



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

**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 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22, 2022, and will remain in effect until 11:59 p.m. Eastern Daylight Time (EDT) on April 21, 2022, unless amended or rescinded prior to that time.

**FOR FURTHER INFORMATION CONTACT:** Petra Horne, Office of Field Operations, U.S. Customs and Border Protection (CBP), 202-325-1517.

**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.<sup>1</sup> 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.<sup>2</sup> In that document, DHS acknowledged that notwithstanding the continuing threat to human life or national interests posed by COVID-19 –

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<sup>1</sup> 85 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).

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

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.<sup>3</sup> 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 for non-essential reasons.<sup>4</sup>

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”),<sup>5</sup> DHS announced that 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.<sup>6</sup> DHS also announced that beginning in January 2022, inbound noncitizen

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<sup>3</sup> 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.”).

<sup>4</sup> See 86 FR 58218; 86 FR 58216.

<sup>5</sup> 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), 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://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](https://www.cdc.gov/quarantine/pdf/Amended-Global-Testing-Order_12-02-2021-p.pdf) (Dec. 2, 2021).

<sup>6</sup> See, e.g., 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 Nov. 23, 2021). See also 86 FR 72842 (Dec. 23, 2021) (describing the announcement with respect to Canada); 86 FR 72843 (Dec. 23, 2021) (describing the announcement with respect to Mexico).

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.<sup>7</sup>

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 memorandum warned 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.”<sup>8</sup> 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.<sup>9</sup> 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

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<sup>7</sup> 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 Nov. 23, 2021); *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 Nov. 23, 2021).

<sup>8</sup> See Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID-19 Vaccination at U.S. Land Borders (Dec. 14, 2021).

<sup>9</sup> 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.

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.<sup>10</sup> In the absence of required pre-entry COVID-19 testing, CDC described a proof of COVID-19 vaccination requirement as “essential as a matter of public health.”<sup>11</sup>

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 new 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

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<sup>10</sup> CBP assesses that a testing option is not operationally feasible given the significant number of land border crossers that go back on 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.

<sup>11</sup> See Memorandum from CDC to CBP (Dec. 14, 2021).

vaccination” and specifically recommended against exceptions for specific worker categories as a public health matter.<sup>12</sup>

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<sup>13</sup> – 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.<sup>14</sup> In Mexico, 55.9 percent of the population is fully vaccinated against COVID-19,<sup>15</sup> while as of October 2021, 72 percent of those living in border regions were fully

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<sup>12</sup> Memorandum from CDC to CBP re Public Health Recommendation for Proof of COVID-19 Vaccination at U.S. Land Borders—Addendum (Jan. 18, 2022).

<sup>13</sup> See Memorandum from CDC to CBP (Dec. 14, 2021).

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

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

vaccinated against COVID-19.<sup>16</sup> 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 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.<sup>17</sup>

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.<sup>18</sup> 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.<sup>19</sup> 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.<sup>20</sup> DHS carefully considered alternative approaches, including exceptions for these

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<sup>16</sup> Government of Mexico briefing for the NSC-led Mexico - U.S. International Travel Working Group, October 2021.

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

<sup>18</sup> Variant Proportions, Centers for Disease Control and Prevention, <https://covid.cdc.gov/covid-data-tracker/#variant-proportions> (week ending Jan. 8, 2022).

<sup>19</sup> COVID Data Tracker Weekly Review: Interpretive Summary for the Centers for Disease Control and Prevention, *COVID Data Tracker Weekly Review: Interpretive Summary for January 7, 2022*, <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html> (Jan. 7, 2022).

<sup>20</sup> 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.

