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SERVICE DATE - OCTOBER 22, 2012

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 716

CIVIL MONETARY PENALTY INFLATION ADJUSTMENT RULE

Digest:¹ In this decision the Board is issuing a final rule that increases its existing civil monetary penalties by 10% and thereafter adjusts those penalties for inflation at least once every four years.

AGENCY: Surface Transportation Board.

ACTION: Final rule.

SUMMARY: The Surface Transportation Board (Board) is issuing a final rule to adjust the Board's civil monetary penalties for inflation on a periodic basis pursuant to the Federal Civil Penalties Inflation Act of 1990, as amended by the Debt Collection Improvement Act of 1996. Prior to the issuance of this rule, the Board's penalties have not been adjusted for inflation since they were prescribed in the Interstate Commerce Commission Termination Act of 1995 (ICCTA). As mandated by the Debt Collection Improvement Act, the Board's initial increase of its penalties cannot exceed 10%. The Board is required to review its penalties again at least once every four years thereafter and adjust them as necessary for inflation according to a specified formula.

EFFECTIVE DATE: October 22, 2012.

FOR FURTHER INFORMATION CONTACT: Marc Lerner, (202) 245-0390. Federal Information Relay Service (FIRS) for the hearing impaired: 1-800-877-8339.

SUPPLEMENTARY INFORMATION:

I. Background.

The Debt Collection Improvement Act of 1996 (DCIA), Public Law 104-134, 110 Stat. 1321, amended the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

410, 104 Stat. 890 (codified as amended at 28 U.S.C. § 2461 note), to require each federal agency to adopt regulations at least once every four years that adjust for inflation the maximum amount of civil monetary penalties under the statutes administered by the agency.² As defined, a civil monetary penalty is a statutorily prescribed specific amount, or maximum amount, provided by federal law that can be assessed by a federal agency and that can be enforced by the agency pursuant to an administrative proceeding or a civil action in a federal court. Congress passed this legislation on the basis of its findings that: (1) the power to impose civil monetary penalties is important to deterring violations of federal law and furthering the policy goals of federal laws and regulations; and (2) inflation has diminished the impact of these penalties.

Under the DCIA, the inflation adjustment is calculated by increasing the maximum civil monetary penalty amount per violation by the Cost-of-Living Adjustment, which is the percentage (if any) by which the Consumer Price Index for June of the year preceding the adjustment exceeds the Consumer Price Index for June of the year the civil monetary penalty amount was last set or adjusted, multiplied by the statutory maximum amount, rounded to the nearest specified amount using the formula contained in the statute. The DCIA requires agencies to round off the increase of each civil monetary penalty depending on its dollar amount: if the penalty is greater than \$0 and less than or equal to \$100, the increase is to be rounded to the nearest \$10; if the penalty is greater than \$100, but less than or equal to \$1,000, the increase is rounded to the nearest \$100; if the penalty is greater than \$1,000 but less than or equal to \$10,000, the increase is to be rounded to the nearest multiple of \$1,000; if the penalty is greater than \$10,000 but less than or equal to \$100,000, the increase is to be rounded to the nearest multiple of \$5,000; if the penalty is greater than \$100,000 but less than or equal to \$200,000, the increase is to be rounded to the nearest multiple of \$10,000; and lastly, if the penalty is greater than \$200,000, the increase is to be rounded to the nearest \$25,000.

II. Discussion.

The statutory definition of civil monetary penalty covers the civil penalty provisions under the Rail Carrier (Part A), Motor and Water Carriers (Part B), and Pipeline Carrier (Part C) provisions of the Interstate Commerce Act (ICA), as amended by ICCTA. 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. §§ 14901-14915. The Board's penalty authority related to pipeline carriers appears at 49 U.S.C. §§ 16101-16106.³

² Agency means an Executive agency as defined under 5 U.S.C. § 105. "Executive agency" includes an "independent establishment," which is defined at § 104 in relevant part as "an establishment in the executive branch" that is not an "Executive department." For purposes of the requirements of the DCIA, we determine that the Board is a covered agency.

