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SUBJECT: TSA VOLUNTARY DISCLOSURE PROGRAM POLICY

I. PURPOSE

This policy directive relates to information and guidance that may be used by aircraft operators (except individuals), indirect air carriers, foreign air carriers, airports and flight training providers when voluntarily disclosing to the Transportation Security Administration (TSA) apparent violations of TSA regulations listed in paragraph II. The TSA Voluntary Disclosure program does not apply to violations or apparent violations committed by individuals other than individuals as agents of covered regulated entities, under paragraph XI. The Voluntary Disclosure program is implemented by the Aviation Regulatory Inspections Division (ARID), Aviation Operations, TSA.

TSA believes that aviation security is well-served by incentives for aircraft operators, indirect air carriers, foreign air carriers, airports and flight training providers to identify and correct their own instances of noncompliance and to invest more resources in efforts to preclude their recurrence. The TSA policy of forgoing civil penalty actions when one of these entities detects violations, promptly discloses the violations to TSA, and takes prompt corrective action to ensure that the same or similar violations do not recur is designed to encourage compliance with TSA regulations, foster secure practices, and encourage the development of internal evaluation programs. Aircraft operators, indirect air carriers, foreign air carriers, airports and flight training providers may voluntarily disclose apparent violations covered by this directive in the absence of an internal evaluation program. However, these entities are strongly encouraged to develop internal evaluation programs that continually monitor company policies and procedures and ensure that the highest level of security compliance is maintained.

II. RELATED TSA REGULATIONS

TSA regulations applicable to this Voluntary Disclosure program are 49 C.F.R. Parts 1542, 1544, 1546, 1548, 1550.

III. KEY TERMS

The following key terms and phrases are defined to ensure a standard interpretation and understanding of the TSA Voluntary Disclosure policy.

- a) Principal Inspector. Under the Voluntary Disclosure program, principal inspector refers to the appropriate security inspector or other designated TSA official of the program office responsible for oversight of the area of noncompliance involved in the disclosure.
 1. The designated TSA officials for voluntary disclosures by aircraft operators are the Principal Security Inspectors (PSI);
 2. The designated TSA official for voluntary disclosures by indirect air carriers is the Director, Cargo Inspection.



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3. The designated TSA official for voluntary disclosures by foreign air carriers is the Director, International Inspection Program.
 4. The designated TSA officials for disclosures by Category X airports are the Federal Security Directors;
 5. The designated TSA officials for disclosures by Category I-IV airports are Federal Security Directors or their designees; and,
 6. The designated TSA official for disclosures by flight training providers is the Director, General Aviation Inspections.
- b) **Corrective Action Plan.** A corrective action plan is an action or actions proposed by the aircraft operator, indirect air carrier, foreign air carrier, airport or flight training provider reporting the apparent violation, and accepted by the principal inspector or other official designated by TSA to preclude recurrence of the apparent violation voluntarily disclosed under this program. When appropriate, a regulated entity may work with an airport consortium on a corrective action plan.

However, the reporting regulated entity will remain responsible for implementation of the corrective action plan. A schedule of the dates and events encompassed by the corrective action plan must be established and included in a letter of correction issued per TSA regulations at 49 C.F.R. §1503.11(b)(2).

A corrective action plan is satisfactorily implemented and completed when all corrective measures have been completed on schedule and are satisfactory to TSA.

- c) **Evidence.** For the purpose of voluntary disclosure, evidence generally should be in the form of written documentation or reports that support the analysis of the disclosed apparent violation by the regulated entity, and the resulting elements of a proposed corrective action plan. Evidence generally comes from the following elements:
1. Documents or manuals reviewed, including reports and activity logs.
 2. Equipment examined.
 3. Activities observed.
 4. Interview data.

IV. VOLUNTARY DISCLOSURE PROGRAM CONDITIONS

Aircraft operators, indirect air carriers, foreign air carriers, airports and flight training providers will receive a letter of correction in lieu of civil penalty action where appropriate for covered instances of noncompliance that are voluntarily disclosed to TSA in accordance with the procedures set forth in this directive. Per 49 C.F.R. §1503.11(b)(2), once the letter of correction is issued the case will be considered closed



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unless the agreed-upon corrective action plan is not satisfactorily completed by the regulated entity.

