

CLIENT ALERT

May 27, 2020

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CROSS-BORDER TRAVEL BETWEEN THE U.S. AND MEXICO/ CANADA – NON-ESSENTIAL TRAVEL RESTRICTIONS EXTENDED TO JUNE 22, 2020

by Kathleen Campbell Walker¹

On March 24, 2020, [two notices](#) (Notices) were published in the Federal Register by United States (U.S.) Customs and Border Protection (CBP) related to limitations on cross-border travel along the [northern](#)² and [southern](#)³ borders of the U.S. Both of these restrictions went into effect as 11:59 p.m. (EDT) on March 20, 2020, and remained in effect until 11:59 p.m. (EDT) on April 20, 2020. The Notices announced restrictions to “non-essential” travel between the countries (U.S. and Mexico - U.S. and Canada) and outlined what constitutes essential travel for admission to the U.S. These restrictions have now been extended twice and currently expire at 11:59 p.m. (EDT) on [June 22, 2020, unless amended or rescinded](#). The restrictions are not meant to interrupt legitimate trade between the affected nations or disrupt critical supply chains that ensure delivery of food, fuel, medicine, and other critical materials.

Below are references to the notices issued to date:

- [U.S.-Canada Border Federal Register Notice](#) (Initial 85 Fed. Reg. 16548) | [30-Day Extension Notice 1](#) at 85 FR 22352 (April 22, 2020) | [30-Day Extension Notice 2](#) at 85 Fed. Reg. 31059 (May 22, 2020)
- [U.S.-Mexico Border Federal Register Notice](#) (Initial 85 Fed. Reg. 16547) | [30-Day Extension Notice 1](#) at 85 FR 22353 (April 22, 2020) | [30-Day Extension Notice 2](#) at 85 Fed. Reg. 31057 (May 22, 2020)

WHAT MODES OF TRAVEL ARE NOT AFFECTED BY THESE NOTICES?

Canada – Air, Freight, Rail, or Sea Travel between the U.S. and Canada.
Mexico – Air, Freight, Rail, or Sea Travel between the U.S. and Mexico.

WHAT MODES OF TRAVEL ARE AFFECTED BY THESE NOTICES?

Canada and Mexico – Land, passenger rail, passenger ferry travel, and pleasure boat travel.

WHAT TRAVEL IS RESTRICTED BY THESE NOTICES (E.G., NON-ESSENTIAL)?

Individuals traveling for tourism (e.g. sightseeing, recreation, gambling, and attending cultural events), which is typically referred to as B-2 admissions to the U.S. Please note that B-1 business visits are not included in the non-essential category. In addition, the CBP Commissioner may on an individualized basis and for humanitarian reasons or for other purposes in the national interest, permit the processing of travelers to the U.S., who are [not engaged in essential travel](#).

WHAT TRAVEL IS ALLOWED AS “ESSENTIAL”?

For purposes of the temporary alteration in certain designated ports of entry operations authorized under 19 U.S.C. §1318(b)(1)(C) and (b)(2), travel through the land ports of entry and ferry terminals along the U.S.-Mexico or U.S.-Canadian border shall be limited to “essential travel,” which includes, but is not limited to —

- U.S. citizens and lawful permanent residents returning to the U.S.;

- Individuals traveling for medical purposes (e.g., to receive medical treatment in the U.S.);
- Individuals traveling to attend educational institutions (It is unclear if this provision applies to students studying online due to COVID-19 related practices applied by their educational institutions.);
- Individuals traveling to work in the U.S. (e.g., individuals working in the farming or agriculture industry who must travel between the U.S. and Mexico in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (e.g., government officials or emergency responders entering the U.S. to support Federal, state, local, tribal, or territorial government efforts to respond to COVID-19 or other emergencies);
- Individuals engaged in lawful cross-border trade (e.g., truck drivers supporting the movement of cargo between the U.S. and Mexico);
- Individuals engaged in official government travel or diplomatic travel;
- Members of the U.S. Armed Forces, and the spouses and children of members of the U.S. Armed Forces, returning to the U.S.; and
- Individuals engaged in military-related travel or operations.

Please also review the [earlier blog](#) on this issue by Elise Levasseur of Dickinson Wright for more background.

On March 20, 2020, the U.S. and Mexico as well as the U.S. and Canada issued [joint statements](#) regarding their joint efforts to prevent the spread of COVID-19. [Canada](#) and [Mexican](#) travel restrictions regarding non-essential travel were also extended to June 22, 2020. U.S. citizens and dual nationals living abroad are not subject to these restrictions to return to the U.S.

WHAT ABOUT NONIMMIGRANT VISA HOLDERS [E.G., L-1, TRADE NAFTA (TN), H-1B, E, ETC.] TRAVELING TO THE U.S. TO WORK?

The Canadian government was the first to clarify the application of the essential worker term to work authorized nonimmigrants. On March 20, a clarification was [posted](#) that, “Exemptions to the air travel restrictions will apply to foreign nationals who have already committed to working, studying or making Canada their home, and travel by these individuals will be considered essential travel for land border restrictions.” So far, U.S. CBP officials continue to process the admission of nonimmigrant visa holders for TN status at the northern and southern borders for Canadian citizens and for Canadian L-1 initial visa applicants at the northern border.

Processing of Mexican TN visas has basically been placed on hold due to the ongoing [suspension](#) of visa services at U.S. consular posts in Mexico, except in urgent humanitarian circumstances. In some cases, medical professionals have been able to schedule emergency appointments for immigrant and nonimmigrant visas. The U.S. Department of State

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² 85 Fed. Reg. 16548 (March 24, 2020)

³ 85 Fed. Reg. 16547 (March 24, 2020)

[has encouraged](#) nonimmigrant and immigrant medical professionals to review the website of their nearest U.S. embassy or consulate for procedures to request emergency visa appointments. Please note that the Department of State has indicated that those nonimmigrant visa holders in the U.S., who need to extend or adjust their visa status, must apply in the U.S. with U.S. Citizenship and Immigration Services (USCIS).

Please remember that we expect a report to be provided to President Trump soon (May 23) regarding potential restrictions to be placed on nonimmigrant visas based on his prior immigrant visa suspension proclamation outlined [here](#).

It is important to remember that a nonimmigrant visa issued by the Department of State does not determine how long the nonimmigrant visa holder may remain legally in the U.S. The period of admission/authorized stay is set by the I-94 admission record, which may be found after admission at the CBP [website](#), on a separate I-94 paper card issued at a land border port of entry, on an admission stamp in a passport from a CBP officer, or at the bottom of an I-797 approval notice from USCIS depending on timing and the application process used.

WHAT ABOUT POTENTIAL QUARANTINES AFTER ADMISSION TO THE U.S., CANADA, OR MEXICO?

In the U.S., quarantine requirements depend on state and local policies. For those applicable in Canada or Mexico, the Department of State and its embassy websites provide useful resources. CBP, at the link below, outlines travel restrictions and updates to COVID-19 related policies and actions. In addition, The New York Times provides a [helpful list](#) of state shelter in place and reopening orders, while the National Conference of State Legislatures provides [COVID-19 related policies and legislation](#) state-by-state.

Here are some links for reference:

- <https://travel.state.gov/content/travel/en/traveladvisories/ea/covid-19-information.html>
- <https://www.cbp.gov/newsroom/coronavirus>
- <https://mx.usembassy.gov/u-s-citizens-in-mexico-covid-19-information/>
- <https://ca.usembassy.gov/>

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