in Docket No. 31404 Amdt No. 3987, to Part 97 of the Federal Aviation Regulations under section 97.37. The following entry for Jackson, OH, effective January 27, 2022, is hereby rescinded in its entirety:

Jackson, OH, James A Rhodes, Takeoff Minimums and Obstacle DP, Amdt 4A

[FR Doc. 2022–01255 Filed 1–21–22; 8:45 am]
BILLING CODE 4910–13–P

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

[Docket No. DHS–2022–0003]
RIN 1601–ZA21

Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Mexico


ACTION: Notification of temporary travel restrictions.

SUMMARY: This Notification announces the decision of the Secretary of Homeland Security ("Secretary"), after consulting with interagency partners, to temporarily restrict travel by certain noncitizens to the United States at land ports of entry, including ferry terminals ("land POEs") along the United States-Mexico border. These restrictions only apply to noncitizens who are neither U.S. nationals nor lawful permanent residents ("noncitizen non-LPRs"). Under the temporary restrictions, DHS will allow processing for entry into the United States of only those noncitizen non-LPRs who are fully vaccinated against COVID–19 and can provide proof of being fully vaccinated against COVID–19 upon request. The restrictions provide for limited exceptions, largely consistent with the limited exceptions currently available with respect to COVID–19 vaccination in the international air travel context. Unlike past actions of this type, this Notification does not contain an exception for essential travel.

DATES: These restrictions go into effect at 12 a.m. Eastern Standard Time (EST) on January 22, 2022, and will remain in effect until 11:59 p.m. Eastern Daylight Time (EDT) on April 21, 2022, unless amended or rescinded prior to that time.


SUPPLEMENTARY INFORMATION:

Background

On March 24, 2020, the Department of Homeland Security ("DHS") published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPRs into the United States at land POEs along the United States-Mexico border to "essential travel," as further defined in that document. The March 24, 2020 Notification to allow the categories of travel, described as "essential travel." Essential travel included travel to attend educational institutions, travel to work in the United States, travel for emergency response and public health purposes, and travel for lawful cross-border trade. Essential travel also included travel by U.S. citizens and lawful permanent residents returning to the United States.

From March 2020 through October 2021, in consultation with interagency partners, DHS reevaluated and ultimately extended the restrictions on non-essential travel each month. The most recent action of this type, published on October 21, 2021, continued the restrictions until 11:59 p.m. EST on January 21, 2022. In that document, DHS acknowledged that notwithstanding the continuing threat to human life or national interests posed by COVID–19—as well as recent increases in case levels, hospitalizations, and deaths due to the Delta variant—COVID–19 vaccines are effective against Delta and other known COVID–19 variants. These vaccines protect people from becoming infected with and severely ill from COVID–19 and significantly reduce the likelihood of hospitalization and death. DHS also acknowledged the White House COVID–19 Response Coordinator’s September 2021 announcement regarding the United States’ plans to revise standards and procedures for incoming international air travel to enable the air travel of travelers fully vaccinated against COVID–19 beginning in early November 2021. DHS further stated that the Secretary intended to do the same with respect to certain travelers seeking to enter the United States from Mexico and Canada at land POEs to allow those who are fully vaccinated against COVID–19 to travel to the United States for non-essential reasons.

On October 29, 2021, following additional announcements regarding changes to the international air travel policy by the President of the United States and the Centers for Disease Control and Prevention ("CDC"), DHS announced that beginning November 8, 2021, non-essential travel of noncitizen non-LPRs to the United States would be temporarily restricted through land POEs, provided that the traveler is fully vaccinated against COVID–19 and can provide proof of full COVID–19 vaccination status.

The Travel Requirements

On October 29, 2021, following additional announcements regarding changes to the international air travel policy by the President of the United States and the Centers for Disease Control and Prevention ("CDC"), DHS announced that beginning November 8, 2021, non-essential travel of noncitizen non-LPRs to the United States would be temporarily restricted through land POEs, provided that the traveler is fully vaccinated against COVID–19 and can provide proof of full COVID–19 vaccination status.

