U.S. DEPARTMENT OF HOMELAND SECURITY
TRANSPORTATION SECURITY ADMINISTRATION
Washington, D.C.

In the Matter of:	)	
	)	
MESA AIRLINES, INC.	)	TSA Docket No. 09-TSA-0038
	)	
Respondent	)	

FINAL DECISION AND ORDER

Respondent, Mesa Airlines, Inc., appeals two Orders of the Administrative Law Judge (ALJ). In both Orders, dated November 2, 2009, the ALJ granted the TSA's Motion to dismiss Respondent's request for a formal hearing and assess a civil penalty in the amount of $25,000 for violations of 49 C.F.R.§§1544.101(a)(1) and 1544.225(c) and Aircraft Operator Standard Security Program (AOSSP) §12.3.1.A.5 in both dockets.[1]

Since the issues are the same in both dockets, I will consolidate the appeals. For the reasons stated below, Respondent's appeal in both dockets is denied and the Orders issued by the ALJ are affirmed.

TSA's rules of practice for civil penalty actions specify that 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

[1] §1544.101(a)(1) requires each aircraft operator to carry out subparts C,D, and E of TSA's regulations and adopt and carry out a security program that meets the requirements of §1544.103 for a scheduled passenger or public charter passenger operation with an aircraft having a passenger seating configuration of 61 or more seats.
§1544.225(c) requires each aircraft operator to use the procedures included, and the facilities and equipment described, in its security program to perform the following control functions with respect to each aircraft operation: "Conduct a security inspection of each aircraft before placing it into passenger operations if access has not been controlled in accordance with the aircraft operator security program and as otherwise required in the security program." The AOSSP section describes how the security inspection must be conducted. The AOSSP is Sensitive Security Information and disclosure of the contents is not required in order to render a decision.

with applicable law, precedent, and public policy; and (3) whether the ALJ committed any prejudicial errors during the hearing that support the appeal. 49 C.F.R.§1503.657(b). In these cases, the ALJ dismissed Respondent's request for a hearing because Respondent failed to timely submit a request for formal hearing in response to the Final Notice of Proposed Civil Penalty issued by TSA in both cases on June 1, 2009. I find the ALJ Orders are consistent with TSA's rules of practice.

As the ALJ explained, the rules of practice clearly state that not later than 15 days after receipt of a Final Notice of Proposed Civil Penalty, the person charged with a violation must either submit the amount of the civil penalty, or an agreed-upon amount, or request a hearing. 49 C.F.R. §1503.16(e)(2).[2]

An Order assessing civil penalty may be issued if a hearing is not requested within 15 days of receipt of a Final Notice of Proposed Civil Penalty. 49 C.F.R. §1503.16(b)(2).[3] The evidence before the ALJ indicated that the Final Notice of Proposed Civil Penalty was received on June 4, 2009 in both cases. The requests for a hearing, although dated June 4, 2009, were not received by the Enforcement Docket Clerk within the 15 day time limit. The ALJ noted that the only substantive evidence relating to the timing of the respondent's requests for a hearing is a postmark of June 26, 2009 on the envelopes to both the Clerk and TSA counsel.

In his appeal, Respondent argues that original requests for hearing were created and mailed on June 4, 2009 and that Respondent mailed copies of the original requests when it received the Order Assessing Civil Penalty. Respondent maintains that the originals were lost and the copies were postmarked on June 26. In support of those claims, Respondent submitted

[2] I note that effective August 20, 2009, TSA re-issued its rules of practice and changed the numbering of the sections in part 1503. The new section number is 49 C.F.R. §1503.419(b)(2). The requirement to respond within 15 days of receipt of the Final Notice and Order is the same.

[3] See, 49 C.F.R. §1503.419(b)(2).

affidavits affirming that the original letters were mailed on June 4 as well as electronic data that shows the letters were created on June 4. TSA's rules of practice state that 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." 49 C.F.R. §1503.211(d). The ALJ was correct in finding that the only substantive evidence, and the evidence that is preferred by the rules of practice in the absence of a certificate of service, is the postmark on the letters that were received by the Clerk. Neither the affidavits nor the electronic data provide evidence of a mailing date that substantiate the proper service of the letters. Accordingly, the ALJ is affirmed.

A party may petition the TSA Decision Maker to reconsider or modify a Final Decision and Order. The rules of practice for filing a petition are described in 49 C.F.R. §1503.659. The petition must be filed with the TSA Enforcement Docket clerk not later than 30 days after service of the Final Decision and Order and must serve a copy on all parties. A party may also seek judicial review of the Final Decision and Order as provided for by 49 U.S.C. §46110.

For the reasons stated above, the Respondent's appeal in both dockets is denied and the orders of the ALJ are up-held.

Dated: 6/15/2010

__/s/_____
Robert S. Bray
Acting Deputy Administrator