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SERVICE DATE—JANUARY 12, 2024

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 716 (Sub-No. 9)

CIVIL MONETARY PENALTIES—2024 ADJUSTMENT

Decided: January 9, 2024

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 12, 2024.

FOR FURTHER INFORMATION CONTACT: Amy Ziehm at (202) 245-0391. If you require an accommodation under the Americans with Disabilities Act, please call (202) 245-0245.

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. 16101-16106.¹ The Board has regulations at 49 CFR 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 CFR 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 1.03241, which reflects the percentage change between the October 2023 CPI-U (307.671) and the October 2022 CPI-U (298.012). 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 2023, and the adjusted statutory civil penalty level for 2024.

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.

¹ 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 CFR 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. Board Member Primus concurred with a separate expression.

BOARD MEMBER PRIMUS, concurring:

When the Board adjusted its civil monetary penalties last year, I wrote separately to express concern about the adequacy of the penalties afforded by statute. Civ. Monetary Penalties—2023 Adjustment, EP 716 (Sub-No. 8) (STB served Jan. 13, 2023), slip op. at 3-4 (Member Primus concurring). That concern remains today. The Board's decision, consistent with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, makes minor adjustments to its civil penalties—for example, increasing the penalty in 49 U.S.C. 11901(a) from \$9,413 to \$9,718. For the reasons I stated last year, those penalties are unlikely to provide the deterrent effect intended by Congress, and Congress should address this inadequacy.

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. The authority citation for part 1022 continues 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.

(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:

Table 1 to paragraph (b)

<u>U.S. Code Citation</u>	<u>Civil Monetary Penalty Description</u>	2023 - Penalty Amount	2024 - Adjusted Penalty Amount
-	-	EP 716_8 (2023)	EP 716_9 (2024)
	Rail Carrier		
49 U.S.C. 11901(a)	Unless otherwise specified, maximum penalty for each knowing violation under this part, and for each day	\$9,413	\$9,718
49 U.S.C. 11901(b)	For each violation under § 11124(a)(2) or (b)	\$942	\$973
49 U.S.C. 11901(b)	For each day violation continues	\$48	\$50
49 U.S.C. 11901(c)	Maximum penalty for each knowing violation under §§ 10901-10906	\$9,413	\$9,718
49 U.S.C. 11901(d)	For each violation under §§ 11123 or 11124(a)(1)	\$187-\$942	\$193-\$973
49 U.S.C. 11901(d)	For each day violation continues	\$94	\$97
49 U.S.C. 11901(e)(1), (4)	For each violation under §§ 11141-11145, for each day	\$942	\$973
49 U.S.C. 11901(e)(2), (4)	For each violation under § 11144(b)(1), for each day	\$187	\$193
49 U.S.C. 11901(e)(3)-(4)	For each violation of reporting requirements, for each day	\$187	\$193

	Motor and Water Carrier		
49 U.S.C. 14901(a)	Minimum penalty for each violation and for each day	\$1,288	\$1,330
49 U.S.C. 14901(a)	For each violation under §§ 13901 or 13902(c)	\$12,883	\$13,301
49 U.S.C. 14901(a)	For each violation related to transportation of passengers	\$32,208	\$33,252
49 U.S.C. 14901(b)	For each violation of the hazardous waste rules under § 3001 of the Solid Waste Disposal Act	\$25,767-\$51,534	\$26,602-\$53,204
49 U.S.C. 14901(d)(1)	Minimum penalty for each violation of household good regulations, and for each day	\$1,881	\$1,942
49 U.S.C. 14901(d)(2)	Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement	\$18,826	\$19,436
49 U.S.C. 14901(d)(3)	Minimum penalty for each instance of transportation of household goods without being registered	\$47,061	\$48,586
49 U.S.C. 14901(e)	Minimum penalty for each violation of a transportation rule	\$3,765	\$3,887
49 U.S.C. 14901(e)	Minimum penalty for each additional violation	\$9,413	\$9,718
49 U.S.C. 14903(a)	Maximum penalty for undercharge or overcharge of tariff rate, for each violation	\$188,257	\$194,359
49 U.S.C. 14904(a)	For first violation, rebates at less than the rate in effect	\$376	\$388
49 U.S.C. 14904(a)	For all subsequent violations	\$472	\$487
49 U.S.C. 14904(b)(1)	Maximum penalty for first violation for undercharges by freight forwarders	\$942	\$973
49 U.S.C. 14904(b)(1)	Maximum penalty for subsequent violations	\$3,765	\$3,887
49 U.S.C. 14904(b)(2)	Maximum penalty for other first violations under § 13702	\$942	\$973
49 U.S.C. 14904(b)(2)	Maximum penalty for subsequent violations.	\$3,765	\$3,887
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)	\$18,826	\$19,436
49 U.S.C. 14906	Minimum penalty for first attempt to evade regulation	\$2,577	\$2,661
49 U.S.C. 14906	Minimum amount for each subsequent attempt to evade regulation	\$6,441	\$6,650
49 U.S.C. 14907	Maximum penalty for recordkeeping/reporting violations	\$9,413	\$9,718

49 U.S.C. 14908(a)(2)	Maximum penalty for violation of § 14908(a)(1)	\$3,765	\$3,887
49 U.S.C. 14910	When another civil penalty is not specified under this part, for each violation, for each day	\$942	\$973
49 U.S.C. 14915(a)(1)-(2)	Minimum penalty for holding a household goods shipment hostage, for each day	\$14,960	\$15,445
49 U.S.C. 14916(c)(1)	Maximum penalty for each knowing violation under § 14916(a) for unlawful brokerage activities	\$12,883	\$13,301
	Pipeline Carrier		
49 U.S.C. 16101(a)	Maximum penalty for violation of this part, for each day	\$9,413	\$9,718
49 U.S.C. 16101(b)(1), (4)	For each recordkeeping violation under § 15722, each day	\$942	\$973
49 U.S.C. 16101(b)(2), (4)	For each inspection violation liable under § 15722, each day	\$187	\$193
49 U.S.C. 16101(b)(3)-(4)	For each reporting violation under § 15723, each day	\$187	\$193
49 U.S.C. 16103(a)	Maximum penalty for improper disclosure of information	\$1,881	\$1,942