ATSB stated in its report: “The reasons for the loss of MH370 cannot be established with certainty until the aircraft is found. It is almost inconceivable and certainly societally unacceptable in the modern aviation era with 10 million passengers boarding commercial aircraft every day, for a large commercial aircraft to be missing and for the world not to know with certainty what became of the aircraft and those on board.” Although the plane has never been found, the investigators’ understanding of MH370’s location is said to be “better now than it has ever been” based on the elimination of high-probability areas through underwater searches, analysis of satellite data, and debris drift. The Boeing 777 is currently believed to have strayed thousands of miles off course before crashing into the Indian Ocean off the coast of Western Australia.

The search for MH370 is reported to have led to important developments in the field of crash investigation, especially in the search for missing planes over deep ocean areas. According to the ATSB, enhancements have already been made to aircraft tracking systems and requirements, while steps are currently being taken to improve emergency locator transponders and flight recorder locator beacons. The ATSB ended its report by making a number of safety recommendations to the International Civil Aviation Organization (ICAO), suggesting that ICAO mandate the publication of information from previous search operations in order to assist future investigations, ensure that aircraft operators and manufacturers are equipped with adequate global position tracking devices, and confirm that member states have sufficient mechanisms in place to rapidly detect and respond to the loss of aircraft position or contact.

The ATSB report served to formally conclude Australia’s assistance to the MH370 investigation led by the Malaysian government. Pursuant to its obligations as a member state of ICAO, Malaysia will continue its investigation into the facts and circumstances of the accident.

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<sup>4</sup> Australian Transport Safety Bureau. (2017, Oct. 3). *The Operational Search for MH370*. Retrieved from [https://www.atsb.gov.au/publications/investigation\\_reports/2014/aair/ae-2014-054/](https://www.atsb.gov.au/publications/investigation_reports/2014/aair/ae-2014-054/)

## **Unmanned Aircraft Play Crucial Role in Response to Hurricanes Harvey and Irma**

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The FAA reports that unmanned aircraft systems (“UAS”, popularly known as “drones”) were invaluable in supporting response and recovery efforts in Texas and Florida following the devastation caused by Hurricanes Harvey and Irma.<sup>1</sup>

Many of the affected areas were located in controlled airspace, such as highly controlled Class B airspace around major airports, where drones may not operate without special FAA authorization. In addition, the FAA imposed a Temporary Flight Restriction (“TFR”) over Houston and specifically warned drone users that flying unauthorized drones in the TFR could interfere with rescue and recovery operations and was strictly prohibited.

As the weather cleared, however, a wide variety of governmental agencies and private sector companies sought emergency permission from the FAA to fly drones to assist in search and rescue and conduct damage assessments. In contrast with the often time-consuming process to obtain airspace authorizations in non-emergency situations, the FAA responded quickly, issuing 137 authorizations in the Houston area and 132 authorizations in Florida, often within hours of receiving a request.<sup>2</sup>

In Houston, local authorities sought permission to operate drones to check for damage to local roads, bridges and other infrastructure, energy companies flew to evaluate damage to their facilities, and a railroad company flew drones to survey damage along a major rail line running through the city. Media outlets also operated drones over the city to provide ongoing television coverage.

In Florida, the Air National Guard used drones normally used for combat operations to assess disaster-stricken areas quickly and decide which were the most in need of assistance. Florida Power and Light dispatched forty-nine drone teams to survey parts of the state not accessible by vehicles. Airbus Aerial, the commercial drone services division of Airbus, assisted insurance companies by providing images of sites before and after the hurricane, so as to prioritize efforts in the hardest hit areas.

According to the FAA, its ability to quickly authorize UAS operations after both storms was critical because most local airports were either closed or dedicated to emergency relief flights, and fuel supplies were low. FAA Administrator Michael Huerta declared that “the hurricane response will be looked back upon as a landmark in the evolution of drone usage in this country.”<sup>3</sup>

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<sup>1</sup> <https://www.faa.gov/news/updates/?newsId=88770>

<sup>2</sup> *Id.*

<sup>3</sup> [https://www.faa.gov/news/speeches/news\\_story.cfm?newsId=22134](https://www.faa.gov/news/speeches/news_story.cfm?newsId=22134)

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## New Small Jetliner in the Crosshairs as Transborder Trade War Heats Up

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Despite the widespread media attention paid to the development and service entry of the latest generation of widebody jetliners, such as the Boeing 787 and Airbus A350, one of the most compelling storylines in the airline industry lies in the smaller jet sector with Canadian manufacturer Bombardier and its new CSeries. Originally conceived by Bombardier in the mid-2000s as an all-new aircraft family in the 100-150 seat category,<sup>1</sup> the CSeries is intended to bring the operating economics of larger narrowbody jets to smaller gauge with a superior passenger experience. Central to this strategy is the Pratt & Whitney PW1500G geared turbofan, driving lower fuel consumption and contributing significantly to the CSeries' promised 15% unit cost savings over existing competitors like the Airbus A319 or Boeing 737-700.<sup>2</sup> Bombardier also saw an opportunity to expand its airline product line, which included 50-100 seat regional jets (the CRJ series) and turboprop transports (the Dash 8 series). Even though most observers acknowledged the CSeries would be an excellent product, so long as it met design specifications, there was little doubt Bombardier was undertaking an enormous risk.

