



BILLING CODE: 4163-18-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

**Amendment and Extension of Order Under Sections 362 and 365
of the Public Health Service Act; Order Suspending
Introduction of Certain Persons from Countries Where a
Communicable Disease Exists**

**AGENCY: Centers for Disease Control and Prevention (CDC),
Department of Health and Human Services (HHS).**

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), a component of the Department of Health and Human Services (HHS), announces the amendment of an Order issued on March 20, 2020 and extended on April 20, 2020 under Sections 362 and 365 of the Public Health Service Act, and associated implementing regulations, that temporarily suspends the introduction of certain aliens based on the Director's determination that introduction of aliens, regardless of their country of origin, migrating through Canada and Mexico into the United States creates a serious

danger of the introduction of COVID-19 into the United States, and the danger is so increased by the introduction of such aliens that a temporary suspension is necessary to protect the public health. This amendment and extension was issued on May 20, 2020 and shall remain in effect until the CDC Director determines that the danger of further introduction of COVID-19 into the United States from covered aliens has ceased to be a serious danger to the public health, and the Order is no longer necessary to protect the public health. CDC shall review the latest information regarding the status of the COVID-19 pandemic and associated public health risks every thirty days to ensure that the Order remains necessary to protect the public health.

DATES: This action is effective 12:00 a.m. EDT May 21, 2020.

FOR FURTHER INFORMATION CONTACT: Kyle McGowan, Office of the Chief of Staff, Centers for Disease Control and Prevention, 1600 Clifton Road, N.E., MS V18-2, Atlanta, GA 30329. Phone: 404-639-7000. Email: cdcregulations@cdc.gov.

SUPPLEMENTARY INFORMATION:

March 20, 2020 Order

On March 20, 2020, the Director of the Centers for Disease Control and Prevention issued an Order temporarily suspending the introduction of certain aliens from Canada and Mexico, including certain aliens who migrate to the United States across the land borders with Canada and Mexico, because the introduction of such aliens creates a serious danger of the introduction of such disease into the United States, and the danger is so increased by the introduction of such aliens that a temporary suspension is necessary to protect the public health (85 FR 17060). The Order suspended the introduction of certain persons into the United States for a period of 30 days.

April 20, 2020 Order

On April 20, 2020, the Director of CDC extended the March 20, 2020 Order until 11:59 p.m. EDT on May 20, 2020 (85 FR 22424). The April 20, 2020 extension found that the determinations of the March 20, 2020 Order remain correct, and further determined that the suspended introduction of covered aliens should continue for another 30 days because the increasing numbers of COVID-19 infections in Canada, Mexico, and the United States, as well as the highly

dynamic domestic healthcare landscape still presented a serious danger of further introduction of COVID-19.

May 20, 2020 Order

Recent data from the Department of Homeland Security (DHS) indicates the Order has mitigated the specific public health risks identified in the March 20, 2020 Order by significantly reducing the population of covered aliens held in POEs and Border Patrol stations. However, since the April 20, 2020 extension, Canada and Mexico continue to see increasing numbers of COVID-19 infections and deaths. Epidemiologically speaking, the United States remains in the acceleration phase of the pandemic. Accordingly, there remains a serious risk to the public health that COVID-19 will continue to spread to unaffected communities within the United States, or further burden already affected areas.

Thus, the Director of CDC is amending the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, issued on March 20, 2020 and extended on April 20, 2020, to clarify that it applies to land and coastal Ports of Entry and Border Patrol stations that would otherwise hold covered aliens in a congregate

setting. The Director is also extending the duration of the Order until he determines that the risk of further introduction of COVID-19 into the United States from covered aliens has ceased to be a serious danger to the public health, and the Order is no longer necessary to protect the public health. CDC shall review the latest information regarding the status of the COVID-19 pandemic and associated public health risks every thirty days to ensure that the Order remains necessary to protect the public health.

A copy of the Order is provided below and a copy of the signed Order can be found at <https://www.cdc.gov/quarantine/order-suspending-introduction-certain-persons.html>.

