

12.5 kilohertz Bandwidth Technology on 25 kilohertz Bandwidth Channel						
Transmitter Emission		Interference Contour [dBu F (50,10)]				
11K3F3E or less	Transmitter	65	NA	75	NA	60
8K10F1E, 8K10F1D, 8K70D1W, 9K80D7W, 9K80D1E or 9K80D1D	Transmitter	65	75	70	NA	55
7K60FXE, 7K60FXD, 7K60F7E, 7K60F7D, 7K60F7W, 8K30F1E or 8K30F1D	Transmitter	65	75	75	NA	60
4K00F1E or 4K00F1D	Transmitter	NA	NA	NA	NA	NA
11K0F7E, 11K0F7D or 11K0F7W	Transmitter	70	NA	NA	NA	NA
Section 90.221 Technology on 25 kilohertz Bandwidth Channels						
Transmitter Emission		Interference Contour [dBu F (50,10)]				
22K0D7E, 22K0D7D, 22K0D7W, 22K0DXW or 22K0G1W	Transmitter	25	28	25	32	23
21K0D1E, 21K0D1D or 21K0D1W	Transmitter	25	28	25	NA	23
21K7D7E, 21K7D7D or 21K0D1W	Transmitter	23	25	23	NA	20

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SURFACE TRANSPORTATION BOARD
49 CFR Chapter X
 [Docket No. EP 764]
Policy Statement on Factors Considered in Assessing Civil Monetary Penalties on Small Entities
AGENCY: Surface Transportation Board.
ACTION: Statement of Board policy.

SUMMARY: The Surface Transportation Board (STB or Board) is issuing this policy statement to provide the public with information on factors the Board expects to consider in determining the appropriate level of civil monetary penalties on small entities in individual cases.
DATES: This policy statement is effective on July 22, 2020.

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: In this Policy Statement, the Board provides information regarding the factors it expects to consider when evaluating the possible reduction, and in appropriate circumstances the waiver, of civil monetary penalties for violations of a statutory or regulatory requirement by a small entity. Although this Policy Statement does not limit the Board's discretion to consider different factors in any particular enforcement action, it is appropriate to provide the public with general guidance regarding the agency's expected approach.

Background

Section 223 of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Public Law 104-121, 110 Stat. 847, as amended, requires each agency that regulates the activities of small entities¹ to establish a "policy or program . . . to provide for the reduction, and under appropriate circumstances for the waiver, of civil penalties for violations of a statutory or regulatory requirement by a small entity."² Section 223 also provides that "[u]nder appropriate circumstances, an agency may consider ability to pay in determining penalty assessments on small entities."

The Interstate Commerce Act, as amended, provides for a variety of potential civil monetary penalties. In general, a rail carrier that "knowingly violat[es] this part [49 U.S.C. 10101-11908] or an order of the Board under this part is liable to the United States Government for a civil penalty of not more than \$5,000 for each violation."³ 49 U.S.C. 11901(a).³ Similarly, "[a] person

knowingly authorizing, consenting to, or permitting a violation of sections 10901 through 10906 of this title [dealing with licensing rail line constructions, mergers, and abandonments], or of a requirement or a regulation under any of those sections, is liable to the United States Government for a civil penalty of not more than \$5,000." 49 U.S.C. 11901(c). There are also civil monetary penalties for violations relating to, among other things, recordkeeping, reporting, and inspections. *See* 49 U.S.C. 11901(e).⁴

Potential Factors for the Reduction or Waiver of Civil Monetary Penalties

Generally, Congress has given the Board discretion to impose civil monetary penalties "not more than" a certain amount. *See* 49 U.S.C. 11901(a), (c), (d). In determining an appropriate amount in such cases, the Board will keep in mind that its main objective is not punishment for its own sake but rather to see that the laws it administers are followed. With compliance as its ultimate goal, the Board expects to look to the following non-exhaustive list of factors when considering whether to reduce or waive a penalty for a small entity:

- *Self-Reporting:* Whether the small entity reported its own violation to the Board voluntarily, not under threat of imminent disclosure, and in a timely manner.⁵
- *Compliance History:* Whether the small entity otherwise has a record of fully complying with statutory and regulatory requirements, as well as Board orders.
- *Safeguards:* Whether the small entity, at the time of the violation, had in place a reasonable mechanism, given the entity's size and resources, to prevent, identify, and correct violations, and, if possible, to mitigate the effects of any violations that do occur.
- *Candor:* Whether the small entity forthrightly acknowledged the facts and the existence of a violation.
- *Cooperation:* Whether the small entity cooperated during any agency

as part of the Bipartisan Budget Act of 2015, Public Law 114-74, 701, 129 Stat. 584, 599-601, the Board adjusts its civil penalties for inflation annually. *See, e.g., Civil Monetary Penalties—2020 Adjustment*, EP 716 (Sub-No. 5) (STB served Jan. 8, 2020).

