

public health priority, based on current COVID-19 trends, the Department of Health and Human Services is planning for the federal Public Health Emergency for COVID-19, declared under Section 319 of the Public Health Service Act, to expire at the end of the day on May 11, 2023.¹⁴ On May 1, 2023, the White House announced the impending termination of COVID-19 air travel restrictions, effective at the end of the day on May 11, 2023.¹⁵ This Notification ensures that applicable restrictions at the land POEs terminate concurrent with the parallel air travel restrictions.

Notice of Action

In light of intervening changes in Presidential and interagency assessments of current trends in COVID-19, I have determined that it is no longer necessary to impose temporary restrictions on the processing of travelers to the United States at the United States-Canada border. I intend for this Notification to be given effect to the fullest extent allowed by law. In the event 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.

This action is not a rule subject to notice and comment under the Administrative Procedure Act. In addition, 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.” 5 U.S.C. 553(a)(1).

Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

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¹⁴ Fact Sheet: COVID-19 Public Health Emergency Transition Roadmap (Feb. 9, 2023), available at <https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html>.

¹⁵ See The White House, Statements and Releases, The Biden-Harris Administration Will End COVID-19 Vaccination Requirements for Federal Employees, Contractors, International Travelers, Head Start Educators, and CMS-Certified Facilities (May 1, 2023), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/01/the-biden-administration-will-end-covid-19-vaccination-requirements-for-federal-employees-contractors-international-travelers-head-start-educators-and-cms-certified-facilities/> (last visited May 1, 2023).

DEPARTMENT OF HOMELAND SECURITY

U.S. Customs and Border Protection

19 CFR Chapter I

RIN 1601-ZA21

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

AGENCY: Office of the Secretary, U.S. Department of Homeland Security; U.S. Customs and Border Protection, U.S. Department of Homeland Security.

ACTION: Notification of termination of temporary travel restrictions.

SUMMARY: This Notification announces the decision of the Secretary of Homeland Security (“Secretary”), after consulting with interagency partners, to terminate temporary restrictions on travel by certain noncitizens into the United States at land ports of entry (“land POEs”), including ferry terminals, along the United States-Mexico border. Under the latest (April 22, 2022) notice of the temporary restrictions, which applied only to noncitizens who are neither U.S. nationals nor lawful permanent residents (“noncitizen non-LPRs”), DHS allowed the processing for entry into the United States of only those noncitizen non-LPRs who were fully vaccinated against COVID-19 and could provide proof of being fully vaccinated against COVID-19 upon request at arrival. DHS is terminating these restrictions.

DATES: The restrictions will cease to have effect as of 12:01 a.m. Eastern Daylight Time (EDT) on May 12, 2023.

FOR FURTHER INFORMATION CONTACT: Stephanie E. Watson, Office of Field Operations, U.S. Customs and Border Protection, 202-255-7018.

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.¹ From March 2020 through

¹ 85 FR 16547 (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-Canada border to “essential travel,” as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

October 2021, in consultation with interagency partners, DHS reevaluated and ultimately extended the restrictions on non-essential travel each month.

On October 21, 2021, DHS extended 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 then-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 2021.³ 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 align the treatment of different types of travel and allow those who are fully vaccinated against COVID-19 to travel to the United States, whether for essential or non-essential reasons.⁴

On October 29, 2021, following additional announcements regarding changes to the international air travel policy by the President of the United States and CDC,⁵ DHS announced that

² See 86 FR 58216 (Oct. 21, 2021) (extending restrictions for the United States-Mexico border); 86 FR 58218 (Oct. 21, 2021) (extending restrictions for the United States-Canada border).

³ See Press Briefing by Press Secretary Jen Psaki (Sept. 20, 2021), <https://www.whitehouse.gov/briefing-room/press-briefings/2021/09/20/press-briefing-by-press-secretary-jen-psaki-september-20-2021/> (“As was announced in a call earlier today . . . [w]e—starting in . . . early November [will] be putting in place strict protocols to prevent the spread of COVID-19 from passengers flying internationally into the United States by requiring that adult foreign nationals traveling to the United States be fully vaccinated.”).

⁴ See 86 FR 58218; 86 FR 58216.

⁵ Changes to requirements for travel by air were implemented by, *inter alia*, Presidential Proclamation 10294 of October 25, 2021, 86 FR 59603 (Oct. 28, 2021) (“Presidential Proclamation 10294”), and a related CDC order, 86 FR 61224 (Nov. 5, 2021) (“CDC Order”). See also CDC, *Requirement for Proof of Negative COVID-19 Test or Recovery from COVID-19 for All Air Passengers Arriving in the United States*, <https://www.cdc.gov/quarantine/pdf/Global-Testing-Order-10-25-21-p.pdf> (Oct. 25, 2021); *Requirement for Airlines and Operators to Collect Contact Information for All Passengers Arriving into the United States*, <https://>

Continued

beginning November 8, 2021, non-essential travel of noncitizen non-LPRs would be permitted through land POEs, provided that the traveler is fully vaccinated against COVID-19 and can provide proof of full COVID-19 vaccination status upon request.⁶ DHS also announced in October 2021 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. In making this announcement, the Department provided fair notice of the anticipated changes, thereby allowing ample time for noncitizen non-LPR essential travelers to become fully vaccinated against COVID-19.⁷

On January 24, 2022, DHS announced the decision of the Secretary to temporarily restrict travel by noncitizen non-LPRs into the United States at land POEs along the United States borders with Mexico and Canada by requiring proof of COVID-19 vaccination upon request at arrival, largely consistent with the limited exceptions then available with respect to COVID-19 vaccination in the international air travel context.⁸ On April 22, 2022, DHS announced the continuation of such restrictions until further notice.⁹ DHS cautioned that the restrictions addressed temporary conditions and may be amended or rescinded at any time, including to conform these restrictions to any intervening changes with respect

www.cdc.gov/quarantine/pdf/CDC-Global-Contact-Tracing-Order-10-25-2021-p.pdf (Oct. 25, 2021). CDC later amended its testing order following developments related to the Omicron variant. See CDC, *Requirement for Proof of Negative COVID-19 Test Result or Recovery from COVID-19 for All Airline Passengers Arriving into the United States*, https://www.cdc.gov/quarantine/pdf/Amended-Global-Testing-Order_12-02-2021-p.pdf (Dec. 2, 2021).

