



# Transportation Security Administration

## **SUBJECT: ENFORCEMENT SANCTION GUIDANCE POLICY**

**PURPOSE:** This policy directive provides sanction guidance for imposing civil penalties up to \$25,000 per violation for aircraft operators and up to \$10,000 per violation for all other “persons,” including individuals, when a determination is made that civil penalty enforcement action should be taken.<sup>1</sup> This sanction guidance is being issued to assist TSA personnel on the appropriate application of penalties under TSA’s present civil penalty authority.

**INTRODUCTION:** On November 19, 2001, the Aviation and Transportation Security Act (ATSA) was enacted. ATSA created the Transportation Security Administration (TSA), and transferred authority for enforcement of civil aviation security requirements from the Federal Aviation Administration (FAA) to TSA. TSA has operated its civil enforcement program utilizing many of the FAA procedures and policies already in place. On November 25, 2002, the Homeland Security Act increased the statutory maximum penalty amounts for civil violations of TSA’s security regulations.<sup>2</sup> The increased civil penalty amounts became effective on January 25, 2003. This document incorporates the increased statutory amounts into TSA’s sanction guidance.

**GENERAL GUIDELINES:** The Sanction Guidance Table (“Table”) provides agency enforcement personnel with guidance in selecting appropriate sanctions for civil penalty enforcement actions and to promote consistency in enforcement of TSA regulations. The purpose of this guidance is to assist, not replace, the exercise of prosecutorial judgment in determining the appropriate civil penalty in a particular case.

The Table represents the normal sanction range for a single violation of a particular regulation. Generally, an appropriate sanction for a single first-time violation, absent aggravating or mitigating factors, would be the low end of the corresponding range defined in the Table. Pursuant to a philosophy of progressive enforcement, the sanction generally increases with each repeated violation or based upon other aggravating factors.

In selecting an appropriate sanction, the totality of circumstances, including any aggravating and mitigating factors, should be considered. A sanction amount at the higher end of a range is appropriate where there are aggravating factors surrounding the alleged violation, while a sanction amount at the lower end of the range is appropriate for first time violations and where mitigating factors exist. A sanction amount that falls outside a range may be sought based on factors of extreme aggravation or mitigation, or if necessary to further TSA policy. Whenever a proposed sanction is outside the range of penalties indicated in the Table, the Enforcement Investigative Report (EIR) must

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<sup>1</sup> There are circumstances where a violation of a security requirement may result in administrative enforcement action, such as issuance of a warning notice or letter of correction or no action, depending on the facts and circumstances.

<sup>2</sup> Homeland Security Act of 2002, Title XVI, sec. 1602 (Pub. L. 107-296, November 25, 2002), 49 U.S.C. § 46301(a).



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identify and explain in detail the factors that justify a civil penalty outside of the normal range. Prior to the issuance of the initial enforcement action document, legal counsel shall coordinate a proposed penalty that falls outside the listed range with Aviation Operations and the Office of the Chief Counsel at TSA Headquarters.

As a general matter, the following aggravating and mitigating factors should be considered:

1. Significance/degree of the security risk created by the alleged violation;
2. Nature of the violation – whether the violation was inadvertent, deliberate, or the result of gross negligence;
3. Past violation history (compliance should be the norm, this factor is considered only to assess the need for an increased sanction);
4. Alleged violator's level of experience;
5. Attitude of alleged violator, including the nature of any corrective action taken by the alleged violator.

The Table describes civil penalties as minimum, moderate or maximum for a single violation of a particular regulation. These terms are defined as follows:

(1) Violations Committed by Aircraft Operators.

Maximum \$18,000-\$25,000  
Moderate \$9,000-\$17,999  
Minimum \$2,500-\$8,999

(2) Violations Committed By Airport Operators.

Maximum \$6,000-\$10,000  
Moderate \$3,000-\$5,999  
Minimum \$1,000-\$2,999

(3) Violations Committed By Indirect Air Carriers.

