levels of government, as specified in Executive Order 13132 (64 FR 43255, August 10, 1999), because it merely authorizes State requirements as part of the State RCRA hazardous waste program without altering the relationship or the distribution of power and responsibilities established by RCRA. This action also is not subject to Executive Order 13045 (62 FR 19885, April 23, 1997) because it is not economically significant and does not make decisions based on environmental health or safety risks. This rule is not subject to Executive Order 13211, ''Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use'' (66 FR 28355 (May 22, 2001)) because it is not a significant regulatory action under Executive Order 12866.

Under RCRA 3006(b), EPA grants a State's application for authorization as long as the State meets the criteria required by RCRA. It would thus be inconsistent with applicable law for EPA, when it reviews a State authorization application, to require the use of any particular voluntary consensus standard in place of another standard that otherwise satisfies the requirements of RCRA. Thus, the requirements of section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) do not apply. As required by section 3 of Executive Order 12988 (61 FR 4729, February 7, 1996), in issuing this rule, EPA has taken the necessary steps to eliminate drafting errors and ambiguity, minimize potential litigation, and provide a clear legal standard for affected conduct. EPA has complied with Executive Order 12630 (53 FR 8859, March 15, 1998) by examining the takings implications of the rule in accordance with the Attorney General's ''Supplemental Guidelines for the Evaluation of Risk and Avoidance of Unanticipated Takings' issued under the executive order. This rule does not impose an information collection burden under the provisions of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

The Congressional Review Act, 5 U.S.C. 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. EPA will submit a report containing this document and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication in the **Federal Register**. A major rule cannot take effect until 60 days after it is published in the **Federal Register**. This action is not a ''major rule'' as defined by 5 U.S.C. 804(2). This action will be effective on August 8, 2002.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste, Hazardous waste transportation, Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements.

Authority: This action is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: August 1, 2002.

Donald S. Welsh,

Regional Administrator, Region III.

[FR Doc. 02–20096 Filed 8–7–02; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

Transportation Security Administration

49 CFR 1503

[Docket No. TSA–2002–12777]

RIN 2110–AA09

Investigative and Enforcement Procedures

AGENCY: Transportation Security Administration (TSA), DOT.

ACTION: Interim final rule.

SUMMARY: This rulemaking establishes the interim investigative and enforcement procedural rules that the TSA will use to address statutory and regulatory violations. It adopts, in large part, the Federal Aviation Administration's (FAA) investigative and enforcement procedures. In addition, this rulemaking adopts the FAA's adjustment of civil penalties for inflation.

DATES: This rule is effective August 8, 2002.

FOR FURTHER INFORMATION CONTACT: Quang Nguyen, Civil Enforcement Division, Office of the Chief Counsel (TSA–2), Transportation Security Administration, 400 Seventh Street, SW., Washington, DC 20590; telephone (202) 493–1233; or e-mail: *quang.nguyen@tsa.dot.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Final Rule

You can get an electronic copy using the Internet by taking the following steps:

(1) Go to search function of the Department of Transportation's electronic Docket Management System (DMS) Web page (*http://dms.dot.gov/search*).

(2) On the search page type in the last digits of the docket number shown at the beginning of this notice. Click on ''search.''

(3) On the next page that contains the docket summary information for the docket you selected, click on the final rule.

You can also get an electronic copy using the Internet through the Government Printing Office's web page at *http://www.access.gpo.gov/su_docs/aces/aces140html*.

In addition, copies are available by writing the Transportation Security Administration, Attention: Enforcement Docket, Office of the Chief Counsel (TSA–2); 400 Seventh Street, SW., Washington, DC 20590. Such requests should identify the docket number of this rulemaking.

Abbreviations and Terms Used in This Document

ATSA—Aviation and Transportation Security Act
FSD—Federal Security Director
SSI—Sensitive Security Information
TSA—Transportation Security Administration
Under Secretary—The Under Secretary of Transportation for Security

Background

On November 19, 2001, the Aviation and Transportation Security Act (ATSA) (Public Law 107–71) became law. ATSA created the TSA, and transferred most aviation security functions from the FAA to the TSA. With some modifications, the civil aviation security rules have been transferred from the FAA (in title 14, Code of Federal Regulations) to the TSA (in title 49, Code of Federal Regulations) in a separate rulemaking (see docket number TSA–2002–11602). 67 FR 8340 (February 22, 2002). Under ATSA, the Under Secretary of Transportation for Security may impose a civil penalty for certain statutory violations of 49 U.S.C. chapter 449 or a regulation prescribed or order issued thereunder.

ATSA section 141 provides that all rules issued by the FAA continue in effect until modified or terminated by the TSA. However, part 13 of the FAA regulations includes references to FAA agency attorneys and the FAA decision

maker that do not apply to the TSA's operations at this time. This action permits TSA personnel to serve as agency attorneys and the Under Secretary to serve as the TSA decision maker under these rules.

Because the TSA currently does not have its own investigatory or enforcement procedures in place, the TSA is adopting, in large part, the current FAA investigative and enforcement rules in part 13 of title 14 of the Code of Federal Regulations. These rules will be used in the interim as the TSA prepares revised investigative and enforcement procedures. Those procedures will be noticed in the **Federal Register** for public comment.

Under ATSA, the TSA is not required to provide administrative hearings on the record. Accordingly, the TSA's enforcement proceedings are not required to comply with the Administrative Procedure Act (APA). Although these interim final rules conform to the APA requirements, the TSA intends to propose new procedures in accordance with its statutory authority. The TSA's decision not to adopt such new procedures in this rulemaking does not limit the TSA's ability to do so in the future.

