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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

No Sail Order and Suspension of Further Embarkation; Notice of Modification and Extension and Other Measures Related to Operations

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

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS), announces a modification and extension of the No Sail Order and Other Measures Related to Operations that was previously issued on March 14, 2020—subject to the modifications and additional stipulated conditions set forth in this Order. The Order shall continue in operation until the earliest of the expiration of the Secretary of Health and Human Services' declaration that COVID-19 constitutes a public health emergency; the CDC Director rescinds or modifies the order based on specific public

health or other considerations; or 100 days from the date of publication in the Federal Register.

DATES: This action is effective on [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Jennifer Buigut, Division of Global Migration and Quarantine, Centers for Disease Control and Prevention, 1600 Clifton Road, N.E., MS V18-2, Atlanta, GA 30329. Phone: 404-498-1600. Email: dgmqpolicyoffice@cdc.gov.

SUPPLEMENTARY INFORMATION:

On March 14, 2020, the Director of the Centers for Disease Control and Prevention (CDC) issued a No Sail Order and Other Measures Related to Operations. CDC published a notice announcing that Order on March 24, 2020 (85 FR 16628). The March 14, 2020 Order was scheduled to expire April 13, 2020. This notice announces the renewal of the No Sail Order and Other Measures Related to Operations signed by the CDC Director on March 14, 2020—subject to the modifications and additional stipulated conditions as set forth in this Order. This Order shall continue in operation until the earliest of (1) the expiration of the Secretary

of Health and Human Services' declaration that COVID-19 constitutes a public health emergency; (2) the CDC Director rescinds or modifies the order based on specific public health or other considerations; or (3) 100 days from the date of publication in the Federal Register. The findings and other evidence relied upon in issuing the March 14, 2020 Order are adopted herein by reference. Any ambiguity between the March 14, 2020 Order, as modified by the current Order, shall be resolved in favor of the current Order.

A copy of the order is provided below and a copy of the signed order can be found at <https://www.cdc.gov/quarantine/cruise/index.html>.

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)**

**ORDER UNDER SECTIONS 361 & 365
OF THE PUBLIC HEALTH SERVICE ACT (42 U.S.C. 264, 268) AND
42 CODE OF FEDERAL REGULATIONS
PART 70 (INTERSTATE) AND PART 71 (FOREIGN):
MODIFICATION AND EXTENSION OF NO SAIL ORDER**

AND OTHER MEASURES RELATED TO OPERATIONS

Previous Order and Incorporation by Reference

This Order renews the No Sail Order and Other Measures Related to Operations signed by the CDC Director on March 14, 2020—subject to the modifications and additional stipulated conditions as set forth in this Order. This Order shall continue in operation until the earliest of (1) the expiration of the Secretary of Health and Human Services' declaration that COVID-19 constitutes a public health emergency; (2) the CDC Director rescinds or modifies the order based on specific public health or other considerations; or (3) 100 days from the date of publication in the Federal Register. The findings and other evidence relied upon in issuing the March 14, 2020 Order are incorporated herein by reference. Any ambiguity between the March 14, 2020 Order, as modified by the current Order, shall be resolved in favor of the current Order.

Statement of Intent

This Order shall be interpreted and implemented in a manner as to achieve the following paramount objectives:

- Preservation of human life;
- Preventing the further introduction, transmission, and spread of COVID-19 into and throughout the United States;
- Preserving the public health and other critical resources of Federal, State, and local governments;
- Preserving hospital, healthcare, and emergency response resources within the United States; and
- Maintaining the safety of shipping and harbor conditions, including safety of personnel.

Applicability

This Modification and Extension of No Sail Order and Other Measures Related to Operations shall apply only to the subset of carriers¹ described below and hereinafter referred to as "cruise ships:"

All commercial, non-cargo,² passenger-carrying vessels operating in international, interstate, or intrastate

¹ Carrier is defined by 42 CFR 71.1 to mean, "a ship, aircraft, train, road vehicle, or other means of transport, including military."