Maximum \$6,000-\$10,000  
Moderate \$3,000-\$5,999  
Minimum \$1,000-\$2,999

Individuals: Aggravating and mitigating factors for violations committed by individuals are listed in Section IV of the Table, which addresses sanction amounts for individual violations. Penalty considerations for violations by individuals, who are not regulated entities or employed by a regulated entity, differ from the considerations for regulated entities such as an aircraft operator, airport, or indirect air carrier. Deterrence against an



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individual generally does not require a penalty range as high as that against a regulated entity. As a result, the Table contains ranges that list dollar amounts for violations by individuals. Egregious or intentional violations may support a civil penalty outside of the listed range. Reduced civil penalties allowed under the Notice of Violation (NOV) program are a program incentive and are not based on the typical mitigating factors.

### Small Business Entities:

The maximum civil penalty that may be assessed against a violator that qualifies as a small business entity is \$10,000.<sup>3</sup> You may consider the fact that the entity qualifies as a small business in determining the appropriate amount of the civil penalty. You may also consider a person’s ability to pay the proposed civil penalty or the impact that the proposed civil penalty may have on the person’s ability to continue in business. This information may not be readily available prior to the issuance of a proposed civil penalty and may be considered at any time after the initiation of a civil penalty enforcement matter. Generally, it is the responsibility of the alleged violator to provide reliable evidence of its inability to pay a proposed civil penalty or of the impact that it will have on its ability to continue in business. Ability to pay should be of limited consideration, if any, when the violation involves willful or criminal conduct or is part of a pattern of repeated noncompliance.

Multiple violations: Where multiple violations arise from the same incident, inspection, or investigation, a sanction amount generally should be calculated for each violation of the regulations. Similarly, a separate sanction amount generally should be assessed for each violation where there are continuing violations or related violations addressed in the same case.

Criminal Referral: Referral for criminal investigation/enforcement is appropriate where there appears to be a violation of criminal laws. Thus, criminal referral is noted for firearms violations and violations involving falsification. Criminal referral may be appropriate when there is evidence that a person has intentionally falsified any document or statement required under a security program or when evidence of repeated falsification suggests an intentional disregard for compliance with security requirements.

## SANCTION GUIDANCE TABLE

### I. AIRPORT OPERATOR\*

- |    |   |      |
|----|---|------|
| 1. | Failure to ensure that Airport Security Coordinator (ASC) fulfills required functions | Min. |
|----|---|------|

<sup>3</sup> 49 U.S.C. § 46301(a)(5), as amended by “Vision 100 – Century of Aviation Reauthorization Act,” H.R. 2115, §503 (December xx, 2003)



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- |     |  |                     |
|-----|--|---------------------|
| 2.  | Failure to train ASC   | Min.                |
| 3.  | Failure to allow TSA inspection  | Max.                |
| 4.  | Failure to provide evidence of regulatory compliance   | Max.                |
| 5.  | Failure to provide SIDA access ID to TSA personnel   | Mod.                |
| 6.  | Failure to carry out a requirement in the security program (general violation to be used when more specific violation is not listed) | Mod.-Max.           |
| 7.  | Failure to restrict the distribution, disclosure of SSI  | Min.-Max.           |
| 8.  | Failure to notify TSA of changes to its security program   | Min.                |
| 9.  | Access control violations - Secured area, AOA, SIDA, and access control systems  | Max.                |
| 10. | Failure to follow escort procedures  | Mod.                |
| 11. | Failure to train or maintain training records  | Min.-Mod.           |
| 12. | Criminal history records check – Failure to perform, failure to suspend, failure to investigate charges                              | Max.                |
| 13. | Failure to maintain record of law enforcement response   | Min.-Mod.           |
| 14. | Failure to comply with Security Directive  | Max.                |
| 15. | False entry in record or report  | Max./Crim. Referral |
| 16. | Failure to comply with requirements related to adequate law enforcement response/support   | Max.                |

\* Airport tenants operating under valid Exclusive Area Agreements assume responsibility for certain airport operator security responsibilities. For violations of security requirements assumed by such airport tenants, the airport operator section of the sanction guidance should be employed.

