

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

JONATHAN CORBETT,
Petitioner

No. 21- 1074

v.

TRANSPORTATION SECURITY
ADMINISTRATION, *and*
DAVID P. PEKOSKE, *in his official*
capacity as Administrator of the
Transportation Security Administration,
Respondents

PETITION FOR REVIEW

Petitioner Jonathan Corbett, an attorney admitted to the Bar of this Court and proceeding *pro se*, petitions the Court for a review of one or more “orders” of the Transportation Security Administration (“TSA”) that, for the first time, claim authority of the agency to regulate ***non-security*** related matters, to wit: orders mandating face masks be worn by passengers throughout the aviation system.

On January 31st, 2021, the Acting Administrator¹ of the U.S. Transportation Security Administration announced Security Directives 1542-21-01, SD 1544-21-02, SD 1582/84-21-01, as well as “emergency amendment” EA 1546-21-01 (the “Directives”). Exhibit A. These Directives require airport and aircraft operators,

¹ In late January 2021, Respondent Pekoske was briefly called by the President to serve as Acting Secretary of the Department of Homeland Security while a permanent secretary was pending confirmation. The challenged orders appear to have been issued by Acting Administrator Darby LaJoye. It appears Pekoske has now resumed his role as TSA Administrator.

as well as covered bus and train operators: 1) to require all passengers to wear masks at all times, and 2) to report non-compliance by passengers to TSA. TSA has clarified on their official Twitter that they now claim authority to issue a civil penalty against any non-compliant passenger². Petitioner, who has Article III standing as a result of frequent flying, including at least one currently booked flight that would subject him to the effects of these orders, challenges these and any other orders, rules, or guidance of the agency that directly or indirectly compel travelers to wear masks.

TSA was created by statute, the Aviation & Transportation Security Act of 2002, to address “security in all modes of transportation.” 49 U.S.C. § 114(d). TSA’s function is limited by that law to address *security* threats: general health & safety measures are outside of the scope of the enabling act (as well as any subsequent modifications thereto). Further, the relevant federal regulations under which the Directives were issued clearly state that they are to be used for security threats, not general health & safety. *See*, e.g., 49 C.F.R. § 1542.303(a) (“When TSA determines that additional **security measures** are necessary to respond to a threat assessment or to a specific threat against civil aviation, TSA issues a

² TSA Spokesperson Farbstein, L. [@TSA_Northeast]. Feb. 5th, 2021. “JUST IN: @TSA will recommend a fine from \$250 and up to \$1,500 for repeat offenders for non-compliance with Federal mask mandate. TSA has given transportation operators guidance on how to report violations so that TSA may issue penalties to those who refuse to wear a face mask.” Twitter. https://twitter.com/TSA_Northeast/status/1357706953213026305

Security Directive setting forth mandatory measures,” *emphasis added*). Finally, to the extent that these orders were issued under any “emergency” authority, TSA’s failure to act over the prior year of pandemic precludes such use and counsels the necessity of ordinary notice-and-comment rulemaking under the Administrative Procedures Act. These Directives are thus *ultra vires*.

Security Directives are “orders” of the TSA subject to a jurisdictional statute that requires judicial review to begin in the Courts of Appeals. 49 U.S.C. § 46110(a); *Amerijet Int’l, Inc. v. U.S. Dep’t of Homeland Sec.*, 43 F. Supp. 3d 4 (D.D.C. 2014). Petitioner respectfully requests the Court review these Directives and set them aside in their entirety.

Dated: Washington, D.C.
February 26th, 2021

Respectfully submitted,

/s/Jonathan Corbett

Jonathan Corbett, Esq.
Petitioner, *attorney proceeding pro se*
958 N. Western Ave. #765
Hollywood, CA 90029
E-mail: jon@corbettrights.com
Phone: (310) 684-3870
FAX: (310) 675-7080

CERTIFICATE OF SERVICE

I, Jonathan Corbett, hereby certify that on February 26th, 2021, I served the petition in this action on the following party via USPS Priority Mail Express:

Adm. David Pecoske
Transportation Security Administration
601 S. 12th St.
Arlington, VA 20598

Dated: Washington, D.C.
February 26th, 2021

Respectfully submitted,

/s/Jonathan Corbett

Jonathan Corbett, Esq.
Petitioner, *attorney proceeding pro se*
958 N. Western Ave. #765
Hollywood, CA 90029
E-mail: jon@corbettrights.com
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FAX: (310) 675-7080

Exhibit A

Challenged Security Directives

U.S. Department of Homeland Security
Transportation Security Administration
6595 Springfield Center Drive
Springfield, Virginia 20598



**Transportation
Security
Administration**

MEMORANDUM

To: Covered Owners/Operators

Date: January 31, 2021

Subject: Security Directive 1582/84-21-01

Attached to this memorandum is Security Directive (SD) 1582/84-21-01: Security Measures – Face Mask Requirements. This SD is issued to implement the January 21, 2021, Executive Order on promoting measures to prevent the spread of coronavirus disease 2019 (COVID-19) by travelers within the United States and those who enter the country from abroad. This SD also supports enforcement of the Centers for Disease Control and Prevention (CDC) Order mandating masks issued on January 29, 2021.

This SD applies to the passenger railroads, intercity bus services, and public transportation. Please refer to the SD for the specific applicability.

