



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

November 19, 2021

The Honorable Bennie G. Thompson
Chairman
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Thompson:

Thank you for your correspondence of October 25, 2021, regarding civil penalties for travelers who do not comply with the requirement to wear masks in transportation settings.

Your concerns, and those expressed by Chairwoman Bonnie Watson Coleman, resonate with me and the Transportation Security Administration (TSA) leadership team. We share your desire to ensure that all steps are taken to protect the safety and well-being of Transportation Security Officers, airport and airline workers, flight crews, and other travelers.

I have enclosed responses to the specific questions raised in your letter. I hope you will find them helpful.

Thank you for sharing your concerns with me and for supporting TSA's important security mission. We have sent an identical response to Chairwoman Coleman. If I may be of further assistance, please do not hesitate to contact me personally or our Legislative Affairs office at (571) 227-2717.

Sincerely,

A handwritten signature in black ink that reads "David P. Pekoske". The signature is written in a cursive style.

David P. Pekoske
Administrator

Enclosures

**TSA Response to October 25, 2021, Letter
from Representatives Bennie Thompson and Bonnie Watson Coleman**

1. How does TSA determine whether to issue a warning or a civil penalty in cases of non-compliance with the mandate to wear masks in transportation settings? Will TSA adjust how it makes such determinations to penalize non-compliance more aggressively and provide a stronger deterrent going forward?

On January 31, 2021, TSA issued directives requiring masks to be worn in transportation venues, implementing President Biden's Executive Order *Promoting COVID-19 Safety in Domestic and International Travel*.¹ At that time, TSA developed guidance to determine how to penalize noncompliance with this mandate. As with every alleged violation of the Transportation Security Regulations, TSA evaluated each report of noncompliance individually in line with our philosophy of progressive enforcement and desire to ensure future compliance.

TSA issued Warning Notices under 49 Code of Federal Regulations (CFR) § 1503.301 to individuals for violations, when aggravating circumstances were not present. It proceeded with monetary civil penalties in more egregious cases. Aggravating circumstances include: causing an aircraft to divert; making false threats related to aircraft security; appearing to test security procedures; causing a Federal Air Marshal to break cover; interfering with TSA's screening duties; or attempting to enter an airport's sterile area without submitting to screening. TSA proposed fines of \$250 for first-time offenders and \$500 for repeat offenders when an aggravating factor was present.

On September 14, 2021, TSA extended the directives requiring masks in transportation venues until January 18, 2022. TSA observed that the rate of mask noncompliance persisted despite public awareness of the mask requirement and the Center for Disease Control and Prevention's (CDC) position that a mask was necessary while indoors or on enclosed conveyances within the transportation sector.

As a result, TSA took additional steps to make enforcement and compliance more meaningful, including implementing the following measures:

- Doubled the range of civil penalties for individuals violating the mask directives, raising the suggested penalty ranges to between \$500 and \$1,000 for first-time offenders and between \$1,000 and \$3,000 for repeat offenders.
- Expanded its list of aggravating factors that qualify for a monetary civil penalty to include instances of defiant behavior while refusing to wear a face mask and repeated removal or improper use of a face mask after being instructed to wear one.

¹ Executive Order *Promoting COVID-19 Safety in Domestic and International Travel* can be found at 86 FR 7205. On January 27, 2021, the Acting Secretary of Homeland Security determined the COVID-19 outbreak was a national emergency requiring TSA to issue countermeasures to address the security threat posed. As a result, TSA issued Security Directives (SD) 1542-21-01, 1544-21-02, 1582/84-21-01, and Emergency Amendment (EA) 1546-21-01. On May 12, 2021, TSA extended these requirements to September 13, 2021, in SD 1542-21-01A, SD 1544-21-02A, SD 1582/84-21-01A, and EA 1546-21-01A. On September 14, 2021, TSA extended these directives until January 18, 2022, in SD 1542-21-01B, SD 1544-21-02B, SD 1582/84-21-01B, and EA 1546-21-01B.