**U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES
CENTERS FOR DISEASE CONTROL AND PREVENTION (CDC)**

ORDER UNDER SECTIONS 362 & 365 OF THE PUBLIC HEALTH SERVICE

ACT

(42 U.S.C. §§ 265, 268) :

**AMENDMENT AND EXTENSION OF ORDER SUSPENDING INTRODUCTION OF
CERTAIN PERSONS FROM COUNTRIES WHERE A COMMUNICABLE DISEASE
EXISTS**

I. Introduction

I am amending the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists, issued on March 20, 2020 (hereinafter, March 20, 2020 Order or Order) and extended on April 20, 2020 (hereinafter, April 20, 2020 Extension or Extension), to clarify that it applies to all land and coastal Ports of Entry (POEs) and Border Patrol stations¹ at or near the United States' border with Canada or Mexico that would otherwise hold covered aliens in a congregate setting. I am extending the duration of the Order until I determine that the danger of further introduction of COVID-19 into the United States has ceased to be a serious danger to the public health, and continuation of the Order is no longer necessary to protect the public health. Every 30 days, the Centers for Disease Control and Prevention (CDC) shall review the latest information regarding the status of the

¹ As explained below, air POEs are excluded from the Amended Order and Extension because they do not present the same public health risk as land and coastal POEs.

COVID-19 pandemic and associated public health risks to ensure that the Order remains necessary to protect the public health. Upon determining that the further introduction of COVID-19 into the United States is no longer a serious danger to the public health necessitating the continuation of this Order, I will publish a notice in the Federal Register terminating this Order and its Extensions.

II. History of Order

A. March 20, 2020 Order

I issued the March 20, 2020 Order pursuant to sections 362 and 365 of the Public Health Service (PHS) Act, 42 U.S.C. §§ 265, 268, and the Act's implementing regulations, which authorize the Director of CDC to suspend the introduction of persons into the United States when the Director determines that the existence of a communicable disease in a foreign country or place creates a serious danger of the introduction of such disease into the United States, and the danger is so increased by the introduction of persons from the foreign country or place that a

temporary suspension of such introduction is necessary to protect the public health.

The March 20, 2020 Order suspended introduction of certain "covered aliens" into the United States for a period of 30 days. The March 20, 2020 Order described "covered aliens" as follows:

Persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land Port of Entry (POE) or Border Patrol station at or near the United States border with Canada or Mexico, subject to exceptions. This order does not apply to U.S. citizens, lawful permanent residents, and their spouses and children; members of the armed forces of the United States, and associated personnel, and their spouses and children; persons from foreign countries who hold valid travel documents and arrive at a POE; or persons from foreign countries in the visa waiver program who are not otherwise subject to travel restrictions and arrive at a POE.

The March 20, 2020 Order also did not apply to "persons whom customs officers of DHS determine, with approval from a supervisor, should be excepted based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests."

The March 20, 2020 Order was based on the following determinations:

- COVID-19 is a communicable disease that poses a danger to the public health;
- COVID-19 is present in numerous foreign countries, including Canada and Mexico;
- There is a serious danger of the introduction of COVID-19 into the land POEs and Border Patrol stations at or near the United States' borders with Canada and Mexico, and into the interior of the country as a whole, because COVID-19 exists in Canada, Mexico, and the other countries of

origin of persons who migrate to the United States across the land borders with Canada and Mexico;

- But for a suspension-of-entry order under 42 U.S.C. § 265, covered aliens would be subject to immigration processing at the land POEs and Border Patrol stations, and during that processing many of them (typically aliens who lack valid travel documents and are therefore inadmissible) would be held in the common areas of the facilities, in close proximity to one another, for hours or days; and
- Such introduction into congregate settings of persons from Canada or Mexico would increase the already serious danger to the public health to the point of requiring a temporary suspension of the introduction of covered aliens into the United States.

B. April 20, 2020 Extension

On April 20, 2020, I extended the March 20, 2020 Order until 11:59 p.m. EDT on May 20, 2020. The April 20, 2020 Extension found that the determinations of the March 20, 2020 Order remain correct, and further determined that the suspension of introduction of covered aliens should continue for another 30 days based on the increasing numbers of COVID-19 infections in Canada, Mexico, and the United States, and the highly dynamic domestic health care landscape.

As detailed below, the Order has proven effective in reducing the risk of COVID-19 within POEs and Border Patrol stations, and the latest information on the status of the pandemic in Canada, Mexico, and the United States justifies issuing this Amendment and Extension until I determine that the serious danger of further introduction of COVID-19 into the United States has ceased to be a danger to the public health.

III. The Order has reduced the risk of COVID-19

transmission in POEs and Border Patrol stations

Recent DHS data indicates the March 20, 2020 Order and April 20, 2020 Extension have significantly mitigated the

specific public health risk identified in the initial Order by significantly reducing the population of covered aliens held in congregate settings in POEs and Border Patrol stations, thereby reducing the risk of COVID-19 infection among DHS personnel and others within these facilities.