All queries concerning the attached SD should be submitted to TSA via email at TSA-Surface@tsa.dhs.gov

A handwritten signature in dark ink, appearing to read "Darby LaJoye", is written over the typed name.

Darby LaJoye
Senior Official Performing the Duties of the TSA Administrator

Attachment:
Security Directive 1582/84-21-01



**Transportation
Security
Administration**

U.S. Department of Homeland Security
Transportation Security Administration
6595 Springfield Center Drive
Springfield, Virginia 20598

SECURITY DIRECTIVE

<u>NUMBER</u>	SD 1582/84-21-01
<u>SUBJECT</u>	Security Measures – Mask Requirements
<u>EFFECTIVE DATE</u>	11:59 pm EST on February 1, 2021
<u>EXPIRATION DATE</u>	May 11, 2021
<u>CANCELS AND SUPERSEDES</u>	Not Applicable
<u>APPLICABILITY</u>	Each owner/operator identified in 49 CFR 1582.1(a); each owner/operator identified in 49 CFR 1584.1 that provides fixed-route service as defined in 49 CFR 1500.3
<u>AUTHORITY</u>	49 U.S.C. 114
<u>LOCATION</u>	United States

PURPOSE AND GENERAL INFORMATION

Due to the ongoing COVID-19 pandemic and to reduce the spread of the virus, the President issued an Executive Order, *Promoting COVID-19 Safety in Domestic and International Travel*, on January 21, 2021, requiring masks to be worn in airports, on commercial aircraft, and in various modes of surface transportation. On January 27, 2021, the Acting Secretary of Homeland Security determined a national emergency existed requiring the Transportation Security Administration (TSA) to issue this Security Directive (SD) to implement the Executive Order and enforce the related Order¹ issued by the Centers for Disease Control and Prevention (CDC), pursuant to the authority of 49 U.S.C. section 114. Consistent with these mandates and TSA's authority, TSA is issuing this SD requiring masks to be worn to mitigate the spread of COVID-19. The requirements in this SD must be applied to all persons in or on one of the conveyances or a transportation facility used by one of the modes identified above. TSA developed these requirements in consultation with the Department of Transportation (including the Federal Railroad Administration, the Federal Transit Administration, and the Federal Motor Carrier Safety Administration) and the CDC.

¹ See Order Under Section 361 of the Public Health Service Act (42 U.S.C. § 264) and 42 Code of Federal Regulations §§ 70.2, 71.31(B), 71.32(B); Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (January 29, 2021).

DEFINITIONS

For the purpose of this SD, the following definitions apply:

Conveyance has the same definition as under 42 CFR 70.1, meaning “an aircraft, train, road vehicle, vessel...or other means of transport, including military.”

Mask means a material covering the nose and mouth of the wearer, excluding face shields.²

Transportation hub/facility means any airport, bus terminal, marina, seaport or other port, subway stations, terminal (including any fixed facility at which passengers are picked-up or discharged), train station, U.S. port of entry, or any other location that provides transportation subject to the jurisdiction of the United States.

ACTIONS REQUIRED

- A. Owner/Operators must notify passengers with prominent and adequate notice of the mask requirements to facilitate awareness and compliance.³ At a minimum, this notice must inform passengers, at the time tickets are purchased or when otherwise booking transportation *and* at the time the conveyance departs its location after boarding passengers, of the following:
1. Federal law requires wearing a mask while on the conveyance and failure to comply may result in denial of boarding or removal.
 2. Refusing to wear a mask is a violation of federal law; passengers may be subject to penalties under federal law.
- B. Owner/Operators must require that individuals wear a mask, except as described in Sections D., E., or F., as follows:
1. Any persons in a public transportation, passenger railroad, or bus conveyance covered by this SD.
 2. Any person in public areas of transportation hubs/facilities controlled by the owner/operator (such as for purposes of purchasing tickets, waiting areas, and platforms for boarding and disembarking) for the duration of travel, boarding, and disembarking.

² A properly worn mask completely covers the nose and mouth of the wearer. A mask should be secured to the head, including with ties or ear loops. A mask should fit snugly but comfortably against the side of the face. Masks do not include face shields. Masks can be either manufactured or homemade and should be a solid piece of material without slits, exhalation valves, or punctures. Medical masks and N-95 respirators fulfill the requirements of this SD. CDC guidance for attributes of acceptable masks in the context of this SD is available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

³ Notice may include, if feasible, advance notifications on digital platforms, such as on apps, websites, or email; posted signage in multiple languages with illustrations; printing the requirement on tickets; or other methods as appropriate.

- C. Owner/Operators must ensure that direct employees and contractor employees wear a mask at all times when in conveyances or in or around transportation facilities under their control, except as described in Sections D., E., or F.
- D. The requirement to wear a mask does not apply under the following circumstances:
1. When necessary to temporarily remove the mask for identity verification purposes.
 2. While eating, drinking, or taking oral medications for brief periods⁴. Prolonged periods of mask removal are not permitted for eating or drinking; the mask must be worn between bites and sips.
 3. While communicating with a person who is deaf or hard of hearing, when the ability to see the mouth is essential for communication.
 4. If unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance.⁵
- E. The following conveyances are exempted from wearing masks:
1. Persons in private conveyances operated solely for personal, non-commercial use.
 2. A driver, when operating a commercial motor vehicle as this term is defined in 49 CFR 390.5, if the driver is the sole occupant of the vehicle.
- F. This SD exempts the following categories of persons from wearing masks:⁶
1. Children under the age of 2.

