



Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington DC 20515

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February 4, 2021

SUMMARY OF SUBJECT MATTER

TO: Members, Committee on Transportation and Infrastructure
FROM: Staff, Committee on Transportation and Infrastructure
RE: Full Committee Hearing on “Protecting Transportation Workers and Passengers from COVID: Gaps in Safety, Lessons Learned and Next Steps”

PURPOSE

The Committee on Transportation and Infrastructure (Committee or T&I) will meet in 2167 Rayburn House Office Building and via videoconferencing through a virtual platform on Thursday, February 4, 2021, at 11:00 a.m. EST to further examine the impacts of the COVID-19 crisis on transportation workers and related issues within the Committee’s jurisdiction. At the hearing, Members will hear about how the COVID-19 pandemic continues to impact the health, safety, and working conditions of transportation industry workers, about ongoing gaps in safety, lessons learned, and next steps to protect transportation workers and passengers from COVID-19. Testimony will be provided by a public health expert, an air quality expert, a city councilmember, the Association of Flight Attendants – CWA, the Amalgamated Transit Union, and the Owner-Operator Independent Drivers Association.

BACKGROUND

The COVID-19 pandemic continues to surge around the globe and across our Nation, disrupting travel, affecting the economy, and ravaging communities. Prior to the Committee’s hearing on this topic last Congress on June 9, 2020, COVID-19 had killed more than 90,000 Americans.¹ As of early February, this number stood at more than 400,000.² Millions of front-line transportation workers drive buses, operate ports, load cargo on airplanes, and carry out a myriad of

¹ CDC, *Daily Updates of Totals by Week and State* (last accessed January 13, 2021), available at <https://www.cdc.gov/nchs/nvss/vsrr/COVID19/index.htm>. (Note: T&I staff calculated this number by adding the deaths reported on a weekly basis through May 30, 2020).

² Johns Hopkins University & Medicine Coronavirus Resource Center (last accessed January 25, 2021) available at <https://coronavirus.jhu.edu/>.

other tasks necessary to ensuring the Nation's economy continues to function.³ The federal government has made recommendations for keeping these and other essential workers safe during the pandemic, and employers have instituted some protections.⁴ The Centers for Disease Control (CDC) characterizes transportation workers in the high-risk category of potential infection and suggests they should be prioritized for expanded testing to help prevent the “silent spread” of COVID-19 from asymptomatic individuals.⁵

COVID-19 Impacts on Transportation Sectors

The impact of COVID-19 on transportation workers and passengers has been significant. Most transportation systems were developed to move large numbers of people in relatively small spaces, making some recommended protective measures such as social distancing difficult.

Airlines/Airports

A recent study by researchers at Johns Hopkins University correlated the number of COVID-19 cases and deaths to the proximity of the infected individual to the nearest airport or train station.⁶ The CDC have also shown the ability of the virus to spread on commercial flights.⁷ One CDC analysis in September 2020 found, for example, that a woman travelling from London to Vietnam in March 2020 infected 15 other passengers on the flight.⁸ The CDC pointed out that there were 16 crew members and 201 passengers on this 10-hour flight.⁹ Other studies have shown the potential for the spread of the COVID-19 virus during long duration plane flights as well.¹⁰

In addition, air traffic controllers have been impacted by COVID-19. Some air traffic control towers have been temporarily shut down for cleaning, some multiple times, due to COVID-19 infections. For example, on January 10, 2021, the Washington Air Route Traffic Control Center

³ Bureau of Transportation Statistics, “Employment in Transportation and Transportation-Related Occupations” (last accessed January 21, 2021) available at <https://www.bts.gov/content/employment-transportation-and-transportation-related-occupations>. For example, according to BTS data, 2019 employment in the following categories totaled 5.02 million: air traffic controllers; bus drivers, transit and intercity; passenger vehicle drivers, except bus drivers, transit and intercity; subway and street car operators; flight attendants; shipping, receiving, and traffic clerks; tank car, truck, and ship loaders; first-line supervisors of transportation and material moving workers, except aircraft cargo handling supervisors; rail yard engineers, dinkey operators, and hostlers; captains, mates, and pilots of water vessels; truck drivers, heavy and tractor-trailer; and truck drivers, light or delivery services.

⁴ CDC, For Specific Industries and Occupations: Transportation and Delivery (last accessed January 18, 2021), available at <https://www.cdc.gov/coronavirus/2019-ncov/community/workplaces-businesses/specific-industries.html#transportation-delivery>.

⁵ “CDC Guidance for Expanded Screening Testing to Reduce Silent Spread of SARS-CoV-2,” Centers for Disease Control and Prevention (CDC), Updated January 21, 2021, accessed here: <https://www.cdc.gov/coronavirus/2019-ncov/php/open-america/expanded-screening-testing.html>.

⁶ Darrell J. Gaskin, et. al., “Geographic Disparities in COVID-19 Infections and Deaths: The Role of Transportation,” *Transport Policy*, [Received date: July 27, 2020; Accepted date: December 1, 2020], accessed here: <https://reader.elsevier.com/reader/sd/pii/S0967070X20309380?token=77C31809717417AECF7EB996C471F8AA40E04F95468FA9CD5D7E78E6C420FC7891DA99300D83A6B690677D1759F138E7>.

⁷ Nathaniel Weixel, “New study shows dangers of in-flight COVID-19 transmission,” *The Hill*, September 18, 2020, available at <https://thehill.com/policy/healthcare/517146-new-study-shows-dangers-of-in-flight-covid-transmission>.

⁸ Ibid.

⁹ CDC’s Emerging Infectious Disease Journal, Volume 26, Number 11, “Transmission of SARS-CoV 2 During Long-Haul Flight” (November 2020). See: https://wwwnc.cdc.gov/eid/article/26/11/20-3299_article.

¹⁰ Benedict Carey, “One 18-Hour Flight, Four Coronavirus Infections,” *New York Times*, January 7, 2021, available at <https://www.nytimes.com/2021/01/07/health/coronavirus-airline-passengers-outbreak.html>.

in Leesburg, Virginia, which serves airspace in Washington, D.C., and surrounding areas, closed for two hours after an employee there reported a positive test for COVID-19.¹¹ According to the *Washington Post*, employees at the center have tested positive 13 times since the start of the pandemic.¹² Last month, *Roll Call* reported that nearly 300 air traffic control centers nationwide have been impacted by COVID-19 infections since the epidemic began.¹³

Transit Systems

COVID-19 also poses challenges for the Nation's public transportation agencies. The Amalgamated Transit Union (ATU), which represents transportation workers including bus operators, has lost more than 100 members due to COVID-19 since the start of the pandemic.¹⁴ One study that investigated a case of COVID-19 transmission on two buses in China early on in the pandemic concluded, "This outbreak on public transportation vehicles highlighted the efficient transmission of [COVID-19] in crowded and closed settings. ... The closed windows with running ventilation on the buses could have created an ideal environment for aerosol transmission."¹⁵ The study recommended an "open windows" policy on public transportation vehicles whenever possible and a reminder of the importance to wear face masks.¹⁶ As discussed in more detail below, transit agencies have taken a number of steps to reduce crowding, improve ventilation, and ensure access to clean vehicles and surfaces for passengers and workers.¹⁷

Maritime Transportation

Cruise ships present a particularly difficult environment to control the spread of COVID-19 and other infectious diseases.¹⁸ In early 2020, hundreds of passengers and crews on multiple cruise ships were infected with COVID-19.¹⁹ On March 11, 2020, the World Health Organization (WHO) declared COVID-19 a pandemic.²⁰ An outbreak on the aircraft carrier USS Theodore Roosevelt in

¹¹ Ian Shapira, "Air traffic control center in Leesburg closes for two hours because of coronavirus," *Washington Post* (January 10, 2021) available at https://www.washingtonpost.com/local/leesburg-faa-air-traffic-coronavirus/2021/01/10/f3394df8-536f-11eb-a08b-f1381ef3d207_story.html.

¹² Id.

¹³ Jessica Wehrman, "Flights delayed as FAA controllers test positive for COVID-19," *Roll Call*, January 7, 2021, accessed here: <https://www.rollcall.com/2021/01/07/flights-delayed-as-faa-controllers-test-positive-for-covid-19/>.

¹⁴ ATU, "Remember Our Fallen," (last accessed January 18, 2021), available at <https://www.atu.org/remember-our-fallen>

¹⁵ Kaiwei Luo, et. al., "Transmission of SARS-CoV-2 in Public Transportation Vehicles: A Case Study in Hunan Province, China," *Open Forum Infectious Diseases* (Infectious Diseases Society of America), published online September 13, 2020, accessed here: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7543623/>.

¹⁶ Kaiwei Luo, et. al., "Transmission of SARS-CoV-2 in Public Transportation Vehicles: A Case Study in Hunan Province, China," *Open Forum Infectious Diseases* (Infectious Diseases Society of America), published online September 13, 2020, accessed here: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7543623/>.

¹⁷ See for instance, "Mandatory Directive: Public Transit," Santa Clara County, California, Public Health Department, Issued July 20, 2020, accessed here: <https://www.sccgov.org/sites/covid19/Documents/Mandatory-Directives-Public-Transit.pdf>.

