- subject attestation, either in whole or in part, and shall not accept any subsequent attestation from the employer for the activity(ies) and U.S. port or location in the State of Alaska at issue.
- (7) The Administrator's cease and desist order shall be served on the employer at the address of its designated U.S. based representative or at the address specified in the employer's response, by facsimile transmission, personal service, or certified mail.
- (b) If the Administrator determines that reasonable cause exists to conduct an investigation with respect to a complaint that a non-attesting employer is not entitled to the automated vessel exception to the requirement for the filing of an attestation, a complaining party may request that the Administrator enter a cease and desist order against the employer against whom the complaint is lodged.
- (1) The request for a cease and desist order may be filed along with the complaint, or may be filed subsequently. The request, including all accompanying documents, shall be filed in duplicate with the same Wage and Hour Division office that received the complaint.
- (2) No particular form is prescribed for a request for a cease and desist order pursuant to this paragraph. However, any such request shall:
  - (i) Be dated:
  - (ii) Be typewritten or legibly written;
- (iii) Specify the circumstances which allegedly require that the employer be denied the use of the automated vessel exception;
- (iv) Be accompanied by evidence to substantiate the allegation(s);
- (v) Be signed by the complaining party making the request or by the authorized representative of such party;
- (vi) Include the address at which such complaining party or authorized representative desires to receive further communications relating thereto.
- (3) Upon receipt of a request for a cease and desist order, the Administrator shall notify the employer of the request. The Administrator's notice shall:
- (i) Inform the employer that it may respond to the request and meet with a Wage and Hour Division official within 14 calendar days of the date of the notice;
- (ii) Be served upon the employer by facsimile transmission, in person, or by certified or regular mail, at the employer's last known address; and
- (iii) Be accompanied by copies of the complaint, the request for a cease and

- desist order, the evidence submitted by the complainant, and any evidence from other investigation(s) of the same or a closely related matter which the Administrator may incorporate into the record. (Any such evidence from other investigation(s) shall also be made available for examination by the complaining party at the Wage and Hour Division office which issued the notice.)
- (4) No particular form is prescribed for the employer's response to the complaining party's request for a cease and desist order under this paragraph (b). However, any such response shall:
  - (i) Be dated;
- (ii) Be submitted by facsimile transmission, in person, by certified or regular mail, or by courier service to the Wage and Hour Division office which issued the notice of the request:
- (iii) Be received by the appropriate Wage and Hour Division office no later than 14 calendar days from the date of the notice of the request;
- (iv) Be typewritten or legibly written; (v) Explain, in any detail desired by the employer, the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order:
- (vi) Be accompanied by evidence to substantiate the employer's grounds or reasons as to why the Administrator should deny the requested cease and desist order:
- (vii) Specify whether the employer desires an informal meeting with a Wage and Hour Division official;
- (viii) Be signed by the employer or its authorized representative; and
- (ix) Include the address at which the employer or its authorized representative desires to receive further communications relating thereto.
- (5) In the event the employer requests a meeting with a Wage and Hour Division official, the Administrator shall provide the employer and the complaining party, or their authorized representatives, an opportunity for such a meeting to present their views regarding the evidence and arguments submitted by the parties. This shall be an informal meeting, not subject to any procedural rules. The meeting shall be held within the 14 calendar days permitted for the employer's response to the request for the cease and desist order, and shall be held at a time and place set by the Wage and Hour Division official, who shall notify the parties.
- (6) After receipt of the employer's timely response and after any informal meeting which may have been held with the parties, the Administrator shall promptly issue a written determination, either denying the request or issuing a cease and desist order. If the

- Administrator determines that the complaining party's position is supported by a preponderance of the evidence submitted, the Administrator shall order that the employer cease the use of alien crewmembers to perform the longshore activity(ies) specified in the order. In making the determination, the Administrator shall consider all the evidence submitted, including any evidence from the same or a closely related matter which the Administrator has incorporated into the record and provided to the employer. The order shall remain in effect until the completion of the investigation and any subsequent hearing proceedings pursuant to § .625 of this part, unless the employer files and maintains on file with ETA an attestation pursuant \_.520 of this part or unless the prohibition is lifted by subsequent order of the Administrator because it is later determined that the employer's position was correct.
- (7) The Administrator's cease and desist order shall be served on the employer or its designated representative by facsimile transmission, personal service, or by certified mail at the address specified in the employer's response or, if no such address was specified, at the employer's last known address.

## .620. Civil money penalties and other remedies.

- (a) The Administrator may assess a civil money penalty not to exceed \$5,000 for each alien crewmember with respect to whom there has been a violation of the attestation or subpart F or G of this part. The Administrator may also impose appropriate remedy(ies).
- (b) In determining the amount of civil money penalty to be assessed, the Administrator shall consider the type of violation committed and other relevant factors. The factors which may be considered include, but are not limited to, the following:
- (1) Previous history of violation, or violations, by the employer under the Act and subpart F or G of this part;
- (2) The number of workers affected by the violation or violations;
- (3) The gravity of the violation or
- (4) Efforts made by the violator in good faith to comply with the provisions of 8 U.S.C. 1288(c) and subparts F and G of this part;
- (5) The violator's explanation of the violation or violations;
- (6) The violator's commitment to future compliance; and/or
- (7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss,