



**Homeland
Security**

FEB 25 2008

The Honorable Christopher J. Dodd
Chairman
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

Section 1302 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53, signed on August 3, 2007, directs the Secretary of the Department of Homeland Security (DHS) to report to the public by January 30, 2008, on the enforcement process for the new authority granted to DHS under that section. Section 1302 gives DHS the authority to assess civil penalties for violations of any surface transportation requirements under title 49 of the U.S. Code, and for any violations of chapter 701 of title 46 of the U.S. Code, governing transportation worker identification credentials. Within DHS, the Transportation Security Administration (TSA) is the agency that will exercise this authority.

The enclosed report which is intended to satisfy this requirement: 1) summarizes the new civil penalty authority; 2) states that TSA is in the process of amending its current enforcement procedures regulation to cover civil penalties issued under the new authority; 3) states that in the interim, TSA will use its existing aviation civil enforcement procedures pending completion of the amendment; and 4) summarizes those procedures.

I appreciate your interest in the Department of Homeland Security, and I look forward to working with you on future homeland security issues. If I may be of further assistance, please contact the Office of Legislative Affairs at (202) 447-5890.

Sincerely,

A handwritten signature in black ink, appearing to read "DKent".

Donald H. Kent, Jr.
Assistant Secretary
Office of Legislative Affairs

Enclosure

FEB 25 2008



Homeland
Security

The Honorable John L. Mica
Ranking Member
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515


Dear Representative Mica:

Section 1302 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53, signed on August 3, 2007, directs the Secretary of the Department of Homeland Security (DHS) to report to the public by January 30, 2008, on the enforcement process for the new authority granted to DHS under that section. Section 1302 gives DHS the authority to assess civil penalties for violations of any surface transportation requirements under title 49 of the U.S. Code, and for any violations of chapter 701 of title 46 of the U.S. Code, governing transportation worker identification credentials. Within DHS, the Transportation Security Administration (TSA) is the agency that will exercise this authority.

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Donald H. Kent, Jr.
Assistant Secretary
Office of Legislative Affairs

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Homeland
Security

The Honorable Joseph I. Lieberman
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

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Donald H. Kent, Jr.
Assistant Secretary
Office of Legislative Affairs

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Homeland
Security

FEB 25 2008

The Honorable Peter T. King
Ranking Member
Committee on Homeland Security
U.S. House of Representatives
Washington, DC 20515

Dear Representative King:

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Enclosure

FEB 25 2008



Homeland
Security

The Honorable Richard C. Shelby
Ranking Member
Committee on Banking, Housing,
and Urban Affairs
United States Senate
Washington, DC 20510

Dear Senator Shelby:

Section 1302 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53, signed on August 3, 2007, directs the Secretary of the Department of Homeland Security (DHS) to report to the public by January 30, 2008, on the enforcement process for the new authority granted to DHS under that section. Section 1302 gives DHS the authority to assess civil penalties for violations of any surface transportation requirements under title 49 of the U.S. Code, and for any violations of chapter 701 of title 46 of the U.S. Code, governing transportation worker identification credentials. Within DHS, the Transportation Security Administration (TSA) is the agency that will exercise this authority.

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Homeland
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FEB 25 2008

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

Dear Mr. Chairman:

Section 1302 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53, signed on August 3, 2007, directs the Secretary of the Department of Homeland Security (DHS) to report to the public by January 30, 2008, on the enforcement process for the new authority granted to DHS under that section. Section 1302 gives DHS the authority to assess civil penalties for violations of any surface transportation requirements under title 49 of the U.S. Code, and for any violations of chapter 701 of title 46 of the U.S. Code, governing transportation worker identification credentials. Within DHS, the Transportation Security Administration (TSA) is the agency that will exercise this authority.

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Donald H. Kent, Jr.
Assistant Secretary
Office of Legislative Affairs

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FEB 25 2008



Homeland
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The Honorable Daniel Inouye
Chairman
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510

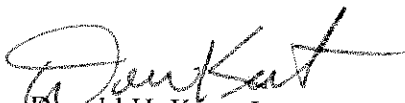
Dear Mr. Chairman:

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Assistant Secretary
Office of Legislative Affairs

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Homeland
Security

The Honorable Ted Stevens
Vice-Chairman
Committee on Commerce, Science,
and Transportation
United States Senate
Washington, DC 20510


Dear Senator Stevens:

Section 1302 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53, signed on August 3, 2007, directs the Secretary of the Department of Homeland Security (DHS) to report to the public by January 30, 2008, on the enforcement process for the new authority granted to DHS under that section. Section 1302 gives DHS the authority to assess civil penalties for violations of any surface transportation requirements under title 49 of the U.S. Code, and for any violations of chapter 701 of title 46 of the U.S. Code, governing transportation worker identification credentials. Within DHS, the Transportation Security Administration (TSA) is the agency that will exercise this authority.

