

## PART 831—INVESTIGATION PROCEDURES

■ 1. The authority citation for part 831 continues to read as follows:

**Authority:** 49 U.S.C. 1113(f).

Section 831.15 also issued under Public Law 101–410, 104 Stat. 890, amended by Public Law 114–74, sec. 701, 129 Stat. 584 (28 U.S.C. 2461 note).

### § 831.15 [Amended]

■ 2. Amend § 831.15 by removing the dollar amount “\$1,742” and add in its place “\$1,850”.

**Jennifer Homendy,**  
*Chair.*

[FR Doc. 2022–00726 Filed 1–13–22; 8:45 am]

**BILLING CODE 7533–01–P**

## SURFACE TRANSPORTATION BOARD

### 49 CFR Part 1022

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

### Civil Monetary Penalties—2022 Adjustment

**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, Public Law 114–74, sec. 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 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 1.06222, 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

<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.

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.

#### 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.

#### 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**.

Decided: January 10, 2022.

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

**Stefan Rice,**

*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. 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.**

\* \* \* \* \*

(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.S. code citation	Civil monetary penalty description	2021— penalty amount	2022— adjusted penalty amount
		EP 716_6 (2021)	EP 716_7 (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.	22,514–45,027	23,915–47,829
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

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**DEPARTMENT OF COMMERCE****National Oceanic and Atmospheric Administration****50 CFR Part 622**

[Docket No. 220111-0009]

RIN 0648-BK70

**Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Resources of the Gulf of Mexico; Requirement for a Descending Device or Venting Tool**

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

**ACTION:** Final rule.

**SUMMARY:** NMFS implements regulations to clarify terms used in the Direct Enhancement of Snapper Conservation and the Economy through Novel Devices Act of 2020 (Descend Act). Section 3 of the Descend Act requires commercial and recreational fishermen to have a descending device or a venting tool on the vessel and ready for use when fishing for federally managed reef fish species in Gulf of Mexico (Gulf) Federal waters. The purpose of this final rule is to clarify the definitions of descending device and venting tool in the Descend Act.

**DATES:** This final rule is effective February 14, 2022.

**ADDRESSES:** Electronic copies of the Descend Act and the Regulatory Flexibility Act (RFA) analysis for this proposed rule may be obtained from [www.regulations.gov](http://www.regulations.gov) or the NMFS Southeast Regional Office website at <https://www.fisheries.noaa.gov/action/descending-device-and-venting-tool-direct-enhancement-snapper-conservation-and-economy>.

**FOR FURTHER INFORMATION CONTACT:** Peter Hood, NMFS Southeast Regional Office, telephone: 727-824-5305, or email: [peter.hood@noaa.gov](mailto:peter.hood@noaa.gov).

**SUPPLEMENTARY INFORMATION:** On January 13, 2021, the majority of the Descend Act became effective with the exception of section 3, which became effective on January 13, 2022. Section 3 of the Descend Act amends the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act) by adding section 321, titled “Required possession of descending devices.” Section 321 of

the Magnuson-Stevens Act requires fishermen on commercial vessels, charter vessels and headboats (for-hire vessels), and private recreational vessels to have a descending device or venting tool rigged and ready to use when fishing for Gulf reef fish in Federal waters.

On November 9, 2021, NMFS published a proposed rule in the **Federal Register** to clarify the terms used in the Descend Act and requested public comment through December 9, 2021 (86 FR 62137). The proposed rule provides additional background and rationale for the actions contained in this final rule.

This final rule clarifies the statutory definitions in the Descend Act of “descending device” and “venting tool,” which are devices designed to help reduce post-release mortality of fish from the effects of barotrauma.

Gulf reef fish are those fish included in the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (Reef Fish FMP). A list of Gulf reef fish can be found in Table 3 of Appendix A to 50 CFR part 622—Species Tables; Gulf Reef Fish, <https://www.ecfr.gov/current/title-50/chapter-VI/part-622/appendix-Appendix%20A%20to%20Part%20622>. For purposes of management under the Reef Fish FMP, Federal waters in the Gulf begin seaward of 9 nautical miles (16.7 km) from the coast off all the Gulf States (Pub. L. 114-113, December 18, 2015, and Pub. L. 115-31, May 5, 2017).

Barotrauma is an injury that may occur to fish caused by the expansion of gas inside a fish from the rapid decrease of water pressure that occurs when a fish is retrieved from depth. Signs of barotrauma in fish include a distended abdomen, bulging eyes, an everted stomach, and bubbling under the scales. Fish experiencing barotrauma often have difficulty returning to deeper water or float on the surface, which makes them more vulnerable to predation from dolphins, sharks and other fish, and seabirds. Fishermen can help reduce mortality to fish they release by using a descending device or a venting tool when barotrauma is affecting a fish that has been caught. A descending device lowers the fish back to depth where internal gases recompress and the fish can be released. A venting tool can release gases in a fish’s abdomen at the surface allowing the fish to swim unaided back to depth.

The Descend Act defines the term “descending device” as an instrument that will release a fish at a depth sufficient for the fish to be able to recover from the effects of barotrauma; is a weighted hook, lip clamp, or box

that will hold the fish while it is lowered to depth, or another device determined to be appropriate by the Secretary of Commerce (Secretary); and is capable of releasing the fish automatically, releasing the fish by actions of the operator of the device, or by allowing the fish to escape on its own. This final rule clarifies that the depth sufficient for a fish to be able to recover from the effects of barotrauma is the depth at which the fish was caught and specifies the minimum weight and minimum length of line required to be consistent with the current regulatory definition of descending device at 50 CFR 622.188(a)(4). The regulations in paragraph 622.188(a)(4) were put in place by NMFS in 2020 to implement the South Atlantic Fishery Management Council’s Regulatory Amendment 29 to the Fishery Management Plan for the Snapper-Grouper Fishery of the South Atlantic (Snapper-Grouper FMP) (85 FR 36166, June 15, 2020). Those regulations require a descending device be on board a vessel and be ready for use while fishing for or possessing South Atlantic snapper-grouper.

The Descend Act states that the term “venting tool” has the meaning given to it by the Gulf Council. The Gulf Council defines the term “venting tool” in its Policy on the Use of Venting Tools and Descending Devices as a sharpened, hollow instrument capable of penetrating the abdomen of a fish to release the excess gases accumulated in the body cavity. The definition also indicates a device that is not hollow, such as a knife or ice pick, is not a venting tool and will cause additional damage to a fish. This final rule clarifies that this definition of venting tool applies to the Descend Act requirements.

**Management Measures Contained in This Final Rule**

Consistent with the requirement in the Descend Act, this final rule requires a descending device or a venting tool on the vessel that is rigged and ready for use while fishing for Gulf reef fish is occurring. This final rule also clarifies the statutory definitions of descending device and venting tool to assist Gulf reef fish fishermen in complying with the statutory requirement. NMFS is not approving or determining the sufficiency of any specific devices through this final rule.

*Descending Device*

This final rule defines a descending device as a device capable of releasing a fish at the depth from which the fish was caught, and specifies that the device must use a minimum of a 16-