85 FR 16547 (Mar. 24, 2020). That same day, DHS also acknowledged the White House COVID–19 Response Coordinator’s September 2021 announcement regarding the United States’ plans to revise standards and procedures for incoming international air travel to enable the air travel of travelers fully vaccinated against COVID–19 beginning in early November 2021. DHS further stated that the Secretary intended to do the same with respect to certain travelers seeking to enter the United States from Mexico and Canada at land POEs to allow those who are fully vaccinated against COVID–19 to travel to the United States for non-essential reasons.

On October 29, 2021, following additional announcements regarding changes to the international air travel policy by the President of the United States and the Centers for Disease Control and Prevention ("CDC"), DHS announced that beginning November 8, 2021, non-essential travel of noncitizen non-LPRs to the United States would be temporarily restricted through land POEs, provided that the traveler is fully vaccinated against COVID–19 and can provide proof of full COVID–19 vaccination status.


announced that beginning in January 2022, inbound noncitizen non-LPRs traveling to the United States via land POEs—whether for essential or non-essential reasons—would be required to be fully vaccinated against COVID–19 and provide proof of full COVID–19 vaccination status.\(^7\)

DHS has continued to monitor and respond to the COVID–19 pandemic. On December 14, 2021, at DHS’s request, CDC provided a memorandum to DHS describing the current status of the COVID–19 public health emergency. The CDC reminded practitioners of the importance of “case counts and deaths due to COVID–19 continuing to increase around the globe and the emergence of new and concerning variants,” and emphasized that “[v]accination is the single most important measure for reducing risk for SARS–CoV–2 transmission and avoiding severe illness, hospitalization, and death.”\(^8\) Given these considerations, CDC recommended that proof of COVID–19 vaccination requirements be expanded to cover both essential and non-essential noncitizen non-LPR travelers.

According to CDC, studies indicate that individuals vaccinated against COVID–19 are five times less likely to be infected with COVID–19 and more than eight times less likely to require hospitalization than those who are unvaccinated. Further, unvaccinated people are 14 times more likely to die from COVID–19 than those who are vaccinated. Such increases in hospitalization and death rates strain critical healthcare resources, which in some parts of the United States may be in short supply.\(^9\) As CDC wrote, “proof of vaccination of travelers helps protect the health and safety of both the personnel at the border and other travelers, as well as U.S. destination communities. Border security and transportation security work is part of the nation’s critical infrastructure and presents unique challenges for ensuring the health and safety of personnel and travelers.”

CDC’s memorandum also acknowledged that because of operational considerations, requirements at land POEs may differ from those implemented for air travel. CDC recognized the operational challenges, as described by DHS, with imposing a testing requirement at land POEs, and noted key differences between land travel and air travel with respect to the volume of travel, predictability, and infrastructure involved.\(^10\) In light of the need for required pre-entry COVID–19 testing, CDC described a proof of COVID–19 vaccination requirement as “essential as a matter of public health.”\(^11\)

In a January 14, 2022 update, also at the request of DHS, CDC confirmed its prior recommendation. Specifically, CDC noted the “rapid increase” of COVID–19 cases across the United States that have contributed to high levels of community transmission and increased rates of new hospitalizations and deaths. According to CDC, between January 5 and January 11, 2022, the seven-day average for new hospital admissions of patients with confirmed COVID–19 increased by 24 percent over the prior week, and the seven-day average for COVID–19-related deaths rose to 2,991, an increase of 33.7 percent compared to the prior week. CDC emphasized that this increase has exacerbated the strain on the United States’ healthcare system and again urged that “[v]accination of the broadest number of people best protects all individuals and preserves the United States’ critical infrastructure, including healthcare systems and essential workforce.” CDC thus urged “the most comprehensive requirements possible for proof of vaccination” and specifically recommended against exceptions for specific worker categories as a public health matter.\(^12\)

DHS has conferred with interagency partners, taken into account all relevant factors, including economic considerations and CDC’s public health input, and concludes that a broad COVID–19 vaccination requirement at land POEs is necessary and appropriate. In particular, DHS notes that, according to the information provided by CDC, those who are not fully vaccinated against COVID–19 have proven to be more likely to be infected by COVID–19, to spread COVID–19 to others, to suffer severe symptoms, and to require the use of scarce hospital resources. DHS acknowledges that in past actions of this type, it has continued to allow essential travel by certain noncitizen non-LPRs who are not fully vaccinated against COVID–19. The assessment has, however, changed in light of the following two factors: (1) The rapid increase of COVID–19 cases; and (2) the increasing availability of COVID–19 vaccines.

