

Aviation Regulatory Update

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DOT WITHDRAWS PROPOSED “AIRLINE PASSENGER RIGHTS” RULEMAKING

On November 17, 2025, the U.S. Department of Transportation formally withdrew an advance notice of proposed rulemaking which would have required covered carriers to pay passengers cash compensation, rebook affected passengers free of charge on the next available flight, and cover other expenses (i.e., meals, overnight lodging, and related transportation) when significant flight delays and cancellations occurred, similar to what is currently required under EU 261. When the Biden administration first issued the ANPRM in December 2024, consumer protection advocates celebrated the proposal because the European Union and Canada have similar regulations requiring services and compensation for affected passengers. However, the anticipated requirements in the ANPRM presented implementation headaches for U.S. and foreign air carriers which would have been required to pay cash compensation and offer free rebooking/amenities for “controllable” cancellations or delays on flights within and to/from the U.S. As proposed in the ANPRM, the definition of “controllable” cancellations or delays was quite broad such that carriers could have been responsible for any factor and/or event within their control, including operating partners, employees, subcontractors, or other persons working on their behalf. The withdrawal of this proposed rulemaking coincides with other business-friendly, deregulatory initiatives across the federal government.

FAA FLIGHT RESTRICTIONS END

On November 16, 2025, the Federal Aviation Administration ended temporary flight restrictions which had been in place at certain U.S. airports due to inadequate air traffic control staffing levels during the federal government shutdown. Citing increased staffing at air traffic control facilities nationwide since the government reopened, FAA Administrator Bedford announced a return to normal operations at forty “high impact” airports and ordered all air traffic controllers back to work. While the flight restrictions are lifted at major U.S. airports, carriers should anticipate a slower return to “normal” as staffing at air traffic control towers gradually increases. FAA leaders also plan to take enforcement action against those carriers which failed to comply with shutdown-related flight restrictions. Letters of investigation will be sent to purportedly noncompliant carriers in the coming weeks to formally notify them. Carriers that failed to comply with the shutdown-related flight restrictions could face penalties of up to \$75,000 for every flight operated above the mandated limits.

FAA WARNS OF INCREASED SECURITY RISKS IN OR AROUND VENEZUELA

On November 21, 2025, the FAA issued an advisory warning to carriers operating in the Maiquetia Flight Information Region (i.e., Venezuela) due to evolving security risks and increased military activity in the region. To safeguard civil aviation from potential risks to aircraft at all altitudes, U.S. air carriers must provide the FAA with at least 72 hours advance notice of any planned flights overflying Venezuela. While the FAA did not prohibit carriers from overflying Venezuela enroute to Latin American countries, American and Delta voluntarily suspended Venezuelan overflights. Since issuance of the warning, TAP, LATAM, Avianca, Iberia, Gol, and Caribbean Airlines have all indefinitely suspended flights to Venezuela, with Turkish Airlines suspending flights until November 28th. The advisory will remain in effect until **February 19, 2026**.

CBP AMENDS AIR CARGO ADVANCE SCREENING REGULATIONS

On November 21, 2025, U.S. Customs and Border Protection published an interim final rule amending regulatory requirements for the Air Cargo Advance Screening (“ACAS”) program. While inbound air carriers and other eligible filers were already required to transmit specified air cargo data through ACAS as early as practicable (i.e., no later than loading of cargo onto aircraft), CBP determined that existing regulations were inadequate to successfully identify certain high-risk air cargo. To address new and emerging air cargo threats, ACAS requirements were modified to require inbound air carriers and other eligible filers to submit additional data elements. In addition to existing requirements, new mandatory and conditional data elements implemented by the interim final rule include the following:

