



March 2022

# TRANSPORTATION SECURITY

## TSA Efforts to Coordinate with Stakeholders on COVID-19 Security Directives

# GAO Highlights

Highlights of [GAO-22-104583](#), a report to congressional committees

## Why GAO Did This Study

In response to the pandemic, the federal government has been concerned about how to slow the spread of COVID-19, including in the transportation sector. TSA, the federal agency responsible for securing the nation's transportation sector, issues security directives if threat information, events, or significant vulnerabilities indicate that additional security measures are needed. TSA security directives establish mandatory measures for transportation operators to implement.

The CARES Act includes a provision for GAO to monitor the federal response to the COVID-19 pandemic. GAO was also asked to review TSA efforts to respond. This report describes TSA's (1) security directives issued to address COVID-19, (2) coordination with interagency and industry stakeholders on COVID-19 security directives, and (3) efforts to ensure operators' implementation of TSA's COVID-19 security directives as well as TSA and FAA investigations of non-masked passengers.

GAO reviewed relevant agency documents and guidance, and analyzed data on related enforcement actions taken from February 2, 2021 to March 7, 2022 for TSA and from January 1, 2021 to November 1, 2021 for FAA. GAO interviewed TSA, FAA, and the Centers for Disease Control and Prevention officials as well as a nongeneralizable sample of transportation stakeholders, selected based on transportation mode, region of operation, and other factors to obtain insights into stakeholder perspectives on TSA coordination.

View [GAO-22-104583](#). For more information, contact Tina Won Sherman at (202) 512-8461 or [shermant@gao.gov](mailto:shermant@gao.gov).

March 2022

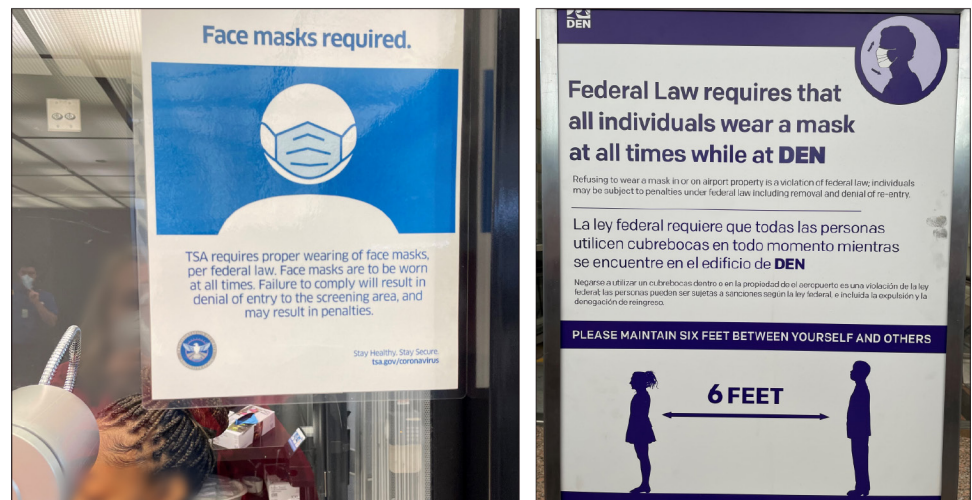
## TRANSPORTATION SECURITY

### TSA Efforts to Coordinate with Stakeholders on COVID-19 Security Directives

## What GAO Found

Starting in January 2020, presidential executive actions imposed restrictions on international air travel to the U.S. from certain countries and mandated that face masks be worn on transportation systems, due to COVID-19. The Transportation Security Administration (TSA) issued security directives to operators of transportation systems to implement these executive actions. TSA expedited coordination with external stakeholders—other federal agencies and industry—to develop and issue these directives, due to the urgent nature of the COVID-19 pandemic. According to TSA officials, development of security directives can take up to several months. However, the executive actions typically gave TSA less than a week to issue the COVID-19 security directives. While selected external stakeholders raised several issues with the security directives, they stated that TSA's expedited coordination was generally effective.

#### TSA Face Mask Security Directive Signage at Airport Security Checkpoints



Source: GAO. | GAO-22-104583

TSA took steps to ensure operator implementation of its security directives and, in addition to the Federal Aviation Administration (FAA), has investigated incidents of or related to non-masked passengers. For example, TSA conducts in-person inspections of air carriers' preboarding procedures for U.S.-bound flights to confirm that they are following the directives restricting travel from certain countries. It also conducts investigations into incidents reported by transportation operators of passengers who refuse to comply with the face mask security directives and become disruptive or aggressive towards an operator or others. Of the over 3,800 incidents investigated from February 2021—when the face mask security directive was implemented—to March 2022, TSA issued more than 2,700 warning notices and over 900 civil penalties against passengers. Separately, the FAA investigates incidents of unruly passengers who interfere with crew members in their duties, including times when they have been asked to comply with the face mask security directive.

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**Abbreviations**

ATSA	Aviation and Transportation Security Act
CBP	U.S. Customs and Border Protection
CDC	Centers for Disease Control and Prevention
COVID-19	Coronavirus Disease 2019
DHS	Department of Homeland Security
DOT	Department of Transportation
FAA	Federal Aviation Administration
FBI	Federal Bureau of Investigation
HHS	Department of Health and Human Services
TSA	Transportation Security Administration

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March 14, 2022

Congressional Committees

To help slow the spread of the Coronavirus Disease 2019 (COVID-19) in the U.S., the White House issued executive actions starting in January 2020 that imposed new requirements on air and surface transportation systems. To implement these actions, the Transportation Security Administration (TSA) issued a series of security directives that (1) restricted travel to the U.S. by air for some individuals with recent travel in countries of high COVID-19 transmission rates and required aviation and (2) surface transportation operators within the U.S. to implement face mask requirements for passengers and employees.<sup>1</sup> According to the Centers for Disease Control and Prevention (CDC), multi-person transportation modes potentially increase the risk of spreading COVID-19 due to the fact that travelers may be in close proximity to others in enclosed spaces where physical distancing is not possible, sometimes for extended periods. Further, international air transportation may pose other unique risks, as its global network and ability to cover long distances in a short amount of time potentially provide the means for an infection to move quickly from one part of the world to another.

TSA, a component within the Department of Homeland Security (DHS), is the federal agency responsible for securing the nation's transportation sector, including aviation and surface transportation systems.<sup>2</sup> In aviation, air carriers are responsible for implementing TSA security requirements predominantly through TSA-approved or accepted security programs, which describe the policies, procedures, and systems that the air carriers are to implement and maintain to comply with those security

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<sup>1</sup>We previously reported on the characteristics of TSA's aviation-related security directives and its processes for reviewing them. With this information, we recommended that TSA better define how to coordinate with industry stakeholders and document industry input. The Department of Homeland Security concurred and implemented all three recommendations. See GAO, *International Aviation Security: TSA Should Improve Industry Coordination and Its Security Directive and Emergency Amendment Review Process*, [GAO-20-7](#) (Washington, DC: Oct. 3, 2019).

<sup>2</sup>Aviation transportation systems include U.S. and foreign-flagged air carrier operations to, from, within, or overflying the U.S. and aircraft operations worldwide. Examples of surface transportation systems include mass transit, passenger rail, and intercity bus services.

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requirements.<sup>3</sup> TSA may issue new, or revise existing, security requirements through the publication of security directives if threat information, events, or significant vulnerabilities, often of an immediate nature, indicate that additional security measures are needed.<sup>4</sup>

TSA may also issue security directives for surface transportation operators when necessary.<sup>5</sup> However, unlike the aviation environment, where TSA has operational responsibility for screening passengers and baggage, the agency has a limited operational role for securing the surface transportation system. For example, to secure passenger rail, TSA partners with public and private transportation operators to address their security needs by conducting vulnerability assessments and sharing intelligence information and key practices. It does not, however, screen passengers or baggage riding on surface transportation system modes.

The Federal Aviation Administration (FAA), a component agency within the Department of Transportation (DOT), is the federal agency responsible for the safety of flight in the U.S. and the safe and efficient movement of air traffic in the national airspace system, as well as other things such as the safety of FAA-certificated air crews. As part of its safety responsibilities, the FAA investigates reports of unruly passengers onboard aircraft.

The CARES Act, enacted March 27, 2020, includes a provision for GAO to conduct monitoring and oversight of the exercise of authorities to prepare for, respond to, and recover from COVID-19 and other related

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<sup>3</sup>In general, U.S. and foreign-flagged air carriers (referred to in this report as domestic and foreign air carriers, respectively) that operate to, from, or within the U.S. must establish and maintain security programs approved or accepted by TSA in accordance with requirements set forth in regulation at Aircraft Operator Security: Air Carriers and Commercial Operators, 49 C.F.R. pt. 1544 (concerning domestic air carriers), and Foreign Air Carrier Security, 49 C.F.R. pt. 1546. See 49 U.S.C. §§ 44903(c), 44906; 49 C.F.R. §§ 1544.3, 1544.101-1544.105, 1546.3, 1546.101-1546.105.

<sup>4</sup>For foreign air carriers (e.g., Lufthansa or Emirates Airways), instead of security directives, TSA issues “emergency amendments” because of differences in TSA’s authority over foreign air carriers. For the purposes of this report, we refer to security directives and emergency amendments collectively as “security directives” unless noted otherwise.

<sup>5</sup>TSA has issued a limited number of requirements for mass transit and passenger rail operators, including that rail carriers designate a rail security coordinator and report significant security concerns. See Security Coordinator, 49 C.F.R. §§ 1570.201, .203. TSA surface inspectors are to enforce these regulations through regulatory inspections.

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matters.<sup>6</sup> Further, the Chairman of the House Homeland Security Committee requested that GAO review TSA's efforts and activities to respond to the COVID-19 pandemic. This report describes TSA's (1) security directives issued to address threats posed by COVID-19 to the U.S. transportation sector, (2) coordination with interagency and industry stakeholders to develop and implement COVID-19 security directives, and (3) efforts to ensure operators' implementation of TSA's COVID-19 security directives as well as TSA and FAA investigations of non-masked passengers.

To identify what security directives TSA issued to address threats posed by COVID-19 to the U.S. transportation sector, we reviewed and analyzed the directives related to international travel restrictions due to COVID-19 and the face mask security directives for air carriers, airports, and surface transportation that were in place as of November 2021. We summarized information about these security directives including their timing, applicability, and requirements. To ensure that we were fully and accurately capturing the extent and requirements of the directives, we also met with TSA headquarters officials involved in the directives' development.

To describe how TSA coordinated with and addressed any issues raised by interagency and industry stakeholders to develop and implement COVID-19 security directives, we reviewed the coordination requirements that TSA developed in response to prior GAO recommendations.<sup>7</sup> Further, we interviewed 26 transportation stakeholder entities including a mix of individual transportation operators and their associations, as well as labor associations representing workers within the aviation and surface transportation modes to which the security directives applied (e.g., air

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<sup>6</sup>Coronavirus Aid, Relief, and Economic Security Act (CARES Act), Pub. L. No. 116-136, § 19010(b), 134 Stat. 281, 580 (2020). We regularly issue government-wide reports on the federal response to COVID-19. For the latest report, see GAO, *COVID-19: Significant Improvements Are Needed for Overseeing Relief Funds and Leading Responses to Public Health Emergencies*, [GAO-22-105291](#) (Washington, D.C.: Jan. 27, 2022). Our next government-wide report will be issued in April 2022 and will be available on GAO's website at <https://www.gao.gov/coronavirus>.

<sup>7</sup>According to TSA's standard operating procedures, prior to the release of a security directive, TSA is required to review the initial draft with key stakeholders and representatives of affected regulated parties, for issues of substance and clarity. Stakeholder input is to be documented and to include the entity consulted, date, location, point of contact, and a brief summary of the discussion and specific stakeholder input, to record concerns. Finally, TSA is to incorporate key stakeholder input into the final draft as appropriate.

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carriers, airports, and all applicable surface transportation system modes, including passenger rail, over-the-road bus, and mass transit systems) to obtain stakeholder perspectives on TSA's coordination.<sup>8</sup> We selected these stakeholders based on a variety of criteria, such as type of transportation mode (e.g., aviation, passenger rail, mass transit, over-the-road bus) and region of operation. The results of these interviews with transportation stakeholders are not generalizable, but provided us insights into how TSA coordinated with them on the security directives. We analyzed the results of these interviews to identify how each of the selected stakeholders was involved in the development of the security directives. In addition, we reviewed the comments that stakeholders provided to TSA during the development of the security directives to identify trends in these comments.

We reviewed documentation and interviewed TSA officials to obtain information on TSA's practices in implementing the COVID-19 security directives. Specifically, we reviewed documentation from TSA such as stakeholder comment logs, outreach plans, and other records related to TSA coordination activities with industry stakeholders. In addition, we met with TSA headquarters offices, including Policy, Plans, and Engagement, the office responsible for coordinating the stakeholder outreach. We also met with other government agencies involved in implementing the presidential proclamations on which the security directives are based, including CDC, DOT, FAA, and the U.S. Customs and Border Protection Agency (CBP) within DHS to understand how TSA coordinated its directives with other federal government agencies.

