

**ORIGINAL**

August 8, 2000

**FEDERAL MARITIME COMMISSION**

**46 CFR Part 506**

**Docket No. 00-09**

**INFLATION ADJUSTMENT OF CIVIL MONETARY PENALTIES**

**AGENCY** Federal Maritime Commission

**ACTION:** Final rule.

**SUMMARY** This final rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The rule adjusts the amount of each statutory civil penalty subject to Federal Maritime Commission jurisdiction in accordance with the requirements of that Act

**EFFECTIVE DATE:** Upon publication in the Federal Register

**FOR FURTHER INFORMATION CONTACT.**

Vern W. Hill, Director, Bureau of Enforcement  
Federal Maritime Commission  
800 North Capitol Street, NW., Room 900  
Washington, DC 20573  
(202) 523-5783

**SUPPLEMENTARY INFORMATION** The Federal Civil Penalties Inflation Adjustment Act of 1990 ("1990 Act"), Public Law 101-410, 104 Stat 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 ("1996 Act"), Public Law 104-134, Title III, 3 1001(s)(1), April 26, 1996, 110 Stat. 1321-373, requires the inflation adjustment of Civil Monetary Penalties ("CMP") to ensure that they continue to maintain their deterrent value. The 1996 Act requires that not later than 180 days after its enactment, October 23, 1996, and at least once every 4 years thereafter, the head of each agency shall, by regulation published in the Federal Register, adjust each CMP within its jurisdiction by the inflation adjustment described in the 1990

Act The Federal Maritime Commission (“Commission”) last adjusted each **CMP** subject to its jurisdiction effective November 7, 1996 (61 FR 52704)

The inflation adjustment under the 1990 Act is to be determined by increasing the maximum **CMP** by the cost-of-living adjustment, rounded off as set forth in section 5(a) of that Act The cost-of-living adjustment is the percentage (if any) for each **CMP** by which the Consumer Price Index (“**CPI**”)<sup>1</sup> for the month of June of the calendar year preceding the adjustment, exceeds the **CPI** for the month of June of the calendar year in which the amount of such **CMP** was last set or adjusted pursuant to law. Any increased penalties shall apply only to violations which occur after the date on which the increase takes effect

One example of an inflation adjustment of a **CMP** is as follows The **CPI** for June 1999 (the year preceding this adjustment) was 166.2 and the **CPI** for June 1996 was 156.7<sup>2</sup> The inflation factor, therefore, is 1.06 (166.2 divided by 156.7). Section 13 of the Shipping Act of 1984 (“1984 Act”), 46 U.S.C. app. 1712, imposes a maximum \$25,000 penalty for a knowing and willful violation of the 1984 Act which was inflation adjusted in 1996 to \$27,500 The maximum penalty amount after calculating the increase and applying the statutory rounding would be \$30,000

A similar calculation was done with respect to each **CMP** subject to the jurisdiction of the Commission In compliance with the 1990 Act, as amended, the Commission is hereby amending

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<sup>1</sup>**CPI** is defined as the **CPI** for all urban consumers published annually by the Department of Labor.

<sup>2</sup> The above **CPI** figures are taken from the Department of Labor, Bureau of Labor Statistics “All Items” index which uses 1982-84 as the reference base period. The 1982-84 base period was adopted pursuant to changes to the **CPI** in 1998.

46 CFR 506 4(d) of its regulations which sets forth the newly adjusted maximum penalty amounts

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (5 U.S.C 553(b)(B)) does not require that process “when the agency for good cause finds (and incorporates the finding and a brief statement of reasons **therefor** in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest.” In this instance, the Commission finds, for good cause, that solicitation of public comment on this final rule is unnecessary and impractical. The Congress has required that the agency periodically make the inflation adjustments contained in the rule, and provided no discretion regarding the substance of the adjustments. All that is required of the Commission for determination of the amount of the **inflation** adjustment are ministerial computations

The Commission certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions because it merely increases the maximum statutory civil monetary penalty by 6 percent for those entities that commit violations **after** the effective date of this rule. The Commission rarely has imposed the statutory maximum civil monetary penalty and, moreover, considers ability of a respondent to pay a civil monetary penalty in determining its amount. The size of a company necessarily enters into a determination of its ability to pay

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, Office of Management and Budget review is not required

List of Subjects in 46 CFR Part 506

Administrative practice and procedure, Claims

For the reasons set out in the preamble, the Commission amends 46 CFR Part 506 as follows.