Unfortunately, the program quickly became mired in costly setbacks. First, not long after the 2007 launch of the CSeries, the global economy entered a recession and access to capital became difficult. After initial production and flight testing, a series of engine issues involving the PW1500G stalled production and certification efforts, including an uncontained failure on a test aircraft.<sup>3</sup> This led to a spate of order cancellations and mounting losses.<sup>4</sup> Eventually, Bombardier was forced to write off some \$3.2 billion (CAD)<sup>5</sup> in CSeries development costs and sought financial assistance from the Canadian government, to the tune of a \$1 billion investment for an equity stake in the program.<sup>6</sup> In 2017, the Canadian government wrote Bombardier more than \$350 million in interest-free loans.<sup>7</sup>

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<sup>1</sup> Bombardier CSeries Marketing Brochure, <http://commercialaircraft.bombardier.com/content/dam/Websites/bca/literature/cseries/Bombardier-Commercial-Aircraft-CSeries-Brochure-en.pdf.pdf> at 6.

<sup>2</sup> *Id.*

<sup>3</sup> "New Bombardier Jet Suffers Major Engine Failure." *The Wall Street Journal*, May 30, 2014. <https://www.wsj.com/articles/new-bombardier-jet-suffers-major-engine-failure-1401475483>.

<sup>4</sup> "Bombardier losses on key CSeries sales total \$462 million." Warwick, Graham. *Air Transport World Online*. August 5, 2016. <http://atwonline.com/aircraft-engines/bombardier-losses-key-cseries-sales-total-492-million>.

<sup>5</sup> "Quebec invests \$1b as Bombardier posts \$4.9b loss." Lu, Vanessa. *The Toronto Star*. October 29, 2015. <https://www.thestar.com/business/2015/10/29/the-loss-is-mostly-tied-to-its-cseries-and-learjet-85-aircraft-programs-quebec-is-investing-1b-in-cseries.html>.

<sup>6</sup> *Id.*

<sup>7</sup> "Federal Government to give \$372.5m in loans to Bombardier." *The Canadian Press/CBC News*. February 7, 2017. <http://www.cbc.ca/news/canada/montreal/bombardier-announcement-feds-1.3971263>.

With far fewer orders than originally forecast and growing financial peril, industry analysts suspected Bombardier was becoming desperate for the first ‘anchor’ CSeries customer. Such a buyer would be in a position to commit to a large order, ensuring a production run toward a breakeven point projected to be 2021 or later. Enter Delta Air Lines, which in April 2016 placed an order for 75 CS100, plus 50 undisclosed options,<sup>8</sup> likely of the larger CS300. First deliveries are scheduled in Spring 2018, intended to replace older aircraft such as the McDonnell Douglas MD-88. Delta, the most profitable airline in the world,<sup>9</sup> reportedly secured a massive discount for the CSeries, rumored to be as much as a 70% discount off the \$71 million list price, which would put the sale price below Bombardier’s production price of roughly \$33 million per frame.<sup>10</sup> This predictably sparked dumping accusations against Bombardier from competitors Airbus, Boeing and Embraer.

On September 26, 2017, in response to a petition and proofs filed by The Boeing Company, the Department of Commerce reached a preliminary finding that Bombardier received subsidies of roughly 220% for the CSeries program.<sup>11</sup> The resulting 220% tariff would negate any total cost-of-ownership advantage of the type and severely hamper sales to US carriers, which Bombardier believes to be essential to the success of the CSeries. It also swept up fierce political rhetoric from the Trudeau administration, calling into doubt a Canadian order for \$5.4 billion of Boeing’s F/A-18E/F Super Hornet.<sup>12</sup> Some also pointed toward the decision as an example of a more protectionist approach under the Trump administration. In any event, it is clear that the dispute has massive airline industry implications.

Critics of the Department of Commerce’s findings say that Boeing is the historical beneficiary of billions of taxpayer subsidies through its longtime use of the Export-Import Bank of the United States (“Ex-Im”), which guarantees private loans to foreign buyers of American products. Since Boeing has long been America’s biggest exporter, Boeing jets tended to comprise the collateral of a significant volume of Ex-Im’s lending. Others say the tariff preserves the current status quo of an Airbus-Boeing duopoly in the mainline category, as the CSeries is the best positioned aircraft to emerge as a viable competitor to the A320 and 737 series. On the other hand, some in favor of the tariff suggest that other carriers will choose the American-made Boeing 737MAX series, or the competing A320NEO, which are largely profit centers for their respective manufacturers and do not require similarly-direct government subsidy.