Current Rulemaking

This rulemaking establishes the interim investigative and enforcement procedural rules that the TSA will use to address violations of 49 U.S.C. chapter 449 and regulations and orders issued thereunder. This rule is being issued as an interim final rule. As a rule of agency practice and procedure, this rule is exempt from the prior notice and comment requirement under 4(b)(3)(A) of the Administrative Procedure Act (APA), 5 U.S.C. 553(b)(3)(A). The rule will be codified in 49 CFR part 1503. The rules are largely unchanged from the FAA investigative and enforcement rules found in part 13, Title 14 of the Code of Federal Regulations, except for the following:

1. Omission of FAA procedures or processes where they are inapplicable to or inappropriate or unnecessary for the TSA at this time;

2. Revision of references from FAA to the TSA and a revision of occurrences of ''shall'' to ''must'' or ''will'' where appropriate;

3. Revision of the time period relating to motions to dismiss a request for hearing, decision on motion for disqualification, motion to dismiss for insufficiency, motion to dismiss a complaint, and motions requesting a more definite statement of the allegations;

4. Revision of the effect of filing a petition to reconsider;

5. Revision of the term ''Record;''

6. Revision of the numbering system to reflect the TSA's adoption in part 1503;

7. Revision of ''aviation safety'' to ''transportation safety;''

8. Revision of public access to the enforcement docket;

9. Addition of section addressing requests for portions of the enforcement investigative report (EIR);

10. Revision with regard to filing certain documents with the administrative law judge.

Administrative Changes

Applicable references to FAA were changed to the TSA. Also, because of its potential legal ambiguity, the occurrences of ''shall'' have been revised to ''must'' or ''will'' as appropriate. Additionally, other administrative changes have been made to clarify, without substantively changing, the language of the rule.

Time Periods

In the interests of equity and practicality, the time periods provided in 49 CFR 1503.218(f)(2)(i) and 49 CFR 1503.218(f)(6)(iii) are both revised from their FAA counterparts. In 49 CFR 1503.218(f)(2)(i), the time for filing a complaint after service of an order denying a motion to dismiss is extended from ''10 days'' to ''20 days.'' Likewise, if required by the decision on appeal, the time period for filing a complaint and service on a party is also extended from ''10 days'' to ''20 days.'' Further, in 49 CFR 1503.218(f)(6)(iii), the requirement for an administrative law judge to render a decision on the motion for disqualification is extended from ''15 days'' to ''20 days.'' In addition, the time period provided for respondents to file an answer upon a denial of a motion to dismiss for insufficiency (1503.218(f)(1)), a denial of a motion to dismiss a complaint (1503.218(f)(2)(ii)), and denial of a motion requesting a more definite statement of the allegations is revised from ''10 days'' to ''20 days'' (1503.218(f)(3)(i)).

Effect of Filing Petition to Reconsider

Under 14 CFR 13.234(f), filing a petition to reconsider does not stay the effective date of a final decision and order and does not toll the time for filing a petition for review in a United States court of appeals. Under TSA rules, the filing of a petition for reconsideration or modification will stay the effective date of the order and a person may seek judicial review of a final order of the Under Secretary, which is embodied in a final decision and order, and if applicable, an order on a petition for modification or reconsideration. Corresponding changes are made to section 1503.235 to reflect the changes.

Expansion of the Term ''Record''

Due to an apparent oversight, the FAA rules did not include the request for hearing and the pleadings as part of the official record. Section 1503.230(a) includes the request for hearing, the complaint, and the answer in the list of documents making up the exclusive record.

Numbering System

Although the FAA part numbers of this rule are replaced with a corresponding TSA part number, we have retained each section number of the previous FAA rule where applicable. For instance, if an FAA section was previously numbered ''13.201,'' it is now numbered ''1503.201.''

''Aviation Safety'' to ''Transportation Safety''

Where applicable, in those instances that 49 CFR part 13 refers to aviation safety, the current rulemaking replaces ''aviation safety'' with ''transportation safety'' (for instance, §§ 1503.226(b) and 1503.233(j)(4)). This change reflects the TSA's broader mission relating to the various modes of transportation.

Public Access to the Enforcement Docket

Sensitive Security Information (SSI) is a category of protected material that is defined under 49 CFR part 1520. SSI material is exempted from disclosure under FOIA. Because of the nature of SSI material and the high concentration of such material in the enforcement actions that the TSA will handle, this rulemaking procedurally limits public access to the TSA enforcement docket. Under revised 49 CFR 1503.230(b), interested members of the public may examine and copy parts of the docket by filing a request under FOIA, 5 U.S.C. 552. This rulemaking is not intended to preclude members of the public from access to the enforcement docket, but is designed to prevent the improper disclosure of SSI.

Addition of section addressing requests for portions of the EIR

Under the new section 49 CFR 1503.12, any alleged violator or designated representative may request portions of the enforcement investigative report (EIR). Any requests by an alleged violator or designated

representative for non-privileged portions of the EIR need not be made under FOIA, but may be made pursuant to this section. Any other individual interested in obtaining a copy of the EIR must still submit a FOIA request.

Filing with the Enforcement Docket Clerk

The rules of practice under 14 CFR part 13 provided that certain documents be filed with the administrative law judge, and this may have caused some confusion in the past. Under this rulemaking, all documents required to be filed must be filed in one place, i.e., with the Enforcement Docket Clerk. The parties must serve a copy on the administrative law judge, or on the chief administrative law judge if no judge has been assigned to the case. This will enable the Enforcement Docket Clerk to maintain a complete set of records for each case and keep the administrative law judge apprised of various requests, amendments, motions and notices.