² Given the substantial risk of person-to-person transmission of COVID-19, as opposed to transmission via indirect contact, this Order is currently limited to passenger, non-cargo vessels.

waterways and subject to the jurisdiction of the United States with the capacity to carry 250³ or more individuals (passengers and crew) with an itinerary anticipating an overnight stay onboard or a twenty-four (24) hour stay onboard for either passengers or crew.⁴

This Order shall additionally apply to any cruise ship that was previously excluded from the March 14, 2020 Order, by virtue of having voluntarily suspended operations.

“Operations” for purposes of this Order means any action by a cruise ship operator to bring or cause a cruise ship to be brought into or transit in or between any international, interstate, or intrastate waterways (e.g., shifting berths, moving to anchor, discharging waste, making port, or embarking or disembarking passengers or crew) subject to the jurisdiction of the United States.

³ Based on substantial epidemiological evidence related to congregate settings and mass gatherings, this Order suspends operation of vessels with the capacity to carry 250 individuals or more. Evidence shows that settings as small as nursing homes or movie theaters can proliferate the spread of a communicable disease. As the numbers of passengers and crew onboard a ship increases, certain recommended mitigation efforts such as social distancing become more difficult to implement. In light of the demonstrated rapid spread of this communicable disease in current cruise ship settings, application of this Order to vessels carrying 250 or more individuals is a prudent and warranted public health measure. Moreover, the management of current coronavirus cases in addition to existing seasonal care needs (e.g., influenza) has placed an extreme burden on the public health and healthcare systems and this Order will help avoid further stressing those systems.

⁴ This order shall not apply to vessels operated by a U.S. Federal or State government agency. Nor shall it apply to vessels being operated solely for purposes of the provision of essential services, such as the provision of medical care, emergency response, activities related to public health and welfare, or government services, such as food, water, and electricity.

"Operator" for purposes of this Order means the Master of the vessel (cruise ship) and any other crew member responsible for cruise ship operations and navigation, as well as any person or entity (including a corporate entity) that authorizes or directs the use of a cruise ship (e.g., as owner, lessee, or otherwise). A cruise ship operator may be either the cruise ship captain or the cruise line to which the cruise ship belongs, or both. The term "Operator" as used in this Order further incorporates the terms "company," "designated person," and "responsible person" as defined in 33 CFR. § 96.120.

Events Since the Issuance of March 14, 2020 Order

On March 14, 2020, the CDC Director issued a No Sail Order and Other Measures Related to Operations directing cruise ships not voluntarily suspending operations to comply with measures outlined by the CDC and U.S. Coast Guard. This followed a March 13, 2020, announcement by Cruise Lines International Association (CLIA), the leading industry trade group, that its members would voluntarily suspend cruise ship operations. On March 17, 2020, CDC issued a Level 3 Travel Warning that all travelers defer cruise

travel worldwide based on widespread ongoing transmission of COVID-19.⁵ The suspension of a global tourism industry, such as the cruise line industry, does not happen instantaneously or easily. During the suspension of operations, the cruise line operators worked with both Federal, State, and local governments to disembark of over 250,000 passengers from more than 120 vessels. The cruise line operators continue discussions with Federal, State and local governments regarding the 114 vessels with over 93,000 crew either in or near U.S. ports. However, COVID-19 clusters and outbreaks continue to occur on and in connection with cruise ships.

There are a number of recent incidences of reported COVID-19 spread onboard cruise ships including the *Costa Magica*, *Costa Favolosa*, *Celebrity Eclipse*, *Disney Wonder*, *Holland America Zaandam*, and *Celebrity Coral Princess*. The *Costa Magica* and the *Costa Favolosa*, reported at least 88 ill crew members on board with respiratory symptoms of COVID-19. On March 26, 2020, in coordination with U.S. Coast Guard and public health personnel, four infected crew members were evacuated off the *Magica* and seven from the

⁵ CDC, Traveler's Health, *COVID-19 and Cruise Ship Travel*, at: <https://wwwnc.cdc.gov/travel/notices/warning/coronavirus-cruise-ship> (originally posted, March 17, 2020).

