

phenyl-5-(3-(trifluoromethyl)phenyl)-4(1*H*)-pyridinone, in or on cotton, gin byproducts at 0.1 ppm.

VI. Statutory and Executive Order Reviews

This action establishes tolerances under FFDCA section 408(d) in response to a petition submitted to the Agency. The Office of Management and Budget (OMB) has exempted these types of actions from review under Executive Order 12866, entitled “Regulatory Planning and Review” (58 FR 51735, October 4, 1993). Because this action has been exempted from review under Executive Order 12866, this action is not subject to Executive Order 13211, entitled “Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use” (66 FR 28355, May 22, 2001) or Executive Order 13045, entitled “Protection of Children from Environmental Health Risks and Safety Risks” (62 FR 19885, April 23, 1997). This action does not contain any information collections subject to OMB approval under the Paperwork Reduction Act (PRA) (44 U.S.C. 3501 *et seq.*), nor does it require any special considerations under Executive Order 12898, entitled “Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations” (59 FR 7629, February 16, 1994).

Since tolerances and exemptions that are established on the basis of a petition under FFDCA section 408(d), such as the tolerances in this final rule, do not require the issuance of a proposed rule, the requirements of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), do not apply.

This action directly regulates growers, food processors, food handlers, and food retailers, not States or tribes, nor does this action alter the relationships or distribution of power and responsibilities established by Congress in the preemption provisions of FFDCA section 408(n)(4). As such, the Agency has determined that this action will not have a substantial direct effect on States or tribal governments, on the relationship between the national government and the States or tribal governments, or on the distribution of power and responsibilities among the various levels of government or between the Federal Government and Indian tribes. Thus, the Agency has determined that Executive Order 13132, entitled “Federalism” (64 FR 43255, August 10, 1999) and Executive Order 13175, entitled “Consultation and Coordination with Indian Tribal Governments” (65 FR 67249, November 9, 2000) do not apply

to this action. In addition, this action does not impose any enforceable duty or contain any unfunded mandate as described under Title II of the Unfunded Mandates Reform Act (UMRA) (2 U.S.C. 1501 *et seq.*).

This action does not involve any technical standards that would require Agency consideration of voluntary consensus standards pursuant to section 12(d) of the National Technology Transfer and Advancement Act (NTTAA) (15 U.S.C. 272 note).

VII. Congressional Review Act

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), EPA will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the **Federal Register**. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 7, 2016.

Daniel J. Rosenblatt,
Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, 40 CFR chapter I is amended as follows:

PART 180—[AMENDED]

■ 1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 321(q), 346a and 371.

■ 2. In § 180.420, in paragraph (a)(2) add an entry “Cotton, gin byproducts” in alphabetical order to read as follows:

§ 180.420 Fluridone; tolerances for residues.

- (a) * * *
- (2) * * *

Commodity	Parts per million
* * * * *	
Cotton, gin byproducts	0.1
* * * * *	

* * * * *
[FR Doc. 2016–25291 Filed 10–19–16; 8:45 am]

BILLING CODE 6560–50–P

SURFACE TRANSPORTATION BOARD

49 CFR Part 1022

[Docket No. EP 716 (Sub-No. 1)]

Civil Monetary Penalty Inflation Adjustment Rule

AGENCY: Surface Transportation Board.

ACTION: Interim final rule.

SUMMARY: The Surface Transportation Board (Board) is issuing an interim final rule to adjust the Board’s civil monetary penalties for inflation pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015. As mandated by that act, the Board is issuing a “catch-up adjustment” for its penalties and will thereafter make annual inflation adjustments according to a specified formula.

DATES: This interim final rule is effective on October 20, 2016.

FOR FURTHER INFORMATION CONTACT: Allison Davis: (202) 245–0378. Federal Information Relay Service (FIRS) for the hearing impaired: 1–800–877–8339.

