



# GMS Flash Alert

Immigration Edition

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## United States -Lifting Travel Restrictions at Land Borders on November 8, 2021

Beginning on November 8, 2021, foreign travelers who are fully vaccinated against COVID-19 and are able to show appropriate documentation, will be permitted to enter the United States for “non-essential” activities via a land border or ferry service shared with Canada or Mexico.<sup>1</sup> The existing ban on non-essential travel, which includes visits for tourism and personal purposes, will be superseded by a requirement that the entering foreign national be fully vaccinated against COVID-19.

Those not fully vaccinated for COVID-19 will not be allowed to travel for non-essential purposes from Canada and Mexico into the United States via land or ferry ports of entry. This will initiate the first of a two-phase plan announced by the Department of Homeland Security (DHS) that will ultimately see the fully vaccination requirement broadened to include foreign nationals crossing via a land border or ferry service for *either* “essential” or “non-essential” purposes in early January 2022.

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### WHY THIS MATTERS

Throughout the pandemic, foreign nationals travelling by land or ferry to the United States for work and select business purposes were permitted to do so as their travel was deemed “essential.” As of January 2022, individuals who wish to continue travelling on their B, H, L, O, and TN visas, as well as under the Visa Waiver Program, must demonstrate evidence of full vaccination against COVID-19. This allows ample time for business travelers not fully vaccinated to do so and avoid delays and barriers to travel in the new year. This new travel system will create consistent, stringent protocols for all foreign nationals traveling to the United States, whether by air, land or ferry.

Until the new policy implementation date in November, employees travelling to the United States via a land border or ferry service must remain prepared to explain why their employment or business activities in the United States are essential. CBP officers have broad discretion to inspect those seeking entry and travelers should continue to expect detailed questioning on their intended activities in the United States. Travelers should also ensure that they have the appropriate documentation evidencing their exemption from the border restrictions. Thus, it remains vital to limit travel for business purposes to the United States until the restrictions are lifted, in order to avoid complications at the border and a possible refusal of entry. If business travel is unavoidable, travelers should confirm specific requirements at their particular port of entry.

## The Existing Travel Restrictions and Exemptions

“Non-essential” travel includes travel that is for tourism and recreational purposes. Restrictions on non-essential travel at land borders and on ferry services between the U.S., Canada, and Mexico have been continuously extended in the 19 months since they were originally implemented on March 21, 2020, initially for a 30-day period. These restrictions will continue to remain in place past the October 21, 2021 extension date, until the effective date of the new policy on November 8, 2021.

What constitutes “essential” travel is a determination made by the DHS and enforced by Customs Border Patrol (CBP) officers on a case-by-case basis. On the whole, such essential travel relates to furthering economic stability and social order between the three nations. Such travel has and will continue to be unrestricted for the duration of the pandemic.

Specifically, the following non-exhaustive list indicates those individuals who continue to be exempt from the border restrictions on U.S. entry by land or ferry:

- U.S. citizens and lawful permanent residents returning to the United States;
- Individuals traveling for medical purposes (e.g., to receive medical treatment in the United States);
- Individuals in the Visa Waiver Program who are not otherwise subject to travel restrictions;
- Individuals traveling to attend educational institutions;
- Individuals traveling to work in the United States who hold valid travel documents (e.g., individuals working in the farming or agriculture industry who must travel between the United States and Canada in furtherance of such work);
- Individuals traveling for emergency response and public health purposes (e.g., government officials or emergency responders entering the United States 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 United States and Canada);
- 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 United States; and
- Individuals engaged in military-related travel or operations.

Despite such restrictions on non-essential car, train, and ferry travel, air travel to the United States was – and continues to remain – unrestricted with respect to its purpose. As has been the situation throughout the course of this pandemic, individuals travelling by air should continue to anticipate additional scrutiny from CBP officers and should be prepared to describe the critical nature of their activities in the United States with relevant documentation.<sup>2</sup> As a reminder, air travelers will be permitted to board their flight only if they present the results of a negative COVID-19 test (i.e. a nucleic acid amplification test or an antigen test) taken within 72 hours of departure, or can provide documentation confirming recovery from COVID-19 and clearance for travel. See, [GMS Flash Alert 2021-026](#) (January 15, 2021).

