

§ 1503.16

49 CFR Ch. XII (10-1-04 Edition)

charged with the violation stating that the certified check or money order is accepted in full settlement of the civil penalty action.

(5) If the parties cannot agree to compromise the civil penalty action or the offer to compromise is rejected and the certified check or money order 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. 46305 to prosecute and collect the civil penalty.

[67 FR 51483, Aug. 8, 2002, as amended at 68 FR 46720, Aug. 19, 2003]

**§ 1503.16 Civil penalties: Civil penalties involving an amount in controversy not exceeding \$50,000.**

(a) *General.* The following penalties apply to persons who violate chapter 449, as specified in subsection (1), of Title 49 of the United States Code:

(1) 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 in the chapter or section 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.

(2)-(3) [Reserved]

(b) *Orders assessing civil penalty.* An order assessing civil penalty may be issued for a violation described in paragraph (a) of this section, or as otherwise provided by statute, after notice and opportunity for a hearing. A person charged with a violation may be subject to an order assessing civil penalty in the following circumstances:

(1) An order assessing civil penalty may be issued if a person charged with a violation submits or agrees to submit a civil penalty for a violation.

(2) An order assessing civil penalty may be issued if a person charged with a violation does not request a hearing under paragraph (e)(2)(ii) of this sec-

tion within 15 days after receipt of a final notice of proposed civil penalty.

(3) Unless an appeal is filed in a timely manner, an initial decision or order of an administrative law judge will be considered an order assessing civil penalty if an administrative law judge finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the administrative law judge, is warranted.

(4) For penalties issued under § 1503.16(a)(1), unless a petition for review is filed with a U.S. court of appeals in a timely manner, 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.

(c) *Delegation of authority.* The authority of the Administrator, under 49 U.S.C. 46301 to initiate and assess civil penalties for a violation under chapter 449, or a rule, regulation, or order issued thereunder, is delegated to the Deputy Chief Counsel for Civil Enforcement. The authority of the Administrator to refer cases to the Attorney General of the United States, or the delegate of the Attorney General, for the collection of civil penalties, is delegated to the Chief Counsel and the Deputy Chief Counsel for Civil Enforcement.

(d) *Notice of proposed civil penalty.* A civil penalty action is initiated by sending a notice of proposed civil penalty 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. A notice of proposed civil penalty will be sent to the individual charged with a violation or to the president of the corporation or company charged with a violation. In response to a notice of proposed civil penalty, a corporation or company may designate in writing another person to receive documents in that civil penalty action. The notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty. Not later than 30

days after receipt of the notice of proposed civil penalty, the person charged with a violation must—

(1) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or compromise order must be issued in that amount;

(2) Submit to the agency attorney one of the following:

(i) Written information, including documents and witness statements, demonstrating that a violation of the regulations did not occur or that a penalty or the amount of the penalty is not warranted by the circumstances;

(ii) A written request to reduce the proposed civil penalty, the amount of reduction, and the reasons and any documents supporting a reduction of the proposed civil penalty, including records indicating a 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 to discuss the matter with the agency attorney and to submit relevant information or documents; or

(3) Request a hearing in which case a complaint will be filed with the Enforcement Docket Clerk.

(e) *Final notice of proposed civil penalty.* A final notice of proposed civil penalty may be issued after participation in informal procedures provided in paragraph (d)(2) of this section or failure to respond in a timely manner to a notice of proposed civil penalty. A final notice of proposed civil penalty will be sent to the individual charged with a violation, to the president of the corporation or company charged with a violation, or a person previously designated in writing by the individual, corporation, or company to receive documents in that civil penalty action. If not previously done in response to a notice of proposed civil penalty, a corporation or company may designate in writing another person to receive documents in that civil penalty action. The final notice of proposed civil penalty contains a statement of the charges and the amount of the proposed civil penalty and, as a result of information submitted to the agency attorney dur-

ing informal procedures, may modify an allegation or a proposed civil penalty contained in a notice of proposed civil penalty.

(1) A final notice of proposed civil penalty may be issued—

(i) If the person charged with a violation fails to respond to the notice of proposed civil penalty within 30 days after receipt of that notice; or

(ii) If the parties participated in any informal procedures under paragraph (d)(2) of this section 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.