¹⁸ Hirohito Ito, et. al., "The cruise industry and the COVID-19 outbreak," *Transportation Research Interdisciplinary Perspectives*, May 5, 2020, accessed here: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7254010/>.

¹⁹ "Public Health Responses to COVID-19 Outbreaks on Cruise Ships — Worldwide, February–March 2020," *Morbidity and Mortality Weekly Report* (MMWR), Centers for Disease Control and Prevention (CDC), March 27, 2020, accessed here: <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

²⁰ "WHO characterizes COVID-19 as a pandemic," World Health Organization (WHO), March 11, 2020, accessed here: <https://www.who.int/emergencies/diseases/novel-coronavirus-2019/events-as-they-happen>.

March 2020 infected 1,271 sailors, 27 percent of the crew.²¹ The maritime industry has also experienced COVID-19 infections, including recent outbreaks among workers at the Ports of Los Angeles, Philadelphia, and Charleston.²²

Following several high profile COVID-19 outbreaks on cruise ships, including the Diamond Princess and Grand Princess, which alone combined for more than 800 total COVID-19 cases, including 10 deaths,²³ the CDC issued a No Sail Order (NSO) on March 14, 2020.²⁴ The CDC subsequently modified and extended the NSO through October 31, 2020. According to the *New York Times*, however, the Trump Administration blocked an extension through mid-February 2021 of CDC's NSO for cruise ships, allowing ships to sail under certain conditions after October 31, 2020. The cruise industry had already voluntarily agreed not to sail prior to October 31, 2020, however.²⁵ On October 30, 2020, the CDC issued a detailed Framework for Conditional Sailing order setting forth specific requirements that cruises must meet in order to sail.²⁶ Despite this, CDC still officially "recommends that all people avoid travel on cruise ships, including river cruises, worldwide, because the risk of COVID-19 on cruise ships is very high."²⁷ Major cruise lines operating out of U.S. waters have voluntarily extended their no sail period through March 2021 and some, including Carnival Cruise Lines, will not sail until at least May 2021.²⁸

Testing

The CDC recommends increased testing, including for individuals with a higher risk of exposure based on their occupation, such as transportation workers who come into face-to-face contact with the public.²⁹ One of the considerations for testing, according to the CDC, is: "People who have taken part in activities that put them at higher risk for COVID-19 because they cannot socially distance as needed, such as travel, attending large social or mass gatherings, or being in crowded indoor settings."³⁰ Most transportation workers, including bus operators and flight

²¹ Matthew R. Kasper, et. al., "An Outbreak of Covid-19 on an Aircraft Carrier," *New England Journal of Medicine* (NEJM), December 17, 2020, accessed here: https://www.nejm.org/doi/full/10.1056/NEJMoa2019375?query=featured_home.

²² Pranshu Verma, "'Very High Risk': Longshoremen Want Protection From the Virus So They Can Stay on the Job," *New York Times*, December 12, 2020, accessed here: <https://www.nytimes.com/2020/12/12/us/politics/coronavirus-longshoremen-ports.html>.

²³ CDC Morbidity and Mortality Weekly Report (March 23, 2020) available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6912e3.htm>.

²⁴ CDC, No Sail Order (March 14, 2020) available at https://www.cdc.gov/quarantine/pdf/signed-manifest-order_031520.pdf.

²⁵ Sheila Kaplan, "White House Blocked C.D.C. Order to Keep Cruise Ships Docked," *New York Times* (September 30, 2020), available at <https://www.nytimes.com/2020/09/30/health/covid-cruise-ships.html>; see also Jonathan Swan, "Scoop: CDC Director overruled on cruise ship ban," *Axios* (September 29, 2020), available at <https://www.axios.com/scoop-white-house-overruled-cdc-cruise-ships-florida-91442136-1b8e-442e-a2a1-0b24e9a39fb6.html>.

²⁶ CDC, "Quarantine and Isolation: Cruise Ship Guidance" (last updated October 30, 2020) available at <https://www.cdc.gov/quarantine/cruise/index.html>.

²⁷ CDC, "Traveler's Health: COVID-19 and Cruise Ship Travel" (last viewed January 19, 2021) available at <https://wwwnc.cdc.gov/travel/notices/covid-4/coronavirus-cruise-ship>.

²⁸ Brittany Chang, "Several cruise trips have already been cancelled this year. See when major cruise lines plan on operating again," *Business Insider*, January 22, 2021, accessed here: <https://www.businessinsider.com/cruise-lines-2021-sailing-plans>.

²⁹ CDC, *Summary of Guidance for Public Health Strategies to Address High Levels of Community Transmission of SARS-CoV-2 and Related Deaths* (December 2020) available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6949e2.htm>.

³⁰ "COVID-19 Testing Overview: Considerations for who should get tested," Centers for Disease Control and Prevention (CDC), accessed here: <https://www.cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html>.

attendants, fall into this category of workers who come into face-to-face contact with the public.³¹ Despite the importance of testing, some localities are continuing to experience challenges ensuring sufficient testing capacity, marked by high demand, hard-to-come-by appointments, and a lack of supplies and personnel.³² From the start of the pandemic the Federal Government has followed a policy that permitted state and local authorities to take the lead on testing.³³

Case Reporting

Case reporting and contact tracing have been touted as core public health strategies for controlling and preventing the spread of infectious diseases, including COVID-19.³⁴ The Collegium Ramazzini, has emphasized the role of national governments to protect high-risk workers from the COVID-19 epidemic.³⁵

A scientific journal article published online in mid-November 2020 by the *American Journal of Industrial Medicine* highlighted the benefits of testing. The study examined 10,850 cases of COVID-19 in Washington State and found that those employed in the transportation and infrastructure sectors were among those workers highest at risk of COVID-19 infections.³⁶ The study found that [n]onhealthcare occupations at the highest risk of COVID-19 infection are dominated by workers who are either in close direct contact with others, such as flight attendants ... or may be directly exposed to [COVID-19].³⁷ The study noted that the CDC is now recommending the collection of data on occupation and workplace during COVID-19 case interviews.³⁸ Ultimately, the study concluded: “More comprehensive data is needed on the individual occupation level, preferably

³¹ CDC, *Testing Strategy for Coronavirus (COVID-19) in High-Density Critical Infrastructure Workplaces after a COVID-19 Case Is Identified* (last accessed January 13, 2021) available at <https://www.cdc.gov/coronavirus/2019-ncov/community/worker-safety-support/hd-testing.html>. Note that this guidance refers to essential workers being in close contact with other workers, but it seems like it would apply to workers in contact with others, ie passengers.

³² See for example The Boston Globe, *COVID-19 Testing Remains a Challenge; It Could Get Worse as Health Care Providers Juggle Vaccine Rollout* (January 7, 2021); Pittsburgh Tribune-Review, *Allegheny County Attributes Low Number of New COVID Cases to Limited Testing* (December 28, 2020); Bangor Daily News, *COVID Testing Challenges Loom with Winter Weather and End of Federal Support* (December 10, 2020).

³³ Mike Stobbe and Matthew Perrone, “Will the US ever have a national COVID-19 testing strategy,” *Associated Press* (AP), December 6, 2020, accessed here: <https://apnews.com/article/will-us-national-virus-testing-strategy-ceeda0ed971631f47666882eacf89a8e>.

³⁴ Elizabeth Ruebush, MPH, et. al., “COVID-19 Case Investigation and Contact Tracing: Early Lessons Learned and Future Opportunities,” *Journal of Public Health Management & Practice*, January/February 2021, Volume 27, Number 1 Supplemental, accessed here: https://journals.lww.com/jphmp/Fulltext/2021/01001/COVID_19_Case_Investigation_and_Contact_Tracing_.15.aspx.

³⁵ The Collegium Ramazzini is an independent, international society comprised of 180 physicians and scientists from 35 countries whose mission is to increase scientific knowledge of the environmental and occupational causes of disease with the goal of transmitting this knowledge to decisions-makers and the global public to prevent disease, promote health and save lives. “24th Collegium Ramazzini statement. Prevention of work-related infection in the COVID-19 pandemic,” *International Journal of Occupational Medicine and Environmental Health*, Online publication date May 19, 2020, accessed here: <http://ijomeh.eu/24th-Collegium-Ramazzini-statement-Prevention-of-work-related-infection-in-the-COVID,122172,0,2.html>.

³⁶ Michael Zhang, MD, (University of Nevada, Las Vegas), “Estimation of differential occupational risk of COVID-19 by comparing risk factors with case data by occupational group,” *American Journal of Industrial Medicine*, published online November 18, 2020, accessed here: <https://onlinelibrary.wiley.com/doi/10.1002/ajim.23199>.

³⁷ Id.

