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SERVICE DATE – JANUARY 14, 2022

## SURFACE TRANSPORTATION BOARD

### DECISION

Docket No. EP 716 (Sub-No. 7)

### CIVIL MONETARY PENALTIES—2022 ADJUSTMENT

Decided: January 10, 2022

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is issuing a final rule to implement the annual inflationary adjustment to its civil monetary penalties, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective January 14, 2022.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245-0391. Assistance for the hearing impaired is available through the Federal Relay Service at (800) 877-8339.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), enacted as part of the Bipartisan Budget Act of 2015, Pub. L. No. 114-74, § 701, 129 Stat. 584, 599-601, requires agencies to adjust their civil penalties for inflation annually, beginning on July 1, 2016, and no later than January 15 of every year thereafter. In accordance with the 2015 Act, annual inflation adjustments are to be based on the percent change between the Consumer Price Index for all Urban Consumers (CPI-U) for October of the previous year and the October CPI-U of the year before that. Penalty level adjustments should be rounded to the nearest dollar.

##### II. Discussion

The statutory definition of civil monetary penalty covers various civil penalty provisions under the Rail (Part A); Motor Carriers, Water Carriers, Brokers, and Freight Forwarders (Part B); and Pipeline Carriers (Part C) provisions of the Interstate Commerce Act, as amended. The Board's civil (and criminal) penalty authority related to rail transportation appears at 49 U.S.C. §§ 11901-11908. The Board's penalty authority related to motor carriers, water

carriers, brokers, and freight forwarders appears at 49 U.S.C. §§ 14901-14916. The Board's penalty authority related to pipeline carriers appears at 49 U.S.C. §§ 16101-16106.<sup>1</sup> The Board has regulations at 49 C.F.R. pt. 1022 that codify the method set forth in the 2015 Act for annually adjusting for inflation the civil monetary penalties within the Board's jurisdiction.

As set forth in this final rule, the Board is amending 49 C.F.R. part 1022 to make an annual inflation adjustment to the civil monetary penalties in conformance with the requirements of the 2015 Act. The adjusted penalties set forth in the rule will apply only to violations that occur after the effective date of this regulation.

In accordance with the 2015 Act, the annual adjustment adopted here is calculated by multiplying each current penalty by the cost-of-living adjustment factor of 1.06222, which reflects the percentage change between the October 2021 CPI-U (276.589) and the October 2020 CPI-U (260.388). The table at the end of this decision shows the statutory citation for each civil penalty, a description of the provision, the adjusted statutory civil penalty level for 2021, and the adjusted statutory civil penalty level for 2022.

### III. Final Rule

The final rule set forth at the end of this decision is being issued without notice and comment pursuant to the rulemaking provision of the Administrative Procedure Act (APA), 5 U.S.C. § 553(b)(B), which does not require that process "when the agency for good cause finds" that public notice and comment are "unnecessary." Here, Congress has mandated that the agency make an annual inflation adjustment to its civil monetary penalties. The Board has no discretion to set alternative levels of adjusted civil monetary penalties, because the amount of the inflation adjustment must be calculated in accordance with the statutory formula. Given the absence of discretion, the Board has determined that there is good cause to promulgate this rule without soliciting public comment and to make this regulation effective immediately upon publication.

### IV. Regulatory Flexibility Statement

The Regulatory Flexibility Act (RFA), as amended by the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. §§ 601-612, generally requires an agency to prepare a regulatory flexibility analysis of any rule subject to notice and comment rulemaking requirements, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities. Because the Board has determined that notice and comment are not required under the APA for this rulemaking, the requirements of the RFA do not apply.

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<sup>1</sup> The Board also has various criminal penalty authority, enforceable in a federal criminal court. Congress has not, however, authorized federal agencies to adjust statutorily prescribed criminal penalty provisions for inflation, and this rule does not address those provisions.

V. Congressional Review Act

Pursuant to the Congressional Review Act, 5 U.S.C. §§ 801-808, the Office of Information and Regulatory Affairs has designated this rule as a non-major rule, as defined by 5 U.S.C. § 804(2).

