

August 2021 Aviation Regulatory Update

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REGULATIONS ISSUED IMPLEMENTING NY HERO ACT

On May 5, 2021, the New York Health and Essential Rights Act (NY HERO Act) was signed into law, and requires employers to adopt and implement new workplace health and safety plans to provide protection during potential future airborne infectious disease outbreaks.

On August 5, 2021, the New York Department of Labor (NYDOL) in collaboration with the New York Department of Health, issued an Emergency Regulation and Proposed Final Regulation, [available here](#). Under the Hero Act and final regulations, each employer must establish a written exposure prevention plan designed to eliminate or minimize employee exposure to airborne infectious agents in the event of an outbreak of an airborne infectious disease. Employers may adopt either: i) the NYDOL's Model Airborne Infectious Disease Exposure Prevention Plan, [available here](#); ii) one of the seven industry specific model plans, which cover the following industries: agriculture, construction, delivery services, domestic workers, emergency response, food services, manufacturing and industry, personal services, private education, private transportation (automobiles), and retail; or iii) a plan developed by the employer (as long as it meets the requirements). These plans apply to all "employees" as defined by the New York State HERO Act, which means any person providing labor or services for remuneration for a private entity or business within the state, without regard to an individual's immigration status, and shall include part-time workers, independent contractors, domestic workers, and other temporary and seasonal workers.

Under the Act, employers were also required to: i) adopt an exposure plan (NYDOL Model, industry specific, or their own plan); and ii) designate a supervisory official by **August 5, 2021**. This official will be responsible for implementing the plan in the event an airborne infectious disease is designated by the New York State Commissioner of Health as a highly contagious communicable disease that presents a serious risk of harm to the public health. By **September 4, 2021**, employers are required to provide a copy of the adopted airborne infectious disease exposure prevention plan to all employees and post the plan in a visible and prominent location within each worksite.

Finally, we will note that even though NYDOL and NYDOH recognize that the COVID-19 pandemic is ongoing, no official designation of an airborne infectious disease event has been made with regard to COVID-19. So while employers are required to adopt a plan, and provide that plan to their employees under the NY Hero Act, employers are not yet required to implement these plans.

FAA PROPOSED \$1.8 MILLION IN CIVIL PENALTIES AGAINST SIX COMPANIES FOR CARRYING OUT ALLEGED ILLEGAL CHARTER FLIGHTS

On August 5, 2021, FAA issued a press release, [available here](#), regarding over \$1.2 million in civil penalties proposed against five companies for allegedly conducting illegal charter flights. The companies noted in this press release include PottCo Airlease, PottCo Tactical Air, Wikert Air, Oracle Aviation, and East Shore Aviation. FAA also issued another press release on August 27, 2021, [available here](#), detailing a proposed fine against Oklahoma-based Interstate Helicopters for

conducting illegal charter flights. With the proposed fine against Interstate Helicopters, FAA has now proposed over \$1.8 million dollars in fines for illegal charter operations within the last month.

Specific details of each case are as follows:

- PottCo Airlease was accused of conducting 16 paid passenger-carrying flights without the required air carrier or operating certificate and without FAA issued Operations Specifications. FAA also alleged that PottCo Airlease lacked the required personnel to conduct the flights and had employed pilots who had not completed their required training, nor passed required written or oral tests. PottCo Airlease is facing a fine of \$344,672.
- FAA is also targeting sister company, PottCo Tactical Air. The company is accused of allegedly conducting 43 passenger-carrying flights without required air carrier or operating certificates and FAA issued Operations Specifications. It has also been accused of lacking the required personnel to carry out the flights and employing pilots lacking the appropriate credentials and training. PottCo Tactical Air is facing a fine of \$301,676.
- FAA has proposed civil penalties totaling \$233,133 against Wikert Air for allegedly conducting 21 paid passenger-carrying flights without required air carrier or operating certificates, and without FAA issued Operations Specifications. FAA has also alleged that Wikert Air lacked required personnel to carry out the flights and employed pilots who lacked the appropriate credentials and training.
- Oracle Aviation is facing a civil penalty of \$191,536 for allegedly conducting 9 paid passenger-carrying flights without required air carrier or operating certificates, and without FAA issued Operations Specifications. FAA has also alleged that Oracle Aviation lacked required personnel to carry out the flights and employed pilots who lacked the appropriate credentials and training.
- FAA has also proposed civil penalties totaling \$157,654 against East Shore Aviation for allegedly conducting 9 paid passenger-carrying flights in three, single-engine Pilatus PC-12s. FAA said that two of these planes had been operated without FAA issued Operations Specifications. Additionally, FAA alleged that the third plane was authorized to be used under visual flight rules, but that East Shore had been operating the plane under instrument flight rules. East Shore is also accused of employing pilots to fly all three planes that had not completed their required training nor passed the required written or oral checks.
- FAA has proposed a \$617,100 civil penalty against Oklahoma-based Interstate Helicopters for allegedly conducting 24 paid passenger-carrying flights in jets when the company was only allowed to conduct flights in helicopters. FAA has also alleged that the company employed unqualified pilots.