SUPPLEMENTARY INFORMATION:

I. Background

On November 2, 2015, the President signed the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act), passed as part of the Bipartisan Budget Act of 2015, Public Law 114–74, 129 Stat. 599. The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (1990 Act), Public Law 101–410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note), as previously amended by the Debt Collection Improvement Act of 1996 (1996 Act), Public Law 104–134, 110 Stat. 1321, in order to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.¹

The 1996 Act required 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. In accordance with the 1996 Act, the Board increased its existing civil monetary penalties, which had not been adjusted for inflation since they were prescribed

¹ A “civil monetary penalty” is defined by the 1990 Act as: “any penalty, fine, or other sanction that—(A)(i) is for a specific monetary amount as provided by Federal law; or (ii) has a maximum amount provided for by Federal law; and (B) is assessed or enforced by an agency pursuant to Federal law; and (C) is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts.” See also 49 CFR 1022.2(b).

in the ICC Termination Act of 1995 (ICCTA), Public Law 104–88, 109 Stat. 803, by 10%, through a final rule issued in the main docket of this proceeding on October 22, 2012.

The 2015 Act requires agencies to adjust their civil monetary penalties for inflation through an initial “catch-up adjustment.”² The 2015 Act requires that this adjustment be issued through an interim final rulemaking and sets forth a specific methodology to calculate the adjustment. To arrive at the adjusted penalty, the agency must multiply the penalty amount when it was established or last adjusted by Congress, excluding adjustments under the 1990 Act, by a multiplier that is based on the percent change between the Consumer Price Index for all Urban Consumers (CPI–U) for the month of October in the year the penalty amount was established or last adjusted by Congress, and the October 2015 CPI–U.³ As mandated by statute, penalty level adjustments should be rounded to the nearest dollar, and the initial increase of penalties shall not exceed 150%.

Following the catch-up adjustment, the 2015 Act then directs agencies to adjust their civil penalties for inflation annually, beginning on January 15, 2017, and no later than January 15 of every year thereafter. Annual inflation adjustments will be based on the percent change between the October CPI–U preceding the date of the

adjustment and the prior year’s October CPI–U. As with the catch-up adjustment, penalty level adjustments should be rounded to the nearest dollar.

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, 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. 16101–16106.⁴

As set forth in this interim final rule, the Board is amending 49 CFR pt. 1022 so that its regulations and civil monetary penalties conform to the requirements of the 2015 Act. The adjusted penalties set forth in the rule will apply only to violations which occur after the effective date of this regulation.

III. Interim Final Rule

The interim final rule is set forth at the end of this decision. This interim final rule is issued without prior public

notice or opportunity for public 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 “unnecessary.” Here, Congress has mandated that the agency make the catch-up inflation adjustment through an interim final rule. 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. The Board simply determines the amount of inflation adjustments by performing technical, ministerial computations. Because the Board has no discretion to do anything except promulgate the rule and perform ministerial computations to apply it, public comment would serve no useful purpose. Accordingly, 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.

The following chart shows the relevant statutory provision and penalty description, the baseline penalty, the values used in the calculations, the relevant cap imposed by the 2015 Act for the catch-up adjustment,⁵ and the rounded catch-up adjustment.

U.S. Code citation	Civil monetary penalty description	Baseline penalty	Multiplier (year)	Multiplier result	2015 Act cap	Adjusted penalty amount
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	1.50245 (1996)	\$7,512	\$13,750	\$7,512
49 U.S.C. 11901(b).	For each violation under section 11124(a)(2) or (b).	\$500	1.50245 (1996)	\$751	\$1,375	\$751
49 U.S.C. 11901(b).	For each day violation continues.	\$25	1.50245 (1996)	\$38	\$69	\$38
49 U.S.C. 11901(c).	Maximum penalty for each knowing violation under sections 10901–10906.	\$5,000	1.50245 (1996)	\$7,512	\$13,750	\$7,512

² Under the 2015 Act, the initial penalty adjustments were to take effect no later than August 1, 2016. The rules issued here will take effect immediately upon publication.

³ The Office of Management and Budget issued guidance to agencies on implementing the catch-up adjustments and provided multipliers to adjust the penalty level based on the year the penalty was

established or last adjusted pursuant to law. See Memorandum from the Office of Management and Budget, M–16–06, *Implementation of the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Feb. 24, 2016).

⁴ 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.

⁵ All of the applicable penalty adjustments fell below the 150% cap on the catch-up adjustments.

