



U.S. Department of Homeland Security  
**Transportation Security Administration**  
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## **ACTION PLAN PROGRAM** **FREQUENTLY ASKED QUESTIONS**

### **ACTION PLAN ELIGIBILITY**

**1. *Who is eligible for an action plan?***

Any entity who performs a TSA security requirement may be eligible for an action plan.

**2. *When are Action Plans an effective method for addressing a violation?***

Generally, an action plan is an effective method when:

- The corrective actions require significant Industry/TSA collaboration;
- The corrective actions will take some time (i.e. months) to effectively implement;
- The matter would have otherwise resulted in a significant civil penalty; and
- The corrective actions will result in better security, faster.

**3. *What does TSA consider when TSA is determining whether to offer an action plan?***

Generally, TSA considers a number of factors to determine whether an action plan is appropriate. Those factors include the underlying facts of the noncompliance, the entity's compliance and violation history, whether the entity voluntarily disclosed the noncompliance to TSA, whether the entity previously had an action plan for this type of violation, if the root cause is the same in any previous action plan, if the location of the previous action plan is the same, and whether the action plan is an effective method for addressing the violation given all of the factors. Using this holistic approach, TSA makes a determination whether the noncompliance is best addressed through administrative action, an action plan, or warrants a monetary civil penalty.

**4. *Can an entity ask for an action plan?***

Yes, an entity can ask TSA for an action plan prior to TSA offering one. An entity does not have to wait for TSA's offer and may proactively reach out to TSA to request an action plan for voluntary disclosures, TSA discovered noncompliance, and vulnerabilities.

**5. *Can an entity get a second action plan if they have successfully completed one in the past?***

Successful completion of an action plan in the past does not preclude an entity from getting an action plan a second time. TSA uses a holistic approach to determine whether the noncompliance is best addressed through administrative action, an action plan, or warrants a monetary civil penalty.

**6. What are some examples of when an action plan is appropriate?**

Generally, an action plan is appropriate when TSA otherwise would have proposed a monetary civil penalty in a Notice of Proposed Civil Penalty issued pursuant to 49 CFR part 1503. Examples of when TSA determined an action plan was appropriate include:

- An Indirect Air Carrier (IAC) violated the known shipper requirement found in 49 C.F.R. § 1548.17. This IAC had two prior findings on this issue during the previous five years. TSA's Enforcement Sanction Guidance Policy assigns the moderate civil penalty range to known shipper violations. In the action plan, the entity updated their software so that there was an automatic check of known shipper requirements, which was applied to all locations where the IAC operated.
- An airport operator voluntarily disclosed to TSA a potential issue regarding badge accountability in advance of a badging audit. If the issue had been discovered during a required inspection of badge audit, TSA would have been required to report the finding to Congress. This airport had never been in violation of this requirement. As part of the action plan, the airport did a comprehensive badge validation, updated its internal process, and implemented a monetary incentive schedule for the return of lost badges and awareness campaign. If the voluntary disclosure had not been submitted by the airport and accepted by TSA, TSA's Enforcement Sanction Guidance Policy assigns the maximum civil penalty range to access control violations.
- An inspection found that recurrent training was not being performed. During the investigation, it was discovered that the software being used to track training was not working properly. A review of their compliance history found no other violations of this nature. TSA's Enforcement Sanction Guidance Policy assigns the minimum to moderate civil penalty ranges to training and training records violations. While correcting software issues, the entity did a manual audit of training records and provided the required recurrent training.
- An inspection found that an entity failed to adequately implement regulatory requirements regarding their employee's security threat assessments. A review of the entity's compliance history found no other violations of this nature. TSA's Enforcement Sanction Guidance Policy assigns the maximum civil penalty range to security threat assessment violations. In the action plan, the entity developed updated training for employees and a corporate audit process to ensure all regulatory requirements and training was completed correctly.

**7. How does an entity determine who is their Designated TSA Official (DTO)?**

Please see Section IV.d) of the Action Plan Program to determine who is the entity's DTO. Entities with questions on who is their DTO should contact their Principal Security Specialist (PSS) or International Industry Representative (IIR).

**8. Can an entity still participate in an action plan if TSA has issued a Letter of Investigation?**

Yes, an entity may still request an action plan even if they have received a Letter of Investigation. An eligible party may request an action plan at any time prior to finalization of enforcement action.

**9. Is an entity required to accept an action plan if TSA offers it?**

No. Participation in an action plan is voluntary and an entity may withdraw completely from the process to develop an action plan at any time. If an entity decides not to participate in an action plan, TSA will proceed with its enforcement action pursuant to 49 CFR part 1503. If an entity does

not want to participate in developing an action plan or makes a decision to withdraw from the process, TSA will not consider it to be an aggravating factor in any related civil enforcement matter.

**10. My entity has been offered an action plan but my entity does not want to participate – what are the next steps?**

The entity should notify the DTO that they do not wish to participate in an action plan at which point TSA will proceed with its enforcement action pursuant to 49 CFR part 1503.

**11. The Designated TSA Official (DTO) has declined an action plan but my entity would still like one – what are the next steps?**

An entity who believes their matter is eligible under the Action Plan Program and an action plan would be an effective method for addressing a violation may submit a letter or email to the Assistant Administrator (AA) of Compliance for resolution of any dispute, including whether an instance of noncompliance is eligible for an action plan. The entity should submit any documentation they would like the AA to consider as part of their dispute resolution request.

