Title 49 —Transportation
Subtitle B —Other Regulations Relating to Transportation
Chapter XII —Transportation Security Administration, Department of Homeland Security
Subchapter A —Administrative and Procedural Rules

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

Authority : 6 U.S.C. 1142; 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113-40114, 40119, 44901-44907, 44939, 46101-46107, 46109-46110, 46301, 46305, 46311, 46313-46314; Pub. L. 110-53 (121 Stat. 266, Aug. 3, 2007) secs. 1408 (6 U.S.C. 1137), 1501 (6 U.S.C. 1151), 1517 (6 U.S.C. 1167), and 1534 (6 U.S.C. 1184).

Source: 74 FR 36039, July 21, 2009, unless otherwise noted.

Subpart A—General

Source: 76 FR 22630, Apr. 22, 2011, unless otherwise noted.

§ 1503.1 Scope.

This part provides information on TSA's investigative and enforcement procedures.

§ 1503.3 Reports by the public of security problems, deficiencies, and vulnerabilities.

This section prescribes the reporting mechanisms that persons may use in order to obtain a receipt for reports to TSA regarding transportation-related security problems, deficiencies, and vulnerabilities.

(a) Any person who reports to TSA a transportation security-related problem, deficiency, or vulnerability—including the security of aviation, commercial motor vehicle, maritime, pipeline, any mode of public transportation, or railroad transportation—will receive a receipt for their report if they provide valid contact information and report through one of the following:

(1) U.S. mail to Transportation Security Administration HQ, TSA-2; Attn: 49 CFR 1503.3 Reports; 601 South 12th Street; Arlington, VA 20598-6002;

(2) Internet at *http://www.tsa.gov/contact,* selecting “Security Issues”; or

(3) Telephone (toll-free) at 1-866-289-9673.

(b) Reports submitted by mail will receive a receipt through the mail, reports submitted by the Internet will receive an e-mail receipt, and reports submitted by phone will receive a call identifier number linked to TSA documents held according to published record schedules. To obtain a paper copy of reports provided by phone, the person who made the report, or their authorized representative, must contact TSA at the address identified in (a)(1) of this section within that period and provide the identifier number.

(c) TSA will review and consider the information provided in any report submitted under this section and take appropriate steps to address any problems, deficiencies, or vulnerabilities identified.

(d) Nothing in this section relieves a person of a separate obligation to report information to TSA under another provision of this title, a security program, or a security directive, or to another Government agency under other law.

(e) Immediate or emergency security or safety concerns should be reported to the appropriate local emergency services operator, such as by telephoning 911. Alleged waste, fraud, and abuse in TSA programs should be reported to the Department of Homeland Security Inspector General: telephone (toll-free) 1-800-323-8603, or e-mail *DHSOIGHOTLINE@dhs.gov*.

Subpart B—Scope of Investigative and Enforcement Procedures

§ 1503.101 TSA requirements.

(a) The investigative and enforcement procedures in this part apply to TSA's investigation and enforcement of violations of TSA requirements.

(b) For purposes of this part, the term *TSA requirements* means the following statutory provisions and a regulation prescribed or order issued under any of those provisions:

(1) Those provisions of title 49 U.S.C. administered by the Administrator;

(2) 46 U.S.C. chapter 701; and

(3) Provisions of Public Law 110-53 (121 Stat. 266, Aug. 3, 2007) not codified in title 49 U.S.C. that are administered by the Administrator.

[74 FR 36039, July 21, 2009, as amended at 85 FR 16499, Mar. 23, 2020]

§ 1503.103 Terms used in this part.

In addition to the terms in § 1500.3 of this chapter, the following definitions apply in this part:

Administrative law judge or *ALJ* means an ALJ appointed pursuant to the provisions of 5 U.S.C. 3105.

Agency attorney means the Deputy Chief Counsel for Enforcement or an attorney that he or she designates. An *agency attorney* will not include—

(1) Any attorney in the Office of the Chief Counsel who advises the TSA decision maker regarding an initial decision or any appeal to the TSA decision maker; or

(2) Any attorney who is supervised in a civil penalty action by a person who provides such advice to the TSA decision maker in that action or a factually related action.

Attorney means any person who is eligible to practice law in, and is a member in good standing of the bar of, the highest court of any State, possession, territory, or Commonwealth of the United States, or of the District of Columbia, and is not under any order suspending, enjoining, restraining, disbarring, or otherwise restricting him or her in the practice of law.

Enforcement Investigative Report or *EIR* means a written report prepared by a TSA Inspector or other authorized agency official detailing the results of an inspection or investigation of a violation of a TSA requirement, including copies of any relevant evidence.

Mail includes regular First Class U.S. mail service, U.S. certified mail, or U.S. registered mail.

Party means the respondent or TSA.

Personal delivery includes hand-delivery or use of a contract or express messenger service, including an overnight express courier service. *Personal delivery* does not include the use of Government interoffice mail service.

Pleading means a complaint, an answer, motion and any amendment of these documents permitted under this subpart as well as any other written submission to the ALJ or a party during the course of the hearing proceedings.

Properly addressed means a document that shows an address contained in agency records, a residential, business, or other address submitted by a person on any document provided under this part, or any other address obtained by other reasonable and available means.

Respondent means the person named in a Notice of Proposed Civil Penalty, a Final Notice of Proposed Civil Penalty and Order, or a complaint.

TSA decision maker means the Administrator, acting in the capacity of the decision maker on appeal, or any person to whom the Administrator has delegated the Administrator's decision-making authority in a civil penalty action. As used in this part, the *TSA decision maker* is the official authorized to issue a final decision and order of the Administrator in a civil penalty action.

[76 FR 22630, Apr. 22, 2011, as amended at 89 FR 35625, May 1, 2024]

Subpart C—Investigative Procedures

§ 1503.201 Reports of violations.

(a) Any person who knows of a violation of a TSA requirement should report it to appropriate personnel of any TSA office.

(b) TSA will review each report made under this section, together with any other information TSA may have that is relevant to the matter reported, to determine the appropriate response, including additional investigation or administrative or legal enforcement action.

§ 1503.203 Investigations.

(a) ***General.*** The Administrator, or a designated official, may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) ***Delegation of authority.*** For the purpose of investigating alleged violations of a TSA requirement, the Administrator's authority may be exercised by the agency's various offices for matters within their respective areas for all routine investigations. When the compulsory processes of 49 U.S.C. 46104 are invoked, the Administrator's authority has been delegated to the Chief Counsel, each Deputy Chief Counsel, and in consultation with the Office of Chief Counsel, the Assistant Administrator for Security Operations, the Assistant Administrator for Transportation Sector Network Management, the Assistant Administrator for Inspections, the Assistant Administrator for Law Enforcement/Director of the Federal Air Marshal Service, each Special Agent in Charge, and each Federal Security Director.

§ 1503.205 Records, documents, and reports.

Each record, document, and report that regulations issued by the Transportation Security Administration require to be maintained, exhibited, or submitted to the Administrator may be used in any investigation conducted by the Administrator; and, except to the extent the use may be specifically limited or prohibited by the section that imposes the requirement, the records, documents, and reports may be used in any civil penalty action or other legal proceeding.

§ 1503.207 Inspection authority.

(a) Each person subject to any of the requirements in this chapter or other applicable authority must allow TSA and other authorized DHS officials, at any time and in a reasonable manner, without advance notice, to enter, assess, inspect, and test property, facilities, equipment, and operations; and to view, inspect, and copy records, as necessary to carry out TSA's security-related statutory or regulatory authorities and without a subpoena, including its authority to—

(1) Assess threats to transportation.

(2) Enforce security-related laws, regulations, directives, and requirements.

(3) Inspect, maintain, and test the security of facilities, equipment, and systems.

(4) Ensure the adequacy of security measures for the transportation of passengers and cargo.

(5) Oversee the implementation, and ensure the adequacy, of security measures for conveyances and vehicles, at transportation facilities and infrastructure and other assets related to transportation.

(6) Review security plans and/or programs.

(7) Determine compliance with any requirements in this chapter.

(8) Carry out such other duties, and exercise such other powers, relating to transportation security, as the Administrator for TSA considers appropriate, to the extent authorized by law.

(b) At the request of TSA, each person subject to the requirements of this chapter must provide evidence of compliance with this chapter, including copies of records.

(c) TSA and other authorized DHS officials, may enter, without advance notice, and be present within any area or within any vehicle or conveyance, terminal, or other facility covered by this chapter without access media or identification media issued or approved by a person subject to requirements in this chapter or other applicable authority in order to inspect or test compliance, or perform other such duties as TSA may direct.

(d) TSA inspectors and other authorized DHS officials working with TSA will, on request, present their credentials for examination, but the credentials may not be photocopied or otherwise reproduced.

[89 FR 35625, May 1, 2024]

Subpart D—Non-Civil Penalty Enforcement

§ 1503.301 Warning notices and letters of correction.

(a) If TSA determines that a violation or an alleged violation of a TSA requirement does not require the assessment of a civil penalty, an appropriate official of the TSA may take administrative action in disposition of the case.

(b) An administrative action under this section does not constitute a formal adjudication of the matter, and may be taken by issuing the alleged violator—

(1) A "Warning Notice" that recites available facts and information about the incident or condition and indicates that it may have been a violation; or

(2) A "Letter of Correction" that confirms the TSA decision in the matter and states the necessary corrective action the alleged violator has taken or agrees to take. If the agreed corrective action is not fully completed, legal enforcement action may be taken.

(c) The issuance of a Warning Notice or Letter of Correction is not subject to appeal under this part.

(d) In the case of a public transportation agency that is determined to be in violation of a TSA requirement, an appropriate TSA official will seek correction of the violation through a written "Notice of Noncompliance" to the public transportation agency giving the public transportation agency reasonable opportunity to correct the violation or propose an alternative means of compliance acceptable to TSA.

(e) TSA will not take legal enforcement action against a public transportation agency under subpart E unless it has provided the Notice of Noncompliance described in paragraph (d) of this section and the public transportation agency fails to correct the violation or propose an alternative means of compliance acceptable to TSA within the timeframe provided in the notice.

(f) TSA will not initiate civil enforcement action for violations of administrative and procedural requirements pertaining to the application for, and the expenditure of, funds awarded pursuant to transportation security grant programs under Public Law 110-53.

Subpart E—Assessment of Civil Penalties by TSA

§ 1503.401 Maximum penalty amounts.

(a) ***General.*** TSA may assess civil penalties not exceeding the following amounts against a person for the violation of a TSA requirement.