⁶ See 86 FR 72843 (Dec. 23, 2021) (describing the announcement with respect to Mexico); 86 FR 72842 (Dec. 23, 2021) (describing the announcement with respect to Canada).

⁷ See DHS, *DHS Releases Details for Fully Vaccinated, Non-Citizen Travelers to Enter the U.S. at Land and Ferry Border Crossings*, <https://www.dhs.gov/news/2021/10/29/dhs-releases-details-fully-vaccinated-non-citizen-travelers-enter-us-land-and-ferry> (Oct. 29, 2021); DHS, *Fact Sheet: Guidance for Travelers to Enter the U.S. at Land Ports of Entry and Ferry Terminals*, <https://www.dhs.gov/news/2021/10/29/fact-sheet-guidance-travelers-enter-us-land-ports-entry-and-ferry-terminals> (updated Jan. 20, 2022); see also DHS, *Frequently Asked Questions: Guidance for Travelers to Enter the U.S.*, <https://www.dhs.gov/news/2021/10/29/frequently-asked-questions-guidance-travelers-enter-us> (updated Jan. 20, 2022).

⁸ See 87 FR 3425 (Jan. 24, 2022) (Mexico notice); 87 FR 3429 (Jan. 24, 2022) (parallel Canada notice).

⁹ See 87 FR 24041 (Apr. 22, 2022) (Mexico notice); 87 FR 24048 (Apr. 22, 2022) (parallel Canada notice).

to Presidential Proclamation 10294 and implementing CDC orders and consistent with the requirements of 19 U.S.C. 1318.¹⁰ DHS indicated that in conjunction with interagency partners, DHS will closely monitor the effect of the requirements discussed herein, and the Secretary will, as needed and warranted, exercise relevant authority in support of the U.S. national interest.¹¹

On January 30, 2023, the Administration announced its intention to “extend the [COVID-19 national emergency and public health emergency] to May 11, [2023] and then end both emergencies on that date.”¹² Consistent with the Administration announcement, DHS has continued to closely monitor the travel requirements at land POEs, and the Secretary has considered the appropriate termination of those travel requirements pursuant to 19 U.S.C. 1318 in light of intervening changes to related Presidential and interagency assessments of COVID-19.

Termination of the Public Health Emergency and Air Travel Restrictions

On February 10, 2023, the White House announced that “we are in a different phase” of the response to the COVID-19 pandemic precipitating an orderly transition to end the national emergency declared in March 2020.¹³ While the spread of SARS-CoV-2, the virus that causes COVID-19, remains a public health priority, based on current COVID-19 trends, the Department of Health and Human Services is planning for the federal Public Health Emergency for COVID-19, declared under Section 319 of the Public Health Service Act, to expire at the end of the day on May 11, 2023.¹⁴ On May 1, 2023, the White House announced the impending termination of COVID-19 air travel restrictions, effective at the end of the day on May 11, 2023.¹⁵ This

¹⁰ *Id.*

¹¹ *Id.*

¹² Office of Mgmt. & Budget, Exec. Office of the President, *Statement of Administration Policy* (Jan. 30, 2023), available at <https://www.whitehouse.gov/wp-content/uploads/2023/01/SAP-H.R.-382-H.J.-Res.-7.pdf>.

¹³ White House Notice on the Continuation of the National Emergency Concerning the Coronavirus Disease 2019 (COVID-19) Pandemic (Feb. 10, 2023), available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2023/02/10/notice-on-the-continuation-of-the-national-emergency-concerning-the-coronavirus-disease-2019-covid-19-pandemic-3/>; see also 88 FR 9385 (Feb. 14, 2023) (providing **Federal Register** notice of same).

¹⁴ Fact Sheet: COVID-19 Public Health Emergency Transition Roadmap (Feb. 9, 2023), available at <https://www.hhs.gov/about/news/2023/02/09/fact-sheet-covid-19-public-health-emergency-transition-roadmap.html>.

¹⁵ See The White House, *Statements and Releases, The Biden-Harris Administration Will End COVID-19 Vaccination Requirements for Federal*

Notification ensures that applicable restrictions at the land POEs terminate concurrent with the parallel air travel restrictions.

Notice of Action

In light of intervening changes in Presidential and interagency assessments of current trends in COVID-19, I have determined that it is no longer necessary to impose temporary restrictions on the processing of travelers to the United States at the United States-Mexico border. I intend for this Notification 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.

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Alejandro N. Mayorkas,

Secretary, U.S. Department of Homeland Security.

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Employees, Contractors, International Travelers, Head Start Educators, and CMS-Certified Facilities (May 1, 2023), available at <https://www.whitehouse.gov/briefing-room/statements-releases/2023/05/01/the-biden-administration-will-end-covid-19-vaccination-requirements-for-federal-employees-contractors-international-travelers-head-start-educators-and-cms-certified-facilities/> (last visited May 1, 2023).