

§ 1503.7

(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 in the TSA Enforcement Docket, TSA Headquarters, Visitor Center, 701 South 12th Street, Arlington, Virginia 22202.

(1) *Generally.* Any person interested in reviewing or obtaining a copy of a record may do so only by submitting a FOIA request under 5 U.S.C. 552 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) Their designated representatives; and
- (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 Enforcement Docket, TSA Headquarters, Visitor Center, 701 South 12th Street, Arlington, Virginia 22202. Persons with access to these records may have a copy of the records after payment of reasonable costs.

[67 FR 51483, Aug. 8, 2002, as amended at 68 FR 49720, Aug. 19, 2003; 68 FR 58281, Oct. 9, 2003]

§ 1503.7 Records, documents and reports.

Each record, document, and report that the Transportation Security Regulations 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.

49 CFR Ch. XII (10–1–04 Edition)

Subpart B—Administrative Actions

§ 1503.11 Administrative disposition of certain violations.

(a) If it is determined that a violation or an alleged 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, does not require legal enforcement action, 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.

Subpart C—Legal Enforcement Actions

§ 1503.12 Request for portions of the enforcement investigative report (EIR).

(a) Discovery and pre-litigation disclosure. Pursuant to this section, any alleged violator or designated representative may request, from the Chief Counsel or designee, portions of the 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 legal enforcement action document. SSI contained in the EIR is released pursuant to 49 CFR part 1520. Information released under this section is not produced under the Freedom of Information Act (FOIA).

(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 49 U.S.C. 552 and 49 CFR part 7. Portions of the EIR may be exempt from disclosure pursuant to FOIA.

§ 1503.13 Consent orders.

(a) At any time before the issuance of an order under this subpart, the official who issued the notice and the person subject to the notice may agree to dispose of the case by the issuance of a consent order by the official.

(b) A proposal for a consent order, submitted to the official who issued the notice, under this section must include—

- (1) A proposed order;
- (2) An admission of all jurisdictional facts;
- (3) An express waiver of the right to further procedural steps and of all rights to judicial review; and
- (4) An incorporation of the notice by reference and an acknowledgment that the notice may be used to construe the terms of the order.

§ 1503.15 Civil penalties: Civil penalties involving an amount in controversy in excess of \$ 50,000, an in rem action, or injunctive relief.

(a) Any person who violates any provision 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, is subject to a civil penalty of not more than the amount specified for each violation in accordance with 49 U.S.C. 46301, in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (note), as amended.

(b) The authority of the Administrator, under 49 U.S.C. 46301 to propose a civil penalty for a violation of that chapter, or a rule, regulation, or order issued thereunder, and the ability to refer cases to the United States Attorney General, or the delegate of the Attorney General, for prosecution of civil penalty actions proposed by the Administrator, involving an amount in controversy in excess of \$ 50,000, an in rem action, or suit for injunctive relief, or for collection of an assessed civil penalty, is delegated to the Chief

Counsel and the Deputy Chief Counsel for Civil Enforcement.

(c) The Administrator may compromise any civil penalty, proposed in accordance with 49 U.S.C. 46301, involving an amount in controversy in excess of \$ 50,000, an in rem action, or suit for injunctive relief, prior to referral of the civil penalty action to the United States Attorney General, or the delegate of the Attorney General, for prosecution.

(1) The Administrator, through the Chief Counsel or the Deputy Chief Counsel for Civil Enforcement, will send a civil penalty letter to the person charged with 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 civil penalty letter contains 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.

(2) Not later than 30 days after receipt of the civil penalty letter, the person charged with a violation may present any material or information in answer to the charges to the agency attorney, 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.

(3) If the person charged with the violation offers to compromise for a specific amount, that person must send a certified check or money order for that amount to the agency, made payable to the Transportation Security Administration. The Chief Counsel or the Deputy Chief Counsel for Civil Enforcement may accept the certified check or money order or may refuse and return the certified check or money order.

(4) If the offer to compromise is accepted by the Administrator, the agency will send a letter to the person