

**Authority**

The authority for the Presidential Proclamation is Sections 1182(f) and 1185(a)(1) of Title 8, and Section 301 of Title 3, United States Code. CDC's Order is issued pursuant to the Presidential Proclamation.

**Sherri Berger,**

*Chief of Staff, Centers for Disease Control and Prevention.*

[FR Doc. 2021-24385 Filed 11-3-21; 4:15 pm]

BILLING CODE 4163-18-C

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Requirement for Airlines and Operators To Collect and Transmit Designated Information for Passengers and Crew Arriving Into the United States; Requirement for Passengers To Provide Designated Information

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of agency order.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS), announces the requirement for all airlines and operators to collect and/or maintain passenger and crew contact information (designated information), and for passengers to provide such information to airlines and operators, on flights arriving into the United States. This includes flights with intermediate stops in the United States between the flight's foreign point of origin and the final destination. Unless otherwise transmitted to the U.S. Government via established U.S. Department of Homeland Security (DHS) data systems, airlines and operators are required to retain the designated information for 30 days and transmit it within 24 hours of a request from CDC. Accurate and complete contact information is needed to protect the health of travelers and U.S. communities and for the purposes of public health follow-up.

**DATES:** This Order is effective beginning 12:01 a.m. Eastern Standard Time on November 8, 2021.

**FOR FURTHER INFORMATION CONTACT:** Jennifer Buigut, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road, NE, MS H16-4, Atlanta, GA 30329. Telephone: 404-498-1600. Email: [dgmqpolicyoffice@cdc.gov](mailto:dgmqpolicyoffice@cdc.gov).

**SUPPLEMENTARY INFORMATION:****Background**

The current coronavirus disease 2019 (COVID-19) pandemic has spread globally. As of October 22, 2021, there were over 242,000,000 confirmed cases of COVID-19 globally resulting in over 4,900,000 deaths; more than 45,000,000 cases have been confirmed in the U.S., with new cases being reported daily, and over 733,000 U.S. deaths due to the disease.

In addition, genetic variants of SARS-CoV-2, the virus that causes COVID-19, have been emerging and circulating around the world throughout the pandemic. The Delta variant now makes up over 99% of cases in the United States and is two times as contagious as previous variants. Some of the potential features and consequences of emerging variants are their ability to spread more quickly in people, cause more severe effects in people, evade detection by specific viral diagnostic tests, diminish the efficacy of therapeutic agents such as monoclonal antibodies, and evade natural or vaccine-induced immunity. Preventing the importation and spread of SARS-CoV-2 variants and other communicable diseases of concern requires identifying and contacting travelers who may be infected with, or have been exposed to, communicable diseases.

Air travel may potentially continue the spread of SARS-CoV-2 and its variants as well as other communicable diseases rapidly around the globe, as infected people who may be sick or incubating infection travel to other countries from a country where a disease is spreading. Timely public health follow-up requires health officials to have immediate access to accurate and complete contact information for passengers as they arrive in the United States. Inaccurate or incomplete contact information hampers the ability of public health authorities to protect the health of passengers and the public. The best way to ensure airline passengers' contact information is available in real time is to collect the information before they board a flight. CDC identified the following information as needed for reliable public health management of travelers: full name, address while in the United States, primary contact phone number, secondary or emergency contact phone number, email address, date of birth, airline name, flight number, city of departure, departure date and time, city of arrival, arrival date and time, and seat number.

A copy of the Order is provided below and a copy of the signed Order and

Technical Instructions can be found at <https://www.cdc.gov/quarantine/order-collect-contact-info.html>.

### Order of the Centers for Disease Control and Prevention, Department of Health and Human Services

#### Requirement for Airlines and Operators To Collect and Transmit Designated Information for Passengers and Crew Arriving Into the United States; Requirement for Passengers To Provide Designated Information Under 42 CFR 71.4, 71.20, 71.31, and 71.32 as Authorized by 42 U.S.C. 264 and 268

**Attention**

- All airlines and operators conducting any passenger-carrying operations into the United States from a foreign last point of departure.
- All passengers and crewmembers flying into, or transiting through, the United States from a foreign last point of departure.

**Introduction**

The Director of the Centers for Disease Control and Prevention (CDC) (Director) is issuing this Order (Order) to require all airlines and operators of flights arriving into the United States from a foreign last point of departure to collect and/or maintain passenger and crewmember contact information ("designated information"). These requirements also apply to flights with intermediate stops in the United States between the flight's foreign point of origin and the final destination.

Airlines and operators are required to collect the five data elements from the interim final rule (IFR)<sup>1</sup> published on February 12, 2020, from passengers, to the extent they exist, and to maintain additional data elements outlined in 42 CFR 71.4(b)<sup>2</sup>—to the extent that such data are already available and maintained by the airline. The data elements from the IFR and the additional data elements outlined in 42 CFR 71.4(b) make up the designated information referred to in this Order. The designated information consists of full name, address while in the United States, primary contact phone number, secondary or emergency contact phone number, email address, date of birth, airline name, flight number, city of departure, departure date and time, city of arrival, arrival date and time, and seat number. Airlines and operators are

<sup>1</sup> <https://www.federalregister.gov/documents/2020/02/12/2020-02731/control-of-communicable-diseases-foreign-quarantine>.

