

# U.S. Customs and Border Protection



## DEPARTMENT OF THE TREASURY

**19 CFR Part 24**

**CBP Dec. 20-05**

**RIN 1515-AE54**

### **TEMPORARY POSTPONEMENT OF THE TIME TO DEPOSIT CERTAIN ESTIMATED DUTIES, TAXES, AND FEES DURING THE NATIONAL EMERGENCY CONCERNING THE NOVEL CORONAVIRUS DISEASE (COVID-19) OUTBREAK**

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

**ACTION:** Temporary final rule.

**SUMMARY:** In light of the President’s Proclamation Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) (Presidential Proclamation 9994) under the National Emergencies Act on March 13, 2020, and the President’s Executive Order entitled “National Emergency Authority to Temporarily Extend Deadlines for Certain Estimated Payments” authorizing the Secretary of the Treasury to exercise the authority under section 318(a) of the Tariff Act of 1930, issued on April 18, 2020, the Secretary of the Treasury, in consultation with the designee of the Secretary of Homeland Security (U.S. Customs and Border Protection (CBP)), is amending the CBP regulations to temporarily postpone the deadline for importers of record with a significant financial hardship to deposit certain estimated duties, taxes, and fees that they would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, for merchandise entered in March or April 2020, for a period of 90 days from the date that the deposit would otherwise have been due but for this emergency action. This temporary postponement does not permit return of any deposits of estimated duties, taxes, and/or fees that have been paid. This temporary postponement also does not apply to entries, or withdrawals from

warehouse, subject to certain specified trade remedies, and any entry summary that includes merchandise subject to those trade remedies is not eligible under this rule.

**DATES:** Effective date: April 20, 2020. Comments must be received by May 20, 2020.

**ADDRESSES:** You may submit comments, identified by *docket number* USCBP–2020–0017, by *one* of the following methods:

- *Federal eRulemaking Portal* at <http://www.regulations.gov>. Follow the instructions for submitting comments via Docket No. USCBP–2020–0017.
- *Mail:* Trade and Commercial Regulations Branch, Regulations and Rulings, Office of Trade, U.S. Customs and Border Protection, 90 K Street NE, 10th Floor, Washington, DC 20229–1177.

*Instructions:* All submissions received must include the agency name and docket number for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided. For detailed instructions on submitting comments and additional information on the rulemaking process, see the Public Participation heading of the **SUPPLEMENTARY INFORMATION** section of this document.

*Docket:* For access to the docket to read background documents or comments received, go to <http://www.regulations.gov>. Due to the relevant COVID–19-related restrictions, CBP has temporarily suspended its on-site public inspection of the public comments.

**FOR FURTHER INFORMATION CONTACT:** Randy Mitchell, Director, Commercial Operations Revenue Entry Division, Office of Trade, U.S. Customs and Border Protection, 202–325–6532 or by email at [otentrysummary@cbp.dhs.gov](mailto:otentrysummary@cbp.dhs.gov).

## **SUPPLEMENTARY INFORMATION:**

### **I. Public Participation**

Interested persons are invited to participate in this rulemaking by submitting written data, views, or arguments on all aspects of this temporary final rule. See **ADDRESSES** above for information on how to submit comments. CBP also invites comments that relate to the economic, environmental, or federalism effects that might result from this regulatory change. Comments that will provide the most assistance to CBP will reference a specific portion of the rule, explain the reason for any recommended change, and include data, information, or authority that support such recommended change.

## II. Background

On March 13, 2020, the President issued Proclamation 9994, Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID–19), under the National Emergencies Act (50 U.S.C. 1601 *et seq.*) and found and proclaimed that the COVID–19 outbreak in the United States constitutes a national emergency, beginning March 1, 2020. On April 18, 2020, the President issued the Executive Order entitled “National Emergency Authority to Temporarily Extend Deadlines for Certain Estimated Payments” (hereinafter “Postponement of Deposit E.O.”) authorizing the Secretary of the Treasury to respond to the national emergency declared by Presidential Proclamation 9994, pursuant to the authority in section 318(a) of the Tariff Act of 1930 (19 U.S.C. 1318(a)). Upon consultation by the Secretary of the Treasury with the designee of the Secretary of Homeland Security (U.S. Customs and Border Protection (CBP)), and for the reasons set forth below, CBP is amending its regulations to respond to the ongoing national emergency.