To describe TSA's efforts to ensure operators' implementation of TSA's COVID-19 security directives as well as TSA and FAA investigations of, or related to, non-masked passengers, we reviewed and analyzed enforcement data from TSA and the FAA to understand the extent to which TSA and other federal agencies were investigating violations of the COVID-19 security directives, particularly the face mask security directive.<sup>9</sup> To assess the reliability of these data, we interviewed knowledgeable officials at the relevant agencies about data entry and quality control processes and determined that the data were sufficiently

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<sup>8</sup>See App. I for a list of these stakeholders.

<sup>9</sup>Our period of analysis of TSA data on investigations is from when the face mask security directive went into effect on February 2, 2021, to March 7, 2022. Our period of analysis of FAA data on unruly passenger investigations is from January 1, 2021, to November 1, 2021. FAA began a special enforcement program against unruly passengers in January 2021, which is discussed later in this report.



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reliable to provide summary numbers of actions taken, as of March 2022. We also spoke to TSA headquarters officials and federal stakeholders who assisted in implementing the order, including the FAA. Further, we met with selected industry stakeholders noted earlier, who were responsible for or had visibility on the implementation of the security directives to obtain their perspectives on the guidance that TSA provided.

We conducted this performance audit from November 2020 to March 2022 in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

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## Background

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### COVID-19 Pandemic

As the nation continues to respond to the COVID-19 pandemic, response and recovery efforts have been hampered by periodic surges in COVID-19 cases.<sup>10</sup> Although the daily number of new cases had begun to decline earlier in the summer of 2021, the number of new cases reported each day from the end of July 2021, to September 23, 2021, generally exceeded 100,000, according to the CDC—a daily case count not seen since February 2021 and substantially higher than the approximately 8,000 new cases reported per day in mid-June. As a result of the rise in cases, CDC, state and local governments, and private businesses revised COVID-19 requirements, including their mask guidance.<sup>11</sup>

The COVID-19 pandemic has also had devastating effects on the economy. For example, serious economic repercussions from the

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<sup>10</sup>As of February 2022, the CDC had listed the Delta and Omicron variants as variants of concern in the U.S. CDC had previously characterized three other variants (Alpha, Beta, and Gamma) as variants of concern, but later downgraded them.

<sup>11</sup>Data from a sample of state and local health departments showed that, in August 2021, unvaccinated individuals accounted for the majority of new COVID-19 cases in those states, according to CDC. No vaccine is 100 percent effective. CDC expects that, as the number of vaccinated individuals increases, so will the number of so-called “breakthrough” cases. The agency notes, however, that the risks of infection, hospitalization, and death are much lower in vaccinated individuals compared to unvaccinated individuals. In addition, vaccinated individuals are less likely to experience severe illness if they do become infected with COVID-19 after vaccination. As of May 1, 2021, CDC shifted from providing data on all breakthrough cases to providing data on those cases that result in hospitalization or death.

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pandemic continue to affect the transportation sector, including reduced travel to and from the U.S. by air and less usage of surface transportation like passenger rail. Travel has not fully returned to prepandemic levels across many of those systems. In fiscal year 2020, the volume of international air travelers entering the U.S. decreased by about 54 percent as compared with fiscal year 2019. While the volume of international air travelers increased in fiscal year 2021, it remained below fiscal year 2019 levels. Similarly, while there were 2.99 million riders on passenger rail systems in June 2019, ridership declined to 417,000 in June 2020 before rising to 1.85 million in October 2021.

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## TSA's Roles and Responsibilities in Securing Transportation Systems

The Aviation and Transportation Security Act (ATSA), enacted into law shortly after the September 11, 2001, terrorist attacks, established TSA and gave it responsibility for securing all transportation systems.<sup>12</sup> ATSA does not specifically list health-related issues, such as communicable diseases, as a security threat. However, federal law granted the TSA Administrator broad statutory responsibility and authority with respect to the security of all modes of transportation systems, and, according to TSA, safety is inextricably intertwined with security.<sup>13</sup> Accordingly, TSA has stated that the security of the transportation sector involves protection from any threat that may disrupt transportation or endanger the safety of individuals in transportation. Therefore, according to TSA, the introduction or spread of a communicable disease through the transportation sector is a threat that allows TSA to exercise its authorities as needed, including the authority to issue security directives.<sup>14</sup>

TSA may issue such directives if threat information, events, or significant vulnerabilities, often of an immediate nature, indicate that additional security measures are needed and that immediate action is necessary.<sup>15</sup> ATSA grants TSA the authority to issue security directives to any entity in

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<sup>12</sup>Aviation and Transportation Security Act, Pub. L. No. 107-71, § 101(a), 115 Stat. 597 (2001) (codified at 49 U.S.C. § 114(d)).

<sup>13</sup>See 49 U.S.C. § 114(d).

<sup>14</sup>Such directives are issued under 49 U.S.C. 114(l) if the TSA Administrator determines that a regulation or security directive must be issued immediately in order to protect transportation security.

<sup>15</sup>Under 49 U.S.C. § 114, TSA is authorized to issue security directives. Through such directives, the TSA Administrator has the discretion to assist another agency in carrying out its authority in order to address threats to transportation. Further, TSA is given additional authority when the Secretary of Homeland Security has determined there to be a national emergency.

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## Securing Aviation and Surface Transportation Systems

the transportation sector. TSA may also issue directives to carry out requirements for the transportation sector promulgated through executive action, such as presidential proclamations and executive orders. Additionally, TSA can take enforcement actions against regulated entities such as air carriers as well as individuals (e.g., passengers) that violate security requirements such as those laid out in security directives.<sup>16</sup> Depending on the violation and an individual's previous violation history, TSA may take enforcement action ranging from letters of warning to civil penalties.

TSA's specific responsibility within the aviation system includes the screening of passengers and property transported from and within the U.S. by commercial passenger aircraft. In accordance with ATSA, TSA is to screen all passengers, their accessible property, and their checked baggage pursuant to TSA-established procedures. These procedures generally provide that passengers pass through security checkpoints where their person, identification documents, and accessible property, are checked. Airports and air carriers must implement and maintain compliance with TSA security requirements. They do so predominantly through TSA-approved or accepted security programs that describe the required security policies, procedures, and systems.

TSA conducts inspections of airports and air carriers and their operations to evaluate airport perimeter security and access control measures to secure areas to confirm that the airports and air carriers are operating in accordance with their respective TSA-approved or accepted security programs and applicable security directives.<sup>17</sup> If an inspector finds that an airport operator or air carrier is not in compliance with any applicable security requirements, the inspector is to take additional steps to correct and record those specific violations, ranging from on-the-spot counseling

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<sup>16</sup>TSA exercises enforcement authority through a delegation of statutory authority from the Secretary of Homeland Security. Through that delegation, TSA administers the authority of 49 U.S.C. § 114(f)(7) to "enforce security related regulations and requirements" related to civil aviation security and security in other modes of transportation.

<sup>17</sup>Along with conducting airport assessments, the same TSA inspection team also conducts air carrier inspections when visiting a foreign airport to ensure that air carriers are in compliance with International Civil Aviation Organization standards and TSA security requirements. See 49 U.S.C. § 44907. In general, TSA procedures require TSA to inspect all air carriers at each airport annually or semiannually depending on the vulnerability level of the airport, with some exceptions.

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for minor violations to sending a warning notice or a letter of correction, and, for more egregious violations, issuing notices of civil penalties.<sup>18</sup>

In contrast to the aviation environment, where TSA has operational responsibility for screening passengers and baggage prior to boarding a commercial aircraft, TSA has a limited operational role for securing the different modes within the surface transportation system, such as mass transit and passenger rail.<sup>19</sup> Therefore, public and private transportation owners and operators have the principal responsibility to carry out security measures. TSA coordinates with the entities to identify vulnerabilities, share intelligence information, and work to mitigate security risks to the system.

## Coordinating with Stakeholders

In accordance with the FAA Extension, Safety, and Security Act of 2016 and the TSA Modernization Act of 2018, TSA is to consult with key external stakeholders and regulated parties who are representatives from specific transportation systems that will be most impacted by the proposed security policy.<sup>20</sup> In addition, TSA is to coordinate with other interagency partners, such as the FAA, CBP, and the State Department. According to TSA policy, as a step in the coordination process, TSA is to provide draft policy documents (e.g., security directives) to, and facilitate meetings with, all relevant stakeholders and document any feedback received from the stakeholders. Figure 1 shows TSA's process for developing and reviewing security directives and the various points at which it is to coordinate with, and seek input from, stakeholders.

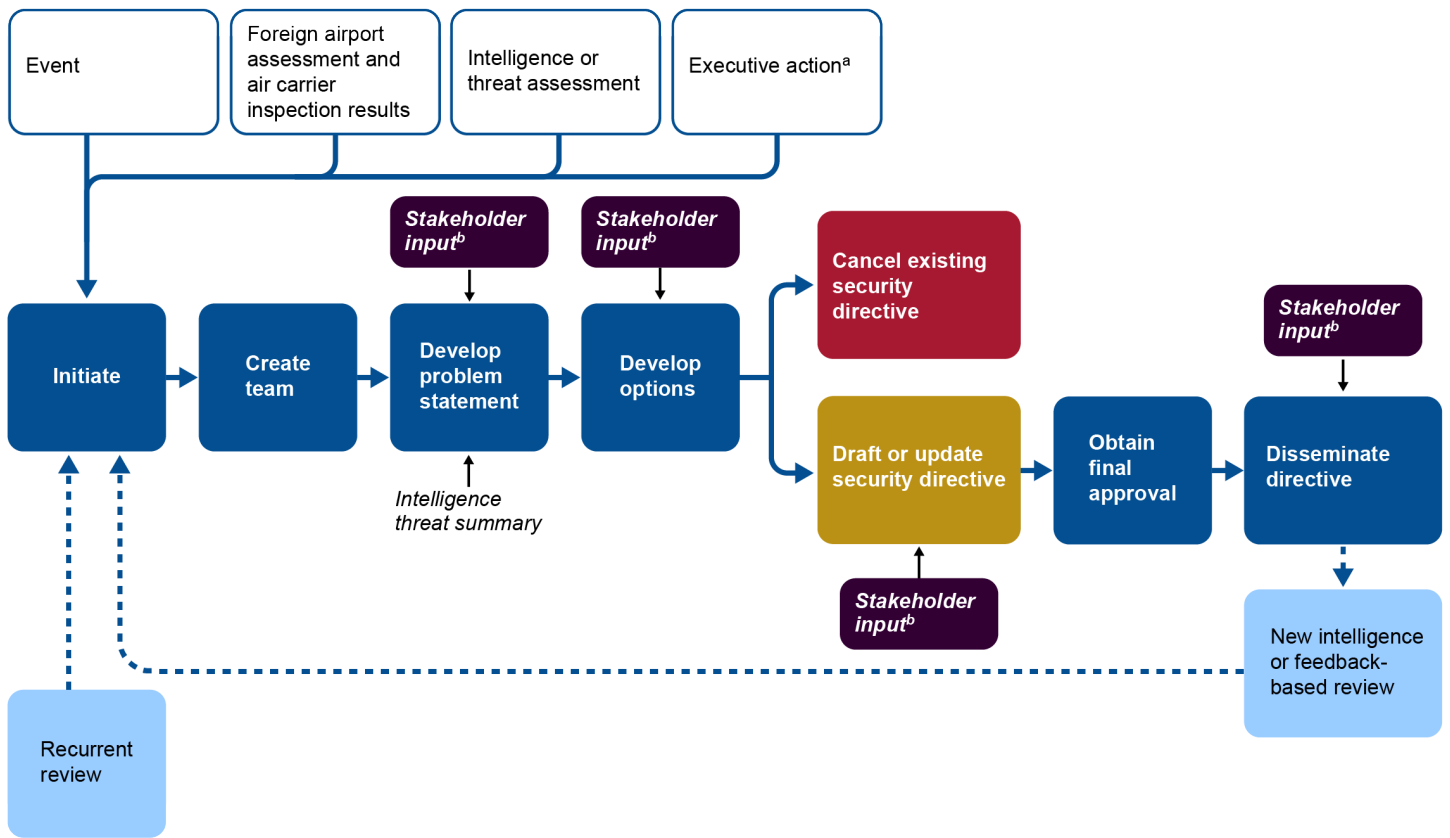
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<sup>18</sup>TSA may initiate a civil penalty action by serving a Notice of Proposed Civil Penalty on the person charged with a violation of a TSA requirement. See 49 C.F.R. § 1503.413.

<sup>19</sup>Aviation and Transportation Security Act, Pub. L. No. 107-71, § 101(a), 115 Stat. 597 (2001) (codified at 49 U.S.C. § 114(d)). To secure surface transportation system modes, such as passenger rail, TSA primarily partners with public and private transportation operators to address their security needs by conducting vulnerability assessments and sharing intelligence information and key practices, among other things.