- a) In evaluating whether an apparent violation is covered by this policy, the following five conditions should be met:
 1. The aircraft operator, indirect air carrier, foreign air carrier, airport or flight training provider has notified TSA of the apparent violation immediately after detecting it and before the agency has learned of it by other means.
 2. The apparent violation was inadvertent.
 3. The apparent violation does not indicate a lack or reasonable question of qualification or training on the part of the reporting entity.
 4. Immediate action satisfactory to TSA was taken upon discovery to terminate the conduct that resulted in the apparent violation.
 5. The aircraft operator, indirect air carrier, foreign air carrier, airport or flight training provider has developed or is developing a corrective action and schedule of implementation satisfactory to TSA. The corrective action plan includes a follow-up self-inspection to ensure that the action taken corrects the noncompliance. This self-inspection is in addition to any inspections conducted by TSA.
- b) Ordinarily, TSA will not forgo legal enforcement action if the aircraft operator, indirect air carrier, foreign air carrier, airport or flight training provider informs TSA of the apparent violation during, or in anticipation of, a TSA investigation/inspection or in association with an incident.
- c) Ordinarily, the Voluntary Disclosure policy will not apply when TSA becomes aware of an apparent violation by an aircraft operator, indirect air carrier, foreign air carrier, airport or flight training provider before that entity notifies TSA of its apparent violation with the exception of disclosure in the context of airport consortia.
 1. Several airports have an established consortium of law enforcement and aviation security interests whose purpose is to exchange information concerning airport security. Membership in each consortium is voluntary and usually includes air carrier and airport certificate holders as well as a TSA representative. Consortium membership also may include persons and entities that do not hold certificates including law enforcement personnel and airport tenants.



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2. The purpose of an airport consortium may include conducting vulnerability assessments in order to identify actual or potential security weaknesses, and to examine assessment findings with a view toward collaborating on security improvements. During consortium assessment activities, an apparent violation by a regulated entity may be discovered by someone other than the regulated entity and brought forward for discussion by the consortium members. Because a TSA representative is a member of the consortium, TSA may become aware of an apparent violation during this discussion at the same time or before the regulated entity becomes aware of the apparent violation.
3. Notwithstanding the requirement that a regulated entity notify TSA of its apparent violation before the agency has learned of it by other means, the apparent violation will be covered by this policy provided all other elements of the policy are met in the following situations:
 - (i) if TSA initially becomes aware of the apparent security violation by the responsible regulated entity before or at the same time the entity does, because of information disclosed by a person or entity other than the responsible aircraft operator, indirect air carrier, foreign air carrier or airport during an airport consortium activity or meeting; or
 - (ii) if TSA becomes aware of an apparent security violation at the same time the responsible regulated entity does during consortia assessments that involve both TSA personnel and an aircraft operator, indirect air carrier, foreign air carrier or airport.
4. The entity responsible for the violation must self-report the violation and follow the procedures outlined herein irrespective of whether TSA became aware of the violation during consortia assessments before or at the same time as the responsible entity. The appropriate TSA principal inspector will send a written acknowledgment of the notification to the pertinent regulated entity and open an Enforcement Investigative Report (EIR). The regulated entity will have 10 calendar days from the date of the written acknowledgment of the apparent violation to follow up with a written report to the principal inspector in accordance with the guidance in paragraph VII. If the regulated entity does not agree that there has been a violation or otherwise fails to provide information identified in paragraph VII, TSA thereafter will proceed with its investigation and initiate enforcement action, if appropriate, against the regulated entity.



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V. VOLUNTARY DISCLOSURE PROGRAM PROCEDURES

The procedures to be followed when applying the Voluntary Disclosure policy are further described in the following paragraphs.

