§ 1299-eee. Transit adjudication bureau. 1. Establishment. There is hereby created in the authority a transit adjudication bureau. The head of such bureau shall be the director, who shall be appointed by the chairman of the authority. The director may delegate the powers and duties conferred upon the director by this section to such qualified officers and employees of the bureau as he may designate.

2. Hearing officers. The chairman of the authority shall appoint hearing officers who shall preside at hearings for the adjudication of charges of transit infractions, as hereinafter defined, and who, as provided below, may be designated to serve on the appeals board of the bureau. Every hearing officer shall have been admitted to the practice of law in this state for a period of at least five years, and shall be compensated for his services on a per diem basis determined by the bureau.

3. Jurisdiction. The bureau shall have, with respect to acts or incidents in or on the transit facilities of the authority, non-exclusive jurisdiction over violations of the rules which may from time to time be established by the authority. Matters within the jurisdiction of the bureau shall be known for purposes of this section as transit infractions. Nothing herein shall be construed to divest jurisdiction from any court now having jurisdiction over any criminal charge relating to any act committed in a transit facility, or to impair the ability of a police officer to conduct a lawful search of a person in a transit facility. The criminal court within which jurisdiction the transit authority shall operate transit facilities shall continue to have jurisdiction over any criminal charge brought for violation of the rules of the authority, as well as jurisdiction relating to any act which may constitute a crime or an offense under any law of the state of New York or any municipality or political subdivision thereof and which may also constitute a violation of such rules.

4. General powers. The bureau shall have the following functions, powers and duties:

a. To accept pleas (whether made in person or by mail) to, and to hear

and determine, charges of transit infractions within its jurisdiction;

b. To impose civil penalties not to exceed a total of two hundred fifty dollars for any transit infraction within its jurisdiction, in accordance with a penalty schedule established by the authority;

c. In its sole discretion, to suspend or forgive penalties or any portion of penalties imposed on the condition that the respondent voluntarily agrees to perform and actually does satisfactorily perform unpaid services on transit facilities as assigned by the authority, such as, without limitation, cleaning of rolling stock;

d. To adopt, amend and rescind rules and regulations not inconsistent with any applicable provision of law to carry out the purposes of this section, including but not limited to rules and regulations prescribing the internal procedures and organization of the bureau, the manner and time of entering pleas, the conduct of hearings, and the amount and manner of payment of penalties;

e. To enter judgments and enforce them, without court proceedings, in the same manner as the enforcement of money judgments in civil actions, as provided below;

f. To compile and maintain complete and accurate records relating to all charges and dispositions, which records shall be deemed exempt from disclosure under the freedom of information law as records compiled for law enforcement purposes;

g. To apply to a court of competent jurisdiction for enforcement of any decision or order issued by such bureau or of any subpoena issued by a hearing officer as provided in paragraph d of subdivision seven of this section;

h. To enter into contracts with other government agencies, with private organizations, or with individuals to undertake on its behalf such functions as data processing, debt collections, mailing, and general administration, as the director deems appropriate, except that

the conduct by hearing officers of hearings and of appeals may not be performed by outside contractors; and

i. To accept payment of penalties and to remit same to the authority.

5. Notices of violation. The bureau shall prepare and distribute notices of violation in blank to the Niagara Frontier transportation authority security officer, ticket inspector, and any other person empowered by law, rule and regulation to serve such notices. The form and wording of the notice of violation shall be prescribed by the director, and it may be the same as any other notice of violation or summons form already in use if said form meets the requirements hereof. The notice of violation may include provisions to record information which will facilitate the identification and location of respondents, including but not limited to name, address, telephone numbers, date of birth, social security number if otherwise permitted by law, place of employment or school, and name and address of parents or guardian if a minor. Notices of violation shall be served by delivering the notice within the state to the person to be served. A copy of each notice of violation served hereunder shall be filed and retained by said bureau, and shall be deemed a record kept in the ordinary course of business, and, if sworn to or affirmed, shall be prima facie evidence of the facts contained herein. Said notice of violation shall contain information advising the person charged of the manner and the time within which such person may either admit or deny the offense charged in the notice. Such notice of violation shall also contain a warning to advise the person charged that failure to plead in the manner and within the time stated in the notice may result in a default decision and order being entered against such person.

6. Defaults. Where a respondent has failed to plead within the time allowed by the rules of said bureau or has failed to appear on a designated hearing date or a subsequent date following an adjournment, such failure to plead or appear shall be deemed, for all purposes, to be an admission of liability and shall be grounds for rendering a default decision and order imposing a penalty in such amount as may be prescribed by the authority.