<sup>20</sup>FAA Extension, Safety, and Security Act of 2016, Pub. L. No. 114-190, § 3409(a), 130 Stat. 615, 662; TSA Modernization Act, Pub. L. No. 115-254, § 1953, 132 Stat. 3542, 3594. If the TSA Administrator determines that a security directive must be issued immediately to protect transportation security, the Administrator will issue the security directive without providing notice or an opportunity for comment. 49 U.S.C. § 114(l).

**Figure 1: Key Steps in the Transportation Security Administration’s (TSA) Process to Develop and Review Security Directives**



Source: GAO analysis of TSA information. | GAO-22-104583

Note: TSA security directives issued to foreign air carriers (e.g., Lufthansa or Emirates Airways) are referred to as “emergency amendments.”

<sup>a</sup>Includes presidential proclamations and executive orders.

<sup>b</sup>TSA officials are to obtain input from key stakeholders and representatives of affected regulated parties (e.g., air carriers, surface transportation operators), as appropriate.

## CDC Roles and Responsibilities Related to Transportation Systems

Within the Department of Health and Human Services (HHS), CDC has a mission to protect Americans from health, safety, and security threats, both foreign and in the U.S.<sup>21</sup> As the federal government’s public health agency, CDC creates guidance and information on public health threats and what actions should be taken to mitigate those threats. For COVID-19, CDC has issued guidance on infection control practices including

<sup>21</sup>CENTERS FOR DISEASE CONTROL AND PREVENTION, *MISSION, ROLE AND PLEDGE*, (Last reviewed May 13, 2019), <https://www.cdc.gov/about/organization/mission.htm>.

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physical distancing, as well as testing protocols, quarantines, and vaccinations. CDC has also issued orders requiring specific actions, such as that masks be worn while on transportation systems or at transportation hubs.<sup>22</sup> For travelers, CDC monitors disease data from foreign countries and provides information and alerts about outbreaks and steps that travelers can take to protect themselves. For passengers arriving to the U.S. from foreign countries, CDC also has the authority to impose quarantines, if necessary, to protect the general population and respond to disease threats to the United States.<sup>23</sup>

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## The FAA's Role in Ensuring Aviation System Safety

As part of its safety responsibilities for the nation's aviation system, the FAA investigates reports of unruly passengers onboard aircraft, including any alleged assault, threat, intimidation, or interference with a crewmember, and any alleged physical or sexual assault or threat of physical or sexual assault of any individual on an aircraft.<sup>24</sup> Passengers that the FAA has determined to have interfered with air carrier

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<sup>22</sup>According to TSA officials, the TSA security directives were issued to provide enforcement support for the CDC orders and aligned directly to the CDC's orders. The CDC's order also specifies that TSA shall enforce the CDC's orders under appropriate statutory and regulatory authorities such as 49 U.S.C. §§ 106, 114, 44902, 44903 and 46301; and 49 C.F.R. §§ 1503, 1540.105, 1542.303, 1544.305, and 1546.105. *Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs*, 86 Fed. Reg. 8025 (February 3, 2021).

<sup>23</sup>The Surgeon General, with the approval of the Secretary of HHS, has statutory responsibility for preventing the introduction, transmission, and spread of communicable diseases into the U.S. and between the states. Under section 361 of the Public Health Service Act ch. 373, title III, § 361, 58 Stat. 703 (codified at 42 U.S.C. § 264), HHS is authorized to make and enforce regulations to prevent the entry and spread of communicable diseases from foreign countries into the U.S. and among states. The authority for carrying out these functions on a daily basis has been delegated to CDC. Under 42 C.F.R. parts 70 and 71, CDC may provide for the detention, medical examination, and release of persons arriving into the U.S. and traveling among states who are suspected of carrying these communicable diseases. Quarantinable diseases include cholera, diphtheria, infectious tuberculosis, plague, smallpox, yellow fever, viral hemorrhagic fevers (including Ebola), severe acute respiratory syndromes, and flu that can cause a pandemic ((Executive Order No. 13295, § 1, 68 Fed. Reg. 17255 (April 9, 2003); Executive Order No. 13375, § 1, 70 Fed. Reg. 17299 (April 5, 2005)(amending Executive Order No. 13295 to include flu that has the potential to cause a pandemic); Executive Order No. 13674, § 1, 79 Fed. Reg. 45671 (Aug. 6, 2014)(amending Executive Order No. 13295 to redefine acute respiratory syndromes)).

<sup>24</sup>Under 49 U.S.C. § 46318, an individual who assaults or threatens to assault a member of the flight crew of a civil aircraft or any other individual on the aircraft, or takes any action that poses an imminent threat to the safety of the aircraft or other individuals on the aircraft is liable to the United States Government for a civil penalty of not more than \$35,000. 14 CFR §§ 91.11, 121.580, 135.120; 49 U.S.C. § 46318.

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crewmembers or assault, or threaten to assault, a crew member or others on board the aircraft could be subject to civil penalties.<sup>25</sup> The FAA may also refer these incidents for criminal investigation.<sup>26</sup>

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## Recent Legislative Activity Related to Transportation Preparedness Planning for Communicable Diseases

In December 2015, we issued a report on air travel and communicable diseases in which we found that the U.S. lacked a comprehensive national aviation-preparedness plan to limit the spread of communicable diseases through air travel.<sup>27</sup> Accordingly, we recommended that DOT work with relevant stakeholders, such as HHS and DHS, to develop a national aviation-preparedness plan for communicable disease outbreaks. As we have previously reported, such a plan could establish a mechanism for coordination between the aviation and public health sectors and guide preparation for communicable disease nationally and for individual airlines and airports. While DOT agreed that a plan is needed, as of May 2020, it had not taken steps to develop one.<sup>28</sup> Given the absence of any DOT progress to develop a plan and in light of the unfolding COVID-19 pandemic, in June 2020, we made a matter for congressional consideration that Congress take legislative action to require DOT to complete such a plan for the aviation sector.<sup>29</sup> While bills

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<sup>25</sup>For violations of 49 U.S.C. § 46318, the current inflation-adjusted maximum is \$36,948 per violation. For regulatory violations, the current inflation-adjusted maximum pursuant to 49 U.S.C. § 46301(a)(5)(A) is \$14,074 per violation. A single incident can involve multiple violations.

<sup>26</sup>Under 49 U.S.C. § 46504, passengers on an aircraft who assault or intimidate a flight crewmember or flight attendant of the aircraft, and interfere with the performance of the duties of the member or attendant or lessen the ability of the member or attendant to perform those duties, or attempt or conspire to do such an act, shall be fined, imprisoned for not more than 20 years, or both.

<sup>27</sup>See GAO, *Air Travel and Communicable Diseases: Comprehensive Federal Plan Needed for U.S. Aviation System's Preparedness*, [GAO-16-127](#) (Washington, D.C.: Dec. 16, 2015).

<sup>28</sup>DOT has stated that because HHS and DHS are responsible for communicable disease response and preparedness planning, those departments should lead any efforts to address planning for communicable disease outbreaks, including for transportation. We maintain that DOT is in the best position to lead a multiagency effort to develop a national aviation-preparedness plan given its oversight responsibilities and ties with relevant aviation stakeholders, such as serving as the U.S. liaison to the International Civil Aviation Organization, which has developed standards—including a national aviation pandemic plan—that member states are obligated to implement. We included this open recommendation in 2021 as one of 16 high priority recommendations to DOT.

<sup>29</sup>See GAO, *COVID-19: Opportunities to Improve Federal Response and Recovery Efforts*, [GAO-20-625](#) (Washington, D.C.: June 25, 2020).

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have been introduced that include such a provision for DOT, none have been enacted by Congress, as of January 2022.<sup>30</sup>

Separately, the National Defense Authorization Act for Fiscal Year 2022 requires the Secretary of DHS, acting through the TSA Administrator, to develop a transportation security preparedness plan that, for all transportation sectors, (1) establishes processes for communicating and collaborating with interagency task forces and other public and private stakeholders in the event of a communicable disease outbreak and (2) includes considerations for assessing the appropriateness of issuing security directives and plans for ensuring compliance with such measures.<sup>31</sup> Such a plan could foster a shared understanding and agreement among all relevant stakeholders on how to respond to prevent and control a communicable disease threat, as well as provide a mechanism for the public health and transportation sectors to coordinate more effectively while minimizing disruptions to the nation's transportation system. The act also contains a provision for GAO to assess DHS's plan once developed.<sup>32</sup>

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## TSA Issued Several COVID-19 Security Directives

In response to various executive actions, TSA issued several COVID-19 security directives related to international travel restrictions and face mask requirements. Between January 2020 and April 2021, multiple presidential proclamations were issued that imposed restrictions on international air travel into the U.S. for individuals with recent presence in countries with high COVID-19 transmission rates. The proclamations directed the Secretary of DHS to suspend entry to the U.S. for noncitizens who had been present in countries with high COVID-19 transmission

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<sup>30</sup>In February 2021, H.R. 884, the National Aviation Preparedness Plan Act of 2021, was introduced in the House of Representatives. National Aviation Preparedness Plan Act of 2021, H.R. 884, 117<sup>th</sup> Cong. (1<sup>st</sup> Sess. 2021). If enacted, this bill would have required the DOT, in collaboration with DHS, HHS, and other aviation stakeholders, to develop a national plan to prepare the aviation industry for future communicable disease outbreaks. In January 2021, S. 82, Ensuring Health Safety in the Skies Act of 2021, was reported favorably out of the Senate Committee on Commerce, Science, and Transportation. Ensuring Health Safety in the Skies Act of 2021, S. 82, 117<sup>th</sup> Cong. (1<sup>st</sup> Sess. 2021).

<sup>31</sup>National Defense Authorization Act for Fiscal Year 2022, Pub. L. No. 117-81, § 6412(a)(1), (a)(3)(A)(i), (a)(3)(G), 135 Stat 1541 (2021).

<sup>32</sup>*Id.* at § 6412(b), 135 Stat 1541 (2021).



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rates prior to their planned entry into the U.S.<sup>33</sup> Additionally, as part of the implementation of the presidential proclamations made in 2020, the Secretary of DHS imposed another requirement that flights carrying persons who recently traveled to or within the countries or regions specified in the proclamations, arrive to the U.S. at designated airports to undergo enhanced health screenings by CDC.<sup>34</sup>

During this time, TSA issued the following five sets of COVID-19 related security directives. Specifically:

- TSA utilized its existing security framework to issue security directives to air carriers to implement the international air travel restrictions to the U.S. mandated by the presidential proclamations.<sup>35</sup> In turn, TSA issued directives that required foreign and U.S.-based air carriers with last point of departure flights to the U.S. to screen their passengers for recent travel in countries specified in the presidential proclamations

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<sup>33</sup>In a series of presidential proclamations issued between January 2020 and April 2021, restrictions were first imposed on mainland China and were subsequently extended to other countries and regions (i.e., Iran, Ireland, the United Kingdom, Europe's 26-country Schengen Area, Brazil, South Africa, and India). Europe's 26-country Schengen Area generally functions as a single jurisdiction for international travel purposes and includes Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland. The restrictions applied to noncitizen individuals who were physically present within the specified countries during the 14-day period preceding their expected entry into the U.S.

<sup>34</sup>For these enhanced screenings, travelers were to be observed for signs of illness, had their temperature taken, completed a questionnaire about symptoms and exposure to persons with COVID-19 and provided contact information in the U.S. Ill travelers and those disclosing exposure to COVID-19 in the previous 14 days were referred for additional public health assessments by a medical officer or to a local health care facility. In September 2020, CDC ceased these screenings, stating that it would instead dedicate resources to other mitigation strategies, such as health education for travelers and voluntary collection of contact information from travelers. The requirement for flights carrying passengers with recent presence in relevant countries to arrive at designated U.S. airports was also discontinued.

<sup>35</sup>According to officials at TSA, DOT, and CDC, interagency consultations and deliberations on how to implement the presidential proclamations determined that TSA was the federal entity best positioned, through its existing security protocols and framework, to quickly engage industry and carry out the restrictions by issuing security directives.

