

## Aviation Regulatory Update

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### DOT SEEKS INDUSTRY INPUT ON UPDATED STRATEGIC PLAN

On August 8, 2025, the U.S. Department of Transportation [asked](#) for comments on its Strategic Plan for 2026-2030. Federal agencies are required to revise and update their strategic plans at the beginning of each new presidential term. By providing public comments, industry stakeholders can help identify areas of improvement such that DOT can better understand how regulatory obligations impact carriers and other transportation related operations. Comments are encouraged on any of the following questions:

- What strategies or priorities should the DOT adopt to improve the Nation's transportation systems?
- How should DOT measure progress towards the priorities suggested in Question 1?
- What emerging challenges or opportunities in transportation warrant additional DOT activities, investments, research, or analysis?
- How can DOT best create value for its activities with stakeholders?

DOT's current Strategic Plan (available [here](#)) concludes at the end of this calendar year with the updated Strategic Plan set to be released February 2026. Comments can be submitted via email ([dotstrategicplanning@dot.gov](mailto:dotstrategicplanning@dot.gov)) and must be received by **September 7, 2025**.

### FAA PLANS TO EXTEND OPERATING LIMITS AT NEWARK LIBERTY INTERNATIONAL AIRPORT

On August 12, 2025, the Federal Aviation Administration notified stakeholders that restrictions on the number of scheduled aircraft operations currently permitted at Newark Liberty International Airport ("EWR") will likely be amended and extended through **October 24, 2026**. By way of background, the FAA issued an order on June 10, 2025 (the "June 2025 Order") limiting the number of scheduled operations to 68 per hour. If finalized, the FAA's decision would amend and extend the June 2025

Order by increasing the rate of hourly operations at EWR to 72 per hour through October 24, 2026. The FAA continues to monitor congestion, delays, and cancellations at New York area airports amidst nationwide Air Traffic Control (“ATC”) staffing shortages.

### **FAA EXTENDS LIMITED WAIVER OF SLOT USAGE REQUIREMENTS AT DCA, JFK, AND LGA**

On July 25, 2025, the FAA extended relief from minimum usage requirements at Ronald Reagan Washington National Airport (“DCA”), John F. Kennedy International Airport (“JFK”), and LaGuardia Airport (“LGA”) through Summer 2026. Doing so allows carriers to reduce schedules without penalties for non-use of slots. The FAA undertook this action after Airlines for America (“A4A”) submitted a petition on April 21, 2025, requesting extended relief through the Summer 2027 season. When determining whether to grant a waiver of the usage requirement, the FAA explained that the current number of certified controllers remains insufficient to handle traffic levels such that there is a high likelihood of congestion, delay, and cancellations absent extension. To be eligible for relief, carriers seeking to return slots must do so by **January 15, 2026**, for Summer 2026. Carriers should not expect any extension beyond the Summer 2026 season as the FAA does not anticipate granting further relief at this time.

### **DOT TERMINATES AVIATION CONSUMER HOTLINE RULEMAKING**

On August 19, 2025, the Department [terminated](#) a rulemaking which would have required covered carriers to display a consumer complaints toll-free hotline telephone number on their websites and at airports. The rule would have required carriers to include the following on their websites: (1) the toll-free hotline number; (2) the email address, telephone number, and mailing address of the carrier for the submission of complaints by passengers about air travel service problems; and (3) DOT Office of Aviation Consumer Protection’s web and mailing addresses where passengers could submit complaints about air travel service problems. Before the Department finalized this rulemaking, Congress eliminated the aviation consumer hotline requirement via the FAA Reauthorization Act of 2024. Given the fact that Secretary Duffy and the Trump administration are focused on deregulation, DOT terminated this rulemaking because there is no longer statutory authority for the aviation consumer hotline requirement.