(b) ***In general.*** Except as provided in paragraph (c) of this section, in the case of violation of title 49 U.S.C. or 46 U.S.C. chapter 701, or a regulation prescribed or order issued under any of those provisions, TSA may impose a civil penalty in the following amounts:

(1) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern ("small business concern" as defined in section 3 of the Small Business Act (15 U.S.C. 632)). For violations that occurred after November 2, 2015, $14,602 per violation, up to a total of $73,011 per civil penalty action, in the case of an individual or small business concern; and

(2) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person. For violations that occurred after November 2, 2015, $14,602 per violation, up to a total of $584,078 per civil penalty action, in the case of any other person.

(c) ***Certain aviation related violations.*** In the case of a violation of 49 U.S.C. chapter 449 (except sections 44902, 44903(d), 44907(a)-(d)(1)(A), 44907(d)(1)(C)-(f), 44908, and 44909), or 49 U.S.C. 46302 or 46303, or a regulation prescribed or order issued under any of those provisions, TSA may impose a civil penalty in the following amounts:

(1) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $50,000 per civil penalty action, in the case of an individual or small business concern ("small business concern" as defined in section 3 of the Small Business Act (15 U.S.C. 632)). For violations that occurred after November 2, 2015, $17,062 per violation, up to a total of $85,314 per civil penalty action, in the case of an individual (except an airman serving as an airman), or a small business concern.

(2) For violations that occurred on or before November 2, 2015, $10,000 per violation, up to a total of $400,000 per civil penalty action, in the case of any other person (except an airman serving as an airman) not operating an aircraft for the transportation of passengers or property for compensation. For violations that occurred after November 2, 2015, $17,062 per violation, up to a total of $682,509 per civil penalty action, in the case of any other person (except an airman serving as an airman) not operating an aircraft for the transportation of passengers or property for compensation.

(3) For violations that occurred on or before November 2, 2015, $25,000 per violation, up to a total of $400,000 per civil penalty action, in the case of a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman). For violations that occurred after November 2, 2015, $42,657 per violation, up to a total of $682,509 per civil penalty action, in the case of a person (except an individual serving as an airman) operating an aircraft for the transportation of passengers or property for compensation.

[81 FR 8583, Jan. 27, 2017, as amended at 83 FR 13838, Apr. 2, 2018; 84 FR 13512, Apr. 5, 2019; 85 FR 36482, June 17, 2020; 86 FR 57544, Oct. 18, 2021; 87 FR 1330, Jan. 11, 2022; 88 FR 2186, Jan. 13, 2023; 89 FR 53863, June 28, 2024; 90 FR 13, Jan. 2, 2025]

§ 1503.403 Delegation of authority.

The Administrator delegates the following authority to the Chief Counsel and the Deputy Chief Counsel for Enforcement, which authority may be redelegated as necessary:

(a) To initiate and assess civil penalties under 49 U.S.C. 114 and 46301 and this subpart for a violation a TSA requirement;

(b) To compromise civil penalties initiated under this subpart; and

(c) To refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for the collection of civil penalties.

§ 1503.405 Injunctions.

Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting a violation of a TSA requirement, the Chief Counsel or the Deputy Chief Counsel for Enforcement may request the Attorney General of the United States, or the delegate of the Attorney General, to bring an action in the appropriate United States district court for such relief as is necessary or appropriate, including mandatory or prohibitive injunctive relief, interim equitable relief, and punitive damages, as provided by 49 U.S.C. 114 and 46107.

§ 1503.407 Military personnel.

If a report made under this part indicates that, while performing official duties, a member of the Armed Forces, or a civilian employee of the Department of Defense who is subject to the Uniform Code of Military Justice (10 U.S.C. chapter 47), has violated a TSA requirement, an agency official will send a copy of the report to the appropriate military authority for such disciplinary action as that authority considers appropriate and a report to the Administrator thereon.

§ 1503.409 Service of documents.

(a) ***General.*** This section governs service of documents required to be made under this part.

(b) ***Type of service.*** A person may serve documents by:

(1) Personal delivery;

(2) Mail, or

(3) Electronic mail or facsimile transmission, if consented to in writing by the person served, except that such service is not effective if the party making service receives credible information indicating that the attempted service did not reach the person to be served.

(c) If a party serves a pleading on another party during the course of hearing proceedings by electronic mail or facsimile transmission, the party making service must file with the Enforcement Docket Clerk a copy of the consent of the receiving party to accept such method of service.

(d) ***Date of service.*** The date of service will be:

(1) The date of personal delivery.

(2) If mailed, the mailing date stated on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(3) If sent by electronic mail or facsimile transmission, the date of transmission.

(e) ***Valid service.*** A document served by mail or personal delivery that was properly addressed, was sent in accordance with this part, and that was returned, that was not claimed, or that was refused, is deemed to have been served in accordance with this part. The service will be considered valid as of the date and the time that the document was deposited with a contract or express messenger, the document was mailed, or personal delivery of the document was attempted and refused.

(f) ***Presumption of service.*** There will be a presumption of service where a party or a person, who customarily receives mail, or receives it in the ordinary course of business, at either the person's residence or the person's principal place of business, acknowledges receipt of the document.

(g) ***Additional time after service by mail.*** Whenever a party has a right or a duty to act or to make any response within a prescribed period after service by mail, or on a date certain after service by mail, 5 days will be added to the prescribed period.

(h) ***Service of documents filed with the Enforcement Docket.*** A person must serve a copy of any document filed with the Enforcement Docket on each party and the ALJ or the chief ALJ if no judge has been assigned to the proceeding at the time of filing. Service on a party's attorney of record or a party's designated representative is service on the party.

(i) ***Certificate of service.*** Each party must attach a certificate of service to any document tendered for filing with the Enforcement Docket Clerk. A certificate of service must consist of a statement, dated and signed by the person who effected service, of the name(s) of the person(s) served, and the method by which each person was served and the date that the service was made.

(j) ***Service by the ALJ.*** The ALJ must serve a copy of each document he or she issues including, but not limited to, notices of pre-hearing conferences and hearings, rulings on motions, decisions, and orders, upon each party to the proceedings.

§ 1503.411 Computation of time.

(a) This section applies to any period of time prescribed or allowed by this part, or by notice or order of an ALJ.

(b) The date of an act, event, or default, after which a designated time period begins to run, is not included in a computation of time under this subpart.

(c) The last day of a time period is included in a computation of time unless it is a Saturday, Sunday, a legal holiday, or a day on which the enforcement docket is officially closed. If the last day of the time period is a Saturday, Sunday, legal holiday, or a day on which the enforcement docket is officially closed, the time period runs until the end of the next day that is not a Saturday, Sunday, legal holiday, or a day on which the enforcement docket is officially closed.

§ 1503.413 Notice of Proposed Civil Penalty.

(a) ***Issuance.*** TSA may initiate a civil penalty action under this section by serving a Notice of Proposed Civil Penalty on the person charged with a violation of a TSA requirement. TSA will serve the Notice of Proposed Civil Penalty on the individual charged with a violation or on the president of the corporation or company charged with a violation, or other representative or employee previously identified in writing to TSA as designated to receive such service. A corporation or company may designate in writing to TSA another person to receive service of any subsequent documents in that civil penalty action.

(b) ***Contents.*** The Notice of Proposed Civil Penalty contains a statement of the facts alleged, the statute, regulation, or order allegedly violated, the amount of the proposed civil penalty, and a certificate of service.

(c) ***Response.*** Not later than 30 days after receipt of the Notice of Proposed Civil Penalty, the person charged with a violation may take one, and only one, of the following options.

(1) Submit a certified check or money order in the amount of the proposed civil penalty made payable to Transportation Security Administration, at the address specified in the Notice of Proposed Civil Penalty, or make payment electronically through *http://www.pay.gov*.

(2) Submit to the agency attorney who issued the Notice of Proposed Civil Penalty one of the following:

(i) A written request that TSA issue an Order Assessing Civil Penalty in the amount stated in the Notice of Proposed Civil Penalty without further notice, in which case the person waives the right to request a Formal Hearing, and payment is due within 30 days of receipt of the Order.

(ii) Written information and other evidence, including documents and witness statements, demonstrating that a violation of the regulations did not occur as alleged, or that the proposed penalty is not warranted by the circumstances.

(iii) A written request to reduce the proposed civil penalty, the amount of requested reduction, together with any documents supporting a reduction of the proposed civil penalty, which reflect a current financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iv) A written request for an Informal Conference, at a date to be determined by the agency attorney, to discuss the matter with the agency attorney and to submit supporting evidence and information to the agency attorney before the date of the Informal Conference.

(3) Submit to the agency attorney and to TSA's Enforcement Docket Clerk a written request for a Formal Hearing before an ALJ in accordance with subpart G of this part. TSA's Enforcement Docket Clerk is currently located at the United States Coast Guard (USCG) ALJ Docketing Center, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202-4022. If this location changes, TSA will provide notice of the change by notice in the FEDERAL REGISTER.

§ 1503.415 Request for portions of the enforcement investigative report (EIR).

(a) Upon receipt of a Notice of Proposed Civil Penalty, a person charged with a violation of a TSA requirement, or a representative designated in writing by that person, may request from the agency attorney who issued the Notice of Proposed Civil Penalty portions of the relevant EIR that are not privileged (*e.g.,* under the deliberative process, attorney work-product, or attorney-client privileges). This information will be provided for the sole purpose of providing the information necessary to prepare a response to the allegations contained in the Notice of Proposed Civil Penalty. Sensitive Security Information (SSI) contained in the EIR may be released pursuant to 49 CFR part 1520. Information released under this section is not produced under the Freedom of Information Act.

(b) Any person not listed in paragraph (a) of this section that is interested in obtaining a copy of the EIR must submit a FOIA request pursuant to 5 U.S.C. 552, *et seq.,* 49 CFR part 7, and any applicable DHS regulations. Portions of the EIR may be exempt from disclosure pursuant to FOIA.

§ 1503.417 Final Notice of Proposed Civil Penalty and Order.

(a) ***Issuance.*** TSA may issue a Final Notice of Proposed Civil Penalty and Order ("Final Notice and Order") to a person charged with a violation in the following circumstances:

(1) The person has failed to respond to a Notice of Proposed Civil Penalty within 30 days after receipt of that notice.

(2) The person requested an Informal Conference under § 1503.413(c)(2), but failed to attend the conference or continuation of the conference or provide the agency attorney with a written request showing good cause for rescheduling of the informal conference to a specified alternate date.

(3) The parties have participated in an Informal Conference or other informal proceedings as provided in § 1503.413(c)(2) and the parties have not agreed to compromise the action or the agency attorney has not agreed to withdraw the notice of proposed civil penalty.

