

ORIGINAL

July 28, 2009

FEDERAL MARITIME COMMISSION

46 CFR Part 506

Docket No. 09-04

RIN 3072-AC36

INFLATION ADJUSTMENT OF CIVIL MONETARY PENALTIES

AGENCY: Federal Maritime Commission.

ACTION: Final Rule.

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

EFFECTIVE DATE: July 31, 2009

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION: This rule implements the Debt Collection Improvement Act of 1996 ("DCIA"), Public Law 104-134, Title III, §31001(s)(1), April 26, 1996, 110 Stat.1321-373. The DCIA amended the Federal Civil Penalties Inflation Adjustment Act of 1990 ("FCPIAA"), Public Law 101-410, Oct. 5, 1990, 104 Stat. 890, 28 U.S.C. 2461 note, to require the head of each executive agency to adopt regulations that adjust the maximum civil monetary penalties ("CMPs") assessable under its agency's jurisdiction at least every four years to ensure that they continue to maintain their deterrent value.¹ The Commission last adjusted each CMP subject to its jurisdiction effective August 15, 2000. (65 FR 49741).

¹ Increased CMPS are applicable only to violations occurring after the increase takes effect.

The inflation adjustment under the FCPIAA is to be determined by increasing the maximum CMP by the cost-of-living, 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”)² 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.

One example of an inflation adjustment is as follows. Section 13 of the Shipping Act of 1984 (“1984 Act”), 46 U.S.C. 41107, imposes a maximum \$25,000 penalty for a knowing and willful violation of the 1984 Act which was inflation adjusted in 2000 to \$30,000. First, to calculate the new CMP amounts under the amendment, we determine the appropriate CPI-U for June of the calendar year preceding the adjustment. Given that we are adjusting the CMPs in 2009, we use the CPI-U for June of 2008, which was 218.815. The CPI-U for June of the year the CMP was last adjusted for inflation must also be determined. The Commission last adjusted this CMP in 2000, therefore we use the CPI-U for June of 2000, which was 172.4. Using those figures, we calculate the cost-of-living adjustment by dividing the CPI-U for June of 2008 (218.815) by the CPI-U for June of 2000 (172.4). Our result is 1.2692.

Second, we calculate the raw inflation adjustment (the inflation adjustment prior to rounding) by multiplying the maximum penalty amount by the cost-of-living adjustment. In our example, \$30,000 multiplied by the cost-of-living adjustment of 1.2692 equals \$38,076.85

Third, we use the rounding rules set forth in Section 5(a) of the FCIPAA. In order to round only the increase amount, we subtract the current maximum penalty amount (\$30,000) from the raw maximum inflation adjustment (\$38,319), equaling \$8,076.85. Under Section 5(a), if the penalty is greater than \$10,000 but less than or equal to \$100,000, we round the increase to the nearest multiple of \$5,000. Therefore, the maximum penalty increase in our example is \$10,000.

Finally, the rounded increase is added to the maximum penalty amount last set or adjusted. Here, \$30,000 plus \$10,000 equals a maximum inflation adjustment penalty amount of \$40,000.

² The CPI defined in the FCPIAA is the U.S. Department of Labor’s Consumer Price Index for all-urban consumers (“CPI-U”). 28 U.S.C.2461 note (3)(3).

A similar calculation was done with respect to each CMP subject to the jurisdiction of the Commission. In compliance with the FCPIAA, 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. Under the Administrative Procedures Act ("APA"), 5 U.S.C. §553(b)(B), a final rule may be issued without 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.

Specifically, the Congress has mandated that the agency periodically make the inflation adjustments and does not allow for the exercise of Commission discretion regarding the substance of the adjustments. The Commission, under the DCIA, is required to make the adjustment to the civil monetary penalties according to a formula specified in the statute. The regulation requires ministerial, technical computations that are noncontroversial. Moreover, the conduct underlying the penalties is already illegal under existing law, and there is no need to provide thirty days prior to the effectiveness of the regulation and amendments to allow for affected parties to correct their conduct. Accordingly, the Commission believes that there is good cause to make this regulation effective immediately upon publication.

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601-612, the Chairman of the Commission has certified to the Chief Counsel for Advocacy, Small Business Administration, that the 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 for those entities that commit violations after the effective date of this rule. The Commission recognizes that the rule can impact certain regulated parties that qualify as small entities under the guidelines of the Small Business Administration. However, the assessment of civil penalties affects only those regulated parties that have been found to be in violation of the shipping statutes and/or regulations, which is not likely to be substantial in number. The Commission rarely has imposed the statutory maximum civil monetary penalty and, moreover, considers the 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. Further, the adjustment of civil penalties deters regulated parties from engaging in harmful activities that violate the shipping statutes and regulations, which serves to protect the public and the system of ocean liner transportation.

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.

This regulatory action is not a major rule as defined under 5 U.S.C. 804(2).

List of Subjects in 46 CFR Part 506

Administrative practice and procedure, Penalties.

Part 506 of title 46 of the Code of Federal Regulations is amended 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. In § 506.4, revise paragraph (d) to read as follows:

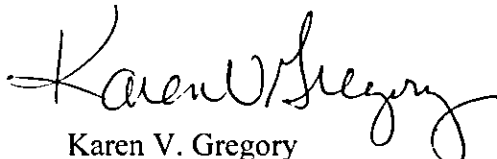
§ 506.4 Cost of living adjustments of civil monetary penalties.

(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. 42304	Adverse impact on U.S. carriers by foreign shipping practices	1,175,000	1,500,000
46 U.S.C. 41107(a)	Knowing and Willful violation/ Shipping Act of 1984, or Commission regulation or order	30,000	40,000
46 U.S.C. 41107(b)	Violation of Shipping Act of 1984,	6,000	8,000

	Commission regulation or order, not knowing or willful		
46 U.S.C. 41108(b)	Operating in foreign commerce after tariff suspension	60,000	75,000
46 U.S.C. 42104	Failure to provide required reports, etc./ Merchant Marine Act of 1920	6,000	8,000
46 U.S.C. 42106	Adverse shipping conditions/Merchant Marine Act of 1920	1,175,000	1,500,000
46 U.S.C. 42108	Operating after tariff or service contract suspension/Merchant Marine Act of 1920	60,000	75,000
46 U.S.C. 44102	Failure to establish financial responsibility for non-performance of transportation	6,000 220	8,000 300
46 U.S.C. 44103	Failure to establish financial responsibility for death or injury	6,000 220	8,000 300
31 U.S.C. 3802(a)(1)	Program Fraud Civil Remedies Act/makes false claim	6,000	8,000
31 U.S.C. 3802(a)(2)	Program Fraud Civil Remedies Act/giving false statement	6,000	8,000

By the Commission.


 Karen V. Gregory
 Secretary