



**BILLING CODE: 4163-18-P**

**DEPARTMENT OF HEALTH AND HUMAN SERVICES**

**Centers for Disease Control and Prevention**

**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 an extension of an Order issued March 20, 2020, under Sections 362 and 365 of the Public Health Service Act, and associated implementing regulations, that suspends the introduction of certain persons from countries where an outbreak of a communicable disease exists. The Order was issued on April 20, 2020 and shall remain in effect until 11:59 p.m. EDT on May 20,

2020. This Order may be amended or rescinded prior to that time at the discretion of the Director.

**DATES:** This action took effect April 20, 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:** On March 20, 2020, the Director of the Centers for Disease Control and Prevention issued an Order prohibiting the introduction of certain persons from countries where an outbreak of a communicable disease exists (85 FR 17060; March 26, 2020). The Order was scheduled to expire April 20, 2020.<sup>1</sup>

Unfortunately, COVID-19 has continued to spread since the March 20 Order. Canada and Mexico continue to see large numbers of COVID-19 infections and deaths. In addition, the United States has seen many states enter the

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<sup>1</sup> See 1 CFR 18.17. When a date falls on a weekend or holiday, the next Federal business day is used.

acceleration phase of the COVID-19 pandemic, which has strained the healthcare system and prompted dramatic public health responses at the local, state, and Federal levels. Millions of Americans are now complying with local and state stay-at-home orders, engaging in social distancing, and taking other precautions calculated to slow the spread of, and protect others from, COVID-19. At the Federal level, HHS and the Department of Homeland Security (DHS) are working with public and private stakeholders to rapidly procure, distribute, and increase the supply of scarce medical and healthcare resources such as personal protective equipment (PPE), ventilators, and therapeutics for the American public. The entire country has mobilized to save lives by limiting face-to-face contact and reserving medical and healthcare resources for those who need them most. The determinations made in support of the March 20 Order remain correct and should continue in place until 11:59 p.m. EDT on May 20.

A copy of the order is provided below and a copy of the signed order can be found at

<https://www.cdc.gov/quarantine/aboutlawsregulationsquarantineisolation.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) :**

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

I am extending the Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists issued on March 20, 2020 until 11:59 p.m. EDT on May 20 or 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, whichever is sooner. I may further amend or extend the March 20, 2020 Order as needed to protect the public health.

I issued the March 20, 2020 Order pursuant to §§ 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 the Centers for Disease Control and Prevention (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 defined "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.

In addition, the March 20, 2020 Order 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.

COVID-19 has continued to spread since the March 20, 2020 Order. Canada and Mexico continue to see increasing numbers of COVID-19 infections and deaths. In addition, the United States has seen many states experience exponential growth in the number of confirmed COVID-19 cases, which has strained the healthcare system and prompted dramatic public health responses at the local, state, and Federal levels. Millions of Americans are now complying with local and state stay-at-home orders, engaging in social distancing, and taking other precautions calculated to slow the spread of, and protect others from, COVID-19. At the Federal level, the U.S. Departments of Health and Human Services (HHS) and Homeland Security (DHS) are working with public and private stakeholders to rapidly procure, distribute, and increase the supply of scarce medical and healthcare resources such as personal protective equipment (PPE), ventilators, and therapeutics for the American public. The entire country has mobilized to save lives by limiting face-to-face contact and reserving medical and healthcare resources for those who need them most. At a time when these domestic efforts are



ongoing and effective, it would be counterproductive and dangerous to undermine those efforts by permitting the introduction of persons from outside the United States who pose a risk of transmission of COVID-19 within DHS facilities or the U.S. interior.

Further, the determinations made in support of the March 20, 2020 Order remain correct. If anything, they have become more compelling. I therefore conclude that the March 20, 2020 Order should remain in effect until 11:59 p.m. EDT on May 20.

**COVID-19 is Continuing to Spread in Canada, Mexico, and the United States**

Since the March 20, 2020 Order, the number of COVID-19 cases globally, including in Canada, Mexico, and the United States, has continued to increase.

