

February 2021 Aviation Regulatory Update

By Evelyn D. Sahr, Drew M. Derco and Andrew Orr

CDC AND AIRLINES TO INITIATE CONTACT TRACING PROGRAM FOR PASSENGERS TRAVELING TO U.S.

On February 19, 2021, Airlines for America announced that its member airlines voluntarily agreed to collect contact tracing data from passengers traveling into the United States and transmitting that data to the Centers for Disease Control (CDC). Under the agreement, U.S. airlines will ask passengers to provide two phone numbers, email addresses, and an address of where the travelers will be staying in the U.S. In the event there was a possible COVID-19 exposure on an aircraft, the information submitted by airlines will assist CDC in conducting contact tracing with local health authorities. The airlines and CDC met on February 25, 2021 to further discuss plans for the program, and CDC is likely to issue an order in approximately 10 days. Tentatively, the airlines and CDC have agreed to the following:

- Implementation of contact tracing will begin 90-100 days after the issuance of a CDC Order;
- CDC would prefer airline DCS not to issue a boarding pass without the passenger completing the required data elements (rather than a board/no board process);
- APIS and JSON are acceptable; PNR.GOV will be acceptable in the short term;
- Passengers will not be required to attest to the information, and airlines will not be responsible for validation of the information; and
- Airlines will not be required to store the contact tracing information.

CBP REOPENS COMMENT PERIOD FOR BIOMETRIC COLLECTION RULE

On November 19, 2020, U.S. Customs and Border Protection (CBP) issued a Notice of Proposed Rulemaking, "Collection of Biometric Data from Aliens Upon Entry to and Departure from the United States," available here. DHS is required by statute to develop and implement an integrated, automated entry and exit data system to match records, including biographic data and biometrics, of aliens entering and departing the U.S. However, under current regulations, CBP may only conduct pilot programs to collect biometrics at exit at a limited number of air and seaports and may only collect biometrics from a limited population. The proposed rule would amend the DHS entry/exit regulations to eliminate references to pilot programs and the port limitation to permit the collection of photographs or other biometrics from non-U.S. travelers departing from airports, land ports, seaports, or any other authorized point of departure. The proposed rule would also amend the DHS entry/exit regulations requiring foreign travelers to provide photographs upon entry to and/or departure from the United States. In the initial stage of implementation, CBP plans to expand its facial recognition system to commercial airports, but will eventually establish a biometric entry-exit system at all air, sea, and land ports of entry. Finally, U.S. citizens may voluntarily opt out of CBP's biometric verification program. The original comment period for

this NPRM closed on December 21, 2020. However, based on the comments received on the NPRM, CBP announced on February 10, 2021 that the comment period would be reopened for another 30 days, until **March 12, 2021**.

9TH CIRCUIT REVERSES FAVORABLE COURT DECISIONS FOR UNITED AND DELTA

On February 2, 2021, the U.S. Court of Appeals for the 9th Circuit issued an opinion reversing a district court's summary judgment in favor of United Airlines, Inc. in two consolidated class action cases brought by United pilots and flight attendants alleging that United failed to comply with California labor law, and remanding the cases for a full hearing on the merits. Additionally, the 9th Circuit also issued an order remanding a similar summary judgment decision in favor of Delta Airlines in a case brought by Delta flight attendants. While the 9th Circuit affirmed the district court's decision on the plaintiffs' minimum wage claims, the district court must now hear the merits of the plaintiffs' timing-of-pay and wage-statement claims. In both cases, the 9th Circuit's decisions were partially based on a California Supreme Court decision from June 2020 that found that pilots and flight attendants are entitled to the protections of California's wage laws if California serves as their "base of work operations", even if most of their work is performed outside of California. At this point, it is unclear how the cases will be resolved after a full hearing at the district court level, and what affect, if it any, it will have on other carriers who have employees primarily based in California.