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and, accordingly, restrict or redirect passengers boarding U.S.-bound flights.<sup>36</sup>

- In addition to international air travel restrictions, TSA issued security directives mandating medical screenings of passengers prior to their departure from select countries.<sup>37</sup> For example, in response to White House Coronavirus Task Force direction, TSA issued a security directive that imposed preboarding medical screening requirements for passengers on flights to the U.S. from last points of departure in Italy and the Republic of Korea (South Korea).<sup>38</sup> Using the screening, carriers were to prohibit passengers from boarding U.S. bound flights

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<sup>36</sup>See TSA Security Directive (SD) 1544-20-01 (concerning People's Republic of China), TSA Emergency Amendment (EA) 1546-20-01; SD 1544-20-01B (adding Islamic Republic of Iran), EA 1546-20-01B; SD 1544-20-01C (adding the Schengen Area), EA 1546-20-01C; SD 1544-20-01D (adding the United Kingdom and Republic of Ireland), EA 1546-20-01D; SD 1544-20-01E (adding Federative Republic of Brazil), EA 1546-20-01E; EA 1546-20-01G (adding Republic of South Africa); SD 1544-20-01H (adding Republic of India), EA 1546-20-01H. A last point of departure flight is a flight that does not make any intermediate stops between a foreign and U.S. airport. The requirements of these directives do not apply to crewmembers, except those off duty and on personal travel. The first security directives restricting international air travel that went into effect for China in February 2020 identified 11 U.S. airports to which carriers were to route flights carrying persons with recent presence in China. 85 Fed. Reg. 6709 (Feb. 5, 2020). DHS subsequently added two more airports to the list in March 2020 when the restrictions were expanded to include European countries within the Schengen Area. 85 Fed. Reg. 12855 (Mar. 4, 2020). CBP was the DHS agency responsible for coordinating with airport operators and CDC for implementing processes to handle arriving passengers and conduct screenings at the designated airports. In June 2021, we reported on the CBP's efforts to implement those processes and some of the challenges CBP faced. For example, for the first full day restrictions on which travelers from Europe went into effect, delays in processing arriving travelers at one airport resulted in thousands of travelers waiting for hours without access to food, water, or bathrooms, according to airport and CBP officials. See GAO, *Border Security: CBP's Response to COVID-19*, [GAO-21-431](#) (Washington, D.C.: June 14, 2021).

<sup>37</sup>See SD 1544-20-02, EA 1546-20-02 (requiring medical screenings for Last Points of Departure to the United States from Italy and the Republic of Korea (South Korea)).

<sup>38</sup>To conduct these screenings, airlines were required to measure a passenger's body temperature to detect fever (a measured temperature of 100.4 degrees Fahrenheit or 38 degrees Celsius), conduct visual observation of the passenger for signs of illness, ask questions regarding potential COVID-19 symptoms (e.g., coughing, chills, difficulty breathing), and ask about the potential for recent high-risk exposures to COVID-19 (e.g., visiting hospitals or close contact with a COVID-19-infected person). *Id.*

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if they exhibited any signs or symptoms of illness or indicated they may be at high risk for recent exposure to the virus.<sup>39</sup>

- On January 31, 2021, TSA issued a set of security directives requiring that face masks be worn by individuals while riding or working on all transportation systems.<sup>40</sup> TSA issued the security directives in response to an executive order and a related CDC order mandating that face masks be worn by passengers and employees while in aviation and surface transportation stations and on conveyances (e.g., airports, commercial aircraft, passenger rail, mass transit, and intercity bus systems).<sup>41</sup> While the terms of the security directives were the same, TSA issued separate security directives to the different types of transportation operators responsible for implementing and enforcing them such as air carriers, airports, and surface transportation.<sup>42</sup> The face mask security directives were given an expiration date of May 11, 2021, which TSA has subsequently extended four times. According to

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<sup>39</sup>TSA later amended this directive to discontinue the requirement for Italy once a separate security directive was issued to restrict travel from the Schengen Area, which includes Italy. TSA also amended the security directive to allow carriers to use the results of medical screenings conducted by other entities, such as by the host government when passengers make their way through the airport to the departure gate, rather than having to conduct the screenings themselves at the departure gate, as long as TSA has accepted the level of screening provided by the other entity.

<sup>40</sup>See SD 1542-21-01 (concerning Airport Operators); SD 1544-21-02 (concerning Domestic Air Carriers); EA 1546-21-01 (concerning Foreign Air Carriers); SD 1582/84-21-01 (concerning Surface Modes of Transportation). Specifically, TSA acted in furtherance of the President's Executive Order 13,998 to promote COVID-19 safety in domestic and international travel, 86 Fed. Reg. 7205 (Jan. 26, 2021), and the CDC order requiring that, subject to limited exceptions, all persons in transportation hubs and on transport conveyances must wear masks covering their noses and mouths for the duration of travel. 86 Fed. Reg. 8025 (Feb. 3, 2021)

<sup>41</sup>The executive order was issued on January 20, 2021. 86 Fed. Reg. 7045 (Jan. 25, 2021). On January 27, 2021, the Acting Secretary of Homeland Security determined that a national emergency existed requiring TSA to issue security directives to implement the executive order and enforce the related order issued by CDC pursuant to the authority of 49 U.S.C. §§114, 44902, and 44903 for the aviation directives and 49 U.S.C. §114 for surface transportation modes. This action triggered the use of TSA's specific authorities under 49 U.S.C. §114(g). CDC issued its order on January 29, 2021. *Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs*, 86 Fed. Reg. 8025 (February 3, 2021); see also *ORDER: WEARING OF FACE MASKS WHILE ON CONVEYANCES AND AT TRANSPORTATION HUBS*, CDC, (page last reviewed August 20, 2021), <https://www.cdc.gov/quarantine/masks/mask-travel-guidance.html>.

<sup>42</sup>Exemptions were provided for private conveyances; people with disabilities who cannot safely wear a mask; and people for whom wearing a mask would create a risk to workplace health, safety, or job duty, as determined by the relevant workplace safety guidelines or federal regulations.

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TSA, the security directive for mask use on public transportation and transportation hubs will be extended through April 18, 2022.<sup>43</sup> TSA officials stated that such decisions on extensions are made in collaboration with other federal agencies such as CDC.

- On November 8, 2021, TSA replaced the security directives restricting international air travel with new directives implementing vaccine requirements for noncitizen nonimmigrant air travelers.<sup>44</sup> According to TSA officials, the new security directives implement the terms of a presidential proclamation and related CDC orders to move away from the country-by-country restrictions to an approach that relies primarily on vaccination to advance the resumption of international air travel to the U.S.<sup>45</sup> Specifically, the security directives require air carriers to obtain proof of full vaccination from noncitizen nonimmigrant passengers prior to boarding them on a U.S.-bound flight.<sup>46</sup> These security directives are set to expire November 8, 2022.

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<sup>43</sup>See SD 15-82-84-21-01A (extending to September 2021), SD-1544-21-02A, SD-1542-21-01A, EA 1546-21-01A; SD 1582-84-21-01B (extending to January 2022), SD 1544-21-02B, SD 1542-21-01B, EA 1546-21-01B; SD 1582/84-21-01C (extending to March 2022), 1544-21-02C, 1542-21-01C, EA 1546-21-01C. Press Release, Transp. Sec. Admin., Statement Regarding Face Mask Use On Public Transportation (March 10, 2022).

<sup>44</sup>See SD 1544-21-03 (requiring proof of full vaccination for specified passengers).

<sup>45</sup>On October 25, 2021, the President issued a proclamation, *Advancing the Safe Resumption of Global Travel During the COVID-19 Pandemic*, which rescinded previous proclamations for COVID-19 related travel restrictions. 86 Fed. Reg. 59603 (Oct. 28, 2021). The proclamation also requires DHS to take steps to ensure that airlines do not permit noncitizens barred from entry under the proclamation to board an aircraft traveling to the United States. CDC issued an order on October 25, 2021, and an amendment to that order on October 30, 2021, providing further instructions on implementing the presidential proclamation. This requirement was added to the existing CDC requirement that went into effect on January 26, 2021, that all passengers arriving by air into the U.S. from any foreign country provide proof of a negative predeparture COVID-19 test result or documentation of recovery from COVID-19. *Amended Order Implementing Presidential Proclamation on Advancing the Safe Resumption of Global Travel During the COVID-19 Pandemic*, 86 Fed. Reg. 61224 (November 5, 2021); *Requirements for Negative Pre-Departure Covid-19 Test Result or Documentation of Recovery From Covid-19 for All Airline or Other Aircraft Passengers Arriving Into the United States From Any Foreign Country*, 86 Fed. Reg. 69256 (December 7, 2021).

<sup>46</sup>Exceptions to this requirement are allowed for individuals within certain categories such as those on diplomatic and official foreign government travel, children under 18 years of age, and persons unable to receive a COVID-19 vaccine due to medical contraindications. Individuals claiming such exceptions must provide air carriers with written attestation and supporting documentation proving their eligibility for such exceptions prior to boarding U.S.-bound flights.

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- With the detection of a new variant of the COVID-19 virus in South Africa in November 2021, TSA issued a new security directive restricting international air travel.<sup>47</sup> As with the previous security directives restricting international air travel, on November 27, 2021, TSA issued the directive to implement the terms of a presidential proclamation restricting the entry of noncitizens to the U.S. who had been physically present in South Africa or seven other African countries within 14 days of the date of their entry or attempted entry to the U.S.<sup>48</sup> These restrictions were subsequently cancelled by TSA on December 31, 2021 in response to a presidential proclamation which stated the restrictions were no longer needed to protect public health.<sup>49</sup>

Figure 2 shows a time line of key COVID-19-related events and TSA's security directives.

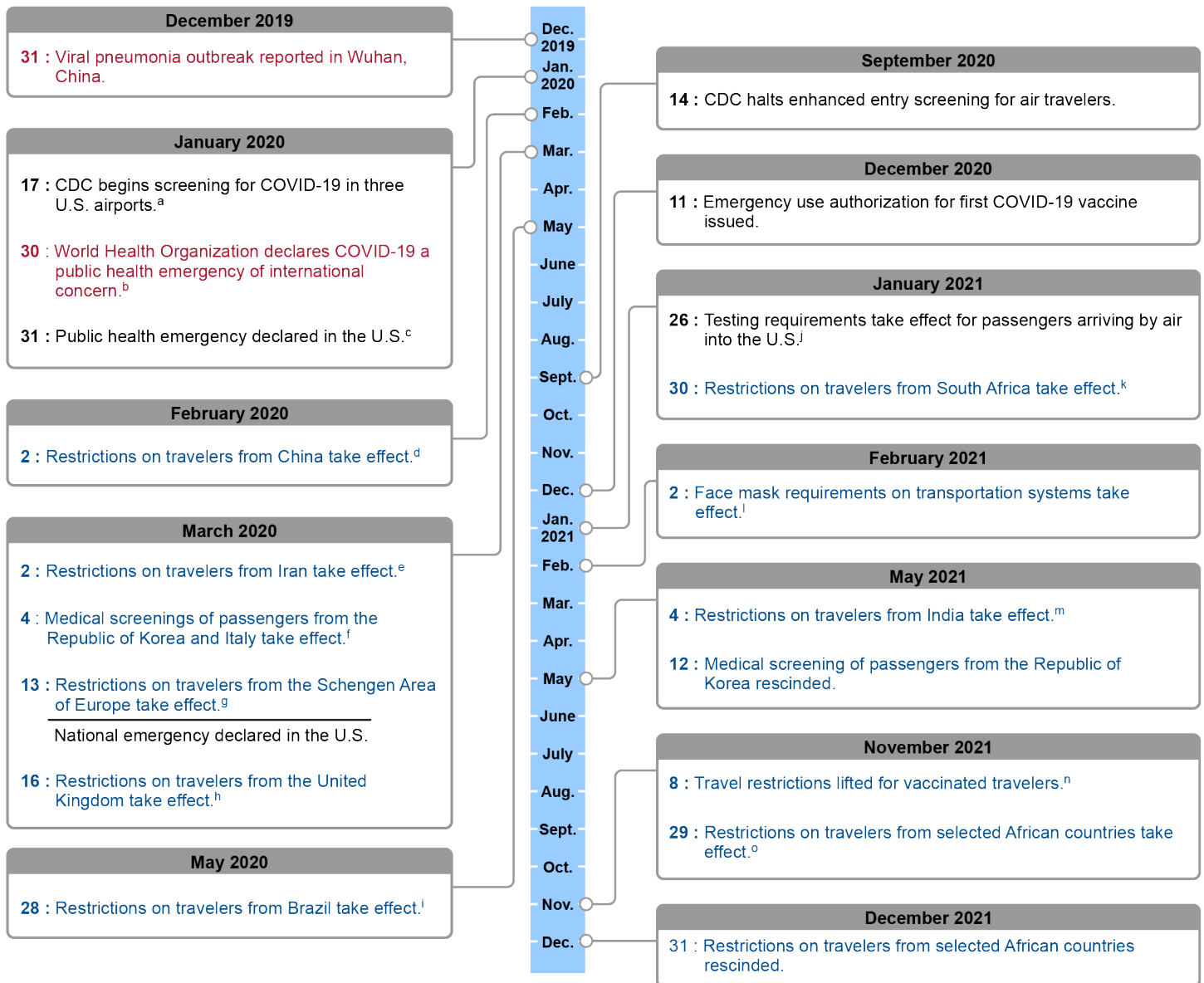
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<sup>47</sup>See SD 1544-21-04 (restricting travel from Republic of Botswana, Kingdom of Eswatini, Kingdom of Lesotho, Republic of Malawi, Republic of Mozambique, Republic of Namibia, Republic of South Africa, Republic of Zimbabwe).

<sup>48</sup>In addition to South Africa, the other countries to which these restrictions apply include Botswana, Eswatini, Lesotho, Malawi, Mozambique, Namibia, and Zimbabwe.

<sup>49</sup>On December 28, 2021, the President issued a proclamation, *Revoking Proclamation 10315*, which revoked the travel restrictions previously established for the eight southern African countries. 87 Fed. Reg. 149 (Jan. 3, 2022).