³ The Board also has 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.

Because the Board was created in 1996, the year 2000 would have been the first time that the Board should have amended its regulations to adjust its civil monetary penalties for inflation.⁴ Subsequent amendments should have been effected in 2004, 2008, and in 2012. The Board's initial adjustment, however, cannot exceed 10% of each penalty, regardless of the rate of inflation. As set forth in the rule, the Board is adding 49 C.F.R. § 1022 to adjust the penalty for each violation for which a statutory minimum or maximum amount is specified under the ICA as amended by ICCTA. These adjusted penalties will apply only to violations which occur after the effective date of this regulation.

III. Immediate Final Rule.

The Board has no discretion to set alternative levels of adjusted civil monetary penalties, since the amount of the inflation adjustment must be calculated in accordance with the statutory formula. Accordingly, the Board is issuing this regulation as a final rule, without opportunity for public notice and comment. The Administrative Procedure Act (APA), 5 U.S.C. § 553(b)(B), does not require that process "when the agency for good cause finds" that public notice and comment are "impracticable, unnecessary, or contrary to the public interest." The Board finds that solicitation of public comments in this rulemaking is unnecessary and impracticable because Congress has prescribed that agencies adjust the civil monetary penalties under their jurisdiction and has provided no discretion to the agencies regarding the substance of the adjustments. The Board is only required to determine the amount of inflation adjustments by performing technical, ministerial computations. Thus, there is no need for affected parties to have 30 days' notice or opportunity to comment prior to the effectiveness of this regulation to adjust their conduct, because the regulation concerns penalties for conduct that is already illegal under existing law. Accordingly, the Board has determined that there is good cause 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. §§ 801 et seq., 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.

V. 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 et seq.

⁴ See GAO Report, GAO-03-409, *Civil Penalties: Agencies Unable to Fully Adjust Penalties for Inflation Under Current Law* (March 2003), at 46 (STB not required to make initial adjustments until Jan. 1, 2000; as of Jun. 30, 2002, STB had not made the adjustments).

VI. Effective Date.

For the same reasons the Board has determined that public notice and comment is unnecessary and impracticable, the Board finds that it has good cause to make this regulation effective upon publication.

VII. List of Subjects in 49 CFR Part 1022.

Administrative practice and procedures, Civil Penalties, Rail Carriers, Water Carriers, Motor Carriers, Brokers, Freight Forwarders, Pipeline Carriers.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The new rule set forth in Appendix A is adopted as a final rule.
2. This decision is effective on its date of service.

Decided: October 12, 2012.

By the Board, Chairman Elliott, Vice Chairman Mulvey, and Commissioner Begeman.

Appendix A
Code of Federal Regulations

For the reasons set forth in the preamble, the Surface Transportation Board adds Part 1022 of title 49, chapter X, of the Code of Federal Regulations to read as follows:

PART 1022—CIVIL MONETARY PENALTY INFLATION ADJUSTMENT

Sec.

1022.1 Scope and purpose.

1022.2 Definitions.

1022.3 Civil Monetary Penalty Inflation Adjustment.

1022.4 Cost-of-Living Adjustments of Civil Monetary Penalties.

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, 16101, 16103.

Source: 77 F.R. 64431, October 22, 2012 [date of publication, unless otherwise noted.]

§ 1022.1 Scope and purpose.

The purpose of this part is to establish a method to adjust for inflation the civil monetary penalties provided by law within the jurisdiction of the Board. These penalties shall be subject to review and adjustment at least once every four years using the method specified in the Debt Collection Improvement Act of 1996, Public Law 104-134, 110 Stat. 1321, as it amends the Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, 104 Stat. 890 (codified as amended at 28 U.S.C. § 2461 note). The inflation adjustment is calculated by increasing the maximum civil monetary penalty amount per violation by the Cost-of-Living Adjustment, which is the percentage (if any) by which the Consumer Price Index for June of the year preceding the adjustment exceeds the Consumer Price Index for June of the year the civil monetary penalty amount was last set or adjusted, multiplied by the statutory maximum amount, rounded to the nearest specified amount using the formula contained in the statute. The initial adjustment, however, is capped at 10% of the penalty, regardless of the applicable rate of inflation.