<sup>2</sup> [https://www.ecfr.gov/current/title-42/chapter-I/subchapter-F/part-71#p-71.4\(b\)](https://www.ecfr.gov/current/title-42/chapter-I/subchapter-F/part-71#p-71.4(b)).

required to maintain the designated information for crewmembers.

These data elements are necessary for identifying and locating passengers and crewmembers who may have coronavirus disease 2019 (COVID-19) or may have been exposed to a person with COVID-19 or another communicable disease of concern. Unless otherwise transmitted to the U.S. Government via established U.S. Department of Homeland Security (DHS) data systems, airlines and operators are required to retain the designated information for 30 days and transmit it within 24 hours of a request from CDC. The methods of transmission to the U.S. Government, whether transmitted per the CDC technical instructions or whether via an established DHS data system, must be made through approved secure electronic means.

Flights contracted by the U.S. Military services are exempt from this Order. Flights contracted by other federal agencies may also be exempted by CDC on a case-by-case basis. Flights designated as state aircraft under international law (1) by an appropriate United States federal government department or agency, or (2) by a foreign government and granted diplomatic clearance to enter U.S. airspace, are exempt from this Order. All exempt aircraft and persons may voluntarily comply to aid the public health response.

CDC will issue additional operational guidance and technical instructions to airlines and operators regarding the collection, retention, and transmission of the designated information. CDC will maintain and use the designated information called for in this Order in accordance with the Privacy Act of 1974 (5 U.S.C. 552a) and its applicable System of Records Notice.<sup>3</sup>

## Background

The current COVID-19 pandemic has spread globally, including cases reported in all 50 States within the United States, the District of Columbia, and U.S. territories. As of October 22, 2021, there have been over 242,000,000 confirmed cases of COVID-19 globally resulting in over 4,900,000 deaths;<sup>4</sup> more than 45,000,000 COVID-19 cases have been confirmed in the United States as well as over 733,000 COVID-19 related deaths, with new cases being reported daily.<sup>5</sup>

In addition, genetic variants of SARS-CoV-2, the virus that causes COVID-19,

have been emerging and circulating around the world throughout the COVID-19 pandemic.<sup>6</sup> There is currently one variant of concern (Delta) circulating in the United States and ten other variants being monitored.<sup>7</sup> As of October 22, 2021, the Delta variant made up over 99.0% of new COVID-19 cases in the United States.<sup>8</sup> CDC is closely tracking and reporting variants of SARS-CoV-2 around the world<sup>9</sup> and is working with state and local health departments to establish and expand sequencing capacity to identify, characterize, and report variants.

Some of the potential features and consequences of emerging variants are their ability to spread more quickly in people, cause more severe effects in people, evade detection by specific viral diagnostic tests, diminish the efficacy of therapeutic agents such as monoclonal antibodies, and evade natural or vaccine-induced immunity.<sup>10</sup> The Delta variant spreads faster than other variants and may cause more severe illness in unvaccinated people than previous strains.<sup>11</sup> COVID-19 vaccines protect people against severe illness, including disease caused by the Delta variant and other variants circulating in the United States, decreasing the likelihood of hospitalization or death due to COVID-19. Fully vaccinated people get COVID-19 less often than unvaccinated people; however, people who are infected after being fully vaccinated can be contagious.<sup>12</sup> Preventing the further importation and spread of SARS-CoV-2 variants of concern will require rapid identification and notification of potentially infected or exposed travelers (passengers and crew) so that they and their respective jurisdictional public health officials may take steps to minimize exposure to others.

While vaccination is the most important tool for controlling the pandemic, public health mitigation efforts, including isolation of infected persons and contact tracing and management, remain key to slowing transmission and spread of SARS-CoV-

2, even as vaccines are increasingly available in the United States and around the world. Air travel may contribute to the spread of SARS-CoV-2 and other communicable diseases around the globe if people who are infected or incubating infection travel by aircraft, particularly if they fail to use mitigation measures such as masks to prevent COVID-19. Air travel can also increase a person's risk of getting and spreading communicable diseases by bringing people in close contact with others, often for prolonged periods, and exposing them to frequently touched surfaces. While fully vaccinated travelers are less likely to get and transmit SARS-CoV-2, international travel poses additional risks, and even fully vaccinated travelers might be at increased risk for getting and possibly spreading some SARS-CoV-2 variants.<sup>13</sup>

Public health officials may need to follow up with travelers after arrival, either because these travelers may have been exposed before they traveled or because during travel they were possibly exposed to a person known to have a communicable disease that poses a public health threat, such as COVID-19. Other communicable diseases for which CDC conducts contact investigations of exposure while traveling on aircraft are infectious tuberculosis (including multidrug-resistant and extensively drug-resistant infections), measles, pertussis (whooping cough), meningococcal disease, and Middle East Respiratory Syndrome (MERS).<sup>14 15 16 17</sup> Similarly, preventing the further importation and spread of SARS-CoV-2, including variants of concern, requires rapid identification and notification of potentially infected or exposed travelers so that they and their respective jurisdictional public health officials can take steps to minimize exposure to others.

<sup>13</sup> <https://www.cdc.gov/coronavirus/2019-ncov/travelers/international-travel-during-covid19.html>.

<sup>14</sup> <https://www.cdc.gov/quarantine/contact-investigation.html>.