- a. Initial Notification to TSA – Time and Form. The Voluntary Disclosure policy applies only when notification of an apparent violation is made to TSA by the aircraft operator, indirect air carrier, foreign air carrier, airport or flight training provider immediately after the apparent violation has been discovered by the regulated entity, and before TSA learns of the apparent violation by some other means. The initial notification should be made as soon as practicable but no later than 24 hours after discovery of the apparent violation, and the notification should be in the form of a written hard copy or a written electronic copy.
- b. Initial Notification to TSA - Elements. When an aircraft operator, indirect air carrier, foreign air carrier, airport or flight training provider notifies TSA of an apparent violation, contact must be made with or directed to the appropriate principal inspector. The reporting entity should not delay notification for any reason and should address, to the maximum extent possible, the following items with the principal inspector:
 1. A brief description of the apparent violation, including an estimate of the duration of time that it remained undetected, and how and when it was discovered.
 2. Verification that noncompliance ceased after it was identified.
 3. A brief description of the immediate action taken after the apparent violation was identified, the immediate action taken to terminate the conduct that resulted in the apparent violation, and the person responsible for taking the immediate action.
 4. Verification that an evaluation is underway to determine if there are any systemic problems and a description of the corrective steps necessary to prevent the apparent violation from recurring.
 5. Identification of the person responsible for preparing the corrective action plan.
 6. Acknowledgment that a detailed written report will be provided to the principal inspector within 10 calendar days.

VI. TSA RESPONSE TO INITIAL NOTIFICATION

- a) The principal inspector or other designated TSA official responds with a written acknowledgment of the initial notification from the reporting entity. This



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- acknowledgment includes the request for a written report which should be completed in accordance with the Voluntary Disclosure program reporting procedures set forth below.
- b) The principal inspector or other designated TSA official will issue a Letter of Investigation (LOI) soliciting evidence that establishes whether the reporting entity has satisfied the criteria of this Voluntary Disclosure program policy.
 - c) The principal inspector or other designated TSA official will also open an EIR that will be closed out with a letter of correction per 49 C.F.R. §1503.11(b)(2) following satisfactory development of a corrective action plan and schedule of implementation agreed upon by TSA and the entity. The inspector should include the following information in the EIR:
 1. Evidence of how, when and where the apparent violation was detected, and by whom.
 2. Evidence of whether and when the regulated entity disclosed the apparent violation to the principal inspector.
 3. Evidence of whether and when the regulated entity took action to cease any conduct which did or might constitute a violation.
 4. Evidence of whether the regulated entity has taken or agreed to take remedial action acceptable to TSA to preclude recurrence of the apparent violation, including an analysis of the nature and likely effectiveness of such action.
 5. A summary listing of similar violations by the regulated entity.

VII. WRITTEN REPORT OF REGULATED ENTITY

The written report should be provided to the principal inspector by the reporting entity within 10 calendar days after the initial notification was made. A sample format for this report is provided in Appendix A, attached hereto. In summary, the written report should include the following information:

- a) A list of the specific TSA regulations that may have been violated.
- b) A description of the apparent violation, including the duration of time it remained undetected, and how and when it was detected.
- c) A description of the immediate action taken to terminate the conduct that resulted in the apparent violation, including when it was taken and who was responsible for taking the action.



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- d) An explanation that shows the apparent violation was inadvertent.
- e) Evidence that demonstrates the seriousness of the apparent violation and an analysis by the regulated entity of that evidence.
- f) A detailed description of the proposed corrective action plan outlining the planned corrective steps, the delegation of responsibilities for implementing those corrective steps, and a time schedule for completion of the plan. If a proposed corrective action plan is not fully developed within 10 calendar days, the regulated entity should provide at least an overview of its corrective action plan within that timeframe. In any event, a detailed description of the corrective action plan should be provided to the principal inspector within 30 calendar days after the regulated entity initially notified the principal inspector of the apparent violation.
- g) Identification of the company official responsible for monitoring the implementation and completion of the corrective action plan.

VIII. REVIEW BY TSA

TSA will work with the aircraft operator, indirect air carrier, foreign air carrier, airport or flight training provider to ensure that the corrective action plan is acceptable to TSA.

- a) If the principal inspector or other designated TSA official determines that the proposed corrective action plan is acceptable, the official will prepare a letter of correction that includes the date by which the plan will be implemented and completed.
- b) Following issuance of the letter of correction, the case is closed but remains subject to reopening in the event that the actions set forth in the corrective action plan are not completed to the satisfaction of TSA.
- c) The principal inspector or other designated TSA official has the authority to close the case. Consultation with regional specialists, legal counsel, or other TSA personnel may be taken as deemed appropriate.