⁴ 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.

⁵ Pursuant to Executive Order 13,892, *Promoting the Rule of Law Through Transparency & Fairness in Civil Administrative Enforcement & Adjudication*, 84 FR 55,239 (Oct. 15, 2019), the Board also expects to consider this factor when determining whether to reduce or waive penalties for larger entities.

investigation into the violation, such as by freely providing documents and access to relevant personnel.

- *Good Faith:* Whether the small entity had a good-faith reason for noncompliance (for those violations that need not be committed "knowingly"), such as reasonable reliance on faulty advice.

- *Impact of Violation:* Whether the violation resulted in, or was likely to result in, little or no actual impact on others, including shippers, carriers, and the general public.

- *Lack of Benefit to Violator:* Whether there was an absence of any significant benefit to the small entity from the violation.

- *Deterrence:* Whether, in light of the small entity's size and resources, a reduced or waived penalty would be sufficient to deter future violations by both the small entity at issue and similarly situated small entities.

- *Impact of Penalty:* Whether the small entity has demonstrated that paying a full penalty would substantially interfere with its ability to operate or otherwise have an adverse effect on third parties not responsible for the violation, such as shippers.

- *Extenuating Circumstances:* Any other circumstance not covered above that may justify a reduction or waiver of a penalty.

The Board expects to take into consideration the factors discussed above, together with all of the evidence and argument before it, in assessing civil monetary penalties on small entities in future cases. The Board notes, however, that because there is significant diversity among the small entities subject to the Board's jurisdiction, a flexible case-by-case approach to penalty waivers and reductions is most appropriate.⁶ Parties in individual matters are also free to raise additional factors they believe the Board should consider or to argue that one of the above-listed factors should not be considered (or should be modified).

This action is categorically excluded from environmental review under 49 CFR 1105.6(c)(6).

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 policy statement as non-major, as defined by 5 U.S.C. 804(2).

Decided: July 1, 2020.

⁶ For example, some small entities are small stand-alone switching carriers, whereas others are part of larger corporate holding companies with more resources.

¹ Section 221 of SBREFA defines the term "small entity" as having the same meaning as in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601, which, in turn, allows an agency to establish an alternative definition appropriate to the agency's activities, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for notice and comment, 5 U.S.C. 601(3). The Board pursued this route, defining "small entities" for purposes of implementing the RFA as including only those rail carriers classified as Class III rail carriers under 49 CFR 1201.1-1. *Small Entity Size Standards Under the Regulatory Flexibility Act*, EP 719 (STB served June 30, 2016). The RFA's small business size standards (based on number of employees or average annual receipts) continue to apply to other non-rail entities under the Board's jurisdiction.

² The Board recently became aware that the agency did not establish a formal policy or program in 1997, as required by SBREFA, regarding civil penalty enforcement for small entities. Accordingly, the Board is issuing this policy statement now.

³ Under the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, enacted

By the Board, Board Members Begeman, Fuchs, and Oberman.

Aretha Laws-Byrum,
Clearance Clerk.

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 679

[Docket No.: 200622-0166]

RIN 0648-BJ40

Fisheries of the Exclusive Economic Zone off Alaska; Adjust the North Pacific Observer Program Fee

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

ACTION: Final rule.

SUMMARY: NMFS issues regulations to adjust the North Pacific Observer Program (Observer Program) fee. This action is intended to increase funds available to support observer and electronic monitoring systems deployment in the partial coverage category of the Observer Program and increase the likelihood of meeting desired monitoring objectives. This action is intended to promote the goals and objectives of the Individual Fishing Quota (IFQ) Program, the Magnuson-Stevens Fishery Conservation and Management Act, the Northern Pacific Halibut Act of 1982, and other applicable law.

DATES: Effective August 10, 2020.

ADDRESSES: Electronic copies of the Environmental Assessment/Regulatory Impact Review (referred to as the “Analysis”) prepared for this final rule are available from <http://www.regulations.gov> or from the NMFS Alaska Region website at <https://www.fisheries.noaa.gov/region/alaska>.