<sup>15</sup> Nelson K, Marienau K, Schembri C, Redd S. Measles transmission during air travel, United States, December 1, 2008–December 31, 2011. *Travel Med Infect Dis.* 2013 Mar–Apr;11(2):81–9. doi: 10.1016/j.tmaid.2013.03.007.

<sup>16</sup> Marienau KJ, Cramer EH, Coleman MS, Marano N, Cetron MS. Flight related tuberculosis contact investigations in the United States: comparative risk and economic analysis of alternate protocols. *Travel Med Infect Dis.* 2014 Jan–Feb;12(1):54–62. doi: 10.1016/j.tmaid.2013.09.007.

<sup>17</sup> Lippold SA, Objio T, Vonnahme L, et al. Conveyance Contact Investigation for Imported Middle East Respiratory Syndrome Cases, United States, May 2014. *Emerg Infect Dis.* 2017 Sep;23(9):1585–1589. doi: 10.3201/eid2309.170365.

<sup>3</sup> <https://www.cdc.gov/sornnotice/09-20-0171.htm>.

<sup>4</sup> <https://covid19.who.int/>.

<sup>5</sup> <https://covid.cdc.gov/covid-data-tracker/#datatracker-home>.

<sup>6</sup> <https://www.cdc.gov/coronavirus/2019-ncov/variants/index.html>.

<sup>7</sup> <https://www.cdc.gov/coronavirus/2019-ncov/variants/variant-info.html>.

<sup>8</sup> <https://covid.cdc.gov/covid-data-tracker/#variant-proportions>.

<sup>9</sup> <https://covid.cdc.gov/covid-data-tracker/#global-variant-report-map>.

<sup>10</sup> <https://www.cdc.gov/coronavirus/2019-ncov/science/science-briefs/scientific-brief-emerging-variants.html>.

<sup>11</sup> <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>.

<sup>12</sup> <https://www.cdc.gov/coronavirus/2019-ncov/vaccines/effectiveness/why-measure-effectiveness/breakthrough-cases.html>.

In the past, public health efforts to follow up with travelers arriving into the United States have been hampered by incomplete or inaccurate contact information, causing delays in conducting contact investigations and requiring resource-intensive entry screening operations to facilitate post-arrival management of travelers.<sup>18 19 20</sup> These challenges occurred during the 2014 response to MERS, the 2014–2016 response to the Ebola epidemic in West Africa, and in the early stage of the current COVID–19 public health emergency. Timely public health follow-up requires health officials to have prompt access to accurate and complete contact information for travelers traveling into, or transiting through, the United States. Inaccurate or incomplete contact information decreases the ability of public health authorities to protect the health of travelers and the public. The best way to ensure airline passengers' contact information is available in real time is to collect the information before they board a flight. Given that it is impossible to predict which passengers' or crewmembers' information will be needed for public health purposes, it is necessary to collect information for all passengers and crewmembers originating abroad who intend to travel to, or transit through, the United States. Additionally, many passengers transiting through the United States will likely transit back through the United States on their return trip. If they were exposed during travel, they may return at a time when they are infectious. Facilitating notification to public health authorities at their final destination would prevent potential exposures during such return travel.

CDC identified that the following information is needed for reliable public health management of travelers disembarking in, or transiting through, the United States: Full name, address while in the United States, primary contact phone number, secondary or emergency contact phone number, email address, date of birth, airline name, flight number, city of departure,

departure date and time, city of arrival, arrival date and time, and seat number.

CDC's authority for collecting these data elements is contained in 42 CFR 71.4.<sup>21</sup> The first five data elements were added to section 71.4 on February 12, 2020, in response to the current COVID pandemic.<sup>22</sup> Airlines with flights arriving into the United States must collect and, within 24 hours of an order issued by the CDC Director, transmit these five data elements to CDC. The remaining data elements, listed in 42 CFR 71.4(b), are part of CDC's previously existing regulatory scheme. Airlines must also transmit these data elements to CDC within 24 hours of an order, to the extent such data elements are already available and maintained by the airline.

Identifying individual COVID–19 cases and conducting contact tracing continue to be an important strategy in preventing opportunities for the virus to spread and mutate, particularly to prevent the spread of variants of COVID–19 that are not already prevalent in the United States. Even as more people become fully vaccinated, sub-populations of unvaccinated people and others vulnerable to infection will remain, including people who elect not to be vaccinated, those ineligible for vaccination (currently young children), people with contraindications to vaccination, and people at increased risk for severe illness (including some who may be fully vaccinated, such as those with certain immunocompromising conditions). In areas where spread of the virus has been controlled, rapid identification of imported cases and containment of further transmission through nonpharmaceutical interventions, including isolation of infected people and quarantine of susceptible close contacts, will be essential to prevent resurgence of local epidemics and ultimately end the pandemic.

CDC has taken a variety of additional steps to mitigate the risk that travel poses to the further spread of SARS–CoV–2 and the introduction of its variants into the United States. On October 25, 2021, CDC amended an Order requiring all air passengers two years of age and older traveling to the United States from any foreign country to be tested for SARS–CoV–2 either no more than three days prior to their flight, for those who are fully vaccinated, or no more than one day

prior to their flight, for those who are not fully vaccinated. Air passengers may alternatively present documentation of having recovered from COVID–19 in the previous 3 months.<sup>23</sup> On October 25, 2021, CDC also issued an Order implementing a Presidential Proclamation requiring all noncitizens who are nonimmigrants, with limited exceptions, to be fully vaccinated in order to fly into the United States from any foreign country. On January 29, 2021, CDC issued an Order requiring the wearing of masks by persons on any conveyance entering, traveling within, or departing the United States and at U.S. transportation hubs to prevent further spread of SARS–CoV–2.<sup>24</sup> In addition, CDC has posted Level 4 Travel Notices recommending travelers avoid all non-essential travel to more than 150 countries worldwide because of very high rates of COVID–19 in these countries.<sup>25</sup> This Order aligns with these new and existing public health mitigation actions.