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Office of Legislative Affairs

Enclosure

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Homeland
Security

The Honorable Susan M. Collins
Ranking Member
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Senator Collins:

Section 1302 of the Implementing Recommendations of the 9/11 Commission Act of 2007, Public Law 110-53, signed on August 3, 2007, directs the Secretary of the Department of Homeland Security (DHS) to report to the public by January 30, 2008, on the enforcement process for the new authority granted to DHS under that section. Section 1302 gives DHS the authority to assess civil penalties for violations of any surface transportation requirements under title 49 of the U.S. Code, and for any violations of chapter 701 of title 46 of the U.S. Code, governing transportation worker identification credentials. Within DHS, the Transportation Security Administration (TSA) is the agency that will exercise this authority.

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Enclosure



Homeland
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FEB 25 2008

The Honorable James L. Oberstar
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515


Dear. Mr. Chairman:

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Enclosure

Process for Enforcement of Regulations and Orders of the Secretary For Violation of Non-Aviation Transportation Security Requirements

January 30, 2008

Background

Section 1302(a) of the Implementing Recommendations of the 9/11 Commission Act of 2007 (the Act),¹ gave the Transportation Security Administration (TSA) new authority to assess civil penalties for violations of any surface transportation requirements under title 49 of the U.S. Code and for any violations of chapter 701 of title 46 of the U.S. Code, which governs transportation worker identification credentials. Under 49 U.S.C. § 114(v)(7)(D), as added by section 1302(a) of the Act, TSA is required to report to the public on the enforcement process established under this authority.²

Summary of New Statutory Enforcement Authority

New subsection 114(v) of title 49 U.S. Code authorizes the Secretary of the Department of Homeland Security (DHS) to impose civil penalties of up to \$10,000 per violation of any surface transportation requirement under title 49 of the U.S. Code or any requirement related to transportation worker identification credentials under 46 U.S.C. chapter 701.³ TSA exercises this function under delegated authority from the Secretary.⁴

If the violation is committed by an individual or small business, the maximum penalty amount per case is \$50,000. If the violation is committed by a person other than an individual or small business, the maximum penalty amount per case is \$400,000.⁵ If the total penalty amount in a case exceeds these limits, TSA must bring an action in Federal court to enforce the penalties.⁶

Prior to imposing a civil penalty, TSA must provide to the person against whom the penalty is to be imposed: 1) written notice of the proposed penalty; and 2) the opportunity to request a hearing on the proposed penalty, if the TSA receives the request not later than 30 days after the date on which the person receives notice.⁷ Investigations

¹ Pub. L. 110-53 § 1302(a), 121 Stat. 392 (Aug. 3, 2007).

² 49 U.S.C. § 114(v)(7)(D) states: "Not later than 180 days after the enactment of the Implementing Recommendations of the 9/11 Commission Act of 2007, the Secretary shall provide a report to the public describing the enforcement process established under this subsection."

³ 49 U.S.C. § 114(v)(7)(D).

⁴ See DHS Delegation No. 7060-2.

⁵ 49 U.S.C. § 114 (v) (3) (D).

⁶ 49 U.S.C. § 114 (v) (3) (C).

⁷ 49 U.S.C. § 114 (v) (3) (E). Under section 1304(e) of the Act, prior to imposing a civil penalty against a public transportation agency, TSA is required give written notice of the violation and a reasonable opportunity to correct the violation or propose an alternative means of compliance acceptable to TSA. TSA may not take legal enforcement action against a public transportation agency unless TSA has provided such notice and the public transportation agency fails to correct the violation or propose an alternative means of compliance acceptable to TSA within the timeframe provided in the notice. See Pub. L. 110-53 §

and proceedings governing such cases must follow the requirements set forth in chapter 461 of title 49 U.S. Code, which govern aviation security matters.⁸

TSA may compromise (settle) a civil penalty case, and the Federal Government may deduct the amount of a civil penalty imposed or compromised from amounts it owes the person liable for the penalty.⁹

Description of the Enforcement Process

TSA's imposition of civil penalties is governed by TSA's Investigative and Enforcement Procedures, which are set forth in the Code of Federal Regulations at 49 C.F.R. part 1503. These procedures currently apply only to cases involving violations of aviation security requirements under 49 U.S.C. chapter 449.

TSA is preparing to a rulemaking to expand the procedures at 49 C.F.R. part 1503 to the new categories of violations. A summary of the procedures is as follows.

