Aviation Regulatory Update

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INDUSTRY AWAITS FINAL DOT ORDER ON RUSSIAN OVERFLIGHTS

On October 9, 2025, the U.S. Department of Transportation issued an Order to Show Cause which would, if finalized, impact the ability of certain Chinese air carriers to utilize Russian airspace in their passenger and/or combination services between China and the United States. The Order seeks to impose a condition on all foreign air carrier permits and exemption authorities held by certain Chinese air carriers to enforce compliance with Article 2(4) of the U.S.-China Civil Air Transport Agreement, by adding the following condition to the foreign air carrier permits and exemption authority held by the affected Chinese air carriers:

> "Until further order of the Department, the holder shall not utilize Russian airspace in the conduct of any of its international scheduled and/or charter passenger and combination services in foreign air transportation to and/or from the United States."

DOT issued the Order in response to supposed competitive imbalances between U.S. and Chinese air carriers over the last three and a half years following Russia's decision to close its airspace to U.S. air carriers effective May 17, 2022. Numerous interested parties filed comments and replies to the Order, which DOT currently has under review.

Given that DOT expedited the comment and reply periods, a final order could be forthcoming at any time. We anticipate that the Department will act quickly considering that many U.S. air carriers filed comments supporting the Order and applauded the Department for enforcing the U.S.-China Air Transport Agreement. Chinese air carriers, on the other hand, urged restraint and argued the Order, if finalized, would not be in the public interest. If the Department does indeed finalize the Order, covered Chinese air carriers, which include Air China, Beijing Capital Airlines, China Eastern, China Southern, Hainan Airlines, Sichuan Airlines, and Xiamen Airlines, will have **30 days**

DOT FURTHER LIMITS MEXICAN CARRIERS OVER OPEN SKIES DISPUTE WITH THE GOVERNMENT OF MEXICO

On October 28, 2025, DOT issued a pair of orders (Order 2025-10-13 and Order 2025-10-14) further restricting Mexican carrier operations because the Trump administration continues to believe that the Government of

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Mexico is acting contrary to the 2015 U.S.-Mexico Air Transport Agreement. The first DOT order (Order 2025-10-13) took the following actions:

- DOT will disapprove all prospective schedules for any new proposed services or increase in frequency of existing services between Felipe Ángeles International Airport ("NLU") or Mexico City International Airport Benito Juárez ("MEX") and any U.S. point.

- DOT has disapproved all existing NLU-IAH and NLU-MFE schedules filed by Aerovias de Mexico, S.A. de C.V. and/or Aerolitoral, S.A. de C.V. d/b/a Aeromexico Connect (effective November 7, 2025, or immediately upon Presidential approval).

- DOT has disapproved all proposed schedules for:

    - MEX-SJU service of Aerovias de Mexico, S.A. de C.V. and/or Aerolitoral, S.A. de C.V. d/b/a Aeromexico Connect, scheduled to begin on October 29, 2025;

    - MEX-EWR service of Concesionaria Vuela Compania de Aviacion, S.A.P.I. de C.V. d/b/a Volaris, scheduled to begin on November 2, 2025; and

    - Services scheduled to begin in November-December 2025 of Aeroenlaces Nacionales, S.A. de C.V. d/b/a VivaAerobus between NLU and the following U.S. points: AUS, JFK, ORD, DFW, DEN, IAH, LAX, MIA, and MCO.

In addition to Order 2025-10-13, the second DOT order (Order 2025-10-14) proposes a prohibition on combination services (i.e., belly cargo) operated by several Mexican carriers between MEX and any U.S. airport. DOT contends that its objective in taking this step is to persuade the Government of Mexico to rescind its prohibition against U.S. all-cargo carriers operating at MEX. Notably, this prohibition has not yet been finalized so the Department is allowing interested parties 14 days to comment on this proposal. DOT is also tentatively providing a 108-day transition period after a final order is served to allow time for potential resolution.

DHS WILL COLLECT BIOMETRIC DATA FROM FOREIGN NATIONALS TRAVELING TO/FROM THE U.S.

On October 27, 2025, the U.S. Department of Homeland Security issued a final rule requiring noncitizens to be photographed and provide other biometrics when entering and exiting the United States. This rulemaking expands the authority of U.S. Customs and Border Protection to collect biometric data from all foreign nationals entering and exiting the United States via airports, land borders, and seaports. While the final rule empowers DHS to biometrically record the entry and departure of noncitizens, U.S. citizens are not directly impacted unless they voluntarily decide to participate in biometric verification. Those U.S. citizens who do not wish to have their photograph taken must be provided an alternative inspection process. Comments on this final rule must be submitted on or before **November 26, 2025**, because DHS confirmed that new biometric data collection requirements will become effective on **December 26, 2025**.