DHS has provided CDC with statistical information on the impact of the Order and Extension, which supports my decision to further extend the suspension. For example, following issuance of the March 20, 2020 Order, DHS data on operational encounters with covered aliens demonstrate that the population of covered aliens held in POEs and Border Patrol stations was reduced by 88 percent. Specifically, in the 46-day period preceding the March 20, 2020 Order (i.e., February 3, 2020 to March 20, 2020), there was a daily average of 3,249 covered aliens in custody at POEs and Border Patrol stations. In the 47-day period following the March 20, 2020 Order (i.e., March 21, 2020 to May 6, 2020), there was a daily average of 395 covered aliens in custody, with approximately 100 aliens in CBP facilities at any given time. By significantly reducing the number of covered aliens held in POEs and Border Patrol stations, the Order and Extension have reduced the density of covered aliens held in congregate custody within these facilities,

which reduces the risk of exposure to COVID-19 for DHS personnel and others in POEs and Border Patrol stations.

**IV. Conditions in Canada, Mexico, and the United States
warrant continued implementation of the Order**

Since the April 20, 2020 Extension, COVID-19 has continued to spread. Canada and Mexico continue to see increasing numbers of COVID-19 infections and deaths. In the United States, many states continue to experience growth in the number of confirmed COVID-19 cases, as more states enter the acceleration phase of the pandemic. Although certain early hotspots are beginning to see improvement, and certain areas of the country are beginning a phased reopening of their communities, millions of Americans continue to comply with stay-at-home orders and practice social distancing, most schools and businesses remain closed, and health care providers across the country continue to strive to meet the demand for COVID-19-related care. Epidemiologically speaking, the United States as a whole remains in the acceleration phase of the pandemic.²

² CDC, Situation Summary (updated Apr. 19, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/summary.html>; *see also* Dr. Anne Schuchat, MMWR and Morbidity and Mortality Weekly Report, U.S. Dep't. of Health and Human Services, Public Health Response to the Initiation and Spread of Pandemic COVID-19 in the United States, February 24–April 21,

Accordingly, there remains a serious risk to the public health that COVID-19 will continue to spread to unaffected communities within the United States, or further burden already affected areas. At this critical juncture, it would be counterproductive to undermine ongoing public health efforts by relaxing restrictions on the introduction of covered aliens who pose a risk of further introducing COVID-19 into the United States.

A. Canada

As of May 9, 2020, Canada has reported 66,780 confirmed cases of COVID-19, and a total of 4,628 deaths. Canada has tested 1,067,595 people for COVID-19.³ The Public Health Agency of Canada believes that the COVID-19 pandemic may have reached its peak, but expects that the number of confirmed COVID-19 cases will continue to increase.⁴ The Canadian government estimates that 81 percent of COVID-19 cases are the result of community

2020 (May 8, 2020), *available at* <https://www.cdc.gov/mmwr/volumes/69/wr/mm6918e2.htm#suggestedcitation>

³ Government of Canada, Coronavirus disease (COVID-19): Outbreak Update (May 9, 2020), <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html?topic=tilelink#a2>.

⁴ Government of Canada, Epidemiological Summary of COVID-19 Cases in Canada (May 9, 2020), <https://health-infobase.canada.ca/covid-19/epidemiological-summary-covid-19-cases.html>.

transmission.⁵ Canadian modeling indicates that, with the use of strong epidemic controls resulting in a 2.5 percent infection rate, Canada could see 940,000 people with infections, 73,000 hospitalizations, and 23,000 people requiring intensive care over the course of the COVID-19 pandemic.⁶ Canada continues to enforce robust public health measures to slow the spread of COVID-19; non-essential businesses and public schools remain largely closed, and public events remain cancelled.⁷

B. Mexico

As of May 9, 2020, Mexico has reported 29,616 confirmed cases of COVID-19 and 2,961 deaths.⁸ The Mexican Health Ministry believes that there are approximately 8

⁵ *Id.*

⁶ Public Health Agency of Canada, COVID-19 in Canada: Using Data and Modeling to Inform Public Health Action (last updated May 3, 2020), <https://www.canada.ca/en/public-health/services/publications/diseases-conditions/covid-19-using-data-modelling-inform-public-health-action.html>.

⁷ Schools in Quebec are scheduled to re-open May 11 with restrictions. *See* Solarina Ho, CTV News (May 4, 2020) <https://www.ctvnews.ca/health/coronavirus/when-will-school-resume-what-we-know-province-by-province-1.4923667>; *see also generally* Marc Montgomery, Radio Canada International (May 5, 2020) <https://www.rcinet.ca/en/2020/05/05/covid-19-the-2020-summer-of-fun-events-that-werent/>.