Due to the COVID–19 pandemic, local, state and national restrictions have forced the closure of offices of the importing community and those businesses have limited their operations and procedures. Many importers of record will be receiving diminished or no revenue during this time while still incurring costs, including the duties, taxes, and fees associated with imported merchandise for their clients and supply chains. Aggravating matters, many major retail chains and other businesses are closing for business—either voluntarily in response to the President’s call or following state or local government requirements.

As a result, many importers of record are undergoing significant financial hardship with operations fully or partially suspended during March or April 2020 due to orders from competent governmental authorities imposing limits on commerce, travel, or group meetings because of COVID–19. Many importers of record are also having difficulty authorizing payments for duties, taxes, and fees on imported merchandise. Employees are having difficulty getting to work or are having technical issues with working remotely, making it difficult to contact the individuals responsible for the release of funds, which is leading to delays in payments of duties, taxes, and fees.

Under 19 U.S.C. 1318(a), whenever the President shall by proclamation declare an emergency to exist by reason of a state of war, or otherwise, he may authorize the Secretary of the Treasury to extend during the continuance of such emergency the time prescribed for the performance of any act. To address the specific circumstances created by the COVID–19 pandemic, and without creating, for the avoidance

of doubt, a binding precedent for future exercises of the authority granted by 19 U.S.C. 1318(a), the Secretary of the Treasury, in consultation with the designee of the Secretary of Homeland Security (U.S. Customs and Border Protection (CBP)), under 19 U.S.C. 1318(a) and as authorized by the Postponement of Deposit E.O., is amending the CBP regulations by adding a new section 24.1a to title 19 of the Code of Federal Regulations (19 CFR 24.1a) to temporarily postpone the deadline for importers of record to deposit certain estimated duties, taxes, and fees that they would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, for merchandise entered in March or April 2020, for a period of 90 days from the date that the deposit would otherwise have been due but for this emergency action. In addition, no interest that would otherwise accrue upon such estimated duties, taxes, and fees will accrue during the 90-day postponement period.

This emergency action is being taken in response to the extraordinary challenges facing U.S. individuals and businesses during the COVID-19 national emergency (which significantly affects the trade community), and is consistent with the Secretary of the Treasury's decision to postpone due dates for Federal income tax payments under section 7508A(a) of the Internal Revenue Code (available at <https://www.irs.gov/coronavirus>).

This temporary postponement is limited. This temporary postponement does not permit return of any deposits of estimated duties, taxes, and/or fees that have been paid. This temporary postponement also does not apply to any entry, or withdrawal from warehouse, for consumption, or any deposit of estimated duties, taxes, or fees for the entry, or withdrawal from warehouse, for consumption, where the entry summary includes any merchandise subject to one or more of the following: Antidumping duties (assessed pursuant to 19 U.S.C. 1673 *et seq.*), countervailing duties (assessed pursuant to 19 U.S.C. 1671 *et seq.*), duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), duties assessed pursuant to Section 201 of the Trade Act of 1974 (19 U.S.C. 2251 *et seq.*), and duties assessed pursuant to Section 301 of the Trade Act of 1974 (19 U.S.C. 2411 *et seq.*). Accordingly, CBP anticipates that importers will file separate entries when a shipment contains both merchandise that is eligible for temporary postponement and merchandise that is ineligible (because of the above-specified trade remedies).

To qualify for this temporary postponement, an importer must demonstrate a significant financial hardship. An eligible importer's operation must be fully or partially suspended during March or April 2020 due to orders from a competent governmental authority limiting

commerce, travel, or group meetings because of COVID–19, and as a result of such suspension, the gross receipts of such importer for March 13–31, 2020 or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019. An eligible importer need not file additional documentation with CBP to be eligible for this relief but must maintain documentation as part of its books and records establishing that it meets the requirements for relief.

This temporary postponement does not apply to deadlines for the payment of other debts to CBP, including but not limited to deadlines for the payment of bills for duties, taxes, fees, and interest determined to be due upon liquidation or reliquidation, deadlines for the payment of fees authorized pursuant to 19 U.S.C. 58c (except for merchandise processing fees and dutiable mail fees), or deadlines for the payment of any penalty or liquidated damages due to CBP.