**Figure 2: Time Line of Key COVID-19 Events and Related Transportation Security Administration (TSA) Security Directives, as of December 2021**



■ Global COVID-19 event    
 ■ U.S. COVID-19 event    
 ■ TSA security directives

Source: GAO analysis. | GAO-22-104583

<sup>a</sup>The Centers for Disease Control and Prevention (CDC) and the Department of Homeland Security's Countering Weapons of Mass Destruction Office, with support from U.S. Customs and Border Protection implemented enhanced health screenings to detect ill travelers traveling to the U.S. on

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direct or connecting flights from Wuhan, China. These screenings were conducted at three U.S. airports that receive most of the travelers from Wuhan, China: San Francisco International Airport in San Francisco, CA; John F. Kennedy International Airport in New York, NY; and Los Angeles International Airport in Los Angeles, CA.

<sup>b</sup>A Public Health Emergency of International Concern is an extraordinary event that is determined to constitute a public health risk to other States through the international spread of disease and to potentially require a coordinated international response.

<sup>c</sup>Secretary of Health and Human Services Alex M. Azar, II, Determination that a Public Health Emergency Exists, <https://www.phe.gov/emergency/news/healthactions/phe/Pages/2019-nCoV.aspx>.

<sup>d</sup>See TSA Security Directive (SD) 1544-20-01 (concerning People's Republic of China), TSA Emergency Amendment (EA) 1546-20-01.

<sup>e</sup>See TSA SD 1544-20-01B (adding Islamic Republic of Iran), EA 1546-20-01B.

<sup>f</sup>See SD 1544-20-02, EA 1546-20-02 (requiring medical screenings for Last Points of Departure to the United States from Italy and the Republic of Korea (South Korea)). Italy was subsequently dropped from this security directive on March 13, 2020 when a separate security directive for restrictions on travelers from the Schengen Area of Europe, which includes Italy, went into effect.

<sup>g</sup>See TSA SD 1544-20-01C (adding the Schengen Area), EA 1546-20-01C. The Schengen Area of Europe includes 26 countries: Austria, Belgium, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Italy, Latvia, Liechtenstein, Lithuania, Luxembourg, Malta, Netherlands, Norway, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden, and Switzerland. Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak, 85 Fed. Reg. 15337 (Mar. 18, 2020).

<sup>h</sup>See TSA SD 1544-20-01D (adding the United Kingdom and Republic of Ireland), EA 1546-20-01D.

<sup>i</sup>See TSA SD 1544-20-01E (adding Federative Republic of Brazil), EA 1546-20-01E.

<sup>j</sup>CDC issues order requiring all air passengers entering the U.S. to get a viral test (a test for current infection) within the 3 days before their flight and to provide documentation of the test result to the airline or provide documentation of having recovered from COVID-19. Under the order, airlines are to confirm the negative test result for all passengers or documentation of recovery before they are boarded. If a passenger does not provide documentation, or chooses not to take a test, the airline must deny boarding to the passenger.

<sup>k</sup>See TSA EA 1546-20-01G (adding Republic of South Africa).

<sup>l</sup>See TSA SD 1542-21-01 (concerning Airport Operators); SD 1544-21-02 (concerning Domestic Air Carriers); EA 1546-21-01 (concerning Foreign Air Carriers); SD 1582/84-21-01 (concerning Surface Modes of Transportation).

<sup>m</sup>See TSA SD 1544-20-01H (adding Republic of India), EA 1546-20-01H.

<sup>n</sup>See TSA SD 1544-21-03 (requiring proof of full vaccination for specified passengers). All country-by-country COVID-19 international air travel restrictions were lifted for fully vaccinated noncitizen nonimmigrants. In place of the restrictions, noncitizen nonimmigrant passengers are to provide air carriers proof of full vaccination prior to boarding a U.S.-bound flight. Exceptions to this requirement are allowed for certain individuals such as those on diplomatic and official foreign government travel, children under 18 years of age, and persons unable to receive a COVID-19 vaccine due to medical contraindications.

<sup>o</sup>See TSA SD 1544-21-04 (restricting travel from Republic of Botswana, Kingdom of Eswatini, Kingdom of Lesotho, Republic of Malawi, Republic of Mozambique, Republic of Namibia, Republic of South Africa, Republic of Zimbabwe).

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## TSA Coordinated with Stakeholders on COVID-19 Security Directives

In developing and issuing its COVID-19 security directives, TSA generally coordinated with external stakeholders—including industry partners and other federal agencies. Due to the urgent nature of the COVID-19 pandemic and the time frames established in the executive actions, TSA told us they expedited this coordination to quickly issue the security directives. While industry stakeholders raised some issues with various

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aspects of the directives, such as how to implement the international security restrictions and concern for the safety of their workforce when implementing the face mask security directives, selected stakeholders we spoke with were broadly positive with regard to TSA's outreach and coordination efforts.

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## TSA Coordinated with Stakeholders

TSA officials stated that they conducted the required coordination activities, legal reviews, and documentation for creating security directives in accordance with its procedures and processes as set forth in TSA standard operating procedures. TSA officials also provided documentation related to TSA's coordination activities, such as agency outreach plans and logs of comments they received from industry stakeholders. TSA officials reported coordinating in an expedited manner, given the urgency of the COVID-19 situation and the time frames specified in the executive actions. According to TSA officials, under normal circumstances, the security directive development process can take up to several months for more broad-scoped worldwide directives. However, the time frames in the executive actions typically gave TSA less than a week to fully develop and issue the COVID-19 security directives.<sup>50</sup> To meet the expedited time frames, TSA primarily asked stakeholders to meet quick time lines to carry out coordination activities, including the sharing of information about the directives with, and obtaining input from industry and interagency stakeholders.

## Industry Stakeholders

Industry stakeholders we spoke with stated that TSA coordinated positively and effectively overall when issuing the COVID-19-related security directives. Specifically, TSA officials reached out to industry stakeholders or entities that TSA has regulatory authority over, including airlines, airports, and surface transportation operators. This outreach occurred through a series of conference calls and emails between TSA and the stakeholders. Through these calls and emails, TSA provided draft language in the directive for stakeholders to comment on and received

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<sup>50</sup>For the presidential proclamations imposing the international air travel restrictions, the timeframe for implementation varied from one to four calendar days from the time the proclamation was signed. The executive order requiring face masks on transportation systems, signed on January 21, 2021, required agencies to take immediate action, but did not set a specific implementation deadline. Executive Order 13998, *Promoting COVID-19 Safety in Domestic and International Travel*, 86 Fed. Reg. 7205 (Jan. 26, 2021); CDC subsequently issued an order on January 29, 2021, that established the specific requirements for wearing face masks on transportation systems and set the deadline for implementation as February 2, 2021. *Requirement for Persons to Wear Masks While on Conveyances and at Transportation Hubs*, 86 Fed. Reg. 8025 (February 3, 2021).



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responses from the stakeholders on concerns they had on the draft language. For example, when developing the international air travel restrictions, TSA spoke via conference calls with air carrier associations and their members as well as associations representing airport operators about the draft language. Sometimes TSA held multiple conversations with smaller groups of stakeholders to allow for more manageable feedback sessions.<sup>51</sup> Due to the scheduling challenges of holding conference calls with foreign carrier stakeholders in various time zones abroad, TSA also used its International Industry Representatives as direct liaisons to foreign carriers in seeking the carriers' feedback on the directives, as well as to respond to questions they may have.

Similarly, TSA officials stated that TSA also used its Principal Security Inspectors as direct liaisons to domestic air carriers in seeking feedback on directives as well as responding to inquiries that those carriers may have. The time TSA gave stakeholders to review and comment on the security directives was likewise accelerated as compared with normal circumstances as nine of the 21 regulated stakeholders we spoke with noted that they had less than 24 hours to comment.<sup>52</sup> TSA officials acknowledged that the time provided to stakeholders for comment was shortened for the COVID-19 security directives, due to the expedited implementation time frames mandated by the executive actions.

With regard to coordinating with surface transportation stakeholders for the face mask security directives, TSA reached out to regulated parties and their industry representatives, such as associations that represent specific types of transportation operators. Surface transportation operators told us that they provided any comments they had to industry associations that represent operators, such as the American Public Transportation Association, which helped coordinate and consolidate

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<sup>51</sup>According to TSA officials, the security directives were applicable to a total of 336 domestic and foreign air carriers worldwide.

<sup>52</sup>For this review, GAO met with a total of 26 industry stakeholders including individual operators, operator associations, and transportation sector labor associations. See App. I for a list of these stakeholders. The five labor associations are not considered regulated parties by TSA and were therefore not coordinated with prior to the release of the security directives. A "regulated party" is a party operating under a standard security program, Security Directive, or Emergency Amendment that is approved, accepted, or issued by TSA and is responsible for compliance under TSA regulations or the terms of the security directive. For example, an airport operator is a regulated party under 49 C.F.R. Part 1542. Given this, the total number of stakeholders that we spoke with that are "regulated" operators or associations that represent such operators and did coordinate with TSA is 21.

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operator input and comments before providing the input and comments to TSA headquarters officials.<sup>53</sup> Some operators stated that they also worked closely with local or regional TSA officials to obtain clarification about how to implement the directives.

For example, one stakeholder stated that they had questions about exactly when they should remove passengers who refused to comply with the face mask security directives and took those questions to the TSA regional security director for their region who helped clarify what the expectations were for the stakeholder. In addition to working through associations and TSA representatives at their local offices, TSA provided some operators that were also members of TSA's Surface Transportation Security Advisory Committee, a preview draft of the security directives. Those operators provided comments directly to TSA.<sup>54</sup>

TSA reached out to labor associations on the security directives after they were developed. According to TSA officials, in January 2021, they engaged labor associations and law enforcement partners to provide information on the face mask security directives. For example, TSA officials stated that FAA and TSA representatives held conference calls with aviation stakeholders, including labor associations, to discuss the face mask security directives and how to deal with potentially aggressive passengers. TSA representatives also attended a meeting hosted by DOT for surface transportation labor association representatives about the face mask security directives in the week following the directives' release. The five labor associations representing transportation workers that we spoke with stated that it has been a longstanding TSA practice not to coordinate with labor associations in the development of directives

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<sup>53</sup>According to TSA officials and our review of the comments received, of the 34 comments that TSA received from surface transportation system stakeholders on the face mask security directive, more than half were provided by industry associations representing surface transportation operators.

<sup>54</sup>The Surface Transportation Security Advisory Committee advises the TSA Administrator on surface transportation security matters, including the development, refinement, and implementation of policies, programs, initiatives, rulemakings and security directives pertaining to surface transportation security. Voting members consist of individuals representing each mode of surface transportation, such as passenger rail, freight rail, mass transit, pipelines, highways, over-the-road bus, school bus industry, and trucking. The committee operates in accordance with the provisions of the TSA Modernization Act, which was signed into law on October 3, 2018. Pub. L. No. 115-254, §1901, 132 Stat. 3186, 3542.

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or other security policies.<sup>55</sup> According to TSA officials, this is TSA's practice because TSA does not consider labor associations to be "regulated" parties. TSA officials further stated that it is the responsibility of the regulated party to share the contents of the security directives with their employees with a need to know, including pilots, flight attendants, and security officers.

## Interagency Stakeholders

As with the industry stakeholders, interagency stakeholders similarly reported timely and effective coordination by TSA during development of the security directives. Officials from CDC, DOT and its component agencies such as the FAA, and CBP all stated that TSA coordinated quickly and effectively with their agencies to ensure that their expertise and equities were considered and reflected in the security directives. This coordination happened through interagency forums such as the White House Coronavirus Taskforce, interagency conference calls, and by inviting other federal agencies to review and comment on draft security directives before they were finalized. For example, DOT officials stated that they worked with TSA in order to ensure that disability requirements were addressed appropriately with exemptions in accordance with federal regulations, a requirement that DOT must carry out under its statutory authority.<sup>56</sup> Additionally, when developing and coordinating on the face mask security directives, TSA waited for the final CDC order before finalizing the security directives to ensure consistency. According to TSA officials, TSA made some changes to its draft directives based on the final CDC order, such as modifying the language for medical exemptions, which was broader than TSA's original language.

Officials from DOT and its component agencies stated that they were also included and participated in TSA outreach efforts to industry stakeholders about the face mask requirement and also provided additional resources and information to operators to support effective implementation. For example, DOT officials stated that they participated in conference calls with TSA to discuss implementation with operators and to answer questions. These calls included meetings with surface transportation and aviation operators in the week leading up to implementation and the week

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<sup>55</sup>Officials from the five labor associations we met with stated that TSA did not consult with them during the development of the COVID-19 directives. However, the officials told us TSA did brief them on the directives after they were finalized.

<sup>56</sup>Under 14 C.F.R. pt. 382, DOT has regulatory authority for monitoring and enforcing federal requirements for ensuring the nondiscrimination of travelers based on disability in air travel. 49 U.S.C. § 41705(a).