³⁸ Id.

across the entire United States, to fully assess worker risk and direct protective measures tailored to individual occupations.”³⁹

Last May, the President of the American College of Occupational and Environmental Medicine (ACOEM) that represents 4,000 occupational medicine physicians and related health care professions wrote to the CDC Director imploring him to improve the CDC’s efforts to gather workplace specific COVID-19 infection data which was largely limited to the healthcare workforce.⁴⁰ “We urge you to take all feasible steps to better understand the connection between COVID-19 and occupational factors by gathering codable data on industry and occupation in reported [COVID-19] cases.”⁴¹ The ACOEM president specifically cited “public transportation” workers as one of those high-risk groups that were prone to “occupational risks” from COVID-19 infections.⁴²

Contact Tracing

Contact tracing is a resource intensive exercise dependent upon individuals with the right public health skills and access to laboratory testing facilities.⁴³ However, it has been shown to be an effective measure to control the spread of infectious diseases, including COVID-19.⁴⁴ A study by researchers at Harvard and Stanford Universities, using a mathematical model, found that the most effective contact tracing programs could reduce the overall transmissions of COVID-19 infections by almost half.⁴⁵ Yet, while the United States has suffered nearly twice as many deaths as Brazil,⁴⁶ with the second highest number of deaths in the world, and has more than twice as many COVID-19 infections as India with the second highest number of worldwide cases, during the last ten months the United States did not have a cohesive federal contact tracing program or plan.⁴⁷ Instead, the Federal Government has largely left COVID-19 contact tracing efforts up to state and local

³⁹ Id.

⁴⁰ Letter from Beth A. Baker, MD, President, American College of Occupational and Environmental Medicine (ACOEM) to Dr. Robert R. Redfield, Director, Centers for Disease Control and Prevention (CDC), “SUBJECT: Inclusion of occupational data fields in COVID-19 case reporting,” May 20, 2020, accessed here: <https://acoem.org/acoem/media/PDF-Library/May-2020-letter-to-CDC.pdf>.

⁴¹ Id.

⁴² Id.

⁴³ “COVID-19: Laboratory Capacity,” Centers for Disease Control and Prevention (CDC), accessed here: <https://www.cdc.gov/coronavirus/2019-ncov/php/open-america/laboratory.html>

⁴⁴ Matt J. Keeling, T. Deirdre Hollingsworth and Jonathan M. Read, “Efficacy of contact tracing for the containment of the 2019 novel coronavirus (COVID-19),” *Journal of Epidemiology and Community Health*, October 2020, accessed here: <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7307459/#:~:text=In%20general%2C%20contact%20tracing%20is,t ransmission%20from%20the%20secondary%20cases.>

⁴⁵ Alyssa Bilinski, MS, Farzad Mostashari, MD and Joshua A. Salomon, PhD, “Modeling Contact Tracing Strategies for COVID-19 in the Context of Relaxed Physical Distancing,” *JAMA Network Open* (Research Letter/Public Health), August 21, 2020, accessed here: <https://jamanetwork.com/journals/jamanetworkopen/fullarticle/2769618>.

⁴⁶ On January 17, 2021, the United States had 397,561 recorded deaths from COVID-19 while Brazil had 209,847 recorded COVID-19 deaths and the United States had 23,932,306 recorded COVID-19 cases followed by India with 10,557,985 recorded COVID-19 cases. See, Johns Hopkins University’s “COVID-19 Dashboard” created by the Center for Systems Science and Engineering (CSSE), accessed here: <https://coronavirus.jhu.edu/map.html>.

⁴⁷ Beth Duff-Brown, “Model shows potential contact tracing impact against COVID-19,” News Center, Stanford University’s School of Medicine, August 24, 2020, accessed here: <http://med.stanford.edu/news/all-news/2020/08/model-shows-potential-contact-tracing-impact-against-covid-19.html>.

officials.⁴⁸ The CDC's own guidance says, "State and local public health officials will decide how to implement these activities and how to advise specific people, or groups of people, to be tested."⁴⁹

Quarantine

Forcing those infected with COVID-19 to quarantine or self-isolate has proven difficult. In December, for example, a passenger on a United Airlines flight died of an apparent heart attack.⁵⁰ However, the man's wife apparently told emergency medical personnel that he had COVID-19 symptoms, including loss of taste.⁵¹ The coroner later confirmed he died of acute respiratory failure and COVID-19.⁵² With those symptoms he should have been in self-quarantine.⁵³ In addition, transportation and other workers may feel compelled to go to work so that they don't miss a paycheck, particularly if they are asymptomatic.⁵⁴ In December, the CDC shortened its recommended time for quarantine from 14 days to 10 days or potentially 7 days, depending on the specific test results and an individual's symptoms.⁵⁵

Vaccinations

Immunization with a safe and effective COVID-19 vaccine is a critical component of the United States' strategy to reduce COVID-19-related illnesses, hospitalizations, and deaths, and to help restore more normal social functioning and economic activity.⁵⁶ The Department of Homeland Security considers transportation workers to be part of the essential critical infrastructure workforce and has noted that a degradation of infrastructure operations and resilience will make stopping the spread of the virus more difficult.⁵⁷ Essential workers, such as those employed in a range of transportation occupations, are among the populations being considered for initial phased allocation of limited vaccine doses.⁵⁸ But states and localities vary in how they intend to prioritize essential workers, including those in the transportation sector, to receive vaccinations.⁵⁹

⁴⁸ "Contact Tracing for COVID-19," Centers for Disease Control and Prevention (CDC), Updated December 16, 2020, accessed here: <https://www.cdc.gov/coronavirus/2019-ncov/php/contact-tracing/contact-tracing-plan/contact-tracing.html>

⁴⁹ Id.

⁵⁰ Melissa Alonso, Kelly Murray and Hollie Silverman, "United passenger died of Covid-19 and acute respiratory failure, coroner says," *CNN*, December 22, 2020, accessed here: <https://www.cnn.com/2020/12/19/us/united-passenger-died-covid-symptoms/index.html>.

⁵¹ Id.

⁵² Id.

⁵³ "Isolate If You Are Sick: Separate yourself from others if you have COVID-19," Centers for Disease Control and Prevention (CDC), accessed here: <https://www.cdc.gov/coronavirus/2019-ncov/if-you-are-sick/isolation.html>.

⁵⁴ "Report Shows Transportation Workers Lack Support and Flexibility on the Job: Many workers come to work sick, worrying losing pay or their job," *Roads & Bridges*, June 5, 2020, accessed here: <https://www.roadsbridges.com/report-shows-transportation-workers-lack-support-and-flexibility-job>.

⁵⁵ Colin Dwyer, "CDC Shortens Its COVID-19 Quarantine Recommendations," *National Public Radio* (NPR), December 2, 2020, accessed here: <https://www.npr.org/2020/12/02/941355347/cdc-shortens-its-covid-19-quarantine-recommendations>.

⁵⁶ CDC, *COVID-19 Vaccination Program Interim Playbook For Jurisdiction Operations* (October 29, 2020) available at https://www.cdc.gov/vaccines/imz-managers/downloads/COVID-19-Vaccination-Program-Interim_Playbook.pdf.

⁵⁷ U.S. Department of Homeland Security-Cybersecurity & Infrastructure Security Agency, *Guidance on the Essential Critical Infrastructure Workforce: Ensuring Community and National Resilience in COVID-19 Response* (August 18, 2020).

⁵⁸ CDC, *Summary of Guidance for Public Health Strategies to Address High Levels of Community Transmission of SARS-CoV-2 and Related Deaths* (December 2020) available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6949e2.htm>.

⁵⁹ NBC Nightly News, *Who's Next for the COVID Vaccine, a Look at What Some States Are Deciding* (December 13, 2020).

Personal Protective Equipment (PPE)

Masks

The CDC strongly recommends all passengers and operators wear masks on public transportation, including airplanes, ships, ferries, trains, subways, buses, taxis, and ride-shares.⁶⁰ CDC also strongly recommends mask use at transportation hubs and in boarding areas.⁶¹ CDC further recommends that operators refuse to board anyone not wearing a mask, and require all people on board to wear masks for the duration of the trip with a few exceptions, such as for brief periods to eat, drink, or take medicine.⁶² During the Trump administration, however, the CDC did not issue a mandatory mask requirement.⁶³

According to the *New York Times*, the CDC drafted an order in September 2020 under its quarantine powers that would have required all passengers and employees to wear masks on all forms of public and commercial transportation in the United States.⁶⁴ However, these CDC plans were blocked by the White House and never issued, according to these reports.⁶⁵ On October 2, 2020, the U.S. Department of Transportation (DOT) denied a petition from the Transportation Trades Department, AFL-CIO asking DOT to require passengers to wear masks on airplanes, trains, buses, and passenger vessels as well as in boarding areas and associated facilities such as airports and stations.⁶⁶

On January 21, 2021, President Biden signed an executive order requiring, to the extent consistent with applicable law, that masks be worn in compliance with CDC guidelines in airports, on commercial aircraft, trains, public maritime vessels including ferries, intercity buses and public transportation.⁶⁷ The order also requires, to the extent feasible, that travelers entering the United States from a foreign country produce proof of a negative COVID-19 test prior to entry and

⁶⁰ CDC, “Wear Face Masks on Public Transportation Conveyances and at Transportation Hubs,” (Updated November 20, 2020, available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/face-masks-public-transportation.html>); See also CDC, “Interim Guidance: Wearing of face masks while on public conveyances at stations, ports and similar transportation hubs,” October 20, 2020, available at <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

⁶¹ Id.