⁸ World Health Organization, Coronavirus Disease 2019 (COVID-19) Situation Report – 110 (May 9, 2020), https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200509covid-19-sitrep-110.pdf?sfvrsn=3b92992c_4.

additional cases for each confirmed case of COVID-19.⁹ On April 21, 2020, government officials announced that Mexico has entered Phase III of the COVID-19 pandemic, the Mexican government's highest level of public health emergency.¹⁰ As the pandemic continues, there are media reports of hospitals in Mexico City turning away potential COVID-19 cases and fears that Mexico lacks sufficient ventilators.¹¹ Mexico's initial modeling, based on Chinese data reported by the World Health Organization (WHO), assumed a 0.2 percent infection rate with 250,656 people infected during the acceleration phase of the pandemic.¹² Of those people, 70 percent (175,459) are anticipated to seek medical care.¹³ Among people seeking medical care, it is projected that 80 percent (140,367) will be ambulatory patients, 14 percent

⁹ Mexico News Daily, *New Model Show Highest Number of Virus Cases Will Come Sooner Than Expected* (Apr. 24, 2020), <https://mexiconewsdaily.com/news/coronavirus/new-model-shows-virus-cases-will-come-sooner-than-expected/>.

¹⁰ James Pasley, *MSN News Insider, Mexico has Moved to "Phase 3" – its Most Serious Level of Coronavirus Alert – and Faces a Looming Outbreak. Here's how it got to this Point* (Apr. 23, 2020), <https://www.msn.com/en-us/news/other/mexico-has-moved-to-phase-3-e2-80-94-its-most-serious-level-of-coronavirus-alert-e2-80-94-and-faces-a-looming-outbreak-heres-how-it-got-to-this-point/ss-BB135RGq/>.

¹¹ Andrea Navarro, *Bloomberg, Mexico City Top Hospitals Reach Capacity, Reject Virus Patients* (Apr. 28, 2020), <https://www.bloomberg.com/news/articles/2020-04-28/mexico-city-top-hospitals-reach-capacity-reject-virus-patients>.

¹² Secretaria De Salud, *COVID-19: Comunicado Tecnico Diario* (Mar. 17, 2020), available at https://www.gob.mx/cms/uploads/attachment/file/541879/COVID-19_-_Presentacion_Comunicado_Tecnico_Diario_2020.03.17.pdf.

¹³ *Id.*

(25,564) will need to be hospitalized without intensive care, and 6 percent (10,528) will require intensive care.¹⁴ Non-governmental models and estimates indicate that Mexico may have between 620,000 and 730,000 symptomatic COVID-19 cases.¹⁵

C. United States

As of May 9, 2020, the United States has reported 1,274,036 confirmed cases of COVID-19 and 77,034 deaths.¹⁶ Community transmission of COVID-19 is continuing in many locations across the United States. Public health measures to slow the spread of COVID-19 so as to avoid overwhelming health care systems have, to date, largely proven successful.¹⁷ However, several cities and states, including

¹⁴ *Id.*

¹⁵ See Jorge Galindo, Javier LaFuente, El País, The Magnitude of the Epidemic in Mexico (May 8, 2020), <https://elpais.com/sociedad/2020-05-08/la-magnitud-de-la-epidemia-en-mexico.html>; Juan Montes, The Wall Street Journal, Death Certificates Point to Much Higher Coronavirus Toll in Mexico (May 8, 2020), <https://www.wsj.com/articles/death-certificates-point-to-much-higher-coronavirus-toll-in-mexico-11588957041>; Azam Ahmed, Hidden Toll: Mexico Ignores Wave of Coronavirus Deaths in Capital (May 8, 2020), <https://www.nytimes.com/2020/05/08/world/americas/mexico-coronavirus-count.html>.

¹⁶ CDC, Cases in U.S. (updated May 9, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

¹⁷ Judy Woodruff, Interview with Vice President of the United States Michael Pence, PBS News Hour (Apr. 17, 2020), <https://www.pbs.org/newshour/show/our-health-care-system-has-not-been-overwhelmed-by-covid-19-says-pence>.

several located at or near U.S. borders, continue to experience widespread, sustained community transmission that has put their healthcare and public health systems remain at risk of being overwhelmed.¹⁸

CDC continues to recommend that all Americans practice vigorous hand hygiene, engage in social distancing, limit non-essential travel,¹⁹ and wear cloth face coverings when out in public.²⁰ Nevertheless, not all areas of the United States are currently experiencing high rates of infection or numbers of confirmed cases.²¹ Limiting the spread of COVID-19 to un- or less-affected areas, and slowing the spread of COVID-19 in highly impacted areas, involves limiting the number of foci, or infected individuals, who