U.S. Code citation	Civil monetary penalty description	Baseline penalty	Multiplier (year)	Multiplier result	2015 Act cap	Adjusted penalty amount
49 U.S.C. § 11901(d).	For each violation under sections 11123 or 11124(a)(1).	\$100–\$500	1.50245 (1996)	\$150–\$751	\$275–\$1,375	\$150–\$751
49 U.S.C. 11901(d).	For each day violation continues.	\$50	1.50245 (1996)	\$75	\$138	\$75
49 U.S.C. 11901(e)(1).	For each violation under sections 11141–11145.	\$500	1.50245 (1996)	\$751	\$1,375	\$751
49 U.S.C. 11901(e)(2).	For each violation under section 11144(b)(1).	\$100	1.50245 (1996)	\$150	\$275	\$150
49 U.S.C. 11901(e)(3–4).	For each violation of reporting requirements, for each day.	\$100	1.50245 (1996)	\$150	\$275	\$150

Motor and Water Carrier Civil Penalties

49 U.S.C. 14901(a).	Minimum penalty for each violation and for each day.	\$1,000	1.02819 (2012)	\$1,028	n/a	\$1,028
49 U.S.C. 14901(a).	For each violation under sections 13901 or 13902(c).	\$10,000	1.02819 (2012)	\$10,282	n/a	\$10,282
49 U.S.C. 14901(a).	For each violation related to transportation of passengers.	\$25,000	1.02819 (2012)	\$25,705	n/a	\$25,705
49 U.S.C. 14901(b).	For each violation of the hazardous waste rules under section 3001 of the Solid Waste Disposal Act.	\$20,000–\$40,000	1.02819 (2012)	\$20,564–\$41,128	n/a	\$20,564–\$41,128
49 U.S.C. 14901(d)(1).	Minimum penalty for each violation of household good regulations, and for each day.	\$1,000	1.50245 (1996)	\$1,502	\$2,750	\$1,502
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	1.50245 (1996)	\$15,025	\$27,500	\$15,025
49 U.S.C. 14901(d)(3).	Minimum penalty for each instance of transportation of household goods without being registered.	\$25,000	1.50245 (1996)	\$37,561	\$68,750	\$37,561
49 U.S.C. 14901(e).	Minimum penalty for each violation of a transportation rule.	\$2,000	1.50245 (1996)	\$3,005	\$5,500	\$3,005
49 U.S.C. 14901(e).	Minimum penalty for each additional violation.	\$5,000	1.50245 (1996)	\$7,512	\$13,750	\$7,512
49 U.S.C. 14903(a).	Maximum penalty for undercharge or overcharge of tariff rate, for each violation.	\$100,000	1.50245 (1996)	\$150,245	\$275,000	\$150,245

U.S. Code citation	Civil monetary penalty description	Baseline penalty	Multiplier (year)	Multiplier result	2015 Act cap	Adjusted penalty amount
49 U.S.C. 14904(a).	For first violation, rebates at less than the rate in effect.	\$200	1.50245 (1996)	\$300	\$550	\$300
49 U.S.C. 14904(a).	For all subsequent violations.	\$250	1.50245 (1996)	\$376	\$688	\$376
49 U.S.C. 14904(b)(1).	Maximum penalty for first violation for undercharges by freight forwarders.	\$500	1.50245 (1996)	\$751	\$1,375	\$751
49 U.S.C. 14904(b)(1).	Maximum penalty for subsequent violations.	\$2,000	1.50245 (1996)	\$3,005	\$5,500	\$3,005
49 U.S.C. 14904(b)(2).	Maximum penalty for other first violations under § 13702.	\$500	1.50245 (1996)	\$751	\$1,375	\$751
49 U.S.C. 14904(b)(2).	Maximum penalty for subsequent violations.	\$2,000	1.50245 (1996)	\$3,005	\$5,500	\$3,005
49 U.S.C. 14905(a).	Maximum penalty for each knowing violation of section 14103(a), and knowingly authorizing, consenting to, or permitting a violation of section 14103(a) & (b).	\$10,000	1.50245 (1996)	\$15,025	\$27,500	\$15,025
49 U.S.C. 14906 ..	Minimum penalty for first attempt to evade regulation.	\$2,000	1.02819 (2012)	\$2,056	n/a	\$2,056
49 U.S.C. § 14906	Minimum amount for each subsequent attempt to evade regulation.	\$5,000	1.02819 (2012)	\$5,141	n/a	\$5,141
49 U.S.C. 14907 ..	Maximum penalty for record-keeping/reporting violations.	\$5,000	1.50245 (1996)	\$7,512	\$13,750	\$7,512
49 U.S.C. 14908(a)(2).	Maximum penalty for violation of section 14908(a)(1).	\$2,000	1.50245 (1996)	\$3,005	\$5,500	\$3,005
49 U.S.C. § 14910	When another civil penalty is not specified under this part, for each violation, for each day.	\$500	1.50245 (1996)	\$751	\$1,375	\$751
49 U.S.C. 14915(a)(1) & (2).	Minimum penalty for holding a household goods shipment hostage, for each day.	\$10,000	1.19397 (2005)	\$11,940	\$27,500	\$11,940

