AVIATION REGULATION AND ENFORCEMENT
Aviation is one of the most regulated industries in the world. Our top-flight team advises and represents air carriers and repair stations, pilots and mechanics, airport agencies and avionics companies, among others, in all types of transactional and ongoing compliance matters and Federal Aviation Administration (FAA), National Transportation Safety Board (NTSB), Transportation Security Administration (TSA) and Department of Transportation (DOT) investigations and enforcement actions.
A Dedicated Team
Serving a multifaceted industry on a broad spectrum of issues requires a legal team with a dedicated sector focus, extensive capabilities and global reach. LeClairRyan’s Aviation Regulation and Enforcement team is comprised of practitioners who are deeply familiar with the myriad regulations, statutes and treaty requirements that govern everything from the shape of certain cockpit controls to aircraft maintenance recordkeeping; who have represented clients in regulatory investigations by U.S. federal and state agencies as well as international regulatory bodies; and who have defended clients in enforcement actions before administrative tribunals and arbitration panels as well as in courtrooms throughout the world. There is a big difference between regulatory frameworks on paper and in practice. Our attorneys don’t just have a deep understanding of the law, but just as important, a wealth of experience regarding its real-world application. We pride ourselves on our ability to help clients address issues before they become problems and to resolve problems in a manner that preserves our clients’ relationships with regulatory authorities and the flying public.

Agency Relationships
Members of our team have developed productive relationships with officials and staff members at the FAA and NTSB. Mark Dombroff and Allan Horowitz provide additional insight into FAA policies, practices and priorities from having worked there for many years prior to entering private practice. Our team also regularly interacts and builds strong, positive relationships with personnel at the Department of Transportation (DOT), Transportation Security Administration (TSA), Departments of Defense (DoD), Justice (DOJ) and State, Occupational Safety and Health Administration (OSHA), Environmental Protection Agency (EPA) and Department of Energy (DOE).

Lawyers without Borders
Aviation is inherently international. U.S. airlines that fly outside the country have to satisfy the foreign equivalents of our aviation authorities. We regularly advise U.S. and foreign airlines, cargo carriers, corporate flight departments and ground handling companies wherever their business takes them. For accidents outside the U.S., we advise on International Civil Aviation Organization (ICAO) Annex 13 ground rules for investigations involving more than one country, the Warsaw Convention of 1929, the Hague Protocol and the Montreal Convention, as applicable; U.S. Department of State Foreign Affairs Manual (Vol. 7 – Consular Affairs); and the local laws of the territory of the crash, including regarding evidence handling and protection.

LeClairRyan serves all facets of the aviation sector, including:

| Domestic and foreign international, national and regional airlines | Airmen, including men and women certified as pilots, mechanics and other aviation technicians |
| Corporate flight departments | Air traffic controllers |
| Air freight companies | Military and government contractors |
| Individual aircraft owners | Fractional ownership providers |
| Helicopter flight services, including medevac and sightseeing operations | Airport authorities, management companies and concessions; flight schools and training centers |
| Unmanned aircraft system (UAS) operators | Aircraft leasing companies |
| Aircraft and aircraft parts manufacturers | Aircraft finance companies |
| Fixed-base operators (FBOs) and other ground-handling, terminal and aircraft services providers, including: maintenance, repair and overhaul (MRO); fueling; aircraft towing, parking, tie-down, ramp and hangar storage; cabin and catering; passenger ticketing and boarding; security and screening; baggage handling; and wheelchair transport. |
Full-Service Capabilities

Compliance and Regulatory Advice
Our team regularly provides transaction-related regulatory filing requirements and non-transaction related regulatory filing requirements and other compliance-related aspects of owning and/or operating aircrafts – from jumbo jets to single-engine planes to unmanned air vehicles.

Licenses and Certificates
We assist clients in securing: registrations, licenses, certificates and permits, including aircraft registrations and airworthiness certifications, including inspections and maintenance and renewals and reactivations; special flight authorities (applies to foreign-registered aircraft from non-ICAO countries); airmen certifications (applies to pilots, aviation maintenance technicians (AMTs) and other aviation professionals, including flight instructors); medical certificates (including drug and alcohol testing programs); airport operating certificates, including changes to air carrier certificate or operating authority in connection with mergers and/or acquisitions of operational assets; and commercial space transportation (i.e., rocket) licenses, experimental permits and safety approvals.

Regulatory Relief
We assist clients in applying for exemptions, waivers and other relief from FAA regulations, including Part 11 exemptions, commercial space waivers, and certificates of waiver or authorization (COAs) for public aircraft operation of unmanned aircraft systems (UAS), as well as requests for exemptions from temporary flight restrictions (TFRs) and other issues relating to flight paths (altitudes and/or courses), airspeeds, noise levels, flight schedules, arrival and departure procedures, flight time limitations and rest requirements, compliance with the Air Carrier Access Act and the Fair Treatment for Experienced Pilots Act and pilot training.

