

June 2020 Aviation Regulatory Update

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PRESIDENT TRUMP ISSUES PROCLAMATION SUSPENDING AND LIMITING CERTAIN VISAS

On June 22, 2020, President Trump issued a Presidential Proclamation, [available here](#), suspending and limiting entry to aliens seeking entry to the U.S. under the following visas:

- H-1B or H-2B visas, and any alien accompanying or following to join such alien;
- non-student/research J-1 visas, to the extent the alien is participating in an intern, trainee, teacher, camp counselor, au pair, or summer work travel program, and any alien accompanying or following to join such alien; and
- L-1 visas, and any alien accompanying or following to join such alien.

This suspension and limitation only applies to an alien who is:

- Outside the U.S. on or before June 24, 2020 (effective date);
- Does not have a nonimmigrant visa that is valid on June 24, 2020; and
- Does not have an official travel document other than a visa (such as a transportation letter, an appropriate boarding foil, or an advance parole document) that is valid on June 24, 2020, or issued on any date thereafter that permits him or her to travel to the United States and seek entry or admission.

Therefore, persons who are already in the United States, persons who hold valid H-1B, H-2B, J-1, or L-1 visas as of June 24, 2020, and persons who hold different classes of visas (such as D, C-1, C-1/D crewmember visas) are NOT impacted by the Presidential Proclamation.

This order is set to expire on **December 31, 2020**, unless continued further.

DOT FINES SPIRIT AIRLINES \$350,000 FOR DENIED BOARDING VIOLATIONS

On June 19, 2020, the U.S. Department of Transportation (DOT) fined Spirit Airlines \$350,000 for violating federal rules protecting passengers who are denied boarding (“bumped”) on oversold flights, and for not providing accurate reporting of passengers who were denied boarding. DOT found that Spirit improperly required passengers who were involuntarily denied boarding to sign waivers or documents suggesting that those passengers were “volunteers.” In addition, Spirit allegedly offered travel vouchers to such passengers without first informing them they had the option of receiving cash or check, as required by law. In terms of reporting violations, Spirit allegedly failed to file accurate reports of passengers who were denied boarding by misclassifying and misreporting more than 1,000 passengers as “volunteers” when in fact

they were passengers who had been denied boarding involuntarily. As a result, several of the Department's monthly Air Travel Consumer Reports (ATCRs) were published containing information that incorrectly lowered Spirit's rate of involuntary denied boarding.

NTSB ISSUES SAFETY RECOMMENDATION FOR PROTOTYPE AND LOW PRODUCTION LITHIUM-ION BATTERIES

On June 8, 2020, the National Transportation Safety Board (NTSB) issued two safety recommendations, [available here](#), providing that the Pipeline and Hazardous Materials Safety Administration (PHMSA) remove certain exemptions in hazardous materials shipping standards for certain lithium-ion batteries. Specifically, the NTSB is asking PHMSA to close a loophole that allows "prototype" or "low-production" batteries to be shipped on aircraft without passing certain safety tests required of other lithium-ion batteries.

This recommendation arose from a joint investigation with Canadian authorities into a shipment of lithium-ion batteries that ignited while in transport on a delivery truck in Canada. During the June 2016 shipment, four large custom-made batteries had been accepted for shipment by FedEx from the manufacturer, Braille Battery, in Sarasota, Florida and transported on aircraft from Tampa, Florida, to Indianapolis, Indiana, and then on to Toronto, Ontario. The batteries subsequently caught fire approximately 10 hours after they had been unloaded from the aircraft, destroying the truck. The NTSB determined that if lithium-ion battery safety tests had been conducted, the conditions that caused these batteries to fail would have been discovered, and the batteries would not be accepted for shipment as air cargo.

NY, NJ, AND CT ISSUE TRAVEL ADVISORY

On June 24, 2020, the governors of Connecticut, New York, and New Jersey issued a joint travel advisory, [available here](#), requiring travelers from COVID-19 hotspots to quarantine upon entry into these states. Specifically, the order states that all travelers entering from a state with a positive test rate higher than 10 per 100,000 residents, or higher than a 10% test positivity rate, over a seven day rolling average, will be required to quarantine for a period of 14 days.