(b) ***Contents.*** The Final Notice and Order will contain a statement of the facts alleged, the law allegedly violated by the respondent, and the amount of the proposed civil penalty. The Final Notice and Order may reflect a modified allegation or proposed civil penalty as a result of information submitted to the agency attorney during the informal proceedings held under § 1503.413(c)(2).

§ 1503.419 Order Assessing Civil Penalty.

(a) ***Issuance pursuant to a settlement.*** TSA will issue an Order Assessing Civil Penalty if the parties have participated in an Informal Conference or other informal proceedings as provided in § 1503.413(c)(2) and agreed to a civil penalty amount in compromise of the matter, in which case the person waives the right to request a formal hearing, and payment is due within 30 days of receipt of the Order.

(b) ***Automatic issuance.*** A Final Notice and Order automatically converts to an Order Assessing Civil Penalty if—

(1) The person charged with a violation submits a certified check or money order in the amount reflected in the Final Notice and Order to Transportation Security Administration, to the address specified in the Final Notice and Order, or makes such payment electronically through *http://www.pay.gov*; or

(2) The person fails to respond to the Final Notice and Order or request a formal hearing within 15 days after receipt of that notice.

§ 1503.421 Streamlined civil penalty procedures for certain security violations.

(a) ***Notice of violation.*** TSA, at the agency's discretion, may initiate a civil penalty action through issuance of a Notice of Violation for violations described in the section and as otherwise provided by the Administrator. TSA may serve a Notice of Violation on an individual who violates a TSA requirement by presenting a weapon, explosive, or incendiary for screening at an airport or in checked baggage, where the amount of the proposed civil penalty is less than $5,000.

(b) ***Contents.*** A Notice of Violation contains a statement of the charges, the amount of the proposed civil penalty, and an offer to settle the matter for a lesser specified penalty amount.

(c) ***Response.*** Not later than 30 days after receipt of the Notice of Violation, the individual charged with a violation must respond to TSA by taking one, and only one, of the following options.

(1) Submit a certified check or money order for the lesser specified penalty amount in the Notice of Violation, made payable to Transportation Security Administration and sent to the address specified in the Notice of Violation, or make such payment electronically through *http://www.pay.gov.*

(2) Submit to the office identified in the Notice of Violation one of the following:

(i) Written information and other evidence, including documents and witness statements, demonstrating that a violation of the regulations did not occur as alleged, or that the proposed penalty is not warranted by the circumstances.

(ii) A written request to reduce the proposed civil penalty, the amount of requested reduction, together with any documents supporting a reduction of the proposed civil penalty, which reflect a current financial inability to pay or records showing that payment of the proposed civil penalty would prevent the person from continuing in business.

(iii) A written request for an Informal Conference, at a date to be determined by an agency official, to discuss the matter with the agency official and to submit supporting evidence and information to the agency official before the date of the Informal Conference.

(3) Submit to the office identified in the Notice of Violation and to TSA's Enforcement Docket Clerk a written request for a formal hearing before an ALJ in accordance with subpart G. A request for a formal hearing before an ALJ must be submitted to the address provided in § 1503.413(c)(3).

(d) ***Final Notice of Violation and Civil Penalty Assessment Order.*** TSA may issue a Final Notice of Violation and Civil Penalty Assessment Order ("Final Notice and Order") to the recipient of a Notice of Violation in the following circumstances:

(1) The individual has failed to respond to a Notice of Violation within 30 days after receipt of that notice.

(2) The individual requested an Informal Conference under § 1503.421(c)(2)(iii) but failed to attend the conference or continuation of the conference or provide the agency official with a written request showing good cause for rescheduling the informal conference to a specified alternate date.

(3) The parties have participated in an Informal Conference or other informal proceedings as provided in § 1503.421(c)(2) and the parties have not agreed to compromise the action or the agency official has not agreed to withdraw the Notice of Violation.

(e) ***Order Assessing Civil Penalty.*** A Final Notice and Order automatically converts to an Order Assessing Civil Penalty if—

(1) The individual charged with a violation submits a certified check or money order in the amount reflected in the Final Notice and Order to Transportation Security Administration at the address specified in the Final Notice and Order, or makes such payment electronically through *http://www.pay.gov*; or

(2) The individual fails to respond to the Final Notice and Order or request a formal hearing within 15 days after receipt of that notice.

(f) ***Delegation of authority.*** The authority of the Administrator, under 49 U.S.C. 46301, to initiate, negotiate, and settle civil penalty actions under this section is delegated to the Assistant Administrator for Security Operations. This authority may be further delegated.

§ 1503.423 Consent orders.

(a) ***Issuance.*** At any time before the issuance of an Order Assessing Civil Penalty under this subpart, an agency attorney and a person subject to a Notice of Proposed Civil Penalty, or an agency official and a person subject to a Notice of Violation, may agree to dispose of the case by the issuance of a consent order by TSA.

(b) ***Contents.*** A consent order contains the following:

(1) An admission of all jurisdictional facts.

(2) An admission of agreed-upon allegations.

(3) A statement of the law violated.

(4) A finding of violation.

(5) An express waiver of the right to further procedural steps and of all rights to administrative and judicial review.

§ 1503.425 Compromise orders.

(a) ***Issuance.*** At any time before the issuance of an Order Assessing Civil Penalty under this subpart, an agency attorney and a person subject to a Notice of Proposed Civil Penalty, or an agency official and a person subject to a Notice of Violation, may agree to dispose of the case by the issuance of a compromise order by TSA.

(b) ***Contents.*** A compromise order contains the following:

(1) All jurisdictional facts.

(2) All allegations.

(3) A statement that the person agrees to pay the civil penalty specified.

(4) A statement that TSA makes no finding of a violation.

(5) A statement that the compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding.

§ 1503.427 Request for a formal hearing.

(a) ***General.*** Any respondent may request a formal hearing, pursuant to § 1503.413(c)(3) or § 1503.421(c)(3), to be conducted in accordance with the procedures in subpart G of this part. The filing of a request for a formal hearing does not guarantee a person an opportunity to appear before an ALJ in person, because the ALJ may issue an initial decision or dispositive order resolving the case prior to the commencement of the formal hearing.

(b) ***Form.*** The person submitting a request for hearing must date and sign the request, and must include his or her current address. The request for hearing must be typewritten or legibly handwritten.

(c) ***Submission of request.*** A person requesting a hearing must file a written request for a hearing with the Enforcement Docket Clerk in accordance with § 1503.429 and must serve a copy of the request on the agency attorney or other agency official who issued the Notice of Proposed Civil Penalty, or Notice of Violation, as applicable, and any other party, in accordance with § 1503.429.

§ 1503.429 Filing of documents with the Enforcement Docket Clerk.

(a) ***General.*** This section governs filing of documents with the Enforcement Docket Clerk when required under this part.

(b) ***Type of service.*** A person must file a document with the Enforcement Docket Clerk by delivering two copies of the document as follows:

(1) By personal delivery or mail, to United States Coast Guard (USCG) ALJ Docketing Center, ATTN: Enforcement Docket Clerk, at the address specified in § 1503.413(c)(3).

(2) By electronic mail, to *ALJdocket@ALJBalt.USCG.MIL*. If this e-mail address changes, TSA will provide notice of the change by notice in the FEDERAL REGISTER.

(3) By facsimile transmission, to 410-962-1746. If this number changes, TSA will provide notice of the change by notice in the FEDERAL REGISTER.

(c) ***Contents.*** Unless otherwise specified in this part, each document must contain a short, plain statement of the facts supporting the person's position and a brief statement of the action requested in the document. Each document must be typewritten or legibly handwritten.

(d) ***Date of filing.*** The date of filing will be as follows:

(1) The date of personal delivery.

(2) If mailed, the mailing date stated on the certificate of service, the date shown on the postmark if there is no certificate of service, or other mailing date shown by other evidence if there is no certificate of service or postmark.

(3) If sent by electronic mail or facsimile transmission, the date of transmission.

(e) ***Service of documents filed with the Enforcement Docket.*** A person must serve a copy of any document filed with the Enforcement Docket on each party and the ALJ or the chief ALJ if no judge has been assigned to the proceeding at the time of filing. Service on a party's attorney of record or a party's designated representative is service on the party.

§ 1503.431 Certification of documents.

(a) ***General.*** This section governs each document tendered for filing with the Enforcement Docket Clerk under this part.

(b) ***Signature required.*** The attorney of record, the party, or the party's representative must sign each document tendered for filing with the Enforcement Docket Clerk, or served on the ALJ, the TSA decision maker on appeal, or each party.

(c) ***Effect of signing a document.*** By signing a document, the attorney of record, the party, or the party's representative certifies that he or she has read the document and, based on reasonable inquiry and to the best of that person's knowledge, information, and belief, the document is—

(1) Consistent with the rules in this part;

(2) Warranted by existing law or that a good faith and nonfrivolous argument exists for extension, modification, or reversal of existing law;

(3) Not unreasonable or unduly burdensome or expensive, not made to harass any person, not made to cause unnecessary delay, not made to cause needless increase in the cost of the proceedings, or for any other improper purpose; and

(4) Supported by evidence, and any denials of factual contentions are warranted on the evidence.

(d) ***Sanctions.*** On motion of a party, if the ALJ or TSA decision maker finds that any attorney of record, the party, or the party's representative has signed a document in violation of this section, the ALJ or the TSA decision maker, as appropriate, will do the following:

(1) Strike the pleading signed in violation of this section.

(2) Strike the request for discovery or the discovery response signed in violation of this section and preclude further discovery by the party.

(3) Deny the motion or request signed in violation of this section.

(4) Exclude the document signed in violation of this section from the record.

(5) Dismiss the interlocutory appeal and preclude further appeal on that issue by the party who filed the appeal until an initial decision has been entered on the record.

(6) Dismiss the appeal of the ALJ's initial decision to the TSA decision maker.

Subpart F [Reserved]

Subpart G—Rules of Practice in TSA Civil Penalty Actions

§ 1503.601 Applicability.

(a) This subpart applies to a civil penalty action in which the requirements of paragraphs (a)(1) through (a)(3) of this section are satisfied.

(1) There is an alleged violation of a TSA requirement.

(2) The amount in controversy does not exceed—

(i) $50,000 if the violation was committed by an individual or a small business concern;

(ii) $400,000 if the violation was committed by any other person.

(3) The person charged with the violation has requested a hearing in accordance with § 1503.427 of this part.

(b) This subpart does not apply to the adjudication of the validity of any TSA rule or other requirement under the U.S. Constitution, the Administrative Procedure Act, or any other law.