VI. Paperwork Reduction Act

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1995, 44 U.S.C. §§ 3501-3521.

VII. List of Subjects in 49 C.F.R. part 1022

Administrative practice and procedures, Brokers, Civil penalties, Freight forwarders, Motor carriers, Pipeline carriers, Rail carriers, Water carriers.

It is ordered:

1. The Board amends its rules as set forth in this decision. Notice of the final rule will be published in the Federal Register.

2. This decision is effective on its date of publication in the Federal Register.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.

### Code of Federal Regulations

For the reasons set forth in the preamble, part 1022 of title 49, chapter X, of the Code of Federal Regulations is amended as follows:

#### **PART 1022—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT**

1. Revise the authority citation for part 1022 to read as follows:

Authority: 5 U.S.C. 551-557; 28 U.S.C. 2461 note; 49 U.S.C. 11901, 14901, 14903, 14904, 14905, 14906, 14907, 14908, 14910, 14915, 14916, 16101, 16103.

2. Revise § 1022.4(b) to read as follows:

#### **§ 1022.4 Cost-of-living adjustments of civil monetary penalties.**

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(b) The cost-of-living adjustment required by the statute results in the following adjustments to the civil monetary penalties within the jurisdiction of the Board:

| <u><b>U.S. Code Citation</b></u> | <u><b>Civil Monetary Penalty Description</b></u>                                                         | <b>2021 –<br/>Penalty<br/>Amount</b> | <b>2022 -<br/>Adjusted<br/>Penalty<br/>Amount</b> |
|----------------------------------|----------------------------------------------------------------------------------------------------------|--------------------------------------|---------------------------------------------------|
|                                  |                                                                                                          | EP 716_6<br>(2021)                   | EP 716_7<br>(2022)                                |
| <b>Rail Carrier</b>              |                                                                                                          |                                      |                                                   |
| 49 U.S.C. 11901(a)               | Unless otherwise specified, maximum penalty for each knowing violation under this part, and for each day | \$8,224                              | \$8,736                                           |
| 49 U.S.C. 11901(b)               | For each violation under § 11124(a)(2) or (b)                                                            | \$823                                | \$874                                             |
| 49 U.S.C. 11901(b)               | For each day violation continues                                                                         | \$42                                 | \$45                                              |
| 49 U.S.C. 11901(c)               | Maximum penalty for each knowing violation under §§ 10901-10906                                          | \$8,224                              | \$8,736                                           |
| 49 U.S.C. 11901(d)               | For each violation under §§ 11123 or 11124(a)(1)                                                         | \$164-\$823                          | \$174-\$874                                       |
| 49 U.S.C. 11901(d)               | For each day violation continues                                                                         | \$82                                 | \$87                                              |
| 49 U.S.C. 11901(e)(1), (4)       | For each violation under §§ 11141-11145, for each day                                                    | \$823                                | \$874                                             |
| 49 U.S.C. 11901(e)(2), (4)       | For each violation under § 11144(b)(1), for each day                                                     | \$164                                | \$174                                             |
| 49 U.S.C. 11901(e)(3)-(4)        | For each violation of reporting requirements, for each day                                               | \$164                                | \$174                                             |
| <b>Motor and Water Carrier</b>   |                                                                                                          |                                      |                                                   |
| 49 U.S.C. 14901(a)               | Minimum penalty for each violation and for each day                                                      | \$1,125                              | \$1,195                                           |