#### Scope of the Order

This Order applies to all passengers and passenger-carrying operations arriving into the United States from a foreign last point of departure (including flights with intermediate stops in the United States between the flight's foreign point of origin and the final destination). Where appropriate, CDC has used Federal Aviation Administration or Department of Transportation regulatory references for ease of reference for the affected industry. As used in the Order, the terms described below have their given meanings.

This Order imposes obligations on “airlines”, “operators”, “passengers,” and “crewmembers.” “Airlines” has the same meaning as in 42 CFR 71.1(b), which includes “air carriers” and “foreign air carriers” providing “air transportation” as those terms are defined in 49 U.S.C. 40102(a)(2), (a)(5), and (a)(21). An “operator” is any person<sup>26</sup> that operates an aircraft. To “operate” an aircraft means to use, cause to use, or authorize to use aircraft for the purpose of air navigation. “Operate” includes piloting an aircraft, with or without the right of legal control (as owner, lessee, or otherwise). An

<sup>18</sup> Regan JJ, Jungerman MR, Lippold SA, et al. Tracing Airline Travelers for a Public Health Investigation: Middle East Respiratory Syndrome Coronavirus (MERS–CoV) Infection in the United States, 2014. *Public Health Rep.* 2016 Jul–Aug;131(4):552–9. doi: 0.1177/0033354916662213.

<sup>19</sup> Cohen NJ, Brown CM, Alvarado-Ramy F, et al. Travel and Border Health Measures to Prevent the International Spread of Ebola. *MMWR Suppl.* 2016 Jul 8;65(3):57–67. doi: 10.15585/mmwr.su6503a9.

<sup>20</sup> Dollard P, Griffin I, Berro A, et al. Risk Assessment and Management of COVID–19 Among Travelers Arriving at Designated U.S. Airports, January 17–September 13, 2020. *MMWR Morb Mortal Wkly Rep.* 2020 Nov 13;69(45):1681–1685. doi: 10.15585/mmwr.mm6945a4.

<sup>21</sup> <https://www.ecfr.gov/current/title-42/chapter-I/subchapter-F/part-71#71.4>.

<sup>22</sup> <https://www.federalregister.gov/documents/2020/02/12/2020-02731/control-of-communicable-diseases-foreign-quarantine>.

<sup>23</sup> 86 FR 7387 and <https://www.cdc.gov/quarantine/fr-proof-negative-test.html>.

<sup>24</sup> 86 FR 8025 and <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

<sup>25</sup> <https://www.nccdc.gov/travel/notices/covid19>.

<sup>26</sup> A “person” is “an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them.” 14 CFR 1.1.

operator can be any person such as an air carrier, a commercial operator (as defined in 14 CFR 1.1), or a non-certificated party. “Passenger” means any person who is not a crewmember on any aircraft operation carrying any person (“passenger-carrying operation”). “Crewmember” means a person assigned to perform duty in an aircraft during flight time.

Passengers must provide the designated information, to the extent it exists, to airlines and operators. Airlines and operators must collect the designated information from passengers and retain it for 30 days from the flight’s departure unless it is otherwise transmitted to the U.S. Government. CDC is requiring a retention period of 30 days because it can take up to 30 days for CDC to receive genetic sequencing information identifying a SARS-CoV-2 variant of concern for which contact tracing beyond the 14-day incubation period of COVID-19 may be warranted. The incubation periods for measles, whooping cough, meningococcal disease, Ebola, and MERS—other communicable diseases for which CDC conducts contact investigations—are all less than 30 days.

Airlines or operators that enter into a contract with U.S. Military services to provide transportation to persons designated by U.S. Military services are exempt from the Order. CDC is exempting these operations because U.S. Military service’s standard practice is to collect and retain the designated information and conduct any necessary public health follow-up for passengers on the aircraft that operate in accordance with the U.S. Military service contract with the airline or operator. Airlines and operators that contract with other U.S. Government agencies may be eligible for an exemption on a case-by-case basis if the U.S. Government agency submits a request to CDC and agrees to CDC’s required public health conditions, including conducting necessary public health follow-up for passengers. But, in these instances, the U.S. Government agency that is a party to such a contract shall conduct any necessary public health follow-up for passengers and crew. Flights designated as state aircraft under international law (1) by an appropriate United States federal government department or agency, or (2) by a foreign government and granted diplomatic clearance to enter U.S. airspace, are exempt from this Order.