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after. DOT officials participated in calls with operators to update operators on revisions to the face mask security directive.<sup>57</sup>

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## Industry Stakeholders Raised Some Implementation Issues with COVID-19 Security Directives

### International Air Travel Restrictions

For the security directives on international air travel restriction and testing requirements, TSA received 273 comments from 117 airline associations and operators.<sup>58</sup> Of those comments, about half (145 out of 273 comments) were confirming receipt of the security directives, as required by TSA, and did not raise any substantive issues. Of the remaining 128 comments, 103 asked clarifying questions about how to implement the requirements. For example, nine stakeholders asked about the applicability of the security directives to pilots and crewmembers who had traveled to restricted locations in the previous 14 days. TSA clarified that working and commuting crewmembers would be exempt from the travel restrictions, regardless of which carrier they are travelling on, but that crewmembers who are on personal travel would not.

### Face Mask Security Directives

For the face mask security directives, TSA received and addressed comments from both aviation and surface transportation operators and their related associations about a variety of issues. While there were distinct issues highlighted by operators, there were also requests for

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<sup>57</sup>In addition to participating in calls with operators, DOT component agencies also issued additional information to operators within their respective transportation modes on how to implement the requirement. For example, DOT component agencies such as the Federal Transit Administration, Federal Railroad Administration, and Federal Motor Carrier Safety Administration, provided a list of frequently asked questions and answers to common questions specific to the different transportation modes. DOT also created a “Mask Up Toolkit” website to provide information on the face mask security directives as well as other resources such as templates for signs and other media for operators to use to increase public awareness of and compliance with the requirement. DEPT. OF TRANSPORTATION, MASK UP TOOLKIT, (last updated Thursday, March 18, 2021), <https://www.transportation.gov/mask-up/tool-kit>.

<sup>58</sup>In November 2019, TSA instituted a process to formally track and document input and comments received from stakeholders on reviews of security directives. As this process was implemented just before the COVID-19-related security directives began to be issued in January 2020, counts of comments for prior security directives are not available for comparison. According to TSA officials, the security directives applied to 336 foreign and U.S. air carriers worldwide.

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clarifications on implementation that TSA made through the coordination process. For example, one operator asked TSA to clarify language such as TSA's expectations for operators to remove persons who refuse to wear a mask at the "earliest opportunity." TSA officials responded to this comment by leaving it up to the operator to determine, stating that they expect owners and operators "will develop appropriate procedures to disembark passengers at a safe and appropriate location." TSA also created a "Frequently Asked Questions" document to provide information on the face mask security directives to address stakeholder questions. According to TSA officials, TSA also hosted weekly conference calls with aviation system stakeholders to provide additional information and clarification as needed.

Twenty-one of 26 stakeholders we spoke with stated that TSA coordinated with them in a positive and effective manner when issuing the face mask security directives.<sup>59</sup> For example, all of these stakeholders stated that despite the tight time frames, TSA was responsive to their comments and questions regarding the directives. Further, one stakeholder specifically noted that TSA was broadly inclusive of a diverse set of stakeholders and worked hard to reach out to as many stakeholders as possible.

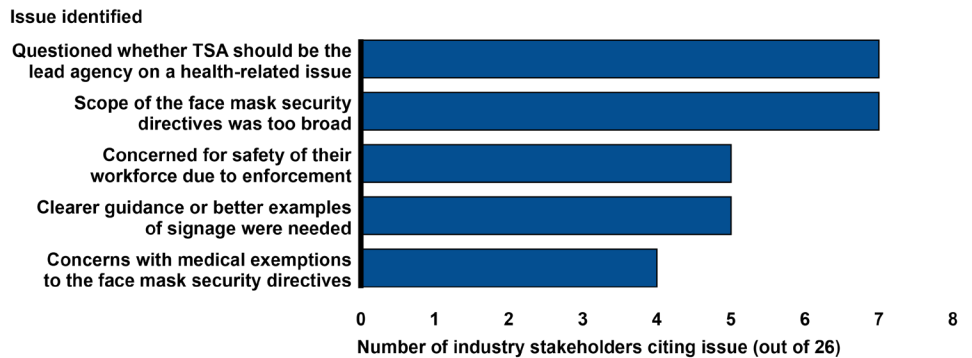
#### Issues Raised by Industry Stakeholders

Many of the stakeholders we spoke with told us that they had identified several key issues with the directives and raised them with TSA (See Figure 3).

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<sup>59</sup>To identify and understand key industry stakeholder concerns or issues related to the face mask security directives, we interviewed 26 industry stakeholders including individual operators, operator associations, and transportation sector labor associations.

**Figure 3: Issues Concerning the Transportation Security Administration’s (TSA) Face Mask Security Directives That Selected Industry Stakeholders Raised to GAO**



Source: GAO. | GAO-22-104583

Note: This figure reflects the number of industry stakeholders that raised particular issues to GAO regarding TSA’s face mask directives. For this analysis, GAO met with 26 industry stakeholders including individual operators, operator associations, and transportation sector labor associations.

### TSA’s Authority Regarding Health-Related Issues

Just over one-fourth (seven of 26) of stakeholders we spoke with questioned whether TSA should have the authority to be the lead agency on a COVID-19-related requirement because COVID-19 was a health concern and did not directly relate to TSA’s security-focused mission and authorities. TSA responded by explaining that the ATSA provides it broad authority to regulate transportation systems, including taking actions to address threats such as the introduction or spread of a communicable disease through transportation systems. Further, on January 27, 2021, the Acting Secretary of Homeland Security released a determination of national emergency for the COVID-19 pandemic and directed TSA to use its authority to address the COVID-19 threat to transportation, recognizing that such a threat may involve passenger and employee safety.<sup>60</sup>

### Scope of the Face Mask Security Directives

Just over one-fourth (seven of 26) of stakeholders we spoke with raised issues related to the scope of the face mask security directive as they

<sup>60</sup>DEPARTMENT OF HOMELAND SECURITY, DETERMINATION OF A NATIONAL EMERGENCY REQUIRING ACTIONS TO PROTECT THE SAFETY OF AMERICANS USING AND EMPLOYED BY THE TRANSPORTATION SYSTEM, (2021), [https://www.dhs.gov/sites/default/files/publications/21\\_0130\\_as1\\_determination-national-emergency.pdf](https://www.dhs.gov/sites/default/files/publications/21_0130_as1_determination-national-emergency.pdf).

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pertain to workspaces. For example, one stakeholder stated that the initial interpretation of the directives was that employees were required to wear a mask alone in their office or while working outside away from other people, which some industry stakeholders felt was broader than the CDC guidance. As a result of the feedback, TSA updated its Frequently Asked Questions document to clarify that employees who were alone in enclosed offices could remove their masks.

### **Workforce Safety**

Just under one fifth (five of 26) of stakeholders we spoke with expressed concerns with workforce safety. They stated that employees, such as bus drivers, train conductors, flight attendants, and public transportation station managers, do not always have timely access to security officers for assistance in case a passenger becomes belligerent when asked to comply with the face mask security directives. Therefore, the stakeholders were concerned about employee physical safety when confronting noncompliant passengers who may become belligerent. TSA stressed that the objective of the security directives is to gain compliance from passengers in wearing masks, not to take punitive enforcement action against noncompliant passengers without escalation. TSA further explained that if a passenger refuses to comply, the operators' employees should make their "best effort" to remove the passenger. If the passenger continues to refuse, the operators should report this to TSA, and TSA will ensure that appropriate consequences are levied. According to stakeholders, they worked with TSA on a case-by-case basis to clarify the meaning of "best efforts" and generally came to the understanding that the passenger should be removed at the judgement of the operator when it is safe and practical to do so.

### **Guidance and Signage**

Just under one fifth (five of 26) of stakeholders we spoke with stated that they would have liked to receive better guidance and signage from TSA prior to the release of the directives. For example, stakeholders stated that TSA's communications guidance and signage were too vague to properly inform the public that the face mask security directives were a federal requirement. In response, according to TSA officials, TSA revised its sample signage and updated the Frequently Asked Questions guidance to better clarify some of the language.

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### Medical Exemptions to the Face Mask Security Directives

Four out of 26 stakeholders we spoke with stated that the medical exemptions to the face mask security directives were too lenient and that many aviation stakeholders had stricter requirements for granting exemptions. One stakeholder stated that they did not understand which exemptions qualified. TSA responded that it developed the exemptions language to be consistent with CDC guidance and DOT feedback and to ensure that federal disability requirements were met.<sup>61</sup>

According to the stakeholders we spoke with, TSA's responses to the concerns raised by associations and operators were generally accepted by the stakeholders and they were satisfied by the efforts TSA made. Further, in some instances, such as with the medical exemption concerns, stakeholders stated that they also understood that TSA was implementing CDC guidance and did not have the sole authority to make changes. With this understanding, stakeholders were generally positive when speaking about TSA's coordination.

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### TSA Took Steps to Ensure Implementation of the Directives and, with FAA, Supported Investigations of Unruly Non-Masked Passengers

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#### TSA Used Inspections and Observations to Ensure Operator Implementation of COVID-19 Directives

TSA took steps to monitor and ensure implementation of the directives by transportation system operators and to work with them on areas needing improvement. It did so using in-person inspections of air carriers for their implementation of the security directives for international air travel

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<sup>61</sup>Additionally, according to TSA officials, the Department of Justice advised TSA that any exemptions to the mandate be narrowly construed. TSA officials said TSA followed that guidance.



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restrictions and TSA inspector observations of operator implementation of the security directives.

## In-person Inspections

For the security directives restricting international air travel, TSA incorporated steps into existing in-person inspections of air carrier operations for flights to the U.S. from foreign airports.<sup>62</sup> According to TSA officials, since the security directives went into effect, inspectors have been observing carrier processes to confirm that they comply with the requirements of the security directives, such as reviewing passenger travel histories, conducting health screenings, and denying boarding to passengers that fail a health screening or have a high risk of exposure to COVID-19. TSA officials stated that since the first security directives restricting international air travel went into effect in February 2020, a total of 198 carrier inspections had been completed as of September 2021. Of those inspections, six identified what TSA officials described as minor deficiencies specific to the COVID-19 security directives, such as carrier personnel not asking the correct questions of passengers to determine recent travel histories. In those instances, TSA officials reported that TSA inspectors provided on-the-spot corrective counseling to the personnel.<sup>63</sup>

## In-person Observations

In implementing the face mask security directives, operators are required to provide notice to passengers and employees of the requirement and the potential penalties for not wearing a face mask.<sup>64</sup> To assist operators with this, TSA developed signage templates that operators can adapt and

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<sup>62</sup>Consistent with the ATSA and in accordance with existing statutory requirements (49 U.S.C. § 114 (2021)), TSA is to conduct inspections of U.S. air carriers and foreign air carriers servicing the U.S. from foreign airports to ensure that they meet applicable security requirements. During an air carrier inspection, inspectors are to review applicable security manuals, procedures, and records; interview air carrier station personnel; and observe air carrier employees processing passengers from at least one flight from passenger check-in until the flight departs the gate to ensure that the air carrier is compliant with applicable requirements.

<sup>63</sup>For passengers, compliance with the international air travel restrictions is monitored by CBP from the time passengers begin the travel process through the time they apply for admission or entry into the United States. In June 2021, we reported on CBP's processes for this monitoring. See [GAO-21-431](#).

<sup>64</sup>See SD 1542-21-01 (concerning Airport Operators); SD 1544-21-01 (concerning Domestic Air Carriers); EA 1546-21-01 (concerning Foreign Air Carriers); SD 1582/84-21-01 (concerning Surface Modes of Transportation). According to TSA's security directives, operators are to provide prominent and adequate notice that federal law requires wearing a mask and that failure to comply may result in denial of boarding or removal. In addition, the notice is to state that refusing to wear a mask is a violation of federal law and could result in penalties. The directives also state that such notice is to be provided by the operators, at a minimum, when passengers purchase tickets or book transportation and after passengers have been boarded.

use in their own systems and facilities. According to TSA officials, TSA does not conduct inspections specifically to confirm operator compliance with the requirements of the face mask security directives, such as providing adequate signage. However, if a TSA inspector happens to be on an operator's conveyance or at an operator's facility and observes deficient signage, the inspector is to counsel the operator on improvements. See figure 4 for an example of TSA face mask signage at an airport security checkpoint.

**Figure 4: Examples of the Transportation Security Administration's Face Mask Security Directive Signage at Airport Security Checkpoints**



Source: GAO. | GAO-22-104583

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## TSA and the FAA Investigated Incidents of Unruly Non-Masked Passengers

Both TSA and the FAA have investigated incidents of passengers who become threatening or physically aggressive when asked to comply with the face mask security directive. TSA investigates incidents across all transportation systems, while the FAA investigates incidents with air carriers to combat unruly passengers.<sup>65</sup> Specifically, TSA investigates violations of the security directives, while the FAA investigates incidents regarding flight safety and interference with flight crew.