§ 1503.603 Separation of functions.

(a) Civil penalty proceedings, including hearings, will be prosecuted only by an agency attorney, except to the extent another agency official is permitted to issue and prosecute civil penalties under § 1503.421 of this part.

(b) An agency employee engaged in the performance of investigative or prosecutorial functions in a civil penalty action must not, in that case or a factually related case, participate or give advice in a decision by the ALJ or by the TSA decision maker on appeal, except as counsel or a witness in the public proceedings.

(c) The Chief Counsel or an agency attorney not covered by paragraph (b) of this section will advise the TSA decision maker regarding an initial decision or any appeal of a civil penalty action to the TSA decision maker.

§ 1503.605 Appearances and rights of parties.

(a) Any party may appear and be heard in person.

(b) Any party may be accompanied, represented, or advised by an attorney or representative designated by the party and may be examined by that attorney or representative in any proceeding governed by this subpart. An attorney or representative who represents a respondent and has not previously filed a pleading in the matter must file a notice of appearance in the action, in the manner provided in § 1503.429, and must serve a copy of the notice of appearance on each party, in the manner provided in § 1503.409, before participating in any proceeding governed by this subpart. The attorney or representative must include the name, address, and telephone number of the attorney or representative in the notice of appearance.

§ 1503.607 Administrative law judges.

(a) ***Powers of an ALJ.*** In accordance with the rules of this subpart, an ALJ may:

(1) Give notice of, and hold, prehearing conferences and hearings.

(2) Issue scheduling orders and other appropriate orders regarding discovery or other matters that come before him or her consistent with the rules of this subpart.

(3) Administer oaths and affirmations.

(4) Issue subpoenas authorized by law.

(5) Rule on offers of proof.

(6) Receive relevant and material evidence.

(7) Regulate the course of the hearing in accordance with the rules of this subpart.

(8) Hold conferences to settle or to simplify the issues on his or her own motion or by consent of the parties.

(9) Rule on procedural motions and requests.

(10) Make findings of fact and conclusions of law, and issue an initial decision.

(11) Strike unsigned documents unless omission of the signature is corrected promptly after being called to the attention of the attorney or party.

(12) Order payment of witness fees in accordance with § 1503.649.

(b) ***Limitations on the power of the ALJ.***

(1) The ALJ may not:

(i) Issue an order of contempt.

(ii) Award costs to any party.

(iii) Impose any sanction not specified in this subpart.

(iv) Adopt or follow a standard of proof or procedure contrary to that set forth in this subpart.

(v) Decide issues involving the validity of a TSA regulation, order, or other requirement under the U.S. Constitution, the Administrative Procedure Act, or other law.

(2) If the ALJ imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right pursuant to § 1503.631(c)(3).

(3) This section does not preclude an ALJ from issuing an order that bars a person from a specific proceeding based on a finding of obstreperous or disruptive behavior in that specific proceeding.

(c) ***Disqualification.*** The ALJ may disqualify himself or herself at any time. A party may file a motion, pursuant to § 1503.629(f)(6), requesting that an ALJ be disqualified from the proceedings.

§ 1503.609 Complaint.

(a) ***Filing.*** The agency attorney must file the complaint with the Enforcement Docket Clerk in accordance with § 1503.429, or may file a written motion pursuant to § 1503.629(f)(2)(i) instead of filing a complaint, not later than 30 days after receipt by the agency attorney of a request for hearing. The agency attorney should suggest a location for the hearing when filing the complaint.

(b) ***Contents.*** A complaint must set forth the facts alleged, any statute, regulation, or order allegedly violated by the respondent, and the proposed civil penalty in sufficient detail to provide notice of any factual or legal allegation and proposed civil penalty.

§ 1503.611 Answer.

(a) ***Filing.*** A respondent must file a written answer to the complaint in accordance with § 1503.429, or may file a written motion pursuant to § 1503.629(f)(1)-(4) instead of filing an answer, not later than 30 days after service of the complaint. Subject to paragraph (c) of this section, the answer may be in the form of a letter, but must be dated and signed by the person responding to the complaint. An answer may be typewritten or may be legibly handwritten. The person filing an answer should suggest a location for the hearing when filing the answer.

(b) ***Contents.*** An answer must specifically state any affirmative defense that the respondent intends to assert at the hearing. A person filing an answer may include a brief statement of any relief requested in the answer.

(c) ***Specific denial of allegations required.*** A person filing an answer must admit, deny, or state that the person is without sufficient knowledge or information to admit or deny, each numbered paragraph of the complaint. Any statement or allegation contained in the complaint that is not specifically denied in the answer may be deemed an admission of the truth of that allegation. A general denial of the complaint is deemed a failure to file an answer.

(d) ***Failure to file answer.*** A person's failure to file an answer without good cause, as determined by the ALJ, will be deemed an admission of the truth of each allegation contained in the complaint.

§ 1503.613 Consolidation and separation of cases.

(a) ***Consolidation.*** If two or more actions involve common questions of law or fact, the Chief Administrative Law Judge may do the following:

(1) Order a joint hearing or trial on any or all such questions.

(2) Order the consolidation of such actions.

(3) Otherwise make such orders concerning the proceedings as may tend to avoid unnecessary costs or delay.

(b) ***Consolidation shall not affect the applicability of this part.*** Consolidation of two or more actions that individually meet the jurisdictional amounts set forth in § 1503.601(a)(2) shall not cause the resulting consolidated action to come under the exclusive jurisdiction of the district courts of the United States as specified in 49 U.S.C. 46301(d)(4)(A).

(c) ***Separate trials.*** The Chief Administrative Law Judge, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, or of any separate issue, or any number of claims or issues.

§ 1503.615 Notice of hearing.

(a) ***Notice.*** The ALJ must give each party at least 60 days notice of the date, time, and location of the hearing. With the consent of the ALJ, the parties may agree to hold the hearing on an earlier date than the date specified in the notice of hearing.

(b) ***Date, time, and location of the hearing.*** The ALJ to whom the proceedings have been assigned must set a reasonable date, time, and location for the hearing. The ALJ must consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The ALJ must give due regard to the convenience of the parties, the location where the majority of the witnesses reside or work, and whether the location is served by a scheduled air carrier.

§ 1503.617 Extension of time.

(a) ***Oral requests.*** The parties may agree to extend for a reasonable period the time for filing a document under this subpart. If the parties agree, the ALJ must grant one extension of time to each party. The party seeking the extension of time must submit a draft order to the ALJ to be signed by the ALJ and filed with the Enforcement Docket Clerk. The ALJ may grant additional oral requests for an extension of time where the parties agree to the extension.

(b) ***Written motion.*** A party must file a written motion for an extension of time not later than 7 days before the document is due unless the party shows good cause for the late filing. The ALJ may grant the extension of time if the party shows good cause.

(c) ***Request for continuance of hearing.*** Either party may request in writing a continuance of the date of a hearing, for good cause shown, no later than seven days before the scheduled date of the hearing. Good cause does not include a scheduling conflict involving the parties or their attorneys which by due diligence could have been foreseen.

(d) ***Failure to rule.*** If the ALJ fails to rule on a written motion for an extension of time by the date the document was due, the motion for an extension of time is deemed granted for no more than 20 days after the original date the document was to be filed. If the ALJ fails to rule on a request for continuance by the scheduled hearing date, the request is deemed granted for no more than 10 days after the scheduled hearing date.

§ 1503.619 Intervention.

(a) A person may file a motion for leave to intervene as a party in a civil penalty action. The person must file a motion for leave to intervene not later than 10 days before the hearing unless the person shows good cause for the late filing.

(b) If the ALJ finds that intervention will not unduly broaden the issues or delay the proceedings, the ALJ may grant a motion for leave to intervene if the person will be bound by any order or decision entered in the action or the person has a property, financial, or other legitimate interest that may not be addressed adequately by the parties. The ALJ may determine the extent to which an intervenor may participate in the proceedings.

§ 1503.621 Amendment of pleadings.

(a) ***Filing and service.*** A party must file the amendment with the Enforcement Docket Clerk and must serve a copy of the amendment on the ALJ and all parties to the proceeding.

(b) ***Time.*** A party must file an amendment to a complaint or an answer within the following:

(1) Not later than 15 days before the scheduled date of a hearing, a party may amend a complaint or an answer without the consent of the ALJ.

(2) Less than 15 days before the scheduled date of a hearing, the ALJ may allow amendment of a complaint or an answer only for good cause shown in a motion to amend.

(c) ***Responses.*** The ALJ must allow a reasonable time, but not more than 20 days from the date of filing, for other parties to respond if an amendment to a complaint, answer, or other pleading has been filed with the ALJ.

§ 1503.623 Withdrawal of complaint or request for hearing.

At any time before or during a hearing, an agency attorney may withdraw a complaint or a respondent may withdraw a request for a hearing without the consent of the ALJ. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the ALJ must dismiss the proceedings under this subpart with prejudice, unless the withdrawing party shows good cause for dismissal without prejudice, except that a party may withdraw a request for hearing without prejudice at any time before a complaint has been filed.

§ 1503.625 Waivers.

Waivers of any rights provided by statute or regulation must be in writing or by stipulation made at a hearing and entered into the record. The parties must set forth the precise terms of the waiver and any conditions.

§ 1503.627 Joint procedural or discovery schedule.

(a) ***General.*** The parties may agree to submit a schedule for filing all prehearing motions, a schedule for conducting discovery in the proceedings, or a schedule that will govern all prehearing motions and discovery in the proceedings.

(b) ***Form and content of schedule.*** If the parties agree to a joint procedural or discovery schedule, one of the parties must file the joint schedule with the ALJ, setting forth the dates to which the parties have agreed, and must serve a copy of the joint schedule on each party.

(1) The joint schedule may include, but need not be limited to, requests for discovery, any objections to discovery requests, responses to discovery requests to which there are no objections, submission of prehearing motions, responses to prehearing motions, exchange of exhibits to be introduced at the hearing, and a list of witnesses that may be called at the hearing.

(2) Each party must sign the original joint schedule to be filed with the Enforcement Docket Clerk.

(c) ***Time.*** The parties may agree to submit all prehearing motions and responses and may agree to close discovery in the proceedings under the joint schedule within a reasonable time before the date of the hearing, but not later than 15 days before the hearing.

(d) ***Order establishing joint schedule.*** The ALJ must approve the joint schedule filed by the parties. One party must submit a draft order establishing a joint schedule to the ALJ to be signed by the ALJ and filed with the Enforcement Docket Clerk.

(e) ***Disputes.*** The ALJ must resolve disputes regarding discovery or disputes regarding compliance with the joint schedule as soon as possible so that the parties may continue to comply with the joint schedule.