⁴ The CDC has stated that brief periods of close contact without a mask should not exceed 15 minutes. *See* <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

⁵ Persons who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask. Persons who are vomiting should remove the mask until vomiting ceases. Persons with acute illness may remove the mask if it interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.

⁶ Owner/Operators may impose requirements, or conditions of carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the owner/operator, as well as require evidence that the person does not have COVID-19 such as a negative result from a SAR-CoV-2 viral test or documentation of recovery from COVID-19. CDC definitions for SAR-CoV-2 viral test and documentation of recovery are available in Frequently Asked Questions at: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>. Owners/Operators may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as scheduling travel at less crowded times or on less crowded conveyances, or seating or otherwise situating the individual in a less crowded section of the conveyance or transportation hub/facility. Owners/Operators may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.

2. People with disabilities who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).⁷
 3. People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.
- G. Owner/Operators must establish procedures to manage situations with persons who refuse to comply with the requirement to wear a mask. At a minimum, these procedures must ensure that if an individual refuses to comply with an instruction given by the owner/operator with respect to wearing a mask, the owner/operator must:
1. Deny boarding;
 2. Make best efforts to disembark the individual as soon as practicable; or
 3. Make best efforts to remove the individual from the transportation hub/facility.
- H. If an individual's refusal to comply with the mask requirement constitutes a significant security concern, the owner/operator must report the incident to the Transportation Security Operations Center (TSOC) at 1-866-615-5150 or 1-703-563-3240 in accordance with 49 CFR 1570.203.

PREEMPTION

The requirements in this SD do not preempt any State, local, Tribal, or territorial rule, regulation, order, or standard necessary to eliminate or reduce a local safety hazard, which includes public health measures that are the same or more protective of public health than those required in this SD, if that provision is not incompatible with this SD.

PROCEDURES FOR SECURITY DIRECTIVES

- A. The owner/operator must immediately provide written confirmation of receipt of this SD via email to TSA at TSA-Surface@tsa.dhs.gov.
- B. The owner/operator must immediately disseminate the information and measures in this SD to corporate senior management, security management representatives, and any personnel having responsibilities in implementing the provisions in this directive. The owner/operator may widely share this SD with anyone subject to the provisions of this directive to include,

⁷ This is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to the disability; who, e.g., do not understand how to remove their mask due to cognitive impairment, cannot remove a mask on their own due to dexterity/mobility impairments, or cannot communicate promptly to ask someone else to remove their mask due to speech impairments or language disorders, or cannot wear a mask because doing so would impede the function of assistive devices/technology. It is not meant to cover persons for whom mask-wearing may only be difficult. CDC intends to issue further guidance regarding this exception.

Security Directive

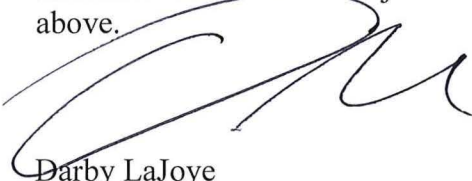
SD 1582/84-21-01

but not limited to, federal, state, and local government personnel; direct owner/operator employees; tenants; contractors; transport personnel; taxi drivers; law enforcement; *etc.*

- C. All individuals responsible for implementing this SD must be briefed by the owner/operator. If the owner/operator is unable to implement the measures in this SD, the owner/operator must submit proposed alternative measures and the basis for submitting the alternative measures to TSA for approval.
- D. The owner/operator may comment on this SD by submitting data, views, or arguments in writing to TSA via email at TSA-Surface@tsa.dhs.gov. TSA may amend the SD based on comments received. Submission of a comment does not delay the effective date of the SD.

APPROVAL OF ALTERNATIVE MEASURES

The owner/operator must immediately notify TSA via email at TSA-Surface@tsa.dhs.gov if unable to implement any of the measures in this SD. The owner/operator may submit proposed alternative measures and a justification for adopting those measures to the email addresses above.



Darby LaJoye

Senior Official Performing the Duties of the TSA Administrator

U.S. Department of Homeland Security
Transportation Security Administration
6595 Springfield Center Drive
Springfield, Virginia 20598



**Transportation
Security
Administration**

MEMORANDUM

To: Covered Aircraft Operators

Date: January 31, 2021

Subject: Security Directive 1544-21-02

Attached to this memorandum is Security Directive (SD) 1544-21-02: Security Measures – Face Mask Requirements. This SD is issued to implement the January 21, 2021, Executive Order on promoting measures to prevent the spread of coronavirus disease 2019 (COVID-19) by travelers within the United States and those who enter the country from abroad. This SD also supports enforcement of the Centers for Disease Control and Prevention (CDC) Order mandating masks issued on January 29, 2021.

All queries concerning the attached SD must be directed to your respective TSA Principal Security Inspector or International Industry Representative.

A handwritten signature in black ink, appearing to read "Darby LaJoye", is written over the printed name.