Pipeline Carrier Civil Penalties

49 U.S.C. § 16101(a).	Maximum penalty for violation of this part, for each day.	\$5,000	1.50245 (1996)	\$7,512	\$13,750	\$7,512
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U.S. Code citation	Civil monetary penalty description	Baseline penalty	Multiplier (year)	Multiplier result	2015 Act cap	Adjusted penalty amount
49 U.S.C. 16101(b)(1) & (4).	For each record-keeping violation under section 15722, each day.	\$500	1.50245 (1996)	\$751	\$1,375	\$751
49 U.S.C. 16101(b)(2) & (4).	For each inspection violation liable under section 15722, each day.	\$100	1.50245 (1996)	\$150	\$275	\$150
49 U.S.C. 16101(b)(3) & (4).	For each reporting violation under section 15723, each day.	\$100	1.50245 (1996)	\$150	\$275	\$150
49 U.S.C. 16103(a).	Maximum penalty for improper disclosure of information.	\$1,000	1.50245 (1996)	\$1,502	\$2,750	\$1,502

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 interim 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.*

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 interim final rule will be published in the **Federal Register**.

2. This decision is effective on its date of service.

Decided: October 12, 2016.

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

Kenyatta Clay,
Clearance Clerk.

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, 16101, 16103.

■ 2. Revise § 1022.1 to read as follows:

§ 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, in conformity with 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), as amended by the Debt Collection Improvement Act of 1996, Public Law 104–134, 110 Stat. 1321, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Public Law 114–74, 129 Stat. 599. These penalties shall be subject to review and adjustment annually using the method specified in this part.

■ 3. Amend § 1022.2 as follows:

■ a. Revise paragraph (d).

■ b. Add paragraph (e).

The revisions read as follows:

§ 1022.2 Definitions.

* * * * *

(d) *Cost-of-Living Adjustment* means the percentage (if any) by which the Consumer Price Index for the month of October preceding the adjustment exceeds the Consumer Price Index for the month of October one year before

the month of October preceding date of the adjustment.

(e) *Initial Cost-of-Living Adjustment* means, for each civil monetary penalty, the percentage (if any) by which the Consumer Price Index for the month of October 2015 exceeds the Consumer Price Index of the month of October of the calendar year during which the amount of such civil monetary penalty was established or adjusted under a provision of law.

■ 4. Amend § 1022.3 by revising the introductory text to read as follows:

§ 1022.3 Civil monetary penalty inflation adjustment.

The Board shall, immediately, and at least every year thereafter—

* * * * *

■ 5. Revise § 1022.4 to read as follows:

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

(a) The inflation adjustment under § 1022.3 will initially be determined by increasing each maximum civil monetary penalty by the initial cost-of-living adjustment. Not later than January 15 of every year thereafter, the inflation adjustment will subsequently be determined by increasing the maximum civil monetary penalty for each civil monetary penalty by the cost-of-living adjustment. Any increase determined under this section shall be rounded to the nearest dollar.

