

§ 1503.645

49 CFR Ch. XII (10–1–10 Edition)

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

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

§ 1503.645 Expert or opinion witnesses.

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

§ 1503.647 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 ALJ who is assigned to the case, or, if no ALJ is assigned or the assigned law judge is unavailable, from the chief ALJ. 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 or the custodian of the documents or tangible items sought to be produced.

(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 ALJ 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 U.S. district court having jurisdiction to seek judicial enforcement of the subpoena in accordance with 49 U.S.C. 46104.

§ 1503.649 Witness fees.

(a) *General.* Unless otherwise authorized by the ALJ, 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.

§ 1503.651 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, responses to 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 Freedom of Information Act (FOIA) request under 5 U.S.C. 552, *et seq.*, 49 CFR part 7, and any applicable DHS regulations. 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.

(C) Persons who have a need to know as determined by the Administrator.

(ii) Those persons with permission to review these documents or docket files may view the materials at the TSA Headquarters, 601 South 12th Street, Arlington, Virginia 20598-6002. Persons with access to these records may have a copy of the records after payment of reasonable costs.

§ 1503.653 Argument before the ALJ.

(a) *Arguments during the hearing.* During the hearing, the ALJ 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 ALJ may request written arguments during the hearing if the ALJ finds that submission of written arguments is necessary before the ALJ issues the ruling or order.

(b) *Final oral argument.* At the conclusion of the hearing and before the ALJ 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 ALJ, 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 ALJ may request written posthearing briefs before the ALJ 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 ALJ, and supporting arguments for the findings, conclusions, or exceptions. The ALJ must give the parties a reasonable opportunity, not more than 30 days after receipt of the transcript, to prepare and submit the briefs.

§ 1503.655 Initial decision.

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

(b) *Written decision.* At the conclusion of the hearing, the ALJ may issue the initial decision and order orally on the record. The ALJ must issue a written initial decision and order not later than 30 days after the conclusion of the hearing or submission of the last posthearing brief. The ALJ must serve a copy of any written initial decision on each party.

(c) *Order assessing civil penalty.* Unless appealed pursuant to § 1503.657, the initial decision issued by the ALJ will be considered an order assessing civil penalty if the ALJ finds that an alleged violation occurred and determines that a civil penalty, in an amount found appropriate by the ALJ, is warranted.

(d) *Effect of initial decision.* An initial decision of an ALJ is persuasive authority in any other civil penalty action, unless appealed and reversed by the TSA decision maker or a court of competent jurisdiction.

§ 1503.657 Appeal from initial decision.

(a) *Notice of appeal.* Either party may appeal the initial decision, and any decision not previously appealed pursuant to § 1503.631, by filing a notice of appeal with the Enforcement Docket Clerk. A party must file the notice of