Darby LaJoye
Senior Official Performing the Duties of the TSA Administrator

Attachment:
Security Directive 1544-21-02



**Transportation
Security
Administration**

U.S. Department of Homeland Security
Transportation Security Administration
6595 Springfield Center Drive
Springfield, Virginia 20598

SECURITY DIRECTIVE

<u>NUMBER</u>	SD 1544-21-02
<u>SUBJECT</u>	Security Measures – Mask Requirements
<u>EFFECTIVE DATE</u>	11:59 pm EST on February 1, 2021
<u>EXPIRATION DATE</u>	May 11, 2021
<u>CANCELS AND SUPERSEDES</u>	Not Applicable
<u>APPLICABILITY</u>	Aircraft operators regulated under 49 CFR 1544.101
<u>AUTHORITY</u>	49 U.S.C. 114, 44902, and 44903; 49 CFR 1544.305
<u>LOCATION(S)</u>	All Locations

PURPOSE AND GENERAL INFORMATION

Due to the ongoing COVID-19 pandemic and to reduce the spread of the virus, the President issued an Executive Order, *Promoting COVID-19 Safety in Domestic and International Travel*, on January 21, 2021, requiring masks to be worn in airports, on commercial aircraft, and in various modes of surface transportation. On January 27, 2021, the Acting Secretary of Homeland Security determined a national emergency existed requiring the Transportation Security Administration (TSA) to issue this Security Directive (SD) to implement the Executive Order and enforce the related Order¹ issued by the Centers for Disease Control and Prevention (CDC), pursuant to the authority of 49 U.S.C. sections 114, 44902, and 44903. Consistent with these mandates and TSA's authority, TSA is issuing this SD requiring masks to be worn to mitigate the spread of COVID-19 during air travel. The requirements in this SD must be applied to all persons onboard a commercial aircraft operated by a U.S. aircraft operator, including passengers and crewmembers. TSA developed these requirements in consultation with the Federal Aviation Administration and CDC.

¹ See Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations (CFR) §§ 70.2, 71.31(B), 71.32(B); Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (January 29, 2021)

DEFINITIONS

For the purposes of this SD, the following definitions apply:

Conveyance has the same definition as under 42 CFR 70.1, meaning “an aircraft, train, road vehicle, vessel...or other means of transport, including military.”

Mask means a material covering the nose and mouth of the wearer, excluding face shields.²

ACTIONS REQUIRED

- A. The aircraft operator must provide passengers with prominent and adequate notice of the mask requirements to facilitate awareness and compliance.³ At a minimum, this notice must inform passengers, at or before check-in and as a pre-flight announcement, of the following:
1. Federal law requires each person to wear a mask at all times throughout the flight, including during boarding and deplaning.
 2. Refusing to wear a mask is a violation of federal law and may result in denial of boarding, removal from the aircraft, and/or penalties under federal law.
 3. If wearing oxygen masks is needed because of loss of cabin pressure or other event affecting aircraft ventilation, masks should be removed to accommodate oxygen masks.
- B. The aircraft operator must not board any person who is not wearing a mask, except as described in Sections D., E., and F.
- C. The aircraft operator must ensure that direct employees and authorized representatives wear a mask at all times while on an aircraft or in an airport location under the control of the aircraft operator, except as described in Sections D., E., and F.
- D. The requirement to wear a mask does not apply under the following circumstances:
1. When necessary to temporarily remove the mask for identity verification purposes.

² A properly worn mask completely covers the nose and mouth of the wearer. A mask should be secured to the head, including with ties or ear loops. A mask should fit snugly but comfortably against the side of the face. Masks do not include face shields. Masks can be either manufactured or homemade and should be a solid piece of material without slits, exhalation valves, or punctures. Medical masks and N-95 respirators fulfill the requirements of this SD. CDC guidance for attributes of acceptable masks in the context of this SD is available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

³ Notice may include, if feasible, advance notifications on digital platforms, such as on apps, websites, or email; posted signage in multiple languages with illustrations; printing the requirement on boarding passes; or other methods as appropriate.

2. While eating, drinking, or taking oral medications for brief periods.⁴ Prolonged periods of mask removal are not permitted for eating or drinking; the mask must be worn between bites and sips.
3. While communicating with a person who is deaf or hard of hearing, when the ability to see the mouth is essential for communication.
4. If wearing oxygen masks is needed because of loss of cabin pressure or other event affecting aircraft ventilation.
5. If unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance, or otherwise unable to remove the mask without assistance.⁵

E. The following conveyances are exempted from this SD:

1. Persons in private conveyances operated solely for personal, non-commercial use.
2. A driver, when operating a commercial motor vehicle as this term is defined in 49 CFR 390.5, if the driver is the sole occupant of the vehicle.

F. This SD exempts the following categories of persons from wearing masks:⁶

1. Children under the age of 2.
2. People with disabilities who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).⁷

⁴ The CDC has stated that brief periods of close contact without a face mask should not exceed 15 minutes. See <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

⁵ Persons who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask. Persons who are vomiting should remove the mask until vomiting ceases. Persons with acute illness may remove the mask if it interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.

⁶ Aircraft operators may impose requirements, or conditions of carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the aircraft operator, as well as require evidence that the person does not have COVID-19 such as a negative result from a SAR-CoV-2 viral test or documentation of recovery from COVID-19. CDC definitions for SAR-CoV-2 viral test and documentation of recovery are available in Frequently Asked Questions at: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>. Aircraft operators may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as scheduling travel at less crowded times or on less crowded conveyances, or seating or otherwise situating the individual in a less crowded section of the conveyance or airport. Aircraft operators may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.

