

# **Federal Vaccination Mandate**

## **Consultation Paper – Mandatory Vaccination Policy /**

### **Compliance Reporting for Regulated Entities**

**Important Note:** *This paper is intended to support discussions. It should not in any way be considered a commitment as to the final regulations. The Government of Canada will draft the final regulatory instruments based on consultations and feedback on this document, as well as ongoing implementation planning. There could be material changes to what is presented here.*

*In addition, Transport Canada has provided general privacy tips (Annex A) at the end of this document for industry stakeholders.*

## **General Intent**

While the pandemic has had a devastating impact on Canada's transportation sector, public health measures have been critical to combatting the spread of the virus. Additional measures are needed to ensure the safety and security of Canada's transportation system and facilitate the resumption of safe travel. A requirement for passengers and crew to be vaccinated in federally regulated air, rail, and marine sectors would enhance the safety of the Canadian aviation system, and help give Canadians the confidence to resume travel, while still adhering to public health measures.

## **Scope**

Given the critical nature of airport operations, operators of an aerodrome at specified airports (see Annex B) would be required to implement an airport-wide mandatory vaccination policy not later than October 30, 2021, for all its employees and non-passengers. Airport-wide policies are needed to ensure the safe operation of the aviation system, recognizing that employees critical to support this function must be adequately protected, and that it is not possible to completely isolate operational employees from other employees who have access to the airport environment.

A two-week transition period would then follow before restricted area verifications begin by CATSA on November 15, 2021.<sup>1</sup>

Nav Canada and air carriers operating at specified airports would also be required to implement a company-wide mandatory vaccination policy to ensure that their essential employees and those working in the airport environment are protected from COVID-19. This is imperative in order to ensure that these companies take into account the various risks associated with all of their operations and how the various workflows and employees interact with each other.

For those companies where there is complete segregation between sites (e.g., headquarters or office staff that do not interact with the travelling public and/or the operational environment),

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<sup>1</sup> See the ***Federal Vaccination Mandate Consultation Paper – Non-Passengers Working in Airport Restricted Areas***

an alternative means of compliance could be authorized by the Minister on a case-by-case basis. This approach would require specific companies to instead report to the Minister of Transport Canada (TC), on a weekly basis, specific data elements related to the vaccine status of the following employees including:

- non-passengers (i.e. workers, domestic crew members, technicians, ground crew, etc.) who require access to the restricted area;
- non-passengers conducting operations or in direct support of operations related to commercial passenger flights;
- non-passengers in direct contact with users of the aviation system; and
- non-passengers with functions tied to combatting COVID-19 and other biosecurity threats (e.g. cleaning staff and medical staff working in an operational environment).

Nav Canada/air carriers wishing to take advantage of the alternative means of compliance option should apply to the Minister, for consideration. The intention is that this alternative option be exceptional and limited to a small number of companies (e.g. those whose operation is entirely covered by the restricted area mandatory vaccination regulation).

Cargo operators, secure supply chain participants, private operators (CAR subpart 604), general aviation, aerial work (CAR subpart 702), would not be included in the scope of these policy/reporting requirements.

## **Operational Approach – Operators of an Aerodrome**

**Vaccination Policy for** operators of an aerodrome would be required by regulation to develop an airport-wide mandatory vaccination policy, including but not limited to the following elements:

1. a mandatory vaccination policy statement, signed by an accountable executive;
2. the application or scope of the mandatory vaccination policy;
3. adherence to COVID-19 prevention measures and local public health guidelines;
4. employer responsibilities;
5. vaccination requirements;
6. exemption review process;
7. measures for unvaccinated persons; and
8. proof of vaccination and consequences of non-compliance with the policy.

Operators of an aerodrome would be required to develop and implement their vaccination policy by October 30, 2021 in order to coincide with the coming into force of restricted area vaccine regulations. As part of the new entry restrictions, the operator of an aerodrome, or its delegate, would be responsible to approve exemption requests. Operators of an aerodrome may be asked to report to the Minister on their overall program implementation, in order to support national key performance indicators.

