



US Travel Updates for 2010

Air Travel to the US... The New Reality

On December 28, 2009 Transport Canada announced heightened security measures for all air travelers destined to the United States as a result of the attempted bombing on Christmas Day of a US bound airliner. Most carry-on luggage has been banned on US bound flights and although, in late December 2009, there were suggestions that the heightened security measures would only last a short time, this would no longer seem to be the case. Air travelers have been encouraged to arrive at airports at least three hours prior to their flights to allow for security procedures and even so, many have missed their flights.

The number of carry-on items has been severely limited but there are some exemptions including medication or medical devices, small purses, cameras, coats, infant care items, laptops, crutches, canes, walkers, containers carrying life-sustaining items, special-needs items, musical instruments, and diplomatic or consular bags. For a full list of exempted items, see: <http://www.tc.gc.ca/eng/mediaroom/backgrounders-menu-5781.htm>

On Sunday, January 3, 2010 the United States announced a stronger security focus on citizens of, or travelers through, 14 specific countries that the US government sites as countries deemed to be "state sponsors of terrorism". Those countries include: Pakistan, Saudi Arabia, Nigeria, Cuba, Iran, Sudan, Syria, Afghanistan, Algeria, Lebanon, Libya, Iraq, Somalia and Yemen.

Individuals who were born in, are citizens of, carry passports of, or traveling through any of these 14 countries will be subjected to heightened security measures as a result of these countries being placed on a new anti-terror watch list and they will be subjected to such things as full-body scans, pat-downs and extensive questioning. Although there have been accusations in the press that these new provisions represent "racial profiling" at its worst and that it should not be allowed, in fact, individuals who meet the 14 country criteria have been enduring such profiling for years.

At Canadian airports, security personnel are being trained to recognize suspicious behaviour in passengers through a new Passenger Behaviour Observation Program and the Canadian government will be purchasing and installing 44 full-body scanners at airports across the country.

Tips:

1. Be prepared to wait, have proper identification, valid and in good order.
2. Know your destination including details of where you will stay and evidence of accommodation such as hotel reservations.
3. Business travelers should have a company letter confirming employment and the purpose of their visit.
4. Don't joke around. Remain professional and avoid being confrontational.
5. If you are a Canadian citizen born in one of the 14 target countries, carry the Foreign Affairs consular phone number and register with the Canadian Embassy.
6. Avoid transit through the US if possible. Consider driving across the border to avoid long delays caused by extra airport security.

Crossing the Border with Your Computer and Data

Be careful what you store on your hard drive when crossing the border. Many people are unaware that current rules allow border guards to search any data you may be bringing into the US or Canada that may be stored on a laptop, external hard drive, USB memory key, BlackBerry or other device in your possession. No probable cause is needed.

New rules have put some limits on these procedures for US border guards. Guards may perform a search without a warrant or probable cause, but can only hold your device for up to 5 days, unless they find something allowing them to extend this period. The only right you have, under these rules, is to be in the same room as the officer performing the search, but not to see what the officer is doing. Information found can only be retained if they have probable cause to suspect a crime has been committed. Current rules state that if a guard encounters data labeled "solicitor-client privileged" or "solicitor work product", he or she must consult with the agency's counsel before proceeding. The same is true of medical records and journalistic work-related information.

Searches upon entry to Canada have been confined to looking for data such as for child pornography. These searches are generally rare, however, and target a specific area of inquiry. One person who underwent a search described how, after some questioning, it was decided his data required further investigation. The guards scanned through every image on his laptop's hard drive. He was allowed to watch this search, and marveled at how many images were actually present on his hard drive that he was unaware of. When they found nothing, he was allowed to leave.

It would appear that such searches are currently confined to hard drives and data storage but have not extended to web-based e-mail. Should you have sensitive information to take across the border it may be better to email it to yourself rather than carry it on a storage medium. Data

can also be stored securely on services such as Evernote until you retrieve it, without it being on your hard drive. These searches have only been performed on a small number of travelers. Between October 1, 2008 and August 11, 2009, the US Department of Homeland Security performed 1,000 data searches of the 221 million people coming across the US border, and only 46 of those were classified as "in depth." In light of recent terrorist incidents, however, such searches may become more common and one should have little expectation of privacy at the port of entry.



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