CBP notes that for some types of entries, the time of entry is contingent (in part) upon the deposit of estimated duties, taxes, and fees. See, *e.g.*, 19 CFR 141.68(b). To ensure clarity in the application of the temporary postponement vis-a'-vis the time of entry, this emergency action includes a waiver of the regulatory requirement to deposit estimated duties, taxes, and fees for the purpose of establishing the time of entry in those instances where it would otherwise be required under 19 CFR 141.68. The time of entry can thus be established in the absence of the deposit of estimated duties, taxes, and fees postponed in accordance with this emergency action.

### **III. Statutory and Regulatory Requirements**

#### *A. Inapplicability of Notice and Delayed Effective Date*

The Administrative Procedure Act (APA) requirements in 5 U.S.C. 553 govern agency rulemaking procedures. Section 553(b) of the APA generally requires notice and public comment before issuance of a final rule. In addition, section 553(d) of the APA requires that a final rule have a 30-day delayed effective date. The APA, however, provides exceptions from the prior notice and public comment requirement and the delayed effective date requirements, when an agency for good cause finds that such procedures are impracticable, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(B), (d)(3). CBP finds that prior notice and comment are impracticable and contrary to the public interest and that good cause exists to issue this rule immediately.

As noted above, the ongoing unprecedented situation related to COVID–19 is having a nationwide impact, as demonstrated by the declaration of a national emergency by the President. The postponement of the payment period for the deposit of certain estimated

duties, taxes, and fees as of the date of entry, or withdrawal from warehouse, for consumption, of merchandise imported into the United States supports American workers and businesses who are currently affected by COVID–19. To protect our public interests during the ongoing national emergency, the Secretary of the Treasury, in consultation with CBP, concludes, pursuant to 5 U.S.C. 553(b)(B), that there is good cause to dispense with prior public notice and the opportunity to comment on this rule before finalizing this rule. For the same reasons, the Secretary of the Treasury, in consultation with CBP, has determined, consistent with section 553(d)(3) of the APA, that there is good cause to make this temporary final rule effective immediately.

### *B. Executive Orders 13563, 12866 and 13771*

Executive Orders 13563 and 12866 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects, distributive impacts, and equity). Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. Executive Order 13771 directs agencies to reduce regulation and control regulatory costs and provides that “for every one new regulation issued, at least two prior regulations be identified for elimination, and that the cost of planned regulations be prudently managed and controlled through a budgeting process.”

This temporary final rule is a “significant regulatory action,” under section 3(f) of Executive Order 12866, but not an “economically significant regulatory action.” Accordingly, the Office of Management and Budget (OMB) has reviewed this regulation. This regulation has been prepared under the emergency flexibilities provided under section 6(a)(3)(D) of Executive Order 12866. The costs of this rule are considered de minimis for purposes of Executive Order 13771. See OMB’s Memorandum titled “Guidance Implementing Executive Order 13771, Titled ‘Reducing Regulation and Controlling Regulatory Costs’ ” (April 5, 2017).

### *C. Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), as amended by the Small Business Regulatory Enforcement and Fairness Act of 1996, requires an agency to prepare and make available to the public a regulatory flexibility analysis that describes the effect of a proposed

rule on small entities (*i.e.*, small businesses, small organizations, and small governmental jurisdictions) when the agency is required to publish a general notice of proposed rulemaking for a rule. Since a general notice of proposed rulemaking is not necessary for this rule, CBP is not required to prepare a regulatory flexibility analysis for this rule.

#### *D. Paperwork Reduction Act*

This temporary final rule does not impose an additional information collection burden under the Paperwork Reduction Act of 1995 (44 U.S.C. 3507) and does not involve any material change to the existing approved information collection by OMB under assigned OMB control number 1651–0078. An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number assigned by OMB.

#### *E. Signing Authority*

This document is being issued by CBP in accordance with § 0.1(a)(1) of the CBP Regulations (19 CFR 0.1(a)(1)) pertaining to the authority of the Secretary of the Treasury (or his/her delegate) to approve regulations related to certain customs revenue functions.

### **List of Subjects in 19 CFR Part 24**

Accounting, Claims, Harbors, Reporting and recordkeeping requirements, Taxes.