Favolosa for life-critical care at Jackson Memorial Hospital in Miami, Florida. The *Zaandam* cruise ship reported illness consistent with COVID-19 in at least 250 persons onboard - guests and crew members; 76 of these persons remain symptomatic. Four passengers onboard the *Zaandam* have died (one for non-COVID-19 related reasons).⁶ As of April 1, 2020, four crew members onboard the *Eclipse* have tested positive for COVID-19, three of whom remain on the ship. One passenger onboard the *Eclipse* required emergency medical evacuation and is currently hospitalized in San Diego, California after having tested positive for COVID-19. The *Wonder* reported four crew members who have tested positive for COVID-19. Two of the four are now hospitalized, the two others are isolated on the ship; an additional three former passengers (from the last voyage who disembarked) are also positive. Most recently, the *Coral Princess* reported 12 persons (seven passengers and five crew members) onboard who are confirmed positive for COVID-19 and an additional 43 suspected cases in persons with influenza-like illness. As of April 3, 2020, there are four patients on oxygen in the ship's medical center.

⁶ "President of Holland America cruise line pleads for compassion while Florida debates allowing ships to dock," Fox News, March 31, 2020, available at: <https://www.foxnews.com/travel/zaandam-holland-america-cruise-president-florida-debate>.

There are approximately 50 cruise ships that remain at sea off the East Coast of the United States and in the Bahamas with an estimated 47,800 crew onboard; off the West Coast and Gulf Coast there are approximately 45 cruise ships with an estimated 32,000 crew onboard. Some of these crew are not critical to maintain the seaworthiness or basic safe operation of the cruise ships; many are part of the hotel and hospitality crew. CDC is currently aware of 15 cruise ships at port or anchorage in the United States with known or suspected COVID-19 infection among the crew who remain onboard. CDC is currently tracking two cruise ships with passengers that are expected to make port in the United States.

There are several public health concerns when crew members become ill while onboard these ships and the cruise lines seek the aid of the United States in disembarking them, as has already occurred on numerous occasions. The intensive care requirements for infected crew in need of life-critical care greatly stresses an already overburdened healthcare system facing shortages of masks, test kits, beds, and ventilators needed to respond to COVID-19. The addition of further COVID-19 cases from cruise ships places healthcare workers at substantial increased risk. Moreover,

safely evacuating, triaging, and repatriating cruise ship crew involves complex logistics, incurs financial costs at all levels of government, and diverts resources away from larger efforts to suppress or mitigate COVID-19.

Critical Need for Further Cooperation and Response Planning

CDC and other Federal agencies engaged with CLIA representatives in early March. On March 13, 2020, CLIA and their associated members announced that all member cruise lines would voluntarily suspend cruise ship operations from U.S. ports of call for 30 days as public health officials and the Federal government continue to address COVID-19. Several cruise lines followed CLIA's example and similarly voluntarily suspended operations.

CLIA also drafted a response plan, "On Course: Cruise Industry COVID-19 Response and Protocols" (hereinafter, "On Course"). The plan proposed "industry management of suspected or confirmed cases of COVID-19 without burden on the U.S. government."⁷ CLIA stated that it could implement this plan within 7 days.⁸ In response to a suspected or

⁷ (On Course, pages 1, 10).

⁸ *Id.* at 2.

confirmed case of COVID-19, "industry would be responsible for transporting the [exposed or infected] individuals in appropriate buses, cars, or ambulances."⁹ Furthermore, CLIA averred that, "contracts for predesignated facilities though Global Rescue [a firm with purported experience and expertise in mass medical incidents] [would] receive COVID-19 patients, including arrangements [that] will be executed following plan approval."¹⁰ CLIA further stated that it had planned for "multiple redundancies" in its response efforts. Specifically, "CLIA commits to making five ships available for temporary housing purposes. They would be tasked with sailing to any affected ship and taking affected guests and crew aboard for the self-isolation period."¹¹

On April 3, 2020, CLIA drafted a new response plan, "Framework: For Cruise Industry Care of Crew and other Persons on Board while Ships Remain Idle during the Global COVID-19 Pandemic" (hereinafter, "Framework"). The Framework plan must go further to reduce industry reliance on government and shoreside hospital resources. For example, while the Framework states that a ship will

⁹ *Id.* at 1-2.