⁷ This is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to the disability; who, e.g., do not understand how to remove their mask due to cognitive impairment, cannot remove a mask on their own due to dexterity/mobility impairments, or cannot communicate promptly to ask someone else to

3. People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.
- G. If a passenger refuses to comply with an instruction given by a crew member with respect to wearing a mask, the aircraft operator must:
1. Make best efforts to disembark the person who refuses to comply as soon as practicable; and
 2. Follow incident reporting procedures in accordance with its TSA-approved standard security program and provide the following information, if available:
 - a. Date and flight number;
 - b. Passenger's full name and contact information;
 - c. Passenger's seat number on the flight;
 - d. Name and contact information for any crew members involved in the incident; and
 - e. The circumstances related to the refusal to comply.

PREEMPTION

The requirements in this SD do not preempt any State, local, Tribal, or territorial rule, regulation, order, or standard necessary to eliminate or reduce a local safety hazard, which includes public health measures that are the same or more protective of public health than those required in this SD, if that provision is not incompatible with this SD.

ACKNOWLEDGMENT OF RECEIPT

The aircraft operator must immediately provide written confirmation of receipt of this SD to its Principal Security Inspector (PSI) or International Industry Representative (IIR), as appropriate.

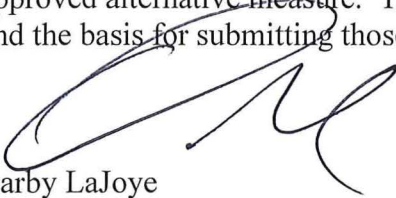
DISSEMINATION REQUIRED

The aircraft operator must immediately pass the information and measures set forth in this SD to any personnel having responsibilities in implementing the provisions of this directive. The aircraft operator may share this SD with anyone subject to the provisions of this directive to include but not limited to: federal, state, and local government personnel; authorized representatives; catering personnel; vendors; airline club staff; contractors; etc.

remove their mask due to speech impairments or language disorders, or cannot wear a mask because doing so would impede the function of assistive devices/technology. It is not meant to cover persons for whom mask-wearing may only be difficult. CDC intends to issue further guidance regarding this exception.

APPROVAL OF ALTERNATIVE MEASURES

In accordance with 49 CFR 1544.305(d), the aircraft operator must immediately notify its PSI or IIR, as appropriate, if unable to implement any of the measures in this SD, or in any TSA-approved alternative measure. The aircraft operator may submit proposed alternative measures and the basis for submitting those measures to its PSI or IIR.



Darby LaJoye

Senior Official Performing the Duties of the TSA Administrator

U.S. Department of Homeland Security
Transportation Security Administration
6595 Springfield Center Drive
Springfield, Virginia 20598



**Transportation
Security
Administration**

MEMORANDUM

To: Covered Airport Operators

Date: January 31, 2021

Subject: Security Directive 1542-21-01

Attached to this memorandum is Security Directive (SD) 1542-21-01: Security Measures – Face Mask Requirements. This SD is issued to implement the January 21, 2021, Executive Order on promoting measures to prevent the spread of coronavirus disease 2019 (COVID-19) by travelers within the United States and those who enter the country from abroad. This SD also supports enforcement of the Centers for Disease Control and Prevention (CDC) Order mandating masks issued on January 29, 2021.

All queries concerning the attached SD must be directed to your assigned TSA Federal Security Director.


Darby LaJoye
Senior Official Performing the Duties of the TSA Administrator

Attachment:
Security Directive 1542-21-01



**Transportation
Security
Administration**

U.S. Department of Homeland Security
Transportation Security Administration
6595 Springfield Center Drive
Springfield, Virginia 20598

SECURITY DIRECTIVE

<u>NUMBER</u>	SD 1542-21-01
<u>SUBJECT</u>	Security Measures – Mask Requirements
<u>EFFECTIVE DATE</u>	11:59 pm EST on February 1, 2021
<u>EXPIRATION DATE</u>	May 11, 2021
<u>CANCELS AND SUPERSEDES</u>	Not Applicable
<u>APPLICABILITY</u>	Airport operators regulated under 49 CFR 1542.103 and airlines that have exclusive area agreements under 49 CFR 1542.111
<u>AUTHORITY</u>	49 U.S.C. 114 and 44903; 49 CFR 1542.303
<u>LOCATION</u>	Airports within the United States

PURPOSE AND GENERAL INFORMATION

Due to the ongoing COVID-19 pandemic and to reduce the spread of the virus, the President issued an Executive Order, *Promoting COVID-19 Safety in Domestic and International Travel*, on January 21, 2021, requiring masks to be worn in airports, on commercial aircraft, and in various modes of surface transportation. On January 27, 2021, the Acting Secretary of Homeland Security determined a national emergency existed requiring the Transportation Security Administration (TSA) to issue this Security Directive (SD) to implement the Executive Order and enforce the related Order¹ issued by the Centers for Disease Control and Prevention (CDC), pursuant to the authority of 49 U.S.C. sections 114 and 44903. Consistent with these mandates and TSA's authority, TSA is issuing this SD requiring masks to be worn to mitigate the spread of COVID-19 during air travel. TSA developed these requirements in consultation with the Federal Aviation Administration and CDC.

