

## Aviation Regulatory Update

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### AIRLINES FOR AMERICA AND IATA SUPPORT DEREGULATORY AGENDA

On May 5, 2025, Airlines for America (“A4A”) and the International Air Transport Association (“IATA”), among other industry participants, submitted comments to the U.S. Department of Transportation’s (“DOT” or the “Department”) Request for Information (“RFI”) titled [Ensuring Lawful Regulation; Reducing Regulation and Controlling Regulatory Costs](#). A4A and IATA raised concerns that recent DOT regulations have strayed from the pro-competitive benefits of the Airline Deregulation Act of 1978 (the “ADA”). Arguing that regulatory overreach hinders competition and innovation in the aviation industry, commenters recommended that Secretary Duffy proceed with broad deregulatory action to correct the missteps of prior administrations. For example, A4A and IATA suggested that DOT should eliminate requirements which are unmoored from the modern era such as the requirement to maintain a physical copy of 14 C.F.R. Part 382 at each U.S. airport to which a carrier operates. IATA also requested that the Department eliminate the requirement for carriers to first obtain a statement of authorization before selling codeshare services because such proves unnecessary when codeshare services are expressly permitted by most bilateral air service agreements between the U.S. and foreign countries. The Department’s pending [Advanced Notice of Proposed Rulemaking](#) (“ANPRM”) requiring airlines to pay passengers cash compensation when a disruption is airline-caused also faced considerable opposition such that commenters advocated for its swift termination. In addition to IATA and A4A, more than 950 comments were received from other interested parties. Of note, several commenters requested the elimination of all codeshare flight disclosure requirements for ticket agents because such requirements are outdated and unnecessary in the modern economy. The Department must now adjudicate hundreds of industry recommendations to determine how best to implement President Trump’s deregulatory agenda to ensure robust competition and innovation for decades to come. If the Department proceeds with broad deregulation as expected, carriers could experience reduced disclosure and reporting requirements among other welcomed changes.

### DOT ISSUES NPRM WITH PROCEDURAL REFORMS TO RULEMAKINGS AND ENFORCEMENT ACTIONS

On May 16, 2025, DOT issued a [Notice of Proposed Rulemaking](#) (“NPRM”) which reinstates rules related to rulemakings, guidance documents, and enforcement actions previously rescinded in 2021. If finalized, this NPRM would significantly alter how DOT conducts enforcement actions and promulgates agency rulemaking.

By updating DOT's internal policies and revising procedural requirements, this NPRM would offer those subjected to DOT's regulatory authority greater due process protections and procedural remedies during enforcement actions, such as petitioning DOT's general counsel, if DOT personnel committed a procedural violation. Stakeholders could also benefit from required disclosures of evidence within DOT's possession even if carriers do not specifically request such disclosure. Required disclosure to carriers facing enforcement actions could assist in prompt adjudication of alleged violations and ensure fair notice to all parties involved. DOT issued this NPRM planning to codify the internal procedures contained therein and provide the public with a comprehensive source for this information.

A few proposed reforms include:

- Ensuring that there are no more regulations than necessary;
- Narrowly tailoring regulations to minimize potential burdens;
- Reestablishing DOT's Regulatory Reform Task Force to make recommendations to the Secretary of Transportation;
- Defining procedures which DOT must follow during all stages of the rulemaking process;
- Reinstating heightened procedural requirements for "economically significant" or "high impact" rulemaking;
- Allowing the public to file petitions for retrospective regulatory reviews of existing rules and guidance documents;
- Updating enforcement procedures to reflect DOT's commitment to proper due process; and
- Permitting those subject to enforcement actions to file a petition for a determination on whether DOT personnel violated regulatory provisions with respect to the adjudication of an enforcement action.

Comments must be received by **June 16, 2025**. If you would like to comment, please let us know.

## **REAL ID ENFORCEMENT BEGINS NATIONWIDE**

On May 7, 2025, the Transportation Security Administration ("TSA") [rolled out](#) Real ID enforcement measures at checkpoints nationwide. For reference, a Real ID is a state-issued driver's license or identification card that meets federal security standards typically marked with a star in the upper right corner, though the specific design may vary by state. While the Real ID Act (the "Act") was first enacted in 2005, implementation was delayed several times over the last 20 years. Travelers must now have identification that meets federal security standards to board a commercial aircraft in the U.S. Accordingly, anyone 18 years and older that plans to fly domestically or visit certain federal facilities will need a Real ID or another acceptable form of identification. Please be advised that the Act does not require individuals to present identification where it is not currently required to access a federal facility (such as to enter the public areas of the Smithsonian) nor does it prohibit an agency from accepting other forms of identity documents (such as a U.S. passport or passport card). If passengers and/or carriers seek further information on Real ID, the TSA maintains a [Frequently Asked Questions](#) page where background information can be found on Real ID issuance and enforcement policies.