¹⁰ *Id.* at 7.

¹¹ *Id.* at 13.

maintain its medical staff, it must provide further details of how the industry will provide for the acute care needs of the critically ill. The Framework must also address industry assistance to COVID-19 affected cruise ships by deploying additional ships for cohort separation of those who are exposed, infected, and in need of hospitalization. Furthermore, laboratory sampling and testing, onboard mitigation and prevention strategies, disinfection protocols, personal protective equipment, repatriation of foreign nationals, and onshore transportation, including through contract medivac helicopter, must be addressed in further detail, including how the industry proposes to acquire, staff, and operationalize this plan, with minimal burden on Federal, State, or local government entities or the healthcare system.

Findings and Immediate Action

Accordingly, and consistent with 42 CFR 70.2, 71.31(b) and 71.32(b), the Director of CDC ("Director") finds 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. As described in the March 14, 2020 Order, cruise ship travel markedly increases the risk and impact of the COVID-19 disease outbreak within the United States. If unrestricted cruise ship passenger operations were permitted to resume, infected and exposed cruise ship cases would place healthcare workers at substantial increased risk. Specifically, these cases would divert medical resources away from persons with other medical problems and other COVID-19 cases, consuming precious diagnostics, therapeutics, and protective equipment. Ongoing concerns with cruise ship transmission would further draw valuable resources away from the immense Federal, State, and local effort to contain and mitigate the spread of COVID-19. Further, the current ongoing non-passenger operation of cruise ships has not sufficiently abated the public health concern, as ship crew become sick and require medical care drawing on otherwise engaged Federal, State, and local resources. As operators of non-U.S. flagged vessels sailing in international waters, it is imperative that the cruise ship industry and cruise lines themselves take responsibility for the care of their crew and do not further tax limited U.S. resources during a public health emergency.

The Director also finds evidence to support a reasonable belief that cruise ships are or may be infected or contaminated with a quarantinable communicable disease.¹² This reasonable belief is based on information from epidemiologic and other data regarding the nature and transmission of COVID-19 on cruise ships, including the information described in the March 14, 2020 Order and evidence from the *Costa Magica*, *Costa Favolosa*, *Eclipse*, *Wonder*, *Zaandam*, *Coral Princess*, and other cruise ships. As a result, persons onboard cruise ships may be infected with or exposed to COVID-19 by virtue of being onboard at a time when cases of COVID-19 are being reported in increasingly significant numbers globally¹³ and specifically on cruise ships, when testing is available.

Accordingly, under 42 CFR 70.2, the Director determines that measures taken by State and local health authorities regarding COVID-19 onboard cruise ships are inadequate to prevent the further interstate spread of the disease.

¹² COVID-19 is a communicable disease for which quarantine is authorized under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 CFR 70.1, 71.1, as listed in Executive Order 13295, as amended by Executive Orders 13375 and 13674.

¹³ Since the March 14, 2020 Order, the number of global cases of COVID-19 reported by the World Health Organization (WHO) has risen from 142,534 to 1,051,635 as of April 4, 2020, with 56,985 deaths. *See* Situation Reports, WHO, <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/situation-reports>.

This Order is not a rule within the meaning of the Administrative Procedure Act ("APA"), but rather an emergency action taken under the existing authority of 42 CFR 70.2, 71.31(b) and 71.32(b). In the event that this Order qualifies as a rule under the APA, notice and comment and a delay in effective date are not required because there is good cause to dispense with prior public notice and comment and the opportunity to comment on this Order and the delay in effective date.¹⁴ Considering the public health emergency caused by COVID-19 based, among other things, on its continued spread on board cruise ships, it would be impracticable and contrary to the public health, and by extension the public interest, to delay the issuance and effective date of this Order. Similarly, if this Order qualifies as a rule per the definition in the APA, the Office of Information and Regulatory Affairs has determined that it would be a major rule, but there would not be a delay in its effectiveness as the agency has invoked the good cause provision of the APA.