⁶² Id.

⁶³ Erika Edwards, “CDC says mask mandates can slow COVID-19,” *NBC News*, November 20, 2020, accessed here: <https://www.nbcnews.com/health/health-news/cdc-says-mask-mandates-can-slow-covid-19-spread-n1248417>.

⁶⁴ Sheila Kaplan, “White House Blocked C.D.C. From Requiring Masks on Public Transportation,” *New York Times* (October 9, 2020), available at <https://www.nytimes.com/2020/10/09/health/coronavirus-covid-masks-cdc.html>.

⁶⁵ Sheila Kaplan, “White House Blocked C.D.C. From Requiring Masks on Public Transportation,” *New York Times* (October 9, 2020), available at <https://www.nytimes.com/2020/10/09/health/coronavirus-covid-masks-cdc.html>.

⁶⁶ Andy Kroll, “Trump Administration Rejected a Mask Mandate on the Day Trump Was Hospitalized for Covid-19,” *Rolling Stone* (October 3, 2020) available at <https://www.rollingstone.com/politics/politics-news/trump-covid-positive-test-hospital-plane-train-mask-mandate-transportation-1070629/>; See also Ian Duncan, “Labor Unions Petition Transportation Department for a mandatory mask rule,” *Washington Post* (July 28, 2020) available at https://www.washingtonpost.com/local/trafficandcommuting/labor-unions-petition-transportation-department-for-a-mandatory-mask-rule/2020/07/28/0cc36306-d0f0-11ea-9038-af089b63ac21_story.html.

⁶⁷ Executive Order on Promoting COVID-19 Safety in Domestic and International Travel, Section 2 available at <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-promoting-covid-19-safety-in-domestic-and-international-travel/>.

travelers, “comply with other applicable CDC guidelines concerning international travel, including recommended periods of self-quarantine or self-isolation after entry into the United States.”⁶⁸

Every domestic commercial airline requires, as a matter of company policy, that passengers and crew wear face coverings on flights, as well as during check-in and boarding.⁶⁹ Most major transit systems, and a lot of smaller ones, require masks.⁷⁰ Uber⁷¹ and Lyft⁷² require masks for both drivers and passengers, and Amtrak requires masks for customers and front-line employees and is also limiting bookings on reserved trains to allow for more social distancing.⁷³

Passenger access to PPE, including masks, varies by transit agency. In New York City, the Metropolitan Transportation Authority (MTA) has created a “Mask Force” comprised of hundreds of volunteers who distribute free masks on subways and buses two days each month.⁷⁴ The Chicago Transit Authority (CTA) recently announced a pilot program to provide free, disposable masks on 200 buses serving 20 bus routes,⁷⁵ following the installation of personal protective equipment vending machines at six of CTA’s rail stations which offer riders access to items like masks and hand sanitizer for prices ranging from \$3.75 to \$10.⁷⁶

However, enforcement of mask policies has been a challenge. For example, bus drivers have been assaulted while trying to enforce mask mandates, including a 62-year-old public bus driver in New York City who was hit after reminding a passenger that masks were required, and a bus driver in San Francisco who was beaten by three men who had been ordered off for refusing to put on a mask.⁷⁷ There have also been numerous reports of airline passengers verbally abusing flight attendants as they have tried to enforce airline mask requirements and of passengers exploiting food and drink mask exceptions for prolonged periods to avoid mask wearing.⁷⁸ Moreover, these

⁶⁸ Executive Order on Promoting COVID-19 Safety in Domestic and International Travel, Section 5 *available at* <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/21/executive-order-promoting-covid-19-safety-in-domestic-and-international-travel/>.

⁶⁹ Becky Pokora and Caroline Lupini, “Master List of U.S. Airline Seating and Mask COVID-19 Policies,” *Forbes* (December 7, 2020) *available at* <https://www.forbes.com/sites/advisor/2020/12/07/master-list-of-us-airline-seating-and-mask-covid-19-policies/?sh=34c9d2fb1bb4>.

⁷⁰ APTA Health & Safety Commitments Program, Participating Agencies, *available at* https://apta.com/wp-content/uploads/Participating_Agencies_12-23-2020.pdf.

⁷¹ Dalvin Brown, “No mask. No ride.: Uber will require drivers and passengers to wear face masks indefinitely,” *USA Today* (July 1, 2020) *available at* <https://www.usatoday.com/story/money/2020/07/01/uber-require-face-masks-drivers-and-passengers-indefinitely/5354164002/>.

⁷² Andrew J. Hawkins, “Lyft will require drivers and Passengers to wear face masks,” *The Verge* (May 7, 2020) *available at* <https://www.theverge.com/2020/5/7/21250999/lyft-face-mask-require-driver-passenger-coronavirus>.

⁷³ Amtrak, “Amtrak Requires Facial Coverings As Added Measure of Protection,” (May 7, 2020) *available at* <https://media.amtrak.com/2020/05/amtrak-requires-facial-coverings-as-added-measure-of-protection/>.

⁷⁴ <https://new.mta.info/maskforce>.

⁷⁵ Chicago Transit Authority, “CTA Announces Free Face Mask Pilot Program,” (December 29, 2020) *available at* <https://www.transitchicago.com/cta-announces-free-face-mask-pilot-program/>.

⁷⁶ Chicago Transit Authority, “CTA Announces New PPE Vending Machines for Customers at Rail Stations,” (October 21, 2020) *available at* <https://www.transitchicago.com/cta-announces-new-ppe-vending-machines-for-customers-at-rail-stations/>.

⁷⁷ Christine Goldbaum, “When a Bus Driver Told a Rider to Wear a Mask, ‘He Knocked Me Out Cold,’” *New York Times* (September 18, 2020) *available at* <https://www.nytimes.com/2020/09/18/nyregion/mta-bus-mask-covid.html>

⁷⁸ Michael Laris, “Sneezed on, cussed at, ignored: Airline workers battle mask resistance with scant governmental backup,” *Washington Post* (January 1, 2021) *available at* https://www.washingtonpost.com/local/trafficandcommuting/coronavirus-mask-airplanes/2020/12/31/09c12d52-4565-11eb-975c-d17b8815a66d_story.html; Maria Cramer, “Mask Fights and a ‘Mob Mentality’: What Flight Attendants Faced Over the Last Year,” *New York Times* (January 26, 2021), *available at*

disturbances have safety implications beyond even spreading the virus, with at least one report of an airline captain being so distracted by a mask-related problem with a passenger that the captain mistakenly descended to the wrong altitude.⁷⁹

Healthy Flights Act

On July 30, 2020, Chair DeFazio, Chair Larsen, and more than a dozen members of Congress introduced the *Healthy Flights Act of 2020* (116th - H.R. 7867), which sought to clarify FAA's authority to impose requirements on passengers to protect health and safety, require passengers to wear masks on board aircraft and within airports during public health emergencies caused by airborne disease, mandate development of a national aviation preparedness plan to respond to pandemics, call for a study on transmission of infectious diseases in airplane cabins, and create an FAA Center of Excellence on Infectious Disease Response and Prevention in Aviation to advise the FAA Administrator on infectious diseases and air travel. The bill was not marked up or otherwise advanced by the Committee during the 116th Congress.

Bus Shields

On buses, plastic shields, which have previously been used to help protect drivers from assaults, are now being added by some transit agencies to help protect drivers from coronavirus.⁸⁰ According to the American Public Transportation Association's (APTA) Mobility Recovery and Restoration Task Force, adding physical barriers between drivers and passengers minimizes the person-to-person spread of disease.⁸¹ The Amalgamated Transit Union (ATU), which represents over 200,000 workers, includes temporary barrier installation as part of its recommended "Bus Airflows and Solutions for Operators."⁸²

Surface Sanitization

The CDC recommends frequent hand washing and/or use of hand sanitizer containing at least 60 percent alcohol.⁸³ To help airplane passengers comply, the Transportation Security Administration (TSA) allows passengers to carry on one container of hand sanitizer up to 12 ounces.⁸⁴

Both public and private transportation services have also explored innovations in disinfection. JetBlue has experimented with a machine from Honeywell that uses UV light to

<https://www.nytimes.com/2021/01/26/business/airlines-capitol-violence.html?action=click&module=Top%20Stories&pgtype=Homepage>.

⁷⁹ Id.

⁸⁰ Luz Lazo, "Plastic barriers protected bus drivers from assaults. Now they shield them from the coronavirus," *Washington Post* (December 30, 2020) available at https://www.washingtonpost.com/local/trafficandcommuting/bus-driver-barriers-coronavirus/2020/12/29/7e4ce230-3e1a-11eb-8bc0-ae155bee4aff_story.html.

⁸¹ American Public Transportation Association Mobility Recovery and Restoration Task Force White Paper, "Transit Leadership in the Post-COVID-19 Mobility Landscape Part One: Measures to Promote Safe Mobility," (September 2, 2020) p. 16 available at https://apta.com/wp-content/uploads/Updated_Transit_Leadership_in_the_Post-COVID-19_Mobility_Landscape_Part_1_v2.pdf.

