

PUBLICATION

Air Travel to the U.S.: Testing and Vaccination Requirements, Exceptions, Old Bans Dropped

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On October 25, 2021 and November 26, 2021, the White House issued new COVID-related Proclamations about air travel to the U.S. effective on November 8, 2021 and November 26, 2021, respectively. The October Proclamation revoked prior country-specific bans in favor of a complex combination of recent test results or recovery, and either full vaccination or exemptions with certain conditions involving post-arrival testing and vaccination, self-isolation and quarantine. The November 26 Proclamation returned to a country-specific restriction on eight countries in Southern Africa arising from the Omicron variant. Read more for critical details derived from confusing Centers for Disease Control and Prevention (CDC) implementation documents and follow up order including attestation forms.

Essential Requirements

All persons (including U.S. citizens and permanent residents) traveling to the U.S. from a foreign country must attest and present proof of any *one* of the following:

- (1) a negative test taken within one day before departure (Note: prior to December 6, 2021, a fully vaccinated traveler could be tested up to three days before departure);
- (2) a positive test taken within 90 days before travel and clearance for travel by a licensed health care provider or public health official;
- (3) age under two years; **or**
- (4) an extremely rare humanitarian emergency exemption letter issued by the U.S. Government (through request to the U.S. consulate) to preserve health and safety (i.e., emergency medical evacuation) when pre-departure testing is not possible.

Nonimmigrants must complete an additional attestation. Those who are not fully vaccinated and have not recovered from COVID-19 within the past 90 days may still travel to the U.S. by air if they meet an exception and agree to the following post-arrival conditions that apply depending on their exception:

1. Viral testing for COVID-19 three to five days after arrival (unless having recovered from COVID within 90 days before travel)
2. Self-quarantine for seven days even if the post-arrival test is negative
3. Self-isolation for 10 days if post-arrival testing is positive
4. Completion of full vaccination (including spacing between shots and the 14 days following) within 60 days after arrival unless the traveler attests to not intending to stay in the U.S. more than 60 days.

The following categories of nonimmigrants are exempt from the vaccination requirement with obligation to complete the post-arrival commitments as indicated by reference to the numbers above:

- Children under age 18 (Conditions 1-3) (Children under age two are exempt from all requirements)
- Holder of a visa who is a citizen of a country listed by the CDC as having limited vaccine availability (mainly less than 10 percent vaccinated; currently 50 countries) (Conditions 1-4). Note: this does NOT include B-1 or B-2 visitors, whether they hold a visa or would use the Visa Waiver Program/ESTA. The country of residence is not considered. It would seem that a country of residence could be used only if that country's passport is being used for travel to the U.S.
- Person with documented medical contra-indication for vaccine, such as a past allergic reaction to components of a COVID-19 vaccine (Conditions 1-3)
- Participants on certain COVID-19 vaccination trials who received non-placebo doses, including otherwise non-qualifying vaccines Bharat Biotech, CanSinoBIO, Clover, Novavax, Serum Institute of India (Conditions 1-3)
- Member of U.S. Armed Forces, spouse, or child under 18 (no conditions)
- Sea crew member using C-1 or D visa (Conditions 1-4)
- Diplomatic or Official Foreign Government traveler (A, G, NATO, E-1/TECRO/TECO visas or UN invitation, with official letter) (Conditions 1-4 unless CDC exempted)
- Person exempted by U.S. Government letter for humanitarian reasons or national interest (Conditions 1-4)

Definitions and Details

Airline crew members are exempt from all requirements as long as they are complying with airline protocols.

Nonimmigrants: The following are not considered "nonimmigrants" and are not subject to the post-arrival conditions if unvaccinated:

- U.S. citizens
- Permanent residents
- Nationals
- Asylees
- Refugees

Note that persons entering as part of a process to obtain permanent status are subject to a separate vaccination requirement including COVID-19. It is not clear whether someone processing for permanent residence within the U.S. and using "advance parole" would be considered a nonimmigrant, so for now we recommend that advance parole be used only by persons who are fully vaccinated or can meet an exception.

Domestic Travel: The Proclamation covers only travel from a foreign country, which means that travel within and among U.S. states, territories (including American Samoa, Guam, the Northern Mariana Islands, Puerto Rico, and the U.S. Virgin Islands) do not trigger the Proclamation's requirements.

Documentation Process and Retention: A parent or authorized person may complete the required attestation forms on behalf of a traveler who is under age 18 or otherwise impaired. Airlines are responsible for collecting the attestations and confirming supporting paper or electronic documents from travelers, and in doing so they may rely on trusted third parties but remain ultimately responsible. Vaccination records need not be verifiable but must contain at least full name and date of birth, authorized entity issuing the record, vaccine manufacturer, and date of vaccination. Airlines must retain the collected records for two years. Requirements for document retention by passengers is not clear but prudent travelers will retain copies of attestations and supporting documents. (Compare in the CDC Order: "individuals are not required to retain a copy of the attestation in their possession upon arriving in the United States" with "Requirements for Aircraft Passengers ... E. Retain a copy of the applicable documentation listed in parts A, B, C, and D of this section and produce

such documentation upon request, or as required by, any U.S. government official or a cooperating state, local, territorial, or tribal public health authority after arrival in the United States.")

Qualifying Vaccines: The vaccines currently listed by the CDC as approved at least for emergency use by the FDA or WHO include Janssen/J&J single dose, or two-dose series of Pfizer-BioNTech, Moderna, AstraZeneca, Covishield, BIBP/Sinopharm, and Sinovac. Mix-and-match combinations of these vaccines can be accepted if administered at least 17 days apart. Some people who participated in trials using non-qualifying vaccines may be exempted subject to post-arrival testing and isolation.

Alternatives: Positive antibody tests are not acceptable. There are no religious or moral conviction exceptions.

Isolation and Quarantine: Self-isolation and self-quarantine are required to be "in a home or other residence." It is not clear whether a hotel can qualify. CDC materials indicate that the self-quarantine requirement applies at least for seven days to all nonimmigrants who are not fully vaccinated and have not recovered from COVID-19 within the last 90 days, regardless of exposure. In other materials, the CDC indicates that quarantine normally is required only if someone is exposed for 15 minutes or more over a 24-hour period within six feet of someone who has COVID-19 for 14 days, or for seven days after negative results from a test taken after day five.

Updates: The CDC is expected to update its guidance periodically, especially concerning the list of countries with limited vaccine availability.

Other Travel: The Proclamation referenced in this alert refers only to air travel. Different guidance about land and sea arrivals is expected soon. Baker Donelson attorneys will be watching for any further updates. If you have questions about this proclamation, please reach out to the author or any member of Baker Donelson's [Immigration Team](#)