



DEPARTMENT OF HOMELAND SECURITY

6 CFR Chapter I

49 CFR Chapter XII

[DHS Docket No. DHS-2021-0008]

Ratification of Security Directive

AGENCY: Office of Strategy, Policy, and Plans, Department of Homeland Security (DHS).

ACTION: Notification of ratification of directive.

SUMMARY: DHS is publishing official notification that the Transportation Security Oversight Board (TSOB) has ratified a Transportation Security Administration (TSA) surface transportation security directive (SD) requiring mask wearing on public transportation and at transportation hubs to protect the safety and security of the traveling public and the transportation system. As a consequence of the TSOB's actions, described below, the SD will remain in effect until at least May 11, 2021, and may further be extended by the TSA Administrator to the extent described below.

DATES: The ratification was executed on February 28, 2021 and took effect on that date. The SD is in effect until at least May 11, 2021.

FOR FURTHER INFORMATION CONTACT: John D. Cohen, DHS Coordinator for Counterterrorism and Assistant Secretary for Counterterrorism and Threat Prevention, DHS Office of Strategy, Policy, and Plans, (202) 202-282-9708, john.cohen@hq.dhs.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Executive Order, DHS Determination, and Centers for Disease Control and Prevention (CDC) Order

On January 21, 2021, in recognition of the continuing threat to health, safety, and economic and national security posed by COVID-19, including the new virus variants, the President issued

Executive Order 13,998, *Promoting COVID-19 Safety in Domestic and International Travel*.¹

The Executive Order directs the Secretary of Homeland Security, in coordination with other federal officials and “through the Administrator of the Transportation Security Administration,” to “immediately take action, to the extent appropriate and consistent with applicable law, to require masks to be worn in compliance with CDC guidelines” in or on airports, commercial aircraft, trains, public maritime vessels, intercity bus services, and all forms of public transportation.² The Executive Order focuses on a nationwide, “whole of government” approach to addressing security and safety concerns presented by the continued transmission of COVID-19 through the transportation system.

On January 27, 2021, the Acting Secretary of Homeland Security issued a *Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System*.³ The Acting Secretary’s determination directs TSA to take actions consistent with its statutory authorities “to implement the Executive Order to promote safety in and secure the transportation system.” In particular, the determination directs TSA to support “the CDC in the enforcement of any orders or other requirements necessary to protect the transportation system, including passengers and employees, from COVID-19 and to mitigate the spread of COVID-19 through the transportation system.”

On January 29, 2021, the Director of the CDC’s Division of Global Migration and Quarantine issued a Notice and Order titled *Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs*.⁴ The CDC Order, effective February 1, 2021, provides that it “shall be enforced by the Transportation Security Administration under

¹ 86 FR 7205 (published Jan. 26, 2021).

² *Id.*

³ Acting Secretary David P. Pekoske, *Determination of a National Emergency Requiring Actions to Protect the Safety of Americans Using and Employed by the Transportation System* (Jan. 27, 2021), *available at* <https://www.dhs.gov/publication/determination-national-emergency-requiring-actions-protect-safety-americans-using-and> (accessed Feb. 22, 2021)

⁴ 86 FR 8025 (Feb. 3, 2021).

appropriate statutory and regulatory authorities” and “further enforced by other federal authorities” as well as “cooperating state and local authorities.”⁵

B. TSA Security Directive 1582/84-21-01

On January 31, 2021, the Senior Official Performing the Duties of the TSA Administrator issued Security Directive 1582/84-21-01 to surface transportation owners and operators requiring mask wearing on public transportation, passenger rail, and bus conveyances, and at transportation hubs to protect the safety and security of the traveling public and the transportation system.⁶ The SD, which is available in the docket for this notice at <https://www.regulations.gov/>, became effective on February 1, 2021, and is scheduled to expire on May 11, 2021. Neither the Acting Secretary’s national emergency determination nor the CDC Order includes an expiration date and they remain in effect based on specific public health conditions and in consideration of the public health emergency.

The SD implements the Executive Order, the Acting Secretary of Homeland Security’s national emergency determination, and the CDC Order by requiring mask wearing on surface transportation conveyances and at transportation hubs. The directive mandates measures to secure and promote safety in the transportation system, including passengers and employees, by mitigating against the further spread of COVID-19. Under the SD, covered owners and operators must: (1) provide prominent and adequate notice of the mask requirement to facilitate awareness and compliance; (2) require individuals to wear a mask; and (3) report incidents of non-compliance to TSA. Consistent with the CDC Order, the directive permits limited exemptions from the requirement to wear a mask in the transportation system and does not preempt state or local requirements that are the same or more protective of public health than TSA’s mandatory measures.

⁵ *Id.* at 8030.

⁶ See 49 U.S.C. 114(l)(2)(A) (authorizing TSA to issue emergency regulations or security directives without providing notice or public comment where “the Administrator determines that the regulation must be issued immediately in order to protect transportation security. . .”).

II. TSOB Ratification

The Aviation and Transportation Security Act (the Act) establishes the TSOB and provides that the TSOB shall “review and ratify or disapprove” security directives issued by TSA under 49 U.S.C. 114(l)(2).⁷ The Act further states that such directives “shall remain effective for a period not to exceed 90 days unless ratified or disapproved by the Board or rescinded by the Administrator.”⁸

Pursuant to these authorities, the Senior Official Performing the Duties of the Deputy Secretary of Homeland Security, in his capacity as chairman of the TSOB, requested TSOB review of the SD.⁹ On February 28, 2021, the TSOB ratified TSA Security Directive 1582/84-21-01. As part of this ratification, the TSOB also ratified any extension of the SD for a period no longer than the period of time that the Secretary’s national emergency determination and the CDC Order remain in effect should the TSA Administrator determine that such an extension is warranted to support implementation of the Executive Order, the national emergency determination, and the CDC order.

The SD is available in the docket for this notice at <https://www.regulations.gov/>.

Signed:

David P. Pecoske
Senior Official Performing the Duties of Deputy Secretary of Homeland Security & Chairman of
the Transportation Security Oversight Board
U.S. Department of Homeland Security.
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⁷ 49 U.S.C. 115(a) and (c)(1).

⁸ *Id.* 114(l)(2)(B).

⁹ DHS Delegation No. 7071.1, *Delegation to the Deputy Secretary to Chair the Transportation Security Oversight Board* (Apr. 2, 2007).