(f) ***Sanctions for failure to comply with joint schedule.*** If a party fails to comply with the ALJ's order establishing a joint schedule, the ALJ may direct that party to comply with a motion or discovery request or, limited to the extent of the party's failure to comply with a motion or discovery request, the ALJ may do the following:

(1) Strike that portion of a party's pleadings.

(2) Preclude prehearing or discovery motions by that party.

(3) Preclude admission of that portion of a party's evidence at the hearing.

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 1503.629 Motions.

(a) ***General.*** A party applying for an order or ruling not specifically provided in this subpart must do so by motion. A party must comply with the requirements of this section when filing a motion. A party must serve a copy of each motion on each party.

(b) ***Form and contents.*** A party must state the relief sought by the motion and the particular grounds supporting that relief. If a party has evidence in support of a motion, the party must attach any supporting evidence, including affidavits, to the motion.

(c) ***Filing of motions.*** A motion made prior to the hearing must be in writing or orally on the record. Unless otherwise agreed by the parties or for good cause shown, a party must file any prehearing motion, and must serve a copy on each party, not later than 30 days before the hearing. Motions introduced during a hearing may be made orally on the record unless the ALJ directs otherwise.

(d) ***Reply to motions.*** Any party may file a reply, with affidavits or other evidence in support of the reply, not later than 30 days after service of a written motion on that party. When a motion is made during a hearing, the reply may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the ALJ. At the discretion of the ALJ, the moving party may file a response to the reply.

(e) ***Rulings on motions.*** The ALJ must rule on all motions as follows:

(1) ***Discovery motions.*** The ALJ must resolve all pending discovery motions not later than 10 days before the hearing.

(2) ***Prehearing motions.*** The ALJ must resolve all pending prehearing motions not later than 7 days before the hearing. If the ALJ issues a ruling or order orally, the ALJ must serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the ALJ must issue rulings and orders in writing and must serve a copy of the ruling or order on each party.

(3) ***Motions made during the hearing.*** The ALJ may issue rulings and orders on motions made during the hearing orally. Oral rulings or orders on motions must be made on the record.

(f) ***Specific motions.*** A party may file, but is not limited to, the following motions with the Enforcement Docket Clerk:

(1) ***Motion to dismiss for insufficiency.*** A respondent may file a motion to dismiss the complaint for insufficiency instead of filing an answer. If the ALJ denies the motion to dismiss the complaint for insufficiency, the respondent must file an answer not later than 20 days after service of the ALJ's denial of the motion. A motion to dismiss the complaint for insufficiency must show that the complaint fails to state a violation of a TSA requirement. If the ALJ grants the motion to dismiss the complaint for insufficiency, the agency attorney may amend the complaint in accordance with § 1503.621.

(2) ***Motion to dismiss.*** A party may file a motion to dismiss, specifying the grounds for dismissal. If an ALJ grants a motion to dismiss in part, a party may appeal the ALJ's ruling on the motion to dismiss under § 1503.631(b).

(i) ***Motion to dismiss a request for a hearing.*** An agency attorney may file a motion to dismiss a request for a hearing as untimely instead of filing a complaint. If the motion to dismiss is not granted, the agency attorney must file the complaint and must serve a copy of the complaint on each party not later than 20 days after service of the ALJ's ruling or order on the motion to dismiss. If the motion to dismiss is granted and the proceedings are terminated without a hearing, the respondent may file an appeal pursuant to § 1503.657. If required by the decision on appeal, the agency attorney must file a complaint and must serve a copy of the complaint on each party not later than 30 days after service of the decision on appeal.

(ii) ***Motion to dismiss a complaint.*** A respondent may file a motion to dismiss a complaint instead of filing an answer, on the ground that the complaint was not timely filed or on other grounds. If the ALJ does not grant the motion to dismiss, the respondent must file an answer and must serve a copy of the answer on each party not later than 30 days after service of the ALJ's ruling or order on the motion to dismiss. If the ALJ grants the motion to dismiss and the proceedings are terminated without a hearing, the agency attorney may file an appeal pursuant to § 1503.657. If required by the decision on appeal, the respondent must file an answer and must serve a copy of the answer on each party not later than 20 days after service of the decision on appeal.

(iii) ***Motion to dismiss based on settlement.*** A party may file a motion to dismiss based on a mutual settlement of the parties.

(3) ***Motion for more definite statement.*** A party may file a motion for more definite statement of any pleading that requires a response under this subpart. A party must set forth, in detail, the indefinite or uncertain allegations contained in a complaint or response to any pleading and must submit the details that the party believes would make the allegation or response definite and certain.

(i) ***Complaint.*** A respondent may file a motion requesting a more definite statement of the allegations contained in the complaint instead of filing an answer. If the ALJ grants the motion, the agency attorney must supply a more definite statement not later than 15 days after service of the ruling granting the motion. If the agency attorney fails to supply a more definite statement, the ALJ must strike the allegations in the complaint to which the motion is directed. If the ALJ denies the motion, the respondent must file an answer and must serve a copy of the answer on each party not later than 20 days after service of the order of denial.

(ii) ***Answer.*** An agency attorney may file a motion requesting a more definite statement if an answer fails to respond clearly to the allegations in the complaint. If the ALJ grants the motion, the respondent must supply a more definite statement not later than 15 days after service of the ruling on the motion. If the respondent fails to supply a more definite statement, the ALJ must strike those statements in the answer to which the motion is directed. The respondent's failure to supply a more definite statement may be deemed an admission of unanswered allegations in the complaint.

(4) ***Motion to strike.*** Any party may move to strike any insufficient allegation or defense, or any redundant, immaterial, or irrelevant matter in a pleading. A party must file a motion to strike before a response is required under this subpart or, if a response is not required, not later than 10 days after service of the pleading.

(5) ***Motion for decision.*** A party may move for decision, regarding all or any part of the proceedings, at any time before the ALJ has issued an initial decision in the proceedings. A party may include with a motion for decision affidavits as well as any other evidence in support of the motion. The ALJ must

grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, affidavits, matters that the ALJ has officially noticed, or evidence introduced during the hearing show that there is no genuine issue of material fact and that the party making the motion is entitled to a decision as a matter of law. The party moving for decision has the burden of showing that there is no genuine issue of material fact.

(6) ***Motion for disqualification.*** A party may file the motion at any time after the ALJ has been assigned to the proceedings but must make the motion before the ALJ files an initial decision in the proceedings.

(i) ***Motion and supporting affidavit.*** A party must state the grounds for disqualification, including, but not limited to, personal bias, pecuniary interest, or other factors supporting disqualification, in the motion for disqualification. A party must submit an affidavit with the motion for disqualification that sets forth, in detail, the matters alleged to constitute grounds for disqualification.

(ii) ***Answer.*** A party must respond to the motion for disqualification not later than 5 days after service of the motion for disqualification.

(iii) ***Decision on motion for disqualification.*** The ALJ must render a decision on the motion for disqualification not later than 20 days after the motion has been filed. If the ALJ finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the ALJ must withdraw from the proceedings immediately. If the ALJ finds that disqualification is not warranted, the ALJ must deny the motion and state the grounds for the denial on the record. If the ALJ fails to rule on a party's motion for disqualification within 20 days after the motion has been filed, the motion is deemed granted.

(iv) ***Appeal.*** A party may appeal the ALJ's denial of the motion for disqualification in accordance with § 1503.631(b).

[74 FR 36039, July 21, 2009, as amended at 75 FR 58333, Sept. 24, 2010]

§ 1503.631 Interlocutory appeals.

(a) ***General.*** Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the ALJ to the TSA decision maker until the initial decision has been entered on the record. A decision or order of the TSA decision maker on the interlocutory appeal does not constitute a final order of the Administrator for the purposes of judicial appellate review under 49 U.S.C. 46110.

(b) ***Interlocutory appeal for cause.*** If a party files a written request for an interlocutory appeal for cause with the ALJ, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the ALJ issues a decision on the request. If the ALJ grants the request, the proceedings are stayed until the TSA decision maker issues a decision on the interlocutory appeal. The ALJ must grant an interlocutory appeal for cause if a party shows that delay of the appeal would be detrimental to the public interest or would result in undue prejudice to any party.

(c) ***Interlocutory appeals of right.*** If a party notifies the ALJ of an interlocutory appeal of right, the proceedings are stayed until the TSA decision maker issues a decision on the interlocutory appeal. A party may file an interlocutory appeal, without the consent of the ALJ, before an initial decision has been entered in the following cases:

(1) A ruling or order by the ALJ barring a person from the proceedings.

(2) Failure of the ALJ to dismiss the proceedings in accordance with § 1503.623.

(3) A ruling or order by the ALJ in violation of § 1503.607(b).

(4) A ruling or order by the ALJ regarding public access to a particular docket or documents.

(d) ***Procedure.*** Not later than 10 days after the ALJ's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the ALJ's decision granting an interlocutory appeal for cause, a party must file a notice of interlocutory appeal, with supporting documents, and the party must serve a copy of the notice and supporting documents on each party. Not later than 10 days after service of the appeal brief, a party must file a reply brief, if any, and the party must serve a copy of the reply brief on each party. The TSA decision maker must render a decision on the interlocutory appeal, on the record and as a part of the decision in the proceedings, within a reasonable time after receipt of the interlocutory appeal.

(e) ***Frivolous appeals.*** The TSA decision maker may reject frivolous, repetitive, or dilatory appeals, and may issue an order precluding one or more parties from making further interlocutory appeals in a proceeding in which there have been frivolous, repetitive, or dilatory interlocutory appeals.

[74 FR 36039, July 21, 2009, as amended at 75 FR 58334, Sept. 24, 2010]

§ 1503.633 Discovery.

(a) ***Initiation of discovery.*** Any party may initiate discovery described in this section, without the consent or approval of the ALJ, at any time after a complaint has been filed in the proceedings.

(b) ***Methods of discovery.*** The following methods of discovery are permitted under this section: depositions on oral examination or written questions of any person; written interrogatories directed to a party; requests for production of documents or tangible items to any person; and requests for admission by a party. A party is not required to file written discovery requests and responses with the ALJ or the Enforcement Docket Clerk. In the event of a discovery dispute, a party must attach a copy of these documents in support of a motion made under this section.

(c) ***Service on the agency.*** A party must serve each discovery request directed to the agency or any agency employee on the agency attorney of record.

(d) ***Time for response to discovery requests.*** Unless otherwise directed by this subpart, agreed by the parties, or by order of the ALJ, a party must respond to a request for discovery, including filing objections to a request for discovery, not later than 30 days after service of the request.

