

# COVID-19 vaccination requirement to replace existing air travel restrictions in the United States

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On September 20, 2021, the White House announced its plans to ease its existing COVID-19 air travel ban, which currently applies to air travelers entering the United States, at least for fully vaccinated travelers. These changes are expected to come into effect in early November 2021.

The United States has maintained a COVID-19 air travel ban since February 2, 2020, when former President Trump signed the first Presidential Proclamation, which suspended the entry of foreign nationals (with limited exceptions) who were physically present within the People's Republic of China during the 14-day period preceding their travel to the United States. Since then, subsequent Presidential Proclamations have been issued, extending the COVID-19 air travel bans to additional countries.

At the present time, the COVID-19 air travel ban applies to all foreign nationals (with limited exceptions) who have been physically present in any of the following countries/areas during the 14-day period preceding their attempted entry to the United States:

- The People's Republic of China (excluding the Special Administrative Regions of Hong Kong and Macau);
- The Islamic Republic of Iran;
- The European Schengen Area (Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, Switzerland, Monaco, San Marino, Vatican City);
- The United Kingdom (England, Scotland, Wales, Northern Ireland);
- The Republic of Ireland;
- The Federative Republic of Brazil;
- The Republic of South Africa; and
- The Republic of India.

The COVID-19 air travel ban does not apply to United States citizens or lawful permanent residents of the United States. A very limited number of exemptions are also potentially available to foreign nationals, including a National Interest Exemption granted by the Secretary of State or the Secretary of Homeland Security.

The White House will soon be replacing the above COVID-19 air travel ban with a requirement that all adult foreign nationals travelling to the United States be fully vaccinated (Travel Vaccination Requirement). Beginning in early November 2021, virtually all foreign nationals travelling to the US will need to be fully vaccinated and will need to show proof of vaccination prior to boarding their flight to the United States.

Although the Travel Vaccination Requirements will not apply to United States citizens and lawful permanent residents of the United States, if they are unvaccinated, they will be required to provide the following prior to boarding their flight to the United States:

- Proof of a negative COVID-19 test result taken within one day of their departure; and
- Proof that they have purchased a COVID-19 viral test to be taken after arrival.

The Travel Vaccination Requirement is likely to be perceived as a relaxation of COVID-19 air travel restrictions, at least by individuals who are currently subject to the COVID-19 air travel ban. However, since Canada is not one of the countries subject to the current COVID-19 air travel ban, Canadian citizens, Canadian permanent residents, and other foreign nationals residing in Canada will almost certainly perceive the Travel Vaccination Requirement as a tightening of these restrictions.

## Acceptable vaccines

The White House has not confirmed which vaccines will be acceptable for the purposes of the Travel Vaccination Requirement. It has said only that it will look to the Centers for Disease Control and Prevention (CDC) to guide which vaccines will be accepted, as part of their standard role in determining who is considered fully vaccinated.

The CDC website currently states that only the Pfizer-BioNTech, Moderna, and Janssen (Johnson & Johnson) vaccines are approved and authorized *in the United States* to prevent COVID-19. However, the CDC website also confirms that people who were vaccinated *outside the United States* with a currently COVID-19 vaccine approved or authorized by the Food and Drug Administration (FDA) or a World Health Organization (WHO)-emergency use listed COVID-19 vaccine, and who have received all of the recommended doses, do not need to take any additional doses. It also confirms that only people who have completed a primary vaccine series of an FDA-approved, FDA-authorized, or WHO-listed COVID-19 vaccine are considered fully vaccinated for the purpose of public health guidance.

As of September 29, 2021, the WHO has listed the following COVID-19 vaccines for emergency use:

- Pfizer-BioNTech COVID-19 vaccines (e.g., COMIRNATY, Tozinameran);
- AstraZeneca-Oxford COVID-19 vaccines (e.g., Covishield, Vaxzevria);
- Janssen (Johnson & Johnson) COVID-19 vaccine;
- Moderna COVID-19 vaccine;
- Sinopharm BIBP COVID-19 vaccine; and
- Sinovac-CoronaVac COVID-19 vaccine.

As a result, it is expected that foreign nationals who have been fully vaccinated using any of the above COVID-19 vaccines should be able to satisfy the proposed vaccination requirement. However, the formal guidance relating to the Travel Vaccination Requirement will need to be reviewed (once published) before this can be confirmed.

## Mixing and matching of acceptable vaccines

In June 2021, the Canadian National Advisory Committee on Immunization (NACI) updated its guidance, recommending the mixing and matching of mRNA vaccines (Pfizer-BioNTech and Moderna) when the same mRNA

COVID-19 vaccine is not readily available or is unknown. It also recommended that an mRNA COVID-19 vaccine could be offered for a subsequent dose after an initial dose of the AstraZeneca vaccine.

Many Canadians followed these recommendations and obtained mixed doses of COVID-19 vaccines. The recent White House announcement regarding the Travel Vaccination Requirement has now raised concerns regarding whether individuals who received these mixed doses will be eligible to enter the United States once the Travel Vaccination Requirement has become effective.