IX. IMPLEMENTATION OF A CORRECTIVE ACTION PLAN

- a) During the implementation period, TSA and the pertinent regulated entity should continue to work together. TSA may advise and assist the entity in correcting any identified systemic problems. Changes can be made to the corrective actions outlined in the corrective action plan when the need is identified and when TSA concurs with the change. When a change to a



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corrective action plan has been agreed upon, the principal inspector will prepare an amended letter of correction that reflects this change.

- b) TSA monitors the implementation of the corrective steps. Throughout the implementation period, TSA assesses the corrective efforts of the regulated entity and the involvement of the entity's top management in these efforts. If during this period, TSA determines that the steps taken by the entity are not those documented in the corrective action plan, the letter of correction may be rescinded, the investigative report may be reopened, and appropriate legal enforcement action may be initiated.
- c) Following completion of the agreed-upon corrective actions, the aircraft operator, indirect air carrier, foreign air carrier, airport or flight training provider conducts a self-inspection to ensure that the actions taken remedy the problem that gave rise to the apparent violation.
- d) At the conclusion of the implementation period, the principal inspector makes a final assessment. If all elements of the corrective action plan have been adequately accomplished, the principal inspector finds the plan satisfactorily completed. A statement of follow-up investigation confirming that the corrective action plan was satisfactorily implemented and completed shall be prepared to complete the TSA investigative package, and the case is closed. If the agreed corrective action is not fully completed, legal enforcement action may be taken.

X. DISPUTE RESOLUTION

When disputes occur regarding the acceptance of a proposed corrective action plan or a modification thereto before the plan is considered satisfactory, the principal inspector and the regulated entity may request that the issue be resolved at the next level of management within TSA. This procedure will provide for an independent assessment of the areas in disagreement.

XI. SEPARATE ACTIONS AGAINST INDIVIDUALS AGENTS

- a) The voluntary disclosure policy applies to individual agents of an aircraft operator, indirect air carrier, foreign air carrier, airport or flight training provider when:
 - 1. The apparent violation involves a deficiency of the employing entity's practices or procedures that causes the employing entity to be in violation of a covered violation of a TSA regulation;
 - 2. The agent of the employing entity, while acting on behalf of the employing entity, inadvertently violates the TSA regulation as a direct result of a deficiency of the employing entity that causes the employing



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entity to be in violation of the regulation. The Voluntary Disclosure policy does not apply to the agent when his/her apparent violation is the result of actions unrelated to the employing entity's deficiency;

3. The agent immediately makes the report of his/her apparent violation to the employing entity; and
 4. The employing entity immediately notifies TSA of both the agent's apparent violation and the apparent deficiency in its practice or procedures.
- b) A separate EIR is opened for the individual, and the appropriate TSA principal inspector follows the investigative steps outlined in paragraph V.
 - c) When all the above conditions are met to the satisfaction of TSA, the principal inspector will close the case with an administrative action.
 - d) If all the above conditions are not met, the principal inspector will review all facts associated with the case and determine what action is appropriate for agents of the employing entity.
 - e) This provision does not apply to matters concerning qualifications to hold an airman certificate.

XII. APPLICABILITY OF THE FREEDOM OF INFORMATION ACT (FOIA) TO SELF-DISCLOSURE RECORDS

Records submitted to TSA for review pursuant to this voluntary self-disclosure program will be protected to the full extent allowed by law.

XIII. REPEATED VIOLATIONS

If a repeated violation occurs, notwithstanding the fact that a corrective action plan was satisfactorily completed and followed, the procedures outlined in this directive may apply to the disclosure of the repeated violation. The determination whether a repeated violation will be covered under this policy will be made by TSA on a case-by-case basis, upon consideration of the facts and circumstances surrounding the repeated violation.