## **Operational Approach – Air Carriers (CAR subpart 703, 704, 705) and Nav Canada**

Air carriers and Nav Canada would be required to implement the federal vaccine mandate as follows:

### **1 – Mandatory Vaccination Policy**

Air carriers would be required to develop and implement a company-wide mandatory vaccination policy by October 30, 2021, which would include the following minimum elements as part of their policy:

- a mandatory vaccination policy statement, signed by an accountable executive;
- the application or scope of the mandatory vaccination policy;
- adherence to COVID-19 prevention measures and local public health guidelines;
- employer responsibilities;
- vaccination requirements including the mitigations to ensure that critical employees and those working in the airport environment are adequately protected from COVID-19;
- exemption<sup>2</sup> review process;
- measures for unvaccinated persons; and
- proof of vaccination and consequences of non-compliance with the policy.

A fully vaccinated non-passenger must:

- have received the full series of an accepted COVID-19 vaccine or a full series of a combination of accepted vaccines; and
- have received their last dose at least 14 full days prior to the day they enter the airport site.

Accepted COVID-19 vaccines in Canada are:

- Pfizer-BioNTech (Comirnaty, tozinameran, BNT162b2);
- Moderna (Spikevax, mRNA-1273);
- AstraZeneca/COVISHIELD (ChAdOx1-S, Vaxzevria, AZD1222); and
- Janssen/Johnson & Johnson (Ad26.COV2.S).

Air carriers and Nav Canada may be asked to report to the Minister on their overall program implementation, in order to support national key performance indicators.

### **2 - Alternative Means of Compliance - Reporting**

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<sup>2</sup> For the purpose of this paper an “**exemption**” refers to a document approved by an employer or the operator of an aerodrome, where a non-passenger has been granted an exemption for reasons of medical contraindication, religion, or after having received a first dose of a COVID-19 vaccine (To be determined reflecting airport specific policies).

Transport Canada strongly recommends that all air carriers and NavCanada implement a mandatory company-wide vaccination policy as the best means of complying with these regulatory requirements and ensuring the safety of operational employees. However, for those who have received prior authorization from the Minister, they would instead be required to provide regularly, on the Minister's request (e.g. weekly basis), the following data elements to Transport Canada:

- total number of non-passengers;
- breakdown of non-passengers requiring access to the restricted area;
- aggregate number of non-passengers fully vaccinated, partially vaccinated, not vaccinated;
- aggregate number of non-passengers who are unable to work due to an illness related to COVID-19;
- number of non-passengers who have an exemption<sup>3</sup> and the mitigation strategy for each;
- number of non-passengers who have refused to comply with the vaccination requirements and the mitigation strategy for each; and
- number of non-passengers for whom access to the restricted area was suspended as a consequence of not being fully vaccinated.

## Exemptions

### Medical and Religious Exemptions

- The Government of Canada is prepared to consider very limited exemptions (e.g. medical or religious grounds) to the vaccination requirement for employees.
- In the case of all potential exemptions, Transport Canada will require air carriers to obtain an attestation from employees which, in the case of medical exemptions would need to be authorized by a medical professional, and in the case of religious conviction would need to be sworn by the employee.
- Transport Canada will also prepare guidance for air carriers in terms of how to address employees who present documentation in support of exemptions on either ground and employers will want to consider these considerations in drafting their own policies.
- In terms of exemptions on medical grounds, the National Advisory Committee on Immunization has established very limited medical reasons for an individual not to become vaccinated.
- Certified medical contraindications to full vaccination against COVID-19 with an mRNA vaccine are based on recommendation of the National Advisory Committee on Immunization. The following are certified medical contraindications as of September 10, 2021:

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<sup>3</sup> Ibid.