|                       |                                                                                                                                                    |                       |                       |
|-----------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|-----------------------|
| 49 U.S.C. 14901(a)    | For each violation under §§ 13901 or 13902(c)                                                                                                      | \$11,257              | \$11,957              |
| 49 U.S.C. 14901(a)    | For each violation related to transportation of passengers                                                                                         | \$28,142              | \$29,893              |
| 49 U.S.C. 14901(b)    | For each violation of the hazardous waste rules under § 3001 of the Solid Waste Disposal Act                                                       | \$22,514-<br>\$45,027 | \$23,915-<br>\$47,829 |
| 49 U.S.C. 14901(d)(1) | Minimum penalty for each violation of household good regulations, and for each day                                                                 | \$1,644               | \$1,746               |
| 49 U.S.C. 14901(d)(2) | Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement                       | \$16,450              | \$17,473              |
| 49 U.S.C. 14901(d)(3) | Minimum penalty for each instance of transportation of household goods without being registered                                                    | \$41,120              | \$43,678              |
| 49 U.S.C. 14901(e)    | Minimum penalty for each violation of a transportation rule                                                                                        | \$3,289               | \$3,494               |
| 49 U.S.C. 14901(e)    | Minimum penalty for each additional violation                                                                                                      | \$8,224               | \$8,736               |
| 49 U.S.C. 14903(a)    | Maximum penalty for undercharge or overcharge of tariff rate, for each violation                                                                   | \$164,490             | \$174,724             |
| 49 U.S.C. 14904(a)    | For first violation, rebates at less than the rate in effect                                                                                       | \$329                 | \$349                 |
| 49 U.S.C. 14904(a)    | For all subsequent violations                                                                                                                      | \$412                 | \$438                 |
| 49 U.S.C. 14904(b)(1) | Maximum penalty for first violation for undercharges by freight forwarders                                                                         | \$823                 | \$874                 |
| 49 U.S.C. 14904(b)(1) | Maximum penalty for subsequent violations                                                                                                          | \$3,289               | \$3,494               |
| 49 U.S.C. 14904(b)(2) | Maximum penalty for other first violations under § 13702                                                                                           | \$823                 | \$874                 |
| 49 U.S.C. 14904(b)(2) | Maximum penalty for subsequent violations.                                                                                                         | \$3,289               | \$3,494               |
| 49 U.S.C. 14905(a)    | Maximum penalty for each knowing violation of § 14103(a), and knowingly authorizing, consenting to, or permitting a violation of § 14103(a) or (b) | \$16,450              | \$17,473              |
| 49 U.S.C. 14906       | Minimum penalty for first attempt to evade regulation                                                                                              | \$2,252               | \$2,392               |
| 49 U.S.C. 14906       | Minimum amount for each subsequent attempt to evade regulation                                                                                     | \$5,628               | \$5,978               |
| 49 U.S.C. 14907       | Maximum penalty for recordkeeping/reporting violations                                                                                             | \$8,224               | \$8,736               |
| 49 U.S.C. 14908(a)(2) | Maximum penalty for violation of § 14908(a)(1)                                                                                                     | \$3,289               | \$3,494               |
| 49 U.S.C. 14910       | When another civil penalty is not specified under this part, for each violation, for each day                                                      | \$823                 | \$874                 |

|                            |                                                                                               |          |          |
|----------------------------|-----------------------------------------------------------------------------------------------|----------|----------|
| 49 U.S.C. 14915(a)(1)-(2)  | Minimum penalty for holding a household goods shipment hostage, for each day                  | \$13,072 | \$13,885 |
| 49 U.S.C. 14916(c)(1)      | Maximum penalty for each knowing violation under § 14916(a) for unlawful brokerage activities | \$11,257 | \$11,957 |
| <b>Pipeline Carrier</b>    |                                                                                               |          |          |
| 49 U.S.C. 16101(a)         | Maximum penalty for violation of this part, for each day                                      | \$8,224  | \$8,736  |
| 49 U.S.C. 16101(b)(1), (4) | For each recordkeeping violation under § 15722, each day                                      | \$823    | \$874    |
| 49 U.S.C. 16101(b)(2), (4) | For each inspection violation liable under § 15722, each day                                  | \$164    | \$174    |
| 49 U.S.C. 16101(b)(3)-(4)  | For each reporting violation under § 15723, each day                                          | \$164    | \$174    |
| 49 U.S.C. 16103(a)         | Maximum penalty for improper disclosure of information                                        | \$1,644  | \$1,746  |