LeClairRyan routinely represents aviation (carrier) and non-aviation (shippers) clients in hazmat cases alleging violations of the Hazardous Materials Transportation Act (HMTA) during manufacturing, packing, labeling, loading and securing operations. The rules are enforced by a slew of agencies, depending on the nature of the hazardous material (e.g., radioactive materials are regulated by the Atomic Energy Commission) or the interest being protected (e.g., TSA’s anti-terrorism efforts).

Environmental Law
We advise airports on all aspects of federal and state environmental regulatory compliance, including the FAA’s Airport Environmental Program, which implements the National Environmental Policy Act (NEPA) and other federal environmental laws and regulations (and compliance with which is a condition of receiving financial support from the Department of Transportation). Members of our team counsel clients regarding air quality (including carbon emissions and lead emissions from avgas), airport noise, airport recycling and sustainability, wildlife hazard mitigation and land use compatibility planning, including completion of environmental assessments for airport development projects.

Drug and Alcohol Compliance Programs
The FAA’s Drug Abatement Division oversees the industry’s compliance with the drug and alcohol testing law and regulations through a combination of on-site inspections policy and guidance, and random drug and alcohol testing, the latter required by both the DOT and FAA and applicable to anyone in a safety-sensitive position. We assist clients with all of the above, plus post inspection activities and investigations. We also advise regarding drug and alcohol tests for personnel performing “safety-sensitive functions” in connection with accident investigations.

M&A
Airline M&A is on the rise across the globe. These transactions have serious implications for travelers as well as airline employees. They are also a matter of concern to the FAA, which does not permit the sale of certificates of public convenience and necessity (CPCNs). We advise air carriers, repair stations and other certificated entities on ways to legally avoid this restriction.

Investigations and Enforcement Actions
If an FAA inspector performing surveillance on his or her assigned certificate holders suspects violations, our team assists clients in responding to warning notices, letters of correction and letters of investigation. With the objective of preventing the matter from going further, we assist clients in conducting an internal investigation and undertaking corrective action and other mitigation measures. We also respond to records requests and meet with the inspector to discuss settlement.
If the matter has been referred to the Legal Division for further action, our team assists clients in responding to notices of proposed civil penalty, civil penalty letters and notices of proposed certificate actions, including requesting an informal conference (and a copy of the FAA's evidentiary file) and engaging in settlement discussions. If the case is a certificate action or a civil penalty action against a pilot, mechanic or flight engineer under $50,000 and the resulting order of suspension or revocation is deemed unlawful, unreasonable or unfair, or the monetary penalty excessive, we may challenge the result in the certificate action in a formal hearing before an NTSB ALJ and the unfair penalty to a DOT AU, and if necessary, seek further appellate review to the FAA Administrator or a U.S. Court of Appeal. The law requires the U.S. Attorney General to initiate civil penalty actions over $50,000 and we have defended clients in such cases.

Voluntary Disclosure Reporting Program

Our team assists certificated air carriers, fractional ownership programs and parts manufacturers requiring FAA production approval in avoiding a civil penalty, suspension or revocation by taking advantage of the VDRP, an FAA program that rewards certificate holders that detect and promptly disclose certain classes of violations take a series of corrective steps with a letter of correction in lieu of civil penalty action. Added benefit records submitted for review are protected from release to the public. We also represent pilots and crew members in filing immunity reports with NASA under the Aviation Safety Reporting Program (ASRP).
**Accident/Incident Investigations and Litigation**

Members of our team have represented air carriers in nearly every major airline accident investigation conducted by the NTSB over the past 30 years. LeClairRyan advises and assists clients on all phases of the investigation process, including the selection of airline participants to join the working groups organized by the NTSB’s “Go Team” at the accident scene; briefing personnel.

While the NTSB has primary authority to investigate every civil aviation accident in the United States, including conducting forensic investigations and proposing safety recommendations, other agencies are not precluded from conducting investigations and, in fact, do so, including the FAA and TSA in almost all cases and, in addition, the DoD (if military or government personnel were aboard the aircraft), Department of State (if civilian U.S. government personnel casualties in international flight), U.S. Postal Service (if aircraft carrying U.S. mail), Department of State and Civil Aeronautics Administration (if accident occurred outside of the U.S.), Environmental Programs Department (to evaluate possible fuel spill or hazardous cargo situation) and possibly the EPA and state and local environmental agencies, and Department of Labor (if OSHA regulations relevant to accident site). We also advise on accident-specific laws, as relevant, such as The Aviation Disaster Family Assistance Act and the Death on the High Seas Act.