¹ See Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations (CFR) §§ 70.2, 71.31(B), 71.32(B); Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (January 29, 2021)

DEFINITIONS

For the purposes of this SD, the following definitions apply:

Conveyance has the same definition as under 42 CFR 70.1, meaning “an aircraft, train, road vehicle, vessel...or other means of transport, including military.”

Mask means a material covering the nose and mouth of the wearer, excluding face shields.²

ACTIONS REQUIRED

Except at locations under the control of an aircraft operator, foreign air carrier, or a federal government agency or their contractors, the airport operator must apply the following measures:

- A. The airport operator must make best efforts to provide individuals with prominent and adequate notice of the mask requirements to facilitate awareness and compliance.³ This notice must also inform individuals of the following:
 1. Federal law requires wearing a mask at all times in and on the airport and failure to comply may result in removal and denial of re-entry.
 2. Refusing to wear a mask in or on the airport is a violation of federal law; individuals may be subject to penalties under federal law.
- B. The airport operator must require that individuals in or on the airport wear a mask, except as described in Sections D., E., and F.
 1. If individuals are not wearing masks, ask them to put a mask on.
 2. If individuals refuse to wear a mask in or on the airport, escort them from the airport.
- C. The airport operator must ensure direct employees, authorized representatives, tenants, and vendors wear a mask at all times in or on the airport, except as described in Sections D., E., and F.
- D. The requirement to wear a mask does not apply under the following circumstances:
 1. When necessary to temporarily remove the mask for identity verification purposes.

² A properly worn mask completely covers the nose and mouth of the wearer. A mask should be secured to the head, including with ties or ear loops. A mask should fit snugly but comfortably against the side of the face. Masks do not include face shields. Masks can be either manufactured or homemade and should be a solid piece of material without slits, exhalation valves, or punctures. Medical masks and N-95 respirators fulfill the requirements of this SD. CDC guidance for attributes of acceptable masks in the context of this SD is available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

³ Notice may include, if feasible, advance notifications on digital platforms, such as on apps, websites, or email; posted signage in multiple languages with illustrations; or other methods as appropriate.

2. While eating, drinking, or taking oral medications for brief periods.⁴ Prolonged periods of mask removal are not permitted for eating or drinking; the mask must be worn between bites and sips.
3. While communicating with a person who is deaf or hard of hearing, when the ability to see the mouth is essential for communication.
4. If unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance.⁵

E. The following conveyances are exempted from this SD:

1. Persons in private conveyances operated solely for personal, non-commercial use.
2. A driver, when operating a commercial motor vehicle as this term is defined in 49 CFR 390.5, if the driver is the sole occupant of the vehicle.

F. This SD exempts the following categories of persons from wearing masks:⁶

1. Children under the age of 2.
2. People with disabilities who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).⁷
3. People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.

⁴ The CDC has stated that brief periods of close contact without a mask should not exceed 15 minutes. See <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

⁵ Persons who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask. Persons who are vomiting should remove the mask until vomiting ceases. Persons with acute illness may remove the mask if it interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.

⁶ Airport operators may impose requirements, or conditions of carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the airport operator, as well as require evidence that the person does not have COVID-19 such as a negative result from a SAR-CoV-2 viral test or documentation of recovery from COVID-19. CDC definitions for SAR-CoV-2 viral test and documentation of recovery are available in Frequently Asked Questions at: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>. Airport operators may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as scheduling travel at less crowded times or on less crowded conveyances, or seating or otherwise situating the individual in a less crowded section of the conveyance or airport. Airport operators may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.

⁷ This is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to the disability; who, e.g., do not understand how to remove their mask due to cognitive impairment, cannot remove a mask on their own due to dexterity/mobility impairments, or cannot communicate promptly to ask someone else to remove their mask due to speech impairments or language disorders, or cannot wear a mask because doing so would impede the function of assistive devices/technology. It is not meant to cover persons for whom mask-wearing may only be difficult. CDC intends to issue further guidance regarding this exception.

G. If an individual refuses to comply with mask requirements, follow incident reporting procedures in accordance with the Airport Security Program and provide the following information, if available:

1. Date and airport code;
2. Individual's full name and contact information;
3. Name and contact information for any direct airport employees or authorized representatives involved in the incident; and
4. The circumstances related to the refusal to comply.

PREEMPTION

The requirements in this SD do not preempt any State, local, Tribal, or territorial rule, regulation, order, or standard necessary to eliminate or reduce a local safety hazard, which includes public health measures that are the same or more protective of public health than those required in this SD, if that provision is not incompatible with this SD.

ACKNOWLEDGMENT OF RECEIPT

The airport operator must immediately provide written confirmation of receipt of this SD to the Federal Security Director (FSD).

DISSEMINATION REQUIRED

The airport operator must immediately pass the information and measures set forth in this SD to any personnel having responsibilities in implementing the provisions of this directive. The airport operator may share this SD with anyone subject to the provisions of this directive to include but not limited to: federal, state, and local government personnel; direct airport employees or authorized representatives; vendors; tenants; exclusive area agreement holders; contractors; transport personnel; taxi drivers; law enforcement; etc.

