

§ 1503.201

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

a violation. The final notice and order will contain a statement of the charges and the amount of the proposed civil penalty and, as a result of information submitted to the agency attorney during any informal procedures, may reflect a modified allegation or proposed civil penalty. A final notice and order may be issued—

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

(2) If the parties participated in any informal procedures under paragraph (b)(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 violation.

(d) *Order assessing civil penalty.* An order assessing civil penalty may be issued 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, the amount of civil penalty proposed in the notice of violation.

(2) An order assessing civil penalty may be issued if a person charged with a violation submits, or agrees to submit, an agreed-upon amount of civil penalty that is not reflected in either the notice of violation or the final notice and order.

(3) The final notice and order becomes (and contains a statement so indicating) an order assessing a civil penalty when the person charged with a violation submits the amount of the proposed civil penalty that is reflected in the final notice and order.

(4) The final notice and order becomes (and contains a statement so indicating) an order assessing a civil penalty 16 days after receipt of the final notice and order, unless not later than 15 days after receipt of the final notice and order, the person charged with a violation does one of the following—

(i) Submits an agreed-upon amount of civil penalty that is not reflected in the final notice and order, in which case an order assessing civil penalty or

a compromise order will be issued in that amount; or

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

(5) Unless there is an appeal to the TSA decision maker, 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 to be appropriate by the administrative law judge, is warranted.

(6) 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.

Subparts D-F [Reserved]

Subpart G—Rules of Practice in Transportation Security Administration (TSA) Civil Penalty Actions

§ 1503.201 Applicability.

(a) This subpart applies to the following actions:

(1) A civil penalty action in which a request for hearing has been filed and the amount sought does not exceed \$50,000 for a violation arising under 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.

(b) [Reserved]

(c) Notwithstanding the provisions of paragraph (a) of this section, the United States district courts will have exclusive jurisdiction of any civil penalty action initiated by the Administrator:

(1) Which involves an amount in controversy in excess of \$50,000;

(2) Which is an in rem action or in which an in rem action based on the same violation has been brought;

(3) Regarding which an aircraft subject to lien has been seized by the United States; and

(4) In which a suit for injunctive relief based on the violation giving rise to the civil penalty has also been brought.

§ 1503.202 Definitions.

The following definitions apply to this subpart:

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

Agency attorney means the Deputy Chief Counsel for Civil 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 a person licensed by a state, the District of Columbia, or a territory of the United States to practice law or appear before the courts of that state or territory.

Complainant means those persons within the TSA responsible for investigating and bringing possible violations of statute and regulation.

Complaint means a document issued by an agency attorney alleging 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 that has been filed with the enforcement docket after a hearing has been requested pursuant to § 1503.16(d)(3) or § 1503.16(e)(2)(ii).

Mail includes U.S. certified mail, U.S. registered mail, or use of an overnight express courier service.

Order assessing civil penalty means a document that contains a finding of 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 and may direct payment of a civil

penalty. Unless there is an appeal to the TSA decision maker, 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. 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.

Party means the respondent or the complainant.

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

Pleading means a complaint, an answer, and any amendment of these documents permitted under this subpart.

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 subpart, or any other address shown by other reasonable and available means.

Respondent means a person, corporation, or company named in 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 subpart, the *TSA decision maker* is the official authorized to issue a final decision and order of the Administrator in a civil penalty action.

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

§ 1503.203 Separation of functions.

(a) Civil penalty proceedings, including hearings, will be prosecuted by an agency attorney.

(b) An agency employee engaged in the performance of investigative or