The Department of Commerce’s final decision, expected in December 2017, is subject to appeal and review with International Trade Commission or before the World Trade Organization. At present, the impact on Delta’s forthcoming CS100 order is unknown, but the timing could not be

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<sup>8</sup> Delta orders state-of-the-art, fuel efficient Bombarider CSeries.” Thomas, Michael. *Delta News Hub*. April 28, 2016. <http://news.delta.com/delta-orders-state-art-fuel-efficient-bombardier-c-series>.

<sup>9</sup> “Delta: There’s a reason it’s more profitable than other airlines.” Levisohn, Ben. *Barron’s*. August 15, 2017. <http://www.barrons.com/articles/delta-air-lines-theres-a-reason-its-more-profitable-than-other-airlines-1502822040>.

<sup>10</sup> “Bombardier secures Delta order for up to 125 new CSeries jets.” Evans, Pete. *CBC News*. April 28, 2016. <http://www.cbc.ca/news/business/bombardier-delta-1.3556661>.

<sup>11</sup> “U.S. Slaps Duties on Bombardier’s CSeries Jet in Win for Boeing. Mayeda, Andrew. Bloomberg News. September 26, 2017. <https://www.bloomberg.com/news/articles/2017-09-26/u-s-imposes-duties-on-bombardier-jets-in-setback-for-c-series>.

<sup>12</sup> “Boeing Super Hornet Jet Purchase likely to be 1st casualty in possible trade war.” Brewster, Murray. *CBC News*. September 27, 2017. <http://www.cbc.ca/news/politics/boeing-bombardier-trade-war-brewster-1.4308734>.

worse for either party, since Delta has already begun preparations for inducting a new fleet type, while Bombardier is nearing the start of production on the first aircraft destined for Delta. This battle is, and will remain, important to follow for aviation aficionados and trade enthusiasts alike.

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## **EPA and IRS Waivers Issued Following Hurricanes Harvey, Irma and Maria**

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Chair, Fuel Subcommittee

September 30, 2017

On September 13, 2017, the federal government waived the Jones Act to allow more fuel to Florida ports.<sup>1</sup> In addition to the Jones Act waiver, Gov. Rick Scott (FL) also requested an Environmental Protection Agency (EPA) waiver to allow higher quantities of certain fuel products to enter the state.<sup>2</sup> Unlike the Jones Act, the EPA Fuel Waiver has received little or no coverage but is a vital tool in the management of fuel supplies and pricing in times of crisis.

In response to fuel disruptions from refinery or pipeline infrastructure damage resulting from hurricanes or other natural disasters, the EPA may issue an emergency waiver of certain fuel standards for affected areas.<sup>3</sup> Waiver authority can be exercised under the Clean Air Act.<sup>4</sup> According to the EPA website waivers have been issued for Texas, Louisiana, Georgia, Florida, Puerto Rico and a wide area Multi-State Fuel Waiver in PADDs 1, 2 & 3.<sup>5</sup>

In Texas, the EPA waived the low volatility gasoline, RFG (Reformulated Gasoline) and Low Emission Diesel requirement through October 1.<sup>6</sup> In addition, a waiver was issued on non-highway diesel “dying,” in both Texas<sup>7</sup> and Florida.<sup>8</sup> In Louisiana<sup>9</sup> and Georgia,<sup>10</sup> a waiver of the Reid Vapor Pressure requirements was issued in a limited number of counties in both states.<sup>11</sup> In Puerto Rico, the Agency waived requirements to allow the use of high-sulfur heating and marine fuel in generators and pumps for emergency purposes.<sup>12</sup>

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<sup>1</sup> [https://www.dhs.gov/sites/default/files/publications/17\\_0908\\_AS1\\_Jones-Act-Waiver.pdf](https://www.dhs.gov/sites/default/files/publications/17_0908_AS1_Jones-Act-Waiver.pdf).

<sup>2</sup> “Much-needed fuel headed to Florida ports after Hurricane.” Susskind, Stephanie. *WPTV.com*. September 13, 2017. <http://www.wptv.com/news/region-c-palm-beach-county/much-needed-fuel-headed-to-florida-ports-after-hurricane-irma>.

<sup>3</sup> <https://www.epa.gov/enforcement/fuel-waivers>.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> <https://www.epa.gov/enforcement/texas-fuel-waiver-extension>.

<sup>7</sup> *Id.*

<sup>8</sup> <https://www.epa.gov/enforcement/fuel-waiver-concerning-use-red-dyed-15-ppm-non-road-diesel-locomotive-and-marine-fuel>.

<sup>9</sup> <https://www.epa.gov/enforcement/louisiana-fuels-waiver>.

<sup>10</sup> <https://www.epa.gov/enforcement/georgia-fuels-waivers>.

<sup>11</sup> <https://www.epa.gov/enforcement/fuel-waivers>.

