

Aviation Regulatory Update

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DOT LAUNCHES PUBLIC AWARENESS CAMPAIGN TO ENSURE AIR TRAVELERS WITH DISABILITIES KNOW THEIR RIGHTS

This month the Department of Transportation (DOT) [announced](#) the launch of a campaign, #AccessibleAirTravel, to raise awareness about the rights of air travelers with disabilities to enjoy safe, dignified, and accessible air travel. According to DOT an estimated 5.5 million Americans use a wheelchair, and many encounter barriers when traveling by air. The #AccessibleAirTravel campaign will promote DOT's [Airline Passengers with Disabilities Bill of Rights](#) through a quick and informative video that empowers individuals with disabilities to understand and assert their right to safe, dignified, and accessible air travel. DOT is also promoting these rights through a variety of new rulemaking initiatives, such as the final rule for accessible lavatories on single-aisle aircraft, which was published in July 2023.

NOTICE FOR POTENTIAL U.S. GOVERNMENT SHUTDOWN ON NOVEMBER 17

U.S. government funding is [due to expire](#) on November 17th and a partial shutdown of many federal services could begin the following day if lawmakers do not act to approve a long term funding plan for the government. While a shutdown is unlikely to impact those employees that are considered essential (e.g., air traffic controllers, safety inspectors, security agents and customs officials), this date is important to note from a planning perspective. This is because numerous key government stakeholders who oversee important functions such as licensing will likely be unreachable during a shutdown. To the extent you are aware of any upcoming operation or application that may require approval by, for instance, DOT or the Federal Aviation Administration (FAA), we would encourage you to let us know as soon as possible so that appropriate actions can be taken prior to November 17th.

AIR TRAVEL CONSUMER REPORT: JULY 2023 NUMBERS

DOT [released](#) its Air Travel Consumer Report (ATCR) for the month of July 2023 on several key metrics, including on-time performance, mishandled baggage, and mishandled wheelchairs and scooters. DOT noted that it continues to receive a high volume of air travel service complaints against airlines and ticket agents. In July 2023, airlines reported 63 tarmac delays of more than three hours on domestic flights, compared to 74 tarmac delays reported the month prior. In July 2023, airlines reported three tarmac delays of more than four hours on international flights, compared to 14 the month prior. In July 2023, reporting marketing carriers handled 45.6 million bags and posted a mishandled baggage rate of 0.75%, higher than both the rate of 0.70% in June 2023 and the rate of 0.64% in July 2022. In July 2023, reporting marketing carriers reported checking 81,536 wheelchairs and scooters and mishandling 1,137, for a rate of 1.39% mishandled wheelchairs and scooters, lower than both the rate of 1.45% mishandled in June 2023 and 1.63% mishandled in July 2022.

DELTA SETTLES PANDEMIC FLIGHT CANCELLATION CLASS CASE FOR MORE THAN \$27M

A federal judge in Georgia granted final approval of a class settlement in a case brought by Delta customers who were provided credits in lieu of refunds for flights canceled by Delta between March 2020 and April 2021. The dispute began after a customer purchased a Delta flight from Montana to Mexico for March 27, 2020 which was cancelled by Delta during the pandemic. The customer requested a full refund but was allegedly told that if she did not accept the rebooked flight, she could receive only a travel credit, not a refund. Delta eventually entered into a settlement, which will provide more than \$27 million to settlement class members who make eligible claims, as well as separate payments of more than \$2.3 million for attorney fees and costs and \$3,000 for a service award.

DHS GRANTED INDEFINITE EXEMPTION FOR DEPORTATION OPERATIONS TO CARACAS, VENEZUELA

Pursuant to Order 2019-5-5, issued on May 15, 2019, DOT suspended the authority of all U.S. air carriers and foreign air carriers to provide foreign air transportation between the United States and Venezuela. However, at the request of the U.S. Department of Homeland Security (DHS), DOT recently granted a limited exemption, authorizing certain flights by U.S. air carriers conducted on behalf of DHS to execute final orders of removal for Venezuelan nationals. In support of its request, DHS asserted that the exemption is necessary to enable it to undertake one of its core statutory missions - securing the United States' borders and safeguarding the integrity of its immigration system – and argued that the operations are in the public interest. Removal flights have been ongoing this month.

PREPARING FOR THE CORPORATE TRANSPARENCY ACT

On January 1, 2024, [the Corporate Transparency Act](#) (“CTA”) will come into effect and significantly revise current disclosure requirements for nearly every entity engaging in commerce in the United States. Under the CTA, all “reporting companies” will be required to disclose beneficial ownership information (“BOI”) to the U.S. Treasury’s Financial Crimes and Enforcement Network (“FinCEN”). A “reporting company” includes all entities that are formed or registered to do business in the United States by filing of a document with a secretary of state or similar offices, such as corporations, LLCs, LLPs, etc., subject to various exemptions. If an entity is not created with this type of state filing, like most trusts, the entity is exempt from the CTA. The CTA also exempts “large operating companies.” CTA defines a large operating company as any business that employs more than 20 full-time employees, earns more than \$5 million in revenue, and has an operating presence at a physical office in the United States. The CTA creates 23 total exemptions from its reporting requirements. Failure to comply with the CTA can result in civil and criminal penalties. Businesses and industry leaders should take proactive steps to determine their specific status as either a “reporting company” or an exempt entity under the CTA. Companies should take necessary steps now to ensure compliance in 2024.