- A history of anaphylaxis after previous administration of an mRNA COVID-19 vaccine;
  - A confirmed allergy to polyethylene glycol (PEG) which is found in the Pfizer-BioNTech and Moderna COVID-19 vaccines (Note that if a person is allergic to tromethamine which is found in Moderna, they can receive the Pfizer-BioNTech product).
- Medical reasons for delay of full vaccination against COVID-19 as described by the National Advisory Committee on Immunization as of September 10, 2021 include:
    - A history of myocarditis/pericarditis following the first dose of an mRNA vaccine.
    - An immunocompromising condition or medication, waiting to vaccinate when immune response can be maximized (i.e., waiting to vaccinate when immunocompromised state / medication is lower).
  - With respect to possible exemptions on the basis of religious conviction, major organized religions (e.g., Islam, Roman Catholicism, Judaism, Greek Orthodox, Mennonites) have made statements that they support COVID-19 vaccination for their members in the interest of public health.
  - Other religions that are generally known to have theological objections to vaccinations have released public statements indicating their support for the COVID-19 vaccine (e.g., Jehovah's Witnesses, Christian Science).
  - Given this context, the scope for employee exemptions will be very narrow.

### **Testing Alternative**

If employees are unable to be vaccinated for medical or religious reasons, they must provide their employer with a valid COVID-19 molecular test result. The COVID-19 molecular test result will be either negative or positive:

- If the **test result is negative**, the employee must be tested twice weekly;  
OR
- If the **test result is positive**, it must be dated at least 14 days before but not more than 180 days prior to the employee's work day (e.g., the employee would be eligible to work on day 15 after their test was administered, since 14 days have passed). This accounts for those that had contracted COVID-19, have recovered, but may still be testing positive due to lingering amounts of the virus in their system.

### **Regulatory Framework**

Transport Canada would outline the regulatory requirements for the Federal Vaccine Mandate for non-passengers within the Interim Order Respecting Certain Requirements for Civil Aviation due to COVID-19:

- Operators of an aerodrome, air carriers and Nav Canada would be required to develop and implement an airport-wide/company-wide mandatory vaccination policy and make it available to the Minister upon request.
  - Operators of an aerodrome, air carriers and Nav Canada would be required to adjust their policy as required by the Minister; and/or
  - Operators of an aerodrome, air carriers and Nav Canada could be required to demonstrate proof that their policy is being enforced.
- On an exceptional basis, certain air carriers could be authorized by the Minister to provide Transport Canada, on a weekly basis, with specific data elements related to the vaccination status of non-passengers.

## **Oversight Mechanisms**

Compliance would be verified through oversight inspections carried out by Transport Canada and would begin on October 30, 2021.

Interim Order provisions will be designated. Non-passengers could be fined up to \$5,000 per violation under the *Aeronautics Act*, and operators could be fined up to \$25,000 per violation.

## **Critical Dates**

### **October 30, 2021:**

- Operators of an aerodrome would have to implement their policy and provide it to the Minister upon request. The policy would have to include a mechanism to identify non-passengers with an exemption.
- Air carriers and Nav Canada would have to implement their policy and provide it to the Minister upon request.
- Transport Canada to begin oversight activities per its graduated oversight approach.

### **November 15, 2021:**

- Random verifications begin prior to entry into the restricted area.
- Air carriers must have fully implemented their policy.

## **Annex A - Privacy Considerations – Transport Canada Engagement on Vaccination Mandates in the Transportation Sector**

Companies must ensure that personal information is only created, collected, retained, used, disclosed, and disposed of in a manner that respects the provisions set out in applicable Canadian privacy legislation and other applicable legislation. As such, companies must ensure that privacy is considered at the earliest opportunity and that they implement best privacy practices in order to properly protect the personal information that will be processed.

Please note that the privacy tips below are provided solely as general privacy considerations and do not constitute legal advice. For specific advice on compliance with applicable privacy laws, please contact your legal counsel, privacy professional and/or consult with the applicable Privacy Commissioners' Office.

Privacy considerations:

- Document a defined purpose and authority for the collection and use of this personal information.
- Be transparent with employees and inform them about the reasons for collection, use, disclosure, retention and disposal of their personal information and the consequences for not providing the requested personal information, through a concise, transparent, intelligible and easily accessible privacy notice statement, as required under applicable Canadian privacy legislation.
  - Employees should also be informed and provided with a contact to request access to, and correction of, any personal information available or to make an inquiry or complaint about the handling of their personal information.
- The necessity, effectiveness, proportionality and data minimization principles should be applied so that the least amount of personal information is collected, used or disclosed, for example: unnecessary data fields within a form.
- Employee data related to vaccination status is only used for the purposes it was collected for, retained for a specific period of time and can only be accessed on a need to know basis.
- All company personnel handling personal information, including managers, are aware of their responsibilities and adhere to applicable Canadian privacy legislation and other applicable legislation.
- Consider conducting a Privacy Impact Assessment or other meaningful privacy analyses.
- Privacy breach plans and procedures are up to date.
- Personal information is appropriately protected against unauthorized access and that technical, physical and administrative safeguards are put in place and are appropriate given the sensitivity of the personal information to be collected, used or disclosed through the requirement.

