§ 3000.12, move paragraph (b) to below the table on page 332.

[FR Doc. 2010–24034 Filed 9–23–10; 8:45 am]

BILLING CODE 1505–01–D

DEPARTMENT OF HOMELAND SECURITY

Transportation Security Administration

49 CFR Part 1503

[Docket No. TSA–2009–0013]

RIN 1652–AA62

Revision of Enforcement Procedures

AGENCY: Transportation Security Administration, DHS.

ACTION: Final rule.

SUMMARY: The Transportation Security Administration (TSA) issues this final rule regarding TSA's investigative and enforcement procedures. TSA makes several minor changes to the final rule TSA issued on July 21, 2009. TSA extends the time for parties to reply to a petition for reconsideration or modification of a final decision and order of the TSA decision maker on appeal from 10 days after service to 30 days after service. Similarly, TSA extends the time for parties to reply to a motion from 10 to 30 days after service. Finally, TSA corrects an incorrect section reference.

DATES: Effective September 24, 2010.

FOR FURTHER INFORMATION CONTACT: Emily Su, Office of Chief Counsel, TSA–2, Transportation Security Administration, 601 South 12th Street, Arlington, VA 20598–6002; telephone (571) 227–2305; facsimile (571) 227–1380; e-mail *emily.su@dhs.gov*.

SUPPLEMENTARY INFORMATION:

Availability of Rulemaking Document

You can get an electronic copy using the Internet by—

(1) Searching the electronic Federal Docket Management System (FDMS) Web page at *http://www.regulations.gov;*

(2) Accessing the Government Printing Office's Web page at *http://www.gpoaccess.gov/fr/index.html;* or

(3) Visiting TSA's Security Regulations Web page at *http://www.tsa.gov* and accessing the link for "Research Center" at the top of the page.

In addition, copies are available by writing or calling the individual in the **FOR FURTHER INFORMATION CONTACT** section. Make sure to identify the docket number of this rulemaking.

Small Entity Inquiries

The Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996 requires TSA to comply with small entity requests for information and advice about compliance with statutes and regulations within TSA's jurisdiction. Any small entity that has a question regarding this document may contact the person listed in **FOR FURTHER INFORMATION CONTACT**. Persons can obtain further information regarding SBREFA on the Small Business Administration's Web page at *http://www.sba.gov/advo/laws/law_lib.html.*

Good Cause for Immediate Effective Date

This rule will be effective upon publication in the **Federal Register**. The Administrative Procedure Act, 5 U.S.C. 553, allows an agency, upon finding good cause, to make a rule effective immediately. There is good cause for making this final rule effective immediately. A final rule, published on July 21, 2009, is already in effect. 74 FR 36030. There is no need to provide advance notice that this final rule will become effective because this final rule is substantively the same as the July 21, 2009, final rule; the only changes in this final rule expand the period of time in which a party may respond to motions and final decision from 10 to 30 days.

Summary of the Rulemaking

On July 21, 2009, TSA published a final rule in the **Federal Register** (74 FR 36030) reorganizing and amending its Investigative and Enforcement Procedures. When TSA published the rule, TSA invited public comments on the rule until September 21, 2009. TSA received one letter to the public docket that raised a number of comments. This final rule responds to the comments and makes one minor procedural change and corrects a section reference, discussed below.

Response to Comments

Informal Conferences: The commenter stated that permitting an Informal Conference with an agency attorney or another agency official, as § 1503.421 provides, is beneficial for expedited resolution of cases. However, the commenter cautioned that agency personnel authorized to conduct such informal conferences must understand the TSA regulations and their intent and expressed the view that sometimes they do not.

TSA trains its attorneys and other agency officials so that they are well versed in any regulations at issue in an informal conference. TSA equips its attorneys and agency officials with proper knowledge and skills to address any relevant concerns at informal conference.

Enforcement of "TSA Requirements": Another comment recommended that TSA amend the regulation to make it clear that individuals may only be charged with violations of regulations or agency orders as to which "proper notice has been given pursuant to the Administrative Procedure Act." The commenter stated that, if TSA seeks to hold individuals responsible through the enforcement process for violating non-regulatory "TSA requirements" such as agency orders, Subpart G should be amended to make clear that § 1503.607 does not preclude the Administrative Law Judge (ALJ) from making a full factual record as to whether the "TSA requirement" at issue was properly applicable to the individual charged, including whether the individual charged received legally sufficient actual or constructive notice of the binding nature of the TSA requirement.