With respect to the increasing availability of COVID–19 vaccines, at this point, COVID–19 vaccines—which according to CDC are “the single most important measure” for responding to COVID–19—\(^13\) are widely available and have been increasingly available for months. In Canada, 77.1 percent of the entire population is now fully vaccinated against COVID–19, while 87.8 percent of individuals 12 years and older are fully vaccinated against COVID–19.\(^14\) In Mexico, 55.9 percent of the population is fully vaccinated against COVID–19, \(^15\) while as of October 2021, 72 percent of those living in border regions were fully vaccinated against COVID–19.\(^16\) In October 2021, DHS announced its intention to expand the temporary travel restrictions applicable to land POEs by applying the COVID–19 vaccination requirement to those traveling for essential reasons, thus recognizing the importance of fair notice and allowing ample time for noncitizen non-LPR essential travelers to get fully vaccinated against COVID–19. For these reasons, DHS believes that


\(^8\) See Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders (Dec. 14, 2021).

\(^9\) At the time of the memorandum, CDC noted that the Delta variant was still the predominant variant in the United States, but that ongoing research indicated that the Omicron variant may spread more easily than the original SARS-CoV-2 virus. CDC noted that further studies are underway to assess concerns about whether the Omicron variant may have increased transmissibility, confer resistance to therapeutics, or partially escape infection- or vaccine-induced immunity.\(^10\)

\(^10\) CBP assesses that a testing option is not operationally feasible given the significant number of land border crossers that go back and forth on a daily, or near-daily, basis, for work or school. A negative COVID–19 test requirement would mean that such individuals would have to get tested just about every day. This is not currently feasible, given the cost and supply constraints, particularly in smaller rural locations. Further, CBP reports additional operational challenges associated with verifying test results, given the wide variation in documentation.


\(^12\) Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID–19 Vaccination at U.S. Land Borders—Addendum (Jan. 18, 2022).

\(^13\) See Memorandum from CDC to CBP (Dec. 14, 2021).

\(^14\) Canadian statistics may be found at: https://health-infobase.canada.ca/covid-19-vaccination-coverage (Jan. 17, 2022).

\(^15\) Mexican statistics may be found at: https://ourworldindata.org/covid-vaccinations?country=MEX (Jan. 17, 2022).

it is now necessary and appropriate to align COVID–19 vaccine restrictions at land POEs to current U.S. government policy governing incoming international air travel. 17

Moreover, COVID–19 cases continue to increase rapidly across the United States, as described below. This surge is currently driven by the Omicron variant, which CDC’s Nowcast model projects may account for approximately 98.3 percent of cases. 18 On January 5, 2022, 705,264 new COVID–19 cases were reported, more than double the peak in January 2021. Communities across the United States are now experiencing high levels of community transmission, and hospitalizations and deaths are also on the rise. 19 This surge underscores the need for the policy that DHS previously announced, and is an important reason why DHS, in consultation with interagency partners, is declining to implement broad exceptions for certain categories of travelers.

