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Katie Matison
matisonk@lanepowell.com

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Centers for Disease Control Extends No Sail Order for Cruise Ships

COVID-19 Resource

On April 15, 2020, the Centers for Disease Control and Protection (CDC)¹ modified and extended the *No Sail Order and Other Measures Related to Operations* (the Order or No Sail Order) for cruise ships in response to the continuing COVID-19 health threat.² The original No Sail Order was signed by the CDC Director on March 14, pursuant to its authority under the *Public Health Service Act*, 42 U.S.C. §§ 264 and 268 and 42 C.F.R. Part 70 and Part 71. The Order shall continue in effect until the earliest of: (1) expiration of the Secretary of Human Services determination that COVID-19 is a public health emergency; (2) CDC rescinds or modifies the Order; or (3) 100 days from publication in the Federal Register.

The Order is applicable to commercial non-cargo passenger carriers operating in “international, interstate, or intrastate waterways and subject to the jurisdiction of the United States with the capacity to carry 250 or more individuals (passengers and crew) with an itinerary anticipating an overnight stay onboard or an itinerary anticipating an overnight stay onboard or a twenty-four (24) hour stay onboard for either passengers or crew.”³ The Order does not apply to vessels operated by a federal or state government, cargo vessels, or vessels used for essential services related to medical care, public health, provisions of food, water or electricity.

Background — Cruise Industry Voluntarily Suspends Operations

Cruise Lines International Association (CLIA) is the leading industry trade group of cruise operators with approximately 270 members. On March 13, CLIA publically announced that the group intended to voluntarily suspend cruise operations. Several cruise lines also voluntarily suspended operations. CLIA also prepared a response plan entitled “On Course: Cruise Industry COVID-19 Response and Protocols.” The CLIA Plan was intended as an industry-wide response for the minimization and response to the transmission of COVID-19.

Four days later on March 17, the CDC issued a Level 3 Travel Warning advising all travelers to refrain from cruise travel throughout the world to minimize the transmission of COVID-19 among passengers and crewmembers. Cruise line operators worked very closely with federal, state and local governments in suspending cruise operations and evacuating passengers from vessels.

On April 3, CLIA created a new response plan for cruise ships with passengers infected with COVID-19. The new plan is titled, “Framework: For Cruise Industry Care of Crew and other Persons on Board while Ships Remain Idle during the Global COVID-19 Pandemic.” The CLIA’s Framework Plan provides for onboard testing and medical care of infected persons to reduce the industry reliance on government and shore side hospital resources. The plan includes a protocol for personal protective equipment, repatriation, and deploying other ships to segregate infected persons from otherwise healthy individuals.

Specific Requirements of the April 15 CDC No Sail Order

The No Sail Order specifically states that it is enforceable by the CDC pursuant to 18 U.S.C. §§ 3559 – 3571. The Order further contains a specific finding by the Director that “cruise ship travel exacerbates the global spread of COVID-19 and that the scope of this pandemic is inherently and necessarily a problem that is international and interstate in nature and has not been controlled sufficiently by the cruise ship industry or individual State or local health authorities.”⁴

The April 15 No Sail Order contains a number of requirements imposed on the cruise industry. Some of the requirements include the following:

- Development and implementation of an action plan to prevent, mitigate and respond to COVID-19;
- Providing the HHS, CDC and Coast Guard with a copy of the plan;
- Providing onboard surveillance of passengers and crew with symptoms indicative of COVID-19;
- Creation of a reporting system;
- Training of crew on mitigation, prevention and response;
- Creation of a testing protocol;
- Medical screening of crew and passengers;
- Onboard medical staffing;
- Outbreak management plan;
- Medical treatment plan;
- Creating a logistical plan for evacuating and repatriating infected passengers and crew;
- Provide projected and resource impact on state and local governments;
- Plan execution in all U.S. geographical areas; and
- Cleaning and disinfectant protocols.

These robust requirements must be contained in all response plans by cruise operators sailing within the United States waters.

CLIA Press Release — Update on Cruise Industry Response to COVID-19

On April 21, CLIA issued a press release concerning industry efforts to contain and cope with the global pandemic and the unprecedented step of voluntarily suspending operations. CLIA states that the majority of its members were not impacted by COVID-19. Industry leaders from the cruise industry have been working closely with nations and local governments toward the common goal of stymying the spread of the virus.

The suspension of cruise operations is expected to have a sharp impact on the world economy. According to CLIA, the industry generates over \$150 billion worldwide and supports over 1.17 million jobs across the globe. The impact of the cessation of activities will certainly be felt throughout 2020.

1 The CDC is a component of the Department of Health and Human Services.

2 *Federal Register*/Vol. 85, No. 73/Wednesday, April 15, 2020/Notices. The complete text of the No Sail Order may be found at: <https://www.cdc.gov/quarantine/cruise/index.html>.

3 Id. “Carrier” is defined by 42 C.F.R. Part 71.1.

4 *Federal Register*/Vol. 85, No. 73/Wednesday, April 15, 2020/ Notices, Page 21006.