TSA agrees that persons must have notice of a requirement before TSA can enforce it. In the case of violation of a statutory provision, the provision's inclusion in the public laws of the United States establishes notice. In the case of a regulation published in the **Federal Register**, filing the document with the Office of the Federal Register establishes notice. In the case of another enforceable requirement, such as an agency order, the person charged must have had adequate notice of the requirement; an ALJ proceeding could include resolution of this issue.

Warning Notices, Letters of Correction: Another comment focused on language in § 1503.301 providing that, if TSA determines that an alleged violation does not require assessment of a civil penalty, an appropriate official may take administrative action, such as warning notices and letters of correction, in disposition of the case. The rule provides: "The issuance of a Warning Notice or Letter of Correction is not subject to appeal under this part." The commenter expressed the following objections to the absence of an appeal process for Warning Notices:

1. TSA has made mistakes in interpreting its rules, resulting in the incorrect adjudication of matters under investigation, leading to TSA issuing Warning Notices to innocent parties.

2. Improperly issued Warning Notices can result in future negative consequences, such as increased civil penalties, if the recipient of the Warning Notice is the subject of future enforcement actions. The commenter referenced the language of Subpart E—

Assessment of Civil Penalties by TSA, § 1503.425, Compromise Orders, (b)(5) to support the position that an improperly-issued Warning Notice may have negative consequences. Specifically, the commenter referenced the following statement: "A compromise order contains the following: (5) A statement that the compromise order will not be used as evidence of a prior violation in any subsequent civil penalty proceeding." The commenter suggested that, if TSA does not allow formal or informal appeals of Warning Notices, at a minimum TSA should incorporate similar language declaring that such Warning Notices will not be used as evidence of a prior violation in any subsequent civil proceeding.

3. The inability to seek redress of an improperly issued Warning Notice presents future risk to other innocent individuals; TSA errors may lead to similar actions against other individuals who may be accused, erroneously, of the same type of alleged violation.

TSA believes that the Warning Notice process is adequate to address these concerns. A Warning Notice does not constitute a legal finding of a violation; therefore, no formal appeal process is required. TSA generally affords persons the opportunity to respond to an investigation before TSA takes enforcement action, including the issuance of a Warning Notice. The most efficient and effective means for resolving allegations of noncompliance is for the person to respond to TSA inquiries promptly and thoroughly.

Penalties Against Individuals: The commenter acknowledged that TSA has the statutory authority to raise the maximum civil penalties assessed against individuals, but objected to TSA's doing so now in view of the recession, high unemployment rates, and stagnant economic growth. The commenter added that airline workers, including pilots, have suffered significant wage reductions. The commenter, a trade association that represents airline workers, expressed its view that airline workers are more likely to be the subject of penalties than other individuals because of the amount of time they spend at airports and transiting checkpoints; these activities might lead to potential charges of a violation of TSA regulations. The commenter recommended that TSA take these factors into account when TSA considers mitigating factors for purposes of proposing penalties. The comment noted that this should be the case particularly in regard to proposed penalties for first-time offenders.

As explained in the preamble to the rule published on July 21, 2009, TSA has adjusted the penalty amounts as required by statute. *See* 74 FR 36034. The Federal Civil Penalties Inflation Adjustment Act of 1990 (Adjustment Act), as amended,[1] includes a detailed formula for inflation adjustments. TSA recognizes that many parties may experience financial hardship due to the current economic environment. Hence, TSA always considers multiple factors, including financial distress, when assessing civil penalties. TSA uses a publicly available sanctions policy in assessing penalties. See *http://www.tsa.gov/research/laws/editorial_1504.shtm.* Finally, TSA disagrees with the view that airline workers' occupation should be considered a mitigating factor for assessing penalties. Individuals who spend considerable time in the aviation environment should be aware of TSA's requirements and take particular care to comply with them.

Formal Complaints: The commenter raised objections to the procedures for formal complaints in subpart I, § 1503.801. This provision of the rule allows any person to file a complaint with the TSA Administrator with respect to "any act or omission by any person in contravention of" any rules, regulations or provisions administered by the TSA. Paragraph (d) of that section provides that TSA will place complaints that meet the tests of Subpart I on its Complaint Docket, mail a copy to each person named in the complaint and, per paragraph (f), the person named in the complaint "must file an answer within 20 days after service of a copy of the complaint." Pursuant to paragraph (k), TSA maintains in the public docket "the complaint and other pleadings and official TSA records relating to the disposition of the complaint."