⁸² Amalgamated Transit Union, "Safe Service Now: COVID019 – Bus Airflows and Solutions" (last viewed Jan. 17, 2021), available at https://www.atu.org/covid-one9/resources/STRAT_COVIDPerilsofAirflowFlyer.pdf.

⁸³ CDC, "How to Protect Yourself & Others," Updated December 31, 2020 available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/prevention.html>

⁸⁴ <https://www.tsa.gov/travel/security-screening/whatcanibring/items/hand-sanitizers>.

disinfect cabins.⁸⁵ The CTA has purchased electrostatic sprayers to help evenly distribute its cleaning agent and help the agent to cling to surfaces, as well as with surface coating products to prevent viruses from sticking to surfaces inside of vehicles.⁸⁶

APTA's Mobility Recovery and Restoration Task Force has recommended that transit agencies comply with recommendations by health and safety agencies regarding masks, and provide key supplies in both vehicles and facilities for both passengers and employees to help mitigate against the spread of contagious disease.⁸⁷ Examples of such supplies include soap, cleaning wipes, hand sanitizer dispensers, paper towels, tissues, and trash cans to dispose of used products.⁸⁸

Some transit agencies are also transitioning to contactless payment systems such as phone app-based fare collection, which helps reduce touch points and potentially infections.⁸⁹ Other concepts transit systems are considering to reduce surface-based infection include antimicrobial coverings for handrails and other key touch points to inhibit growth of microbes,⁹⁰ copper coatings, which reduce the length of time COVID-19 can remain on a surface, and self-cleaning nanocoatings, which can kill viruses on surfaces and nearby air.⁹¹ The Port Authority of New York and New Jersey, for example, has been experimenting with a self-cleaning escalator handrail system using UV light.⁹²

Physical Distancing

The CDC recommends maintaining physical distance of at least six feet as a strategy to decrease the spread of coronavirus. When an infected person coughs, sneezes, or talks and droplets from their mouth or nose are launched into the air they can land in the mouths or noses of people nearby, potentially infecting those individuals.⁹³ However, as the following examples demonstrate,

⁸⁵ Cailey Rizzo, "JetBlue Is Testing a Giant UV Light Machine That Could Disinfect Plane Cabins in Under 10 Minutes," *Travel + Leisure* (July 30, 2020), available at <https://www.travelandleisure.com/airlines-airports/jetblue/jetblue-airplane-cabin-disinfectant-machine-coronavirus>.

⁸⁶ <https://www.transitchicago.com/coronavirus/vehicles/#New>.

⁸⁷ American Public Transportation Association Mobility Recovery and Restoration Task Force White Paper, "Transit Leadership in the Post-COVID-19 Mobility Landscape Part One: Measures to Promote Safe Mobility," (September 2, 2020) p. 13 available at https://apta.com/wp-content/uploads/Updated_Transit_Leadership_in_the_Post-COVID-19_Mobility_Landscape_Part_1_v2.pdf.

⁸⁸ Id. at p. 8.

⁸⁹ American Public Transportation Association Mobility Recovery and Restoration Task Force White Paper, "Transit Leadership in the Post-COVID-19 Mobility Landscape Part One: Measures to Promote Safe Mobility," (September 2, 2020) pp. 19-20 available at https://apta.com/wp-content/uploads/Updated_Transit_Leadership_in_the_Post-COVID-19_Mobility_Landscape_Part_1_v2.pdf; See also "Contactless Payment: Metro Makes TAP Cards Available On Apple Devices," CBS Los Angeles (September 3, 2020) available at <https://losangeles.cbslocal.com/2020/09/03/contactless-payment-metro-makes-tap-cards-available-on-apple-devices/>.

⁹⁰ Id. at p. 23.

⁹¹ Id. at pp. 24-25.

⁹² Larry Higgs, "Self-sanitizing escalator handrail coming to Port Authority bus terminal," NJ.com (August 2, 2020) available at <https://www.nj.com/coronavirus/2020/08/self-sanitizing-escalator-handrail-coming-to-port-authority-bus-terminal.html>; see also American Public Transportation Association Mobility Recovery and Restoration Task Force White Paper, "Transit Leadership in the Post-COVID-19 Mobility Landscape Part One: Measures to Promote Safe Mobility," (September 2, 2020) pp. 26-27 available at https://apta.com/wp-content/uploads/Updated_Transit_Leadership_in_the_Post-COVID-19_Mobility_Landscape_Part_1_v2.pdf.

⁹³ CDC, *Summary of Guidance for Public Health Strategies to Address High Levels of Community Transmission of SARS-CoV-2 and Related Deaths* (December 2020) available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6949e2.htm>; CDC, *Social Distancing* (last accessed January 13, 2021) available at <https://www.cdc.gov/coronavirus/2019-ncov/prevent-getting-sick/social-distancing.html>.

the ability to maintain six feet of separation varies across and within modes of transportation. In aviation, many airports have instituted physical distancing requirements within terminals, but once aboard aircraft, flight crew and travelers are generally limited in their ability to remain six feet apart due to the size of the cabin.⁹⁴ Likewise, maintaining at least six feet of distance can be challenging in other crowded transportation settings, such as in buses and subway cars and on commuter ferries.⁹⁵

Air Quality/Ventilation

The CDC encourages increasing indoor air ventilation as a strategy to help reduce transmission of coronavirus.⁹⁶ The American Society of Heating, Refrigerating and Air-Conditioning Engineers has recommended specific actions to improve air quality and thereby decrease the risk of infectious disease exposure in indoor environments, including mobile environments such as vehicles and ships.⁹⁷ These recommendations include, for example, using filters and air cleaners and ensuring sufficient outdoor airflow rates.⁹⁸ Most commercial airliners use high-efficiency particulate air (HEPA) filters⁹⁹ and have a high air-exchange rate, including a mix of outside and recirculated air.¹⁰⁰ Particles generated by sneezing or coughing, however, remain in the cabin air creating exposure for disease transmission until they enter the ventilation system and are effectively removed by HEPA filters.¹⁰¹

U.S. Department of Transportation Statutory Authority to Combat the COVID Crisis

On July 27, 2020, the Transportation Trades Department AFL-CIO (TTD) and its 33 member unions petitioned the DOT to mandate by regulation the usage of masks or face coverings for passengers on DOT-regulated commercial transportation providers.¹⁰² In its petition, TTD cited the “patchwork of state or local mandates and a deeply inadequate federal response consisting of non-mandatory guidance” which failed to protect front-line transportation employees.¹⁰³ At the time

⁹⁴ See, for example, Houston Airports Authority, *FlySafe Houston* (accessed on January 13, 2021) available at <https://www.fly2houston.com/flysafe>; San Francisco International Airport, *What We Are Doing* (accessed on January 13, 2021) available at <https://www.flysfo.com/travel-well/new-health-protocols>; Saint Louis Lambert International Airport, *Travel Update: Coronavirus (COVID-19)* (accessed on January 13, 2021) available at <https://www.flystl.com/newsroom/stl-news/2020/travel-update-coronavirus-covid-19>.

⁹⁵ CDC, *Wear Face Masks on Public Transportation Conveyances and at Transportation Hubs* (last accessed January 13, 2021) available at <https://www.cdc.gov/coronavirus/2019-ncov/travelers/face-masks-public-transportation.html>.

⁹⁶ CDC, *Summary of Guidance for Public Health Strategies to Address High Levels of Community Transmission of SARS-CoV-2 and Related Deaths* (December 2020) available at <https://www.cdc.gov/mmwr/volumes/69/wr/mm6949e2.htm>.

⁹⁷ ASHRAE Epidemic Task Force, *Core Recommendations for Reducing Airborne Infectious Aerosol Exposure* (accessed on January 14, 2021) available at <https://www.ashrae.org/file%20library/technical%20resources/covid-19/core-recommendations-for-reducing-airborne-infectious-aerosol-exposure.pdf>.

⁹⁸ Id.

⁹⁹ HEPA filters are high efficiency particle air (HEPA) filters with an efficiency of 99.97% removal of particulates larger than 0.30 microns. See: “Frequently Asked Questions,” American Society of Heating, Refrigerating and Air-Conditioning Engineers (ASHRAE), accessed here: <https://www.ashrae.org/technical-resources/frequently-asked-questions-faq>.

¹⁰⁰ Airlines for America, “Working Together to Protect Travelers from Curb to Gate” (July 2, 2020) available at <https://www.airlines.org/blog/working-together-to-protect-travelers-from-curb-to-gate/>.

¹⁰¹ National Academies of Science, *Infectious Disease Mitigation in Airports and on Aircraft* (2013) available at <http://nap.edu/22512>.

¹⁰² Letter from Larry I. Willis, President, Transportation Trades Department AFL-CIO, to Secretary Elaine Chao, U.S. Department of Transportation (July 27, 2020) available at <https://ttt.org/policy/federal-comments/ttd-petitions-dot-for-passenger-face-mask-mandate/>.