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.<sup>21</sup>

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

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<sup>21</sup> Public Health Agency of Canada website *Requirements for Truckers entering Canada in effect as of January 15, 2022*, <https://www.Canada.ca/en/public-health/news/2022/01/requirements-for-truckers-entering-canada-in-effect-as-of-january-15-2022.html>; Public Health Agency of Canada website: *Minimizing the Risk of Exposure to COVID-19 in Canada Order (Prohibition of Entry into Canada from the United States)*, Section 10 of order is the provision that went into place on 15 January 2022, <https://orders-in-council.canada.ca/attachment.php?attach=41322&lang=en>



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.<sup>22</sup> 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.<sup>23</sup> 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.<sup>24</sup>

DHS acknowledges that some persons engaged in essential travel, in particular long-haul

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<sup>22</sup> See, e.g., David Koenig, Associated Press, American, Alaska, JetBlue join growing list of airlines requiring employees to be vaccinated against COVID-19, <https://www.usatoday.com/story/travel/airline-news/2021/10/02/american-joins-list-airlines-requiring-employee-vaccinations/5968626001/> (Oct. 2, 2021) (“United Airlines took an early and tough stance to require vaccination. United said Thursday that 320 of its 67,000 U.S. employees faced termination for not getting vaccinated or seeking a medical or religious exemption by a deadline earlier in the week.”); Novant Health, Novant Health update on mandatory COVID-19 vaccination program for employees, <https://www.novanthealth.org/home/about-us/newsroom/press-releases/newsid33987/2576/novant-health-update-on-mandatory-covid-19-vaccination-program-for-employees.aspx> (Sept. 21, 2021) (“Today, 98.6% of more than 35,000 team members are compliant with Novant Health’s mandatory COVID-19 vaccination program.”); Houston Methodist, Houston Methodist Requires COVID-19 Vaccine for Credentialed Doctors, <https://www.houstonmethodist.org/leading-medicine-blog/articles/2021/jun/houston-methodist-requires-covid-19-vaccine-for-credentialed-doctors/> (June 8, 2021) (“As of June 1, more than 99% 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/tyson-covid-vaccine/index.html> (“Tyson’s President and CEO Donnie King said in a blog post ‘we couldn’t be happier to say that, as of 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 Dave Muoio, 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).

<sup>23</sup> See White House Report: Vaccination Requirements Are Helping Vaccinate More People, Protect Americans from COVID-19, and Strengthen the Economy (Oct. 7, 2021).

<sup>24</sup> On October 30, 2021, the Government of Canada imposed a separate domestic mandate on federally regulated railways, and their rail crew and track employees, along with air and marine operators. Each organization is required to have a process for employee attestation of their vaccination status; provide a description of consequences for employees who do not comply or who falsify information; and meet standards consistent with the approach taken by the Government of Canada for the Core Public Administration. See Transport Canada, *Mandatory COVID-19 vaccination requirements for federally regulated transportation employees and travellers*, <https://www.canada.ca/en/transport-canada/news/2021/10/mandatory-covid-19-vaccination-requirements-for-federally-regulated-transportation-employees-and-travellers.html> (updated Oct. 30, 2021).

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 the Presidential Proclamation 10294 of October 25, 2021<sup>25</sup> (“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 Pandemic<sup>26</sup> and Technical Instructions<sup>27</sup> (“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 (“SAFO”) issued by the Federal Aviation Administration.<sup>28</sup> 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.<sup>29</sup> 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

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<sup>25</sup> 86 FR 59603 (Oct. 28, 2021).

<sup>26</sup> 86 FR 61224 (Nov. 5, 2021).

<sup>27</sup> CDC, Technical Instructions for Implementing Presidential Proclamation Advancing the Safe Resumption of Global Travel During the COVID-19 Pandemic and CDC’s Order, <https://www.cdc.gov/quarantine/order-safe-travel/technical-instructions.html> (last reviewed Nov. 30, 2021).

<sup>28</sup> 86 FR 61224 (Nov. 5, 2021) (citing FAA, SAFO 20009, COVID-19: Updated Interim Occupational Health and Safety Guidance for Air Carriers and Crews, [https://www.faa.gov/other\\_visit/aviation\\_industry/airline\\_operators/airline\\_safety/safo/all\\_safos/media/2020/SAFO\\_20009.pdf](https://www.faa.gov/other_visit/aviation_industry/airline_operators/airline_safety/safo/all_safos/media/2020/SAFO_20009.pdf) (last updated May 25, 2021)).

