

Maritime



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U.S. Coast Guard to Enforce CDC's Mask Mandate on Vessels

In an effort to slow the spread of the coronavirus ("COVID-19"), the U.S. Centers for Disease Control and Prevention ("CDC") issued a sweeping order on January 29, 2021, which took effect at 11:59 p.m. EST on Monday, February 1, requiring the use of face masks on nearly all forms of public transportation, stations, airports, and inside federal buildings. On that same date, the U.S. Coast Guard issued Marine Safety Information Bulletin ("MSIB") 02-21. The MSIB requires vessel operators to require persons boarding, disembarking, and traveling aboard to wear masks and notes that failure to do so constitutes a hazardous condition, which can be enforced civilly or criminally. Stakeholders should examine the MSIB for impacts to their operations.

NEW DEVELOPMENT

Following the inauguration, on January 21, 2021, one of President Biden's first orders was to government agencies, directing them to "immediately take action" to require masks in airports and on public aircraft, trains, and vessels, including ferries, intercity bus services, and all public transportation to mitigate the risk of spreading COVID-19. The CDC then issued an order, [Requirement for Persons to Wear Masks while on Transportation Hubs](#), which requires, among other things, all persons traveling on all commercial vessels to wear a mask. In response, the Department of Homeland Security stated that Transportation Security Administration ("TSA") workers now have the authority to enforce President Biden's transportation mask mandate "at TSA screening checkpoints and throughout the commercial and public transportation system." Acting Secretary David Pekoske then signed a [Determination of National Emergency](#), which said the TSA can "take actions consistent with the authorities" of its federal jurisdiction so it can

enforce the mask mandate order laid out by CDC. Finally, the U.S. Coast Guard issued MSIB 02-21, [COVID-19 Safety Requirements in the Maritime Transportation System](#), which addressed the new CDC order and enforces its implementation in the maritime industry.

DISCUSSION

Specifically, the CDC order requires face masks to be worn by all travelers on airplanes, vessels, trains, subways, buses, taxis, and ride-shares traveling into, within, or out of the United States. It also applies to conveyance operators, including vessels, and crew, drivers, conductors, and other workers involved in the operation of conveyances, as well as operators of transportation hubs, such as airports, bus or ferry terminals, train or subway stations, seaports, ports of entry, or any other area that provides transportation in the United States.

Note that popular items, such as scarves, ski masks, balaclavas, and bandanas are not classified as a proper face covering, nor is a shirt or sweater collar pulled up over the mouth and nose. Face shields or goggles are only permitted to supplement an authorized face covering. Furthermore, wearers are prohibited from allowing the covering to sit just below the nose; the CDC requires that it be worn in a way that covers both the mouth and nose. Guidance on the definition of a mask and how to properly wear a mask can be found [here](#).

Exempt from the federal order are private conveyances operated solely for personal, non-commercial use, commercial motor vehicles or trucks if the operator is the sole occupant of the vehicle, and conveyances operated or chartered by the U.S. military services provided that such conveyance operators observe Department of Defense precautions to prevent COVID-19 transmission that are equivalent to the precautions of the order.

Additionally, the requirement to wear a mask does not apply in other certain situations, such as when a person is eating, drinking, or taking medication for brief periods, or when communicating with a person who is hearing impaired and requires the ability to see one's mouth. It also does not apply to persons who cannot safely wear a mask due to a disability as defined by the Americans with Disability Act (42 U.S.C. 12101 et seq.) or in situations when 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.

CDC's order states that operators "must use best efforts" to make sure riders are wearing masks when boarding, disembarking, and for the duration of travel. The U.S. Coast Guard went on to provide several examples of best efforts vessel operators may use to ensure that any person on the conveyance remains compliant. Pertinent examples include boarding only those persons who wear masks, instructing persons that federal law requires wearing a mask on the conveyance and failure to comply constitutes a violation of federal law, and disembarking any person who refuses to comply.

Enforcement will ultimately fall to federal authorities and cooperating state and local authorities. TSA will be among those enforcing the requirement in transportation facilities

and on vehicles across the country, while the U.S. Coast Guard will enforce as to vessels. TSA expressed that passengers without a mask may be denied entry, boarding, or continued transport, and failure to comply with the mask requirement can result in civil penalties. However, the CDC has stated that it reserves the right to enforce the order through criminal penalties, but it "strongly encourages and anticipates widespread voluntary compliance" and expects support from other federal agencies to implement the order.

Finally, the U.S. Coast Guard noted in the MSIB, that it is charged with enforcing CDC quarantine orders under federal law. It stated that failure to wear a mask creates an undue safety risk by increasing the risk of transmission of COVID-19 between passengers, the crew of the vessel, and port operators. Vessels that have not implemented the mask requirement may be issued a Captain of the Port order directing the vessel's movement and operations, and the repeated failure of owners, operators, and vessel crews to impose the mask mandate could result in civil penalties and/or criminal action.

CONCLUSIONS AND RECOMMENDATIONS

Before the CDC order, enforcement of mask policies was largely left to individual transportation hubs. While most transit modes already require masks, the CDC order will make not wearing a mask a violation of federal law that could make it easier for conveyance operators and others to enforce. The U.S. Coast Guard now endorses the CDC order and cooperates with TSA to compel adherence to the same, subjecting those found non-compliant to civil or criminal penalties. Stakeholders are advised to review the CDC order and the MSIB to confirm they are taking the necessary measures to ensure full compliance.

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