Good Cause for Immediate Adoption

This action adopts agency rules of procedure, and therefore a notice of proposed rulemaking is not required under 5 U.S.C. 553. Further, this action in essence adopts an existing FAA rule used up to now for these same types of cases, and therefore imposes few new or different procedures on respondents. This rule is needed so that TSA can enforce its security rules and promote compliance with security requirements. Accordingly, the agency finds that prior notice and public comment is impracticable, unnecessary, and contrary to the public interest.

This action adopts a procedural rule; therefore, it is not subject to the requirement that it be effective not less than 30 days from the date of publication in the **Federal Register**, as provided in 5 U.S.C. 553. Further, respondents receiving notices initiating civil penalties under this rule will receive abundant notice of the procedures to be used.

Paperwork Reduction Act

This rule does not contain any collection of information requirements, as defined by the Paperwork Reduction Act of 1995, as amended.

Regulatory Evaluation

Changes to Federal regulations are required to undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency shall propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic effect of regulatory changes on small entities. Third, the Office of Management and Budget directs agencies to assess the effect of regulatory changes on international trade. In conducting these analyses, the TSA has determined that this rule is not a ''significant regulatory action'' as defined in the Executive Order and the Department of Transportation Regulatory Policies and Procedures. This rule will not have a significant impact on a substantial number of small entities and will not constitute a barrier to international trade. A full regulatory analysis, which includes the identification and evaluation of cost-reducing alternatives to this rule, has not been prepared. Instead, the agency has prepared a more concise analysis of this rule that is presented in the following paragraphs.

This rulemaking provides guidance for the parties as to how civil penalties are imposed. The rules state the procedures for investigations, enforcement actions, for TSA civil penalty actions, and other details of imposing and adjudicating civil penalties.

Costs

There are no costs associated with this rulemaking. The rules do not impose any new economic requirements on the affected parties. The rules provide a framework for investigative and enforcement procedures and options for the respondent to respond to a proposed civil penalty. They also provide procedures used if an administrative law judge hears a matter. These are essentially the same procedures and options as were provided under the FAA rules that formerly applied to security enforcement cases. Respondents are not required to take any additional action based on these rules. Rather, these rules set out in detail for their options, which respondents may choose to take advantage of or not.

Benefits

This rulemaking will result in some unquantified cost savings to the agency and the respondents by making clear what procedures apply in civil penalty cases.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 establishes ''as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and of applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.'' To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 Act provides that the head of the agency may so certify and a regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

As discussed above, there are no costs imposed by this rulemaking. There are unquantified benefits associated with this rulemaking. For this reason, the TSA certifies that there is not a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including those barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the TSA has assessed the potential effect of this final rule and has determined that it will not impose any costs on domestic and international entities and thus has a neutral trade impact.

Executive Order 13132, Federalism

The TSA has analyzed this rule under the principles and criteria of Executive Order 13132, Federalism. We determined that this action will not have a substantial direct effect on the States, or the relationship between the national Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, we have determined that this final rule does not have federalism implications.

Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995, enacted as Public Law 104–4 on March 22, 1995, is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a ''significant regulatory action.''

The requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply when rulemaking actions are taken without the issuance of a notice of proposed rulemaking. Therefore, the TSA has not prepared a statement under the Act.

Environmental Analysis

The TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact

The energy impact of this rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (43 U.S.C. 6362). It has been determined that this rule is not a major regulatory action under the provisions of the EPCA.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires the TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within the TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in ''For Further Information Contact'' for information. Persons can obtain further information regarding SBREFA on the Small Business Administration's web page at *http://www.sba.gov/advo/laws/law_lib.html.*

List of Subjects in 49 CFR Part 1503

Administrative practice and procedure, Investigations, Law enforcement, Penalties, Transportation.

The Amendments

For the reasons set forth in the preamble, the Transportation Security Administration adds a new part 1503 in Title 49, chapter XII, subchapter A, of the Code of Federal Regulations to read as follows:

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

Subpart A—Investigative Procedures

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314.

Subpart A—Investigative Procedures

§ 1503.1 Reports of violations.

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

(b) Each report made under this section, together with any other information the TSA may have that is relevant to the matter reported, will be reviewed by TSA personnel to determine the nature and type of any additional investigation or enforcement action the TSA will take.

§ 1503.3 Investigations (general).

(a) The Under Secretary may conduct investigations, hold hearings, issue subpoenas, require the production of relevant documents, records, and property, and take evidence and depositions.

(b) For the purpose of investigating alleged 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, the Under Secretary's authority may be exercised by the various offices for matters within their respective areas for all routine investigations. When the compulsory processes of section 49 U.S.C. 46104 are invoked, the Under Secretary's authority has been delegated to the Chief Counsel, each Deputy Chief Counsel, and in consultation with the Office of the Chief Counsel, the Associate Under Secretary for Aviation Operations, the Associate Under Secretary for Maritime and Land Security, the Associate Under Secretary for Inspections, and each Federal Security Director.

§ 1503.5 Formal complaints.

(a) Any person may file a complaint with the Under Secretary with respect to any act or omission by any person in contravention of 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. This section does not apply to complaints against the Under Secretary 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 Transportation, Transportation Security Administration, Office of the Chief Counsel, TSA–2, Attention: Enforcement Docket, 400 Seventh Street, SW., Washington, DC 20590;

(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 or regulation or order that the complainant 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) Complaints that do not meet the requirements of paragraph (b) of this section will be considered reports under § 1503.1.