The tri-state measure will use messaging on highways, airports, websites and social media across to communicate the advisory, and will also ask hotels to communicate the 14-day quarantine to guests who have traveled from one of the impacted states. The states agreed to continually update and publish on their respective websites a list of states to which the new advisory applies. Currently, travelers from the following states are subject to the 14-day quarantine: Alabama; Arkansas; Arizona; Florida; North Carolina; South Carolina; Texas; Utah; Washington.

U.S. AIRLINES ANNOUNCE HEALTH ACKNOWLEDGEMENT REQUIREMENT

On June 29, 2020, Airlines for America (A4A) announced a plan to provide an additional level of protection during the COVID-19 epidemic. A4A members, which include Alaska Airlines, American Airlines, Delta Air Lines, Hawaiian Airlines, JetBlue Airways, Southwest Airlines and United Airlines, will now be voluntarily implementing temporary health acknowledgment policies and procedures for passenger travel. As part of this program, passengers will be required to complete a health acknowledgment during the check-in process, which will include:

- An assurance that the passenger will bring a face covering and wear it at the airport, on the jet bridge and onboard the aircraft;
- An assurance that the passenger is not experiencing a temperature (38C/100.4F or higher), coughing, shortness of breath/difficulty breathing, loss of taste or smell, chills, muscle pain and/or sore throat; and

- An assurance that the passenger has not had close contact with someone who tested positive or had symptoms of COVID-19 in the last 14 days.

The carriers have also indicated that passengers who fail or refuse to complete the health acknowledgment may not be allowed to travel, depending on each airline's own policies and procedures.

PASSENGER FILES LAWSUIT AGAINST CHARTER AIRLINES FOR FAILURE TO USE PPE

On June 12, 2020, a charter passenger, Mr. Paul E. Rice, filed a complaint, [available here](#), alleging claims of breach of contract, intentional misrepresentation, and negligent misrepresentation, for the crew's failure to continuously wear Personal Protective Equipment (PPE) during a charter flight, and may act as a test case for similar lawsuits filed against airlines during the COVID-19 epidemic. The lawsuit was filed against MPI Jet, Flight Level Aviation LLC, Prestige Aviation LLC, and 1-25 unnamed "Does" to be named at a later date. Mr. Rice and his wife, concerned about public travel during the COVID-19 epidemic, contracted with MPI Jet to arrange private charter air services, with the requirement that the cabin crew would, at all times, wear masks and gloves. Mr. Rice alleges that during the charter operations, the flight crew failed to continuously wear both masks and gloves for the entirety of the flight, breaching the contract. Mr. Rice seeks damages in the amount of \$10,300 for the breach of contract, as well as further punitive damages for the alleged misrepresentations.

CBP ISSUES ADVISORIES FOR JFK AND ATL AIRPORTS

- **JFK International Airport** - Due to a large number of dogs arriving without proper documentation CBP at John F. Kennedy International Airport issued a reminder to stakeholders to encourage them to familiarize themselves with CDC entry requirements prior to transporting the dogs. Any dog arriving in the United States from a "high-risk" country, listed here, must have a valid rabies vaccination certificate issued on or after the dog is 12 weeks of age, and the dog must wait 28 days after initial vaccination before entering the United States. These rules apply to all dogs, including puppies, service animals, and emotional support dogs. These rules also apply whether the owners are (1) just visiting the United States with their dogs, (2) importing dogs into the United States, or (3) traveling out of the United States and returning with their dog after a temporary visit, such as a vacation or holiday. If a dog does NOT meet CDC requirements, the dog may be denied entry upon arrival in the United States. If denied entry, the dog may be sent back to the last country of departure at the importer's expense. This policy could potentially conflict with DOT's rule on the non-discriminatory treatment of passengers with disabilities in the event a service or emotional support dog are denied entry into the United States.
- **Atlanta International Airport** – On May 29, U.S. Customs and Border Protection at Hartsfield-Jackson Atlanta International Airport issued a notice to clarify the responsibilities of the airport and commercial carriers to properly maintain the Federal Inspection Service facility, as well as any related Federal Government offices. The Notice cites to 8 USC 1223(b),(d), which requires that international airports and carriers have suitable "landing stations" to receive foreign aliens when transported into the U.S. from a foreign territory. The Notice further cites 19 CFR 122.11(c), which requires all international airports to provide the Federal Government with necessary office space and other working areas at no cost. Finally, the Notice reminds carriers that it is their responsibility to ensure the CBP areas are properly maintained and janitorial services are provided. The notice applies to all airport international passenger processing facilities.