## **DHS RESCINDS ROMANIA'S VISA WAIVER PROGRAM DESIGNATION**

On May 2, 2025, the U.S. Department of Homeland Security ("DHS") [announced](#) that Romania was removed from the Visa Waiver Program ("VWP") effective immediately. As background, Romania was previously granted entry into the VWP in January 2025 yet DHS subsequently reversed course citing security concerns over Romania's designation. The Romanian VWP rollout was originally scheduled for March 31, 2025, but DHS

paused implementation on March 25, 2025, to conduct a comprehensive review. The move comes as the Trump administration implements rigorous border security measures across all U.S. ports of entry, resulting in renewed scrutiny of immigration pathways. While Romania could be reconsidered for VWP designation in the future, the decision to rescind the recent VWP designation means that visa-free travel to the United States is not currently available for Romanian citizens at this time. U.S. immigration policy can and often does shift quickly so short-term travelers from Romania should apply for visas well in advance to reduce the possibility of travel disruptions.

## FAA CERTIFIES ARGENTINA'S CATEGORY ONE SAFETY RATING

Following an April 2024 audit by the Federal Aviation Administration ("FAA") that uncovered 82 deficiencies in critical areas such as airworthiness, pilot licensing, and operational oversight issues, Argentina [successfully retained](#) its Category 1 Air Safety Rating after corrective action was undertaken by the country's National Civil Aviation Administration ("ANAC"). As readers may recall, the FAA utilizes the [International Aviation Safety Assessment Program](#) ("IASA") to evaluate aviation authorities of foreign countries whose airlines operate to the United States based on a two-tier safety rating system (i.e., Category 1 vs. Category 2). Carriers from Category 1 countries can initiate new service to the United States with their own metal and can participate in reciprocal codeshare arrangements with U.S. air carriers. In contrast, carriers from Category 2 countries are prohibited from initiating new service to the U.S. market and cannot codeshare with any U.S. air carrier. A downgraded safety rating, like the one Argentina faced, would significantly limit a foreign air carrier's ability to serve the U.S. market. Given extensive ANAC mismanagement and delayed engagement with U.S. regulators, there were concerns that Argentina would be downgraded to Category 2 at which time Argentine carriers would be restricted to current levels of existing U.S. service. Fortunately, ANAC submitted documentation to the FAA showing that the 82 deficiencies were properly addressed, and it worked attentively with U.S. counterparts to retain the coveted Category 1 safety rating.

## NTSB ANNOUNCES UPCOMING 2025 ANNUAL AIR CARRIER MEETING

On May 14, 2025, the Transportation Disaster Assistance ("TDA") division of the National Transportation Safety Board ("NTSB") announced that it will be hosting the 2025 Annual Air Carrier Meeting on **Wednesday, September 24, 2025, from 9:00 AM – 4:30 PM**. In addition to the 2025 Annual Air Carrier Meeting, there will also be a Regional Carrier Meeting on **Thursday, September 25, 2025, from 8:30 AM – 12:30 PM**. Both meetings will be held at the NTSB's [Boardroom and Conference Center](#) at 429 L'Enfant Plaza, SW in Washington, DC. For those attending the Wednesday meeting, you can expect air carriers to share lessons learned from recent responses to Alaska Airlines Flight 1282 (January 5, 2024), American Eagle Flight 5342 (Operated by PSA, January 29, 2025), and Delta Connection Flight 4819 (Operated by Endeavor, February 17, 2025).

The American Red Cross, in coordination with TDA, will provide an overview of aviation safety-related best practices following the fatal tragedy earlier this year at Ronald Reagan Washington National Airport. As readers may recall, one of the eighteen assurances that foreign air carriers must include in a Family Assistance Plan ("FAP") is working with any designated organization (e.g., the American Red Cross) on an ongoing basis to ensure that families of passengers receive assistance following an accident. The 2025 Annual Air Carrier Meeting offers an opportunity for industry collaboration and response planning such that carriers can sufficiently implement their FAP following an aviation accident. Carriers can also establish a relationship with the American Red Cross in the event that they must respond to an aviation accident in the U.S. The Thursday meeting will focus on aspects of U.S. regional carriers' FAP operations which may interest foreign air carriers operating codeshare services where certain flights are operated by regional affiliates. Should you have any questions or if you plan to attend, please let us know.