**PART 506--CIVIL MONETARY PENALTY INFLATION ADJUSTMENT**

1 The authority citation for Part 506 continues to read as follows:

AUTHORITY: 28 U.S C 2461

2. Revise § 506.4 (d) to read as follows

**Sec. 506.4 Cost of living adjustments of civil monetary penalties.**

**(d) Inflation adjustment.** Maximum Civil Monetary Penalties within the jurisdiction of the Federal Maritime Commission are adjusted for inflation as follows:

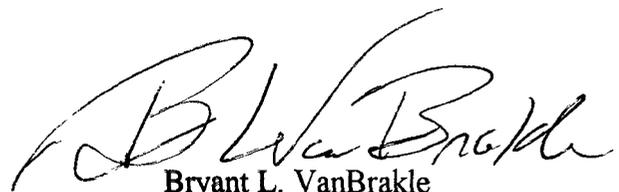
United States Code Citation	Civil Monetary Penalty description	Current maximum penalty amount	New adjusted maximum penalty amount
46 U.S.C. app sec. 817d	Failure to establish financial responsibility for death or injury	5,500 220	6,000 220 <sup>3</sup>
46 U.S C app. sec. 817e	Failure to establish financial responsibility for non-performance of transportation	5,500 220	6,000 220 <sup>3</sup>

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<sup>3</sup> Application of the statutory rounding resulted in no increase to these penalties.

46 US C. app sec. 876	Failure to provide required reports, etc. — Merchant Marine Act of 1920	5,500	6,000
46 U.S C. app. sec. 876	Adverse shipping conditions/Merchant Marine Act of 1920	1,100,000	1,175,000
46 U S.C. app. sec. 876	Operating after tariff or service contract suspension/Merchant Marine Act of 1920	55,000	60,000
46 U.S C. app. sec. 1710a	Adverse impact on U.S. carriers by foreign shipping practices	1,100,000	1,175,000
46 U S.C app. sec. 1712	Operating in foreign commerce after tariff suspension	55,000	60,000
46 US C app sec 1712	Knowing and willful violation/Shipping Act of 1984 or Commission regulation or order	27,500	30,000
46 U S.C. app. sec. 1712	Violation of Shipping Act of 1984, Commission regulation or order, not knowing or willful	5,500	6,000
31 U.S.C. sec 3802(a)(1)	Program Fraud Civil Remedies Act/giving false statement	5,500	6,000
31 U.S.C. sec 3802(a)(2)	Program Fraud Civil Remedies Act/giving false statement	5,500	6,000

By the Commission

  
**Bryant L. VanBrakle**  
 Secretary

[Federal Register: August 15, 2000 (Volume 65, Number 158) ]  
[Rules and Regulations]  
[Page 49741-49742]

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**FEDERAL MARITIME COMMISSION**

46 CFR Part 506

[Docket No. 00-09]

Inflation Adjustment of Civil Monetary Penalties

AGENCY: **Federal Maritime Commission.**

ACTION: Final rule.

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SUMMARY: This final rule implements the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. The rule adjusts the amount of each statutory civil penalty subject to **Federal Maritime Commission** jurisdiction in accordance with the requirements of that Act.

EFFECTIVE DATE: August 15, 2000.

FOR FURTHER INFORMATION CONTACT: Vern W. Hill, Director, Bureau of Enforcement, **Federal Maritime Commission**, 800 North Capitol Street, NW., Room 900, Washington, DC 20573, (202) 523-5783.

SUPPLEMENTARY INFORMATION: The **Federal Civil Penalties Inflation Adjustment Act of 1990** ("1990 Act"), Public Law 101-410, 104 Stat. 890, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996 ("1996 Act"), Public Law 104-134, Title III, 31001(s)(1), April 26, 1996, 110 Stat. 1321-373, requires the inflation adjustment of Civil Monetary Penalties ("CMP") to ensure that they continue to maintain their deterrent value. The 1996 Act requires that not later than 180 days after its enactment, October 23, 1996, and at least once every 4 years thereafter, the head of each agency shall, by regulation published in the **Federal Register**, adjust each CMP within its jurisdiction by the inflation adjustment described in the 1990 Act. The **Federal Maritime Commission** ("**Commission**") last adjusted each CMP subject to its jurisdiction effective November 7, 1996. (61 FR 52704).

The inflation adjustment under the 1990 Act is to be determined by increasing the maximum CMP by the cost-of-living adjustment, rounded off as set forth in section 5(a) of that Act. The cost-of-living adjustment is the percentage (if any) for each CMP by which the Consumer Price Index ("CPI") \1\ for the month of June of the calendar year preceding the adjustment, exceeds the CPI for the month of June of the calendar year in which the amount of such CMP was last set or adjusted pursuant to law. Any increased penalties shall apply only to violations which occur after the date on which the increase takes effect.