¹⁸ See Johns Hopkins University, COVID-19 United States Cases by County, <https://coronavirus.jhu.edu/us-map>; see also Letter from Chris D. Van Gorder, President & CEO, Scripps Health, & Daniel L. Gross, Executive Consultant, Sharp HealthCare COVID-19 Strategic Response, to Hon. Alex M. Azar, Secretary of the U.S. Dep't. of Health & Human Services, and Hon. Chad F. Wolf, Acting Secretary of the U.S. Dep't. of Homeland Security (Apr. 28, 2020), available at https://www.voiceofsandiego.org/wp-content/uploads/2020/04/Border-Concerns-Letter_Scripps-Health_Sharp-HealthCare-4.28.20.pdf; see also Letter from Hon. Kristin Gaspar, Supervisor, Third District, San Diego County Board of Supervisors, to Hon. Michael Pence, Vice President of the United States (Apr. 19, 2020), available at <https://www.krqe.com/news/border-report/san-diego-county-official-asks-white-house-to-help-mexico-control-covid-19/>.

¹⁹ CDC, COVID-19: How to Protect Yourself & Others (last reviewed May 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

²⁰ CDC, COVID-19: Use of Cloth Face Coverings to Help Slow the Spread of COVID-19 (last reviewed May 11, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>.

²¹ See Johns Hopkins University, COVID-19 United States Cases by County, <https://coronavirus.jhu.edu/us-map>.

may enter these areas. Such efforts are critical as individual states begin to ease public health restrictions on businesses and public activities in an effort to mitigate the economic and other costs of the COVID-19 pandemic.²²

V. The Order is amended to apply to land and coastal POEs and Border Patrol stations at or near the border with Canada or Mexico that would otherwise hold covered aliens in a congregate setting

As noted above, the March 20, 2020 Order and April 20, 2020 Extension defined "covered alien" in terms of the public health risk associated with permitting individuals who have traveled from Canada or Mexico to be introduced into a congregate holding area "in a *land* Port of Entry (POE) or Border Patrol station at or near the United States borders with Canada and Mexico." Due to the highly contagious nature of the virus that causes COVID-19 and the mode of transmission, it is determined that the continued introduction of potentially infected individuals into these facilities poses a public health risk given the role of

²² Executive Office of President and CDC, Guidelines for Opening Up America Again (Apr. 16, 2020), <https://www.whitehouse.gov/openingamerica/>.

these facilities and their personnel not only in carrying out immigration functions, but also in ensuring safe border crossings for essential goods and persons, and in law enforcement activities such as preventing terrorism and drug trafficking. Because the limited medical capacity in POEs and Border Patrol stations presents a significant obstacle to safely managing the risk of COVID-19 among covered aliens held in these facilities, the public health risk is best addressed by suspending the introduction of covered aliens into land and coastal POEs and Border Patrol stations.²³

After consulting with DHS regarding its various operations and ability to rapidly stand-up the containment measures and medical capacity needed to deal with the COVID-19 pandemic, CDC determined that protecting the public health of the United States necessitated temporarily suspending the introduction of covered aliens into the congregate holding areas of POEs and Border Patrol stations at or near the United States' border with Canada and Mexico. CDC understands that, at least in theory, it is

²³ The various screening and documentation requirements to board an aircraft justify the exclusion of air POEs from the scope of this Order because they do not pose the same public health risk as land and coastal POEs. In addition, DHS has informed CDC that air POEs do not tend to hold large numbers of persons for the more extended processing that occurs at land and coastal POEs.

possible to expand and retrofit POEs and Border Patrol stations with the structural and engineering controls necessary to contain COVID-19, and that DHS personnel could be equipped with the necessary PPE and trained in clinically-informed practices to more safely interact with covered aliens. However, CDC believes such an endeavor would be ill-advised in that it would consume a significant amount of scarce medical resources that could otherwise be used to meet the needs of the domestic population. Nor could such interventions—particularly those involving structural and engineering additions or changes to hundreds of DHS facilities—be implemented quickly enough to mitigate the current risk of allowing covered aliens to be introduced into POEs and Border Patrol stations. As noted above, the Order has effectively reduced the population of covered aliens in POEs and Border Patrol stations at or near the border, thereby significantly reducing the risk COVID-19 spreading within these facilities.²⁴

The intent of the March 20, 2020 Order and April 20, 2020 Extension was to suspend the introduction of individuals who have traveled from Canada or Mexico who

²⁴ See *supra* Section III.