§ 1022.2 Definitions.

(a) *Board* means the Surface Transportation Board.

(b) *Civil Monetary Penalty* means any penalty, fine, or other sanction that:

- 1) (i) Is for a specific monetary amount as provided by federal law; or (ii) Has a maximum amount provided by federal law;
- 2) Is assessed or enforced by the Board pursuant to federal law; and
- 3) Is assessed or enforced pursuant to an administrative proceeding or a civil action in the federal courts.

(c) *Consumer Price Index* means the Consumer Price Index for all urban consumers published by the Department of Labor.

(d) *Cost-of-Living Adjustment* means the percentage (if any) for each civil monetary penalty by which the Consumer Price Index for the month of June of the calendar year preceding the adjustment exceeds the Consumer Price Index for the month of June of the calendar year in which the amount of such civil monetary penalty was last set or adjusted pursuant to law.

§ 1022.3 Civil Monetary Penalty Inflation Adjustment.

The Board shall, immediately, and at least once every four years thereafter –

- (a) By regulation adjust each civil monetary penalty provided by law within the jurisdiction of the Board by the inflation adjustment described in § 1022.4; and

(b) Publish each such adjustment in the Federal Register.

§ 1022.4 Civil Penalties, as adjusted, for violations of specified provisions of Title 49 of the United States Code.

(a) Pursuant to the Debt Collection Improvement Act of 1996, as it amends the Federal Civil Penalties Inflation Adjustment Act of 1990, the increase of a civil monetary penalty assessed under this section shall be determined by multiplying the Cost-of-Living Adjustment by the existing maximum civil monetary penalty, rounded to the nearest specified amount using the guidelines set forth in § 1022.4(b).

(b) Any increase determined under § 1022.4(a) shall be rounded to the nearest:

- 1) Multiple of \$10 in the case of penalties less than or equal to \$100;
- 2) Multiple of \$100 in the case of penalties greater than \$100 but less than or equal to \$1,000;
- 3) Multiple of \$1,000 in the case of penalties greater than \$1,000 but less than or equal to \$10,000;
- 4) Multiple of \$5,000 in the case of penalties greater than \$10,000 but less than or equal to \$100,000;
- 5) Multiple of \$10,000 in the case of penalties greater than \$100,000 but less than or equal to \$200,000; or
- 6) Multiple of \$25,000 in the case of penalties greater than \$200,000.

(c) The first adjustment of any civil monetary penalty required by § 1022.3 may not exceed 10% of such penalty.

(d) The first application of the inflation adjustment method required by the statute results in the following adjustments to the civil monetary penalties within the jurisdiction of the Board:

US Code Citation	Civil Monetary Penalty Description	Maximum Penalty Amount Year 1996	Adjusted Maximum Penalty Amount –Yr. 2012
Rail Carrier Civil Penalties			
49 U.S.C. § 11901(a)	Unless otherwise specified, maximum penalty for each knowing violation under this part, and for each day.	\$5,000	\$5,500
49 U.S.C. § 11901(b)	For each violation under §§ 11124(a)(2) or (b).	\$500	\$550
49 U.S.C. § 11901(b)	For each day violation continues.	\$25	\$27.50
49 U.S.C. § 11901(c)	Maximum penalty for each knowing violation under §§ 10901-10906.	\$5,000	\$5,500
49 U.S.C. § 11901(d)	For each violation under §§ 11123 or 11124(a)(1).	\$100-\$500	\$110-\$550
49 U.S.C. § 11901(d)	For each day violation continues.	\$50	\$55
49 U.S.C. § 11901(e)(1)	For each violation under §§ 11141-11145.	\$500	\$550
49 U.S.C.	For each violation under § 11144(b)(1).	\$100	\$110