(d) Complaints that meet the requirements of paragraph (b) of this section will be docketed and a copy mailed to each person named in the complaint.

(e) Any complaint filed against a member of the Armed Forces of the United States acting in the performance of official duties will be referred to the Secretary of the Department concerned for action in accordance with the procedures set forth in § 1503.21.

(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 Under Secretary will determine if there are reasonable grounds for investigating the complaint.

(h) If the Under Secretary determines that a complaint does not state facts that warrant an investigation or action, the complaint may be dismissed without a hearing and the reason for the dismissal will be given, in writing, to the person who filed the complaint and the person named in the complaint.

(i) If the Under Secretary 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 § 1503.3(b) 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 in the TSA Enforcement Docket, GSA Building, Room 5008, 301 Seventh Street SW., Washington, DC 20407.

(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 Under Secretary.

(ii) Those persons with permission to review these documents or docket files may view the materials at the TSA Enforcement Docket, GSA Building, Room 5008, 301 Seventh Street SW., Washington, DC 20407. Persons with access to these records may have a copy of the records after payment of reasonable costs.

§ 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 Under Secretary may be used in any investigation conducted by the Under Secretary; 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.

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 Under Secretary, 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 Under Secretary, 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 Enforcement.

(c) The Under Secretary 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 Under Secretary, through the Chief Counsel or the Deputy Chief Counsel for 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 Under Secretary 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 Under Secretary 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 Under Secretary 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 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 Under Secretary, the agency will send a letter to the person 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 Under Secretary 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.

§ 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) [Reserved]

(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 section 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 Under Secretary 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 Under Secretary, 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 Enforcement. The authority of the Under Secretary 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 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 during 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 Transportation, Transportation Security Administration, Office of the Chief Counsel, TSA–2, Attention: Enforcement Docket Clerk, 400 Seventh Street, SW., Washington, DC 20590) 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 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 Under Secretary have been entered on the record. The TSA decision maker will review the record and issue a final decision and order of the Under Secretary 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 Under Secretary 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 Under Secretary 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 Under Secretary 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.

§ 1503.17 [Reserved]

§ 1503.19 [Reserved]

§ 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 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 Under Secretary thereon.

§ 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 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.

§ 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 Under Secretary, 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 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 Under Secretary 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.

Subpart D—[Reserved]

Subpart E—[Reserved]

Subpart 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 Under Secretary:

(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 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 Under Secretary 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 Under Secretary of Transportation for Security, acting in the capacity of the decision maker on appeal, or any person to whom the Under Secretary has delegated the Under Secretary'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 Under Secretary in a civil penalty action.

§ 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 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

administrative law judge or by the TSA decision maker on appeal, except as counsel or a witness in the public proceedings.

(c) The Chief Counsel or an 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.

§ 1503.204 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 party may file a notice of appearance in the action, in the manner provided in § 1503.210, and must serve a copy of the notice of appearance on each party, in the manner provided in § 1503.211, 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.

(c) Any person may request a copy of a document upon payment of reasonable costs. A person may keep an original document, data, or evidence, with the consent of the administrative law judge, by substituting a legible copy of the document for the record.

§ 1503.205 Administrative law judges.

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

(1) Give notice of, and hold, pre-hearing conferences and hearings;

(2) Administer oaths and affirmations;

(3) Issue subpoenas authorized by law and issue notices of deposition requested by the parties;

(4) Rule on offers of proof;

(5) Receive relevant and material evidence;

(6) Regulate the course of the hearing in accordance with the rules of this subpart;

(7) Hold conferences to settle or to simplify the issues by consent of the parties;

(8) Dispose of procedural motions and requests; and

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

(b) *Limitations on the power of the administrative law judge.* The administrative law judge must not issue an order of contempt, award costs to any party, or impose any sanction not specified in this subpart. If the administrative law judge imposes any sanction not specified in this subpart, a party may file an interlocutory appeal of right pursuant to § 1503.219(c)(4). This section does not preclude an administrative law judge 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 administrative law judge may disqualify himself or herself at any time. A party may file a motion, pursuant to § 1503.218(f)(6), requesting that an administrative law judge be disqualified from the proceedings.

§ 1503.206 Intervention.

(a) A person may submit a motion for leave to intervene as a party in a civil penalty action. Except for good cause shown, a motion for leave to intervene must be submitted not later than 10 days before the hearing.

(b) If the administrative law judge finds that intervention will not unduly broaden the issues or delay the proceedings, the administrative law judge 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 administrative law judge may determine the extent to which an intervenor may participate in the proceedings.

§ 1503.207 Certification of documents.

(a) *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 administrative law judge, the TSA decision maker on appeal, or each party.

(b) *Effect of signing a document.* By signing a document, the attorney of record, the party, or the party's representative certifies that the attorney, the party, or the party's representative 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 argument exists for extension, modification, or reversal of existing law; and

(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.

(c) *Sanctions.* If the attorney of record, the party, or the party's representative signs a document in violation of this section, the administrative law judge or the TSA decision maker, as appropriate, will:

(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; or

(6) Dismiss the appeal of the administrative law judge's initial decision to the TSA decision maker.

§ 1503.208 Complaint.

(a) *Filing.* The agency attorney must file the original and one copy of the complaint with the Enforcement Docket Clerk, or may file a written motion pursuant to § 1503.218(f)(2)(i) instead of filing a complaint, not later than 20 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) *Service.* An agency attorney must personally deliver or mail a copy of the complaint to the respondent, the president of the corporation or company named as a respondent, or a person designated by the respondent to accept service of documents in the civil penalty action.

(c) *Contents.* A complaint must set forth the facts alleged, any regulation 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.