JUSTICE DEPARTMENT UNVEILS "COMPLY WITH CARE" TASK FORCE

The Antitrust Division of the U.S. Department of Justice recently launched its "Comply with Care" Task Force to target "problematic tactics" which undermine the integrity of antitrust enforcement. Citing prominent examples where companies failed to make merger filings under the Hart-Scott-Rodino Act and/or neglected to respond properly to investigations, DOJ's Comply with Care Task Force seeks to hold companies and their counsel

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accountable for purported efforts to obstruct antitrust enforcement proceedings. By way of background, the Antitrust Division recently issued a $1.1 million civil penalty against a subsidiary of the UnitedHealth Group for failing to submit accurate financial statements despite repeated requests from DOJ attorneys during a premerger antitrust review process. A global private equity firm was similarly investigated for intentionally altering documents in HSR filings to presumably mislead antitrust regulators. In both examples, the companies were alleged to have violated the HSR Act by failing to produce requested financial documents and/or neglecting to disclose the deletion of material corporate documents. Since the HSR Act requires companies to notify the antitrust agencies and provide relevant information about mergers that meet a certain size threshold, the Comply with Care Task Force will make it easier for U.S. antitrust enforcers to investigate reportable transactions and ensure strict compliance with the HSR Act, especially among carriers in the highly concentrated airline industry. Assistant Attorney General Gail Slater, who leads the DOJ's Antitrust Division, also mentioned the following examples of alleged obstruction by companies and/or their counsel during enforcement proceedings:

- Discovery abuses (e.g., intentionally failing to produce key documents and information)
- Abuse of privilege (e.g., improper and/or overbroad assertions of attorney-client privilege)
- Legal tactics designed to exclusively hinder or delay investigations

To mitigate potential risks, carriers should update antitrust compliance programs, including merger notification processes and internal investigation protocols, to align with DOJ's new initiative. Since HSR Act violations are subject to a monetary fine of up to **$53,088 per day**, carriers are advised to contact counsel well in advance of required HSR filings and at the earliest stage of any enforcement investigation.

PART 382 COMPLIANCE AND "HANDS-ON" DISABILITY TRAINING

Foreign air carriers that operate flights to and from the U.S. are required to train their staff to proficiency on the various requirements of Part 382. Staff includes, but is not limited to, pilots, flight attendants, reservation/sales (including GSAs), ticket counter personnel, gate agents, ramp and baggage handling personnel and passenger service officer personnel. Employees should be trained as appropriate to their specific employee duties. Carriers are also responsible for training and ensuring that contractors provide training to their employees who deal directly with the traveling public.

All employees who interact with the U.S. traveling public should receive initial training (recommended 8 hours). Refresher training for non-CRO employees must be given at least once every three years to maintain proficiency (recommended 8 hours). **Complaints Resolution Officials ("CROs"), who are your "experts" on the regulation, must receive annual refresher training (recommended 4-6 hours) and new hires should receive training before their employment commences or shortly thereafter. We therefore recommend an 8-hour training each year to meet this requirement.** Carriers are also required to maintain records for three years of individual employee training, demonstrating that all persons required to receive initial and refresher training have done so. Training records must be available for DOT review upon request.

DOT's Ensuring Safe Accommodations for Air Travelers With Disabilities Using Wheelchairs rulemaking also imposed new "hands-on" training requirements such that carriers will be required to ensure employees and contractors providing physical assistance to passengers with disabilities or handling passenger wheelchairs or scooters receive in-depth "hands-on training" no later than **June 17, 2026**. Any employees or contractors who are hired after June 17, 2026, must complete the required hands-on training before assuming their duties.

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We routinely conduct in-person and remote Part 382 training for clients across the globe. If your Part 382 training is not up to date, we would be happy to assist in conducting initial or refresher training for your CROs or other employees as needed to ensure compliance with DOT regulatory requirements.

ADS-B LEGISLATION ADVANCES IN U.S. SENATE WITH BIPARTISAN SUPPORT

On October 21, 2025, the U.S. Senate Committee on Commerce, Science, and Transportation unanimously advanced the Rotorcraft Operations Transparency and Oversight Reform Act for consideration by the full U.S. Senate. A bipartisan group of U.S. lawmakers are strongly advocating for the ROTOR Act, citing a need for all manned aircraft operating in ADS-B Out airspace to be equipped with ADS-B In technology as a critically important aviation safety matter considering the fatal DCA crash earlier this year. In addition to closing the loophole permitting military aircraft to operate in domestic airspace without ADS-B capabilities, the legislation also directs the FAA to conduct comprehensive safety reviews at congested airports with nearby helicopter traffic (e.g., Chicago O'Hare International Airport, John F. Kennedy International Airport, Los Angeles International Airport, Ronald Reagan Washington National Airport, and Newark Liberty International Airport). If enacted into law, the ROTOR Act would require all aircraft in controlled airspace to be equipped with ADS-B In by 2031 with a potential one-year extension for aircraft retrofits.