Notice of Proposed Civil Penalty

The current procedures for aviation security violations are as follows. TSA initiates a civil penalty action by sending the alleged violator a Notice of Proposed Civil Penalty (NPCP), which states the regulation allegedly violated, the facts TSA believes establish the violation, and the amount of the penalty TSA proposes to impose for the violation.¹⁰ The NPCP also informs the respondent that he/she has 30 days from receipt to either: 1) pay the penalty; 2) provide information demonstrating that a violation did not occur, or that the penalty should be lower because of mitigating circumstances, or that the respondent is unable to pay the proposed penalty; 3) request an informal conference with TSA counsel; or 4) request a formal hearing before an Administrative Law Judge (ALJ).

Informal Conference

The informal conference provides the respondent with an opportunity to discuss the matter informally with TSA counsel and to present exculpatory evidence. This conference can be held by telephone or in person. Many TSA enforcement cases settle as a result of information exchanged and/or representations made at (or after) the informal conference.

Order Assessing a Civil Penalty

If the respondent elects to pay the penalty, or if the matter settles (either at the informal

1304(e)(2), 121 Stat. 393.

⁸ 49 U.S.C. § 114(v)(5).

⁹ 49 U.S.C. § 114(v)(4).

¹⁰ Pursuant to section 1304(e) of the Act, TSA will not send an NPCP to a public transportation agency unless TSA first gives written notice of the violation and a reasonable opportunity to correct the violation or propose an alternative means of compliance acceptable to TSA, and the public transportation agency fails to do so within the timeframe provided in the notice. *See* Pub. L. 110-53 § 1304(e)(2), 121 Stat. 393.

conference or before or after the informal conference), TSA counsel issues an Order Assessing a Civil Penalty (OACP), stating the regulation violated, the facts establishing the violation, the amount of the penalty assessed, and how and by when the respondent is to pay the penalty.

Final Notice of Proposed Civil Penalty

In the event the respondent does not respond to the NPCP within 30 days after receipt of that notice, or in the event the respondent and TSA counsel cannot agree on a penalty amount, TSA counsel issues a Final Notice of Proposed Civil Penalty (FNPCP). The FNPCP gives the respondent 15 days from receipt to either: 1) pay the penalty; 2) reach an agreed penalty amount with TSA counsel; or 3) request a formal hearing before an ALJ. The FNPCP also states that if the respondent does not respond to the FNPCP within the 15 days, or if the matter has not settled and the respondent has not requested a formal hearing within the 15 days, TSA counsel will issue an OACP in the penalty amount proposed by the FNPCP.

Formal Hearing

As indicated above, a respondent must request a formal hearing in writing within 30 days of receipt of the NPCP, or within 15 days of receipt an FNPCP. The respondent must send the request for a formal hearing to the Enforcement Docket Clerk and a copy of the request for a formal hearing to the TSA counsel.

The formal hearing is conducted by an ALJ. The procedural rules governing formal hearings are set forth at 49 C.F.R. part 1503, subpart G. Within 20 days of receipt of a timely request for hearing, TSA counsel will file a Complaint reciting the allegations in the NPCP/FNPCP. The respondent must file a written Answer to the Complaint within 30 days of receipt.

Unless the ALJ grants a motion to dismiss or a motion for a decision without a hearing, or the case settles, the matter proceeds to a formal hearing. At the formal hearing, both parties have the opportunity to present witnesses and other evidence. The ALJ will issue an Initial Decision at the close of a hearing or shortly thereafter.

Appeal from the ALJ Initial Decision

Either party may appeal the ALJ Initial Decision to the TSA Decision Maker. The TSA Decision Maker is the Assistant Secretary of Homeland Security for the Transportation Security Administration or his designee. The party appealing the decision must file a written Notice of Appeal with the TSA Decision Maker within 10 days of receipt of the Initial Decision. The appealing party must then file an appeal brief with the TSA Decision Maker within 50 days of receipt of the Initial Decision, and send a copy to the other party. The other party may file a reply brief to the appeal brief. Reply briefs must be filed no later than 35 days after receipt of the appeal brief.

After receipt of the appeal brief and any reply brief, the TSA Decision Maker will render a Final Decision and Order. A party may request that the TSA Decision Maker reconsider a Final Decision and Order by filing a Petition for Reconsideration within 30 days after service of the Final Decision.

Appeal from the TSA Decision Maker's Final Decision and Order

Either party may appeal a Final Decision of the TSA Decision Maker to the U.S. Circuit Court of Appeals with jurisdiction within 60 days after the Final Order has been served on the party.