(d) [Reserved]

§ 1503.209 Answer.

(a) *Writing required.* A respondent must file a written answer to the complaint, or may file a written motion pursuant to § 1503.218(f)(1)-(4) instead of filing an answer, not later than 30 days after service of the complaint. 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.

(b) *Filing and address.* A person filing an answer must personally deliver or mail the original and one copy of the answer for filing with the Enforcement Docket Clerk, not later than 30 days after service of the complaint. Filing must be made by mail to the ?U.S. Department of Transportation, Transportation Security Administration, Office of the Chief Counsel, TSA–2, Attention: Enforcement Docket Clerk, 400 Seventh Street, SW., Washington, DC 20590 or by personal delivery to TSA Enforcement Docket, GSA Building Room 5008, 301 D Street SW., Washington, DC 20407. The person filing an answer should suggest a location for the hearing when filing the answer.

(c) *Service.* A person filing an answer must serve a copy of the answer on the agency attorney who filed the complaint.

(d) *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.

(e) *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.

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

§ 1503.210 Filing of documents.

(a) Address and method of filing. A person tendering a document for filing must personally deliver or mail the signed original and one copy of each document. Filing must be made either by mail to the U.S. Department of Transportation, Transportation Security Administration, Office of the Chief Counsel, TSA–2, Attention: Enforcement Docket Clerk, 400 Seventh Street, SW., Washington, DC 20590 or by personal delivery to TSA Enforcement Docket, GSA Building, Room 5008, 301 D Street SW., Washington, DC 20407. A person must serve a copy of each document on each party in accordance with § 1503.211.

(b) *Date of filing.* A document will be considered to be filed on the date of personal delivery; or if mailed, the mailing date shown 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.

(c) *Form.* Each document must be typewritten or legibly handwritten.

(d) *Contents.* Unless otherwise specified in this subpart, 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.

§ 1503.211 Service of documents.

(a) *General.* A person must serve a copy of any document filed with the Enforcement Docket on each party and the administrative law judge or the chief administrative law judge 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.

(b) *Type of service.* A person may serve documents by personal delivery or by mail.

(c) *Certificate of service.* A person may attach a certificate of service to a document tendered for filing with the Enforcement Docket Clerk. A certificate of service must consist of a statement, dated and signed by the person filing the document, that the document was personally delivered or mailed to each party on a specific date.

(d) *Date of service.* The date of service will be the date of personal delivery; or if mailed, the mailing date shown 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.

(e) *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.

(f) *Service by the administrative law judge.* The administrative law judge 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 by personal delivery or by mail.

(g) *Valid service.* A document that was properly addressed, was sent in accordance with this subpart, and that was returned, that was not claimed, or that was refused, is deemed to have been served in accordance with this subpart. 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 refused.

(h) *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.

§ 1503.212 Computation of time.

(a) This section applies to any period of time prescribed or allowed by this subpart, or by notice or order of the administrative law judge.

(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.

§ 1503.213 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 administrative law judge must grant one extension of time to each party. The party seeking the extension of time must submit a draft order to the administrative law judge to be signed by the administrative law judge and filed with the Enforcement Docket Clerk. The administrative law judge 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 good cause for the late filing is shown. The administrative law judge may grant the extension of time if good cause for the extension is shown.

(c) *Failure to rule.* If the administrative law judge 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.

§ 1503.214 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 administrative law judge 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 administrative law judge.

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

(c) *Responses.* The administrative law judge 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 administrative law judge.

§ 1503.215 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 administrative law judge. If an agency attorney withdraws the complaint or a party withdraws the request for a hearing and the answer, the administrative law judge must dismiss the proceedings under this subpart with prejudice.

§ 1503.216 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.

§ 1503.217 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 pre-hearing 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 administrative law judge, 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 pre-hearing motions, responses to pre-hearing 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 pre-hearing 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 administrative law judge must approve the joint schedule filed by the parties. One party must submit a draft order establishing a joint schedule to the administrative law judge to be signed by the administrative law judge and filed with the Enforcement Docket Clerk.

(e) *Disputes.* The administrative law judge 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 administrative law judge's order establishing a joint schedule, the administrative law judge 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 administrative law judge may:

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

(2) Preclude pre-hearing or discovery motions by that party;

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

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

§ 1503.218 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 administrative law judge directs otherwise.

(d) *Answers to motions.* Any party may file an answer, with affidavits or other evidence in support of the answer, not later than 10 days after service of a written motion on that party. When a motion is made during a hearing, the answer may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the administrative law judge.

(e) *Rulings on motions.* The administrative law judge must rule on all motions as follows:

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

(2) *Pre-hearing motions.* The administrative law judge must resolve all pending pre-hearing motions not later than 7 days before the hearing. If the administrative law judge issues a ruling or order orally, the administrative law judge must serve a written copy of the ruling or order, within 3 days, on each party. In all other cases, the administrative law judge 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 administrative law judge 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 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 administrative law judge denies the motion to dismiss the complaint for insufficiency, the respondent must file an answer not later than 20 days after service of the administrative law judge's denial of the motion. A motion to dismiss the complaint for insufficiency must show that the complaint fails to state 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.

(2) *Motion to dismiss.* A party may file a motion to dismiss, specifying the grounds for dismissal. If an administrative law judge grants a motion to dismiss in part, a party may appeal the administrative law judge's ruling on the motion to dismiss under § 1503.219(b).

(i) *Motion to dismiss a request for a hearing.* An agency attorney may file a motion to dismiss a request for a hearing 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 administrative law judge'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 § 1503.233. 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 20 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. If the motion to dismiss is not granted, 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 administrative law judge'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 agency attorney may file an appeal pursuant to § 1503.233. 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 10 days after service of the decision on appeal.