### TSA Investigations

In addition to requirements for signage and notification to passengers about face mask requirements, TSA's face mask security directive mandates that operators establish procedures to manage passengers who refuse to comply with the requirement.<sup>66</sup> According to the security directive, such procedures are to include processes for the operator to deny boarding to or disembark passengers who refuse to wear masks, even when prompted or asked, and remove them from transportation hubs or facilities, such as stations and terminals. According to TSA officials, this approach is intended to give non-masked passengers an opportunity to comply without operators immediately initiating punitive actions or sanctions.

For passengers who continue to refuse to comply with the face mask security directives and become disruptive or aggressive toward the operator or others, TSA investigates and pursues more punitive action against such passengers, as warranted. For example, TSA's security directive for surface transportation systems requires operators to report incidents involving passengers who escalate their refusal to comply to the point that they create a significant security concern, such as assaulting,

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<sup>65</sup>Under 49 U.S.C. § 46318, An individual who physically or sexually assaults or threatens to physically or sexually assault a member of the flight crew or cabin crew of a civil aircraft or any other individual on the aircraft, or takes any action that poses an imminent threat to the safety of the aircraft or other individuals on the aircraft is liable to the United States Government for a civil penalty of not more than \$35,000. See also 49 U.S.C. § 46504 (providing possibility of fine or imprisonment for passengers who interfere with flight crew member or flight attendant of the aircraft).

<sup>66</sup>See SD 1542-21-01 (concerning Airport Operators); SD 1544-21-01 (concerning Domestic Air Carriers); EA 1546-21-01 (concerning Foreign Air Carriers); SD 1582/84-21-01 (concerning Surface Modes of Transportation).

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interfering with, or threatening a transportation worker.<sup>67</sup> TSA's security directives for the aviation system (air carrier and airport operators) require the operators to report any incident in which an individual refuses to comply with the face mask requirement.<sup>68</sup> Once an operator makes a report to TSA and, if the report contains sufficient information about the disruptive individual involved, a TSA inspector investigates.<sup>69</sup>

TSA has issued warning notices and civil penalty fines against passengers once TSA has determined that enforcement action is warranted but began using only civil penalties against such passengers in September 2021. From the initial implementation of the security directive in February 2021, TSA officials stated that while the agency typically gave warning notices to first-time offenders, it utilized its ability to assess civil penalties against individuals who met certain aggravating factors, such as repeat offenders who could be assessed civil penalties of up to \$1,500. However, due to continued noncompliance by some passengers with the face mask requirement, in September 2021, TSA expanded the list of aggravating factors that qualify a violator 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. TSA also increased the penalties, with first-time

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<sup>67</sup>See SD 1582/84-21-01 (concerning Surface Modes of Transportation). These incident reports are to be made to the Transportation Security Operation Center, which serves as TSA's coordination center for transportation security incidents and operations. The center's functions include incident management, coordination, and situational awareness for all modes of transportation.

<sup>68</sup>See SD 1542-21-01 (concerning Airport Operators); SD 1544-21-01 (concerning Domestic Air Carriers); EA 1546-21-01 (concerning Foreign Air Carriers).

<sup>69</sup>According to TSA officials, because TSA investigates incidents caused by individuals, if an individual's identity is not reported and cannot be subsequently determined, TSA is unable to proceed with an investigation into an incident. TSA officials stated that the lack of identification of disruptive passengers is most prevalent for reports made by surface transportation operators (e.g., public transit, passenger rail, intercity bus) who, unlike air carriers, typically do not require identification or other personal identifying information of passengers when paying a fare or purchasing a ticket for travel. TSA officials stated that they are considering ways to help improve incident reporting by operators. For example, on November 1, 2021, TSA issued an information circular to airport and air carrier operators that details the type of information needed by TSA to carry out an investigation and best practices for obtaining needed information, such as from witnesses to incidents. Officials stated that they are also looking at approaches to help enhance incident reporting for surface transportation operators, but stated that given the variety of modes within the surface transportation system and their operation practices, identifying solutions has been more challenging and was still in process as of January 2022.

offenders being assessed civil penalties of \$500 to \$1,000, while repeat offenders could face up to \$3,000 in civil penalties.

Of the incidents that TSA investigated and for which it took enforcement actions, most involved passengers onboard aircraft. For example, according to TSA data, from February 2, 2021, through March 7, 2022, incidents occurring onboard aircraft represented 88 percent of the 3,815 total incidents investigated. Similarly, 88 percent of TSA’s enforcement actions for passengers who refused to wear a face mask were also for incidents onboard aircraft. Of the 3,631 enforcement actions taken by TSA, 75 percent (2,709) were warning notices while 25 percent (922) were civil penalty assessments (see table 1).<sup>70</sup>

**Table 1: Transportation Security Administration (TSA) Investigations and Enforcement Actions against Individuals Causing a Security Incident Related to the Face Mask Security Directives, from February 2, 2021, to March 7, 2022**

	Incidents investigated by TSA	No enforcement action	Warning notice	Civil penalty	Total recommended civil penalties	Average civil penalty
<i>Airport checkpoint</i>	38	0	20	18	<b>\$57,065</b>	\$3,170
<i>Airport premises</i>	246	13	160	72	<b>\$57,795</b>	\$803
<i>Onboard aircraft</i>	3,355	159	2,406	788	<b>\$501,388</b>	\$636
<i>Surface transportation<sup>a</sup></i>	176	8	123	44	<b>\$28,150</b>	\$640
<b>Total</b>	<b>3,815<sup>b</sup></b>	<b>180</b>	<b>2,709</b>	<b>922</b>	<b>\$644,398<sup>c</sup></b>	<b>\$699</b>

Source: GAO analysis of TSA data. | GAO-22-104583

<sup>a</sup>Includes passenger rail, intercity bus, and public transit operators.

<sup>b</sup>This number reflects the total number of investigations into incidents related to the face mask directive that TSA completed as of March 7, 2022. The total number of incidents reported to TSA by transportation operators as of March 7, 2022 is 7,008. According to TSA officials, enforcement action determinations for four completed investigations were still in process and are not reflected in these data. TSA officials stated that they are considering ways to help improve incident reporting by operators. For example, on November 1, 2021, TSA issued an information circular for aviation transportation operators that details the type of information needed for an investigation and best practices for obtaining information, such as from witnesses to incidents.

<sup>c</sup>According to TSA officials, collection and processing of the civil penalties are managed on behalf of TSA by the U.S. Coast Guard’s Financial Center. The Financial Center is a unit within the Coast Guard that provides professional financial, systems, and business services to multiple components within the Department of Homeland Security. Consequently, TSA does not collect the fines and does not have any direct knowledge of payment.

<sup>70</sup>In approximately 5 percent of the investigations completed, TSA took no enforcement action. According to TSA officials, no enforcement actions are taken if the investigation does not find sufficient information to confirm that a violation occurred as reported.

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## FAA Investigations

For air carrier operators, the FAA receives and investigates reports of incidents of passengers who become unruly. According to FAA officials, in 2021, many of those reports involved passengers who become unruly after being asked repeatedly to wear a face mask onboard an aircraft, in accordance with federal requirements.<sup>71</sup> According to the FAA, such behavior can threaten the safety of the flight by disrupting or distracting the aircraft crew from carrying out their safety duties. FAA officials stated that while the FAA does not enforce TSA's face mask security directive, air carrier crews have reported incidents to the FAA about passengers who interfere with crewmember duties as a result of repeatedly ignoring crewmembers' directions, as well as passengers who become aggressive toward crewmembers such as when asked to comply with the directive, sometimes to the point of threatening or assaulting a crewmember.<sup>72</sup>

Under the FAA Special Emphasis Enforcement Program initiated January 13, 2021, the FAA has pursued civil penalties against a passenger if their behavior was determined to violate specific federal regulations or statutes aimed at unruly passengers.<sup>73</sup> In the past, the FAA addressed unruly passenger conduct with a variety of actions including counseling or warning notices as well as civil penalties. However, under the Special Emphasis Enforcement Program, the FAA instituted what it called a "zero-tolerance" policy in which it would take civil penalty action against all such

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<sup>71</sup>The FAA conducts investigations into incidents of unruly passengers who interfere with, physically assault, or threaten to physically assault aircraft crew or others on commercial aircraft or refuse to follow safety or other federal regulations. These investigations are carried out by the FAA to enforce Federal Aviation Regulations 14 C.F.R. §§91.11, 121.580 and 135.120 which state that "no person may assault, threaten, intimidate, or interfere with a crewmember in the performance of the crewmember's duties aboard an aircraft being operated." 14 C.F.R. § 91.11.

<sup>72</sup>Under the FAA's processes, such incidents can be reported directly to the FAA or through the respective air carrier programs by the crewmembers involved in the incident. Other examples cited by the FAA of unruly passenger behavior include passengers refusing to stay seated and walking through the cabin while the "fasten seatbelt" sign was on; making threats to or assaulting other passengers or crewmembers; and consuming alcoholic beverages that the passenger brought themselves for consumption onboard, which is against FAA regulations.

<sup>73</sup>See 14 C.F.R. §§ 91.11, 121.580, 135.120.

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passengers.<sup>74</sup> According to FAA officials, in addition to the enforcement actions the FAA can take itself, the FAA can refer unruly passenger incidents that appear to involve criminal conduct to the Federal Bureau of Investigation for possible criminal investigation.

The number of unruly passenger incidents reported to and investigations conducted by the FAA in 2021 increased significantly as compared with prior years. According to FAA data, for calendar year 2021, air carriers reported nearly 6,000 incidents of unruly passengers, of which 72 percent involved passengers whose unruly behavior was due, at least in part, to the face mask security directives. By comparison, FAA officials stated that between calendar years 2018 and 2020, air carriers reported an average of 1,462 unruly passenger incidents a year to the FAA. As of November 1, 2021, the FAA reported that it had completed investigations into 449 passengers for unruly behavior for calendar year 2021. By comparison, for calendar years 1995 through 2020, the FAA initiated an average of 175 such investigations each year.

Of its completed unruly passenger investigations, the FAA reported taking enforcement action against some passengers. For example, of the 449 passengers investigated as of November 1, 2021, the FAA reported that it had issued warnings or assessed civil penalties against 53 passengers.<sup>75</sup> FAA officials reported that the FAA had also initiated hundreds of other civil penalty actions that are in process and had referred 37 passengers to the Federal Bureau of Investigation for potential criminal investigation. FAA officials stated that this was unprecedented, compared with past

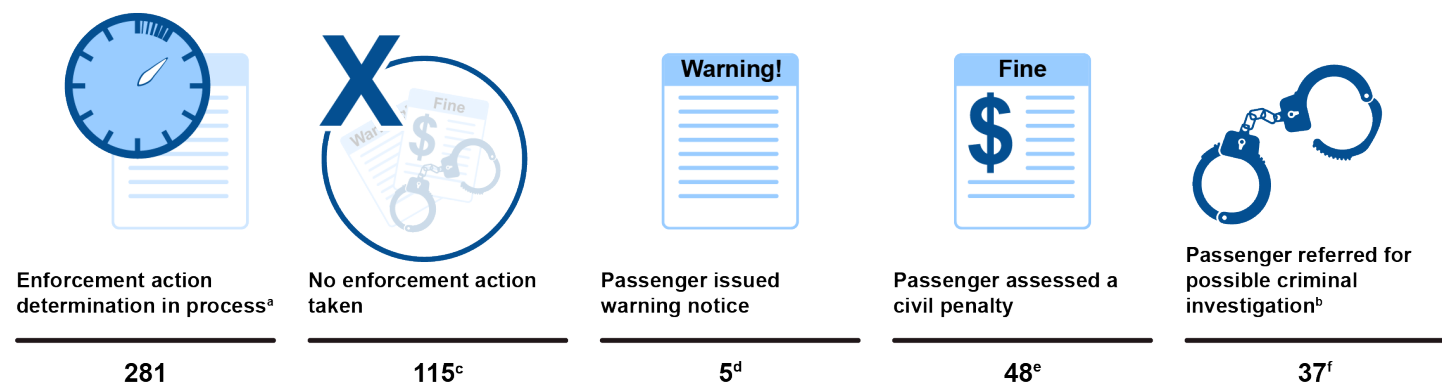
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<sup>74</sup>The FAA announced the “zero tolerance” policy on January 13, 2021 and it went into effect the same day. U.S. Dept. of Transp., Fed. Aviation Admin., Order 2150.3C CHG 4, (2021). According to the FAA, the policy was in response to the increase in incidents of passengers disrupting flights with threatening or violent behavior, some of which reportedly stemmed from passenger refusals to wear face masks. Fed. Aviation Admin., *Zero Tolerance for Unruly and Dangerous Behavior Toolkit*, (last edited November 4, 2021), [https://www.faa.gov/data\\_research/passengers\\_cargo/unruly\\_passengers/toolkit/](https://www.faa.gov/data_research/passengers_cargo/unruly_passengers/toolkit/). According to air carrier industry associations we met with, air carriers implemented face mask requirements for passengers prior to February 2021 when TSA’s face mask security directives went into effect.