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

U.S. Code citation	Civil monetary penalty description	Baseline penalty amount	Adjusted penalty amount (2016)
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	\$7,512
49 U.S.C. 11901(b)	For each violation under section 11124(a)(2) or (b)	\$500	\$751
49 U.S.C. 11901(b)	For each day violation continues	\$25	\$38
49 U.S.C. 11901(c)	Maximum penalty for each knowing violation under section 10901–10906.	\$5,000	\$7,512
49 U.S.C. 11901(d)	For each violation under section 11123 or 11124(a)(1)	\$100–\$500	\$150–\$751
49 U.S.C. 11901(d)	For each day violation continues	\$50	\$75
49 U.S.C. 11901(e)(1)	For each violation under section s 11141–11145	\$500	\$751
49 U.S.C. 11901(e)(2)	For each violation under section 11144(b)(1)	\$100	\$150
49 U.S.C. 11901(e)(3–4)	For each violation of reporting requirements, for each day	\$100	\$150
Motor and Water Carrier Civil Penalties			
49 U.S.C. 14901(a)	Minimum penalty for each violation and for each day	\$1,000	\$1,028
49 U.S.C. 14901(a)	For each violation under sections 13901 or 13902(c)	\$10,000	\$10,282
49 U.S.C. 14901(a)	For each violation related to transportation of passengers	\$25,000	\$25,705
49 U.S.C. 14901(b)	For each violation of the hazardous waste rules under section 3001 of the Solid Waste Disposal Act.	\$20,000–\$40,000	\$20,564–\$41,128
49 U.S.C. 14901(d)(1)	Minimum penalty for each violation of household good regulations, and for each day.	\$1,000	\$1,502
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	\$15,025
49 U.S.C. 14901(d)(3)	Minimum penalty for each instance of transportation of household goods without being registered.	\$25,000	\$37,561
49 U.S.C. 14901(e)	Minimum penalty for each violation of a transportation rule	\$2,000	\$3,005
49 U.S.C. 14901(e)	Minimum penalty for each additional violation	\$5,000	\$7,512
49 U.S.C. 14903(a)	Maximum penalty for undercharge or overcharge of tariff rate, for each violation.	\$100,000	\$150,245
49 U.S.C. 14904(a)	For first violation, rebates at less than the rate in effect	\$200	\$300
49 U.S.C. 14904(a)	For all subsequent violations	\$250	\$376
49 U.S.C. 14904(b)(1)	Maximum penalty for first violation for undercharges by freight forwarders.	\$500	\$751
49 U.S.C. 14904(b)(1)	Maximum penalty for subsequent violations	\$2,000	\$3,005
49 U.S.C. 14904(b)(2)	Maximum penalty for other first violations under section 13702	\$500	\$751
49 U.S.C. 14904(b)(2)	Maximum penalty for subsequent violations	\$2,000	\$3,005
49 U.S.C. 14905(a)	Maximum penalty for each knowing violation of section 14103(a), and knowingly authorizing, consenting to, or permitting a violation of section 14103(a) & (b).	\$10,000	\$15,025
49 U.S.C. 14906	Minimum penalty for first attempt to evade regulation	\$2,000	\$2,056
49 U.S.C. 14906	Minimum amount for each subsequent attempt to evade regulation	\$5,000	\$5,141
49 U.S.C. 14907	Maximum penalty for recordkeeping/reporting violations	\$5,000	\$7,512
49 U.S.C. 14908(a)(2)	Maximum penalty for violation of section 14908(a)(1)	\$2,000	\$3,005
49 U.S.C. 14910	When another civil penalty is not specified under this part, for each violation, for each day.	\$500	\$751
49 U.S.C. 14915(a)(1) & (2)	Minimum penalty for holding a household goods shipment hostage, for each day.	\$10,000	\$11,940
Pipeline Carrier Civil Penalties			
49 U.S.C. 16101(a)	Maximum penalty for violation of this part, for each day	\$5,000	\$7,512
49 U.S.C. 16101(b)(1) & (4)	For each recordkeeping violation under section 15722, each day ..	\$500	\$751
49 U.S.C. 16101(b)(2) & (4)	For each inspection violation liable under section 15722, each day ..	\$100	\$150
49 U.S.C. 16101(b)(3) & (4)	For each reporting violation under section 15723, each day	\$100	\$150
49 U.S.C. 16103(a)	Maximum penalty for improper disclosure of information	\$1,000	\$1,502

DEPARTMENT OF COMMERCE**National Oceanic and Atmospheric Administration 50 CFR Parts 223 and 224**

[Docket No. 150527481–6928–02]

RIN 0648–XD971

Endangered and Threatened Wildlife and Plants: Final Rule To List the Island Grouper (*Mycteroperca fusca*) as Threatened and the Gulf Grouper (*Mycteroperca jordani*) as Endangered Under the Endangered Species Act

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

ACTION: Final rule.

SUMMARY: We, NMFS, issue a final rule to list two foreign grouper species under the Endangered Species Act (ESA). We considered comments submitted on the proposed listing rule and have determined that the gulf grouper (*Mycteroperca jordani*) and the island grouper (*Mycteroperca fusca*) warrant listing as endangered and threatened species, respectively. We will not designate critical habitat for either of these species because the geographical areas occupied by these species are entirely outside U.S. jurisdiction, and we have not identified any unoccupied areas within U.S. jurisdiction that are currently essential to the conservation of either of these species.