If any provision in this Order, or the application of any provision to any carriers, persons, or circumstances, shall

¹⁴ See 5 U.S.C. 553(b)(B), (d)(3).

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

In accordance with 42 U.S.C. § 264(e), this Order shall supersede any provision under State law (including regulations and provisions established by political subdivisions of States), that conflict with an exercise of Federal authority, including instructions by U.S. Coast Guard (USCG) or HHS/CDC personnel permitting ships to make port or disembark persons under stipulated conditions, under this Order.

This Order shall be enforceable through the provisions of 18 U.S.C. 3559, 3571; 42 U.S.C. 243, 268, 271; and 42 CFR 70.18, 71.2.

Therefore, in accordance with sections 361 and 365 of the Public Health Service Act (42 U.S.C. 264, 268) and 42 CFR 70.2, 71.31(b), 71.32(b), for all cruise ships for the period described below, it is **ORDERED**:

1. As a condition of obtaining controlled free pratique to continue to engage in any cruise ship operations in any international, interstate, or intrastate waterways subject to the jurisdiction of the United States, cruise ship operators shall immediately develop, implement, and within **seven (7) days** of the signing of this Order operationalize, an appropriate, actionable, and robust plan to prevent, mitigate, and respond to the spread of COVID-19 on board cruise ships.

2. As a condition of obtaining controlled free pratique to continue to engage in any cruise ship operations in any international, interstate, or intrastate waterways subject to the jurisdiction of the United States, the cruise ship operator shall make the plan described in paragraph 1, above, available to HHS/CDC and USCG personnel within **seven (7) days** of the signing of this Order.

3. An appropriate plan is one that adequately prevents, mitigates, and responds to the spread of COVID-19 on board cruise ships and that, at a minimum, must address the following elements:

- a. Onboard surveillance of passengers and crew with acute respiratory illnesses, influenza-like illnesses, pneumonia, and COVID-19, including reporting to HHS/CDC on a weekly basis on overall case counts, methods of testing, and number of persons requiring hospitalization or medical evacuation;
- b. Reports on the number of persons onboard the cruise ship and any increase in the numbers of persons with COVID-19 made to HHS/CDC and USCG on a daily basis for as long as the cruise ship is within waters subject to the jurisdiction of the United States.
- c. Onboard monitoring of passengers and crew through temperature checks and medical screening, including addressing frequency of monitoring and screening;
- d. Training of all crew on COVID-19 prevention, mitigation, and response activities;
- e. Protocols for any COVID-19 testing, including details relating to the shore-side transport, administration, and operationalization of laboratory work if onboard laboratory work is not feasible;

- f. Onboard isolation, quarantine, and social distancing protocols to minimize the risk of transmission and spread of COVID-19;
- g. Onboard medical staffing, including number and type of staff, and equipment in sufficient quantity to provide a hospital level of care (e.g., ventilators, facemasks, personal protective equipment) for the infected without the need for hospitalization onshore;
- h. An outbreak management and response plan to provision and assist an affected cruise ship that relies on industry resources, e.g., mobilization of additional cruise ships or other vessels to act as "hospital" ship for the infected, "quarantine" ship for the exposed, and "residential" ship for those providing care and treatment, including the ability to transport individuals between ships as needed;
- i. Categorization of affected individuals into risk categories with clear stepwise approaches for care and management of each category;
- j. A medical care plan addressing onboard care versus evacuation to on-shore hospitals for critically ill individuals, specifying how

availability of beds for critically ill at local hospitals will be determined in advance and how the cruise ship operator will ensure acceptance at local medical facilities to treat the critically ill in a manner that limits the burden on Federal, State, and local resources and avoids, to the greatest extent possible, medivac situations. If medical evacuation is necessary arrangements for evacuation must be made with commercial resources (e.g., ship tender, chartered standby vessel, chartered airlift) and arrangements made with a designated medical facility that has agreed to accept such evacuees. All medical evacuation plans must be coordinated with the U.S. Coast Guard;