This Order does not alter or affect the requirements under 42 CFR 71.21 that airlines and operators, including Air Medical Transport services, report to CDC any deaths or illnesses onboard

flights destined for a U.S. airport.<sup>27</sup> As part of the reporting of any death or illness onboard, passenger contact information must be collected and reported in real time to CDC, in addition to any data transmission required under this Order.<sup>28</sup>

#### Determinations and Immediate Action

Accordingly, and consistent with 42 CFR 71.4, 71.20, 71.31, and 71.32, I hereby find that international travel into the United States has the potential to exacerbate and accelerate the introduction of SARS-CoV-2 variants not already present (along with other communicable diseases) and that the scope of this pandemic is inherently and necessarily a problem that is global in nature. The collection and transmission of information required by this Order is therefore necessary to prevent the further introduction, transmission, or spread of COVID-19 via air travel into and throughout the United States. The requirements of this Order will enable prompt public health follow-up by public health jurisdictions, allowing them to quickly implement public health mitigation efforts such as isolation of infected persons and contact tracing and management of people exposed to a communicable disease of concern.

In addition, I hereby determine that passengers and crewmembers on flights covered by this Order are or may be at risk of exposure to SARS-CoV-2 and may further the introduction and spread of SARS-CoV-2 variants and other communicable diseases into the United States. Their accurate and complete contact information as provided for in this Order is needed to protect the health of other travelers and U.S. communities.

The CDC has determined that this Order is not a rule within the meaning of the Administrative Procedure Act (APA) but rather an emergency action taken under the existing regulatory authority of 42 CFR 71.4, 71.20, 71.31, and 71.32. The purpose of these sections is to enable CDC to swiftly take targeted actions within the scope of these authorities to prevent the introduction and spread of communicable diseases. Indeed, in response to the current pandemic, CDC published an interim final rule (IFR)<sup>29</sup> for public comment on February 12, 2020, establishing the

<sup>27</sup> <https://www.cdc.gov/quarantine/air/reporting-deaths-illness/guidance-reporting-onboard-deaths-illnesses.html>.

<sup>28</sup> <https://www.cdc.gov/quarantine/air/reporting-deaths-illness/>.

<sup>29</sup> <https://www.federalregister.gov/documents/2020/02/12/2020-02731/control-of-communicable-diseases-foreign-quarantine>.

requirements in 42 CFR 71.4<sup>30</sup> to collect and transmit designated information upon an order issued by the CDC Director.

#### Good Cause

In the event that a court finds this Order qualifies as a rule under the APA, there is good cause to dispense with prior notice and comment and a delay in effective date. See 5 U.S.C. 553(b)(B), (d)(3). As more fully explained below, I have determined that good cause exists because the public health emergency caused by COVID-19 and the unpredictability of virus mutations and the recent course of the pandemic make notice-and-comment rulemaking impracticable and contrary to the public health, and by extension the public interest.

The rapidly changing nature of the pandemic requires not only that CDC act swiftly, but also deftly, to ensure that its actions are commensurate with the threat. Given the current case rates and other disease mitigation measures that federal, state, and local jurisdictions are taking across the country, identifying individual cases and conducting contact tracing are critical public health actions urgently needed to prevent opportunities for the virus to spread and further mutate.

The emergence of variants, particularly the Delta variant, has demonstrated the unpredictability of the SARS-CoV-2 virus and the COVID-19 pandemic and has shown how COVID-19 case rates, hospitalizations, and deaths can increase rapidly when a new variant emerges. For example, the Delta variant is more than two times as contagious as previous variants and has spread faster than earlier variants of the SARS-CoV-2 virus.<sup>31</sup> The share of infections from the Delta variant in the United States on May 29, 2021, was under 7%, at a point when the trajectory of the pandemic seemed for the better, but by July 31, 2021, the share of infections with the Delta variant surpassed 94%.<sup>32</sup> In late June, the 7-day moving average of reported cases was only around 12,000. By July 27, just 4 weeks later, the 7-day moving average of cases had increased fivefold and reached over 60,000, a rate similar to the rate before COVID-19 vaccines were widely available. Between July and September, the spread of the Delta variant caused a rapid increase in hospitalizations and deaths, especially

<sup>30</sup> <https://www.ecfr.gov/current/title-42/chapter-II/subchapter-F/part-71#71.4>.

<sup>31</sup> <https://www.cdc.gov/coronavirus/2019-ncov/variants/delta-variant.html>.

<sup>32</sup> <https://covid.cdc.gov/covid-data-tracker/#variant-proportions>.

in areas with higher levels of community transmission and lower vaccination coverage.<sup>33 34</sup> The 7-day average for August 4-August 10 for new hospital admissions was a 29.6% increase from the prior 7-day average. The 7-day average for new deaths increased 21% compared to the previous 7-day average. As of October 24, 2021, COVID-19 cases were declining; however, a majority of the United States is still experiencing high community transmission. There have been multiple points throughout the COVID-19 pandemic when cases have swiftly and unexpectedly surged and then declined; therefore, the rapidly changing, unpredictable nature of the COVID-19 pandemic compels CDC to act quickly.

With high transmission rates and low vaccination rates in areas of the United States and around the world, new SARS-CoV-2 variants are expected to occur. New variants may be more transmissible or cause more severe disease, and vaccines and therapeutics may be less effective against these strains. The best way to slow the emergence of new variants is to act quickly to reduce the spread of infection through vaccination layered with additional mitigation measures, including timely and effective case detection and contact tracing and public health follow-up of international travelers.

For these reasons, I hereby conclude that notice-and-comment rulemaking and a delay in the effective date or the Order would defeat the purpose of the Order and endanger the public health, and is, therefore, impracticable and contrary to the public interest. CDC may exercise its enforcement discretion with respect to airlines and operators who are unable to come into compliance on November 8, 2021 despite demonstrated good faith efforts to do so.