(2) Not later than 15 days after receipt of the final notice of proposed civil penalty, the person charged with a violation must do one of the following—

(i) Submit the amount of the proposed civil penalty or an agreed-upon amount, in which case either an order assessing civil penalty or a compromise order will be issued in that amount; or

(ii) Request a hearing in which case a complaint will be filed with the Enforcement Docket Clerk.

(f) *Request for a hearing.* Any person charged with a violation may request a hearing, pursuant to paragraph (d)(3) or paragraph (e)(2)(ii) of this section, to be conducted in accordance with the procedures in subpart G of this part. A person requesting a hearing must file a written request for a hearing with the Enforcement Docket Clerk (U.S. Department of Homeland Security, Transportation Security Administration, Office of the Chief Counsel, TSA-2, Attention: Enforcement Docket Clerk, 601 South 12th Street, Arlington, VA 22202-4220) and must mail a copy of the request to the agency attorney. The person requesting the hearing must date and sign the request, and must include his or her current address. The request for hearing must be typewritten or legibly written.

(g) *Hearing.* If the person charged with a violation requests a hearing pursuant to paragraph (d)(3) or paragraph (e)(2)(ii) of this section, the original complaint will be filed with the Enforcement Docket Clerk and a

**§ 1503.17**

**49 CFR Ch. XII (10–1–04 Edition)**

copy will be sent to the person requesting the hearing. The procedural rules in subpart G of this part apply to the hearing and any appeal. At the close of the hearing, the administrative law judge will issue, either orally on the record or in writing, an initial decision, including the reasons for the decision, that contains findings or conclusions on the allegations contained, and the civil penalty sought, in the complaint.

(h) *Appeal.* Either party may appeal the administrative law judge's initial decision to the TSA decision maker pursuant to the procedures in subpart G of this part. If a party files a notice of appeal pursuant to §1503.233, the effectiveness of the initial decision is stayed until a final decision and order of the Administrator have been entered on the record. The TSA decision maker will review the record and issue a final decision and order of the Administrator that affirms, modifies, or reverses the initial decision. The TSA decision maker may assess a civil penalty but will not assess a civil penalty in an amount greater than that sought in the complaint.

(i) *Payment.* A person must pay a civil penalty by sending, to the agency, a certified check or money order made payable to the Transportation Security Administration.

(j) *Collection of civil penalties.* If a person does not pay a civil penalty imposed by an order assessing civil penalty or a compromise order within 60 days after service of the order, the Administrator may refer the order to the United States Attorney General, or the delegate of the Attorney General, to begin proceedings to collect the civil penalty. The action will be brought in a United States district court, pursuant to the authority in 49 U.S.C. 46305.

(k) *Exhaustion of administrative remedies.* For violations 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, a party may only petition for review of a final decision and order of the Administrator to the courts of appeals of the United States or the United States Court of Appeals for the District of Columbia pursuant

to section 49 U.S.C. 46110. Neither an initial decision or order issued by an administrative law judge that has not been appealed to the TSA decision maker, nor an order compromising a civil penalty action constitutes a final order of the Administrator for the purposes of judicial appellate review under 49 U.S.C. 46110.

(l) *Compromise.* The TSA may compromise any civil penalty action initiated in accordance with 49 U.S.C. 46301, involving an amount in controversy not exceeding \$ 50,000, or any civil penalty action initiated in accordance with 49 U.S.C. 46301 at any time before referring the action to the United States Attorney for collection.

(1) An agency attorney may compromise any civil penalty action where a person charged with a violation agrees to pay a civil penalty and the TSA agrees to make no finding of violation. Pursuant to such agreement, a compromise order will be issued, stating:

(i) The person agrees to pay a civil penalty;

(ii) The TSA makes no finding of a violation; and

(iii) The compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding.

(2) An agency attorney may compromise the amount of any civil penalty proposed in a notice, assessed in an order, or imposed in a compromise order.

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

**§ 1503.17 [Reserved]**

**§§ 1503.19–1503.20 [Reserved]**

**§ 1503.21 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. Ch. 47), has violated 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