ANTITRUST REGULATORS POISED TO POUNCE ON INDUSTRYWIDE ESG COLLABORATIONS

Antitrust attorneys are [concerned](#) with collaborations related to environmental, social and governance (ESG) issues that may lead to antitrust violations. ESG refers to a set of standards that investors weigh to determine whether a company has controls in place to protect the environment and promote socially conscious relationships with its employees, suppliers, customers, and stakeholders. ESG collaborations occur when

different companies within the same industry come together to share and develop ESG related initiatives. Federal and state regulators are stepping up scrutiny over whether ESG collaborations constitute collusion and thus potentially violate antitrust laws. The Department of Justice (DOJ) and the Federal Trade Commission (FTC) have changed draft merger guidelines which may have the impact of classifying more companies as having dominant market positions, a determination that carries consequences beyond M&A. Companies must be weary of collaboration that exceeds what is permissible. Companies that want to maintain their ESG collaborations can take steps to reduce the risks by thoroughly document the procompetitive benefits for engaging in ESG initiatives that involve information-sharing. Moreover, companies should make sure that ESG meetings with competitors are highly structured and documented. Such meetings should have a written agenda and not include “side meetings.” Ideally, the meetings should include an antitrust compliance statement and be held with an antitrust lawyer present.

DOJ APPLIES CLAWBACK PILOT PROGRAM IN REDUCING COMPANY’S SETTLEMENT PRICE

The DOJ [has reduced](#) by more than \$760,000 the settlement a chemical maker will pay to resolve allegations of having bribed foreign officials, under a DOJ pilot program that rewards companies which voluntarily “clawback”—recoup or withhold—compensation from executives or employees involved in the alleged wrongdoing. Albemarle Corp. still agreed to pay more than \$218 million to resolve allegations by DOJ and the Securities and Exchange Commission (SEC) that the company violated the federal Foreign Corrupt Practices Act. But the settlement price would have been \$763,453 higher if not for DOJ’s Compensation Incentives and Clawback Pilot Program, which the agency announced in March. The company learned about possible misconduct in Vietnam approximately 16 months before disclosing it to the DOJ, the department said. The DOJ took the belated disclosure into consideration in evaluating the appropriate disposition of the case. “If you find that problem early enough and report it early enough, you can have a substantial impact on how the Department of Justice or the SEC respond to it.”

EPA FINALIZES LEADED AVIATION FUEL ENDANGERMENT FINDING

The Environment Protection Agency (EPA) released its final “endangerment finding” on leaded aviation fuel, which will trigger legal requirements for EPA and the FAA to issue additional regulations to address lead emissions — though no new requirements are being imposed in the immediate future. Most aircraft, including jets, burn unleaded fuels. But some smaller aircraft with piston engines — including planes that typically carry fewer than 10 passengers and certain helicopters — burn a type of fuel known as “avgas” that still contains lead. There is no known safe level for lead, which harms cognitive development in children and is linked to cardiovascular, kidney and reproductive issues in adults. The finding means that the EPA must now issue emissions standards for aircraft that consume avgas. The FAA is also required to develop fuel standards to reduce or eliminate lead emissions. The FAA last year launched a program to promote lead-free alternative fuels and has already approved an unleaded alternative that can be used by most piston-engine aircraft, but it is not commercially available. It has also approved a lower octane fuel that is available at 35 airports. FAA plans to initiate a rulemaking aimed at controlling or eliminating aviation lead emissions from piston engine aircraft.

IATA CALLS FOR GREATER ACCIDENT INVESTIGATION COMPLIANCE

The International Air Transport Association (IATA) is [looking to improve](#) the compliance and quality of accident reporting worldwide amid a concerning slump. While safety standards across the industry have improved considerably over the last decade, IATA reports that accident reporting has gotten worse over the years. IATA’s

latest figures show that, out of 242 accidents reported between 2018 and 2023, only 113 (47%) resulted in a final report. Under ICAO's Annex 13, accident investigators must submit a preliminary report within 30 days, before submitting a more detailed final report within 12 months. While it is not always possible to compile a final report within this timeframe, just 39 of the 113 final reports prepared during this timeframe were delivered within 12 months. With many regions lacking the resources and training to investigate accidents to a high level, IATA is keen to enhance training standards and ensure states have enough resources. IATA also suggested the idea of pooling resources in some regions - with only around 40% of countries worldwide possessing independent accident investigators, establishing regional investigation agencies could raise standards considerably.

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](mailto:esahr@eckertseamans.com) at 202.659.6622 or esahr@eckertseamans.com; [Drew Derco](mailto:dderco@eckertseamans.com) at 202.659.6665 or dderco@eckertseamans.com; [Jay Julien](mailto:jjulien@eckertseamans.com) at 202.659.6648 or jjulien@eckertseamans.com, or any other attorney at Eckert Seamans with whom you have been working.