would otherwise likely have been held in the congregate holding areas of POEs or Border Patrol stations at or near the border with Canada or Mexico, where they could transmit COVID-19 to the DHS personnel and other individuals in those facilities. The public health risk addressed by the Order and Extension was the risk of transmission in the congregate holding areas of POEs and Border Patrol stations created when individuals who have traveled from Canada or Mexico are held for significant periods of time in these facilities because they lack valid documentation for entry into the United States. This public health analysis was based, in part, on the operational issues identified by DHS, and on the observations of the United States Public Health Service Scientist Officer who visited the El Paso del Norte POE on March 12-13, 2020. For the purposes of the public health analysis and risk determinations, it is irrelevant whether a particular POE or Border Patrol station is designated by DHS as a “land” or “coastal” facility.²⁵ The relevant factor is whether the facility receives individuals who have traveled from Canada or Mexico and are likely to be held in a congregate setting

²⁵ DHS has advised CDC that “coastal borders” refers to any U.S. border that is adjacent to a waterway, rather than land. DHS has further advised CDC that “waterway” refers to any large body of water (e.g., Pacific Ocean, Atlantic Ocean, and Gulf of Mexico). For the purpose of this Order, “coastal” applies to any waterway from which persons traveling through Canada and Mexico may enter the United States (e.g. Pacific, Gulf of Mexico, Lake Michigan, Rio Grande).

within a POE or Border Patrol station at or near the border.

DHS has informed CDC that many POEs and Border Patrol stations service both land and coastal borders, such that covered aliens who are apprehended while attempting to enter the United States by a coastal border are held in the same facilities that temporarily hold covered aliens apprehended while crossing into the United States over the land borders with Canada and Mexico.²⁶ These facilities are substantially similar in all respects relevant to the public health analysis. DHS has informed CDC that, like their land-based counterparts, coastal POEs and Border Patrol stations generally have one or more congregate areas where covered aliens are held for processing, and are not structured or equipped to manage covered aliens exposed to or infected with COVID-19, nor to protect DHS personnel and other individuals within those facilities, including other aliens, from exposure to COVID-19. Similarly, covered aliens at coastal POEs and Border Patrol stations spend periods of time (i.e., hours or days) in the congregate

²⁶ Indeed, the DHS enforcement statistics cited in the March 20, 2020 Order included apprehensions of inadmissible aliens who attempted to cross a U.S. coastal border. *See* Exhs. 2-3, Order Suspending Introduction of Certain Persons from Countries where a Communicable Disease Exists (Mar. 20, 2020), available at https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf.

holding areas of these facilities while they are processed for immigration purposes that are material from a public health perspective. All POEs and Border Patrol stations lack medical resources sufficient to provide the appropriate level of care required by those infected with COVID-19 and would be forced to rely on local health systems, many of which are straining to meet the medical needs of the domestic population.²⁷

Land and coastal POEs and Border Patrol stations are not structured or equipped to implement recommended COVID-19 screening, isolation/quarantine, or social distancing protocols for even small numbers of covered aliens. As noted in the March 20, 2020 Order, the holding areas of POEs and Border Patrol stations were designed for the purpose of short-term processing and holding in a congregate setting. The vast majority of these facilities lack the areas needed to effectively isolate or quarantine covered aliens while COVID-19 test results are pending. Moreover, the process of screening and isolating/quarantining covered aliens suspected of COVID-19

²⁷ See CDC, COVID View Weekly Summary (updated May 8, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/covid-data/covidview/index.html>.

infection would require covered aliens to move throughout various sections of the facility, creating a risk of exposure to all nearby—including DHS personnel and other aliens.

I hereby amend the March 20, 2020 Order and April 20, 2020 Extension by adding the modifier “coastal” so that this Amended Order and Extension expressly applies to land and coastal POE and Border Patrol stations operated by DHS at or near the border with Canada or Mexico. Accordingly, the definition of “covered alien” is amended as follows:

Persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in a land or coastal Port of Entry (POE) or Border Patrol station at or near the United States border with Canada or Mexico, subject to exceptions.²⁸

²⁸ CDC recognizes that in certain limited instances, a fact-based inquiry may be required to determine whether individuals are covered aliens within the meaning of the Amended Order and Extension. For example, it may be unclear whether individuals who arrive at a coastal border by boat departed from Mexico, or another country, such as Haiti. CDC defers to DHS regarding the operational considerations necessary to address such scenarios.

This Amendment and Extension does not alter any of the exclusions or exceptions to the March 20, 2020 Order or April 20, 2020 Extension. Like the March 20, 2020 Order and April 20, 2020 Extension, the Amended Order and Extension does not apply to U.S. citizens, lawful permanent residents, and their spouses and children; members of the armed forces of the United States, and associated personnel, and their spouses and children; persons from foreign countries who hold valid travel documents and arrive at a POE; or persons from foreign countries in the visa waiver program who are not otherwise subject to travel restrictions and arrive at a POE. The Amended Order and Extension also does not apply to persons whom customs officers determine, with approval from a supervisor, should be excepted based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests.²⁹ DHS shall consult with CDC concerning how these types of case-by-case, individualized exceptions shall be made to help ensure consistency with current CDC guidance and public health assessments.