DATES: This final rule is effective November 21, 2016.

ADDRESSES: Chief, Endangered Species Division, NMFS Office of Protected Resources (F/PR3), 1315 East West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Marta Nammack, NMFS, Office of Protected Resources (OPR), (301) 427–8469.

SUPPLEMENTARY INFORMATION:**Background**

On July 15, 2013, we received a petition from WildEarth Guardians to list 81 marine species or subpopulations as threatened or endangered under the ESA. This petition included species from many different taxonomic groups, and we prepared our 90-day findings in batches by taxonomic group. We found that the petitioned actions may be warranted for 24 of the species and 3 of the subpopulations and announced the initiation of status reviews for each of the 24 species and 3 subpopulations (78 FR 63941, October 25, 2013; 78 FR 66675, November 6, 2013; 78 FR 69376,

November 19, 2013; 79 FR 9880, February 21, 2014; and 79 FR 10104, February 24, 2014). On September 23, 2015, we published a proposed rule to list the gulf grouper (*Mycteroperca jordani*) as an endangered species and the island grouper (*Mycteroperca fusca*) as a threatened species (80 FR 57314). We requested public comment on the information in the draft status review and proposed rule, and the comment period was open through November 23, 2015. This final rule provides a discussion of the information we received during the public comment period and our final determinations on the petition to list the gulf grouper and island grouper under the ESA. The status of the findings and relevant **Federal Register** notices for the other 22 species and 3 subpopulations can be found on our Web site at <http://www.nmfs.noaa.gov/pr/species/petition81.htm>.

Listing Species Under the Endangered Species Act

We are responsible for determining whether species are threatened or endangered under the ESA (16 U.S.C. 1531 *et seq.*). To make this determination, we first consider whether a group of organisms constitutes a “species” under the ESA, then whether the status of the species qualifies it for listing as either threatened or endangered. Section 3 of the ESA defines a “species” to include “any subspecies of fish or wildlife or plants, and any distinct population segment of any species of vertebrate fish or wildlife which interbreeds when mature.”

Section 3 of the ESA defines an endangered species as “any species which is in danger of extinction throughout all or a significant portion of its range” and a threatened species as one “which is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range.” We interpret an endangered species to be one that is presently in danger of extinction. A threatened species, on the other hand, is not presently in danger of extinction, but is likely to become so in the foreseeable future (that is, at a later time). In other words, the primary statutory difference between a threatened and endangered species is the timing of when a species may be in danger of extinction, either presently (endangered) or in the foreseeable future (threatened).

Section 4(a)(1) of the ESA requires us to determine whether any species is endangered or threatened due to any one or a combination of the following

five threat factors: The present or threatened destruction, modification, or curtailment of its habitat or range; overutilization for commercial, recreational, scientific, or educational purposes; disease or predation; the inadequacy of existing regulatory mechanisms; or other natural or manmade factors affecting its continued existence. We are also required to make listing determinations based solely on the best scientific and commercial data available, after conducting a review of the species’ status and after taking into account efforts being made by any State or foreign nation to protect the species.

In making a listing determination, we first determine whether a petitioned species meets the ESA definition of a “species.” Next, using the best available information gathered during the status review for the species, we complete a status and extinction risk assessment. In assessing extinction risk for these two grouper species, we considered the demographic viability factors developed by McElhany *et al.* (2000). The approach of considering demographic risk factors to help frame the consideration of extinction risk has been used in many of our status reviews, including for Pacific salmonids, Pacific hake, walleye pollock, Pacific cod, Puget Sound rockfishes, Pacific herring, scalloped hammerhead sharks, and black abalone (see <http://www.nmfs.noaa.gov/pr/species/> for links to these reviews). In this approach, the collective condition of individual populations is considered at the species level according to four viable population descriptors: Abundance, growth rate/productivity, spatial structure/connectivity, and diversity. These viable population descriptors reflect concepts that are well-founded in conservation biology and that individually and collectively provide strong indicators of extinction risk (NMFS 2015).

We then assess efforts being made to protect the species to determine if these conservation efforts are adequate to mitigate the existing threats. Section 4(b)(1)(A) of the ESA requires the Secretary, when making a listing determination for a species, to take into consideration those efforts, if any, being made by any State or foreign nation to protect the species.

Summary of Comments

In response to our request for comments on the proposed rule, we received comments from eight parties. All commenters presented general