<sup>12</sup> <https://www.epa.gov/enforcement/diesel-fuel-waiver-concerning-commonwealth-puerto-rico>.

Broader waivers in Petroleum Administration for Defense Districts (PADDs) 1, 2 & 3, which includes all east coast, mid-west and Gulf coast states,<sup>13</sup> waived the federal requirement for low volatility or “summertime” blend gasoline due to damage to Gulf coast refineries from Hurricane Harvey until October 26.<sup>14</sup> The PADD waiver is the result of disruptions on the 5,500-mile Colonial pipeline for gasoline.<sup>15</sup> Colonial carries more than 100 million gallons of gasoline, diesel and jet fuel a day in pipelines running from Houston to New Jersey.<sup>16</sup>

The Internal Revenue Service also acted in response to recent storms issuing a press release on September 3, 2017 (IR-2017-142)<sup>17</sup> waiving penalties for the sale of dyed diesel fuel sold for highway use. A “No Action Assurance” or NAA was issued on September 13 (IR-2017-149),<sup>18</sup> and remained in effect through September 22.

Jet-A aviation fuel prices have risen by 50% or more in the Caribbean following extensive infrastructure damage.<sup>19</sup> However, according to Aviation International News, while prices rose approximately \$.20 in certain areas of Florida and Texas following Hurricanes Irma and Harvey, there have been no reports of wide area shortages or price increases in the continental United States.

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<sup>13</sup> <https://www.epa.gov/enforcement/second-multi-state-fuels-waivers>.

<sup>14</sup> <https://www.epa.gov/enforcement/multi-state-padd-fuels-waivers>.

<sup>15</sup> “Spaghetti-like pipeline system falls short as Gulf supplies slow.” Vamburkar, Meenal and Tobben, Sheela *Bloomberg*. September 24, 2017. <http://www.mrt.com/business/oil/article/Spaghetti-like-pipeline-system-falls-short-as-12221790.php>.

<sup>16</sup> “Gasoline Prices Jump in Harvey’s Wake.” Cook, Lynn. *The Wall Street Journal*. September 1, 2017. <https://www.wsj.com/articles/gasoline-prices-surge-as-harveys-impact-is-felt-1504202779>.

<sup>17</sup> <https://www.irs.gov/newsroom/update-irs-waives-diesel-fuel-penalty-for-all-of-texas-due-to-hurricane-harvey>.

<sup>18</sup> <https://www.irs.gov/newsroom/irs-provides-limited-waiver-of-fuel-penalty-due-to-hurricane-irma-response-follows-shortage-of-ultra-low-sulfur-diesel>.

<sup>19</sup> “After Hurricanes Maria and Irma, how will Caribbean tourism change?” *CBSNews.com*. September 29, 2017. <https://www.cbsnews.com/news/tourism-impact-caribbean-peter-greenberg-travel-editor/>.

## TFRs – The New Normal for GA Pilots

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Chair, Aviation-Related Intellectual Property Subcommittee

September 26, 2017

I am a general aviation pilot and aircraft owner who flies under Part 91 of the Federal Aviation Regulations (“FARs”) found at 14 CFR. As part of my pre-flight routine, just prior to starting the engine, I call Flight Service – 1-800-WXBRIEF. In the past, these calls were made to get last-minute weather updates. But now with so much weather available from so many sources both on the ground and in the air, that weather update is less compelling. Instead, these calls are now necessary to check for Temporary Flight Restrictions (“TFRs”) that may affect my route of flight from the only FAA-approved source. Indeed, the FAA’s website dedicated to listing TFRs mandates:

*“Depicted TFR data may not be a complete listing. Pilots should not use the information on this website for flight planning purposes. For the latest information, call your local Flight Service Station at 1-800-WX-BRIEF. (<http://tfr.faa.gov/tfr2/list.html>)*

Since 9/11, TFRs of varying types, Presidential and other VIP movements, special events (e.g., the Super Bowl) and natural hazard and disaster areas, have become common. Because TFRs generally do not apply to scheduled commercial flights, they cause the greatest negative impact to those of us who operate GA aircraft, including corporate aircraft, shared aircraft and our own or rented piston aircraft, as well as charter flights. Moreover, TFRs further complicate the already busy and complex airspace in and around New York City (due to Trump Tower, whether or not the President is there), Bedminster, New Jersey (when President Trump is at the Trump National Golf Club) and Morristown, New Jersey (due to Air Force One (757 version) operations at Morristown Airport). Our fellow pilots in south Florida are very familiar with the Presidential TFR that arises in West Palm Beach, Florida, when the President is at Mar-A-Largo. These “Presidential TFRs” move about the country with the President and their timing is linked to the President’s schedule that can change on short notice. This was the case in June when the President was expected to depart on Air Force One from Morristown Airport at 9:00 PM. Instead he lingered at his golf club in Bedminster and TFR was extended to about 10:30 PM. There are also Vice-Presidential TFRs and TFRs for other lower-ranking officials.