## TREASURY DEPARTMENT ISSUES SYRIA GENERAL LICENSE 25

On May 23, 2025, the U.S. Department of the Treasury's Office of Foreign Assets Control ("OFAC") issued [Syria General License 25](#) ("General License 25"), titled "Authorizing Transactions Prohibited by the Syrian Sanctions Regulations or Involving Certain Blocked Persons." Following President Trump's May 13, 2025 statement announcing the cessation of all sanctions on Syria, General License 25 provides immediate sanctions relief for Syria and authorizes new investments across numerous sectors of the Syrian economy. By easing OFAC sanctions on Syria, covered U.S. financial institutions are now [permitted](#) to maintain correspondent accounts for the Commercial Bank of Syria under certain conditions. It is important to note that General License 25 neither impacts the long-standing export control prohibition on exports or reexports of U.S.-regulated items to Syria nor does it authorize transactions benefitting Russia, Iran, or North Korea. Guidance on General License 25 can also be found on the [Frequently Asked Questions](#) page and OFAC's [compliance hotline](#).

## DOT DISMISSES "CHRONIC DELAY" LAWSUIT AGAINST SOUTHWEST

On May 16, 2025, the Trump administration [voluntarily dismissed](#) a lawsuit against Southwest which alleged that the carrier advertised unrealistic flight schedules. The lawsuit, which was filed in the waning days of the Biden administration, claimed that Southwest engaged in unfair or deceptive practices by operating chronically delayed flights during a five-month period ending in August 2022. Following the dismissal, Southwest explained that the lawsuit should not have been brought in the first place since the flights at issue were delayed due to reasons outside of the carrier's operational control. Carriers may remember that chronic delays were a "hot topic" for regulators in the prior administration. For reference, DOT levied significant penalties against JetBlue and Frontier in January 2025 for operating flights with unrealistic schedules. A voluntary dismissal in the Southwest lawsuit could forecast a shift in Department priorities as Secretary Duffy focuses on modernizing national air traffic control systems and resolving the current controller shortage.

## HOUSE REPUBLICANS ABANDON PLANS TO CONSOLIDATE ANTITRUST AUTHORITY (FOR NOW)

On April 30, 2025, Congressman Jordan, chair of the House Judiciary Committee, [withdrew](#) his [proposal](#) to fold the antitrust responsibilities of the Federal Trade Commission ("FTC") into the Antitrust Division of the U.S. Department of Justice ("DOJ"). As proposed, the amendment would transfer all FTC antitrust enforcement actions and related employees to the DOJ. Advocates for the Department of Government Efficiency like Elon Musk lauded the proposal as a means to streamline the enforcement of U.S. antitrust laws into a single regulator. Companies have long faced two potential antitrust regulators depending on whether the FTC or the DOJ's Antitrust Division investigate. While the FTC and DOJ share some overlapping responsibilities for antitrust enforcement, opponents to Congressman Jordan's amendment worried that transferring FTC authority to DOJ would weaken ongoing antitrust enforcement actions against major corporations including Apple and Meta. Following bipartisan opposition to his amendment, Congressman Jordan walked back the controversial proposal, yet House Republicans continue to draft legislation implementing President Trump's domestic agenda, so the door remains open for a single U.S. antitrust regulator. This development comes as the DOJ's Anticompetitive Regulations Task Force examines the process by which DOT grants antitrust immunity ("ATI") to airlines so those in the aviation industry should closely monitor legislative proposals for potential changes to ATI. Of note, the extent to which regulators can thoroughly investigate mergers between those in the aviation industry (e.g., Republic and Mesa's all-stock merger transaction) could also be impacted because transferring all antitrust responsibilities to the DOJ would further strain already limited investigative resources among federal agencies.