CANADA TO ISSUE NEW ACCESSIBILITY REGULATIONS

On February 13, 2021, the Canadian Transportation Agency (CTA) issued proposed regulations, [available here](#), regarding Accessible Transportation Planning and Reporting Regulations (ATPRR). The proposed regulations, required by the Accessible Canada Act of 2019, would set out specific requirements for airline accessibility plans, feedback processes, and progress reports. Specifically, airlines with more than 100 employees serving the Canadian market would be required to publish an initial accessibility plan by June 1, 2023 and publish updated plans every three years thereafter. Carriers that fail to comply with the regulation could be fined up to 250,000 CAD. Carriers have until April 18, 2021 to comment on the proposed regulations and provide input to the CTA at OTC.CETA-CEAT.CTA@otc-cta.gc.ca.

A4A COMMENTS ON DRAFT STRATEGIC PLAN ON ACCESSIBLE TRANSPORTATION

On February 16, 2021, Airlines for America submitted a comment, [available here](#), on DOT's Draft Strategic Plan on Accessible Transportation, a guide for DOT's efforts to create a transportation system that is inclusive of people with disabilities. The strategic plan sets out DOT's goals and objectives for FY 2021-2025, and outlines DOT's principles of removing barriers to accessibility in transportation. DOT's strategic plan includes five primary goals:

- Goal 1: Remove unnecessary barriers for people with disabilities to seek licensure for, operate, and/or ride in passenger and commercial motor vehicles.
- Goal 2: Remove unnecessary barriers to multimodal accessibility of public rights-of-way.
- Goal 3: Enhance opportunities for people with disabilities to walk, roll, cycle, and use micromobility services and other innovative mobility technologies to the greatest extent possible.
- Goal 4: Support the Nation's public transit systems and mobility providers in providing
 - accessibility for people with disabilities.
- Goal 5: Advance accessible air, motorcoach, and rail intercity transportation systems for people with disabilities

A4A's comment strongly supported the strategic plan, stating that it is "critical that all stakeholders collaborate to identify barriers and take steps to improve air travel accessibility". A4A specifically encouraged DOT to take action on the final resolutions of the 2016 Accessible Air Transportation Advisory Committee, which included accessible lavatory

requirements for single aisle aircraft. A4A further supported DOT's strategies for: i) speedy investigation of disability complaints; ii) promoting passenger outreach and education; and iii) improving guidance and regulation.

TREASURY ISSUES GENERAL LICENSE REGARDING VENEZUELAN SANCTIONS

On February 2, 2021, the U.S. Treasury Department issued General License 30A to the Venezuelan Sanctions Regulations, authorizing Certain Transactions Necessary to Port and Airport Operations. After Venezuela' maritime authority, Instituto Nacional de los Espacios Acuáticos (INEA), was added to the Specially Designated Nationals and Blocked Persons (SDN) List in January 2021, under Executive Order (EO) 13850, many shipping operators were concerned about sanctions violations due to the need pay INEA local port fees. This action likely would have prohibited humanitarian aid, food, and medical supplies from being shipped into the Country. Under the license, payments to INEA, and the entities it owns and controls, that are ordinarily incident and necessary to operations or use of ports and airports in Venezuela are now authorized.

UNITED AIRLINES FINED \$49 MILLION FOR MAIL FRAUD

On February 26, 2021, the U.S. Department of Justice (DOJ) announced that United Airlines has agreed to pay more than \$49 million in fines to settle civil and criminal claims related to defrauding the United States Postal Service (USPS). According to the criminal and civil settlement agreements, United entered into International Commercial Air (ICAIR) contracts with USPS, by which United transported U.S. mail internationally on behalf of USPS. Under these contracts United provided bar code scans of mail receptacles to USPS when United took possession of the mail receptacles and when the receptacles were delivered. United was only entitled to full payment under these ICAIR contracts if mail was delivered on time and United provided accurate mail scans. Between 2012 and 2015, former employees of United's Cargo Division allegedly submitted false cargo scan data under the ICAIR contracts, submitting data based on "aspirational delivery times" instead of the actual delivery time data. United further admitted that it concealed problems related to scanning and mail movements that, if known, would have subjected United to financial penalties under the ICAIR contracts. Beyond the monetary penalties, United has agreed to other remedial measures, including removing managers involved in the scheme, hiring outside legal counsel to review United's government contracting compliance, and establishing training curriculum for government contracting compliance.