The CDC guidance on the interchangeability of COVID-19 vaccines clearly states that these vaccines are not interchangeable. However, it recognizes the following limited exceptions:

- The CDC guidance permits the mixing and matching of the Pfizer-BioNTech and Moderna vaccines (both of which are mRNA vaccines) in “exceptional situations” where the mRNA vaccine product given for the first dose cannot be determined or is no longer available. There must be a minimum interval of 28 days between doses. Despite the reference to “exceptional situations,” Canadians who received mixed doses of the Pfizer-BioNTech and Moderna vaccines may be considered fully vaccinated for the purposes of the Travel Vaccination Restrictions. However, the formal guidance relating to the Travel Vaccination Requirement will need to be reviewed (once published) before this can be confirmed.
- The CDC guidance also permits mixing and matching of an mRNA vaccine (Pfizer-BioNTech and Moderna) with the Janssen (Johnson & Johnson) vaccine but only in exceptional situations where a patient received the first dose of an mRNA COVID-19 vaccine but is unable to complete the series with either the same or different mRNA COVID-19 vaccine (e.g., due to contraindication). In such cases, a single dose of Janssen (Johnson & Johnson) vaccine may be administered after a minimum interval of 28 days from the mRNA COVID-19 vaccine dose.

The CDC guidance does not recognize the mixing and matching of the AstraZeneca vaccine with either the Pfizer-BioNTech and Moderna vaccines. As a result, many Canadians who received a first dose of the AstraZeneca vaccine followed by either the Pfizer-BioNTech or the Moderna vaccine may be unable to travel to the United States once the Travel Vaccination Requirement becomes effective.

## Evidence of fully vaccinated status

The White House also did not confirm what evidence of vaccination status it would accept. It said only that the type of proof required will be worked out as a detailed implementation plan is developed in the coming weeks.

## Limited exceptions to the Travel Vaccination Requirement

In its announcement, the White House stated that very limited exceptions to the Travel Vaccination Requirement will be available:

- It stated that an exception will be available for children (presumably those who are under 12 years of age and who are not eligible for vaccination).
- It stated that an exception would be available for COVID-19 vaccine trial participants. This presumably refers to individuals in the United States who have completed a COVID-19 vaccination series as part of a clinical trial in the United States, involving a COVID-19 vaccine that is currently neither approved nor authorized by the FDA. The CDC already recognizes this exception.

- It stated that a humanitarian exception would be available for those traveling for an important reason *and* who lack access to vaccination in a timely manner. It is not yet clear what reason will qualify as sufficiently “important” to justify a humanitarian exception. However, the White House did clarify that those who qualify will need to consent to receiving a COVID-19 vaccine upon their arrival in the United States.

## The Travel Vaccination Requirement at land ports of entry

The Travel Vaccination Requirement is not expected to extend to the land ports of entry along the US-Canada Border or the US-Mexico Border. The COVID-19 travel restrictions currently in effect at the land ports of entry are expected to continue for the foreseeable future.

The current COVID-19 air travel ban, which will be replaced by the Travel Vaccination Requirement in early November 2021, was established by means of several Presidential Proclamations. The Travel Vaccination Requirement will almost certainly be established by means of a Presidential Proclamation as well.

The land border restrictions, which impose an essential travel requirement along the U.S.-Canada border and U.S.-Mexico border, were established by means of two United States Customs and Border Protection (USCBP) Notifications, which were published in the Federal Register. USCBP has recently extended these land border restrictions, along the US-Canada Border and US-Mexico Border, at least until October 21, 2021, and is expected to continue extending it each month for the foreseeable future.

At some point, USCBP may decide to implement an exemption to the essential travel requirement, for foreign nationals who can establish that they are fully vaccinated. However, it has not made any announcements suggesting an intention to do so at this time.

## Existing pre-departure COVID-19 test requirement to apply to fully vaccinated travellers

As previously discussed, the United States imposed a pre-departure COVID-19 test requirement in January 2021. Since that date, all air passengers travelling to the United States from a foreign country have been required to present either:

- A negative test result for a qualifying COVID-19 test conducted on a specimen collected within the three calendar days preceding the flight’s departure from a foreign country; or
- A positive COVID-19 test result within 90 days of the flight’s departure from a foreign country and a letter from a licensed health care provider or public health official stating that the passenger has been cleared for travel.

The current pre-departure COVID-19 test requirement will continue to apply, even in the case of fully vaccinated travellers.

## Other mitigation policies

The White House also announced that it intended to implement the following additional policies, which it expected to be effective by early November 2021:

- It has extended its mask mandate through January 18, 2022;
- The CDC will be expanding pre-departure and post-arrival testing requirements; and
- The CDC will be issuing a Contact Tracing Order, which will require airlines to collect the contact information of every passenger coming to the United States, to provide such information to the CDC upon request, and to contact travellers who have been exposed to COVID-19 variants and/or other pathogens.

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