TFRs have become common and an easy way for a pilot who is not diligent to find him-/herself in violation of the FARs. Violations, usually “incursions” bring FAA-dictated consequences and possibly serious trouble with the United States Secret Service who operate and have enforcement powers under 18 U.S. Code §3056 – “Powers, authorities, and duties of United States Secret Service”. Scheduled airlines are generally exempted from TFRs because they always fly under positive ATC control and all persons on-board are subject to security screening.

So exactly what is a TFR? They are defined in and governed by FAR 91, Secs. 137 et seq. A good overview is provided by and set out below with permission of the National Business Aviation Association on its website at:

<https://www.nbaa.org/ops/airspace/alerts/notams/temporary-flight-restrictions.php>

*A Temporary Flight Restriction (TFR) is a restriction on an area of airspace due to the movement of government VIPs, special events, natural disasters, or other unusual events. On any given day, there are typically several TFRs in place across the National Airspace System (NAS). Most non-VIP TFRs are small in scope, in non-critical locations, or allow for some aspect of general aviation to operate within them, albeit with some restrictions.*

*However, some TFRs do have a significant restrictive impact on general and business aviation. The most common of these are VIP TFRs, which are issued in association with the movements of the President and the Vice President. Not quite as common are special event TFRs, such as those established each year in association with the Super Bowl or the UN General Assembly.*

*The dimensions, timing, and level of restriction for each TFR vary. For VIP TFR’s, these determinations are made by the United States Secret Service (USSS), in coordination with FAA Security. Once finalized, TFR information is typically distributed via Flight Data Center (FDC) Notice to Airmen (NOTAM) in advance of the event.*

### **VIP TFRs**

*There are two basic types of VIP TFRs:*

- 1. [Presidential](#), reserved for use in association with Presidential movement,*
- 2. [Vice-Presidential](#), used for Vice Presidential movement or movement by other lower-ranking government officials.*

*These TFRs are governed by FAR 91.141 and are generally not made available to the public until two or three days before the event.*

*VIP TFRs are normally set up as one or more rings of airspace, surrounding the VIP, which become active for a specific amount of time. The normal arrangement is to have one ring covering the VIP’s arrival and departure location(s) and another covering the area where the VIP will be between arrival and departure. While these rings are stationary,*

*there are occasions where “rolling” TFRs are created to accommodate a moving event (such as one involving a train or bus).*

### ***Presidential VIP TFRs***

*In the case of Presidential movement, the TFR is usually comprised of an outer ring (usually 30 nautical miles, but sometimes slightly more or less) and one or more inner rings (usually 10 nautical miles, but sometimes 8, 9, or 10 nautical miles). The dimensions and, even the shape, of the rings are sometimes altered to suit specific needs. For example, some TFRs are structured so that the **outer** ring consists of the lateral limits of a particular airport’s Class B airspace, or are created with cut-outs, as noted later in this resource.*

*The **inner** ring(s) constitute the most significant challenge to general and business aviation, since they are almost always inaccessible to general aviation aircraft. This is primarily due to the fact that general aviation aircraft are not subject to TSA passenger and aircraft screening.*

*The result is that GA aircraft cannot fly through these areas below 18,000 feet and any airports within these areas are unavailable to GA aircraft during the specified times. In addition, these “no fly” areas may result in required reroutes being issued to move aircraft away from them.*

*There are occasional exceptions that will allow certain GA aircraft to penetrate the inner ring(s). In some cases, the USSS will agree to set up “gateway” airports, at which GA aircraft can be screened before proceeding into the TFR. In other cases, GA aircraft are permitted into the inner ring(s) only after obtaining TSA waivers, sometime used in combination with gateway airports. However, these exceptions are relatively rare and are normally made for TFRs that impact multiple airports for several days.*

*On other occasions, a TFR might be structured with a “cut-out” to allow operations into an airport that lies just inside the inner ring. This happens quite often for Teterboro Airport (TEB) when TFRs are placed over the New York City area. In these cases operators need to be aware that certain approaches and departures may not be available for the airport in the cut-out.*

*The **outer** ring(s) are much less problematic for general and business aviation. Between this outer limit and the inner ring(s), GA aircraft are permitted as long as they are on IFR flight plans [CORRECTION: OR HAVE FILED A VFR FLIGHT PLAN AND HAVE OBTAINED A DISCRETE SQUAWK CODE ASSIGNED BY ATC] and are in communication with air traffic control. However, aircraft cannot loiter in this airspace and certain other types of activities, such as flight training, practice approaches, and sightseeing flights, are not permitted within this area.*

## ***Vice-Presidential VIP TFRs***

*In the case of Vice Presidential movement, TFRs normally consist of one or more 3 nautical mile rings and no outer ring. These TFRs are less restrictive for GA aircraft, allowing access to aircraft that are on IFR flight plans and in communication with ATC – restrictions very similar to those in the outer rings discussed above.*