(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 administrative law judge 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 administrative law judge must strike the allegations in the complaint to which the motion is directed. If the administrative law judge 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 administrative law judge 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 administrative law judge 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 make a motion 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 make a motion for decision, regarding all or any part of the proceedings, at any time before the administrative law judge has issued an initial decision in the proceedings. The administrative law judge must grant a party's motion for decision if the pleadings, depositions, answers to interrogatories, admissions, matters that the administrative law judge 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 making the motion 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 administrative law judge has been assigned to the proceedings but must make the motion before the administrative law judge 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 showing 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 administrative law judge must render a decision on the motion for disqualification not later than 20 days after the motion has been filed. If the administrative law judge finds that the motion for disqualification and supporting affidavit show a basis for disqualification, the administrative law judge must withdraw from the proceedings immediately. If the administrative law judge finds that disqualification is not warranted, the administrative law judge must deny the motion and state the grounds for the denial on the record. If the administrative law judge 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 administrative law judge's denial of the motion for disqualification in accordance with § 1503.219(b).

§ 1503.219 Interlocutory appeals.

(a) *General.* Unless otherwise provided in this subpart, a party may not appeal a ruling or decision of the administrative law judge 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 Under Secretary 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 administrative law judge, or orally requests an interlocutory appeal for cause, the proceedings are stayed until the administrative law judge issues a decision on the request. If the administrative law judge grants the request, the proceedings are stayed until the TSA decision maker issues a decision on the interlocutory appeal. The administrative law judge 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 administrative law judge 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 administrative law judge, before an initial decision has been entered in the case of:

(1) A ruling or order by the administrative law judge barring a person from the proceedings.

(2) Failure of the administrative law judge to dismiss the proceedings in accordance with § 1503.215.

(3) A ruling or order by the administrative law judge in violation of § 1503.205(b).

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

(d) *Procedure.* Not later than 10 days after the administrative law judge's decision forming the basis of an interlocutory appeal of right or not later than 10 days after the administrative law judge'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.

§ 1503.220 Discovery.

(a) *Initiation of discovery.* Any party may initiate discovery described in this section, without the consent or approval of the administrative law judge, 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 administrative law judge 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 or agreed by the parties, 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 administrative law judge 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) *Confidential orders.* A party or person who has received a discovery request for information 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 administrative law judge 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 administrative law judge determines that the requested material is not necessary to decide the case, the administrative law judge must preclude any inquiry into the matter by any party.

(3) If the administrative law judge determines that the requested material may be disclosed during discovery, the administrative law judge 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 administrative law judge determines that the requested material is necessary to decide the case and that a confidential order is warranted, the administrative law judge must provide:

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

(ii) Procedures for excluding the information from the record; and

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

(h) *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 administrative law judge may:

(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; or

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

(i) *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.

(j) *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. In foreign countries, 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 administrative law judge, 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 administrative law judge. 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.

(k) *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 administrative law judge and must serve a copy on each party before serving additional interrogatories on a party. The administrative law judge 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.

(l) *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 administrative law judge 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 administrative law judge 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.

(m) *Motion to compel discovery.* A party may make a motion 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 making a motion to compel if a person refuses to answer.

(n) *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 administrative law judge, limited to the extent of the party's failure to comply with the discovery order or motion to compel, may:

(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; or

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

§ 1503.221 Notice of hearing.

(a) *Notice.* The administrative law judge must give each party at least 60 days notice of the date, time, and location of the hearing. With the consent of the administrative law judge, 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 administrative law judge to whom the proceedings have been assigned must set a reasonable date, time, and location for the hearing. The administrative law judge must consider the need for discovery and any joint procedural or discovery schedule submitted by the parties when determining the hearing date. The administrative law judge 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.

§ 1503.222 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 administrative law judge 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.

§ 1503.223 Standard of proof.

The administrative law judge may issue an initial decision or may rule in a party's favor only if the decision or ruling is supported by, and in accordance with, the reliable, probative, and substantial 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 reliable, probative, and substantial evidence.

§ 1503.224 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.

§ 1503.225 Offer of proof.

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

§ 1503.226 Public disclosure of evidence.

This section applies to information other than Sensitive Security Information (SSI). All release of SSI is governed by § 1503.230.

(a) The administrative law judge 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 administrative law judge and serving a copy of the motion on each party. The party must state the specific grounds for nondisclosure in the motion.

(b) The administrative law judge must grant the motion to withhold information in the record if, based on the motion and any response to the motion, the administrative law judge 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.

§ 1503.227 Expert or opinion witnesses.

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

§ 1503.228 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 administrative law judge who is assigned to the case, or, if no administrative law judge is assigned or the assigned law judge is unavailable, from the chief administrative law judge. 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.

(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 administrative law judge 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 local Federal district court to seek judicial enforcement of the subpoena in accordance with 49 U.S.C. 46104.

§ 1503.229 Witness fees.

(a) *General.* Unless otherwise authorized by the administrative law judge, 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.

§ 1503.230 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, 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 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 Under Secretary.

(ii) Those persons with permission to review these documents or docket files may view the materials at the TSA Enforcement Docket, GSA Building, Room 5008, 301 Seventh Street SW., Washington, DC 20407. Persons with access to these records may have a copy of the records after payment of reasonable costs.

§ 1503.231 Argument before the administrative law judge.

(a) *Arguments during the hearing.* During the hearing, the administrative law judge 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 administrative law judge may request written arguments during the hearing if the administrative law judge finds that submission of written arguments would be reasonable.