## **II. AIRCRAFT OPERATOR**

1. Failure to carry out its security program (Covers any and all violations of security program requirements. General violation



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to be used if more specific violation is not listed in the Table.)	Mod.-Max.
2. Failure to allow TSA inspection	Max.
3. Failure to provide evidence of regulatory compliance	Max.
4. Failure to provide SIDA access ID to TSA personnel	Mod.
5. Failure to restrict distribution and disclosure of security program	Mod.-Max.
6. Failure to comply with a security requirement pertaining to the acceptance, control, screening of checked baggage	Max.
7. Failure to comply with a security requirement pertaining to the acceptance, control, screening of cargo	Max.
8. Screening violations, where conducted by aircraft operator, Individual, metal detection devices, x-ray, explosives detection	Mod.
9. Failure to comply with requirements for carriage of an accessible weapon by an armed LEO	Mod.
10. Failure to prevent unauthorized access to secured area or to aircraft	Max.
11. Failure to conduct a security inspection of aircraft	Mod.-Max.
12. Failure to comply with requirements related to criminal history records check	Max.
13. Failure to comply with requirements for air carrier-issued identification and access media	Mod.
14. Failure to train or to maintain training records	Min.-Mod.
15. Failure to comply with Security Directives	Max.
16. Failure to comply with security requirements related to screening	Mod.-Max.
17. False entry in record or report	Max./Crim. Referral
18. Failure to Transport Federal Air Marshals	Max.
19. Failure to pay security fees	Mod.



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## III. CARGO SECURITY

**This part applies to all persons who offer, accept, or transport cargo pursuant to a TSA-approved security program and/or subject to the requirements of the Transportation Security Regulations. Such persons include, but are not limited to, aircraft operators and indirect air carriers (IAC).**

1. Acting as an IAC without an approved program Max.
2. Failure to retain or produce training records Min.-Mod.
3. Failure to provide required training Mod.
4. Failure to inform agent in writing of responsibilities under the program Min.
5. Failure to comply with the TSA-approved program Mod.-Max  
(general violation to be used if more specific violation is not listed)
6. Failure to comply with current amendments to the program Mod.-Max.
7. Failure to produce copy of the program or relevant portions/instructions at a station(s) where cargo is accepted or processed Min.
8. Failure to restrict distribution of security program or implementing instructions to persons with a need to know Mod.-Max.
9. Failure to maintain or to be able to produce a current listing of authorized agents/contractors (Chronic or intentional failures) Mod-Max.
10. Failure to supply certification to the aircraft operator Min.
11. False Certification to aircraft operator Max./crim. referral
12. Failure to comply with any requirement necessary to establish a known shipper (Repeated failures would justify a maximum penalty) Mod.
13. Falsification of any document/statement required under the security program. Max./crim. referral
14. Failure to meet any requirement for accepting cargo from an all-cargo carrier with an approved security program (Dependent on nature of the requirement.) Min.-Max.
15. Failure to control access to cargo by unauthorized persons Mod.-Max.



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- 16. Failure to transport cargo in locked or closely-monitored vehicles Mod.
- 17. Failure to comply with cargo acceptance requirements Mod.-Max.
- 18. Failure to allow access for inspections (Sanction should be imposed for every day that access is denied.) Mod.-Max.
- 19. Failure to comply with any requirement related to the screening or inspection of cargo Mod.-Max.
- 20. Failure to obtain the required IAC certification Min.-Mod.

## **IV. OTHER AVIATION SECURITY REQUIREMENTS**

### **Part 1550:**

- 1. Failure to comply with a security requirements set forth in, or pursuant to, Part 1550 Max.

### **Flight Training Provider:**

- 1. Failure to comply with any requirement issued pursuant to 49 U.S.C. § 44939 (Alien pilot training rules) Mod.-Max.

Note: The requirements that have been issued pursuant to 49 U.S.C. § 44939 apply to all flight training providers. Some, but not all, training providers are aircraft operators and subject to a civil penalty of up to \$25,000. Flight training providers that are not aircraft operators will be subject to a civil penalty maximum of \$10,000, and the maximum range associated with that civil penalty amount.