The commenter questioned TSA's legal authority for these procedures. The commenter also recommended that TSA consider adding a provision allowing TSA to assess penalties for those who file ill-founded, baseless or false charges against individuals, as well as a provision that would allow the individuals who are the subject of these charges to seek compensation for attorneys' fees and other economic losses incurred as a result of responding to false complaints.

TSA has legal authority for the provision stated in § 1503.801. The provision is based on 49 U.S.C. 46101, as amended by section 140(b) of the Aviation and Transportation Security Act, Public Law. 107–71 (ATSA). Moreover, § 1503.801(a) through (k) is substantively the same as § 1503.5(a) through (k) of the preceding regulation. If TSA were to conclude that a formal complaint consisted of false or baseless charges, TSA would dismiss the complaint and send written notification of the dismissal to the complainant and the person(s) named in the complaint.

Amendment of 49 CFR 1503.629, Motions and 49 CFR 1503.659, Petition To Reconsider or Modify a Final Decision and Order of the TSA Decision Maker on Appeal

Previously, § 1503.629(d) provided that parties must reply to motions not later than 10 days after service of the motion on the party. Similarly, § 1503.659(e) required a party to reply to a Petition to Reconsider or Modify a Final Decision and Order of the TSA Decision Maker on appeal within 10 days after service of the petition on that party. These time periods did not afford parties a sufficient time to reply, partly because parties often receive mail well after the date on which the regulations presume service. Moreover, the 10-day periods were inconsistent with other time periods in the regulation, such as § 1503.609 (30 days to file a Complaint), § 1503.611 (30 days to answer a Complaint), and § 1503.657(e) (35 days to file a reply brief in an appeal from an initial decision by TSA). For these reasons, TSA amends §§ 1503.629(d) and 1503.659(e) to provide that parties will have 30 days from service to reply.

Correction of Section Reference in § 1503.631(c)(2), Interlocutory Appeals

In the July 2009 rule, TSA reorganized part 1503 and moved § 1503.215 to § 1503.623, Withdrawal of complaint or request for hearing. TSA inadvertently did not change the section reference in § 1503.631(c)(2) to the appropriate section. In this rule, TSA replaces the incorrect reference to § 1503.215 with the correct reference to § 1503.623.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3501. *et seq.*) requires that TSA consider the impact of paperwork and other information collection burdens imposed on the public and, under the provisions of PRA section 3507(d), obtain approval from the Office of Management and Budget (OMB) for each collection of information it conducts, sponsors, or requires through regulations.

[1] Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101–410, Oct. 5, 1990, 104 Stat. 890, as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, title III, Sec. 31001(s)(1), Apr. 26, 1996, 110 Stat. 1321–373; the Federal Reports Elimination Act of 1998, Public Law 105–362, title XIII, Sec. 1301(a), Nov. 10, 1998, 112 Stat. 3293.

TSA has determined that there are no current or new information collection requirements associated with this rule.

Economic Impact Analyses

Regulatory Evaluation Summary

Changes to Federal regulations must undergo several economic analyses. First, Executive Order (E.O.) 12866, Regulatory Planning and Review (58 FR 51735, October 4, 1993), directs each Federal agency to propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996) requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. Fourth, the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more annually (adjusted for inflation).

Because this rule does not add any requirements to those in the July 21, 2009, final rule, TSA has not performed a cost/benefit analysis.

Executive Order 12866 Assessment

Executive Order 12866, "Regulatory Planning and Review" (58 FR 51735, October 4, 1993) provides for making determinations as to whether a regulatory action is "significant" and therefore subject to OMB review and the requirements of the Order. Executive Order 12866 classifies a rule as significant if it meets any one of a number of specified conditions, including economic significance, which is defined as having an annual impact on the economy of $100 million. A regulation is also considered a significant regulatory action if it raises novel legal or policy issues.

This regulation is not significant under E.O. 12866. This final regulation will have no economic impact because the regulation makes no substantive changes to 49 CFR part 1503.