(b) *Final oral argument.* At the conclusion of the hearing and before the

administrative law judge 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 administrative law judge, 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 administrative law judge may request written posthearing briefs before the administrative law judge 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 administrative law judge, and supporting arguments for the findings, conclusions, or exceptions. The administrative law judge must give the parties a reasonable opportunity, not more than 30 days after receipt of the transcript, to prepare and submit the briefs.

§ 1503.232 Initial decision.

(a) *Contents.* The administrative law judge must issue an initial decision at the conclusion of the hearing. In each oral or written decision, the administrative law judge 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 administrative law judge's discretion, the amount of any civil penalty found appropriate by the administrative law judge, and a discussion of the basis for any order issued in the proceedings. The administrative law judge 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 administrative law judge refers to any previous unreported or unpublished initial decision, the administrative law judge must make copies of that initial decision available to all parties and the TSA decision maker.

(b) *Oral decision.* Except as provided in paragraph (c) of this section, at the conclusion of the hearing, the administrative law judge must issue the initial decision and order orally on the record.

(c) *Written decision*. The administrative law judge may issue a written initial decision not later than 30 days after the conclusion of the hearing or submission of the last post-hearing brief if the administrative law judge finds that issuing a written initial decision is reasonable. The administrative law judge must serve a copy of any written initial decision on each party.

(d) *Order assessing civil penalty.* Unless appealed pursuant to § 1503.233, the initial decision issued by the administrative law judge will be considered an order assessing civil penalty if the 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.

§ 1503.233 Appeal from initial decision.

(a) *Notice of appeal.* A party may appeal the initial decision, and any decision not previously appealed pursuant to § 1503.219, by filing a notice of appeal with the Enforcement Docket Clerk. A party must file the notice of appeal with the U.S. ?Department of Transportation, Transportation Security Administration, Office of the Chief Counsel, TSA–2, Attention: Enforcement Docket Clerk, 400 Seventh Street, SW., Washington, DC 20590. 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.

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

(1) Whether each finding of fact is supported by a preponderance of reliable, probative, and substantial evidence;

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

(3) Whether the administrative law judge 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 TSA Enforcement Docket Clerk and must serve a copy of the appeal brief on each party.

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

(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 on 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 administrative law judge 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 administrative law judge for further proceedings and an initial decision related to that issue. If an issue raised by the TSA decision maker 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, a remand of the case to the administrative law judge for further proceedings is not required but may be provided in the discretion of the TSA decision maker.

(2) The TSA decision maker will issue the final decision and order of the Under Secretary 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 § 1503.235, a final decision and order of the Under Secretary 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 Under Secretary after appeal is precedent in any other civil penalty action. Any issue, finding or conclusion, order, ruling, or initial decision of an administrative law judge that has not been appealed to the TSA decision maker is not precedent in any other civil penalty action.

(4) The TSA decision maker will determine whether the decision and order of the TSA decision maker, with the administrative law judge'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 safety, would not be in the public interest, or should not otherwise be required to be made available to the public.

§ 1503.234 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 administrative law judge 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 a petition to reconsider or modify, in writing. 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 these allegations and must describe, and support, the basis for the 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 10 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 of 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.

§ 1503.235 Judicial review of a final order.

A person may seek judicial review of a final order of the Under Secretary as provided in 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—Civil Monetary Penalty Inflation Adjustment

§ 1503.301 Scope and purpose.

(a) This subpart provides a mechanism for the regular adjustment for inflation of civil monetary penalties in conformity with the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 (note), as amended, in order to maintain the deterrent effect of civil monetary penalties and to promote compliance with the law. This subpart also sets out the current adjusted maximum civil monetary penalties or range of minimum and maximum civil monetary penalties for each statutory civil penalty subject to the TSA's jurisdiction.

(b) Each adjustment to the maximum civil monetary penalty or the range of minimum and maximum civil monetary penalties, as applicable, made in accordance with this subpart applies prospectively from the date it becomes effective to actions initiated under this part, notwithstanding references to a specific maximum civil monetary penalty or range of minimum and maximum civil monetary penalties contained elsewhere in this part.

§ 1503.303 Definitions.

The following definitions apply to this subpart:

Civil monetary penalty means any penalty, fine, or other sanction that:

(1) Is for a specific monetary amount as provided by Federal law or has a maximum amount provided by Federal law;

(2) Is assessed or enforced by the TSA pursuant to Federal law; and

(3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.

Consumer Price Index means the *Consumer Price Index* for all urban consumers published by the Department of Labor.

§ 1503.305 Cost of living adjustments of civil monetary penalties.

(a) *Adjustment determination.* Except for the limitation to the initial adjustment to statutory maximum civil monetary penalties or range of minimum and maximum civil monetary penalties set forth in paragraph (c) of this section, the inflation adjustment under this subpart is determined by increasing the maximum civil monetary penalty or range of minimum and maximum civil monetary penalty for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this paragraph (a) is rounded to the nearest:

(1) Multiple of $10 in the case of penalties less than or equal to $100;

(2) Multiple of $100 in the case of penalties greater than $100 but less than or equal to $1,000;

(3) Multiple of $1,000 in the case of penalties greater than $1,000 but less than or equal to $10,000;

(4) Multiple of $5,000 in the case of penalties greater than $10,000 but less than or equal to $100,000;

(5) Multiple of $10,000 in the case of penalties greater than $100,000 but less than or equal to $200,000; and

(6) Multiple of $25,000 in the case of penalties greater than $200,000.