²⁹ In addition to CBP and U.S. Coast Guard officers, customs officers include any agent or other person, including foreign law enforcement officers, authorized by law or designated by the Secretary of Homeland Security to perform the duties of a customs officer. *See* 19 U.S.C. § 1401(i).

VI. Extended Duration Subject to Recurring 30 Day Review

As discussed above, the number of confirmed cases of COVID-19 in Canada, Mexico, and the United States continue to increase. The COVID-19 public health emergency determination by the Secretary of HHS has remained in effect since February 4, 2020.³⁰ As individual states in the United States enter different phases of the pandemic, the demand for COVID-19-related care and the challenges of providing that care are rapidly changing. Although some states are beginning to relax restrictions and plan for the reopening of their communities, the reopening process will occur in phases that are closely tied to local infection rates, as well as other considerations. As the United States collectively determines how to best balance protecting public health with resuming normal activities, it is critical that the country continues to adhere to existing containment strategies, where possible—including the suspended introduction of covered aliens.

³⁰ Determination of Public Health Emergency, 85 Fed. Reg. 7316 (Feb. 7, 2020); *see also* HHS Secretary, “Renewal of Determination That A Public Health Emergency Exists,” April 21, 2020, available at: <https://www.phe.gov/emergency/news/healthactions/phe/Pages/covid19-21apr2020.aspx>.

Furthermore, although stay-at-home orders and social distancing have been an important part of controlling the COVID-19 pandemic and “flattening the curve,” these strategies alone cannot eliminate the risk of COVID-19 in the United States. Lasting protection from COVID-19 will be achieved with a widely-available vaccine that confers immunity to the uninfected, widely-available therapeutics for those who are infected, or some combination of both.³¹ While there is unprecedented collaboration between public and private stakeholders to develop vaccines and therapeutics for COVID-19, a widely available finished product is still months away.

The public health risks that are the basis for this Amended Order and Extension are unlikely to abate in the coming months. Covered aliens cannot be introduced into the congregate holding areas of land and coastal POEs and Border Patrol stations without significantly increasing the risk of infection among DHS personnel and others in those facilities. Accordingly, this Amended Order and Extension shall remain in effect until I determine that the danger of

³¹ CDC does not consider Remdesivir to be a therapeutic for COVID-19 for the purposes of the Amended Order and Extension because Remdesivir is not currently approved by the Food and Drug Administration to treat COVID-19.

further introduction of COVID-19 into the United States has ceased to be a serious danger to the public health.

CDC shall reassess the Order every 30 days to determine whether the latest relevant information regarding the COVID-19 pandemic warrants continued implementation, or whether the Order should be modified or terminated.

VII. Determination and Implementation

Based on both the foregoing and additional insight gained over the past two months, I find that the determinations underlying the March 20, 2020 Order and April 20, 2020 Extension remain correct, and that the situation in Canada, Mexico, and the United States continues to require suspension of the introduction of covered aliens into land and coastal POEs and Border Patrol stations at or near the border in order to protect the public health from COVID-19.

The March 20, 2020 Order and April 20, 2020 Extension were based on the risk of introduction of individuals who have traveled through Canada and Mexico into the congregate settings of POEs and Border Patrol stations. Because

COVID-19 is a contagious disease spreading throughout Canada and Mexico, individuals coming from these countries pose a risk of introducing or spreading COVID-19 into the United States once they enter POEs and Border Patrol stations at or near the border. Because covered aliens lack proper immigration documentation for entering the United States, they would have been likely to spend a material amount of time (i.e., hours or days) in the congregate holding areas of POEs and Border Patrol stations while they undergo immigration processing. POEs and Border Patrol stations have capacity only for short-term processing and holding of inadmissible aliens. They were never intended to provide the medical screening, monitoring, and isolation functions needed to contain COVID-19, especially on the scale demanded by the ongoing pandemic. As POEs and Border Patrol stations lack appropriate medical capabilities, any COVID-19-related care of covered aliens would have to be met by local healthcare systems in the United States, which are already straining to respond to the needs of the domestic population.

Moreover, due to their lack of legal immigration status, there is significant uncertainty that covered aliens would be able to effectively self-quarantine, self-

isolate, or otherwise comply with existing social distancing guidelines, if they were conditionally released. CDC and local public health jurisdictions simply lack the resources and personnel necessary to effectively monitor covered aliens who would otherwise be conditionally released into the United States but for the Order. Accordingly, covered aliens must be returned to the country from which they entered the United States, to their country of origin, or to another appropriate location.