DOT ISSUES ORDER REGARDING CHARTER FLIGHTS CONDUCTED BY AIR INDIA

On June 22, 2020, the U.S. Department of Transportation (DOT) issued an order requiring Air India to apply to the Department for statements of authorization prior to conducting charter flights, thereby allowing the Department to scrutinize charter flights by Air India on a case-by-case basis. The Department has decided to do so because the Government of India allegedly is engaging in unfair and discriminatory practices with respect to U.S. charter air transportation services to and from India. The Department is willing to reconsider this action once all applicable restrictions on U.S. carrier rights cease to be applied to U.S. carriers, and a “level playing field has been restored.”

DOT FINES COPA AIRLINES

On June 17, 2020, the U.S. Department of Transportation fined Compania Panamena de Aviacion, S.A. (Copa) \$450,000 for unlawfully transporting passengers between the United States and Venezuela via a stopover point, thus violating DOT Order 2019-5-5. This order was issued because of conditions threatening the safety and security of passengers, aircraft, and crew traveling to or from Venezuela. After further investigation, DOT found Copa sold more than 5,000 tickets for air travel between the United States and Venezuela and transported more than 15,000 passengers on these itineraries.

FINCIMEX ADDED TO CUBA SANCTIONS LIST

The U.S. Department of State recently updated its List of Restricted Entities and Subentities Associated with Cuba, [available here](#). Effective June 19, 2020, business with Fincimex, which handles hundreds of millions of dollars in remittances sent to Cuba by families in Cuban-American communities in South Florida and around the nation, is now prohibited. Fincimex is Western Union’s exclusive representative in Cuba. Previously, these remittances had been allowed through Fincimex as the presidential memorandum ordering the creation of the Cuba restricted list in 2017 included a specific exception for remittances.

FEDERAL GOVERNMENT AGREES TO TEST AIRLINES' PRIVATE CONTACT TRACING APP

On June 9, 2020, The Trump administration convened a high-level White House meeting with Homeland Security Secretary Chad Wolf, Transportation Secretary Elaine Chao, and other senior airline officials to discuss the collection of contact tracing information from U.S.-bound international passengers, with the goal. As readers may recall CDC in February 2020 issued an interim final rule that required airlines to collect five contact data elements from international passengers and electronically submit them to CBP. However, many airlines believed this information was difficult to obtain, especially for passengers booking tickets through third-party websites, and resulted in information that is spotty and incomplete. As a potential solution, U.S. carriers recommended utilizing a website and mobile application for passengers to send their contact information directly to the CDC. Following a meeting between Vice President Pence and airline executives on June 26, 2020, the administration agreed to test a contact tracing app the airline industry has paid to have developed, and to allow international passengers to notify the CDC when they may have come into contact with someone who has COVID-19.

CFIUS PROVIDES DETAILS ON MONITORING AND ENFORCEMENT

The Committee on Foreign Investment in the United States (CFIUS) recently published a new webpage regarding its Office of Monitoring and Enforcement. This office is tasked with: monitoring foreign investments in the United States that are not voluntarily submitted to CFIUS for review (“non-notified” transactions); enforcing CFIUS’s mandatory declarations regulations (“non-declared” transactions); overseeing compliance with CFIUS mitigation agreements, conditions, and orders; and, administering and enforcing civil monetary penalties for violations of applicable CFIUS regulations and

agreements. The webpage provides guidance regarding non-notified and non-declared transactions, as well as the office's mitigation and enforcement programs. Additionally, the webpage asks members of the public to contact Monitoring & Enforcement with any tips, referrals, or other relevant information at CFIUS.tips@treasury.gov; in particular regarding:

- identification of a contemplated or completed foreign investment in, or an acquisition of, a U.S. business or real estate that may be within CFIUS's purview;
- incidents that may imperil or constitute an apparent violation of an existing CFIUS mitigation agreement or order; or
- other issues requiring the attention of Monitoring & Enforcement relating to foreign investment and national security.

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 author Evelyn Sahr at 202.659.6622 or esahr@eckertseamans.com; Drew Derco at 202-659-6665 or dderco@eckertseamans.com; or Andy Orr at 202-659-6625 or aorr@eckertseamans.com or any other attorney at Eckert Seamans with whom you have been working.