In reaching this conclusion, DHS weighed the concerns of industry and, in particular, firms employing or relying on long-haul truck drivers and persons engaged in freight rail operations. 20 DHS carefully considered alternative approaches, including exceptions for these categories of workers. As a public health matter, CDC strongly discouraged additional exceptions, particularly in light of the current increase in COVID–19 cases and related resulting strains on the healthcare system. Even if such workers do not engage in extended interaction with others, they still engage in activities that involve contact with others, thereby increasing the risk of contributing to community spread of COVID–19. Such workers also may enter the United States after contracting COVID–19, become seriously ill after arrival, and require scarce healthcare resources as a result. Given CDC’s recommendation, and after extensive consultation with interagency partners, DHS has determined that such activities do not warrant an exception from these restrictions because these persons still present a public health risk. A COVID–19 vaccination requirement at land POEs helps protect the health and safety of the personnel at the border, other travelers, and the U.S. communities where these persons may be traveling and spending time among the public. A COVID–19 vaccination requirement for these individuals also reduces burdens on local healthcare resources in U.S. communities. This approach aligns the U.S. COVID–19 policies applicable to land POEs with air travel restrictions that require noncitizen non-LPRs traveling by air to the United States for both essential and non-essential reasons to be fully vaccinated against COVID–19 and provide related proof of vaccination, with very few exceptions.

This approach also aligns with new travel restrictions imposed by Canada on January 15, 2022, which similarly impose a COVID–19 vaccination requirement on cross-border travel, with no exception for truck drivers or freight rail operators. 21 DHS also acknowledges concerns among some industry stakeholders that this policy, however necessary to protect the American public, could disrupt cross-border economic activity. In consultation with interagency partners, DHS has carefully considered these concerns. DHS has conferred with interagency partners and determined that these concerns are outweighed by the competing public health concerns and the wide availability of COVID–19 vaccines, coupled with the growing body of evidence that employment-related COVID–19 vaccine mandates result in high levels of COVID–19 vaccine acceptance among employees. 22

A recent White House analysis highlights the ways in which COVID–19 vaccine requirements that cover whole industries or sectors can be particularly effective in persuading employees to become fully vaccinated against COVID–19. 23 The incentive effects of industry-wide requirements, as well as the introduction of a range of other policies intended to incentivize vaccination against COVID–19, reduce the likelihood of a significant disruption in cross-border economic activity, while protecting public health. 24 DHS acknowledges that some persons engaged in essential travel, in particular long-haul truck drivers and persons engaged in freight rail operations, do not engage in work-related activities that involve extended exposure to others in congregate settings. However, there are also important differences between (1) commercial truck, rail, and ferry operators; and (2) air crews and sea crew members traveling pursuant to a C–1 or D nonimmigrant visa. In the international air travel context, under

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17 For a discussion of the current U.S. government policy regarding international air travel, see, supra, n. 45.


20 DHS acknowledges that past actions of this type exempted freight rail, but DHS notes that the considerations applicable to other forms of travel previously designated as essential apply equally in the freight rail context.

21 See, e.g., David Koenig, Associated Press, Houston Methodist, Houston Methodist Requires mandatory COVID–19 vaccination program.’’; Parsons Corp., Houston Methodist Requires COVID–19 Vaccine for Credentialed Nurses, https://www.houstonmethodist.org/leading-vaccine-blog/articles/parsons-corp-houston-methodist-requires-covid-19-vaccine-for-credentialed-doctors/ (June 8, 2021) (‘‘As of June 1, more than 90% of the system’s 26,000 employees and physicians have received the vaccine following issuance of a vaccine mandate in April 2021’’; Alison Kosik, CNN Business, 96% of Tyson’s Active Workers are Vaccinated, CNN (Oct. 26, 2021), https://www.cnn.com/2021/10/26/business/tysongov-tcodile-vaccine-index.html (‘‘Tyson’s President and CEO Donnie King said in a blog post ‘we couldn’t be happier to report that today, over 96% of our active team members are vaccinated—or nearly 60,000 more than when we made the announcement on August 3.’’’; see also generally Fierce Healthcare, How many employees have hospitals lost to vaccine mandates? Here are the numbers so far, https://www.fiercehealthcare.com/hospitals/how-many-employees-have-hospitals-lost-to-vaccine-mandates-numbers-so-far (last updated Jan. 5, 2022) (collecting examples).