The statistical information provided by DHS shows the March 20, 2020 Order and April 20, 2020 Extension have significantly reduced the number of covered aliens in custody at POEs and Border Patrol stations, practically eliminating one channel through which COVID-19 can enter the United States. In light of the current lack of a widely available vaccine or therapeutic for COVID-19, protecting the public health warrants further extending the Order.

Accordingly, I determine that COVID-19 remains a contagious disease that is present in many countries including Canada and Mexico; covered aliens arriving from those countries pose a risk of further introducing or

spreading COVID-19 into the United States while they are held in the congregate holding areas of POEs and Border Patrol stations at or near the border; and this risk is serious enough to require suspending the introduction of such covered aliens into all land and coastal POEs and Border Patrol stations at or near the border with Canada or Mexico that would otherwise hold covered aliens in a congregate setting.

I consulted with DHS before issuing this Amended Order and Extension and requested that DHS continue to implement the operational plan developed to carry out the March 20, 2020 Order and April 20, 2020 Extension because CDC does not have the capability, resources, or personnel needed to alternatively issue quarantine or isolation orders.³²

This Amended Order and Extension applies to all persons traveling from Canada or Mexico (regardless of their country of origin) who would otherwise be introduced into a congregate setting in any land or coastal POE or

³² As previously discussed in the March 20, 2020 Order, CDC relies on the Department of Defense, other federal agencies, and state and local governments to provide both logistical support and facilities for federal quarantines. *See* 42 U.S.C. § 268(b) (requiring customs and Coast Guard officers to aid in the enforcement of quarantine regulations). CDC lacks the resources, staffing, and facilities to quarantine covered aliens. Similarly, DHS has informed CDC that in the near term, it is not financially or logistically practicable for DHS to build additional facilities at POEs and Border Patrol stations for purposes of quarantine or isolation.

Border Patrol station at or near the border with Canada and Mexico, subject to exceptions.

This Amended Order and Extension does not apply to U.S. citizens, lawful permanent residents, and their spouses and children; members of the armed forces of the United States, and associated personnel, and their spouses and children; persons from foreign countries who hold valid travel documents and arrive at a POE; or persons from foreign countries in the visa waiver program who are not otherwise subject to travel restrictions and arrive at a POE. Additionally, this Amended Order and Extension does not apply to persons whom customs officers determine, with approval from a supervisor, should be excepted based on the totality of the circumstances, including consideration of significant law enforcement, officer and public safety, humanitarian, and public health interests. DHS shall consult with CDC concerning how these types of case-by-case, individualized exceptions shall be made to help ensure consistency with current CDC guidance and public health assessments.

This Amended Order and Extension is not a rule subject to notice and comment under the Administrative Procedure

Act (APA). In the event this order qualifies as a rule subject to notice and comment, a delay in effective date is not required because the foregoing discussion shows that there is good cause to dispense with prior public notice and the opportunity to comment on this order and a delay in effective date.³³ Given the public health emergency caused by COVID-19, it would be impracticable and contrary to the public health—and, by extension, the public interest—to delay the issuing and effective date of this Order. In addition, because this Order concerns ongoing discussions with Canada and Mexico on how to best control COVID-19 transmission over our shared borders, it directly “involve[s] . . . a . . . foreign affairs function of the United States.” 5 U.S.C. § 553(a)(1). Notice and comment and a delay in effective date would not be required for that reason as well.

This Amended Order and Extension goes into effect at 12:00 a.m. Eastern Daylight Time (EDT) on May 21, 2020 and shall remain in effect until I determine that the danger of further introduction of COVID-19 into the United States has ceased to be a serious danger to the public health, and the

³³ See 5 U.S.C. § 553(b)(B) and (d)(3).

continuation of the Order is no longer necessary to protect the public health. Upon making this determination, I will publish a notice in the Federal Register terminating this Order and its Extensions. CDC shall reassess the Order every 30 days to determine whether current conditions warrant continued implementation, modification, or termination of the Order. I may further amend or extend the Order as needed to protect the public health.

Authority

The authority for these orders is Sections 362 and 365 of the Public Health Service Act (42 USC §§ 265, 268) and 42 CFR 71.40.

Dated: May 19, 2020.

Robert K. McGowan,
Chief of Staff,
Centers for Disease Control and Prevention.
[FR Doc. 2020-11179 Filed: 5/20/2020 4:15 pm; Publication Date: 5/26/2020]