*However, when an airport is contained within a Vice-Presidential TFR, airport operations are typically halted for a short period of time while the VIP is at the airport or is departing or arriving. As a result, operators flying into an airport sitting under a 3 nautical mile ring can expect minor delays during the TFR's active times.*

## ***Special Event TFRs***

*Large-scale and high profile special events, such as the Super Bowl and political conventions, will also often require the use of TFRs. These TFRs are, in many ways, similar to VIP TFRs, but they are governed under a different set of regulations – FAR 99.7. Normally, an inner ring/outer ring arrangement, similar to a Presidential TFR, is utilized to secure an area around the event.*

*One key difference between these TFRs and VIP TFRs is that special event TFRs are generally released much further in advance – sometimes as much as two weeks ahead of the event.*

## ***Other Relevant Information About TFRs***

*One item that confuses many operators is that, occasionally, more than one NOTAM [i.e., a Notice to Airmen] is issued for the same TFR. The reason for this is that some TFRs lie close to the boundary between two en route centers. When this happens, each center will release an **identical** NOTAM for the TFR. So, as an example, a TFR in Indianapolis might generate two identical NOTAMs –one issued by Chicago Center (ZAU) and another by Indianapolis Center (ZID).*

*It is also important to note that airports lying just outside the boundary of an inner ring may still be impacted by the TFR. For example, if traffic needs to depart to the north from a particular airport, and a 10 nautical mile ring sits 2 miles north of that airport, traffic will not be permitted to depart, since it would put them on a direct course into the TFR.*

*In other instances, a missed approach procedure for an airport just outside an inner ring may place an aircraft into that ring. It should be noted that, while ATC will usually advise the flight crew that this is about to occur, some ATC facilities may not be familiar with the impact that the TFR has on general aviation aircraft. As a result, pilots should always remain vigilant whenever operating in the vicinity of a TFR's inner rings.*

*With regard to TFR times, flight planners and flight crews should be aware that, while specific times are provided for each TFR, VIP TFRs can either be cancelled early or be*

*extended later, with little or no notice, based on the actual movements of the VIPs. If an operator is planning to arrive at an airport shortly after a TFR there is scheduled to end, they should plan for possible airborne holding, or a diversion, in the event that the TFR is extended.*

In the New Jersey aviation community, the impact during this past August on Solberg and Somerset Airports that lie within the ten-mile “no-fly” radius of the Bedminster TFR was noted in a local on-line news source as follows:

***Trump To Visit Bedminster For 18 Days, Will ‘Devastate’ Local Airports***

*Breaking: Trump is planning to visit Bedminster from Aug. 3 to 20, which stops local airports from having sky diving, hot air ballooning.*

*For the full story, go to: <https://patch.com/new-jersey/bernardsville-bedminster/trump-visit-bedminster-18-days-will-devastate-impact-local>*

Flying in the NYC metro-area has always been challenging because of the complexity of the airspace configuration and traffic volume. In addition to the concern that must always come first – i.e., fly the aircraft safely, pilots have the added challenges of regulatory compliance. The regulatory environment for local pilots is now more challenging than ever and will remain so at least for the duration of the Trump Presidency.

For illustrative purposes only, a very recent announcement of the Morristown TFR and another of the Bedminster TFR are attached.

## Announcement of Morristown TFR made on September 14, 2017

PLANNING TO FLY IN THE MORRISTOWN, NEW JERSEY AREA; SEPTEMBER 17, 2017 (SUNDAY)???  
**BE SURE TO READ THE FOLLOWING:**

**NOTAM FDC:** 7/3882 & 7/3883 (Same TFR, different controlling sectors)

**TIME FRAME:** 1930 - 2030 EDT

**AIRSPACE A:** 1930 - 2030 EDT

A 30.0 nm radius ring centered on the TETERBORO VOR/DME (TEB) 271 degree radial at 16.3 nautical miles.  
(Latitude: 40°48'11"N, Longitude: 74°24'51"W)

From the surface up to and including 17,999' MSL

**AIRSPACE B:** 1930 - 2030 EDT

A 10.0 nm radius ring centered on the TETERBORO VOR/DME (TEB) 271 degree radial at 16.3 nautical miles.  
(Latitude: 40°48'11"N, Longitude: 74°24'51"W)

From the surface up to and including 17,999' MSL

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### Operating Restrictions and Requirements

[Top](#)

No pilots may operate an aircraft in the areas covered by this NOTAM (except as described).