§ 11901(e)(2)			
49 U.S.C. § 11901(e)(3-4)	For each violation of reporting requirements, for each day.	\$100	\$110
	Motor and Water Carrier Civil Penalties		
49 U.S.C. § 14901(a)	Minimum penalty for each violation under §§ 13501-13508, 13531, 13901, 13902(c), and for each day.	\$500	\$550
49 U.S.C. § 14901(a)	Minimum penalty if not registered to provide passenger transportation, for each violation under § 13901, and for each day.	\$2,000	\$2,200
49 U.S.C. § 14901(b)	Maximum penalty for each violation of the hazardous waste rules under § 3001 of the Solid Waste Disposal Act.	\$20,000	\$22,000
49 U.S.C. § 14901(d)(1)	Minimum penalty for each violation of household good regulations, and for each day.	\$1,000	\$1,100
49 U.S.C. § 14901(d)(2)	Minimum penalty for each instance of transportation of household goods if broker provides estimate without carrier agreement.	\$10,000	\$11,000
49 U.S.C. § 14901(d)(3)	Minimum penalty for each instance of transportation of household goods without being registered.	\$25,000	\$27,500
49 U.S.C. § 14901(e)	Minimum penalty for each violation of a transportation rule.	\$2,000	\$2,200
49 U.S.C. § 14901(e)(2)	Minimum penalty for each additional violation.	\$5,000	\$5,500
49 U.S.C. § 14903(a)	Maximum penalty for undercharge or overcharge of tariff rate, for each violation.	\$100,000	\$110,000
49 U.S.C. § 14904(a)	For first violation, rebates at less than the rate in effect.	\$200	\$220
49 U.S.C. § 14904(a)	For all subsequent violations.	\$250	\$275
49 U.S.C. § 14904(b)(1)	Maximum penalty for first violation for undercharges by freight forwarders.	\$500	\$550
49 U.S.C. § 14904(b)(1)	Maximum penalty for subsequent violations.	\$2,000	\$2,200
49 U.S.C. § 14904(b)(2)	Maximum penalty for other first violations under § 13702.	\$500	\$550
49 U.S.C. § 14904(b)(2)	Maximum penalty for subsequent violations.	\$2,000	\$2,200
49 U.S.C. § 14905(a)	Maximum penalty for each knowing violation of § 14103(a), and any violation of § 14103(b).	\$10,000	\$11,000
49 U.S.C.	For first attempt to evade regulation.	\$200	\$220

§ 14906			
49 U.S.C. § 14906	Minimum amount for each subsequent attempt to evade regulation.	\$250	\$275
49 U.S.C. § 14907	Maximum penalty for recordkeeping/reporting violations.	\$5,000	\$5,500
49 U.S.C. § 14908(a)(2)	Maximum penalty for violation of § 14908(a)(1).	\$2,000	\$2,200
49 U.S.C. § 14910	When another civil penalty is not specified under this part, for each day.	\$500	\$550
49 U.S.C. § 14915(a)	Minimum penalty for holding a household goods shipment hostage, for each day.	\$10,000	\$11,000
	Pipeline Carrier Civil Penalties		
49 U.S.C. § 16101(a)	Maximum penalty for violation of this part, for each day.	\$5,000	\$5,500
49 U.S.C. § 16101(b)(1)	For each recordkeeping violation under § 15722, each day.	\$500	\$550
49 U.S.C. § 16101(b)(2)	For each inspection violation liable under § 15722, each day.	\$100	\$110
49 U.S.C. § 16101(b)(3)	For each reporting violation under § 15723, each day.	\$100	\$110
49 U.S.C. § 16103(a)	Maximum penalty for improper disclosure of information.	\$1,000	\$1,100