held at the office of the Hearing Officer. A request for a change of location of a hearing or transfer to another Hearing Officer must be in writing and state the reasons why the requested action is necessary or desirable. Action on the request is at the discretion of the Hearing Officer.

(d) A Party who has requested a hearing may amend the specification of the issues in dispute at any time up to 10 days before the scheduled date of the hearing. Issues raised later than 10 days before the schedule hearing may be presented only at the discretion of the Hearing Officer.

### § 221.77 Disclosure of evidence.

The Party shall, upon request, be provided a free copy of all the evidence in the case file, except material that would disclose or lead to the disclosure of the identity of a confidential informant and any other information properly exempt from disclosure.

### § 221.79 Request for confidential treatment.

(a) In addition to information treated as confidential under § 221.77 of this subpart, a request for confidential treatment of a document or portion thereof may be made by the Person supplying the information on the basis that the information is—

(1) Confidential financial information, trade secrets, or other material exempt from disclosure by the Freedom of Information Act (5 U.S.C. 552);

(2) Required to be held in confidence by 18 U.S.C. 1905; or

(3) Otherwise exempt by law from disclosure.

(b) The Person desiring confidential treatment must submit the request to the Hearing Officer in writing and the reasons justifying nondisclosure. The Hearing Officer shall forward any request for confidential treatment to the appropriate official of the Maritime Administration for a determination hereon. Failure to make a timely request may result in a document being considered as nonconfidential and subject to release.

(c) Confidential material shall not be considered by the Hearing Officer in reaching a decision unless—

(1) It has been furnished by a Party; or

(2) It has been furnished pursuant to a subpoena.

### § 221.81 Counsel.

A Party has the right to be represented at all stages of the proceeding by counsel. After receiving notification that a Party is represented by counsel, the Hearing Officer will direct all further communications to that counsel.

### § 221.83 Witnesses.

A Party may present the testimony of any witness either through a personal appearance or through a written statement. The Party may request the assistance of the Hearing Officer in obtaining the personal appearance of a witness. The request must be in writing and state the reasons why a written statement would be inadequate, the issue or issues to which the testimony would be relevant, and the substance of the expected testimony. If the Hearing Officer determines that the personal appearance of the witness may materially aid in the decision on the case, the Hearing Officer will seek to obtain the witness' appearance. The Hearing Officer may move the hearing to the witness' location, accept a written statement, or accept a stipulation in lieu of testimony.

### § 221.85 Hearing procedures.

(a) The Hearing Officer shall conduct a fair and impartial proceeding in which the Party is given a full opportunity to be heard. At the opening of a hearing, the Hearing Officer shall advise the Party of the nature of the proceedings and of the alleged violation.

(b) The material in the case file pertinent to the issues to be determined by the Hearing Officer shall first be presented. The Party may examine, respond to and rebut this material. The Party may offer any facts, statements, explanations, documents, sworn or unsworn testimony, or other exculpatory items that bear on the issues, or which may be relevant to the size of an appropriate penalty. The Hearing Officer may require the authentication of any written exhibit or statement.

(c) At the close of the Party's presentation of evidence, the Hearing Officer

may allow the introduction of rebuttal evidence. The Hearing Officer may allow the Party to respond to rebuttal evidence submitted.

(d) In receiving evidence, the Hearing Officer shall not be bound by the strict rules of evidence. In evaluating the evidence presented, the Hearing Officer shall give due consideration to the reliability and relevance of each item of evidence.

(e) After the evidence in the case has been presented, the Party may present argument on the issues in the case. The party may also request an opportunity to submit a written statement for consideration by the Hearing Officer. The Hearing Officer shall allow a reasonable time for submission of the statement and shall specify the date by which it must be received. If the statement is not received within the specified time, the Hearing Officer may render a decision in the case without consideration of the statement.

**§ 221.87 Records.**

(a) A verbatim transcript of a hearing will not normally be prepared. The Hearing Officer will prepare notes on material and points raised by the Party in sufficient detail to permit a full and fair review of the case.

(b) A Party may, at its own expense, cause a verbatim transcript to be made, in which event the Party shall submit, without charge, two copies to the Hearing Officer within 30 days of the close of the hearing.

**§ 221.89 Hearing Officer's decision.**

(a) The Hearing Officer shall issue a written decision. Any decision to assess a penalty shall be based on substantial evidence in the record, and shall state the basis for the decision.

(b) If the Hearing Officer finds that there is not substantial evidence in the record establishing the alleged violation, the Hearing Officer shall dismiss the case. A dismissal is without prejudice to the Vessel Transfer Officer's right to refile the case if additional evidence is obtained. A dismissal following a rehearing is final and with prejudice.

(c) The Hearing Officer shall notify the Party in writing, by certified or registered mail, of the decision and, if adverse, shall advise the Party of the right to an administrative appeal to the Maritime Administrator or an individual designated by the Administrator from that decision.

(d) If an appeal is not filed within the prescribed time, the decision of the Hearing Officer constitutes final agency action in the case.

**§ 221.91 Appeals.**

(a) Any appeal from the decision of the Hearing Officer must be submitted in writing by the Party to the Hearing Officer within 30 days from the date of receipt of the Hearing Officer's decision.

(b) The only issues that will be considered on appeal are those issues specified in the appeal which were raised before the Hearing Officer and jurisdictional questions.

(c) There is no right to oral argument on an appeal.

(d) The Maritime Administrator or an individual designated by the Administrator will issue a written decision on the appeal, and may affirm, reverse, or modify the decision, or remand the case for new or additional proceedings. In the absence of a remand, the decision on appeal is final agency action.

(e) The Maritime Administrator or an individual designated by the Administrator shall notify the Party in writing, by certified or registered mail, of the decision on appeal and, if adverse, shall advise the Party of the right of appeal to the courts.

**§ 221.93 Collection of civil penalties.**

Within 30 days after receipt of the Hearing Officer's decision, or a decision on appeal, the Party must submit payment of any assessed penalty in the manner specified in the decision letter. Failure to make timely payment will result in the institution of appropriate action to collect the penalty.