FOR FURTHER INFORMATION CONTACT: Alicia M. Miller, 907-586-7228 or alicia.m.miller@noaa.gov.

SUPPLEMENTARY INFORMATION:

Authority for Action

NMFS manages the groundfish fisheries in the exclusive economic zone off Alaska under the Fishery Management Plan (FMP) for Groundfish of the Gulf of Alaska (GOA) and under the FMP for Groundfish of the Bering Sea and Aleutian Islands Management Area (BSAI). The North Pacific Fishery

Management Council (Council) prepared the FMPs under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Stevens Act), 16 U.S.C. 1801 *et seq.* Regulations governing U.S. fisheries and implementing the FMPs appear at 50 CFR parts 600 and 679.

The International Pacific Halibut Commission (IPHC) and NMFS manage fishing for Pacific halibut (*Hippoglossus stenolepis*) through regulations established under the authority of the Northern Pacific Halibut Act of 1982 (Halibut Act). The IPHC promulgates regulations governing the halibut fishery under the Convention between the United States and Canada for the Preservation of the Halibut Fishery of the Northern Pacific Ocean and Bering Sea (Convention), signed at Ottawa, Ontario, on March 2, 1953, as amended by a Protocol Amending the Convention (signed at Washington, DC, on March 29, 1979). The IPHC’s regulations are subject to approval by the Secretary of State with the concurrence of the Secretary. Sections 5(a) and 5(b) of the Halibut Act (16 U.S.C. 773c(a), (b)) provides the Secretary with general responsibility to carry out the Convention and the Halibut Act. Section 5(c) of the Halibut Act also provides the Council with authority to develop regulations that are in addition to, and not in conflict with, approved IPHC regulations. Throughout this preamble the term halibut is used for Pacific halibut.

Background

NMFS issues regulations to adjust the Observer Program fee percentage. This action is intended to increase funds available to support observer and electronic monitoring systems (EM) deployment in the partial coverage category of the Observer Program and increase the likelihood of meeting monitoring objectives. Additional detail describing the Observer Program, the landings subject to the observer fee, and the need for this action were included in the Analysis prepared for this action and preamble to the proposed rule for this action and are not repeated here. The following sections provide a brief summary of this information.

Observer Program

Regulations at 50 CFR part 679, subpart E, implementing the Observer Program, require the deployment of NMFS-certified observers or EM. Fishery managers use information collected by observers or EM to monitor fishing quotas, manage catch and bycatch, and document fishery interactions with protected resources,

such as marine mammals and seabirds. The current Observer Program was implemented in 2012 (77 FR 70061, November 21, 2012) and modified in 2017, to integrate EM into the partial coverage category (82 FR 36991, August 8, 2017).

The Observer Program includes two observer coverage categories—the partial coverage category and the full coverage category (defined in regulation at § 679.51). All groundfish and halibut vessels and fish processors subject to observer coverage are included in one of these two categories. Throughout this rule, the term “processor” refers to shoreside processors, stationary floating processors, and catcher/processors.

Section 313 of the Magnuson-Stevens Act (16 U.S.C. 1862) authorizes the Council, in consultation with NMFS, to prepare a fishery research plan that includes stationing observers to collect data necessary for the conservation, management, and scientific understanding of the fisheries under the Council’s jurisdiction, including the halibut fishery. Section 313(d) of the Magnuson-Stevens Act authorized creation of the North Pacific Fishery Observer Fund within the U.S. Treasury. NMFS uses its authority under section 313 of the Magnuson-Stevens Act to fund the deployment of observers and EM on vessels and processors in the partial coverage category. Section 313 of the Magnuson-Stevens Act authorizes NMFS to assess a fee up to 2 percent of the unprocessed ex-vessel value of the fisheries under the jurisdiction of the Council, including the halibut fishery.

Each year, NMFS prepares an annual report and consults with the Council to develop an Annual Deployment Plan (ADP). The annual report evaluates the performance of observer deployment in the prior year and informs the development of the ADP for the following year. The ADP describes how observers and EM will be deployed in the partial coverage category for the upcoming calendar year. Deployment requirements for observers and EM in the full coverage category are established in regulations 50 CFR part 679. Observer and EM selection rates for a given year are dependent on the available budget generated from the observer fee and supplemental funds. Additional information about the Observer Program is available in the preamble to the proposed rule for this action and in Section 3 of the Analysis.

Landings Subject to the Fee

Regulations at § 679.55(c) describe which landings are subject to the observer fee assessment. The observer