¹⁰³ Id.

of the petition, “barely half of states [had] enacted mandatory mask requirements in public” even as the country set global records on the rate of new COVID-19 infections.¹⁰⁴

The Federal Aviation Administration (FAA), the Federal Railroad Administration (FRA), and the Federal Transit Administration (FTA) already have the authority to mandate the usage of masks and face coverings. Under title 49 of the U.S. Code, the FAA has the statutory authority to issue mandates that promote safety.¹⁰⁵ For example, this has been interpreted in the past by the FAA through the issuance of a “Public Health Authority Notification” via publication in the Federal Register to include regulations related to passengers with communicable diseases.¹⁰⁶ FRA and FTA’s rulemakings also include requirements to promote safety. For example, under FRA’s System Safety Program and Risk Reduction Program final rule, a hazard is defined as “any real or potential condition (as identified in [the railroad’s] risk-based hazard analysis) that can cause injury, illness, or death; damage to or loss of a system, equipment, or property; or damage to the environment.”¹⁰⁷ The FTA uses a similar definition in its Public Transportation Agency Safety Plans regulation: “*Hazard* means any real or potential condition that can cause injury, illness, or death; damage to or loss of the facilities, equipment, rolling stock, or infrastructure of a public transportation system; or damage to the environment.”¹⁰⁸

U.S. Department of Transportation Actions

On October 3, 2020, DOT rejected TTD’s petition for an emergency order mandating masks on all commercial public transportation modes.¹⁰⁹ As of January 17, 2021, DOT has failed to issue an order.¹¹⁰ In a letter to Chair DeFazio on December 30, 2020, providing an update on DOT’s response to COVID-19, DOT listed the following accomplishments: “the Department has issued over 200 administrative actions granting regulatory relief to support critical needs and recovery, distributed over \$35 billion in Coronavirus Aid, Relief, and Economic Security (CARES)

¹⁰⁴ Id.

¹⁰⁵ See 49 U.S. Code §44701, “General requirements,” available at <https://www.govinfo.gov/content/pkg/USCODE-2018-title49/pdf/USCODE-2018-title49-subtitleVII-partA-subpartiii-chap447-sec44701.pdf>; 49 U.S. Code § 44703, “Airman certificates,” accessed here: <https://www.govinfo.gov/content/pkg/USCODE-2018-title49/pdf/USCODE-2018-title49-subtitleVII-partA-subpartiii-chap447-sec44703.pdf>; 49 U.S. Code § 44507, “Regions and centers,” available at <https://www.govinfo.gov/content/pkg/USCODE-2018-title49/pdf/USCODE-2018-title49-subtitleVII-partA-subpartiii-chap445-sec44507.pdf>.

¹⁰⁶ “Public Health Authority Notification,” Federal Aviation Administration, Department of Transportation, Federal Register, Vol. 71, No. 31, 71 FR 8042, February 15, 2006, available at <https://www.govinfo.gov/content/pkg/FR-2006-02-15/pdf/06-1424.pdf>. The notification is summarized as follows: “The FAA is publishing this notice to inform hospitals and other health care organizations of its status as a ‘public health authority’ under the medical privacy requirements of the Health Insurance Portability and Accountability Act of 1996.” Ibid.

¹⁰⁷ “System Safety Program and Risk Reduction,” Federal Railroad Administration, Department of Transportation, Federal Register, Vol. 85, No. 43, 85 FR 12826, March 4, 2020, accessed here: <https://beta.regulations.gov/document/FRA-2009-0038-0118>.

¹⁰⁸ 49 C.F.R. § 673.5, “Definitions,” accessed here: https://www.ecfr.gov/cgi-bin/text-idx?SID=7e96bb63db489533521d74f7f860cf48&mc=true&node=pt49.7.673&rgn=div5#se49.7.673_15.

¹⁰⁹ Press Release, “On the Day POTUS Tests Positive for COVID-19, U.S. DOT Rejects Mask Mandate for All Commercial, Public Transportation,” Transportation Trades Department AFL-CIO (October 3, 2020) available at <https://ttt.org/news-and-media/on-the-day-potus-tests-positive-for-covid-19-u-s-dot-rejects-mask-mandate-for-all-commercial-public-transportation/>.

¹¹⁰ Jorge L. Ortiz, “Blood on his hands’: As US nears 400,000 COVID-19 deaths, experts blame Trump Administration for a ‘preventable’ loss of life,” USA Today (January 17, 2021) available at <https://www.usatoday.com/story/news/nation/2021/01/17/covid-19-us-400-000-deaths-experts-blame-trump-administration/6642685002/>.

Act relief, facilitated distribution of 100 million facemasks to front-line transportation operators, and provided emergency relief to truckers.”¹¹¹ The DOT has also communicated health and workplace guidance from the CDC and OSHA with stakeholders.

One of these stakeholders, APTA, has developed a “COVID-19 Resource Hub” with best practices and implemented the “APTA Health & Safety Commitments Program” to ensure safe operation of public transportation systems.¹¹²

Transportation Provider Actions and Enforcement Issues

Many front-line transportation workers have been left largely on their own to enforce any mask mandates.¹¹³ For flight attendants, aside from company policies that may bar passengers who do not wear masks from future flights, any federal enforcement only stems from passengers who become unruly.¹¹⁴ On January 11, 2021, noting recent violence at the U.S. Capitol and press reports of rowdy and unruly passengers on commercial airlines who refused to wear masks, Chair DeFazio and Chair Larsen wrote to FAA Administrator Stephen Dickson urging him to deter disorderly passengers by vigorously enforcing its authorities and pursue maximum penalties authorized by law - \$35,000 per violation.¹¹⁵ On January 13, 2021, citing increased disruptive behavior by airplane passengers stemming from both refusal to wear masks and from recent violence at the U.S. Capitol, the FAA issued a zero-tolerance policy by which the agency committed to taking enforcement action against unruly passengers, including fines up to \$35,000 and possible jail time, as opposed to first using counseling and warnings.¹¹⁶ The policy is currently in effect through March 30, 2021.¹¹⁷

Federal Emergency Management Agency (FEMA) Response

On March 13, 2020, in response to the COVID-19 pandemic, President Trump declared an emergency under Section 501(b) of the *Robert T. Stafford Disaster Relief and Emergency Assistance Act* (Stafford Act, P.L. 93-288 as amended).¹¹⁸ The initial series of declarations authorized Public

¹¹¹ Letter from Adam J. Sullivan, Assistant Secretary for Governmental Affairs, Department of Transportation, to Chair DeFazio (December 30, 2020).

¹¹² American Public Transportation Association, “COVID-19 Resource Hub,” (last viewed January 17, 2021) *available at* <https://apta.com/covid-19-resource-hub/>.

¹¹³ Harmeet Kaur and Natalia V. Osipova, “For flight attendants, getting people to wear masks is now one of the hardest parts of the job,” *CNN*, January 21, 2021 *available at* <https://www.cnn.com/travel/article/flight-attendants-unruly-passengers-masks-trnd/index.html>.

¹¹⁴ *Id.*

¹¹⁵ “DeFazio and Larsen Encourage FAA Administrator to Use the Full Weight of Federal Law to Protect Airline Passengers and Crews Ahead of Inauguration,” Majority Press Release, Committee on Transportation and Infrastructure, January 11, 2021, accessed here: <https://transportation.house.gov/news/press-releases/defazio-and-larsen-encourage-faa-administrator-to-use-the-full-weight-of-federal-law-to-protect-airline-passengers-and-crews-ahead-of-inauguration>.

¹¹⁶ David Shephardson, “Exclusive: U.S. FAA chief orders ‘zero tolerance’ for disruptive airline passengers, possibly jail,” *Reuters* (January 13, 2021) *available at* <https://www.reuters.com/article/us-usa-election-aviation-exclusive/exclusive-u-s-faa-chief-orders-zero-tolerance-for-disruptive-airline-passengers-possibly-jail-idUSKBN29I302>; See also FAA, “Press Release – Federal Aviation Administration Adopts Stricter Unruly Passenger Policy,” (January 13, 2021) *available at* https://www.faa.gov/news/press_releases/news_story.cfm?newsId=25621.

¹¹⁷ FAA, “Press Release – Federal Aviation Administration Adopts Stricter Unruly Passenger Policy,” (January 13, 2021) *available at* https://www.faa.gov/news/press_releases/news_story.cfm?newsId=25621.

¹¹⁸ Stafford Act, 42 U.S.C. §§5121 et seq.; Letter from President Donald J. Trump on Emergency Determination Under the Stafford Act (March 13, 2020) *available at* <https://www.whitehouse.gov/briefings-statements/letter-president-donald-j-trump-emergency-determination-stafford-act/>.

