

§ 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

under any of those provisions, the Chief Counsel or the Deputy Chief Counsel for Civil Enforcement 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.

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

§ 1503.23 [Reserved]

§ 1503.25 Injunctions.

Whenever it is determined that a person has engaged, or is about to engage, in any act or practice constituting 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 for which the TSA exercises enforcement responsibility, the Chief Counsel or the Deputy Chief Counsel for Civil Enforcement may request the United States Attorney General, 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. 46107.

[68 FR 49720, Aug. 19, 2003]

§ 1503.27 [Reserved]

§ 1503.29 Civil penalties: Streamlined enforcement procedures for certain security violations.

This section may be used, at the agency's discretion, in enforcement actions involving individuals presenting dangerous or deadly weapons for screening at airports or in checked baggage where the amount of the proposed civil penalty is less than \$5,000. In these cases, §§ 1503.16(a), 1503.16(c), and 1503.16 (f) through (l) are used, as well as paragraphs (a) through (d) of this section:

(a) *Delegation of authority.* The authority of the Administrator, under 49 U.S.C. 46301, to initiate civil penalty actions in accordance with TSA policies and procedures promulgated pursuant to 49 U.S.C. 46301 et seq. and 49 CFR

part 1540, is delegated to each Federal Security Director for the purpose of issuing notices of violation in cases involving violations of 49 U.S.C. chapter 449, or a regulation prescribed or order issued under any of those provisions.

(b) *Notice of violation.* A civil penalty action is initiated by sending a notice of violation to the person charged with the violation. The notice of violation 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 violation, 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 a civil penalty or a compromise order will be issued in that amount; or

(2) Submit to the agency attorney identified in the material accompanying the notice any 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 penalty amount is not warranted by the circumstances; or

(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; or

(iii) A written request for an informal conference to discuss the matter with an agency attorney and submit relevant information or documents; or

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

(c) *Final notice of violation and civil penalty assessment order.* A final notice of violation and civil penalty assessment order ("final notice and order") may be issued after participation in any informal proceedings as provided in paragraph (b)(2) of this section, or after failure of the respondent to respond in a timely manner to a notice of violation. A final notice and order will be sent to the individual charged with