7. Hearings. a. Whenever a person charged with a transit infraction returnable to the bureau enters a plea of not guilty, the bureau shall advise such person personally, or by registered or certified mail, of the date on which he or she must appear to answer the charge at a hearing. The form and content of such notice of hearing shall be prescribed by the director, and shall contain a warning to advise the person so pleading that failure to appear on the date designated, or any subsequent adjourned date, shall be deemed for all purposes, an admission of liability, and that a default judgment may be rendered and penalty may be prescribed.

b. Every hearing for the adjudication of a charge of a transit infraction hereunder shall be held before a hearing officer in accordance with the rules and regulations promulgated by the bureau.

c. The hearing officer shall not be bound by the rules of evidence in the conduct of the hearing, except rules relating to privileged communications.

d. The hearing officer when the defendant refuses to stipulate to the contents of the notice of violation, unless the hearing officer determines that the notice of violation should be dismissed, shall require the person who served the petition to attend the hearing and may issue subpoenas to compel the appearance of that person or of other persons to give testimony, and issue subpoenas duces tecum to compel the production for examination or introduction into evidence of any book, paper or other thing relevant to the charges.

e. In the case of a refusal to obey a subpoena, the bureau may make application to the Supreme Court pursuant to section twenty-three hundred eight of the civil practice law and rules, for an order requiring such appearance, testimony or production of evidence.

f. The bureau shall make and maintain a sound recording or other record of every hearing.

g. After due consideration of the evidence and arguments, the hearing officer shall determine whether the charges have been established. No charge may be established except upon clear and convincing evidence. Where the charges have not been established, an order dismissing the charges shall be entered. Where a determination is made that a charge has been established or if an answer admitting the charge has been received, the hearing officer shall set a penalty in accordance with the penalty schedule established by the authority, and an appropriate order shall be entered in the records of the bureau. The respondent shall be given notice of such entry in person or by mail. This order shall constitute the final determination of the hearing officer, and for purposes of review it shall be deemed to incorporate any intermediate determinations made by said officer in the course of the proceeding. When no appeal is filed this order shall be the final order of the bureau.

8. Administrative and judicial review. a. There shall be appeals boards within the bureau which shall consist of three or more hearing officers, as the director shall determine. The director shall select a chairman for each appeals board from the members so appointed. No hearing officer may sit on an appeals board considering an appeal from a determination made by said hearing officer.

b. A party aggrieved by a final determination of a hearing officer may obtain a review thereof by serving upon the bureau within thirty days of the sending of the notice of entry of such order a notice of appeal setting forth the reasons why the determination should be reversed or modified. There shall be no interlocutory appeals.

c. An appeal from a final determination of a hearing officer shall be submitted to the appeals board, which shall have power to review the facts and the law, but shall not consider any evidence which was not presented to the hearing officer, and shall have power to reverse or modify any judgment appealed from for error of fact or law.

d. Appeals shall be made without the appearance of the appellant and appellant's attorney unless the presence of either or both are requested

by the appellant, appellant's attorney, or the appeals board. Within twenty days after a request for an appearance, made by the appellant, appellant's attorney or the board, the bureau shall advise the appellant or appellant's attorney, either personally or by registered or certified mail, of the date on which he or she shall appear. The appellant shall be notified in writing of the decision of the appeals board.

e. A party may request and obtain a record of the proceedings resulting in a determination for which an appeal is sought, but the party shall pay to the bureau the cost of providing such record. When a record is timely requested for the purpose of preparing an appeal, the bureau shall not thereafter cause the appeal to be heard or submitted less than ten days after the delivery or mailing of the record to appellant or appellant's attorney.

f. The service of a notice of appeal shall not stay the enforcement of an order appealed from unless the appellant shall have posted a bond in the amount of penalties imposed in the order appealed from at the time of, or before, the service of such notice.

g. No determination of a hearing officer which is appealable under the provisions of this section shall be reviewed in any court unless an appeal has been filed and determined in accordance with this subdivision. When an appeal has been filed, the order of the appeals board shall be the final order of the bureau. Judicial review may be sought pursuant to article seventy-eight of the civil practice law and rules.

9. Enforcement of judgments. a. The bureau shall have the power to enforce its final decisions and orders imposing civil penalties for violations of laws, rules and regulations enforced by it as if they were money judgments, without court proceedings, in the manner described herein.

b. Any final order of the bureau imposing a civil penalty, whether the adjudication was had by hearing or upon default or otherwise, shall constitute a judgment rendered by the bureau which may be entered in the

county court of Erie or Niagara county or any other place provided for the entry of civil judgments within the state, provided that no proceeding for judicial review shall be pending and the time for initiation of such proceeding shall have expired, and may be enforced without court proceedings in the same manner as the enforcement of money judgments entered in civil actions. Any final order shall be a bar to any criminal proceeding for conduct upon which the order was based.

c. Notwithstanding the foregoing provisions, before a judgment based upon a default may be so entered the bureau must have attempted to notify the respondent by first class mail, in such form as the bureau may direct: (i) of the default decision and order and the penalty imposed; (ii) that a judgment will be entered in the county court of Erie or Niagara county or any other place provided for the entry of civil judgments within the state; and (iii) the entry of such judgments may be avoided by requesting a stay of default for good cause shown and either requesting a hearing or entering a plea pursuant to the rules of the bureau within thirty days of the mailing of such notice.

10. Funds. All penalties collected pursuant to the provisions of this section shall be paid to the authority.