## **ANNEX B – List of Specified Airports in Canada**

The following list of airports has been added for consultation purposes and could change based on the feedback received from stakeholders. Airport operators would be subject to the Federal Vaccine Mandate requirements.

1. Abbotsford International Airport
2. Alma Airport
3. Baie-Comeau Airport
4. Bathurst Airport
5. Brandon Municipal Airport
6. Calgary International Airport
7. Campbell River-Jubilee Airport
8. Canadian Rockies International Airport (Cranbrook, British Columbia)
9. Charlottetown Airport
10. Charlo Airport
11. Chibougamau/Chapais Airport
12. Churchill Falls Airport
13. Comox Valley Airport
14. Dawson Creek Regional Airport
15. Deer Lake Regional Airport
16. Edmonton International Airport
17. Erik Nielsen Whitehorse International Airport
18. Fort McMurray International Airport
19. Fredericton International Airport
20. Gander International Airport
21. Goose Bay Airport
22. Grande Prairie Airport
23. Greater Moncton Roméo LeBlanc International Airport
24. Greater Sudbury Airport
25. Halifax Stanfield International Airport
26. Îles-de-la-Madeleine Airport
27. J.A. Douglas McCurdy Sydney Airport
28. John C. Munro Hamilton International Airport
29. Kamloops Airport
30. Kelowna International Airport
31. Kingston Airport
32. La Grande Rivière Airport
33. Lethbridge Airport
34. Lloydminster Municipal Airport
35. London International Airport
36. Lourdes-de-Blanc-Sablon Airport
37. Medicine Hat Regional Airport
38. Michel-Pouliot Gaspé Airport
39. Mont Tremblant International Airport
40. Mont-Joli Regional Airport
41. Montréal-Pierre Elliott Trudeau International Airport
42. Nanaimo Airport
43. North Bay/Jack Garland Airport
44. North Peace Regional Airport
45. Northwest Terrace Regional Airport



46. Ottawa International Airport
47. Penticton Airport
48. Prince Albert Airport
49. Prince George International Airport
50. Prince Rupert Airport
51. Québec City Jean Lesage International Airport
52. Quesnel Airport
53. Red Deer Regional Airport
54. Regina International Airport
55. Region of Waterloo Regional Airport
56. Roberval Airport
57. Rouyn-Noranda Airport
58. Saguenay-Bagotville Airport
59. Saint John Airport
60. Sarnia-Chris Hadfield Airport
61. Saskatoon John G. Diefenbaker International Airport
62. Sault Ste. Marie Airport
63. Sept-Îles Airport
64. Smithers Airport
65. St. Anthony Airport
66. St. John's International Airport
67. St. Leonard Airport
68. Stephenville Airport
69. Thompson Municipal Airport
70. Thunder Bay International Airport
71. Timmins Victor M. Power Airport
72. Toronto/Buttonville Municipal
73. Toronto Pearson International Airport
74. Toronto Billy Bishop
75. Val-d'Or Regional Airport
76. Vancouver International Airport
77. Victoria International Airport
78. Wabush-Labrador Airport
79. West Kootenay Regional Airport
80. Williams Lake Regional Airport
81. Windsor International Airport
82. Winnipeg James Armstrong Richardson International Airport
83. Yarmouth Airport
84. Yellowknife Airport

**Other airports under consideration as specified airports include**

- i. Edmundston Airport
- ii. Montréal/Saint-Hubert Airport
- iii. Rivière-du-Loup Airport
- iv. Sherbrooke Airport
- v. Trois-Rivières Airport
- vi. Victoria Harbour