XIV. CONCLUSION

Voluntary reporting of apparent violations, and a cooperative and advisory approach to solving problems will enhance and promote aviation security. In addition to the deterrence achieved by the appropriate use of civil penalties, the public interest is also



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served by positive incentives to promote and achieve compliance. Development of internal evaluation programs should help to ensure that any apparent violations are promptly identified, corrected and reported to TSA. While not required, TSA strongly encourages aircraft operators, indirect air carriers, foreign air carriers, airports and flight training providers to make internal evaluation programs an integral part of their everyday management process so that the full benefits of voluntary disclosure can be realized.

XV. EFFECTIVE DATE OF TSA VOLUNTARY DISCLOSURE POLICY

The effective date of the TSA Voluntary Disclosure program policy is the date on which it is issued. The policy remains effective unless otherwise terminated or amended by TSA.



APPENDIX A.

SAMPLE FORMAT FOR WRITTEN REPORT TO TSA

The following sample is only a suggested format to be followed when preparing the written report that will be submitted to TSA. While an aircraft operator, indirect air carrier, foreign air carrier, airport or flight training provider should include at least all the elements specified below, the structure of the written report can be modified by the regulated entity to fit its particular needs.

I. GENERAL

- A. Date of creation of report by regulated entity.
- B. Type of regulated entity, and other identifying information including entity number or equivalent.
- C. Company name and address.
- D. Company official filing report including name, position and telephone number.

II. DESCRIPTION OF APPARENT VIOLATION

- A. Citation of TSA regulation violated.
- B. Date apparent violation was discovered.
- C. Location of discovery.
- D. Company official who discovered the apparent violation including name, position and telephone number.
- E. Date and time of initial notification to TSA.
- F. Name of TSA official (principal inspector) notified.
- G. Company official making notification including name, position and telephone number.
- H. Duration of time apparent violation remained undetected.



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III. SUMMARY OF APPARENT VIOLATION

The summary should be a brief statement that describes the nature of the apparent violation and identifies the specific equipment, facilities, checkpoint, gate, cargo, and/or individuals associated with the apparent violation.

IV. IMMEDIATE ACTION

- A. When immediate action was taken.
- B. Description of immediate action. This description should outline the immediate steps that were taken to cease the inaction or action that caused the occurrence of the apparent violation.
- C. Company official responsible for immediate action including name, position and telephone number.

V. SUMMARY AND ANALYSIS OF EVIDENCE

- A. This summary should describe the scope of the apparent violation and explain how it was detected. Conclusions reached regarding possible or probable systemic deficiencies. When, why and how the noncompliance occurred should be described.
- B. Evidence demonstrating that the apparent violation was inadvertent.
- C. Supporting documentation. The evidence associated with the apparent violation should be attached. The evidence should include a statement regarding how the aircraft operator, indirect air carrier, foreign air carrier, airport, or flight training provider determined the extent of the apparent violation.

VI. CORRECTIVE ACTION PLAN

The proposed long-term corrective steps to be taken by the aircraft operator, indirect air carrier, foreign air carrier, airport or flight training provider to preclude recurrence of the apparent violation should be listed in this section. Each corrective step should identify the individual or department responsible for implementing and completing the corrective step as well as the time



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allotted for completion of each corrective step. Examples of types of questions or issues that a corrective action plan should address are as follows:

- A. Whether the apparent violation involves equipment, facilities, or individuals beyond those addressed in the initial notification and for which immediate action was taken.
 - B. Whether procedural or organizational changes are necessary.
 - C. How it will be determined whether any procedural or organizational changes are effective.
 - A. What procedures will be developed in order to ensure that the affected area is periodically reviewed in the future so that concerns can be identified before a violation occurs.
 - B. Who will be responsible for performing periodic reviews.
 - C. To whom in the organization of the regulated entity will the results of those periodic reviews be reported, and how will they be documented.
- VII. RESPONSIBILITY FOR MONITORING THE IMPLEMENTATION OF THE CORRECTIVE ACTION PLAN
- A. Company official responsible for monitoring the corrective action plan implementation including name, position and telephone number.
 - B. Signature of responsible company official.
- VIII. TSA ACCEPTANCE (TO BE COMPLETED BY TSA)
- A. Name and office of principal inspector.
 - B. Signature and date of acceptance.