Regulatory Flexibility Act Assessment

The Regulatory Flexibility Act of 1980 (RFA) (5 U.S.C. 601 *et seq.,* as amended by the Small Business Regulatory Enforcement Fairness Act (SBREFA) of 1996), requires agencies to perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities when the Administrative Procedure Act (APA) requires notice and comment rulemaking. TSA has not assessed whether this rule will have a significant economic impact on a substantial number of small entities, as defined in the RFA. When an agency publishes a rulemaking without prior notice and an opportunity for comment, the RFA analysis requirements do not apply.

This rulemaking is a final rule that follows a final rule that TSA issued on July 21, 2009. Therefore, no RFA analysis is provided.

International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. TSA has assessed the potential effect of this rulemaking and has determined that it will not create any unnecessary obstacles to foreign commerce.

Unfunded Mandates Assessment

The Unfunded Mandates Reform Act of 1995 is intended, among other things, to curb the practice of imposing unfunded Federal mandates on State, local, and tribal governments. Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final agency rule that may result in a $100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This rulemaking does not contain such a mandate. The requirements of Title II of the Act, therefore, do not apply and TSA has not prepared a statement under the Act.

Executive Order 13132, Federalism

TSA has analyzed this final rule under the principles and criteria of E.O. 13132, Federalism. We have determined that this action will not have a substantial direct effect on the States, or the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government, and, therefore, have determined that this action does not have federalism implications.

Environmental Analysis

TSA has reviewed this action for purposes of the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321–4347) and has determined that this action will not have a significant effect on the human environment.

Energy Impact Analysis

The energy impact of the action has been assessed in accordance with the Energy Policy and Conservation Act (EPCA), Public Law 94–163, as amended (42 U.S.C. 6362). We have determined that this rulemaking is not a major regulatory action under the provisions of the EPCA.

List of Subjects in 49 CFR Part 1503

Administrative Practice and Procedure, Investigations, Law enforcement, Penalties, Transportation.

The Amendments

■ For the reasons set forth in the preamble, the Transportation Security Administration amends Chapter XII of Title 49, Code of Federal Regulations, as follows:

PART 1503—INVESTIGATIVE AND ENFORCEMENT PROCEDURES

■ 1. The authority citation for part 1503 continues to read as follows:

Authority: 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 114, 20109, 31105, 40113–40114, 40119, 44901–44907, 46101–46107, 46109–46110, 46301, 46305, 46311, 46313–46314; Sec. 1413(i), Public Law 110–53, 121 Stat. 414 (6 U.S.C. 1142).

Subpart G—Rules of Practice in TSA Civil Penalty Actions

■ 2. In § 1503.629 revise paragraph (d) to read as follows:

§ 1503.629 Motions.

* * * * *

(d) *Reply to motions.* Any party may file a reply, with affidavits or other evidence in support of the reply, not later than 30 days after service of a written motion on that party. When a motion is made during a hearing, the reply may be made at the hearing on the record, orally or in writing, within a reasonable time determined by the ALJ. At the discretion of the ALJ, the moving party may file a response to the reply.

* * * * *

§ 1503.631 [Amended]

■ 3. In § 1503.631(c)(2) remove the reference "§ 1503.215" and add in its place the reference "§ 1503.623".

■ 4. In § 1503.659 revise paragraph (e) to read as follows:

§ 1503.659 Petition to reconsider or modify a final decision and order of the TSA decision maker on appeal.

* * * * *

(e) *Reply petitions.* Any other party may reply to a petition to reconsider or modify, not later than 30 days after service of the petition on that party, by filing a reply with the Enforcement Docket Clerk. A party must serve a copy of the reply on each party.

* * * * *

Issued in Arlington, Virginia, on September 17, 2010.

John S. Pistole,

Administrator.

[FR Doc. 2010–23985 Filed 9–23–10; 8:45 am]

BILLING CODE 9110–05–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 970730185–7206–02]

RIN 0648–XY73

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Re-Opening of the 2010 Gulf of Mexico Recreational Red Snapper Season

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary rule; re-opening.