#### Miscellaneous

Similarly, if this Order qualifies as a rule under the APA, the Office of Information and Regulatory Affairs (OIRA) has determined that it would be a major rule under Subtitle E of the Small Business Regulatory Enforcement Fairness Act of 1996 (the Congressional Review Act or CRA), 5 U.S.C. 804(2). Regardless of whether this Order qualifies as a rule under the APA, OIRA has determined that it is an economically significant regulatory action under the definitions provided

for those terms in Executive Order 12866. Thus, this action has been reviewed by OIRA. CDC has determined that for the same reasons given above, there would be good cause under the CRA to make the requirements herein effective immediately. 5 U.S.C. 808(2). This Order will cease to be in effect on the earlier of (1) the date that is two incubation periods after the last known case of COVID-19, or (2) when the Secretary determines there is no longer a need for the interim final rule (IFR)<sup>35</sup> published in the **Federal Register** on February 7, 2020. As appropriate, the Secretary will publish a document in the **Federal Register** announcing the expiration date of the IFR.

CDC will separately comply with the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

If any provision of this Order, or the application of any provision to any persons, entities, or circumstances, shall be held invalid, the remainder of the provisions, or the application of such provisions to any persons, entities, or circumstances other than those to which it is held invalid, shall remain valid and in effect.

#### Directive

In accordance with 42 CFR 71.4, 71.20, 71.31, and 71.32 as authorized by 42 U.S.C. 264 and 268, it is hereby ordered:

#### 1. Definitions

As used in this Order, the term: ‘*Airline*’ has the same meaning as in 42 CFR 71.1(b); ‘*Communicable disease*’ has the same meaning as in 42 CFR 71.1(b); ‘*Crewmember*’ means a person assigned to perform duty in an aircraft during flight time; ‘*Designated information*’ means the data elements listed below, to the extent that they exist.<sup>36</sup> Data elements listed in subsections (a) through (e) must be provided by the passenger and maintained by the airline or operator for crewmembers and (f) through (m) must be provided to the extent such data elements are already available and maintained by the airline or operator.

- (a) Full name (last, first, and, if available, middle or suffix (*e.g.*, Jr.);
- (b) Address while in the United States (number and street, city, state or territory, and zip code);
- (c) Primary contact phone number to include country and area code, at which

the passenger or crewmember can be contacted while in the United States;

(d) Secondary contact phone number to include country and area code, which may be an emergency contact number, a work number, or a home number;

(e) Email address that the passenger or crewmember will routinely check while in the United States;

- (f) Date of birth;
- (g) Airline name;
- (h) Flight number;
- (i) City of departure;
- (j) Departure date and time;
- (k) City of arrival;
- (l) Arrival date and time; and
- (m) Seat number.

‘*Operator*’ means any person that operates an aircraft. To ‘operate’ an aircraft means to use, cause to use or authorize to use aircraft for the purpose of air navigation. ‘Operate’ includes piloting an aircraft, with or without the right of legal control (as owner, lessee, or otherwise). An operator can be any person such as an air carrier, a commercial operator (as defined in 14 CFR 1.1) or a non-certificated party.

‘*Passenger*’ means any person who is not a crewmember on any aircraft operation carrying any person;

‘*United States*’ has the same meaning as in 42 CFR 71.1(b).

#### 2. Requirements for Airlines and Operators

(a) This section applies to all passenger-carrying operations conducted on aircraft arriving into the United States from a foreign last point of departure (including flights with intermediate stops in the United States between the flight’s foreign point of origin and the final destination). Airlines and operators are required to collect data as soon as practicable but CDC will use enforcement discretion after the Order effective date to allow airlines to come into compliance.

(b) Beginning on flights departing for the United States from a foreign last point of departure after 12:01 a.m. Eastern Standard Time on November 8, 2021 (including flights with intermediate stops in the United States between the flight’s foreign origin and the final destination), all airlines and operators of any passenger-carrying operations shall:

- (i) Collect the “designated information” for all passengers before boarding, but not more than 72 hours before departing from the flight’s foreign last point of departure;
- (ii) Maintain the “designated information” for all crewmembers;
- (iii) When collecting the “designated information,” notify passengers of the purpose and intent of the information

<sup>33</sup> [https://gis.cdc.gov/grasp/covidnet/COVID19\\_5.html](https://gis.cdc.gov/grasp/covidnet/COVID19_5.html).

<sup>34</sup> [https://covid.cdc.gov/covid-data-tracker/#trends\\_dailydeaths](https://covid.cdc.gov/covid-data-tracker/#trends_dailydeaths).

<sup>35</sup> <https://www.federalregister.gov/documents/2020/02/12/2020-02731/control-of-communicable-diseases-foreign-quarantine>.

<sup>36</sup> An individual may not, for example, have an email address or phone number, in which case the individual would not be required to provide one.

collection, that the obligation to provide complete and accurate information is a United States Government requirement, and that failure to provide complete and accurate information may result in criminal penalties, as set forth herein. The airline or operator must also obtain confirmation from each passenger that the information provided is complete and accurate; and

(iv) Retain the “designated information” under subparagraphs 2(b)(i) and 2(b)(ii) for each flight for a minimum of 30 days from the flight’s departure and, within 24 hours of a request from the CDC Director, transmit it to CDC through secure, electronic means approved by CDC.<sup>37</sup> Data retention is not required for those airlines and operators who choose to otherwise securely transmit data using established DHS data systems.