### **Amendments to the Regulations**

For the reasons stated above, part 24 of title 19 of the Code of Federal Regulations (19 CFR part 24) is amended as set forth below:

### **PART 24—CUSTOMS FINANCIAL AND ACCOUNTING PROCEDURE**

■ 1. The general authority citation for part 24 continues and a new specific authority is added to read as follows:

**Authority:** 5 U.S.C. 301; 19 U.S.C. 58a–58c, 66, 1202 (General Note 3(i), Harmonized Tariff Schedule of the United States), 1505, 1520, 1624; 26 U.S.C. 4461, 4462; 31 U.S.C. 3717, 9701; Pub. L. 107–296, 116 Stat. 2135 (6 U.S.C. 1 *et seq.*).

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Section 24.1a also issued under 19 U.S.C. 1318;

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■ 2. Section 24.1a is added to read as follows:

### **§ 24.1a Temporary Postponement of Deadline to Deposit Certain Estimated Duties, Taxes, and Fees Because of the COVID-19 National Emergency**

(a) *General.* Pursuant to the authority of 19 U.S.C. 1318(a), subject to the conditions in paragraphs (a)(1) through (4) of this section, the deadline for the deposit of estimated duties, taxes, and fees that an importer of record would ordinarily be obligated to pay as of the date of entry, or withdrawal from warehouse, for consumption, of imported merchandise into the United States is postponed for a period of 90 days from the date that the deposit would otherwise have been due. No interest will accrue for the delayed deposit of such estimated duties, taxes, and fees during this 90-day temporary postponement.

(1) This temporary postponement applies only to entries, or withdrawals from warehouse, for consumption, made on or after March 1, 2020, and no later than April 30, 2020, by importers of record with a significant financial hardship. This temporary postponement does not permit return of any deposits of estimated duties, taxes, and/or fees that have been paid.

(2) An importer will be considered to have a significant financial hardship if the operation of such importer is fully or partially suspended during March or April 2020 due to orders from a competent governmental authority limiting commerce, travel, or group meetings because of COVID-19, and as a result of such suspension, the gross receipts of such importer for March 13-31, 2020, or April 2020 are less than 60 percent of the gross receipts for the comparable period in 2019. An eligible importer need not file additional documentation with CBP to be eligible for this relief but must maintain documentation as part of its books and records establishing that it meets the requirements for relief.

(3) No penalty, liquidated damages claim, or other sanction will be imposed for the delayed deposit of estimated duties, taxes, and fees in accordance with a deadline postponed under this section.

(4) This temporary postponement does not apply to any entry, or withdrawal from warehouse, for consumption, or any deposit of estimated duties, taxes, or fees for the entry, or withdrawal from warehouse, for consumption, where the entry summary includes any merchandise subject to one or more of the following: Antidumping duties (assessed pursuant to 19 U.S.C. 1673 *et seq.*), countervailing duties (assessed pursuant to 19 U.S.C. 1671 *et seq.*), duties assessed pursuant to Section 232 of the Trade Expansion Act of 1962 (19 U.S.C. 1862), duties assessed pursuant to Section 201 of the Trade Act of 1974 (19 U.S.C. 2251 *et seq.*), and duties assessed pursuant to Section 301 of the Trade Act of 1974 (19 U.S.C. 2411 *et seq.*).



(b) *Time of entry.* For entries eligible for the temporary postponement of deposits under paragraph (a) of this section, the requirement to deposit estimated duties, taxes, and fees for the purpose of establishing the time of entry stated in 19 CFR 141.68 is waived.

MARK A. MORGAN,  
*Acting Commissioner,*  
*U.S. Customs and Border Protection.*

Dated: April 19, 2020.

TIMOTHY E. SKUD,  
*Deputy Assistant Secretary of the Treasury.*

[Published in the Federal Register, April 22, 2020 (85 FR 22349)]

## **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 continuation of temporary travel restrictions.

**SUMMARY:** This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border. Such travel will be limited to “essential travel,” as further defined in this document.

**DATES:** These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on April 21, 2020 and will remain in effect until 11:59 p.m. EDT on May 20, 2020.