Assistance emergency protective measures to all states, territories, the District of Columbia, and 32 federally-recognized tribes.¹¹⁹ By April 22, 2020, President Trump had approved major disaster declaration requests for all 50 states, the District of Columbia, the five territories, and one federally-recognized tribe.¹²⁰ Currently, pandemics are not explicitly included in the definition of “major disaster” under the *Stafford Act*.¹²¹ Areas of concern raised by recipients of the assistance have included the federal cost share and eligibility and reimbursement clarifications.¹²²

Economic Impact on Transportation Systems

Inter-city and charter buses

The Nation’s private motorcoach industry—which includes about 3,000 operators of commuter shuttles, private charters, and scheduled service—has suffered devastating ridership and revenue losses as a result of decreased travel demand during the COVID-19 pandemic.¹²³ Based on reports from motorcoach companies, between 80 and 95 percent of charter motorcoach trips have been cancelled or are simply not being booked due to the pandemic.¹²⁴ The American Bus Association (ABA) has estimated that up to 50 percent of bus companies could go out of business by the end of 2021.¹²⁵ Further, ABA-commissioned research indicates that without a strong recovery (and without government assistance), 78 percent of jobs in the charter-bus sector will be lost during the next year and around 65 percent will be lost in the commuter, scheduled, and shuttle-bus sectors.¹²⁶

Aviation

Demand for commercial air travel plummeted last spring as coronavirus cases surged, and it continues to be far below typical levels. Airlines operating in the United States are now offering just 42 percent of the seats that they offered a year ago.¹²⁷ TSA security screenings remain far below normal levels as well; on Christmas day 2020, for example, TSA screened only a quarter of the

¹¹⁹ Id.

¹²⁰ Federal Emergency Management Administration, COVID-19 Disaster Declarations (last accessed January 18, 2021) available here <https://www.fema.gov/disasters/coronavirus/disaster-declarations>.

¹²¹ See 42 U.S.C. §5122, “Definitions,” available at <https://www.govinfo.gov/content/pkg/USCODE-2018-title42/pdf/USCODE-2018-title42-chap68-subchap1-sec5122.pdf>.

¹²² See Coalition Letter on the FEMA Assistance Relief Act (September 29, 2020) available at <https://www.nga.org/advocacy-communications/coalition-fema-assistance-relief-act/>.

¹²³ Tim Levin, “With no COVID-19 relief in sight, the private bus industry could collapse — taking with it a vital US transport network” *Business Insider* (November 24, 2020) available at <https://www.msn.com/en-us/travel/news/with-no-covid-19-relief-in-sight-the-private-bus-industry-could-collapse-taking-with-it-a-vital-us-transport-network/ar-BB1bjHWt>.

¹²⁴ John Dunham and Associates, Memo to American Bus Association President Peter Pantuso (September 8, 2020) available at https://www.buses.org/assets/images/uploads/pdf/Economic_Update_on_Motorcoach_Industry_090820-B.pdf.

¹²⁵ Tim Levin, “With no COVID-19 relief in sight, the private bus industry could collapse — taking with it a vital US transport network” *Business Insider* (November 24, 2020) available at <https://www.msn.com/en-us/travel/news/with-no-covid-19-relief-in-sight-the-private-bus-industry-could-collapse-taking-with-it-a-vital-us-transport-network/ar-BB1bjHWt>.

¹²⁶ Id; John Dunham and Associates, Memo to American Bus Association President Peter Pantuso (September 8, 2020) available at https://www.buses.org/assets/images/uploads/pdf/Economic_Update_on_Motorcoach_Industry_090820-B.pdf.

¹²⁷ John Grant, OAG Update (last accessed January 15, 2021) available at <https://www.oag.com/blog/coronavirus-update-week-one-2021>.

passengers that it did on the same day in 2019.¹²⁸ As airlines struggled to remain solvent in the face of declining revenues over the past year, they furloughed tens of thousands of flight attendants, pilots, and other workers prior to receiving financial assistance.¹²⁹ The Coronavirus Aid, Relief, and Economic Security Act (PL 116-136; *CARES Act*), enacted March 27, 2020, provided financial assistance to air carriers to pay airline employees with a prohibition on involuntary worker furloughs. This prohibition initially expired after September 30, 2020. A second round of funding was approved as part of another COVID relief package, which extended the layoff moratorium until March 31, 2021, and requires that air carriers recall any involuntarily furloughed employees.¹³⁰

The COVID-19 pandemic has also affected revenues flowing into the Airport and Airways Trust Fund (“Trust Fund”), the major federal source of funding for improvements to airports and the nation’s air traffic control system. Section 4007 of the *CARES Act* authorized a suspension of aviation excise taxes through calendar year 2020. The suspended taxes include the primary revenue sources for the trust fund—the 7.5 percent tax on airline passenger ticket sales, segment fees, the air cargo waybill tax, and aviation fuel taxes paid by both commercial and general aviation aircraft.¹³¹ The tax holiday, coupled with the precipitous drop in air travel during the pandemic, meant the trust fund faced potential insolvency; Congress responded by transferring \$14 billion from the general fund into the trust fund under the *Continuing Appropriations Act, 2021 and Other Extensions Act* (P.L. 116-159), which averted insolvency.

Transit

COVID-19 and the resulting shelter-in-place orders, business closures, suspension of tourism, and increasing unemployment significantly decreased public transit and commuter rail ridership. In the San Francisco Bay Area, public transit ridership through Bay Area Rapid Transit is 88 percent below its baseline; rail ridership in Washington, D.C., has plummeted 86 percent since 2019; and ridership on New York’s MTA subways is down around 70 percent.¹³² Public transit agencies also have incurred substantial costs through increased cleaning and disinfecting procedures, steps meant to protect employees and the public.¹³³

These revenue declines and additional costs have fueled extreme budget shortfalls. The Washington Metropolitan Area Transit Authority (WMATA) reported a revenue decline of \$550

¹²⁸ TSA, traveler checkpoint numbers for 2019-2020 (last accessed January 15, 2021) available at <https://www.tsa.gov/coronavirus/passenger-throughput>.

¹²⁹ CNBC, *Airlines Begin Complex Process of Calling Back More Than 32,000 Furloughed Workers* (last accessed January 15, 2021) available at <https://www.cnbc.com/2020/12/23/coronavirus-stimulus-gives-airlines-15-billion-to-call-back-furloughed-workers.html>.

¹³⁰ Id.

¹³¹ Congressional Research Service, “Federal Civil Aviation Programs: In Brief” (July 20, 2020) available at <https://crsreports.congress.gov/product/pdf/R/R42781>.

¹³² Abby Vesoulis, “The Future of American Public Transit Depends on Congress,” *Time* (December 17, 2020) available at <https://time.com/5921917/mass-transit-covid-congress/>.

¹³³ linPaul P Skoutelas, APTA President and CEO, “Examining the Surface Transportation Board’s Role in Ensuring a Robust Passenger Rail System,” testimony before the House Subcommittee on Railroads, Pipelines and Hazardous Materials (November 18, 2020), available at: <https://www.apta.com/advocacy-legislation-policy/testimony-letters/letters/paul-p-skoutelas-president-and-ceo-apta-on-examining-the-surface-transportation-boards-role-in-ensuring-a-robust-passenger-rail-system-house-subcommittee-on-railroads-pipelines-and-haza/>.

million this fiscal year.¹³⁴ Washington State Ferries, which operates commuter ferries in Puget Sound and around the San Juan islands, lost \$68 million in revenue due to decreased ridership.¹³⁵ The Chicago area's commuter rail system projects a two-year budget deficit of \$682.5 million.¹³⁶ These revenue shortfalls force transit authorities to slash routes and delay scheduled expansions—decisions that, experts say, could impair transit for the next decade.¹³⁷ While the pandemic package Congress passed at the end of the 116th Congress included \$14 billion for public transit, APTA estimates it would take \$39.3 billion for the nation's transit systems to recover to pre-pandemic levels.¹³⁸

Cruise Industry

The cruise industry has been uniquely affected by the COVID-19 pandemic, including, early on, tens of thousands of people, including both passengers and crew members, being quarantined for months onboard ships.¹³⁹ There is a 'Conditional Sailing Order' in place in the United States, while Canada, the Cayman Islands, Australia, New Zealand, the Seychelles, and Spain have all banned cruise ships for the foreseeable future.¹⁴⁰ Major cruise lines, including Carnival Cruise Line, Princess Cruises, and Holland America Line, have cancelled all sailings for several more months.¹⁴¹ The financial impact on cruise ship companies has been severe. The *Financial Times* reported in June 2020 that Carnival Cruise Lines was losing \$1 billion each month.¹⁴² Also last year, following substantial losses due to the pandemic, the credit ratings of Carnival and Royal Caribbean were downgraded to junk status by two major rating agencies.¹⁴³ Virtually the entire U.S. domestic commercial passenger fleet, including overnight excursions, day charters, and tours, has also shut down.¹⁴⁴ Stakeholders, including the Passenger Vessel Association, are working with the CDC to develop reopening guidelines based on CDC recommendations.¹⁴⁵

¹³⁴ Justin George, "Metro is planning normal service this year, but hoping for a cash infusion in 2022," *Washington Post* (January 14, 2021), available at https://www.washingtonpost.com/local/trafficandcommuting/metro-budget/2021/01/14/211a0f8e-562f-11eb-a931-5b162d0d033d_story.html.

¹³⁵ Michelle Baruchman, "Washington state ferry ridership dropped to historic lows last year," *Seattle Times* (January 13, 2021) available at <https://www.seattletimes.com/seattle-news/transportation/washington-state-ferry-ridership-dropped-to-historic-lows-last-year/>.