Any entities covered under section 2 that fail to comply with section 2 may be subject to criminal penalties under, *inter alia*, 42 U.S.C. 271 and 42 CFR 71.2, in conjunction with 18 U.S.C. 3559 and 3571. Willfully giving false or misleading information to the government may result in criminal penalties under, *inter alia*, 18 U.S.C. 1001.

### 3. Requirements for Passengers

This section applies to any passenger on a flight covered under this Order, including passengers with intermediate stops in the United States between the flight’s foreign point of origin and the final destination. Beginning on flights departing for the United States from a foreign last point of departure after 12:01 a.m. Eastern Standard Time on November 8, 2021, the passenger or the passenger’s authorized representative shall—

(i) Accurately provide the “designated information” as instructed by the airline or operator before boarding a flight to the United States insofar as the information exists for the passenger;

(ii) Acknowledge the airline’s or operator’s notification of the purpose and intent of this information collection, that the obligation to provide complete and accurate information is a United States Government requirement, and that failure to provide complete and accurate information may result in criminal penalties; and,

(iii) Confirm that the provided “designated information” is complete and accurate.

An authorized representative (for example, immediate family member, legal guardian, or travel agent) may

<sup>37</sup> <https://www.cdc.gov/quarantine/order-collect-ti.html>.

provide the “designated information” and acknowledge the airline’s or operator’s notification on behalf of the passenger, including on behalf of a minor or other passenger who is unable to do so on his or her own behalf, but the information provided must be specific to the individual passenger (e.g., agents may not list contact information for the travel agency or provide one telephone number or email address for an entire group of unrelated persons).

Any passenger or authorized representative who fails to comply with the requirements of section 3 may be subject to criminal penalties under, *inter alia*, 42 U.S.C. 271 and 42 CFR 71.2, in conjunction with 18 U.S.C. 3559 and 3571. Willfully giving false or misleading information to the government may result in criminal penalties under, *inter alia*, 18 U.S.C. 1001.

### 4. Exemptions

This Order does not apply to the following:

(a) Any airline or operator that enters into a contract with the U.S. Military services to provide transportation to persons designated by the U.S. Military service is exempt from this Order for flights covered under the contract. The U.S. Military service typically collects and retains the “designated information” and conducts any necessary public health follow-up for passengers on the aircraft that operate in accordance with the U.S. Military service contract with the airline or operator.

(b) Any airline or operator that enters into a contract with another U.S. Government agency may be eligible for an exemption on a case-by-case basis with approval from the CDC Director. Any request for this exemption must be made to CDC and is subject to any requirement or limitation established by the CDC Director, including that the U.S. Government agency that is a party to such a contract shall conduct any necessary public health follow-up for passengers and crew.

(c) Any airline or operator designated as state aircraft under international law (1) by an appropriate United States federal government department or agency, or (2) by a foreign government and granted diplomatic clearance to enter U.S. airspace.

### 5. Privacy

CDC intends to use the “designated information” only for public health follow-up, such as education, treatment, prophylaxis, or other appropriate public health interventions, including travel

restrictions. CDC will maintain and use the “designated information” called for in this Order in accordance with the Privacy Act of 1974 (5 U.S.C. 552a) and its applicable System of Record Notice.<sup>38</sup> As noted in the System of Records Notice, CDC retains contact tracing information until the contact tracing investigation is complete or no longer than 12 months. Personally identifiable information may be used and shared only for lawful purposes, including with authorized personnel of the U.S. Department of Health and Human Services, state and local public health departments, and other cooperating authorities, as authorized by law. CDC will retain, use, delete, or otherwise destroy the “designated information” in accordance with the Federal Records Act, applicable Privacy Act System of Records notice, and other applicable law.

However, if “designated information” is transmitted by airlines via an established DHS data system, DHS will integrate the data into the DHS Automated Targeting System (ATS)<sup>39</sup> and use it for passenger screening. DHS may use the data for any use permitted by the ATS System of Records Notice (SORN)<sup>40</sup> and will retain it for a minimum of fifteen years, in accordance with the SORN. Permitted uses of established data systems, including ATS, include but are not limited to immigration enforcement, law enforcement, anti-terrorism, national security, and border security. DHS shares passenger data with other law enforcement and national security partners pursuant to agreements with those partners for use throughout a period of time specified by the relevant agreement, or according to the recipient agency’s SORN or Attorney General-approved intelligence oversight guidelines.

CDC may modify this Order by an updated publication in the **Federal Register**.

### Authority

The CDC Director is issuing this Order pursuant to Sections 361 and 365 of the Public Health Service (PHS) Act, 42 U.S.C. 264 and 268, and implementing

<sup>38</sup> <https://www.cdc.gov/sornnotice/09-20-0171.htm>.

<sup>39</sup> <https://www.dhs.gov/sites/default/files/publications/privacy-pia-cbp006-ats-may2021.pdf>.

<sup>40</sup> <https://www.gpo.gov/fdsys/pkg/FR-2015-03-13/html/2015-05798.htm>.

regulations at 42 CFR 71.4, 71.20, 71.31, and 71.32.