## **V. INDIVIDUALS**

### **A. Security Violations by Individuals for Prohibited Items Discovered at Checkpoint/Sterile Area/Onboard Aircraft**

Applicable TSA Regulation: 49 C.F.R. § 1540.111(a)

- 1. Weapons
  - a. Firearms
    - i. Loaded (or accessible ammunition) \$3,000-\$7,500



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	ii. Unloaded	\$1,500-\$3,000 + crim. referral
b. Other weapons (this category includes sharp objects, club-like items, and other prohibited items, other than firearms, that may be used as a weapon.		
		\$250-\$1,500
2. Disabling chemicals		
	i. General penalty range	\$250-\$1,500
3. Incendiaries		
	i. General penalty range	\$250-\$1,500
4. Explosives		
	i. Penalty range A*	\$6,000-\$10,000 + crim. referral
	ii. Penalty range B**	\$250-\$1,500

## **B. Security Violations by Individuals for Prohibited Items Discovered in Checked Baggage**

Applicable TSA Regulation: 49 C.F.R. § 1540.111(c)

1. Weapons		
a. Firearms		
	i. Loaded	\$1,000-\$2,000 + crim. referral
	ii. Unloaded and undeclared/not properly packaged	\$500-\$1,000
2. Incendiaries		
	i. General penalty range	\$250-\$1,500
3. Explosives		
	i. Penalty range A*	\$6,000-\$10,000 + crim. referral
	ii. Penalty range B**	\$250-\$1,500





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## **\*Penalty Range A:**

- Blasting Caps
- Dynamite
- Hand grenades
- Plastic explosives
- All other "high explosives"

## **\*\*Penalty Range B:**

- Ammunition (note: See exception for ammunition in Checked Baggage, 49 C.F.R. § 1540.111(d)).
- Fireworks
- Flares in any form
- Gunpowder (note: volume over 10 ounces standard package justifies use of Penalty Range A.



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## **C. Other Security Violations by Individuals or Persons**

1. Attempt to circumvent a security system, measure, or procedure by the <u>artful concealment</u> of a liquid, aerosol, or gel (other than those permitted). 49 C.F.R. § 1540.105(a)(1)	\$100-\$200
2. Interference With Screening (49 C.F.R. § 1540.109)	
a. physical contact	\$1,500-\$5,000
b. non-physical	\$500-\$1,500
c. false threats	\$1,000-\$2,000
3. Entering Sterile Area Without Submitting To Screening 49 C.F.R. § 1540.107	\$1,000-\$3,000
4. Tampering or interfering with, compromising, modifying, attempting to circumvent, or causing a person to tamper or interfere with, compromise, modify or attempt to circumvent any security system, measure, or procedure. 49 C.F.R. § 1540.105(a).	\$2,500-\$6,000
5. Entering or being present within a secured area, AOA, SIDA, or sterile area without complying with the systems measures or procedures being applied to control access to, or presence or movement in, such areas. 49 C.F.R. § 1540.105(a)(2).	\$1,000-\$3,000
6. Improper use of airport access medium. 49 C.F.R. § 1540.105(a)(3).	\$1,000-\$3,000
7. Fraud and Intentional Falsification 49 C.F.R. § 1540.103	\$2,500-\$6,000 + crim. referral
8. Failure to allow inspection of airman certificate, Authorization, FAA license. 49 C.F.R. § 1540.113	\$1,000-\$3,000



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The following is a non-exclusive list of aggravating and mitigating factors frequently encountered in cases of violations by individuals:

### **A. Aggravating factors**

1. Artful concealment
2. Number of weapons, or volume of explosives and incendiaries
3. Type of weapon, explosive or incendiary
4. Display or use of weapon, explosive or incendiary
5. Past violation history of violator
6. Experience level of violator (e.g., airport/air carrier employees are trained and experienced).
7. Evidence of intent to interfere with operations (e.g., testing the system with a prohibited item, attempting to enter sterile area with prohibited item after previously being allowed to leave in order to divest).
8. Attitude of violator

### **B. Mitigating Factors**

1. Disclosure by violator
2. Inexperienced flyer
3. Violator is a juvenile
4. Other penalties assessed by federal, state, or local law enforcement