- k. Detailed logistical planning for evacuating and repatriating, both U.S. citizens and foreign nationals, to their respective communities and home countries via foreign government or industry-chartered private transport and flights, including the steps the cruise ship operator will take to ensure those involved in the transport are not exposed; (the use of commercial flights

to evacuate or repatriate individuals, both within or from the United States, is prohibited);

1. The projected logistical and resource impact on State and local government and public health authorities and steps taken to minimize the impact and engage with these authorities; all plans must provide for industry/cruise line management of suspected or confirmed cases of COVID-19 without resource burden on Federal, State, or local governments;
 - m. Plan execution in all U.S. geographical areas - all plans must be capable of being executed anywhere in international, interstate, or intrastate waterways subject to the jurisdiction of the United States; and
 - n. Cleaning and disinfection protocols for affected cruise ships.

4. An appropriate plan shall be designed to minimize, to the greatest extent possible, any impact on U.S. government operations or the operations of any State or local government, or the U.S. healthcare system.

5. The cruise ship operator shall further ensure that the plan is consistent with the most current CDC recommendations and guidance for any public health actions related to COVID-19. Where appropriate, a cruise ship operator may coordinate the development, implementation, and operationalization of a plan with other cruise ship operators, including an industry trade group.

The terms and conditions of the No Sail Order and Other Measures Related to Operations signed on March 14, 2020, as modified and extended by this ORDER, **SHALL REMAIN IN EFFECT**. Consequently, it remains **ORDERED**:

1. Cruise ship operators shall not be allowed to disembark passengers and crew members at ports or stations, except as directed by the USCG, in consultation with HHS/CDC personnel and, as appropriate, as coordinated with Federal, State, and local authorities.
2. Cruise ship operators shall not reembark any crew member, except as approved by USCG, in consultation with HHS/CDC personnel, until further notice.

3. Cruise ship operators shall not embark any new passengers or crew, except as approved by USCG, or other Federal authorities as appropriate, in consultation with HHS/CDC personnel.
4. Cruise ship operators shall not commence or continue operations (e.g., shifting berths, moving to anchor, or discharging waste), except as approved by USCG, in consultation with HHS/CDC personnel, until further notice.
5. While in port, the cruise ship operator shall observe health precautions as directed by HHS/CDC personnel.
6. The cruise ship operator shall comply with all HHS/CDC, USCG, and other Federal agency instructions to follow CDC recommendations and guidance for any public health actions relating to passengers, crew, ship, or any article or thing on board the ship, as needed, including by making ship's manifests and logs available and collecting any specimens for COVID-19 testing.

7. This order does not prevent the periodic reboarding of the ship by HHS/CDC personnel and/or USCG and/or other Federal, State, or local agencies or the taking on of ships' stores and provisions under the supervision of HHS/CDC personnel and/or USCG.

8. This order does not prevent the ship from taking actions necessary to maintain the seaworthiness or safety of the ship, or the safety of harbor conditions, such as movement to establish safe anchorage, or as otherwise directed by USCG personnel.

This Order is effective upon publication in the Federal Register and shall continue in operation until the earliest of (1) the expiration of the Secretary of Health and Human Services' declaration that COVID-19 constitutes a public health emergency; (2) the CDC Director rescinds or modifies the order based on specific public health or other considerations; or (3) 100 days from the date of publication in the Federal Register.

Authority

The authority for these orders is Sections 361 and 365 of the Public Health Service Act (42 U.S.C. 264, 268) and 42 CFR 70.2, 71.31(b), 71.32(b).

Robert K. McGowan

Chief of Staff,

Centers for Disease Control and Prevention

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