(e) ***Scope of discovery.*** Subject to the limits on discovery set forth in paragraph (f) of this section, a party may discover any matter that is not privileged and that is relevant to the subject matter of the proceeding. A party may discover information that relates to the claim or defense of any party including the existence, description, nature, custody, condition, and location of any document or other tangible item and the identity and location of any person having knowledge of discoverable matter. A party may discover facts known, or opinions held, by an expert who any other party expects to call to testify at the hearing. A party may not object to a discovery request on the basis that the information sought would not be admissible at the hearing if the information sought during discovery is reasonably calculated to lead to the discovery of admissible evidence.

(f) ***Limiting discovery.*** The ALJ must limit the frequency and extent of discovery permitted by this section if a party shows that—

(1) The information requested is cumulative or repetitious;

(2) The information requested can be obtained from another less burdensome and more convenient source;

(3) The party requesting the information has had ample opportunity to obtain the information through other discovery methods permitted under this section; or

(4) The method or scope of discovery requested by the party is unduly burdensome or expensive.

(g) ***Disclosure of Sensitive Security Information (SSI).*** At the request of a party, TSA may provide SSI to the party when, in the sole discretion of TSA, access to the SSI is necessary for the party to prepare a response to allegations contained the complaint. TSA may provide such information subject to such restrictions on further disclosure and such safeguarding requirements as TSA determines appropriate.

(h) ***Confidential orders.*** A party or person who has received a discovery request for information, other than SSI, that is related to a trade secret, confidential or sensitive material, competitive or commercial information, proprietary data, or information on research and development, may file a motion for a confidential order with the ALJ and must serve a copy of the motion for a confidential order on each party.

(1) The party or person making the motion must show that the confidential order is necessary to protect the information from disclosure to the public.

(2) If the ALJ determines that the requested material is not necessary to decide the case, the ALJ must preclude any inquiry into the matter by any party.

(3) If the ALJ determines that the requested material may be disclosed during discovery, the ALJ may order that the material may be discovered and disclosed under limited conditions or may be used only under certain terms and conditions.

(4) If the ALJ determines that the requested material is necessary to decide the case and that a confidential order is warranted, the ALJ must provide the following:

(i) An opportunity for review of the document by the parties off the record.

(ii) Procedures for excluding the information from the record.

(iii) An order that the parties must not disclose the information in any manner and the parties must not use the information in any other proceeding.

(i) ***Protective orders.*** A party or a person who has received a request for discovery may file a motion for protective order and must serve a copy of the motion for protective order on each party. The party or person making the motion must show that the protective order is necessary to protect the party or the person from annoyance, embarrassment, oppression, or undue burden or expense. As part of the protective order, the ALJ may do the following:

(1) Deny the discovery request.

(2) Order that discovery be conducted only on specified terms and conditions, including a designation of the time or place for discovery or a determination of the method of discovery.

(3) Limit the scope of discovery or preclude any inquiry into certain matters during discovery.

(j) ***Duty to supplement or amend responses.*** A party who has responded to a discovery request has a duty to supplement or amend the response, as soon as the information is known, as follows:

(1) A party must supplement or amend any response to a question requesting the identity and location of any person having knowledge of discoverable matters.

(2) A party must supplement or amend any response to a question requesting the identity of each person who will be called to testify at the hearing as an expert witness and the subject matter and substance of that witness' testimony.

(3) A party must supplement or amend any response that was incorrect when made or any response that was correct when made but is no longer correct, accurate, or complete.

(k) ***Depositions.*** The following rules apply to depositions taken pursuant to this section:

(1) ***Form.*** A deposition must be taken on the record and reduced to writing. The person being deposed must sign the deposition unless the parties agree to waive the requirement of a signature.

(2) ***Administration of oaths.*** Within the United States, or a territory or possession subject to the jurisdiction of the United States, a party must take a deposition before a person authorized to administer oaths by the laws of the United States or authorized by the law of the place where the examination is held. Outside the United States, a party will take a deposition in any manner allowed by the Federal Rules of Civil Procedure (28 U.S.C. App.).

(3) ***Notice of deposition.*** A party must serve a notice of deposition, stating the time and place of the deposition and the name and address of each person to be examined, on the person to be deposed, on the ALJ, on the Enforcement Docket Clerk, and on each party not later than 7 days before the deposition. A party may serve a notice of deposition less than 7 days before the deposition only with consent of the ALJ and for good cause shown. If a subpoena “duces tecum” is to be served on the person to be examined, the party must attach a copy of the subpoena duces tecum that describes the materials to be produced at the deposition to the notice of deposition.

(4) ***Use of depositions.*** A party may use any part or all of a deposition at a hearing authorized under this subpart only upon a showing of good cause. The deposition may be used against any party who was present or represented at the deposition or who had reasonable notice of the deposition.

(l) ***Interrogatories.*** A party, the party's attorney, or the party's representative may sign the party's responses to interrogatories. A party must answer each interrogatory separately and completely in writing. If a party objects to an interrogatory, the party must state the objection and the reasons for the objection. An opposing party may use any part or all of a party's responses to interrogatories at a hearing authorized under this subpart to the extent that the response is relevant, material, and not repetitious.

(1) A party must not serve more than 30 interrogatories to each other party. Each subpart of an interrogatory will be counted as a separate interrogatory.

(2) Before serving additional interrogatories on a party, a party must file a motion for leave to serve additional interrogatories on a party with the ALJ and must serve a copy on each party before serving additional interrogatories on a party. The ALJ may grant the motion only if the party shows good cause for the party's failure to inquire about the information previously and that the information cannot reasonably be obtained using less burdensome discovery methods or be obtained from other sources.

(m) ***Requests for admission.*** A party may serve a written request for admission of the truth of any matter within the scope of discovery under this section or the authenticity of any document described in the request. A party must set forth each request for admission separately. A party must serve copies of documents referenced in the request for admission unless the documents have been provided or are reasonably available for inspection and copying.

(1) ***Time.*** A party's failure to respond to a request for admission, in writing and signed by the attorney or the party, not later than 30 days after service of the request, is deemed an admission of the truth of the statement or statements contained in the request for admission. The ALJ may determine that a failure to respond to a request for admission is not deemed an admission of the truth if a party shows that the failure was due to circumstances beyond the control of the party or the party's attorney.

(2) ***Response.*** A party may object to a request for admission and must state the reasons for objection. A party may specifically deny the truth of the matter or describe the reasons why the party is unable to truthfully deny or admit the matter. If a party is unable to deny or admit the truth of the matter, the party must show that the party has made reasonable inquiry into the matter or that the information known to, or readily obtainable by, the party is insufficient to enable the party to admit or deny the matter. A party may admit or deny any part of the request for admission. If the ALJ determines that a response does not comply with the requirements of this rule or that the response is insufficient, the matter is deemed admitted.

(3) ***Effect of admission.*** Any matter admitted or deemed admitted under this section is conclusively established for the purpose of the hearing and appeal.

(n) ***Motion to compel discovery.*** A party may move to compel discovery if a person refuses to answer a question during a deposition, a party fails or refuses to answer an interrogatory, if a person gives an evasive or incomplete answer during a deposition or when responding to an interrogatory, or a party fails or refuses to produce documents or tangible items. During a deposition, the proponent of a question may complete the deposition or may adjourn the examination before moving to compel if a person refuses to answer.

(o) ***Failure to comply with a discovery order or order to compel.*** If a party fails to comply with a discovery order or an order to compel, the ALJ, limited to the extent of the party's failure to comply with the discovery order or motion to compel, may do the following:

(1) Strike that portion of a party's pleadings.

(2) Preclude prehearing or discovery motions by that party.

(3) Preclude admission of that portion of a party's evidence at the hearing.

(4) Preclude that portion of the testimony of that party's witnesses at the hearing.

§ 1503.635 Evidence.

(a) ***General.*** A party is entitled to present the party's case or defense by oral, documentary, or demonstrative evidence, to submit rebuttal evidence, and to conduct any cross-examination that may be required for a full and true disclosure of the facts.

(b) ***Admissibility.*** A party may introduce any oral, documentary, or demonstrative evidence in support of the party's case or defense. The ALJ must admit any oral, documentary, or demonstrative evidence introduced by a party, but must exclude irrelevant, immaterial, or unduly repetitious evidence.

(c) ***Hearsay evidence.*** Hearsay evidence is admissible in proceedings governed by this subpart. The fact that evidence submitted by a party is hearsay goes only to the weight of the evidence and does not affect its admissibility.

§ 1503.637 Standard of proof.

The ALJ may issue an initial decision or may rule in a party's favor only if the decision or ruling is supported by a preponderance of the evidence contained in the record. In order to prevail, the party with the burden of proof must prove the party's case or defense by a preponderance of the evidence.

§ 1503.639 Burden of proof.

(a) Except in the case of an affirmative defense, the burden of proof is on the agency.

(b) Except as otherwise provided by statute or rule, the proponent of a motion, request, or order has the burden of proof.

(c) A party who has asserted an affirmative defense has the burden of proving the affirmative defense.

§ 1503.641 Offer of proof.

A party whose evidence has been excluded by a ruling of the ALJ may offer the evidence for the record on appeal.

§ 1503.643 Public disclosure of evidence.

This section applies to information other than Sensitive Security Information (SSI). All release of SSI is governed by § 1503.415 and 49 CFR part 1520.

(a) The ALJ may order that any other information contained in the record be withheld from public disclosure. Any person may object to disclosure of information in the record by filing a written motion to withhold specific information with the ALJ and serving a copy of the motion on each party. The party must state the specific grounds for nondisclosure in the motion.

(b) The ALJ must grant the motion to withhold information in the record if, based on the motion and any response to the motion, the ALJ determines that disclosure would be detrimental to transportation safety, disclosure would not be in the public interest, or that the information is not otherwise required to be made available to the public.

§ 1503.645 Expert or opinion witnesses.

An employee of the agency may not be called as an expert or opinion witness, for any party other than TSA, in any proceeding governed by this subpart. An employee of a respondent may not be called by an agency attorney as an expert or opinion witness for TSA in any proceeding governed by this subpart to which the respondent is a party.

§ 1503.647 Subpoenas.

(a) ***Request for subpoena.*** A party may obtain a subpoena to compel the attendance of a witness at a deposition or hearing, or to require the production of documents or tangible items, from the ALJ who is assigned to the case, or, if no ALJ is assigned or the assigned law judge is unavailable, from the chief ALJ. The party must complete the subpoena, stating the title of the action and the date and time for the witness' attendance or production of documents or items. The party who obtained the subpoena must serve the subpoena on the witness or the custodian of the documents or tangible items sought to be produced.