### **DE MINIMIS EXEMPTION SET TO EXPIRE PURSUANT TO EXECUTIVE ORDER**

On July 30, 2025, President Trump signed an executive order titled “[Suspending Duty-Free De Minimis Treatment for All Countries](#),” E.O. 14324. The executive order suspends the duty-free de minimis exemption provided in 19 U.S.C. 1321(a)(2)(C) for shipments of packages to the United States, regardless of value, country of origin, mode of transportation, or method of entry. This suspension is expected to particularly impact e-commerce retailers that ship packages directly to U.S. consumers.

Effective **August 29, 2025**, low-value packages shipped to the United States that previously benefitted from the \$800 “*de minimis*” exemption to import duties will lose their entitlement to duty-free entry. Duty-free entry will be limited to personal communications not involving a transfer of value, shipments constituting bona fide noncommercial gifts under \$100, and certain donations, informational materials, and transactions incident to travel. Shipments of low-value packages not made via the international postal network will be subject to the same duties as any other commercial shipments.

Shipments made via the international postal network will either be subject to a specific duty (ranging from \$80 to \$200 per item, depending on the applicable International Emergency Economic Powers Act (“IEEPA”) tariff rate of the country of origin) or an *ad valorem* duty (a percentage duty equal to the IEEPA tariff rate of the country of origin). The option to pay the specific duty will expire on **February 28, 2026**. Citing uncertainty about the new processes and collection of duties, please be advised that some international postal services are temporarily suspending the transportation of many packages to the United States pending clarification by U.S. authorities.

## **U.S. AIR CARRIERS SPAR OVER THE DEPARTMENT’S PLAN TO WITHDRAW AEROMEXICO-DELTA ANTITRUST IMMUNITY**

On or about August 20, 2025, Allegiant Air, American Airlines, Delta Air Lines, and United Airlines all submitted regulatory filings in the dispute between DOT and the Mexican government over suspected violations of the 2015 U.S.-Mexico Air Transport Agreement. By way of background, DOT issued a [Supplemental Order to Show Cause](#) on July 19, 2025, seeking to withdraw antitrust immunity (“ATI”) previously granted to the Aeromexico-Delta joint venture (the “JV”). The Department’s original ATI grant was conditioned on, among other things, slot divestitures at Benito Juarez International Airport (“MEX”) and continued compliance with the U.S.-Mexico Air Transport Agreement. According to DOT, the conditions required for the immunized JV no longer exist due to anti-competitive measures undertaken by Mexico including reducing capacity at MEX, confiscating U.S. air carrier slots at MEX, and operating a non-transparent and discriminatory slot allocation program. To ensure a complete record on the matter, DOT invited interested parties to submit comments on the Department’s tentative findings and competitive issues in the U.S.-Mexico market.

Allegiant and Delta contend that the Department’s tentative findings overlook the fact that since the Department granted ATI over eight years ago, the U.S.-Mexico market is now more competitive due to the JV’s new routes, expanded capacity, enhanced products, and more convenient service offerings. Delta also claims that other U.S. air carriers, most notably American and United, are adopting self-serving positions in this proceeding purely because revoking ATI would weaken one of their competitors in the U.S.-Mexico market such that American and United could once again become the predominant players. Instead of revoking ATI, Delta asks the Department to consider alternative mechanisms such as consultations and arbitration under Articles 13 and 15 of the U.S.-Mexico Agreement because ATI revocation would unfairly discriminate against the JV. Further, Allegiant and Delta allege that if DOT were to finalize the tentative findings, it would violate the Administrative Procedure Act (“APA”) because the Department would implement an Open Skies predicate for ATI which arguably exceeds statutory authority. While the existence and extent of Open Skies should be one factor analyzed by the Department under the ATI statutory analysis, they argue that the Order would impose a blanket ban on ATI requests when a foreign government does not fully adhere to an Open Skies agreement. American and United, on the other hand, reason that DOT should require the Open Skies predicate because such a condition removes protectionist barriers that tend to insulate foreign air carriers from robust competition. American further explains that Mexico’s failure to comply with the U.S.-Mexico Air Transport Agreement presents sufficient grounds to warrant withdrawal. According to American and United, DOT precedent makes clear that certain conditions, including an Open Skies predicate, must exist to prevent foreign governments from unfairly protecting their own carriers from U.S. competition.