**Sherri Berger,**

*Chief of Staff, Centers for Disease Control and Prevention.*

[FR Doc. 2021–24386 Filed 11–3–21; 4:15 pm]

BILLING CODE 4163–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Delegation of Authority

Notice is hereby given that pursuant to Section 222 of the Public Health Service Act [42 U.S.C. 217a], as amended, I have delegated to the Director, Centers for Disease Control and Prevention (CDC), authority to appoint temporary members to the National Institute for Occupational Safety and Health's Safety and Occupational Health Study Section (SOHSS). This authority may be redelegated by the CDC Director.

This delegation supersedes the June 7, 2016, delegation concerning this authority.

This delegation became effective upon date of signature. In addition, I affirmed and ratified any actions taken by the Director, CDC or her subordinates that involved the exercise of the authorities delegated herein, or substantially similar authorities vested in me by prior annual HHS appropriations acts, prior to the effective date of the delegation.

Dated: November 2, 2021.

**Xavier Becerra,**

*Secretary.*

[FR Doc. 2021–24249 Filed 11–4–21; 8:45 am]

BILLING CODE 4160–18–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Centers for Disease Control and Prevention

#### Requirement for Negative Pre-Departure COVID–19 Test Result or Documentation of Recovery From COVID–19 for All Airline or Other Aircraft Passengers Arriving Into the United States From Any Foreign Country

**AGENCY:** Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS).

**ACTION:** Notice of agency amended order.

**SUMMARY:** The Centers for Disease Control and Prevention (CDC), located within the Department of Health and Human Services (HHS), announces an Amended Order requiring negative pre-departure COVID–19 test results or documentation of recovery from COVID–19 for all airline or other aircraft passengers arriving into the United States from any foreign country. This Amended Order was signed by the CDC Director on October 25, 2021, and supersedes the previous Order signed by the CDC Director on January 25, 2021.

**DATES:** This Amended Order will become effective at 12:01 a.m. on November 8, 2021.

#### FOR FURTHER INFORMATION CONTACT:

Jennifer Buigut, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road NE, MS H16–4, Atlanta, GA 30329. Telephone: 404–498–1600. Email: [dgmqpolicyoffice@cdc.gov](mailto:dgmqpolicyoffice@cdc.gov).

**SUPPLEMENTARY INFORMATION:** This Amended Order updates COVID–19 testing requirements for air passengers 2 years of age and older boarding a flight to the United States, depending on their COVID–19 vaccination status.

This Amended Order prohibits the boarding of any passenger 2 years of age and older on any airline or aircraft destined to the United States from a foreign country unless the passenger presents:

(1) Paper or digital documentation of a negative pre-departure viral test result for SARS–CoV–2, the virus that causes COVID–19, that meets one of the following requirements:

- For passengers who are fully vaccinated against COVID–19, the viral test must be conducted on a specimen collected no more than 3 days before the flight's departure from a foreign country.
  - For passengers not fully vaccinated against COVID–19, the viral test must be conducted on a specimen collected no more than 1 day before the flight's departure from a foreign country.
- Or

(2) Paper or digital documentation of recovery from COVID–19 in the form of both:

- A positive viral test result conducted on a specimen collected no more than 90 days before the flight; and
- A letter from a licensed health care provider or public health official stating that the passenger has been cleared for travel.

This Amended Order also constitutes a controlled free pratique to any airline or other aircraft operator with an aircraft arriving into the United States. Pursuant to this controlled free pratique, the

airline or other aircraft operator must comply with the requirements outlined in the Amended Order.

A copy of the Amended Order and Passenger Attestation form is provided below. A copy of the signed Amended Order and Passenger Attestation form can be found at <https://www.cdc.gov/quarantine/fr-proof-negative-test.html>.

#### Centers for Disease Control and Prevention (CDC), Department of Health and Human Services (HHS)

#### Notice and Amended Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations 71.20 & 71.31(b)

#### Requirement for Negative Pre-Departure COVID–19 Test Result or Documentation of Recovery From COVID–19 for All Airline or Other Aircraft Passengers Arriving Into the United States From Any Foreign Country

##### Summary

Pursuant to 42 CFR 71.20, 71.31(b) and as set forth in greater detail below, this Notice and Amended Order<sup>1</sup> prohibits the boarding of any passenger—2 years of age or older—on any aircraft destined to the United States<sup>2</sup> from a foreign country unless the passenger<sup>3</sup> presents:

(1) Paper or digital documentation of a negative pre-departure viral test result for SARS–CoV–2, the virus that causes COVID–19, that meets one of the following requirements:

- For passengers who are fully vaccinated against COVID–19, the viral test must be conducted on a specimen collected no more than 3 calendar days before the flight's departure from a foreign country (*Qualifying Test for Fully Vaccinated*).

- For passengers who are not fully vaccinated against COVID–19, the viral test must be conducted on a specimen collected no more than 1 calendar day before the flight's departure from a foreign country (*Qualifying Test for Not Fully Vaccinated*).

Or

(2) Paper or digital documentation of recovery from COVID–19 in the form of both:

<sup>1</sup> This Amended Order supersedes the previous order signed by the Centers for Disease Control and Prevention (CDC) Director on January 25, 2021.

<sup>2</sup> This includes any flight, regardless of whether the United States is final destination or connection to another country.

<sup>3</sup> A parent or other authorized individual may present the required documentation on behalf of a passenger 2–17 years of age. An authorized individual may act on behalf of any passenger who is unable to act on their own behalf (e.g., by reason of age, or physical or mental impairment).