CALIFORNIA REGULATORS FINALIZE CYBERSECURITY AUDIT REQUIREMENTS

California's Privacy Protection Board recently finalized rules governing annual cybersecurity audit requirements for "high risk" processing activities, which include processing of sensitive personal information, processing personal data for targeted advertising purposes, or using automated decision-making tools (such as artificial intelligence models) to process personal information. The cybersecurity audit requirements are extensive and require companies to submit annual certifications of compliance to the California Board. Companies will need to ensure that they comply with these requirements by April 1, 2028 – 2030 (the due date varies depending on the company's annual revenue). Our Cybersecurity, Data Protection, and Privacy team can assist in this regard should carriers seek advice on data protection best practices, privacy or cybersecurity training, and incident response planning.

Airlines seeking to mitigate such cyber risks should take the following actions: (i) audit their security program and secure adequate support and resources to promptly address any identified gaps; (ii) revisit their third party vendor agreements to impose robust cybersecurity procedures and mechanism on such vendors, including regular staff social engineering awareness training; (iii) develop a third party risk management program to adequately assess and monitor its vendor's security practices; and (iv) ensure that their own staff are regularly trained to detect and respond to social engineering attacks. Any airline suffering a data breach should immediately engage expert breach response counsel to assist with breach response and should continuously monitor new cybersecurity requirements that may affect their cybersecurity program.

DELTA AND AEROMEXICO SEEK JUDICIAL REVIEW OF DOT ORDER TERMINATING ANTITRUST IMMUNITY

On October 9, 2025, Delta and Aeromexico filed a petition in the United States Court of Appeals for the Eleventh Circuit seeking judicial review of DOT's order terminating antitrust immunity of the Delta/Aeromexico joint venture. Absent court order, DOT instructed Delta and Aeromexico to unwind their immunized joint venture by **January 1, 2026**. Both carriers argue that the January 2026 deadline is impracticable given the entangled cross-border operations which have resulted from the Department's initial grant of ATI back in December 2016. In addition to requesting that the Eleventh Circuit examine whether DOT had the underlying statutory authority to issue the order in the first place, Delta and Aeromexico also requested a stay to prevent DOT from enforcing the

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January 1, 2026 deadline. Like the Russian overflight matter potentially impacting Chinese air carriers, we expect the Department to defend its ATI decision in the Eleventh Circuit given that the Trump administration claims the Mexican government, similar to the Chinese government, consistently fails to demonstrate compliance with the applicable bilateral agreement. While the future of the Delta and Aeromexico joint venture hangs in the balance, carriers should take note that the Department continues to aggressively enforce foreign government compliance with Open Skies agreements.

FIFTH CIRCUIT WILL RECONSIDER ITS RULING ON ANCILLARY FEES RULE

On October 2, 2025, the United States Court of Appeals for the Fifth Circuit announced that it will reconsider a January 28, 2025 ruling which determined that DOT had authority to issue rulemaking targeting unfair or deceptive fees. While the Fifth Circuit's prior ruling had remanded the Ancillary Fees Rule to remedy procedural shortcomings during the agency rulemaking process, the January 2025 decision by a three-judge panel held that DOT nevertheless had authority to issue rulemaking requiring airlines to fully disclose fees upfront when a passenger books his or her flight. Airlines for America, on behalf of major U.S. air carriers, objected to the ruling and requested that all judges on the Fifth Circuit review the three-judge panel decision. The Fifth Circuit subsequently granted the request, meaning that oral arguments will now be held to determine whether DOT had statutory authority to issue the Ancillary Fees Rule in the first place.

SPIRIT FINDS A "LIFELINE" IN SECOND BANKRUPTCY PROCEEDING

On October 10, 2025, the United States Bankruptcy Court for the Southern District of New York granted approval for Spirit to receive up to $475 million in debtor-in-possession financing and a $150 million payment from AerCap, the carrier's primary aircraft lessor. Back in bankruptcy court for the second time in less than a year, Spirit needs as much help as possible at a time when the carrier has slashed routes, sold aircraft assets, and furloughed flight attendants. Spirit also rejected 27 aircraft leases during recent bankruptcy proceedings to decrease the carrier's debt obligations and restore financial stability. A merger or sale of Spirit's remaining assets could be a possibility due to changing political winds since the Biden administration successfully blocked JetBlue's acquisition of the carrier last year.

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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; Drew Derco at 202.659.6665 or dderco@eckertseamans.com; Samantha Walter at 412.566.1920 or swalter@eckertseamans.com, Tyler Myers at 202.659.6642 or trmyers@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.

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