<sup>29</sup> Information on maritime COVID-19 guidance may be found at: <https://www.cdc.gov/quarantine/index.html>.

have access to shipboard quarantine options as needed.<sup>30</sup> 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 Canada, including the associated burden on already stressed healthcare resources, poses an ongoing “specific threat to human life or national interests.” Accordingly, and consistent with

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<sup>30</sup> See CDC, *Requirement for Proof of COVID-19 Vaccination for Air Passengers*, <https://www.cdc.gov/coronavirus/2019-ncov/travelers/proof-of-vaccination.html> (last updated Dec. 21, 2021); see also, e.g., CDC, *Technical Instructions for CDC’s COVID-19 Program for Cruise Ships Operating in U.S. Waters*, <https://www.cdc.gov/quarantine/cruise/management/technical-instructions-for-cruise-ships.html> (updated Jan. 14, 2022) and *Interim Guidance for Ships on Managing Suspected or Confirmed Cases of Coronavirus Disease 2019 (COVID-19)*, <https://www.cdc.gov/quarantine/maritime/recommendations-for-ships.html> (Updated Nov. 5, 2021). As noted above, DHS considered but rejected a testing requirement due to operational considerations. DHS notes that sea crew members are not excepted under this Notification.

the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),<sup>31</sup> I have determined, in consultation with interagency partners, that land POEs along the United States-Canada border will continue to suspend normal operations and 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, as those terms are defined under the Presidential Proclamation and CDC Order. This action does not apply to U.S. citizens, U.S. nationals, lawful permanent residents of the United States, or American Indians who have a right by statute to pass the borders of, or enter into, the United States. In addition, I hereby authorize exceptions to these restrictions for the following categories of noncitizen non-LPRs:<sup>32</sup>

- certain categories of persons on diplomatic or official foreign government travel as specified in the CDC Order;
- persons under 18 years of age;
- certain participants in certain COVID-19 vaccine trials as specified in the CDC Order;
- persons with medical contraindications to receiving a COVID-19 vaccine as specified in the CDC Order;

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<sup>31</sup> 19 U.S.C. 1318(b)(1)(C) provides that “[n]otwithstanding 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(2), 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* Treas. 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 “[n]otwithstanding 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 office or 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).

<sup>32</sup> 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.

- persons issued a humanitarian or emergency exception by the Secretary of Homeland Security;
- persons with valid nonimmigrant visas (excluding B-1 [business] or B-2 [tourism] visas) who are citizens of a country with limited COVID-19 vaccine availability, as specified in the CDC Order;
- members of the U.S. Armed Forces or their spouses or children (under 18 years of age) as specified in the CDC Order; and,
- persons whose entry would be in the U.S. national interest, as determined by the Secretary of Homeland Security.

In administering such exceptions, DHS will not require the Covered Individual Attestation currently in use by CDC for noncitizens who are nonimmigrants seeking to enter the United States by air travel, or similar form, but DHS may, in its discretion, require any person invoking an exception to provide proof of eligibility consistent with documentation requirements in CDC's Technical Instructions.<sup>33</sup>

This Notification does not apply to air or sea travel between the United States and Canada. This Notification does apply to passenger/freight rail, passenger ferry travel, and pleasure boat travel between the United States and Canada. 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.

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<sup>33</sup> CDC, Technical Instructions for Implementing Presidential Proclamation Advancing the Safe Resumption of Global Travel During the COVID-19 Pandemic and CDC's Order, <https://www.cdc.gov/quarantine/order-safe-travel/technical-instructions.html> (last reviewed Nov. 30, 2021).

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.” 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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Alejandro N. Mayorkas

Secretary,

U.S. Department of Homeland Security.

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