

CDC Requires COVID-19 Testing of International Passenger Arrivals in the United States

The U.S. Centers for Disease Control and Prevention (CDC) has released a Notice and Order expanding pre-departure COVID-19 testing requirements — which previously applied only to passengers departing the UK — to apply to all U.S.-bound passengers traveling by aircraft from any foreign country. CDC cited “increased transmissibility and spread” of new COVID-19 variants and the need to reduce their introduction and spread in the United States.

Effective January 26, 2021, in order to enter the United States, passengers of all nationalities aged two years or older must present evidence to the airline or aircraft operator of either (1) a negative pre-departure COVID-19 test conducted during the three calendar days preceding the flight’s departure, or (2) written documentation of a positive viral test result within the last 90 days (or at such other intervals specified in CDC guidance) that confirms the passenger previously had, and has recovered from, COVID-19, accompanied by a letter from a health care provider or official stating that the passenger has been cleared for travel. If a passenger chooses not to provide a test result or documentation of recovery, the airline or aircraft operator must deny boarding to the passenger.

The CDC Order applies to airlines and to any other type of aircraft operator flying into the United States. In addition to confirming that each passenger possesses documentation of a qualifying negative test result or of recovery from COVID-19 with clearance to travel, the aircraft operator must collect from each passenger a CDC “attestation” form and retain a copy for two years. Importantly, CDC places the responsibility to provide and collect attestations specifically on airlines and aircraft operators. Airlines and aircraft operators may use a third party or application to collect the attestations, but will be responsible for any failure by the third party to comply with the CDC requirement and may not “shift any legal responsibility to a third party.” Airlines and aircraft operators that fail to comply with these verification and attestation requirements may be subject to criminal penalties.

Airlines and aircraft operators are intensely focusing on a provision in the Order allowing airlines (on an individual basis) to request specific waivers from the Order if CDC determines that a foreign country lacks available COVID-19 testing capacity. Such exemptions will be limited to 14 days’ duration unless renewed by CDC due to “the rapidly evolving status of laboratory testing capacity in foreign countries.” Airlines are working with multiple U.S. government agencies to identify the foreign countries for which an exemption may be warranted. CDC has not issued information about a process for submitting exemption requests or guidance as to the information necessary to submit a complete and meritorious request.

The CDC Order exempts certain categories of individuals from the requirements of the order, including crew members (whether on-duty or deadheading) and certain federal law enforcement and U.S. military personnel. The negative pre-departure testing/recovery requirement does not replace (but is in addition to) the various COVID-19 entry suspensions imposed by presidential proclamations. Additionally, many U.S. states continue to enforce state-specific travel restrictions, such as mandatory quarantine requirements. These restrictions are unaffected by CDC’s Order.

CDC has issued a Frequently Asked Questions document discussing the Order, which can be found [here](#).



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