*Canada*

As of April 13, 2020, Canada has reported 24,804 confirmed cases of COVID-19, and a total of 734 deaths.

Canada has tested 422,200 people for COVID-19.<sup>2</sup> The Public Health Agency of Canada estimates that 72% of infections are the result of community transmission. Canadian modeling indicates that, with the use of strong epidemic controls resulting in a 2.5% 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.<sup>3</sup>

Canada has implemented and maintained robust public health measures to slow the spread of COVID-19, including closures of public schools and cancelation of public events.<sup>4</sup> Non-essential businesses have been closed across the country.

### *Mexico*

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<sup>2</sup> Government of Canada, Coronavirus disease (COVID-19): Outbreak Update (Apr. 13, 2020), <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection.html?topic=tilelink#a2>.

<sup>3</sup> Public Health Agency of Canada, COVID-19 in Canada: Using Data and Modeling to Inform Public Health Action (Apr. 9, 2020), available at <https://www.canada.ca/content/dam/phac-aspc/documents/services/diseases/2019-novel-coronavirus-infection/using-data-modelling-inform-eng.pdf>.

<sup>4</sup> *See generally* Kristin Rushowy, The Star, Ontario Schools Will Remain Closed Until at Least May 4. But Kids Can Expect Marks (Mar. 31, 2020), <https://www.thestar.com/politics/provincial/2020/03/31/ontario-schools-wont-open-until-at-least-may.html>; Ryan Rocca, Global News, Coronavirus: City of Toronto Cancels Events Through June 30, including Pride Parade (updated Apr. 1, 2020), <https://globalnews.ca/news/6758350/coronavirus-toronto-cancels-events-pride-parade/>.

As of April 12, 2020, Mexico has reported 3,844 confirmed cases of COVID-19 and 233 deaths.<sup>5</sup> Nevertheless, based on public health surveillance, Mexico estimates that its current case count is 26,519. Mexico's modeling, based on World Health Organization (WHO) reporting from China, assumes a 0.2% infection rate with 250,656 infected people during the acceleration phase of the pandemic.<sup>6</sup> Of those people, 70% (175,459) are anticipated to seek medical care.<sup>7</sup> Among people seeking medical care, it is projected that 80% (140,367) will be ambulatory patients, 14% (25,564) will need to be hospitalized without intensive care, and 6% (10,528) will require intensive care.<sup>8</sup>

On March 30, 2020, Mexico's General Health Council declared a "State of Health Emergency" and suspended all non-essential activities in the public and private sectors

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<sup>5</sup> World Health Organization, Coronavirus Disease 2019 (COVID-19) Situation Report – 83 (Apr. 12, 2020), [https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200412-sitrep-83-covid-19.pdf?sfvrsn=697ce98d\\_4](https://www.who.int/docs/default-source/coronaviruse/situation-reports/20200412-sitrep-83-covid-19.pdf?sfvrsn=697ce98d_4).

<sup>6</sup> 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.pdf](https://www.gob.mx/cms/uploads/attachment/file/541879/COVID-19_-_Presentacion_Comunicado_Tecnico_Diario_2020.03.17.pdf.pdf).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

until April 30, 2020.<sup>9</sup> The order granted full authority to the Secretariat of Health to take action to address the pandemic across Mexico. The central guidance of the Mexican health authorities is to maximize social distancing and that people should only leave their homes for essential activities, such as to procure food or medical care.<sup>10</sup> State and local authorities in several Mexican states also are enforcing non-essential business closures and self-quarantine measures.

#### *United States*

As of April 13, 2020, the United States has reported 554,849 confirmed cases of COVID-19 across the United States and 21,942 deaths.<sup>11</sup> Community transmission of COVID-19 is occurring in many locations across the United States. Several cities and states have experienced widespread, sustained community transmission to the extent that their healthcare and public health systems are at risk

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<sup>9</sup> U.S. Department of State, U.S. Embassy and Consulates in Mexico, Health Alert – Mexico COVID-19 Update (Apr. 10, 2020), <https://mx.usembassy.gov/health-alert-mexico-covid-19-update-04-10-2020/>.