- Significantly shortened the standard 90-calendar day investigation timeline to 25 calendar days for mask cases.
- Centralized the enforcement process for cases referred for civil penalty, enabling TSA to prioritize these matters so that the monetary civil penalty is assessed closer to the date of the violation without compromising the violator's due process.
- Suspended access to TSA PreCheck[®] for a specified period of time to anyone issued a Warning Notice or Notice of Proposed Civil Penalty.

2. How many civil penalties has TSA issued for violations of the mask mandate to date? Of those, how many recipients have paid the penalties assessed by TSA?

- a. Does TSA regularly track the final outcomes of fines it assesses? If not, will TSA commit to doing so in order to better understand the effectiveness of its compliance efforts?**

The U.S. Coast Guard's Financial Center processes collection of monetary civil penalties, but TSA tracks all aspects of its enforcement program, including the outcomes of its civil penalties. As of November 1, 2021, TSA issued 2,310 Warning Notices and 199 Notices of Civil Penalty totaling \$107,670 in proposed civil penalties. Of the 199 Notices of Civil Penalty, TSA issued 68 Orders Assessing Civil Penalty totaling \$26,655. The remaining 117 cases are still in the civil enforcement process and the penalties have not been finalized.

3. What difficulties does TSA face in pursuing more aggressive enforcement action in cases of non-compliance with the mask mandate? What solutions is TSA implementing in response?

TSA attempts to enforce violations of the mask mandate quickly and fairly. However, most mask violations occur at locations away from the checkpoint where TSA is not present, such as onboard the aircraft or at the airline's gate. To hold violators accountable, TSA must get first-hand eyewitness accounts of mask noncompliance from the regulated entities' employees.

In addition to detailed reports, TSA must receive adequate contact information to notify violators with either a Warning Notice or a monetary civil penalty. If TSA does not have sufficient contact information or supporting evidence, we cannot proceed with a civil enforcement action.

In response to this challenge, TSA issued an Information Circular² to airlines and airports on November 1, 2021. The circular provides best practices to use in gathering and reporting the information TSA needs to pursue civil enforcement cases against individuals who violate mask requirements. TSA also attends weekly calls with industry and the Federal Aviation Administration to explain TSA evidence requirements for prosecution.

TSA provides individuals due process rights when proposing to assess civil penalties, including evaluating evidence to determine whether penalties are warranted. We also provide individuals

² The Information Circular is provided as another enclosure.

the opportunity to present mitigating factors to a TSA official or to request a formal hearing before an administrative law judge.³

4. Will TSA commit to robustly advertising the fines and consequences that passengers face for non-compliance to clearly communicate potential repercussions?

TSA issued a press release on September 9, 2021, notifying passengers that we were increasing the range for civil penalties and reminding them that the mask mandate is in effect until January 18, 2022.

After the proposed fines for noncompliance were increased, TSA also posted updated signs at checkpoints. These signs warned passengers that federal law mandates the proper wearing of face masks and failure to comply could result in denial of boarding and civil penalties up to \$3,000. Additionally, TSA posted signs at the entrance to the expedited screening queue warning that failure to comply with the mask directive may result in suspension of, or ineligibility for, TSA PreCheck[®].

Further, the mask directives require all passengers to be notified that 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. These notifications, at a minimum, are required at or before check-in, at the airport, and during pre-flight announcements by air carriers.

5. How do TSA's efforts to enforce compliance with the mask mandate fit into the agency's broader efforts to address recent increases in unruly passenger behavior, including the increased rate of assaults against TSA employees?

As with compliance with the mask directives, TSA takes assaults against its employees seriously. TSA supports local and federal law enforcement when assaults against our employees rise to the level of a criminal assault. In addition, TSA pursues civil enforcement cases against all instances of assault, intimidation, threats, and interference with officers under the law.⁴ These rigorous prosecutions are key to protecting our workforce from unruly passengers. Noncompliance with the mask directive is a separate violation of TSA security requirements and any civil penalty for mask noncompliance would be in addition to the civil penalty assessed for assault on a TSA officer.

³ TSA civil enforcement administrative process and requirements may be found in 49 CFR part 1503.

⁴ See 49 CFR § 1540.109