The Department must now consider comments submitted by all interested parties and determine whether to proceed with the Order. If finalized, Delta and Aeromexico could be forced to wind down the JV as soon as **October 25, 2025**, absent further legal proceedings.

### **TSA SEEKS PUBLIC INPUT ON INFORMATION COLLECTED FOR SECURE FLIGHT PROGRAM**

On August 1, 2025, the Transportation Security Administration (“TSA”) [invited](#) public comments on the Secure Flight Program which TSA uses to prescreen commercial passengers. TSA seeks comments to: (1) Evaluate whether the proposed information requirement is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (2) Evaluate the accuracy of the agency's estimate of the burden; (3) Enhance the quality, utility, and clarity of the information to be collected; and (4) Minimize the burden of the collection of information on those who are to respond, including the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Carriers with modernized reservation systems and enhanced data protection regimes are encouraged to submit comments so that TSA can minimize the information required during Secure Flight filings while simultaneously protecting against threats to U.S. national security. If interested, comments can be submitted via email ([TSAPRA@tsa.dhs.gov](mailto:TSAPRA@tsa.dhs.gov)) by **September 30, 2025**.

### **FEDERAL CIRCUIT COURT SIDES WITH AIRPORT OPERATORS OVER TSA RULEMAKING DISPUTE**

On August 22, 2025, the United States Court of Appeals for the District of Columbia Circuit (the “Court”) [sided](#) with U.S. airports after TSA implemented a rulemaking to address “insider threats” in secured areas within airports without adhering to ordinary notice-and-comment procedures. The rulemaking required U.S. airport operators to physically screen aviation workers entering certain secured areas and purchase explosives-detecting equipment. Even after airport operators submitted reconsideration requests arguing that TSA should be responsible for screening aviation workers and criticizing TSA for imposing a costly requirement on airports, the agency nevertheless finalized the rulemaking in April 2023 and rejected all petitions for reconsideration. The Airport Council International-North America (“ACI-NA”) and its members then sought judicial review reasoning that TSA was required to provide the public with notice and an opportunity to comment before promulgating the rule and that the rulemaking unlawfully seized local officials to implement a federal regulatory scheme. Since the rulemaking imposed new legal requirements on airport operators across the country, the Court sided with ACI-NA and its members holding that TSA failed to comply with the APA when it promulgated the rulemaking. TSA must now adopt a new rule through notice-and-comment procedures or advise the Court within 60 days if the agency no longer considers rulemaking on this matter necessary.

### **PORT AUTHORITY OF NEW YORK AND NEW JERSEY ANNOUNCES PFC APPLICATION APPROVAL**

On July 25, 2025, the FAA approved an application by the Port Authority of New York and New Jersey (the “Port Authority”) to impose a passenger facility charge (“PFC”) at EWR, JFK, LGA, and SWF. As readers may recall, the Port Authority began this process back in September 2024 and formally submitted its PFC application on March 17, 2025. The total approved PFC revenue to be collected will

be \$1,410,050,000 at the \$4.50 per passenger collection level. PFC revenue will be used for the following projects:

- EWR AirTrain Newark Replacement
- JFK Central Terminal Area Roadways Redevelopment
- JFK Central Electric Utility Substation No. 2
- PFC Consulting Fees

For airlines operating to/from EWR, LGA, and JFK, the approved PFC will become effective on or around **April 1, 2026**, through July 1, 2030. The new PFC at SWF will not go into effect until August 1, 2026, yet it will expire at the same time as the EWR, LGA, and JFK charges.