SUMMARY: NMFS re-opens the recreational red snapper component of the reef fish fishery in the exclusive economic zone (EEZ) of the Gulf of Mexico (Gulf). NMFS previously determined the recreational red snapper quota would be reached by 12:01 a.m., local time, July 24, 2010. However, due to the Deepwater Horizon MC252 oil spill and the associated large-area fishery closure (fishery closed area) in the north-central Gulf where a substantial portion of the recreational red snapper fishing efforts occurs, the latest landings estimates indicate the quota was not reached by that date. Therefore, NMFS will re-open the recreational red snapper season, for eight consecutive weekends (Friday through Sunday), beginning October 1, 2010. The intent of this action is to provide fishermen the opportunity to harvest the recreational red snapper quota, and the opportunity to achieve the optimum yield for the fishery, thus enhancing social and economic benefits to the fishery.

DATES: The re-opening is effective each weekend, from 12:01 a.m., local time, Fridays, through 12:01 a.m., local time, Mondays, beginning October 1, 2010, until 12:01 a.m., local time, November 22, 2010. The season will then be closed until it reopens on June 1, 2011, the beginning of the 2011 recreational fishing season.

FOR FURTHER INFORMATION CONTACT: Steve Branstetter, telephone 727–824–5305, fax 727–824–5308, e-mail *Steve.Branstetter@noaa.gov.*

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery is managed under the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP). The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act).

On June 2, 2010, NMFS implemented a recreational quota for Gulf red snapper of 3.403 million lb (1.544 million kg) and a commercial quota of 3.542 million lb (1.607 million kg) through a regulatory amendment (75 FR 23186, May 3, 2010). These quotas are based on the Councils(recommended total allowable catch of 6.945 million lb (3.150 million kg) for 2010 and subsequent fishing years, and the allocation ratios in the FMP.

The Magnuson-Stevens Act requires NMFS to close the recreational red snapper component of the Gulf reef fish fishery in Federal waters when the quota is met or projected to be met. Finalized 2009 recreational landings data indicated the recreational quota was projected to be met on or by July 23, 2010. Therefore, in the rule that published May 3, 2010 (75 FR 23186), NMFS announced the recreational red snapper fishing season would close at 12:01 a.m., local time, July 24, 2010, which constituted a 53-day fishing season.

Because of the Deepwater Horizon MC252 oil spill, NMFS subsequently closed a large area in the north-central Gulf to fishing (fishery closed area), resulting in lower than expected landings for recreational red snapper. Because the fishery closed area is located where a substantial portion of the recreational red snapper fishing occurs, the Council did not expect the recreational red snapper quota to be met by July 23rd. Therefore, at its June 2010 meeting, the Council requested NMFS publish emergency rulemaking to authorize the RA to re-open the recreational red snapper season after September 30th, the end of the fishing season. A proposed rule was published on August 16, 2010 (75 FR 49883) and NMFS requested public comment through August 31, 2010. NMFS published a final rule in the same issue of the **Federal Register**, authorizing the RA to re-open the recreational red snapper fishing season after September 30th.

Based on the most recent landings data, NMFS has determined that 32 percent of the available recreational quota was landed by the July 23rd closure date. Based on landings rates and the remaining recreational quota of approximately 2.3 million lb (1.1 million kg), NMFS has determined the recreational red snapper season can re-open. At its August 2010 meeting, the Council voted to re-open the season on eight consecutive Fridays, Saturdays, and Sundays, beginning at 12:01 a.m., local time, on October 1, 2010 and closing at 12:01 a.m., local time, on Monday, November 22, 2010 (24 fishing days). In the interim, weekend openings would start at 12:01 a.m., local time, on Fridays and stay open through 12:01 a.m., local time, on Mondays. The season will then be closed until 12:01 a.m., local time, June 1, 2011, the beginning of the 2011 recreational fishing season.

During the open period, the bag and possession limit for recreational Gulf red snapper is two fish. However, no red snapper may be retained by the captain and crew of a vessel operating as a charter vessel or headboat. The bag limit for such captain and crew is zero.

During the closed period, the bag and possession limit for recreational Gulf red snapper is zero. A person aboard a vessel for which a Federal charter vessel/headboat permit for Gulf reef fish has been issued, must also abide by these closure provisions in state waters if Federal regulations are more restrictive than applicable state law.

Classification

This action responds to the best available information recently obtained from the fishery. The Assistant Administrator for Fisheries, NOAA, (AA), finds good cause to waive the requirement to provide prior notice and opportunity for public comment pursuant to the authority set forth at 5 U.S.C. 553(b)(3)(B). Allowing prior