the Presidential Proclamation 10294 of October 25, 2021 25 (“the Presidential Proclamation”), as implemented by CDC’s Amended Order Implementing Presidential Proclamation on Advancing the Safe Resumption of Global Travel During the COVID–19 Pandemic26 and Technical Instructions 27 (“the CDC Order”), commercial air crews are excepted from COVID–19 vaccination requirements only if they follow industry standard protocols for the prevention of COVID–19 as set forth in relevant Safety Alerts for Operators (“SAFOs”) issued by the Federal Aviation Administration.28 SAFO 20009 includes a range of measures for air crew to protect their health and the health of others. Sea crew members traveling pursuant to a C–1 or D nonimmigrant visa are similarly excepted from international air travel COVID–19 vaccine requirements only if they adhere to all industry standard protocols for the prevention of COVID–19, as set forth in relevant CDC guidance for crew member health.29 Importantly, unvaccinated noncitizen mariners must take a predeparture COVID–19 test within one day of travel and show a negative result prior to boarding a plane, attest that they will self-quarantine upon arrival in the United States, and have access to shipboard quarantine options as needed.30 Currently, commercial truck drivers and freight rail and ferry operators are not subject to similar industry-wide requirements.

They are therefore not amenable to parallel treatment at this time. 

DHS, in consultation with its interagency partners, also has considered the operational effect of these requirements. While these changes potentially bring risk of increased wait times at land POEs in the passenger and commercial environments and delays in cargo shipments if vaccinated truck drivers and persons engaged in freight rail operations are unavailable, DHS projects minimal, short-term operational impacts as travelers become familiar with the new requirements. The enforcement of these requirements will mirror the enforcement practices implemented for non-essential travel restrictions on November 8, 2021 which yielded minimal operational disruptions. This assessment is based in part on observations from the implementation of the November 8, 2021 Title 19 restrictions and on the successful implementation of similar requirements by the Canadian government on January 15, 2022.

Notice of Action

Following consultation with CDC and other interagency partners, and after having considered and weighed the relevant factors, I have determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Mexico, including the associated burden on already stressed healthcare resources, poses an ongoing “specific threat to human life or national interests.” Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),31 I have

19 U.S.C. 1318(b)(1)(C) provides that “[h]earting any other provision of law, the Secretary of the Treasury, when necessary to respond to a national emergency declared under the National Emergencies Act (50 U.S.C. 1601 et seq.) or to a specific threat to human life or national interests,” is authorized to “[t]ake any . . . action that may be necessary to respond directly to the national emergency or specific threat.” On March 1, 2003, certain functions of the Secretary of the Treasury were transferred to the Secretary of Homeland Security. See 6 U.S.C. 202(a)(1), 203(1). Under 6 U.S.C. 212(a)(1), authorities “related to Customs revenue functions” were reserved to the Secretary of the Treasury. To the extent that any authority under section 1318(b)(1) was reserved to the Secretary of the Treasury, it has been delegated to the Secretary of Homeland Security. See Dep’t Order No. 100–16 (May 15, 2003), 68 FR 28322 (May 23, 2003). Additionally, 19 U.S.C. 1318(b)(2) provides that “[h]earting any other provision of law, the Commissioner of U.S. Customs and Border Protection, when necessary to respond to a specific threat to human life or national interests, is authorized to close temporarily any Customs port of entry or take any other lesser action that may be necessary to respond to the specific threat.” Congress has vested in the Secretary of Homeland Security the “functions of all officers, employees, and organizational units of the Department,” including the Commissioner of CBP, 6 U.S.C. 112(a)(3).

The exceptions to this temporary restriction are generally aligned with those outlined in the Presidential Proclamation and further described in the CDC Order, with modifications to account for the unique nature of land border operations where advance passenger information is largely not available.
This Notification does not apply to air or sea travel between the United States and Mexico. This Notification does apply to passenger/freight rail, passenger ferry travel, and pleasure boat travel between the United States and Mexico. These restrictions are temporary in nature and shall remain in effect until the date indicated on this Notification, unless modified or rescinded at any point prior to that date, including to conform these restrictions to any intervening changes in the Presidential Proclamation and implementing CDC orders. In conjunction with interagency partners, I will closely monitor the effect of the requirements discussed herein, especially as they relate to any potential impacts on the supply chain and will, as needed and warranted, exercise my authority in support of the U.S. national interest.