**Representative Experience**

- Assisted multiple operators in developing their operations manual for unmanned aerial systems (UAS) and prepared and filed a petition for exemption under Section 333 of the FAA Modernization and Reform Act of 2012.
- Assisted a non-U.S. company in obtaining FAA certification for unit load devices (ULDs) for cold storage.
- Advised a repair station in structuring its acquisition by another entity as a stock rather than an asset sale as certificates are nontransferable.
- Advised one of the largest and busiest airports in the U.S. regarding environmental compliance audits.
- Have assisted national and international providers of airport ground handling services, including fueling, baggage handling, de-icing, skycap and other necessary services.
- Represented aircraft and component manufacturers regarding compliance with the FAA and foreign aviation authorities, and NTSB incident and accident investigations.
- Represented a major airline in the largest FAA federal court civil penalty action in U.S. history involving maintenance-related issues.
- Represented a major airline and reached favorable settlement in what was, at the time, the largest civil penalty ever sought by the FAA.
- Assisted several aviation component parts manufacturers with internal investigations of potential FAA regulatory violations.
- Represented an aircraft maintenance, repair and overhaul facility in a multimillion-dollar civil penalty action by the FAA stemming from failure to comply with FAA airworthiness directives (ADs).
- Represented a cargo airline in an FAA civil enforcement action over allegedly improper repairs to the cargo hold.
- Represented major airline in an internal investigation into alleged federal aviation regulatory violations.
- Represented many clients alleged to have violated hazardous material regulations.
- Represented many clients alleged to have violated DOT and FAA drug and alcohol regulations.
The Regulators

**Federal Aviation Administration:** The FAA’s reach is as expansive as the navigable airspace system that defines the geographic boundaries of its jurisdiction – from pilot training, proficiency and health standards, to aircraft design certification and maintenance procedures, to air traffic control towers and terminal radar approach control centers. The rules prescribed by the FAA to promote safe civil aviation and protect pilots, flight attendants, passengers and the general public are the Federal Aviation Regulations (FARs) and apply to all flight operations in the U.S., and we advise on the full spectrum. The FAA not only makes the rules but is the “judge, jury and executioner” for those that violate them. We also advise clients in connection with investigations into possible violations of the FARs and defend them in enforcement actions seeking civil penalties and revocations or suspensions of individual and corporate certificates and ratings. LeClairRyan also monitors all FAA advisory circulars (ACs), airworthiness directives (ADs), orders, notices and temporary flight restrictions (TFRs), and advises clients on important regulatory developments.

**National Transportation Safety Board:** The NTSB is an independent federal agency whose mission is to investigate transportation accidents to find the cause and to make recommendations as to how to prevent a repetition.

**Department of Transportation:** The DOT regulates the economic aspects of the industry. To operate on certain routes, you need a CPCN. Private companies wishing to provide essential public services in certain countries must be granted a CPCN before constructing facilities and offering services. The DOT regulates the airports and who can operate in and out of them.

**Transportation Security Administration:** Following the September 11 terrorist attacks on the United States, airline and airport security reform was a key aspect of international anti-terrorist efforts. Congress passed the Aviation and Transportation Security Act which created the TSA to supervise security operations for sea and air transportation. Operating under the aegis of the Department of Homeland Security, the TSA regulates the screening of passengers and baggage and crew access to sensitive security information (SSI). We advise on defenses available to clients who are going to be interviewed or questioned by the TSA and also consult regarding pre-employment screening requirements for airmen, mechanics and other employment requiring security clearance.

**European Aviation Safety Agency:** The EU’s equivalent of the FAA is the European Aviation Safety Agency. EASA provides expert advice to the EU for drafting new legislation and drafts implementing rules in all fields pertinent to its mission; certifies and approves products and service providers in areas where it has exclusive competence, such as airworthiness; oversees and supports member states in areas of shared competence, such as air operations and air traffic management, including continuous monitoring and conducting inspections; implementing type-certification procedures for aircraft and components and the approval process for organizations involved in the design, manufacture and maintenance of aeronautical products; authorizing “third-country” (i.e., non-EU) operators; and promoting the use of European and worldwide standards.

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### The 10 Most Regulated Industries in 2014*

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<td>1. Petroleum and Coal Products Manufacturing</td>
<td>6. Scheduled Air Transportation</td>
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<tr>
<td>2. Electric Power Generation, Transmission and Distribution</td>
<td>7. Fishing</td>
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<td>3. Motor Vehicle Manufacturing</td>
<td>8. Oil and Gas Extraction</td>
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<tr>
<td>5. Depositary Credit Intermediation</td>
<td>10. Deep Sea, Coastal and Great Lakes Water Transportation</td>
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* Based on number of restrictions

Source: Mercatus Center at George Mason University
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