APPROVAL OF ALTERNATIVE MEASURES

The operator must immediately notify the FSD whenever any action required by this SD or a TSA-approved alternative measure cannot be carried out. In accordance with 49 CFR 1542.303(d), the airport operator may submit proposed alternative measures and the basis for submitting those measures in writing to the Assistant Administrator for Policy, Plans, and Engagement through the FSD.



Darby LaJoye

Senior Official Performing the Duties of the TSA Administrator

U.S. Department of Homeland Security
Transportation Security Administration
6595 Springfield Center Drive
Springfield, Virginia 20598



**Transportation
Security
Administration**

MEMORANDUM

To: Covered Foreign Air Carriers

Date: January 31, 2021

Subject: Emergency Amendment 1546-21-01

Attached to this memorandum is Emergency Amendment (EA) 1546-21-01: Security Measures – Face Mask Requirements. This EA is issued to implement the January 21, 2021, Executive Order on promoting measures to prevent the spread of coronavirus disease 2019 (COVID-19) by travelers within the United States and those who enter the country from abroad. This EA also supports enforcement of the Centers for Disease Control and Prevention (CDC) Order mandating masks issued on January 29, 2021.

All queries concerning the attached EA must be directed to your assigned TSA International Industry Representative.



Darby LaJoye

Senior Official Performing the Duties of the TSA Administrator

Attachment:

Emergency Amendment 1546-21-01



**Transportation
Security
Administration**

U.S. Department of Homeland Security
Transportation Security Administration
6595 Springfield Center Drive
Springfield, Virginia 20598

EMERGENCY AMENDMENT

<u>NUMBER</u>	EA 1546-21-01
<u>SUBJECT</u>	Security Measures – Mask Requirements
<u>EFFECTIVE DATE</u>	11:59 pm EST on February 1, 2021
<u>EXPIRATION DATE</u>	May 11, 2021
<u>CANCELS AND SUPERSEDES</u>	Not Applicable
<u>APPLICABILITY</u>	Foreign air carriers regulated under 49 CFR 1546.101(a) and (b)
<u>AUTHORITY</u>	49 U.S.C. 114, 44902, and 44903; 49 CFR 1546.105(d)
<u>LOCATION(S)</u>	All flights to, from, or within the United States

PURPOSE AND GENERAL INFORMATION

Due to the ongoing COVID-19 pandemic and to reduce the spread of the virus, the President issued an Executive Order, *Promoting COVID-19 Safety in Domestic and International Travel*, on January 21, 2021, requiring masks to be worn in airports, on commercial aircraft, and in various modes of surface transportation. On January 27, 2021, the Acting Secretary of Homeland Security determined a national emergency existed requiring the Transportation Security Administration (TSA) to issue this Emergency Amendment (EA) to implement the Executive Order and enforce the related Order¹ issued by the Centers for Disease Control and Prevention (CDC), pursuant to the authority of 49 U.S.C. sections 114, 44902, and 44903. Consistent with these mandates and the TSA's authority, TSA is issuing this EA requiring masks to be worn to mitigate the spread of COVID-19 during air travel. The requirements in this EA must be applied to all persons onboard a commercial aircraft operated by a foreign air carrier, including passengers and crewmembers. TSA developed these requirements in consultation with the Federal Aviation Administration and CDC.

¹ See Order Under Section 361 of the Public Health Service Act (42 U.S.C. 264) and 42 Code of Federal Regulations (CFR) §§ 70.2, 71.31(B), 71.32(B); Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs (January 29, 2021)

DEFINITIONS

For the purposes of this EA, the following definitions apply:

Conveyance has the same definition as under 42 CFR 70.1, meaning “an aircraft, train, road vehicle, vessel...or other means of transport, including military.”

Mask means a material covering the nose and mouth of the wearer, excluding face shields.²

ACTIONS REQUIRED

A. The foreign air carrier must provide passengers with prominent and adequate notice of the mask requirements to facilitate awareness and compliance.³ At a minimum, this notice must inform passengers, at or before check-in and as a pre-flight announcement, of the following:

1. Federal law requires each person to wear a mask at all times throughout the flight, including during boarding and deplaning.
2. Refusing to wear a mask is a violation of federal law and may result in denial of boarding, removal from the aircraft, and/or penalties under federal law.
3. If wearing oxygen masks is needed because of loss of cabin pressure or other event affecting aircraft ventilation, masks should be removed to accommodate oxygen masks.

B. The foreign air carrier must not board any person who is not wearing a mask, except as described in Sections D., E., and F.

C. The foreign air carrier must ensure that direct employees and authorized representatives wear a mask at all times while on an aircraft or in a U.S.⁴ airport location under the control of the foreign air carrier, except as described in Sections D., E., and F.

D. The requirement to wear a mask does not apply under the following circumstances:

1. When necessary to temporarily remove the mask for identity verification purposes.

² A properly worn mask completely covers the nose and mouth of the wearer. A mask should be secured to the head, including with ties or ear loops. A mask should fit snugly but comfortably against the side of the face. Masks do not include face shields. Masks can be either manufactured or homemade and should be a solid piece of material without slits, exhalation valves, or punctures. Medical masks and N-95 respirators fulfill the requirements of this EA. CDC guidance for attributes of acceptable masks in the context of this EA is available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

³ Notice may include, if feasible, advance notifications on digital platforms, such as on apps, websites, or email; posted signage in multiple languages with illustrations; printing the requirement on boarding passes; or other methods as appropriate.