Except as specified below and/or unless authorized by ATC in consultation with the air traffic security coordinator via the domestic events network (DEN):

A. All aircraft operations within the 10 NMR area(s) listed above, known as the inner core(s), are prohibited except for: Approved law enforcement, military aircraft directly supporting the United States Secret Service (USSS) and the office of the President of the United States, approved air ambulance flights, and regularly scheduled commercial passenger and all-cargo carriers operating under one of the following TSA-Approved standard security programs/procedures: aircraft operator standard security program (AOSSP), full all-cargo aircraft operator standard security program (FACAOSSP), model security program (MSP), twelve five standard security program (TFSSP) all cargo, or all-cargo international security procedure (ACISP) and are arriving into and/or departing from 14 cfr part 139 airports. All emergency/life saving flight (medical/law enforcement/firefighting) operations must coordinate with ATC prior to their departure at 516-683-2966 to avoid potential delays.

B. For operations within the airspace between the 10 nmr and 30 nmr area(s) listed above, known as the outer ring(s): All aircraft operating within the outer ring(s) listed above are limited to aircraft arriving or departing local airfields, and workload permitting, ATC may authorize transit operations. Aircraft may not loiter. All aircraft must be on an active IFR or filed VFR flight plan with a discrete code assigned by an air traffic control (ATC) facility. Aircraft must be squawking the discrete code prior to departure and at all times while in the TFR and must remain in two-way radio communications with ATC.

C. The following operations are not authorized within this TFR: flight training, practice instrument approaches, aerobatic flight, glider operations, seaplane operations, parachute operations, ultralight, hang gliding, balloon operations, agriculture/crop dusting, animal population control flight operations, banner towing operations, sightseeing operations, maintenance test flights, model aircraft operations, model rocketry, unmanned aircraft systems (UAS), and utility and pipeline survey operations.

D. FAA recommends that all aircraft operators check notams frequently for possible changes to this TFR prior to operations within this region.

**REGARDLESS OF WHEN OR WHERE YOU ARE FLYING, ALWAYS CHECK WITH FSS (800-WX BRIEF; 800-992-7433) IMMEDIATELY BEFORE ANY FLIGHT!!**

## Announcement of Bedminster TFR made on September 14, 2017

PLANNING TO FLY IN THE BEDMINSTER, NEW JERSEY AREA; SEPTEMBER 15, 2017 (FRIDAY)(1645 EDT) - SEPTEMBER 17, 2017 (SUNDAY) (2015 EDT)???

**BE SURE TO READ THE FOLLOWING:**

NOTAM FDC 7/3990 & 7/3992 (Same TFR, different controlling sectors)

**TIME FRAME: 1645 EDT SEPTEMBER 15 (FRIDAY) - 2015 EDT SEPTEMBER 17 (SUNDAY)**

**AIRSPACE A: 1645 EDT SEPTEMBER 15 (FRIDAY) - 2015 EDT SEPTEMBER 17 (SUNDAY)**

**A 30.0 nm radius ring centered on the SOLBERG VOR/DME (SBJ) 035 degree radial at 6.9 nautical miles. (Latitude: 40°41'16"N, Longitude: 74°40'43"W)**

From the surface up to and including 17,999' MSL

**Excluding:**

A 1.5 nm radius ring centered on the STILLWATER VOR/DME (STW) 291 degree radial at 13.5 nautical miles. (Latitude: 41°02'09"N, Longitude: 75°09'38"W)

**Altitude: From the surface up to and including 17,999 feet MSL**

**Excluding:**

A 1.5 nm radius ring centered on the SPARTA VORTAC (SAX) 078 degree radial at 9.4 nautical miles. (Latitude: 41°07'42"N, Longitude: 74°20'49"W)

**Altitude: From the surface up to and including 17,999 feet MSL**

**Excluding:**

A 2.0 nm radius ring centered on the ROBBINSVILLE VORTAC (RBV) 288 degree radial at 5 nautical miles. (Latitude: 40°12'50"N, Longitude: 74°36'06"W)

**Altitude: From the surface up to and including 17,999 feet MSL**

**Excluding:**

A 2.0 nm radius ring centered on the YARDLEY VOR/DME (ARD) 306 degree radial at 11 nautical miles. (Latitude: 40°19'59"N, Longitude: 75°07'20"W)

**Altitude: From the surface up to and including 17,999 feet MSL**

**Excluding:**

A 1.5 nm radius ring centered on the SPARTA VORTAC (SAX) 345 degree radial at 8.8 nautical miles. (Latitude: 41°12'00"N, Longitude: 74°37'23"W)

**Altitude: From the surface up to and including 17,999 feet MSL**

**Excluding:**

A 1.5 nm radius ring centered on the YARDLEY VOR/DME (ARD) 313 degree radial at 17.5 nautical miles. (Latitude: 40°24'37"N, Longitude: 75°13'46"W)

**Altitude: From the surface up to and including 17,999 feet MSL**

**Excluding**

Region bounded by:

	<u>Latitude:</u>	<u>Longitude:</u>	<u>FRD:</u>
From:	40°36'08"N	74°03'34"W	CRI276007.6
To:	40°36'34"N	74°02'05"W	CRI279006.4
To:	40°36'08"N	74°01'49"W	CRI275006.2
To:	40°34'24"N	74°02'16"W	CRI261007
To:	40°36'08"N	74°03'34"W	CRI276007.6