**FOR FURTHER INFORMATION CONTACT:** Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202-344-3788.

### **SUPPLEMENTARY INFORMATION:**

#### **Background**

On March 24, 2020, DHS published notice of the Secretary’s decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to “essential travel,” as further defined in that document.<sup>1</sup> The document described the developing circumstances regarding the COVID-19 pandemic and stated that, given the outbreak and continued transmission and spread of COVID-19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of COVID-19 between the United States and Canada posed a “specific threat to human life or national interests.” The Secretary’s action is currently scheduled to expire at 11:59 p.m. EDT on April 20, 2020.

The Secretary has continued to monitor and respond to the COVID-19 pandemic. As of April 19, there are over 2.2 million con-

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<sup>1</sup> 85 FR 16548 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary’s decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel,” as further defined in that document. 85 FR 16547 (Mar. 24, 2020).

firmed cases globally, with over 152,000 confirmed deaths.<sup>2</sup> There are over 720,000 confirmed cases within the United States,<sup>3</sup> over 32,000 in Canada,<sup>4</sup> and over 6,800 in Mexico.<sup>5</sup>

### Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, I have determined that the risk of continued transmission and spread of COVID–19 between the United States and Canada poses an ongoing “specific threat to human life or national interests.”

U.S. and Canadian officials have mutually determined that non-essential travel between the United States and Canada poses additional risk of transmission and spread of COVID–19 and places the populace of both nations at increased risk of contracting COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Canada, as well as the individuals traveling through these ports of entry, at increased risk of exposure to COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),<sup>6</sup> I have determined that land ports of entry along the U.S.-Canada border will continue to suspend normal operations and will only allow processing for entry into the United States of those travelers engaged in “essential travel,” as defined

<sup>2</sup> WHO, Coronavirus disease 2019 (COVID–19) Situation Report—90 (Apr. 19, 2020), available at [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200419-sitrep-90-covid-19.pdf?sfvrsn=551d47fd\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200419-sitrep-90-covid-19.pdf?sfvrsn=551d47fd_4).

<sup>3</sup> CDC, Cases of COVID–19 in the U.S. (last updated Apr. 19, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

<sup>4</sup> WHO, Coronavirus disease 2019 (COVID–19) Situation Report—90 (Apr. 19, 2020).

<sup>5</sup> *Id.*

<sup>6</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 “take 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).

below. Given the definition of “essential travel” below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

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 United States-Canada border shall be limited to “essential travel,” which includes, but is not limited to—

- 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 traveling to attend educational institutions;
- Individuals traveling to work in the United States (*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.

The following travel does not fall within the definition of “essential travel” for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.*, sightseeing, recreation, gambling, or attending cultural events).

At this time, this notification does not apply to air, freight rail, or sea travel between the United States and Canada, but does apply to passenger rail and ferry travel between the United States and Canada. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on May 20, 2020. This notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this Notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute “essential travel” under this notification. Further, 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 United States not engaged in “essential travel.”

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

Dated:

CHAD R. MIZELLE,  
*Senior Official Performing the  
Duties of the General Counsel,  
U.S. Department of Homeland Security.*

[Published in the Federal Register, April 22, 2020 (85 FR 22352)]

## 19 CFR Chapter I

### **NOTIFICATION 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 continuation of temporary travel restrictions.

**SUMMARY:** This document announces the decision of the Secretary of Homeland Security (Secretary) to continue to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border. Such travel will be limited to “essential travel,” as further defined in this document.

**DATES:** These restrictions go into effect at 12 a.m. Eastern Daylight Time (EDT) on April 21, 2020, and will remain in effect until 11:59 p.m. EDT on May 20, 2020.

**FOR FURTHER INFORMATION CONTACT:** Alyce Modesto, Office of Field Operations, U.S. Customs and Border Protection (CBP) at 202-344-3788.

#### **SUPPLEMENTARY INFORMATION:**

##### **Background**

On March 24, 2020, DHS published notice of the Secretary’s decision to temporarily limit the travel of individuals from Mexico into the United States at land ports of entry along the United States-Mexico border to “essential travel,” as further defined in that document.<sup>1</sup> The document described the developing circumstances regarding the COVID-19 pandemic and stated that, given the outbreak and continued transmission and spread of COVID-19 within the United States and globally, the Secretary had determined that the risk of continued transmission and spread of COVID-19 between the United States and Mexico posed a “specific threat to human life or national interests.” The Secretary’s action is currently scheduled to expire at 11:59 p.m. EDT on April 20, 2020.