(b) ***Motion to quash or modify the subpoena.*** A party, or any person upon whom a subpoena has been served, may file a motion to quash or modify the subpoena at or before the time specified in the subpoena for compliance. The applicant must describe, in detail, the basis for the application to quash or modify the subpoena including, but not limited to, a statement that the testimony, document, or tangible evidence is not relevant to the proceeding, that the subpoena is not reasonably tailored to the scope of the proceeding, or that the subpoena is unreasonable and oppressive. A motion to quash or modify the subpoena will stay the effect of the subpoena pending a decision by the ALJ on the motion.

(c) ***Enforcement of subpoena.*** Upon a showing that a person has failed or refused to comply with a subpoena, a party may apply to the U.S. district court having jurisdiction to seek judicial enforcement of the subpoena in accordance with 49 U.S.C. 46104.

§ 1503.649 Witness fees.

(a) ***General.*** Unless otherwise authorized by the ALJ, the party who applies for a subpoena to compel the attendance of a witness at a deposition or hearing, or the party at whose request a witness appears at a deposition or hearing, must pay the witness fees described in this section.

(b) ***Amount.*** Except for an employee of the agency who appears at the direction of the agency, a witness who appears at a deposition or hearing is entitled to the same fees and mileage expenses as are paid to a witness in a court of the United States in comparable circumstances.

§ 1503.651 Record.

(a) ***Exclusive record.*** The request for hearing, complaint, answer, transcript of all testimony in the hearing, all exhibits received into evidence, and all motions, responses to motions, applications, requests, and rulings will constitute the exclusive record for decision of the proceedings and the basis for the issuance of any orders in the proceeding.

(b) ***Examination and copying of record.***

(1) ***Generally.*** Any person interested in reviewing or obtaining a copy of a record may do so only by submitting a Freedom of Information Act (FOIA) request under 5 U.S.C. 552, *et seq.*, 49 CFR part 7, and any applicable DHS regulations. Portions of the record may be exempt from disclosure pursuant to FOIA.

(2) ***Docket Files or Documents Not for Public Disclosure.***

(i) Only the following persons may review docket files or particular documents that are not for public disclosure:

(A) Parties to the proceedings.

(B) Their designated representatives.

(C) Persons who have a need to know as determined by the Administrator.

(ii) Those persons with permission to review these documents or docket files may view the materials at the TSA Headquarters, 601 South 12th Street, Arlington, Virginia 20598-6002. Persons with access to these records may have a copy of the records after payment of reasonable costs.

§ 1503.653 Argument before the ALJ.

(a) ***Arguments during the hearing.*** During the hearing, the ALJ must give the parties a reasonable opportunity to present arguments on the record supporting or opposing motions, objections, and rulings if the parties request an opportunity for argument. The ALJ may request written arguments during the hearing if the ALJ finds that submission of written arguments is necessary before the ALJ issues the ruling or order.

(b) ***Final oral argument.*** At the conclusion of the hearing and before the ALJ issues an initial decision in the proceedings, the parties are entitled to submit oral proposed findings of fact and conclusions of law, exceptions to rulings of the ALJ, and supporting arguments for the findings, conclusions, or exceptions. At the conclusion of the hearing, a party may waive final oral argument.

(c) ***Posthearing briefs.*** The ALJ may request written posthearing briefs before the ALJ issues an initial decision in the proceedings. If a party files a written posthearing brief, the party must include proposed findings of fact and conclusions of law, exceptions to rulings of the ALJ, and supporting arguments for the findings, conclusions, or exceptions. The ALJ must give the parties a reasonable opportunity, not more than 30 days after receipt of the transcript, to prepare and submit the briefs.

§ 1503.655 Initial decision.

(a) ***Contents.*** The ALJ may issue an initial decision after the conclusion of the hearing or after the submission of written posthearing briefs, if so ordered. In each oral or written decision, the ALJ must include findings of fact and conclusions of law, and the grounds supporting those findings and conclusions, upon all material issues of fact, the credibility of witnesses, the applicable law, any exercise of the ALJ's discretion, the amount of any civil penalty found appropriate by the ALJ, and a discussion of the basis for any order issued in the proceedings. The ALJ is not required to provide a written explanation for rulings on objections, procedural motions, and other matters not directly relevant to the substance of the initial decision. If the ALJ refers to any previous unreported or unpublished initial decision, the ALJ must make copies of that initial decision available to all parties and the TSA decision maker.

(b) ***Written decision.*** At the conclusion of the hearing, the ALJ may issue the initial decision and order orally on the record. The ALJ must issue a written initial decision and order not later than 30 days after the conclusion of the hearing or submission of the last posthearing brief. The ALJ must serve a copy of any written initial decision on each party.

(c) ***Order assessing civil penalty.*** Unless appealed pursuant to § 1503.657, the initial decision issued by the ALJ will be considered an order assessing civil penalty if the ALJ finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the ALJ, is warranted.

(d) ***Effect of initial decision.*** An initial decision of an ALJ is persuasive authority in any other civil penalty action, unless appealed and reversed by the TSA decision maker or a court of competent jurisdiction.

§ 1503.657 Appeal from initial decision.

(a) ***Notice of appeal.*** Either party may appeal the initial decision, and any decision not previously appealed pursuant to § 1503.631, by filing a notice of appeal with the Enforcement Docket Clerk. A party must file the notice of appeal with USCG ALJ Docketing Center, ATTN: Enforcement Docket Clerk, 40 S. Gay Street, Room 412, Baltimore, Maryland 21202-4022. A party must file the notice of appeal not later than 10 days after entry of the oral initial decision on the record or service of the written initial decision on the parties and must serve a copy of the notice of appeal on each party. Upon filing of a notice of appeal, the effectiveness of the initial decision is stayed until a final decision and order of the TSA decision maker have been entered on the record.

(b) ***Issues on appeal.*** A party may appeal only the following issues:

(1) Whether each finding of fact is supported by a preponderance of the evidence.

(2) Whether each conclusion of law is made in accordance with applicable law, precedent, and public policy.

(3) Whether the ALJ committed any prejudicial errors during the hearing that support the appeal.

(c) ***Perfecting an appeal.*** Unless otherwise agreed by the parties, a party must perfect an appeal, not later than 50 days after entry of the oral initial decision on the record or service of the written initial decision on the party, by filing an appeal brief with the Enforcement Docket Clerk.

(1) ***Extension of time by agreement of the parties.*** The parties may agree to extend the time for perfecting the appeal with the consent of the TSA decision maker. If the TSA decision maker grants an extension of time to perfect the appeal, the Enforcement Docket Clerk will serve a letter confirming the extension of time on each party.

(2) ***Written motion for extension.*** If the parties do not agree to an extension of time for perfecting an appeal, a party desiring an extension of time may file a written motion for an extension with the Enforcement Docket Clerk and must serve a copy of the motion on each party. The TSA decision maker may grant an extension if good cause for the extension is shown in the motion.

(d) ***Appeal briefs.*** A party must file the appeal brief with the Enforcement Docket Clerk and must serve a copy of the appeal brief on each party.

(1) In the appeal brief, a party must set forth, in detail, the party's specific objections to the initial decision or rulings, the basis for the appeal, the reasons supporting the appeal, and the relief requested in the appeal. If, for the appeal, the party relies on evidence contained in the record for the appeal, the party must specifically refer in the appeal brief to the pertinent evidence contained in the transcript.

(2) The TSA decision maker may dismiss an appeal, on the TSA decision maker's own initiative or upon motion of any other party, where a party has filed a notice of appeal but fails to perfect the appeal by timely filing an appeal brief.

(e) ***Reply brief.*** Unless otherwise agreed by the parties, any party may file a reply brief not later than 35 days after the appeal brief has been served on that party. The party filing the reply brief must serve a copy of the reply brief on each party. If the party relies on evidence contained in the record for the reply, the party must specifically refer to the pertinent evidence contained in the transcript in the reply brief.

(1) ***Extension of time by agreement of the parties.*** The parties may agree to extend the time for filing a reply brief with the consent of the TSA decision maker. If the TSA decision maker grants an extension of time to file the reply brief, the Enforcement Docket Clerk will serve a letter confirming the extension of time on each party.

(2) ***Written motion for extension.*** If the parties do not agree to an extension of time for filing a reply brief, a party desiring an extension of time may file a written motion for an extension and will serve a copy of the motion on each party. The TSA decision maker may grant an extension if good cause for the extension is shown in the motion.

(f) ***Other briefs.*** The TSA decision maker may allow any person to submit an amicus curiae brief in an appeal of an initial decision. A party may not file more than one appeal brief or reply brief. A party may petition the TSA decision maker, in writing, for leave to file an additional brief and must serve a copy of the

petition on each party. The party may not file the additional brief with the petition. The TSA decision maker may grant leave to file an additional brief if the party demonstrates good cause for allowing additional argument on the appeal. The TSA decision maker will allow a reasonable time for the party to file the additional brief.

(g) ***Number of copies.*** A party must file the original appeal brief or the original reply brief, and two copies of the brief, with the Enforcement Docket Clerk.

(h) ***Oral argument.*** The TSA decision maker has sole discretion to permit oral argument on the appeal. On the TSA decision maker's own initiative or upon written motion by any party, the TSA decision maker may find that oral argument will contribute substantially to the development of the issues on appeal and may grant the parties an opportunity for oral argument.

(i) ***Waiver of objections on appeal.*** If a party fails to object to any alleged error regarding the proceedings in an appeal or a reply brief, the party waives any objection to the alleged error. The TSA decision maker is not required to consider any objection in an appeal brief or any argument in the reply brief if a party's objection is based on evidence contained in the record and the party does not specifically refer to the pertinent evidence from the record in the brief.

(j) ***The TSA decision maker's decision on appeal.*** The TSA decision maker will review the briefs on appeal and the oral argument, if any, to determine if the ALJ committed prejudicial error in the proceedings or that the initial decision should be affirmed, modified, or reversed. The TSA decision maker may affirm, modify, or reverse the initial decision, make any necessary findings, or may remand the case for any proceedings that the TSA decision maker determines may be necessary.

(1) The TSA decision maker may raise any issue, on the TSA decision maker's own initiative, that is required for proper disposition of the proceedings. The TSA decision maker will give the parties a reasonable opportunity to submit arguments on the new issues before making a decision on appeal. If an issue raised by the TSA decision maker requires the consideration of additional testimony or evidence, the TSA decision maker will remand the case to the ALJ for further proceedings and an initial decision related to that issue. If the TSA decision maker raises an issue that is solely an issue of law, or the issue was addressed at the hearing but was not raised by a party in the briefs on appeal, the TSA decision maker need not remand the case to the ALJ for further proceedings but has the discretion to do so.