¹³⁶ Robert Channick, "Metra is falling further behind budget amid COVID-19 ridership decline," *Chicago Tribune* (August 19, 2020) available at <https://www.chicagotribune.com/coronavirus/ct-coronavirus-chicago-metra-ridership-revenue-decline-20200819-ff12sbjnujempaex5pbbt5zqta-story.html>.

¹³⁷ Abby Vesoulis, "The Future of American Public Transit Depends on Congress," *Time* (December 17, 2020) available at <https://time.com/5921917/mass-transit-covid-congress/>.

¹³⁸ Laura Bliss, "For Public Transit, the Stimulus Is a Lifeline – But a Short One," Bloomberg (December 22, 2020) available at <https://www.bloomberg.com/news/articles/2020-12-22/transit-gets-a-reprieve-not-a-rescue-in-stimulus>; Press Release, "New Independent Economic Analysis Shows Public Transportation Industry Faces \$39.3 Billion Shortfall," American Public Transportation Association (January 28, 2021) available at <https://apta.com/news-publications/press-releases/releases/new-independent-economic-analysis-shows-public-transportation-industry-faces-39-3-billion-shortfall/>.

¹³⁹ Taylor Dolven, "Cruise ships sailed on despite the coronavirus. Thousands of people paid the price," *Miami Herald* (April 23 2020) accessed at: <https://www.miamiherald.com/news/business/tourism-cruises/article241640166.html>.

¹⁴⁰ Kaye Holland, "Hoping for calmer waters: Cruise industry looks ahead to 'the year of recovery'" *The Telegraph* (January 7, 2021) available at <https://www.telegraph.co.uk/travel/cruises/news/positive-future-for-cruise-holidays-say-experts/>.

¹⁴¹ Taylor Dolven, "Cruises keep getting canceled due to the pandemic" *Miami Herald* (December 4, 2020).

¹⁴² Alice Hancock, "Coronavirus: is this the end of the line for cruise ships?" *Financial Times* (June 7, 2020) available at <https://www.ft.com/content/d8ff5129-6817-4a19-af02-1316f8defe52>.

¹⁴³ Id.

¹⁴⁴ Letter from Passenger Vessel Association to Speaker Nancy Pelosi (April 8, 2020) available at <http://www.passengervessel.com/downloads/letters/2020-CARES-ACT-2-Speaker-Pelosi.pdf>.

¹⁴⁵ Passenger Vessel Association, "Reopening Guidelines: Getting the Domestic Passenger Vessel Industry Back Underway," (last accessed January 19, 2021) available at <http://www.passengervessel.com/covid-19.html>.

Maritime Industry

The U.S. maritime industry, including merchant mariners, vessel owners and operators, and shipbuilders, the Nation's port system, and supporting industries integrate our economy with a vast global maritime supply chain system that moves more than 90 percent of the world's trade by tonnage, including sources of energy, consumer goods, agricultural products, and raw materials.¹⁴⁶ These industries, vessels, infrastructure, and personnel also play critical roles in national security, supporting our Nation's ability to provide sealift for the Department of Defense (DOD) during times of war and national emergency.¹⁴⁷ It is estimated that before the COVID-19 pandemic, more than 650,000 Americans worked in the maritime industry.¹⁴⁸ Even more jobs—roughly 30.8 million—were supported by cargo moving through deep ports in the United States.¹⁴⁹

Globally, maritime trade was down 4.1 percent in 2020.¹⁵⁰ There was also a sharp decrease in port calls compared to 2019.¹⁵¹ A coalition of U.S. maritime stakeholders describe the impacts as follows: "Commercial cargo has plummeted – total waterborne trade volume is down 6.3% compared to last year, while the total value of this trade has crashed by 13.9% totaling \$200 billion."¹⁵² With commercial cargo and trade down, there have also been added costs to stakeholders to design and implement COVID-19 protocols and precautions.¹⁵³

State and Local Revenues, Federal Trust Funds

The pandemic's initial effect on travel behaviors has been significant. While the long-term specific impact is still uncertain, early data showing an estimated one billion fewer miles driven each day, or an 11.4 percent decrease when compared to 2019.¹⁵⁴ As a significant portion of state transportation funding comes from user fees, such as motor fuel taxes, declines in travel have had a direct impact on state transportation budgets.¹⁵⁵ Density-reliant user fee revenue sources, such as transit fares, variable toll rates, and congestion pricing, have been particularly hard hit by the COVID-19 pandemic.¹⁵⁶ While gas tax revenue sharply declined during the first two months of the pandemic, these receipts have appeared to recover faster than other revenue sources, particularly when compared to user fees that rely on specific commuter patterns.¹⁵⁷ Early estimates from the American Association of State Highway and Transportation Officials project that state departments

¹⁴⁶ Maritime Administrator Mark H. Buzby Testimony before the House Committee on Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation (March 6, 2019), *available at* <https://transportation.house.gov/imo/media/doc/Buzby%20Testimony1.pdf>.

¹⁴⁷ Id.

¹⁴⁸ Press Release, "Ports, Other Maritime Entities Request \$3.5B in COVID-19 Relief," American Association of Port Authorities, December 9, 2020, *available at* <https://www.aapa-ports.org/advocating/PRDetail.aspx?ItemNumber=22701>.

¹⁴⁹ Id.

¹⁵⁰ UNCTAD, "COVID-19 cuts global maritime trade, transforms industry," November 12, 2020, *available at* <https://unctad.org/news/covid-19-cuts-global-maritime-trade-transforms-industry>.

¹⁵¹ UNCTAD, "COVID-19 and maritime transport: Impact and responses," (2020), *available at* https://unctad.org/system/files/official-document/d1t1binf2020d1_en.pdf.

¹⁵² Letter from American Association of Port Authorities and other maritime entities to Congressional Leadership, (December 9, 2020), *available at* https://aapa.cms-plus.com/files/MTS%20Relief%20Coalition%20Letter_Congress.pdf.

¹⁵³ Id.

¹⁵⁴ National Governor's Association, Transportation Funding and Financing During COVID-19, (December 7, 2020) *available at* <https://www.nga.org/memos/transportation-funding-financing-covid-19/>.

¹⁵⁵ Id.

¹⁵⁶ Id.

¹⁵⁷ Id.

of transportation will see \$16 billion in revenue declines in 2020, and \$37 billion in losses over the next five years.¹⁵⁸ However, the most recent census data shows that State motor fuel tax receipts for the first nine months of 2020 were down by \$2.5 billion (-6.3 percent) compared to their 2019 levels, whereas State vehicle and operator license revenues that are also often used by States to fund transportation were down \$1.0 billion this year, or -3.9 percent.¹⁵⁹ Overall impacts on tax receipts can vary widely depending on the State, given the mix of different revenue sources relied upon to fund transportation. Oregon reported collecting \$27 million less in gas tax revenue between January and August 2020, and estimates the State Highway Fund will collect \$170 million less in 2020 and 2021.¹⁶⁰ Pennsylvania's Department of Transportation reported in November 2020 that it has already lost nearly \$400 million in revenue as a result of reduced travel, and expects to lose a total of \$500 to \$600 million in 2020.¹⁶¹

Congressional Action

Congress included billions of dollars of relief and job protection measures in the CARES Act and the *Consolidated Appropriations Act, 2021* (P.L. 116-260). Among the Committee-related provisions in the CARES Act are the following: \$32 billion to fund the Payroll Support Program for airline workers, \$29 billion in loans to air carriers, \$10 billion in grants to airports, \$25 billion to public transit operators, \$1 billion for Amtrak, \$45 billion for the FEMA Disaster Relief Fund, and other funds for federal agencies to prevent, prepare for, and respond to COVID-19.¹⁶² The Consolidated Appropriations Act included the following among its provisions: \$14 billion for transit; \$10 billion for state transportation departments and local transportation agencies; \$1 billion for Amtrak; \$2 billion for motorcoach and bus operators, school bus companies, and U.S. flag passenger vessel operators; \$2 billion for airports; \$15 billion to extend the Payroll Support Program for aviation employees through March 31, 2021; and \$2 billion for FEMA's Disaster Relief Fund.¹⁶³

¹⁵⁸ Id.

¹⁵⁹ Jeff Davis, "Loss from COVID Uneven and Less than Anticipated" *Eno Center for Transportation*, (December 21, 2020), available at <https://www.enotrans.org/article/new-census-data-shows-state-local-revenue-loss-from-covid-uneven-and-less-than-anticipated/>.

¹⁶⁰ National Governor's Association, *Transportation Funding and Financing During COVID-19*, (December 7, 2020) available at <https://www.nga.org/memos/transportation-funding-financing-covid-19/>.

¹⁶¹ Id.

¹⁶² P.L. 116-136, §§ 4003, 4112, & Division B. More information is also available at <https://transportation.house.gov/news/press-releases/chair-defazio-offers-his-support-for-putting-american-families-and-workers-first-in-third-covid-19-relief-package>.

¹⁶³ P.L. 116-260 Division F & Division M. More information is available at <https://transportation.house.gov/news/press-releases/chair-defazio-applauds-new-round-of-aid-for-the-hard-hit-transportation-sector-in-omnibus-and-covid-relief-legislation->.

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