U.S., U.K. AND CANADA IMPOSE NEW SANCTIONS ON BELARUS

Earlier this month, the U.S., U.K. and Canada imposed new trade, financial and aviation sanctions on Belarus following Belarus' disputed presidential election and specifically in response to a crackdown of the Belarusian government on pro-democracy activists and the press within the country.

The U.K. Foreign, Commonwealth and Development Office said that Britain will limit Belarusian trade on a number of goods that can be used to suppress dissidents of the Belarusian government or provide a revenue stream to the government. Britain is also adopting measures to stop granting loans to the government, and has said it will ban Belarusian air carriers from flying over or landing in the U.K. Additionally, Britain will no longer provide technical assistance to Belarusian President Lukashenko's fleet of luxury aircraft.

At the same time, President Biden signed an executive order imposing U.S. sanctions on Belarusian individuals and organizations. These new sanctions have been described as the largest round of U.S. sanctions against Belarus to date. Organizations that have been sanctioned include the Belaruskali OAO, which is one of the country's largest state-owned enterprises, and the Belarusian National Olympic Committee, which has been accused of facilitating money laundering, sanctions evasion, and the circumvention of visa bans. President Biden also said in a statement that the sanctions were

implemented in part because Lukashenko failed to heed calls for democracy, and has allegedly perpetuated election fraud and launched brutal campaigns to suppress dissenters.

FAA REOPENS COMMENT PERIOD FOR PROPOSED AIRPORT SMS RULE

On August 24, 2021, FAA reopened a comment period for the Safety Management System for Certificated Airports Supplemental Notice of Proposed Rulemaking (SNPRM) originally published July 14, 2016. Under the SNPRM, [available here](#), the FAA revised proposed applicability of the rule so that a Safety Management System (SMS) is only required for a certificated airport classified as a small, medium, or large hub airport in the National Plan of Integrated Airport Systems; serving international air traffic; or having more than 100,000 total annual operations. The FAA also proposed changes that would extend the implementation period from 18 to 24 months; require submission of an implementation plan within 12 months instead of 6 months of the effective date of the final rule; modify the training requirements; ensure consistency among various FAA SMS initiatives, and reduce the implementation burden. The original comment period closed on September 12, 2016, but FAA has now reopened and extended the comment period until September 23, 2021. Interested parties may comment via the regulations.gov portal for the SNPRM (link above), mail, or fax.

FAA FINES AGAINST UNRULY PASSENGERS NOW TOTAL OVER \$1M

On August 19, 2021, the Federal Aviation Administration (“FAA”) issued a press release detailing the latest proposed civil penalties against 34 additional airline passengers for allegedly unruly behavior. With the new set of penalties, the total amount of civil penalties imposed by FAA for 2021 has now reached over \$1 million. This is all in response to the approximately 3,889 reports FAA has received of unruly passengers on aircraft, 2,867 of which have been related to failure to comply with the federal mask mandate. The new penalties announced this month are as follows:

- A \$45,000 penalty against a passenger for allegedly throwing objects, including luggage, at other passengers, and refusing to stay seated. The unruly passenger also allegedly laid on the floor and grabbed a flight attendant by the ankles while simultaneously putting his head up her skirt. The passenger was apprehended after an emergency landing in Richmond, VA.
- A \$42,000 penalty against a passenger for allegedly interfering with crewmembers and failing to comply with the federal mask mandate, making non-consensual physical contact with another passenger, throwing an item at another passenger and threatening him with physical harm. The unruly passenger was also accused of making stabbing gestures at other passengers, and snorting what appeared to be cocaine. The passenger was removed after the flight was diverted to Minneapolis, MN.
- A \$32,500 penalty against a passenger for allegedly assaulting passengers seated near him for not changing seats to accommodate his travel partner and threatening to commit various physically violent crimes against these passengers. The passenger was removed by law enforcement after the plane was returned to the gate. Southwest, the airline involved, banned the passenger from flying with them in the future.
- A \$30,000 penalty against a passenger for allegedly interfering with flight attendants during deplaning. Additionally, the unruly passenger attempted to gain entry to the flight deck by physically assaulting two flight attendants and threatening to kill one of them for not opening the door. The passenger was met by law enforcement after deplaning.
- A \$29,000 penalty against a passenger for allegedly interfering with crewmembers and refusing to comply with the federal mask mandate. The passenger also shouted obscenities at crewmembers, intentionally bumped another seated passenger on her way to the lavatory and then punched the seated passenger in the face when the passenger objected to the unruly passenger’s behavior.