### **DELTA RESPONDS TO U.S. LAWMAKER CONCERNS ABOUT AI PRICING**

On August 7, 2025, Delta [responded](#) to U.S. lawmakers who alleged that Delta was planning to use artificial intelligence (“AI”) when setting individualized fares for air travel. Delta answered concerns raised by U.S. Senators Gallego, Blumenthal, and Warner who had [sent](#) the airline’s CEO an inquiry in July 2025, worrying that airlines will use “surveillance pricing” to tailor prices to an individual passenger’s willingness to pay. Federal regulators at the Federal Trade Commission and the U.S. Department of Justice (“DOJ”) have been investigating other industries which employ AI algorithms when setting prices. U.S. lawmakers worry that the airline industry will use AI to individualize prices based upon a passenger’s personal information to which Delta confirmed that it will not use a passenger’s personal data to individualize prices and that ticket prices are dictated by market forces, not personal data. Nevertheless, consumer advocates continue to encourage U.S. regulators to examine airline pricing models in much the same way that Uber and Lyft have faced scrutiny for purported “surge pricing” on ridesharing platforms. Transportation Secretary Duffy recently [warned](#) that DOT will investigate any airline using AI to set seat pricing. Carriers seeking to implement AI algorithms into their pricing system should follow regulatory activity in this area and ensure compliance with DOT fare disclosure regulations.

### **CBP REMINDS CARRIERS OF BIOMETRIC EXIT PROGRAM**

On August 27, 2025, U.S. Customs and Border Protection (“CBP”) published a letter reminding Carrier Liaison Program members about biometric entry and exit requirements. Under 8 C.F.R. 103 Subpart B, CBP has authority to conduct biometric operations on flights which includes the capture of photographs of travelers departing the United States at exit locations. Currently, CBP has biometric exit partnerships at 57 locations across the United States. CBP reminds its airline partners that United States citizens may opt-out of biometric collection by requesting alternative processing, which typically involves a manual review of their travel documents by a CBP officer. All non-United States citizens, including crew and pre-boarded passengers, are subject to biometric collection. Notwithstanding, unless a biometric exit is conducted by CBP, non-United States citizens may request to opt-out of the process subject to document check and manual identity verification.

**STATE DEPARTMENT IMPOSES NEW VISA RESTRICTIONS ON CERTAIN FOREIGN GOVERNMENT OFFICIALS**

On August 13, 2025, the U.S. Department of State (the “State Department”) [announced](#) visa restrictions on African, Cuban, and Grenadian government officials, and their family members. Individuals facing visa restrictions are alleged to have participated in Cuba’s “medical mission scheme” in which medical professionals are “rented” by other foreign countries who in turn compensate the Cuban regime for medical services rendered. According to State Department officials, the Cuban medical mission program perpetuates forced labor among doctors who are required to provide medical services in less-developed countries without pay while the host country compensates the Cuban regime, rather than the specific doctors, for any medical care provided. Secretary Rubio, a vocal critic of the Cuban government, imposed the visa restrictions on those African, Cuban, and Grenadian government officials, and their family members to deter other countries from participating in or facilitating the purported exploitation of doctors at the expense of the Cuban populace who need medical care.



This Aviation Regulatory Update is intended to keep readers current on developments in the law. It is not intended to be legal advice. If you have any questions, please contact Evelyn Sahr at 202.659.6622 or [esahr@eckertseamans.com](mailto:esahr@eckertseamans.com); Drew Derco at 202.659.6665 or [dderco@eckertseamans.com](mailto:dderco@eckertseamans.com); Scott Phillips at 202.659.6689 or [sphillips@eckertseamans.com](mailto:sphillips@eckertseamans.com); Jay Julien at 202.659.6648 or [jjulien@eckertseamans.com](mailto:jjulien@eckertseamans.com); Tyler Myers at 202.659.6642 or [tmyers@eckertseamans.com](mailto:tmyers@eckertseamans.com), or any other attorney at Eckert Seamans with whom you have been working.