

U.S. Customs and Border Protection: Current Issues

Fall 2020

November 4, 2020



Agenda

- NAFSA International Student & Scholar Regulatory Practice Committee (ISS RP) overview
- CBP and NAFSA key resources: COVID-19 and travel
- CBP structure and authority refresher
- Q&A
- Agency updates

NAFSA International Student & Scholar Regulatory Practice Committee (ISS RP)



Five subcommittees:

1. International Student
2. Exchange Visitor Program
3. Employment Based
4. Travel
5. Regulatory Ombudsman (Regbuds)

Four primary functions:

1. Identify critical trends in regulatory practice
2. Prioritize regulatory practice issues
3. Communicate to members about regulatory practice issues
4. Liaise strategically with topics developed

Strength in Reporting!

Report problems to IssueNet Report an Issue: <http://issuenet.nafsa.org/>

ISS RP, ctd.

- 47 Member Leaders across five subcommittees
 - Employment Based, Exchange Visitor Program, Regulatory Ombudsman (Regbuds), International Students, Travel
- Identify and prioritize regulatory practice issues that need action
 - ISTA/ISCA, IssueNet's Report an Issue
- Proposing, preparing, and co-presenting agency-focused conference sessions
- Proposing, preparing, and co-presenting [NAFSA Government Connections](#)

ISS RP Travel Subcommittee

Members:

Lucy Cheung (Chair), Goldstein and Cheung LLP

Susan Ellison, Dartmouth College

Preble Glitz Girard, McNeese State University

Edyta Klimczak, Florida Atlantic University

Chad Lectura, New York University

Nicole Schwab, University of Washington

Key NAFSA Resources

- [NAFSA COVID-19 Restrictions on U.S. Visas and Entry](#)
- [CBP COVID-19 Updates and Announcements](#)
- [CDC COVID-19 Travel Recommendations by Country](#)
- [DHS Fact Sheet on COVID-19 Travel Restrictions](#)
- [SEVP FAQs for COVID-19](#)
- [NAFSA Adviser's Manual 360, Chapter 11 Nonimmigrants](#) (information about inspection and admission to U.S.)

Key CBP Resources

- CBP General Information
 - <https://help.cbp.gov> and <https://helpspanish.cbp.gov>
- CBP Office of Field Operations and Ports of Entry/Deferred Inspection Sites Contact Information
 - <https://www.cbp.gov/contact/ports>
- DHS Traveler Redress Inquiry Program (DHS TRIP)
 - <https://www.dhs.gov/dhs-trip>
- CBP Information Center – Open Monday – Friday (except federal holidays) from 8:30am – 5:00pm EST
 - Domestic Calls: 1-877-CBP-5511 (1-877-227-5511)
 - International Calls: 1-202-325-8000
 - https://help.cbp.gov/s/?language=en_US
- CBP Intergovernmental Public Liaison
 - (202) 325-0775
 - CBP-Intergovernmental-Public-Liaison@cbp.dhs.gov

Refresher: CBP Authority and Role

- Travelers sometimes may be unaware or forget that, in addition to obtaining a nonimmigrant visa, they will undergo another process at the ports of entry (POE). This process is called “inspection.”
 - There is a misconception in the general public that once an individual is granted a visa (nonimmigrant or immigrant visa), such individual is automatically granted entry to the United States.
 - Immigration and Nationality Act (INA) section 101(a)(26) defines the term “nonimmigrant visa” as a visa properly issued to an alien as an eligible nonimmigrant by a competent officer as provided in INA. Issuance of a nonimmigrant visa by the Department of State simply means that the individual is eligible to seek entry under the particular nonimmigrant classification.
 - When this individual presents oneself at a POE to seek entry, that individual is now an applicant for admission, which will be inspected in accordance to INA section 235(a)(1), or 8 CFR 235.5 if seeking entry at Preclearance locations.
 - Keep in mind, that in addition to immigration inspection, CBP is also responsible for the enforcement of customs statutes and regulations, as well as laws pertaining to agricultural/plant protection and quarantine enforcement at POEs.

Refresher: CBP Authority and Role

- **Tips that students and scholars may follow for a smoother inspection:**
 - “Know Before You Go” – Review CBP’s public website for up-to-date information.
 - Understand that travelers are required to be inspected before being admitted into the United States.
 - There are two perspectives during inspection: immigration and customs/agricultural items.
 - For immigration and admissibility, travelers should prepare themselves for questioning and should be able to articulate to the CBP officer the reason/duration/plan for the visit, as well as disclose information that may affect their admissibility.
 - For customs/agricultural related items, travelers should understand what is allowed to be imported into the United States, items that subject to duty/tariff, and items that are prohibited for importation.

Refresher: CBP Authority and Role, ctd.