**VOLUNTARY DISCLOSURES**

**12. Is a voluntary disclosure of noncompliance required to be eligible for an action plan?**

Voluntary disclosure of noncompliance is not required under the Action Plan Program. Both TSA discovered noncompliance and voluntary disclosures by an entity may be eligible for an action plan. However, if an entity voluntarily discloses the noncompliance, it is considered a mitigating factor and is considered during the holistic approach to determine whether the noncompliance is best addressed through administrative action, an action plan, or warrants a monetary civil penalty.

**13. How does an entity notify TSA of a voluntary disclosure?**

The entity must email the Designated TSA Official (DTO) and copy [TSAVDP@tsa.dhs.gov](mailto:TSAVDP@tsa.dhs.gov).

**14. What is the benefit to voluntarily disclosing an instance of noncompliance?**

If an entity voluntarily discloses an instance of noncompliance, TSA must consider that voluntary disclosure as a mitigating factor when determining the appropriate corrective actions to be included in the action plan.

**ACTION PLAN REQUIREMENTS**

**15. What determines the length of an Action Plan?**

Generally, the length of an action plan is determined by the complexity of the matter and/or solution involved. This noted, action plans exceeding 1-year in duration may not be eligible. Action plans lasting longer than one year will be considered on a case-by-case basis to determine whether the noncompliance may be more appropriately resolved using a settlement agreement with TSA's Chief Counsel's office.

**16. What measures and milestones should be required as part of the Action Plan?**

Generally, action plans should include specific milestones for each proposed corrective measure and an estimated timeline for completion for each element, as well as the collective plan.

**17. Can an action plan be updated?**

Should the DTO or eligible party identify a need to amend the corrective measures, timeline, or any other element of the agreed upon plan, they may do so by formally amending the original agreement.

**18. What is an analysis of root cause?**

An analysis of root cause is the who, what, when, where, and why the noncompliance occurred, and the focus of what the action plan is looking to address and correct so that the noncompliance does not occur again. The Action Plan Program defines analysis of root cause as “[a] wide range of approaches, tools, and techniques which determine how noncompliance occurred or is likely to occur by examining the why, how, and when of the causal factors.”

**19. Is an analysis of root cause necessary for an action plan?**

While an analysis of root cause is very beneficial in identifying why noncompliance occurs and how to prevent it from reoccurring, it is not a requirement under the Action Plan Program.

**20. What does TSA look for in order to approve an action plan?**

When determining whether an action plan is appropriate, TSA considers the seriousness of the noncompliance and whether the proposed action plans are commensurate with that seriousness. TSA looks at the time, effort, and costs invested by the eligible party in ensuring the noncompliance does not reoccur. TSA appreciates that sometimes these costs can be challenging to quantify, and applies a holistic approach in determining whether the tangible and intangible corrective actions in the proposal is acceptable.

**21. Who writes the action plan?**

Either TSA or the eligible party may write the action plan, with the other party responding with their agreement.

**22. What if an entity needs an extension on an Action Plan Program deadline?**

Eligible parties who need an extension should contact their Designated TSA Official (DTO) to discuss the length of the extension and why it is necessary.

**23. Is it a requirement of the Action Plan Program that the cost of the corrective actions must equal the potential civil penalty?**

No, it is not a requirement that the eligible party spend the entire amount of the potential civil penalty for its action plan corrective action costs. TSA recognizes that some corrective actions may not cost a significant amount of money but may impact transportation security greatly. TSA looks at intangible benefits to security in addition to actual costs invested by the eligible party, with the goal of ensuring the noncompliance does not reoccur. TSA appreciates that sometimes these costs can be challenging to quantify and applies a holistic approach in determining whether the tangible and intangible corrective actions in the proposal are appropriate to address the underlying violation of TSA’s security requirements and root causes.

## VULNERABILITY ACTION PLANS

### **24. What is a vulnerability action plan?**

A vulnerability action plan is one where the noncompliance has not yet occurred, but an eligible party or TSA has identified a root cause of a potential violation.

### **25. When is a vulnerability action plan appropriate?**

A vulnerability action plan is appropriate at any time before the noncompliance occurs. This includes an advance notification to TSA that an eligible party may not be able to meet a set deadline in a newly established TSA requirement.

### **26. What is the benefit of a vulnerability action plan?**

Eligible parties who enter into an action plan will not have an enforcement action opened against them if the predicted noncompliance occurs unless the eligible party withdraws from the action plan or fails to implement an agreed upon corrective action.

### **27. How does TSA close out a vulnerability action plan?**

TSA closes out vulnerability action plans with a letter indicating the eligible party's success. Even if the predicted noncompliance occurs during the action plan, the eligible party does not get any compliance or violation history resulting from the predicted noncompliance.

### **28. Currently the Action Plan Program states, "A vulnerability may also include occasions when an eligible party is required to implement a new security requirement and notifies TSA ahead of the implementation deadline that it will be unable to meet the deadline due to circumstances beyond its control." Given that TSA security programs already instruct an entity to make such notifications to their assigned TSA industry representative, this addition seemed redundant or potentially in conflict with the AOSSP language. What is the purpose of this new language in the Action Plan Program?**

When a deadline is set in a TSA security requirement, the entity is responsible for ensuring that the required security measures are in place by the date set in the requirement. Once that deadline passes, if the security measures are not in place, it is an instance of noncompliance and could result in civil enforcement action. While there may be circumstances where a notification to the entity's industry representative may suffice, such as when the request for an extension is short in duration, if there are requests for extensions involving significant periods of time, it may be appropriate to enter into a vulnerability action plan. In those instances, in addition to notifying the industry representative of the issue, an entity may use the Action Plan Program to enter into a vulnerability action plan, which would pause any civil enforcement action as long as the entity met the goals and milestones agreed upon in the action plan. If the entity completes the vulnerability action plan, the matter would be closed without any compliance or violation history.