<sup>10</sup> *Id.*

<sup>11</sup> CDC, Cases in U.S. (updated Apr. 13, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html>.

of being overwhelmed. This includes parts of states and territories at or near borders of the United States which are reporting large increases in new COVID-19 cases since the March 20, 2020 Order.<sup>12</sup>

In addition to practicing rigorous hygiene and social distancing and limiting non-essential travel,<sup>13</sup> CDC's guidance to the general public has expanded to include the recommendation that individuals wear face coverings when out in public.<sup>14</sup> CDC expects widespread transmission of COVID-19 in the United States will occur and, in the coming months, most of the U.S. will be exposed to COVID-19.<sup>15</sup> Nevertheless, not all areas of the United States are currently experiencing high rates of infection or numbers of confirmed cases. Generally speaking, COVID-19 is currently concentrated along the East, West, and Gulf

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<sup>12</sup> The New York Times, Coronavirus in the U.S.: Latest Map and Case Count (Apr. 13, 2020), <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html#states>; *see also* CDC, Coronavirus Disease 2019 (COVID-19): Cases in U.S.: States Reporting Cases of COVID-19 to CDC (Apr. 14, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/cases-updates/cases-in-us.html#cumulative>.

<sup>13</sup> CDC, COVID-19: How to Protect Yourself and Others (last reviewed Apr. 8, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>.

<sup>14</sup> CDC, COVID-19: How to Wear a Cloth Face Covering (last reviewed Apr. 9, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/diy-cloth-face-coverings.html>.

<sup>15</sup> CDC, Testing for COVID-19 (Mar. 21, 2020), <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html>.

Coasts and in the Great Lakes region; there are significantly fewer cases in the interior of the United States.<sup>16</sup> Limiting the spread of COVID-19 in these less affected areas is a critical component of the overall U.S. strategy to “flatten the curve,” which requires limiting the number of foci, or infected individuals, who may enter these areas.

#### *Joint Efforts*

On March 20, 2020, the United States and Canada jointly decided to restrict all non-essential travel across the U.S.-Canadian border for 30 days, with limited exceptions for U.S. citizens and others entering Canada for essential business, provided these individuals have not been outside Canada or the United States in the 14 days prior to requesting entry into Canada. Foreign nationals, excluding those arriving from the U.S., will not be allowed into Canada, subject to certain exceptions.<sup>17</sup> The Canadian government is requiring individuals returning home to

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<sup>16</sup> See Johns Hopkins University, COVID-19 United States Cases by County, <https://coronavirus.jhu.edu/us-map>.

<sup>17</sup> See Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada, 85 Fed. Reg. 16548 (Mar. 24, 2020).

Canada to self-isolate for 14 days upon their return.<sup>18</sup> Individuals exhibiting symptoms of COVID-19 are not permitted to enter Canada, except for Canadian citizens or permanent residents.<sup>19</sup>

Similarly, on March 20, 2020, the United States and Mexico announced a joint initiative temporarily restricting all non-essential travel across their border in an effort to combat the spread of COVID-19.<sup>20</sup>

#### *Availability of Rapid COVID-19 Testing*

Since the March 20, 2020 Order, rapid testing for COVID-19 has been developed that can provide results in approximately 15 minutes and manufacturers are currently ramping up production and distribution of rapid COVID-19 testing.<sup>21</sup> Although rapid COVID-19 testing could ameliorate

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<sup>18</sup> Government of Canada, Coronavirus disease (COVID-19): Canada's Response, <https://www.canada.ca/en/public-health/services/diseases/2019-novel-coronavirus-infection/canadas-reponse.html?topic=tilelink>

<sup>19</sup> *Id.*

<sup>20</sup> U.S. Department of Homeland Security, Joint Statement on U.S.-Mexico Joint Initiative to Combat the COVID-19 Pandemic (Mar. 20, 2020), available at <https://www.dhs.gov/news/2020/03/20/joint-statement-us-mexico-joint-initiative-combat-covid-19-pandemic>.