- **Since 2018 we've heard quite a bit of concern about searches of electronic devices during inspection at POEs**
 - We're aware of [DHS OIG Report](#) and a [CBP Directive](#) on the topic
- **How are electronic device searches conducted?**
 - Border searches of electronic devices are essential to enforcing the laws at the border, preserving national security, ensuring public safety, and protecting the country's economic interest.
 - CBP border searches of electronic devices reveal information relevant to interdicting child pornography, combatting drug and human trafficking, enforcing export controls, determining immigration admissibility, and enforcing and administering other laws for which CBP is responsible at the border.
 - The examination of electronic devices receives considerable scrutiny by civil rights and civil liberty groups, Congress, the media and numerous other special interest entities. CBP exercises its border search authority appropriately and in accordance with existing legal requirements, including applicable statutes, regulations, and judicial decisions.
- **How often are travelers' devices are searched (e.g., how many searches are conducted per year)?**
 - CBP searches the electronic devices of fewer than one-hundredth of 1 percent of all arriving international travelers. In fiscal year 2019, there were approximately 40,913 searches conducted at ports of entry.

Update on Travel Bans

- **Since there have been many COVID-related presidential actions (executive orders, memoranda, and proclamations) restricting travel, would you please provide an update on the status of each?**
 - Before going to each specific proclamation, let's talk about the authority that allow the president to issue them - The authority is from INA section 212(f).
 - The list can be found at: <https://www.nafsa.org/regulatory-information/covid-19-restrictions-us-visas-and-entry#countryproclamations>)
 - June 22 [Proclamation 10052](#) suspending entry of certain Hs, Js, Ls
 - April 22 [Proclamation 10014](#) suspending entry of immigrants (who do not already have an immigrant visa) who present a risk to the U.S. labor market

Update on Travel Bans, continued....

- **Country-Specific Covid-19 Proclamations**

- People's Republic of China [Proclamation 9984](#), January 31
- Iran [Proclamation 9992](#) February 29
- European Schengen Area [Proclamation 9993](#) March 11
- Republic of Ireland and United Kingdom [Proclamation 9996](#) March 14
- Brazil [Proclamation 10041](#) May 24-25

Travel Bans and National Interest Exceptions

- **Each proclamation provided an exception, generally for “an alien whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their designees.”**
 - **Can you please explain how such a “National Interest Exception” is determined at POEs?**
 - The Department of State is recognized as the approving authority for waivers for students located overseas. Applicants must present the following; a valid passport, valid nonimmigrant visa, and supporting documentation (Form I-20 or DS-2019). It is important to note that CBP’s Coronavirus Coordination Cell (OCCC) does not adjudicate 212(f) waiver requests for international students (F, M, or Js). All student inquiries must be routed directly to the student’s nearest United States Embassy or Consulate.
 - **Is specific documentation expected, or is the exception and visa granted by DOS sufficient?**
 - There is no documentation issued to the student that states a waiver has been granted. However, CBP and the Department of State communicate internally to ensure that notification and visibility of waiver approvals are known to assist with the facilitation of travel. If the airline needs assistance in determining if a passenger can board, needs a documentation verification, or has any other admissibility concerns, the air carrier should contact the Regional Carrier Liaison Group (RCLG) for guidance and determination on a case-by-case basis, based on the totality of the circumstances.

Travel Bans and National Interest Exceptions (Continued)



- **Each proclamation provided an exception, generally for “an alien whose entry would be in the national interest, as determined by the Secretary of State, the Secretary of Homeland Security, or their designees.”**
 - We understand that, in addition to the visa, some (but not all) travelers who are granted an exception and visa are also given a document by DOS stating that an exception has been granted.
 - CBP continues to work with our industry partners to find a resolution suitable to ensure the facilitation of travel is completed and all applicable immigration laws and executive orders are followed. We understand that recently carriers have seen an uptick in number of passengers requiring document checks and/or being denied boarding.
 - The reason for the uptick has been two-fold; the number of travelers subject to Presidential Proclamations continues to remain high and the increase in the number of individuals granted a National Interest Exception and the facilitation of their travel.
 - CBP continues to explore and improve the process with industry and understands that staffing is limited in our overseas locations.
 - CBP has recently made some operational changes to the process to alleviate the concerns of air carriers, and will also continue to be open to new ideas to ensure the continued facilitation of travel while limiting the spread of COVID-19.

Travel Bans and National Interest Exceptions (Continued)



- **For travelers from one of the restricted countries, but who have not been in a restricted country for the prior 14 days, what documentation would be helpful to establish that lack of physical presence in the restricted country?**
 - In addition to documentary requirements listed on Title of 8 of Code of Federal Regulations section 212.1 and section 214, students/exchange visitors who claimed they have not been present in the restricted country should be able to provide proof the Customs and Border Protection Officer (CBPO) during inspection.
 - Such proof could be lodging receipt, bill/receipt/statements from the non-restricted countries that demonstrate essential presence during the past 14 days, as well as immigration paperwork from the countries one is claiming they were in.