- Consignee email address (mandatory)
- Consignee phone number (mandatory)
- Shipment packing location and/or scheduled shipment pickup location (mandatory)
- Ship to party (mandatory)
- Verified Known Consignor (conditional)
- Shipper email address (conditional)
- Shipper phone number (conditional)
- Customer account name (conditional)
- Customer account issuer (conditional)
- Customer account number (conditional)
- Customer account shipping frequency/volume (conditional)
- Customer account establishment date (conditional)
- Customer account billing type (conditional)
- Unmasked internet protocol address or media access control address of the device used during account creation (conditional)
- Unmasked internet protocol address or media access control address of the device used to initiate the shipping transaction and the unmasked IP address, or MAC address of the device used to file the ACAS filing each time an ACAS filing is submitted (conditional)
- Shipping cost (conditional)
- Biographic data (conditional)
- Link to product listing (conditional)

To provide sufficient time for regulated entities to comply with the new data elements, CBP will exercise enforcement discretion for 12 months after the effective date so long as inbound air carriers and other eligible ACAS filers make good-faith efforts during that time to comply. In other words, inbound air carriers and other eligible filers should work diligently over this 12-month period. to update their policies, procedures, and

technology so that they can begin transmitting enhanced ACAS data elements in accordance with new requirements. When phased enforcement concludes on **November 21, 2026**, CBP will take prompt enforcement action against inbound air carriers and other eligible filers who fail to submit the enhanced ACAS data elements. Interested parties are encouraged to submit comments on the interim rulemaking by **January 20, 2026**.

DOT PROPOSES NEW RULEMAKING ON FORMAL HEARING PROCEDURES

On October 30, 2025, the Department issued a Notice of Proposed Rulemaking seeking to increase transparency and due process rights for regulated entities during aviation consumer protection actions under 49 U.S.C. 41712. To provide carriers and ticket agents with sufficient notice and an opportunity to be heard before DOT declares a specific practice to be unfair or deceptive, the NPRM seeks to unwind two Biden era initiatives that provided DOT officials with overly broad discretion when granting and overseeing hearing requests. The rulemaking proposal, if finalized, would provide U.S. and foreign air carriers greater procedural protections during enforcement actions. DOT seeks comments on the following topics, among others:

- Factors to consider when DOT's General Counsel determines whether to grant or deny hearing petitions from regulated entities;
- Consolidation of duplicative provisions concerning definitions of "unfair" and "deceptive" into one regulation; and
- Rescission of former Biden administration guidance which the Department now considers unnecessary.
- Comments on this NPRM are due no later than **December 1, 2025**.

TSA COULD CHARGE FEE TO PASSENGERS TRAVELING WITHOUT REAL ID

On November 20, 2025, the Transportation Security Administration announced plans to implement a modernized alternative identity verification program for passengers traveling without a REAL ID or passport. For passengers traveling without either a REAL ID or passport, TSA's modernized alternative identity verification program would provide an opportunity for those passengers to be processed through checkpoints after paying \$18. Due to government-incurred costs and the time associated with running the alternative program, TSA would collect the \$18 fee from individuals who fail to present a REAL ID or passport at airport security and then request to use the alternative program. The \$18 non-refundable fee would be collected per individual. Identity verification would then be valid for a 10-day use period provided the traveler can successfully verify his or her identity for each use. Since participation in the new alternative program does not guarantee that passengers will be granted access beyond airport checkpoints, carriers and ticket agents should strongly encourage passengers to travel with acceptable forms of identification, such as a REAL ID or passport.

CBP ANNOUNCES NEW CTPAT PILOT PROGRAM

On November 21, 2025, U.S. Customs and Border Protection announced a new Customs Trade Partnership Against Terrorism ("CTPAT") pilot program for third party logistics providers ("3PLs"). The new pilot program will determine whether asset-based 3PLs (i.e., entities owning or leasing transportation assets) and non-asset-based 3PLs (i.e., entities owning no assets but rather partnering with other carriers and/or providers) should both be permitted to participate in the CTPAT program. Historically, participation of non-asset-based 3PLs has been limited despite those entities playing an integral role in the safety of global supply chains. In 2023, lawmakers therefore directed the U.S. Department of Homeland Security to establish a pilot program to assess whether allowing both non-asset-based 3PLs and asset-based 3PLs to participate in CTPAT would enhance port security, combat terrorism, and prevent international supply chain security breaches. The new program will

begin no earlier than **December 1, 2025**, and continue for no more than five years. Eligible applicants seeking to participate in the pilot program can apply via email (OFO-INDUSTRYPARTNERSHIP@CBP.DHS.GOV).