<sup>75</sup>According to the FAA, it proposed over \$1 million in civil penalties against unruly passengers in 2021. As of November 2021, many of the civil penalty cases are still in process or awaiting a hearing before the DOT’s Office of Hearings. In those instances, a final penalty amount has not yet been assessed. As of November 2021, the total value of civil penalties imposed for cases that have been settled or otherwise adjudicated and considered final was \$549,375. FAA officials stated that most of the warning notices were issued for incidents that occurred before the FAA started its Special Emphasis Enforcement Program in January 2021.

years.<sup>76</sup> FAA officials stated that no enforcement action was taken for 115 passengers, due to a lack of sufficient evidence to proceed with a case and that the FAA was in the process of assessing civil penalties or determining the appropriate enforcement action for 281 passengers (see fig. 5).

**Figure 5: Outcomes of Completed Federal Aviation Administration (FAA) Investigations into Unruly Passengers, as of November 1, 2021**



Source: GAO analysis of FAA data. | GAO-22-104583

Note: According to the FAA, as of November 1, 2021, the total number of passengers for which it had completed an investigation for unruly behavior was 449.

<sup>a</sup>This number includes investigations for which the FAA is in the process of taking civil penalty action.

<sup>b</sup>According to the FAA, these referrals are made to the Federal Bureau of Investigation’s Civil Aviation Security Program and are not exclusive of other enforcement action that may be taken by the FAA.

<sup>c</sup>This number includes one passenger that the FAA was unable to locate and for which the FAA subsequently closed the case without further action.

<sup>d</sup>According to the FAA, most of the warning notices were issued for incidents that occurred before the FAA began its Special Emphasis Enforcement Program in January 2021. Under that program, the FAA instituted a “zero-tolerance” policy in which it would take civil penalty action against unruly passengers. Previously, the FAA addressed unruly passenger conduct with a variety of actions including counseling or warning notices to passengers.

<sup>e</sup>According to the FAA, over \$1 million in civil penalties has been proposed against unruly passengers in 2021. As of November 2021, many of the civil penalty cases are still in process or awaiting a hearing before the Department of Transportation’s Office of Hearings. In those instances, a final penalty amount has not yet been assessed. As of November 2021, the total value of penalties imposed for cases that have been settled or otherwise adjudicated and considered final was \$549,375.

<sup>f</sup>Of these, six have also been assessed a civil penalty by the FAA.

<sup>76</sup>For example, FAA officials stated that no criminal referrals of unruly passengers were made in 2019.



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## TSA and FAA Information Sharing for Investigations

According to TSA and FAA officials, TSA and the FAA have processes in place to facilitate information sharing concerning incidents and the investigations conducted into them. For example, TSA officials stated that they have formalized a process by which TSA inspectors conducting investigations into face mask related incidents in the aviation system are to actively share with their FAA investigative counterparts any information they have obtained on an incident and the individual involved. The FAA can then use the information to pursue investigations under the FAA's respective authorities to ensure aviation safety and take enforcement action as appropriate. TSA has also issued guidance to its inspectors directing them to coordinate with their FAA investigative counterparts on incident investigations that may also involve violations of FAA regulations, such as those against interfering with a flight crew, to determine whether one or both agencies should proceed with enforcement actions. FAA officials also stated that there is coordination in the field between FAA investigators and TSA inspectors who carry out the investigations.

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## Operator and Industry Stakeholder Observations on TSA's Face Mask Security Directives and Their Implementation

Operators and industry stakeholders we met with noted that TSA's face mask security directives were largely consistent with existing face mask requirements and helped strengthen and harmonize messaging to the public about the importance and enforcement of those directives. According to most operators and industry stakeholder associations we met with, as they or most of their members had already implemented face mask requirements for their respective operations in 2020, implementation of TSA's security directive generally required minimal changes. These changes involved revising signage and notices to reflect that face masks were now also a federal requirement and subject to federal enforcement. The operator stakeholders we met with stated that the directive was helpful overall in providing a nationwide standard for baseline face mask requirements and in providing a federal endorsement of sorts of existing face mask requirements. In addition, one industry association representing bus operators indicated that even though some of its charter bus members were not required to follow the directive, they did so anyway to encourage mask wearing among its passengers.

While industry stakeholders told us that they were supportive of TSA's face mask security directives and the importance of ensuring passenger compliance, they raised concerns about the level of aggressive opposition they and their employees face from some passengers over the requirement. For example, multiple industry stakeholders we met with, such as labor associations that represent transportation workers, stated that because violence by passengers against workers enforcing the face mask security directive remains elevated, particularly onboard aircraft,

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more needs to be done to prevent and protect workers against such violence. Some industry stakeholders also suggested specific additional actions that TSA or other federal agencies could take to more directly respond to aggressive passengers, such as increasing the number of Federal Air Marshals on flights, developing a “do not fly” or “do not drive” list of known aggressive passengers, and providing additional criminal prosecution of passengers by the Department of Justice.

TSA officials stated that they have taken additional steps to better support transportation workers against violence and further encourage compliance by passengers with the face mask security directives. For example, TSA officials stated that in July 2021, TSA restarted a voluntary self-defense training course for crewmembers of domestic air carriers on how to respond to potential physical altercations both on and off aircraft.<sup>77</sup> In October 2021, TSA officials stated that since restarting the program, 400 air carrier crewmembers had completed the training.

TSA officials stated that they have also made adjustments in their enforcement approach. For example, they broadened the aggravating factors that a TSA inspector could consider when investigating an incident and determining the appropriate penalty.<sup>78</sup> In addition to any enforcement actions that might be taken against individuals for noncompliance with the face mask security directives, TSA officials stated that TSA protocols disqualify individuals who are subject to such enforcement actions from participating in TSA’s PreCheck® program.<sup>79</sup> TSA has also established a memorandum of understanding with the FAA for a process to obtain information on passengers whom the FAA has issued civil penalties against for unruly passenger conduct, such as interfering with a flight crew, so that those passengers can also be disqualified for PreCheck privileges. In addition, TSA will assist the FAA in identifying current addresses for passengers suspected of engaging in interference with the flight crew, if the passenger has also applied to the TSA PreCheck

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<sup>77</sup>According to TSA officials, this four-hour training program has been in place since 2004, and was paused in 2020 due to COVID-19 restrictions. The training is provided at locations around the country by the Federal Air Marshals who teach crewmembers techniques for deescalating and defending themselves against attacks.

<sup>78</sup>An example of an aggravating factor is when an individual has already been subject to an enforcement action for a previous violation.

<sup>79</sup>TSA’s PreCheck program provides previously vetted individuals with expedited security screening when passing through an airport security checkpoint. According to TSA PreCheck protocols, individuals found in violation of 49 C.F.R. § 1540.105(a)(1) can be disqualified from participating in the PreCheck program.

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Program or to other TSA-run programs. According to TSA officials, this will help the FAA initiate the civil penalty process for persons whom it may otherwise be unable to locate, due to lack of address information.

Beyond those efforts, TSA officials noted that TSA enforcement authorities are limited. Specifically, TSA is principally responsible for transportation security, whereas the FAA is responsible for flight safety and has issued regulations and requirements regarding interference with flight crew, although these authorities overlap and intersect. Consequently, TSA investigates violations of the security directives and takes appropriate action consistent with TSA enforcement policies and procedures, while the FAA pursues enforcement action regarding flight safety and interference with flight crew. If a violation solely involves interference with the flight crew and does not involve compliance with the face mask security directive, TSA officials stated that only the FAA investigates and pursues enforcement, including any referrals to the Department of Justice for potential criminal investigation. TSA officials also noted that violation of the face mask security directives is not a crime by itself but, in matters where a crime has also occurred during a violation of the directives, TSA will support the Department of Justice.

Some operators also indicated that TSA does not keep them informed on the status of security incidents they have reported. Specifically, three of 10 operators we met with stated that they have not heard from TSA about the outcomes of any investigations into their reports about security incidents or concerns caused by passengers refusing to comply with the face mask security directive, such as whether TSA took action against the passengers. The operators told us that having such information would provide better awareness of the usefulness of their reports to TSA and the enforcement actions TSA has taken, if any. The operators also noted that such information may help build transportation workers' confidence that TSA supports them in their enforcement and that reports to TSA about such incidents are taken seriously.

TSA officials acknowledged that they do not share outcomes of specific face mask security incident investigations with operators due to legal and technical limitations, but make efforts to share aggregated information on enforcement activity when possible. TSA officials stated that because the subjects of these investigations are individuals, there are privacy protections that limit TSA's ability to share specific case information or

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outcomes, even with the operator that reported a particular individual.<sup>80</sup> In addition, the entry fields for TSA's database system to record violations of TSA security regulations do not link investigations of face mask-related security incidents to a specific operator.<sup>81</sup> TSA officials stated that while mention of an operator's identity may be made in free-form narrative entry fields in TSA's database system, compiling information about specific investigations to share with specific operators would be a labor-intensive process of manually reviewing investigation report entries to search and separate out investigations by operator. TSA officials noted that while they do not share incident-specific information or outcomes, they meet with some operator stakeholder groups, such as air carriers, on a regular basis and use the opportunities to share aggregated counts with the operators. These counts may include the total number of incidents reported, investigations ongoing and completed, and the enforcement actions taken to date.

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## Agency Comments

We provided a draft of this report to DHS and DOT for review and comment. DHS and DOT did not provide formal written comments, but did provide technical comments, which we incorporated as appropriate.

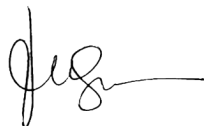
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<sup>80</sup>Under the Privacy Act (5 U.S.C. § 552a(b)), in general an agency may not disclose any records about an individual maintained in a system of records without that individual's written consent. According to TSA officials, there are exceptions to that general rule when appropriate to address a threat or potential threat to transportation security or national security or when required for administrative purposes related to the effective and efficient administration of transportation security laws. Therefore, TSA would be permitted to share specific case information or investigation outcomes with an operator, regardless of whether an operator made the initial incident report to TSA.

<sup>81</sup>This database is known as the Performance and Results Information System (PARIS) and is the system that TSA uses to capture reports of violations of TSA security regulations as well as details of outreach, inspection, incident, and investigation records.

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We are sending copies of this report to the appropriate congressional committees, the Secretary of Homeland Security, and other interested parties. In addition, the report is available at no charge on the GAO website at <https://www.gao.gov/>. If you or your staff have any questions, please contact me at (202) 512-8461 or [shermant@gao.gov](mailto:shermant@gao.gov). Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. GAO staff who made significant contributions to this report are listed in appendix II.



Tina Won Sherman  
Director,  
Homeland Security and Justice

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# Appendix I: List of Transportation Industry Stakeholders Interviewed

We interviewed 26 transportation industry stakeholders to obtain the perspectives on the Transportation Security Administration’s efforts to coordinate and understand concerns or issues related to COVID-19 security directives. The table below lists those stakeholders.

**Table 2: Transportation Industry Stakeholders GAO Interviewed**

<b>Stakeholder</b>	<b>Type of stakeholder</b>
<b>Transportation operators</b>	
Delta Air Lines	U.S. air carrier
United Airlines	U.S. air carrier
British Airways	Foreign air carrier
Korean Air	Foreign air carrier
Miami International Airport	Airport operator
Seattle-Tacoma International Airport	Airport operator
Coach USA	Intercity bus operator
Greyhound Lines	Intercity bus operator
Washington Metropolitan Area Transit Authority	Public transit operator
Amtrak	Passenger rail operator
Metra (Chicago)	Passenger rail operator
<b>Transportation labor associations</b>	
Air Line Pilots Association, International	Labor association
Association of Flight Attendants	Labor association
Coalition of Airline Pilots Associations	Labor association
Transport Workers Union of America	Labor association
Airport Law Enforcement Agencies Network <sup>a</sup>	Airport law enforcement association
<b>Transportation operator associations</b>	
Association of American Railroads	Railroad operator association
American Bus Association	Bus operator association
United Motorcoach Association	Bus operator association
American Public Transportation Association	Public transportation operator association
Airlines for America	U.S. air carrier association
National Air Carrier Association	U.S. air carrier association
Regional Airline Association	U.S. air carrier association
American Association of Airport Executives	Airport operator association
Airports Council International-North America	Airport operator association
International Air Transport Association	International air carrier association

Source: GAO. | GAO-22-104583



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**Appendix I: List of Transportation Industry  
Stakeholders Interviewed**

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<sup>a</sup>The Airport Law Enforcement Agencies Network is an association that represents agencies that provide law enforcement at airports. Given that they do not operate a transportation system, we classified them as a labor association for the purpose of our analysis.

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# Appendix II: GAO Contact and Staff Acknowledgments

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## GAO Contact:

Tina Won Sherman at (202) 512-8461 or [shermant@gao.gov](mailto:shermant@gao.gov).

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## Staff

## Acknowledgements:

In addition to the contact named above, Chris Ferencik (Assistant Director), Christopher Hatscher (Analyst-in-Charge), Ben Crossley, Dominick Dale, Michele Fejfar, Leslie Gordon, David Hooper, Ryan Lester, and Mary Turgeon made key contributions to this report.

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