## **AMERICAN SUES CHICAGO OVER GATE ACCESS AT O'HARE**

On May 2, 2025, American filed a lawsuit against the City of Chicago (the "City") alleging that preliminary gate redeterminations at Chicago's O'Hare International Airport ("O'Hare") violated the City's contractual obligations with American. Since O'Hare serves as a hub for both American and United, the City executed an Airline Use and Lease Agreement (the "Agreement") with American, United, and other carriers which included provisions governing initial gate assignments and procedures for redetermining gates. At United's request, the City recently commenced a gate redetermination which American considered premature under the contractual terms of the Agreement and thus it filed to enjoin the City's purported contractual breach. Pursuant to the Agreement, a redetermination of gate access is largely based on flight statistics for each airline from the "immediately preceding calendar year" such that those operating at full capacity in a prior year are more likely to be awarded gate assignments during redetermination. If the City were to proceed as planned with the gate redetermination rather than several years from now as American requests, United will receive approximately five more gates at O'Hare while American will lose some four gates. Since several gates allocated to American were unavailable last year due to construction at O'Hare, flight statistics for American in the preceding year would show underutilized capacity if gate redeterminations were finalized as proposed by the City. American claims that the Agreement requires the next gate determination to occur no earlier than 2027 with flight statistics from calendar year 2026 at which time American could fully utilize allocated gates absent construction-related interruptions. The turf war over access underscores tensions between two major U.S. air carriers with United now responding that its Fort Worth-based competitor failed to adequately invest in airport infrastructure at O'Hare when compared United's own sizable investments. Moreover, United argues that American's current gate access was underutilized by choice such that reallocation of gates to United and other carriers would better serve passengers traveling to and from Chicago.

## **BOEING MUST FACE OUTRAGE CLAIM IN WASHINGTON STATE COURT**

On May 8, 2025, the King County Superior Court in Washington (the "State Court") sided with passengers aboard Alaska Airlines Flight 1282 ("Flight 1282") where a door plug detached mid-flight and denied Boeing's arguments seeking to dismiss a cause of action for outrage. A claim for outrage arises when a plaintiff experiences emotional distress so severe that no reasonable person should be expected to endure it. To prevail on such a claim, a plaintiff must prove three elements: (1) extreme and outrageous conduct, (2) intentional or reckless infliction of emotional distress, and (3) actual result to the plaintiff of emotional distress. Since the alleged conduct (i.e., failing to ensure proper installation of four retention bolts on the aircraft in question) was neither extreme nor outrageous and no allegations were made such that emotional harm was intended for specific passengers, Boeing filed a partial motion to dismiss. Passengers aboard Flight 1282 opposed Boeing's partial motion to dismiss and reasoned that manufacturing/operating an aircraft without a secure mid-exit door plug was outrageous as a matter of law. If true, the passengers contend that their claim for outrage was sufficiently pled such that a jury could determine whether Boeing and the other named defendants (i.e., Alaska Airlines and Spirit Aerosystems) demonstrated extreme and outrageous conduct, especially in light of two recent fatal airline disasters. Given the fact that the State Court denied Boeing's partial motion to dismiss, the claim for outrage can proceed such that Boeing could be required to pay significant sums to compensate passengers for emotional distress relating to the Flight 1282 incident. A jury trial could be forthcoming where Boeing and the other named defendants would have to disprove the claim for outrage in addition to other claims asserting product liability theories. We will monitor this litigation because compensation owed could be sizable if the passengers prevail and could provide a framework by which passengers raise outrage claims in future aviation disaster-related suits.

**FEDERAL JUDGE UPHOLDS JURY AWARD FOR AMERICAN IN COPYRIGHT LAWSUIT AGAINST AIRFARE SEARCH ENGINE**

On May 6, 2025, the U.S. District Court for the Northern District of Texas (the “Court”) [upheld](#) a \$9.4 million jury award for American against airfare search engine Skiplagged (i.e., an online service which enables customers to locate cheaper fares by “skipping” part of their flight itinerary) after the Court ruled in August 2024 that Skiplagged infringed on American’s copyrighted booking content. While the jury initially returned a verdict finding Skiplagged liable for \$23.7 million in damages, the award was mitigated down to \$9.4 million because the jury found that American failed to mitigate its infringement damages. In other words, the jury award was reduced because American did not take affirmative steps to mitigate financial losses stemming from Skiplagged’s infringement. In the end, the Court entered judgment in American’s favor for \$9.4 million and permanently enjoined Skiplagged from displaying American’s copyrights on its website. It is important to note that if a copyright owner fails to minimize the damage caused by the alleged infringement, most federal courts will find that actual damages can be reduced or even eliminated in their entirety depending on the circumstances. Copyright holders should seek counsel upon notice of the infringement such that any lost profits and/or other financial losses could be fully recoverable depending on the facts alleged and the applicable copyright laws.

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), [Jay Julien](#) at 202.659.6648 or [jjulien@eckertseamans.com](mailto:jjulien@eckertseamans.com); or [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.