<sup>21</sup> For instance, on March 27, 2020, Abbott received emergency use authorization from the U.S. Food and Drug Administration ("FDA") for the fastest available point-of-care test for COVID-19.

some of the public health concerns associated with congregate detention in DHS border facilities, rapid COVID-19 testing is not yet widely available, and demand outstrips supply. Moreover, once it is available, rapid COVID-19 testing should be prioritized to certain key locations, such as hospitals treating high numbers of COVID-19 patients, where the ability to quickly determine whether doctors and nurses have been infected with COVID-19 could increase the availability of care providers by eliminating the need for these individuals to self-isolate while awaiting test results.

### **Determination and Implementation**

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Abbott, “Detect COVID-19 in as Little as 5 Minutes” (Mar. 27, 2020), <https://www.abbott.com/corpnewsroom/product-and-innovation/detect-covid-19-in-as-little-as-5-minutes.html>; *see generally* U.S. Food and Drug Administration, Emergency Use Authorizations, <https://www.fda.gov/medical-devices/emergency-situations-medical-devices/emergency-use-authorizations#covid19ivd>. Rapid COVID-19 testing will significantly reduce the time needed to confirm a suspected diagnosis of COVID-19, which currently may take as long as three to four days. *See* CDC, 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](https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf); *see also* CDC, Interim Guidelines for Collecting, Handling, and Testing Clinical Specimens from Persons for Coronavirus Disease 2019 (COVID-19) (updated Apr. 8, 2020), <https://www.cdc.gov/coronavirus/2019-nCoV/lab/guidelines-clinical-specimens.html>. When a case of COVID-19 is suspected, the sooner that confirmatory test results are available, the more quickly treatment and isolation and quarantine measures can be implemented, lowering the risk of infecting others. *See* CDC, Evaluating and Testing Persons for Coronavirus Disease 2019 (COVID-19) (updated Mar. 24, 2020), <https://www.cdc.gov/coronavirus/2019-nCoV/hcp/clinical-criteria.html>.



Based on the foregoing, I find that the global presence of COVID-19, including in Canada, Mexico, still presents a danger of further introduction of COVID-19 into the United States. This is true notwithstanding the community transmission of COVID-19 in many locations across the United States. There are many locations in the United States near our borders with Canada and Mexico that have not yet experienced widespread community transmission. The on-going COVID-19 pandemic, including in Canada and Mexico, remains a serious danger to such locations.

In the March 20, 2020 Order, I found the risks troubling partly because outbreaks of COVID-19 in POEs or Border Patrol stations would lead U.S. Customs and Border Protection to transfer persons with acute presentations of illness to local or regional healthcare providers for treatment, which would exhaust the local or regional healthcare resources or at least reduce the availability of such resources to the domestic population, and further expose local or regional healthcare workers to COVID-19. Millions of Americans are complying with local and state stay-at-home orders, engaging in social distancing, and taking other precautions calculated to slow the spread, protect others, and relieve the strain on the healthcare

system. Their efforts would be significantly undermined if outbreaks of COVID-19 in land POEs or Border Patrol stations crippled the DHS workforce and local or regional healthcare systems.

I consulted with DHS before issuing this Order and requested that DHS continue to implement the March 20, 2020 Order because CDC does not have the capability, resources, or personnel needed to alternatively issue quarantine or isolation orders.<sup>22</sup>

The March 20, 2020 Order shall remain in effect until 11:59 p.m. EDT on May 20, or 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, whichever is sooner. I may further amend or extend the March 20, 2020 Order as needed to protect the public health.

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<sup>22</sup> 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 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.

This Order 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 are not required because there is good cause to dispense with prior public notice and the opportunity to comment on this order and a delay in effective date.<sup>23</sup> 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.

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The March 20, 2020 Order shall remain in effect until 11:59 p.m. EDT on May 20, 2020.

#### **Authority**

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<sup>23</sup> See 5 U.S.C. 553(b)(B) and (d)(3).

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: April 19, 2020.

**Robert K. McGowan**

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