⁴ Including U.S. territories: American Samoa, Guam, the Northern Mariana Islands, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.

2. While eating, drinking, or taking oral medications for brief periods.⁵ Prolonged periods of mask removal are not permitted for eating or drinking; the mask must be worn between bites and sips.
3. While communicating with a person who is deaf or hard of hearing, when the ability to see the mouth is essential for communication.
4. If wearing oxygen masks is needed because of loss of cabin pressure or other event affecting aircraft ventilation.
5. If unconscious (for reasons other than sleeping), incapacitated, unable to be awakened, or otherwise unable to remove the mask without assistance.⁶

E. The following conveyances are exempted from this EA:

1. Persons in private conveyances operated solely for personal, non-commercial use.
2. A driver, when operating a commercial motor vehicle as this term is defined in 49 CFR 390.5, if the driver is the sole occupant of the vehicle.

F. This EA exempts the following categories of persons from wearing masks:⁷

1. Children under the age of 2.
2. People with disabilities who cannot wear a mask, or cannot safely wear a mask, because of the disability as defined by the Americans with Disabilities Act (42 U.S.C. 12101 et seq.).⁸

⁵ The CDC has stated that brief periods of close contact without a mask should not exceed 15 minutes. *See* <https://www.cdc.gov/coronavirus/2019-ncov/php/public-health-recommendations.html>

⁶ Persons who are experiencing difficulty breathing or shortness of breath or are feeling winded may remove the mask temporarily until able to resume normal breathing with the mask. Persons who are vomiting should remove the mask until vomiting ceases. Persons with acute illness may remove the mask if it interferes with necessary medical care such as supplemental oxygen administered via an oxygen mask.

⁷ Foreign air carriers may impose requirements, or conditions of carriage, on persons requesting an exemption from the requirement to wear a mask, including medical consultation by a third party, medical documentation by a licensed medical provider, and/or other information as determined by the foreign air carrier, as well as require evidence that the person does not have COVID-19 such as a negative result from a SAR-CoV-2 viral test or documentation of recovery from COVID-19. CDC definitions for SAR-CoV-2 viral test and documentation of recovery are available in Frequently Asked Questions at: <https://www.cdc.gov/coronavirus/2019-ncov/travelers/testing-international-air-travelers.html>. Foreign air carriers may also impose additional protective measures that improve the ability of a person eligible for exemption to maintain social distance (separation from others by 6 feet), such as scheduling travel at less crowded times or on less crowded conveyances, or seating or otherwise situating the individual in a less crowded section of the conveyance or airport. Foreign air carriers may further require that persons seeking exemption from the requirement to wear a mask request an accommodation in advance.

⁸ This is a narrow exception that includes a person with a disability who cannot wear a mask for reasons related to the disability; who, e.g., do not understand how to remove their mask due to cognitive impairment, cannot remove a mask on their own due to dexterity/mobility impairments, or cannot communicate promptly to ask someone else to remove their mask due to speech impairments or language disorders, or cannot wear a mask because doing so would

3. People for whom wearing a mask would create a risk to workplace health, safety, or job duty as determined by the relevant workplace safety guidelines or federal regulations.
- G. If a passenger refuses to comply with an instruction given by a crew member with respect to wearing a mask, the foreign air carrier must:
1. Make best efforts to disembark the person who refuses to comply as soon as practicable; and
 2. Follow incident reporting procedures in accordance with its TSA-accepted security program or any applicable EAs and provide the following information, if available:
 - a. Date and flight number;
 - b. Passenger's full name and contact information;
 - c. Passenger's seat number on the flight;
 - d. Name and contact information for any crew members involved in the incident; and
 - e. The circumstances related to the refusal to comply.

PREEMPTION

The requirements in this EA do not preempt any host government, State, local, Tribal, or territorial rule, regulation, order, or standard necessary to eliminate or reduce a local safety hazard, which includes public health measures that are the same or more protective of public health than those required in this EA, if that provision is not incompatible with this EA.

ACKNOWLEDGMENT OF RECEIPT

The foreign air carrier must immediately provide written confirmation of receipt of this EA to its International Industry Representative (IIR), as appropriate.

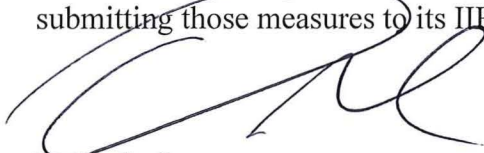
DISSEMINATION REQUIRED

The foreign air carrier must immediately pass the information and measures set forth in this EA to any personnel having responsibilities in implementing the provisions of this directive. The foreign air carrier may share this EA with anyone subject to the provisions of this directive to include but not limited to: host government, federal, state, and local government personnel; authorized representatives; catering personnel; vendors; airline club staff; contractors; etc.

impede the function of assistive devices/technology. It is not meant to cover persons for whom mask-wearing may only be difficult. CDC intends to issue further guidance regarding this exception.

APPROVAL OF ALTERNATIVE MEASURES

The foreign air carrier must immediately notify its IIR if unable to implement any of the measures in this EA, or in any TSA-approved alternative measure. In accordance with 49 CFR 1546.105, the foreign air carrier may submit proposed alternative measures and the basis for submitting those measures to its IIR.



Darby LaJoye

Senior Official Performing the Duties of the TSA Administrator