## The New Land Border Entry Process

Commencing on November 8, 2021, and coinciding with the approaching elimination of regional travel bans on certain foreign nationals entering by air, fully vaccinated foreign nationals entering the United States from Canada or Mexico via a land border or ferry service for non-essential travel will be permitted to do so. In January 2022, *all* foreign nationals entering the United States via a land border or ferry service from Canada or Mexico, regardless of “essential” or “non-

essential” purpose, will need to be fully vaccinated to do so. For prior coverage, see [GMS Flash Alert 2021-246](#) (28 September 2021).

Unlike the air travel requirement of a negative molecular COVID-19 test result taken within 72 hours prior to departing on a flight bound for the United States, travelers crossing via a land border or ferry service will not have to show the results of such a test.<sup>3</sup> All that will be required is evidence of having received two doses of a vaccine recognized by the U.S. Food and Drug Administration (FDA). This includes vaccines developed by AstraZeneca, COVishield, Sinovac and Sinopharm, as well as mRNA vaccines produced by Pfizer-BioNtech, Moderna, and Johnson & Johnson.<sup>4</sup> For those seeking to re-enter Canada via the land border or by ferry service between the United States, *all* travelers must continue to show a negative molecular COVID-19 test taken within 72 hours of entry into Canada. Information regarding the test and proof of vaccination can be uploaded into the ArriveCAN system.

Individuals travelling across the Canadian and Mexican land borders, as well as all foreign nationals travelling by air into the United States who are “fully vaccinated” with mixed doses, (such as one dose of each of the mRNA vaccines (Pfizer and Moderna), or one dose of each of an mRNA vaccine and the AstraZeneca vaccine), will now be permitted entry. The Center for Disease Control and Prevention (CDC) has expanded its definition of “fully vaccinated” to include combinations of FDA and World Health Organization (WHO) approved vaccines.<sup>5</sup> As a reminder, individuals are considered “fully vaccinated” by the CDC fourteen (14) days after receipt of the last dose of any combination of two doses of an FDA approved/authorized COVID-19 two-dose series or fourteen (14) days after receipt of the single-dose Johnson & Johnson’s vaccine.

Further details from the DHS as to the specific date in January that the second phase of this policy will come into effect, exceptions to the rule, and the necessary documentation for demonstrating proof of vaccination are expected soon.

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## KPMG NOTE

KPMG Law LLP in Canada is tracking this matter closely. We will endeavor to keep readers of GMS Flash Alert posted on future important developments when they occur.

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## FOOTNOTES:

1 See [Secretary Mayorkas to Allow Fully Vaccinated Travelers from Canada and Mexico to Enter U.S. at Land Borders and Ferry Crossings | Homeland Security \(dhs.gov\)](#).

2 For prior coverage of the U.S., Canada, and Mexico border restrictions, read the following issues of *GMS Flash Alert*: [2021-219](#) (August 23, 2021); [2021-187](#) (June 29, 2021); [2021-136](#) (May 7, 2021); [2021-097](#) (March 30, 2021); [2021-062](#) (February 24, 2021); [2021-031](#) (January 19, 2021); [2020-512](#) (December 23, 2020); [2020-475](#) (November 30, 2020); [2020-407](#) (September 23, 2020); [2020-366](#) (August 21, 2020); [2020-286](#) (June 17, 2020); [2020-240](#) (May 21, 2020); [2020-194](#) (April 23, 2020); and [2020-110](#) (March 25, 2020).

3 For further information on travel details with respect to the new policy, see (1) [Canada-U.S. land borders will open in November. Here’s what we know - National | Globalnews.ca](#).

4 For more information on U.S.-accepted vaccines, see [id.](#)

5 For more information on the CDC’s implementation of the new policy, see <https://www.cnn.com/travel/article/united-states-international-travel-rules-what-to-know/index.html>.

## Contact us

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