**Altitude: From the surface up to and including 17,999 feet MSL**

**AIRSPACE B: 1645 EDT SEPTEMBER 15 (FRIDAY) - 2015 EDT SEPTEMBER 17 (SUNDAY)**

**A 10.0 nm radius ring centered on the SOLBERG VOR/DME (SBJ) 035 degree radial at 6.9 nautical miles. (Latitude: 40°41'16"N, Longitude: 74°40'43"W)**

**From the surface up to and including 17,999' MSL**

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**Operating Restrictions and Requirements**

[Top](#)

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B. For operations within the airspace between the 10 nmr and 30 nmr area(s) listed above, known as the outer ring(s): THE New York Class B airspace Hudson River SFRA Exclusion and East River SFRA Exclusion, 14 CFR 93.350(d), IS EXCLUDED FROM THE RESTRICTIONS IN THIS TFR. All OTHER aircraft operating within the outer ring(s) listed above are limited to aircraft arriving or departing local airfields, and workload permitting, ATC may authorize transit operations. Aircraft may not loiter. All aircraft must be on an active IFR or a filed VFR flight plan with a discrete code assigned by an air traffic control (ATC) facility. Aircraft must be squawking the discrete code prior to departure and at all times while in the TFR and must remain in two-way radio communications with ATC.

C. The following operations are not authorized within this TFR: flight training, practice instrument approaches, aerobatic flight, glider operations, seaplane operations, parachute operations, ultralight, hang gliding, balloon operations, agriculture/crop dusting, animal population control flight operations, banner towing operations, sightseeing operations, maintenance test flights, model aircraft operations, model rocketry, unmanned aircraft systems (UAS), and utility and pipeline survey operations.

D. FAA recommends that all aircraft operators check notams frequently for possible changes to this TFR prior to operations within this region.

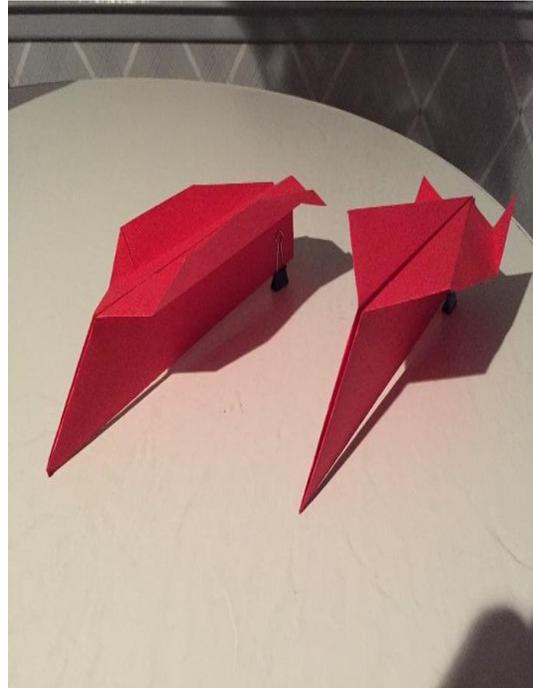
**REGARDLESS OF WHEN OR WHERE YOU ARE FLYING, ALWAYS CHECK WITH FSS (800-WX BRIEF; 800-992-7433) IMMEDIATELY BEFORE ANY FLIGHT!!**<sup>1</sup>

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<sup>1</sup> TFR Text Courtesy of Len Levy ([leonardlevy@sprintmil.com](mailto:leonardlevy@sprintmil.com)) from data available at [tfr.faa.gov](http://tfr.faa.gov)

## FUN PAGE

Readers are encouraged to please submit (via email to [alan.reitzfeld@hklaw.com](mailto:alan.reitzfeld@hklaw.com)) aviation-related original cartoons, other works of art (especially airplane doodles), poems, photographs, crossword puzzles, etc. for the Newsletter Fun Page. To start the ball rolling, the Committee Chair submits the following cockpit and paper airplane pics:



### **Did you know?**

**Aviation Vocabulary Builder:** Pitot Tube (or Pitot Probe): A pressure measurement instrument that is used to measure fluid flow velocity. It is widely used to determine an aircraft's airspeed. *See, e.g.,* [https://en.wikipedia.org/wiki/Pitot\\_tube](https://en.wikipedia.org/wiki/Pitot_tube)

**Aviation History:** Fifty years ago this month: Central Airlines is acquired by and merged into Frontier Airlines. [https://en.wikipedia.org/wiki/1967\\_in\\_aviation#October\\_2](https://en.wikipedia.org/wiki/1967_in_aviation#October_2); [https://en.wikipedia.org/wiki/Central\\_Airlines](https://en.wikipedia.org/wiki/Central_Airlines)

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