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\1\ CPI is defined as the CPI for all urban consumers published annually by the Department of Labor.  
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One example of an inflation adjustment of a CMP is as follows. The CPI for June 1999 (the year preceding this adjustment) was 166.2 and the CPI for June 1996 was 156.7.\2\ The inflation factor, therefore, is 1.06 (166.2 divided by 156.7). Section 13 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1712, imposes a maximum \$25,000 penalty for a knowing and willful violation of the 1984 Act which was inflation adjusted in 1996 to \$27,500. The maximum penalty amount after calculating the increase and applying the statutory rounding would be \$30,000.  
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\2\ The above CPI figures are taken from the Department of Labor, Bureau of Labor Statistics "All Items" index which uses 1982-84 as the reference base period. The 1982-84 base period was adopted pursuant to changes to the CPI in 1998.  
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A similar calculation was done with respect to each CMP subject to the jurisdiction of the **Commission**. In compliance with the 1990 Act, as amended, the **Commission** is hereby amending 46 CFR 506.4(d) of its regulations which sets forth the newly adjusted maximum penalty amounts.

This final rule has been issued without prior public notice or opportunity for public comment. The Administrative Procedure Act (5 U.S.C. 553(b)(B)) does not require that process "when the agency for good cause finds (and incorporates the finding and a brief statement of reasons **therefor** in the rules issued) that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." In this instance, the **Commission** finds, for good cause, that solicitation of public comment on this final rule is unnecessary and impractical. The Congress has required that the agency periodically make the inflation adjustments contained in the rule, and provided **no** discretion regarding the substance of the adjustments. All that is required of the **Commission** for determination of the amount of the inflation adjustment are ministerial computations.

The **Commission** certifies pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), that this rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units, and small governmental jurisdictions because it merely increases the maximum statutory civil monetary penalty by 6 percent for those entities that commit violations after the effective date of this rule. The **Commission** rarely has imposed the statutory maximum civil monetary penalty and, moreover, considers ability of a respondent to pay a civil monetary penalty in determining its amount. The size of a company necessarily enters into a determination of its ability to pay.

The rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995, as amended. Therefore, Office of Management and Budget review is not required.

List of Subjects in 46 CFR Part 506

Administrative practice and procedure, Claims.

For the reasons set out in the preamble, the **Commission** amends 46 CFR Part 506 as follows:

**PART 506--CIVIL MONETARY PENALTY INFLATION ADJUSTMENT**

1. The authority citation for part 506 continues to read as follows:

Authority: 28 U.S.C. 2461.

2. Revise Sec. 506.4(d) to read as follows:

**Sec. 506.4** Cost of living adjustments of civil monetary penalties.

\* \* \* \* \*

(d) Inflation adjustment. Maximum civil monetary penalties within the jurisdiction of the **Federal Maritime Commission** are adjusted for inflation as follows:

[[Page 4974211

United States Code Citation	Civil Monetary Penalty <b>descriptio</b>
46 U.S.C. app. sec. 817d .....	Failure to establish financial responsibility for death or injury
46 U.S.C. app. sec. 817e .....	Failure to establish financial responsibility for non-performance transportation.
46 U.S.C. app. sec. 876 .....	Failure to provide required reports etc.--Merchant Marine Act of 1920.
46 U.S.C. app. sec. 876 .....	Adverse shipping conditions/Merchan Marine Act of 1920.
46 U.S.C. app. sec. 876 .....	Operating after tariff or service contract suspension/Merchant Marin Act of 1920.
46 U.S.C. app. sec. 1710a .....	Adverse impact on U.S. carriers by foreign shipping practices.
46 U.S.C. app. sec. 1712 .....	Operating in foreign commerce after tariff suspension.
46 U.S.C. app. sec. 1712 .....	Knowing and willful violation/Shipp Act of 1984 or <b>Commission</b> regulati or order.
46 U.S.C. app. sec. 1712 .....	Violation of Shipping Act of 1984, <b>Commission</b> regulation or order, no knowing or willful.
31 U.S.C. sec. 3802(a) (1).....	Program Fraud Civil Remedies Act/ giving false statement.
31 U.S.C. sec. 3802(a) (2).....	Program Fraud Civil Remedies Act/ giving false statement.

\1\ Application of the statutory rounding resulted in no increase to these **penaltie**

By the Commission.  
Bryant L. VanBrakle,  
Secretary.  
[FR doc. 00-20681 Filed 8-14-00; 8:45 am]  
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