FEDERAL CIRCUIT COURT STAYS DOT ORDER TERMINATING DELTA/AEROMEXICO ANTITRUST IMMUNITY

On November 12, 2025, the United States Court of Appeals for the Eleventh Circuit stayed a DOT order after Delta and Aeromexico filed a lawsuit last month alleging that the Department had violated the Administrative Procedure Act. Since the Department sought to terminate antitrust immunity effective January 1, 2026, the Eleventh Circuit stayed the agency order until a three-judge panel can thoroughly review the validity of DOT's decision. The key takeaway is that Delta and Aeromexico will **not** be required to unwind their joint venture by January 1, 2026. Until the Eleventh Circuit issues a detailed decision on the validity of DOT's order, the Delta/Aeromexico JV will remain in place as the lawsuit proceeds. Joint scheduling and pricing between the JV partners can continue while the Eleventh Circuit's stay remains in effect. While the Department hoped to swiftly unwind the Delta-Aeromexico partnership due to anticompetitive concerns within the U.S.-Mexico market, the stay further prolongs the cross-border dispute between the United States and Mexico over the Mexican government's alleged non-compliance with the 2015 U.S.-Mexico Air Transport Agreement. DOT plans to further contest this matter, demonstrating the Trump administration's focus on enforcing strict compliance with bilateral aviation agreements.

POLAND TERMINATES 1991 BILATERAL VISA-WAIVER AGREEMENT FOR U.S. CITIZENS

On November 4, 2025, the Police Border Guard headquarters in Poland announced that U.S. citizens are no longer entitled to remain visa-free in Poland for stays exceeding 90 days within any 180-day period. This change follows the October 12, 2025 implementation of Article 6(1) of the Schengen Borders Code governing the movement of persons across borders within the European Union. Travelers who need to exceed these limitations must preemptively obtain an appropriate visa or residence authorization and are further advised that "failure to comply may result in overstay penalties or future entry restrictions."

LAWMAKERS DEBATE BIPARTISAN AIRPORT GATE ACCESS PROPOSAL

The U.S. Senate's Subcommittee on Antitrust, Competition Policy, and Consumer Rights recently held a hearing on airline competition issues, including a bipartisan proposal to require all U.S. airports using federal grants to finance terminal construction projects to guarantee "reasonable access" to gates. The legislative proposal intends to prevent major U.S. air carriers from crowding out new entrant carriers seeking access to airport gates. Low-cost carriers, including Allegiant and Frontier, support the so-called Airport Gate Competition Act to thwart major U.S. air carriers from creating "fortress hubs" dominated by one carrier at the expense of low-cost competitors. Since four major carriers hold about 80 percent of the domestic market, airline competition advocates view airport gate access as a tool to increase competition, especially in emerging U.S. markets. If enacted into law, the legislation could prevent major U.S. air carriers from "gatekeeping" underused gates by implementing "use it or lose it" rules at most U.S. airports. The Act could also benefit foreign air carriers because it would require at least 25 percent of airport gates be available for "common use" and that no more than 50 percent of airport gates be reserved for a single carrier.

LEGISLATION WOULD PRIORITIZE COMMERCIAL FLIGHTS OVER PRIVATE DURING FUTURE GOVERNMENT SHUTDOWN

On November 10, 2025, Congressman Seth Moulton (MA-06) introduced the Fair Aviation in Restrictions and Emergencies Act which would require the FAA to first limit private air travel during a government shutdown before commercial flights can be restricted. Said differently, the Act would halt private flights before the FAA can restrict commercial flights because several U.S. lawmakers contend that it is unfair for commercial passengers to experience widespread flight restrictions during a shutdown while private flights, often transporting wealthy and well-connected passengers, are largely unaffected. While the Act includes statutory exceptions for public safety, government operations, medical flights, and other essential missions, there is a strong appetite on Capitol Hill to insulate commercial flights from shutdown-related difficulties which could mean private air travel taking a backseat to commercial operations.



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