I intend for this Notification and the restrictions discussed herein to be given effect to the fullest extent allowed by law; in the event that a court of competent jurisdiction stays, enjoins, or sets aside any aspect of this action, on its face or with respect to any person, entity, or class thereof, any portion of this action not determined by the court to be invalid or unenforceable should otherwise remain in effect for the duration stated above.

This action is not a rule subject to notice and comment under the Administrative Procedure Act (APA). It is exempt from notice and comment requirements because it concerns ongoing discussions with Canada and Mexico on how best to control COVID–19 transmission over our shared borders and therefore directly involve[s] . . . a . . . foreign affairs function of the United States.1 Even if this action were subject to notice and comment, there is good cause to dispense with prior public notice and the opportunity to comment. Given the public health emergency caused by COVID–19, including the rapidly evolving circumstances associated with elevated rates of infection due to the Omicron variant, it would be impracticable and contrary to the public health, and the public interest, to delay the issuance and effective date of this action.

The CBP Commissioner is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the implementation of the temporary measures set forth in this Notification. Further, the CBP Commissioner may, on an individualized basis and for humanitarian or emergency reasons or for other purposes in the national interest, permit the processing of travelers to the United States who would otherwise be subject to the restrictions announced in this Notification.


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DEPARTMENT OF HOMELAND SECURITY
U.S. Customs and Border Protection
19 CFR Chapter I
[Docket No. DHS–2022–0002]
RIN 1601–ZA20
Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada
ACTION: Notification of temporary travel restrictions.
SUMMARY: This Notification announces the decision of the Secretary of Homeland Security (“Secretary”), after consulting with interagency partners, to temporarily restrict travel by certain noncitizens into the United States at land ports of entry, including ferry terminals (“land POEs”) along the United States-Canada border. These restrictions only apply to noncitizens who are neither U.S. nationals nor lawful permanent residents (“noncitizen non-LPRs”). Under the temporary restrictions, DHS will allow processing for entry into the United States of only those noncitizen non-LPRs who are fully vaccinated against COVID–19 and can provide proof of being fully vaccinated against COVID–19 upon request. The restrictions provide for limited exceptions, largely consistent with the limited exceptions currently available with respect to COVID–19 vaccination in the international air travel context. Unlike past actions of this type, this Notification does not contain an exception for essential travel.
DATES: These restrictions go into effect at 12 a.m. Eastern Standard Time (EST) on January 22, 2022, and will remain in effect until 11:59 p.m. Eastern Daylight Time (EDT) on April 21, 2022, unless amended or rescinded prior to that time.


SUPPLEMENTARY INFORMATION:
Background
On March 24, 2020, the Department of Homeland Security (“DHS”) published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPRs into the United States at land POEs along the United States-Canada border to “essential travel,” as further defined in that document.1 The March 24, 2020 Notification described the developing circumstances regarding the COVID–19 pandemic and stated that, given the outbreak, continued transmission, and spread of the virus associated with COVID–19 within the United States and globally, DHS had determined that the risk of continued transmission and spread of the virus associated with COVID–19 between the United States and Canada posed a “specific threat to human life or national interests.” Under the March 24, 2020 Notification, DHS continued to allow certain categories of travel, described as “essential travel.” Essential travel included travel to attend educational institutions, travel to work in the United States, travel for emergency response and public health purposes, and travel for lawful cross-border trade. Essential travel also included travel by U.S. citizens and lawful permanent residents returning to the United States.

From March 2020 through October 2021, in consultation with interagency partners, DHS reevaluated and ultimately extended the restrictions on non-essential travel each month. The most recent action of this type, published on October 21, 2021, continued the restrictions until 11:59 p.m. EST on January 21, 2022.2 In that document, DHS acknowledged that notwithstanding the continuing threat to human life or national interests posed by COVID–19—as well as recent increases in case levels,

185 FR 16548 (Mar. 24, 2020). That same day, DHS also published a Notification of its decision to temporarily limit the travel of certain noncitizen non-LPR persons into the United States at land POEs along the United States-Mexico border to “essential travel,” as further defined in that document. 85 FR 16547 (Mar. 24, 2020).