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<sup>1</sup> 85 FR 16547 (Mar. 24, 2020). That same day, DHS also published notice of the Secretary’s decision to temporarily limit the travel of individuals from Canada into the United States at land ports of entry along the United States-Canada border to “essential travel,” as further defined in that document. 85 FR 16548 (Mar. 24, 2020).

The Secretary has continued to monitor and respond to the COVID–19 pandemic. As of April 19, there are over 2.2 million confirmed cases globally, with over 152,000 confirmed deaths.<sup>2</sup> There are over 720,000 confirmed cases within the United States,<sup>3</sup> over 32,000 in Canada,<sup>4</sup> and over 6,800 in Mexico.<sup>5</sup>

### Notice of Action

Given the outbreak and continued transmission and spread of COVID–19 within the United States and globally, I have determined that the risk of continued transmission and spread of COVID–19 between the United States and Mexico poses an ongoing “specific threat to human life or national interests.”

U.S. and Mexican officials have mutually determined that non-essential travel between the United States and Mexico poses additional risk of transmission and spread of COVID–19 and places the populace of both nations at increased risk of contracting COVID–19. Moreover, given the sustained human-to-human transmission of the virus, returning to previous levels of travel between the two nations places the personnel staffing land ports of entry between the United States and Mexico, as well as the individuals traveling through these ports of entry, at increased risk of exposure to COVID–19. Accordingly, and consistent with the authority granted in 19 U.S.C. 1318(b)(1)(C) and (b)(2),<sup>6</sup> I have determined that land ports of entry along the U.S.-Mexico border will continue to suspend normal opera-

<sup>2</sup> WHO, Coronavirus disease 2019 (COVID–19) Situation Report—90 (Apr. 19, 2020), available at [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200419-sitrep-90-covid-19.pdf?sfvrsn=551d47fd\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200419-sitrep-90-covid-19.pdf?sfvrsn=551d47fd_4).

<sup>3</sup> CDC, Cases of COVID–19 in the U.S. (last updated Apr. 19, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

<sup>4</sup> WHO Coronavirus disease 2019 (COVID–19) Situation Report—90 (Apr. 19, 2020).

<sup>5</sup> *Id.*

<sup>6</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 “take 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).

tions and will only allow processing for entry into the United States of those travelers engaged in “essential travel,” as defined below. Given the definition of “essential travel” below, this temporary alteration in land ports of entry operations should not interrupt legitimate trade between the two nations or disrupt critical supply chains that ensure food, fuel, medicine, and other critical materials reach individuals on both sides of the border.

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 United States-Mexico border shall be limited to “essential travel,” which includes, but is not limited to—

- 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 traveling to attend educational institutions;
- Individuals traveling to work in the United States (*e.g.*, individuals working in the farming or agriculture industry who must travel between the United States 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 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 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 United States; and
- Individuals engaged in military-related travel or operations.



The following travel does not fall within the definition of “essential travel” for purposes of this Notification—

- Individuals traveling for tourism purposes (*e.g.*, sightseeing, recreation, gambling, or attending cultural events).

At this time, this notification does not apply to air, freight rail, or sea travel between the United States and Mexico, but does apply to passenger rail and ferry travel between the United States and Mexico. These restrictions are temporary in nature and shall remain in effect until 11:59 p.m. EDT on May 20, 2020. This notification may be amended or rescinded prior to that time, based on circumstances associated with the specific threat.

The Commissioner of U.S. Customs and Border Protection (CBP) is hereby directed to prepare and distribute appropriate guidance to CBP personnel on the continued implementation of the temporary measures set forth in this notification. The CBP Commissioner may determine that other forms of travel, such as travel in furtherance of economic stability or social order, constitute “essential travel” under this notification. Further, 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 United States not engaged in “essential travel.”

The Acting Secretary of Homeland Security, Chad F. Wolf, having reviewed and approved this document, is delegating the authority to electronically sign this document to Chad R. Mizelle, who is the Senior Official Performing the Duties of the General Counsel for DHS, for purposes of publication in the **Federal Register**.

CHAD R. MIZELLE,  
*Senior Official Performing the  
Duties of the General Counsel,  
U.S. Department of Homeland Security.*

[Published in the Federal Register, April 22, 2020 (85 FR 22353)]