(2) The TSA decision maker will issue the final decision and order of the Administrator on appeal in writing and will serve a copy of the decision and order on each party. Unless a petition for review is filed pursuant to § 1503.659, a final decision and order of the Administrator will be considered an order assessing civil penalty if the TSA decision maker finds that an alleged violation occurred and a civil penalty is warranted.

(3) A final decision and order of the Administrator after appeal is binding precedent in any other civil penalty action unless appealed and reversed by a court of competent jurisdiction.

(4) The TSA decision maker will determine whether the decision and order of the TSA decision maker, with the ALJ's initial decision or order attached, may be released to the public, either in whole or in redacted form. In making this determination, the TSA decision maker will consider whether disclosure of any of the information in the decision and order would be detrimental to transportation security, would not be in the public interest, or should not otherwise be required to be made available to the public.

§ 1503.659 Petition to reconsider or modify a final decision and order of the TSA decision maker on appeal.

(a) ***General.*** Any party may petition the TSA decision maker to reconsider or modify a final decision and order issued by the TSA decision maker on appeal from an initial decision. A party must file a petition to reconsider or modify not later than 30 days after service of the TSA decision maker's final decision and order on appeal and must serve a copy of the petition on each party. The TSA decision maker will not reconsider or modify an initial decision and order issued by an ALJ that has not been appealed by any party to the TSA decision maker and filed with the Enforcement Docket Clerk.

(b) ***Form and number of copies.*** A party must file in writing a petition to reconsider or modify. The party must file the original petition with the Enforcement Docket Clerk and must serve a copy of the petition on each party.

(c) ***Contents.*** A party must state briefly and specifically the alleged errors in the final decision and order on appeal, the relief sought by the party, and the grounds that support the petition to reconsider or modify.

(1) If the petition is based, in whole or in part, on allegations regarding the consequences of the TSA decision maker's decision, the party must describe and support those allegations.

(2) If the petition is based, in whole or in part, on new material not previously raised in the proceedings, the party must set forth the new material and include affidavits of prospective witnesses and authenticated documents that would be introduced in support of the new material. The party must explain, in detail, why the new material was not discovered through due diligence prior to the hearing.

(d) ***Repetitious and frivolous petitions.*** The TSA decision maker will not consider repetitious or frivolous petitions. The TSA decision maker may summarily dismiss repetitious or frivolous petitions to reconsider or modify.

(e) ***Reply petitions.*** Any other party may reply to a petition to reconsider or modify, not later than 30 days after service of the petition on that party, by filing a reply with the Enforcement Docket Clerk. A party must serve a copy of the reply on each party.

(f) ***Effect of filing petition.*** Unless otherwise ordered by the TSA decision maker, filing a petition pursuant to this section will stay the effective date of the TSA decision maker's final decision and order on appeal.

(g) ***The TSA decision maker's decision on petition.*** The TSA decision maker has sole discretion to grant or deny a petition to reconsider or modify. The TSA decision maker will grant or deny a petition to reconsider or modify within a reasonable time after receipt of the petition or receipt of the reply petition, if any. The TSA decision maker may affirm, modify, or reverse the final decision and order on appeal, or may remand the case for any proceedings that the TSA decision maker determines may be necessary.

[74 FR 36039, July 21, 2009, as amended at 75 FR 58334, Sept. 24, 2010]

§ 1503.661 Judicial review of a final order.

For violations of a TSA requirement, a party may petition for review of a final order of the Administrator only to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia pursuant to 49 U.S.C. 46110. A party seeking judicial review of a final order must file a petition for review not later than 60 days after the final order has been served on the party.

Subpart H—Judicial Assessment of Civil Penalties

§ 1503.701 Applicability of this subpart.

(a) ***Jurisdictional minimums.*** This subpart applies to a civil penalty action under this part in which the total amount in controversy exceeds the following amounts.

(b) ***In general.*** Except as provided in paragraph (c) of this section, in the case of violation of title 49 U.S.C. or 46 U.S.C chapter 701, a regulation prescribed, or order issued under any of those provisions, the amount in controversy exceeds the following:

(1) $50,000, in the case of violation by an individual or small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632).

(2) $400,000, in the case of violation by any other person.

(c) ***Certain aviation related violations.*** In the case of a violation of 49 U.S. C. chapter 449 (except sections 44902, 44903(d), 44907(a)-(d)(1)(A), 44907(d)(1)(C)-(f), 44908, and 44909), or a regulation prescribed or order issued under any of those provisions, the amount in controversy exceeds the following:

(1) $50,000, in the case of violation by an individual (except an airman serving as an airman), any person not operating an aircraft for the transportation of passengers or property for compensation, or a small business concern, as defined in section 3 of the Small Business Act (15 U.S.C. 632).

(2) $400,000, in the case of violation by a person operating an aircraft for the transportation of passengers or property for compensation (except an individual serving as an airman).

§ 1503.703 Civil penalty letter; referral.

(a) ***Issuance.*** In a civil penalty action in which the amount in controversy exceeds the amounts set forth in § 1503.701, the Administrator will send a civil penalty letter to the person charged with a violation of a TSA requirement.

(b) ***Contents.*** The civil penalty letter will contain a statement of the charges; the applicable law, rule, regulation, or order; the amount of civil penalty that the Administrator will accept in full settlement of the action or an offer to compromise the civil penalty.

(c) ***Response.*** Not later than 30 days after receipt of the civil penalty letter, the person charged with a violation may present to the agency attorney any material or information in answer to the charges, either orally or in writing, that may explain, mitigate, or deny the violation or that may show extenuating circumstances. The Administrator will consider any material or information submitted in accordance with this paragraph (c) to determine whether the person is subject to a civil penalty or to determine the amount for which the Administrator will compromise the action.

(d) ***Compromise.*** If the person charged with a violation offers to compromise the civil penalty action for a specific amount, that person must send payment in a form and manner acceptable to TSA for that amount to the agency, made payable to the Transportation Security Administration, or make payment electronically through *http://www.pay.gov.* The Chief Counsel or the Deputy Chief Counsel for Civil Enforcement may accept the payment or may refuse and return the payment. If the Administrator accepts the offer to compromise, the agency will send a letter to the person charged with the violation stating that the payment is accepted in full settlement of the civil penalty action and that the matter is closed.

(e) ***Referral for prosecution and collection.*** If the parties cannot agree to compromise the civil penalty action or the offer to compromise is rejected and the payment submitted in compromise is returned, the Administrator may refer the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings in a United States district court, pursuant to the authority in 49 U.S.C. 114 or 46305 to prosecute and collect the civil penalty.

(f) The Administrator delegates to the Chief Counsel and the Deputy Chief Counsel for Enforcement the authority to carry out any function of the Administrator described in this § 1503.703.

Subpart I—Formal Complaints

§ 1503.801 Formal complaints.

(a) Any person may file a complaint with the Administrator with respect to any act or omission by any person in contravention of 49 U.S.C., subtitle VII, part A, (except sections 44902, 44903(d), 44907(a)-(d)(1)(A), 44907(d)(1)(C)-(f), 44908, and 44909) administered by the Administrator, or a regulation prescribed or order issued under any of those provisions. This section does not apply to complaints against the Administrator or employees of the TSA acting within the scope of their employment.

(b) Complaints filed under this section must—

(1) Be submitted in writing and identified as a complaint filed for the purpose of seeking an appropriate order or other enforcement action;

(2) Be submitted to the U.S. Department of Homeland Security, Transportation Security Administration, by following the instructions to complete a "complaint" contact form by following the instructions on the TSA Web site, currently accessible at *http://www.tsa.gov/contact/index.shtm*.

(3) Set forth the name and address, if known, of each person who is the subject of the complaint and, with respect to each person, the specific provisions of the statute, regulation, or order that the person filing the complaint believes were violated;

(4) Contain a concise, but complete, statement of the facts relied upon to substantiate each allegation;

(5) State the name, address, and telephone number of the person filing the complaint; and

(6) Be signed by the person filing the complaint or a duly authorized representative.

(c) TSA will consider complaints that do not meet the requirements of paragraph (b) of this section as reports under § 1503.1.

(d) TSA will place complaints that meet the requirements of paragraph (b) of this section in the docket and will mail a copy to each person named in the complaint.

(e) TSA will refer any complaint against a member of the Armed Forces of the United States acting in the performance of official duties to the Secretary of the Department concerned in accordance with the procedures set forth in § 1503.407.

(f) The person named in the complaint must file an answer within 20 days after service of a copy of the complaint.

(g) After the complaint has been answered or after the allotted time in which to file an answer has expired, the Administrator, or a designated official, will determine if there are reasonable grounds for investigating the complaint.

(h) If the Administrator, or a designated official, determines that a complaint does not state facts that warrant an investigation or action, the Administrator or designated official may dismiss the complaint without a hearing and, if so, will provide the reason for the dismissal, in writing, to the person who filed the complaint and the person(s) named in the complaint.

(i) If the Administrator, or a designated official, determines that reasonable grounds exist, an informal investigation may be initiated. Each person named in the complaint will be advised which official has been delegated the responsibility under § 1503.203 for conducting the investigation.

(j) If the investigation substantiates the allegations set forth in the complaint, a notice of proposed order may be issued or other enforcement action taken in accordance with this part.

(k) The complaint and other pleadings and official TSA records relating to the disposition of the complaint are maintained in current docket form at: U.S. Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, TSA-2, Complaint Docket, 601 South 12th Street, Arlington, VA 20598-6002. If this location changes, TSA will give notice of the change by publishing a notice in the FEDERAL REGISTER.

(1) ***Generally.*** Any person interested in reviewing or obtaining a copy of a record may do so only by submitting a Freedom of Information Act (FOIA) request under 5 U.S.C. 552, *et seq.* and 49 CFR part 7. Portions of the record may be exempt from disclosure pursuant to FOIA.

(2) ***Docket files or documents not for public disclosure.***

(i) Only the following persons may review docket files or particular documents that are not for public disclosure:

(A) Parties to the proceedings.

(B) Representatives designated in writing by a party.

(C) Persons who have a need to know as determined by the Administrator.

(ii) Those persons with permission to review these documents or docket files may view the materials at the Complaint Docket, TSA Headquarters, Visitor Center, 601 South 12th Street, Arlington, Virginia 20598-6002, Attn: Office of Chief Counsel. If this address changes, TSA will give notice by publishing a notice in the FEDERAL REGISTER. Persons with access to these records may have a copy of the records after payment of reasonable costs.