Travel Bans and National Interest Exceptions: Schengen Area, U.K., Ireland



- On July 22, DOS provided an update at [Travel.State.gov](https://travel.state.gov) stating, in part, that:
 - “Students traveling from the Schengen Area, the UK, and Ireland with valid F-1 and M-1 visas do not need to contact an embassy or consulate to seek an individual national interest exception to travel. Students seeking to apply for new F-1 or M-1 visas . . . will automatically be considered for a national interest exception to travel.”
 - And “J-1 students . . . who have a valid visa . . . that was issued prior to PP 9993 or 9996’s effective date or who are seeking to apply for a visa, and believe they may qualify for a national interest exception should contact the nearest U.S. embassy or consulate before traveling. If a national interest exception is approved, they may travel on either a valid visa . . . as appropriate.”
 - We have seen only one document, [a CBP carrier bulletin](#), addressing this, and it states that these travelers have been granted an exception if they have a valid visa
- How are these travelers processed at the POE? What can they expect?
 - The CBP inspection procedures have not changed. Students/Exchange visitors with approved waivers are still subject to inspection pursuant to Immigration and Nationality Act section 235(a)(1).

Canada-Mexico Essential Travel Restrictions



- **Would you please provide an update on the travel restrictions for Canada and Mexico for land ports of entry introduced on March 24?**
 - We note that “Individuals traveling to attend educational institutions” and “Individuals traveling to work in the United States” are considered engaged in “essential travel.”
 - For students: beyond the Form I-20, visa (if required), financial documents, and proof of admission/study, are other documents helpful in making the determination?
 - The current travel restrictions related to cross-border travel for Mexico and Canada do not apply to air travel.
 - For students seeking to enter the United States via a land border ports of entry, academic study would fall under one of the exceptions for “essential travel”. However, the determination of essential travel continues to be at the discretion of the port of entry. Land border crossings into the United States are limited to essential travel only.
 - In summary, CBP Office of Field Operations headquarter does not grant 212(f) waivers for travelers crossing at a Land Border Port of Entry, and thus cannot make the decision of what is essential or non-essential travel.
 - That determination is up to the land border port of entry. Any traveler seeking admission into the United States via land border needs to petition the port at which they wish to enter at the time of entry. As with any cross border travel situation, the traveler should be prepared to provide documentation
 - or proof of reason of travel, qualifying their travel as essential, should they be requested to do so.

PRC Proclamation

- **Presidential Proclamation 10043 of May 29, 2020 suspended entry of certain nonimmigrant students and researchers with ties to the PRC's military civil fusion strategy. The State Department's determination of whether a student or researcher is subject to the Proclamation occurs during the visa application process.**
 - Since issuance of a visa on or after May 29, 2020 provides evidence that the State Dept has determined that the student or researcher is not subject to the proclamation, could you please comment on what role, if any, does CBP have for the implementation of this Proclamation for such students?
 - Our role remains the same – To inspect every foreigner who is seeking admission into the United States in accordance the Immigration and Nationality Act, Title of Code of Federal Regulations (CFR), Title 19 of CFR and many other laws that CBP enforces at or between ports of entry.
 - A nonimmigrant visa is merely a document allowing an individual to travel to a port of entry and apply for admission. Admissibility determination includes prior criminal record(s), purpose of visit on the particular visa, and any national security concern.

PRC Proclamation

- **How does CBP determine if an applicant with a visa issued before May 29, 2020 is subject to the proclamation?**
 - CBP OFO will utilize information provide by the applicant for admission, visa application information, and other sources/materials provided by other government agencies to make such decision.

Inspection and Electronic I-20s

- **Department of Homeland Security Guidance**
 - **Can DSOs electronically send signed Forms I-20 to students instead of physically mailing the forms?**
 - Yes, due to COVID-19, DSOs may electronically send Forms I-20 to student email addresses listed in SEVIS. In the case of a minor students, the email address may belong to their parent or legal guardian. Schools do not need to request permission from SEVP or report their plans to electronically send Forms I-20 as part of their COVID-19 procedural changes.“
 - <https://www.ice.gov/doclib/coronavirus/covid19faq.pdf>, p.6
 - **Can you confirm that CBP is honoring this guidance, and have POEs and posts been instructed to accept a print-out of a Form I-20 sent electronically to students? Would CBP post this information on its website so that students can be assured that their documents are valid? Are you aware of plans to stop accepting such I-20s?**
 - POEs are aware of change from ICE-SEVP and has been provided guidance from CBP OFO HQ on acceptance of electronically sent I-20 since March, 2020.
 - CBP Office of Field Operations (OFO) will discontinue the acceptance when ICE-SEVP rescinds the decision of allowing I-20 to be sent electronically.

Agency updates

- Would you please provide any updates that may be helpful for us, our students and scholars, and our institutions to know about?
- In particular, we'd appreciate hearing more about:
 - Long-term vision and twelve strategic initiatives in [CBP strategy 2020-2025](#)
 - Biometric exit screening (not just entry)
 - Expected proposed rule titled "Collection of Biometric Data From Aliens Upon Entry To and Exit From the United States"
 - More robust use of open-source information for vetting (social media)
 - Increased transparency to empower and facilitate relationships with private stakeholders

Other News and Updates

- Are there other updates that CBP can provide?
 - Termination of Funneling Airports
- Any changes on the horizon?
 - Duration of Status
- Are there any changes we can expect in 2021?