- A \$25,000 penalty against a passenger for allegedly repeatedly kicking the aircraft bulkhead, screaming obscenities at a passenger next to her and a flight attendant, locking herself in the lavatory for 30 minutes, yelling obscenities at a flight attendant for informing the unruly passenger she had to return to her seat when the fastened seatbelt sign came on, throwing corn nuts at other passengers and shoving her middle fingers in a flight attendant's face when she was instructed to stop throwing the corn nuts, and putting her middle fingers up at a flight attendant when she was issued a "red card" notice.
- A \$19,000 penalty against a passenger for allegedly interfering with crewmembers and refusing to comply with the federal mask mandate, ignoring the fastened seatbelt sign, and pushing a flight attendant.
- A \$17,530 penalty against a passenger for allegedly interfering with crewmembers, refusing to comply with the federal mask mandate, vaping on the airplane, and drinking alcohol not provided by the airline.
- A \$17,000 penalty against a passenger for allegedly interfering with crewmembers and refusing to comply with the federal mask mandate, attempting to use a vape pen, and drinking alcohol not provided by the airline.
- A \$16,700 penalty against a passenger for allegedly smoking in the lavatory and on another flight a few days later, allegedly physically and verbally assaulting other passengers and shouting obscenities at crewmembers.
- A \$15,000 penalty against a passenger for allegedly striking a flight attendant in the nose.
- A \$15,000 penalty against a passenger for allegedly drinking alcohol that was not provided by the airline.
- A \$15,000 penalty against another passenger for allegedly drinking alcohol that was not provided by the airline.
- A \$13,000 penalty against a passenger for allegedly interfering with crewmembers, refusing to comply with the federal mask mandate and drinking alcohol that was not provided by the airline.
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- A \$13,000 penalty against a passenger for refusing to comply with the federal mask mandate and drinking alcohol that was not provided by the airline.
- A \$13,000 penalty against a passenger for allegedly interfering with crewmembers, refusing to comply with flight attendant instructions to turn off her phone during takeoff, refusing to comply with the federal mask mandate and drinking alcohol that was not provided by the airline.
- A \$10,500 penalty against a passenger for allegedly interfering with crewmembers, refusing to comply with the federal mask mandate, and urinating on the lavatory floor.
- A \$10,500 penalty against a passenger for disrupting a flight attendant and repeatedly yelling obscenities at and shoving his traveling partner.
- A \$10,500 penalty against a passenger for allegedly interfering with crewmembers, refusing to comply with the federal mask mandate, and being combative while walking to the lavatory while the fastened seatbelt sign was on.
- A \$10,500 penalty against a passenger for allegedly interfering with crewmembers and refusing to comply with the federal mask mandate.
- A \$10,500 penalty against a passenger for refusing to comply with the federal mask mandate.
- A \$10,315 penalty against a passenger for allegedly vaping on the airplane during boarding and yelling at flight attendants when told to stop vaping.

- A \$10,000 penalty against a passenger for allegedly interfering with crewmembers and refusing to comply with the federal mask mandate. The unruly passenger also acted as though his hand was a gun and made a “pew, pew” noise as if he was shooting a fellow passenger, repeatedly pushed the call light button during a PA announcement by the captain and refused to deplane, which resulted in the removal of all passengers from the aircraft.
- A \$9,000 penalty against a passenger for disruptively arguing with his wife during boarding, arguing with flight attendants for telling his son to stop vaping on the airplane, and yelling “imagine all of you in body bags” as he was being escorted off the aircraft.
- A \$9,000 penalty against a passenger for allegedly interfering with crewmembers, refusing to comply with the federal mask mandate, hiding a flight attendant’s jacket under his seat, and punching a window and a tray table on the airplane.
- A \$9,000 penalty against a passenger for allegedly interfering with crewmembers and refusing to comply with the federal mask mandate.
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- An \$8,000 penalty against a passenger for allegedly interfering with crewmembers and refusing to comply with the federal mask mandate.
- A \$7,500 penalty against a passenger for allegedly threatening to kill another passenger seated in front of him.

All of these fines reflect FAA’s commitment to its Zero Tolerance policy towards unruly passengers and unruly behavior. Passengers fined have 30 days after receipt to respond to an FAA enforcement letter.