(b) *Definition.* For purposes of paragraph (a) of this section, the term *cost-of-living adjustment* means the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

(c) *Limitation on initial adjustment.* The initial adjustment of maximum civil penalty or range of minimum and maximum civil monetary penalties made pursuant to this subpart does not exceed 10 percent of the statutory maximum civil penalty before an adjustment under this subpart is made. This limitation applies only to the initial adjustment, effective on January 21, 1997.

(d) *Inflation adjustment.* Minimum and maximum civil monetary penalties within the jurisdiction of the TSA are adjusted for inflation as follows:

MINIMUM AND MAXIMUM CIVIL PENALTIES—ADJUSTED FOR INFLATION, EFFECTIVE MARCH 13, 2002

United States Code citation	Civil monetary penalty description	Minimum penalty	New adjusted minimum penalty amount	Maximum penalty amount when last set or adjusted pursuant to law	New or adjusted maximum penalty amount
49 U.S.C. 46301(a)(1) ...	Violations of statutory provisions listed in 49 U.S.C. 46301(a)(1), regulations prescribed, or orders issued under those provisions.	N/A	N/A	$1,100 per violation, adjusted 1/21/97.	$1,100 per violation, adjusted 1/21/97.
49 U.S.C. 46301(a)(2) ...	Violations of statutory provisions listed in 49 U.S.C. 46301(a)(2), regulations prescribed, or orders issued under those provisions by a person operating an aircraft for the transportation of passengers or property for compensation.	N/A	N/A	$11,000 per violation, adjusted 1/21/97.	$11,000 per violation, adjusted 1/21/97.

Issued in Washington, DC, on July 26, 2002.

J.M. Loy,

Acting Under Secretary of Transportation for Security.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D. 080502A]

Fisheries of the Exclusive Economic Zone Off Alaska; Pacific Ocean Perch in the Central Regulatory Area of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting retention of Pacific ocean perch in the Central Regulatory Area of the Gulf of Alaska (GOA). NMFS is requiring that catch of Pacific ocean perch in this area be treated in the same manner as prohibited species and discarded at sea with a minimum of injury. This action is necessary because the allocation of the Pacific ocean perch 2002 total allowable catch (TAC) in this area has been achieved.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 5, 2002, until 2400 hrs, A.l.t., December 31, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for the Groundfish Fishery of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The 2002 TAC allocation of Pacific ocean perch for the Central Regulatory Area was established as 8,220 metric tons by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002, and 67 FR 34860, May 6, 2002).

In accordance with § 679.20(d)(2), the Administrator, Alaska Region, NMFS, has determined that the allocation of the Pacific ocean perch TAC in the Central Regulatory Area of the GOA has been achieved. Therefore, NMFS is requiring that further catches of Pacific ocean perch in the Central Regulatory Area of the GOA be treated as prohibited species in accordance with § 679.21(b).

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(B) as such requirement is contrary to the public interest. This requirement is contrary to the public interest as it would delay the closure of the fishery, lead to overharvesting the allocation of the TAC, and therefore reduce the public's ability to use and enjoy the fishery resource.

The Assistant Administrator for Fisheries, NOAA, also finds good cause to waive the 30 day delay in the effective date of this action under 5 U.S.C. 553(d)(3). This finding is based upon the reasons provided above for waiver of prior notice and opportunity for public comment.

This action is required by § 679.20 and is exempt from review under Executive Order 12866.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: August 5, 2002.

Virginia M. Fay,

Acting Director, Office of Sustainable Fisheries, National Marine Fisheries Service.

[FR Doc. 02–20081 Filed 8–5–02; 3:37 pm]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No. 011218304–1304–01; I.D.080202F]

Fisheries of the Exclusive Economic Zone Off Alaska; Shallow-Water Species Fishery by Vessels Using Trawl Gear in the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NationalOceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is prohibiting directed fishing for species that comprise the shallow-water species fishery by vessels using trawl gear in the Gulf of Alaska (GOA), except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. This action is necessary because the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the shallow-water species fishery in the GOA has been reached.

DATES: Effective 1200 hrs, Alaska local time (A.l.t.), August 5, 2002, until 1200 hrs, A.l.t., September 1, 2002.

FOR FURTHER INFORMATION CONTACT: Mary Furuness, 907–586–7228.

SUPPLEMENTARY INFORMATION: NMFS manages the groundfish fishery in the GOA exclusive economic zone according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson-Stevens Fishery Conservation and Management Act. Regulations governing fishing by U.S. vessels in accordance with the FMP appear at subpart H of 50 CFR part 600 and 50 CFR part 679.

The Pacific halibut bycatch allowance for the GOA trawl shallow-water species fishery, which is defined at § 679.21(d)(3)(iii)(A), was established by an emergency rule implementing 2002 harvest specifications and associated management measures for the groundfish fisheries off Alaska (67 FR 956, January 8, 2002) for the third season, the period June 30, 2002, through September 1, 2002, as 200 metric tons.

In accordance with § 679.21(d)(7)(i), the Administrator, Alaska Region, NMFS, has determined that the third seasonal apportionment of the 2002 Pacific halibut bycatch allowance specified for the trawl shallow-water species fishery in the GOA has been reached. Consequently, NMFS is prohibiting directed fishing for the shallow-water species fishery by vessels using trawl gear in the GOA, except for vessels fishing for pollock using pelagic trawl gear in those portions of the GOA open to directed fishing for pollock. The species and species groups that comprise the shallow-water species fishery are: pollock, Pacific cod, shallow-water flatfish, flathead sole, Atka mackerel, and ''other species.≥

Maximum retainable bycatch amounts may be found in the regulations at § 679.20(e) and (f).