

Issued: January 11, 2022

FEDERAL MARITIME COMMISSION

46 CFR Part 506

[Docket No. 22-02]

RIN 3072-AC89

Inflation Adjustment of Civil Monetary Penalties

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission (Commission) is publishing this final rule to adjust for inflation the civil monetary penalties assessed or enforced by the Commission, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Act). The 2015 Act requires that agencies adjust and publish their new civil penalties by January 15 each year.

DATES: This rule is effective January 15, 2022.

FOR FURTHER INFORMATION CONTACT: William Cody, Secretary; Phone: (202) 523-5725; Email: secretary@fmc.gov.

SUPPLEMENTARY INFORMATION: This rule adjusts the civil monetary penalties assessable by the Commission in accordance with the 2015 Act, which became effective on November 2, 2015. Pub. L. 114-74, section 701. The 2015 Act further amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), Pub. L. 101-410, 104 Stat. 890 (codified as amended at 28 U.S.C. 2461 note), in order to improve the effectiveness of civil monetary penalties and to maintain their deterrent effect.

The 2015 Act requires agencies to adjust civil monetary penalties under their jurisdiction by January 15 each year, based on changes in the consumer price index (CPI-U) for the month of

October in the previous calendar year. On December 15, 2021, the Office of Management and Budget published guidance stating that the CPI-U multiplier for October 2021 is 1.06222.¹ In order to complete the annual adjustment, the Commission must multiply the most recent civil penalty amounts in 46 CFR part 506 by the multiplier, 1.06222.

Rulemaking Analyses and Notices

Notice and Effective Date

Adjustments under the FCPIAA, as amended by the 2015 Act, are not subject to the procedural rulemaking requirements of the Administrative Procedure Act (APA) (5 U.S.C. 553), including the requirements for prior notice, an opportunity for comment, and a delay between the issuance of a final rule and its effective date.² As noted above, the 2015 Act requires that the Commission adjust its civil monetary penalties no later than January 15 of each year.

Congressional Review Act

The rule is not a “major rule” as defined by the Congressional Review Act, codified at 5 U.S.C. 801 *et seq.* The rule will not result in: (1) an annual effect on the economy of \$100,000,000 or more; (2) a major increase in costs or prices; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based companies to compete with foreign-based companies. 5 U.S.C. 804(2).

Regulatory Flexibility Act

The Regulatory Flexibility Act (codified as amended at 5 U.S.C. 601–612) provides that whenever an agency promulgates a final rule after being required to publish a notice of proposed

¹ Office of Management and Budget, M-22-07, Implementation of Penalty Inflation Adjustments for 2022, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, at 1 (Dec. 15, 2021) (M-22-07).

² FCPIAA section 4(b)(2); M-22-07 at 3-4.

rulemaking under the APA (5 U.S.C. 553), the agency must prepare and make available a final regulatory flexibility analysis describing the impact of the rule on small entities or the head of the agency must certify that the rule will not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 604–605. As indicated above, this final rule is not subject to the APA’s notice and comment requirements, and the Commission is not required to either conduct a regulatory flexibility analysis or certify that the final rule would not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (44 U.S.C. 3501–3521) requires an agency to seek and receive approval from the Office of Management and Budget (OMB) before collecting information from the public. 44 U.S.C. 3507. The agency must submit collections of information in rules to OMB in conjunction with the publication of the notice of proposed rulemaking. 5 CFR 1320.11. This final rule does not contain any collection of information, as defined by 44 U.S.C. 3502(3) and 5 CFR 1320.3(c).

Regulation Identifier Number

The Commission assigns a regulation identifier number (RIN) to each regulatory action listed in the Unified Agenda of Federal Regulatory and Deregulatory Actions (Unified Agenda). The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The public may use the RIN contained in the heading at the beginning of this document to find this action in the Unified Agenda, available at <http://www.reginfo.gov/public/do/eAgendaMain>.

List of Subjects in 46 CFR Part 506

Administrative practice and procedure, Claims, Penalties.

For the reasons stated in the preamble, 46 CFR part 506 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. Amend § 506.4 by revising 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:

Table 1 to Paragraph (d)

| United States Code Citation | Civil Monetary Penalty Description | Maximum penalty as of January 15, 2021 | Maximum penalty as of January 15, 2022 |
|-----------------------------|--|--|--|
| 46 U.S.C. 42304 | Adverse impact on U.S. carriers by foreign shipping practices | \$2,166,279 | \$2,301,065 |
| 46 U.S.C. 41107(a) | Knowing and Willful violation/ Shipping Act of 1984, or Commission regulation or order | \$61,820 | \$65,666 |
| 46 U.S.C. 41107(a) | Violation of Shipping Act of 1984, Commission regulation or order, not knowing and willful | \$12,363 | \$13,132 |
| 46 U.S.C. 41108(b) | Operating in foreign commerce after tariff suspension | \$123,641 | \$131,334 |
| 46 U.S.C. 42104 | Failure to provide required reports, etc./ Merchant Marine Act of 1920 | \$9,753 | \$10,360 |
| 46 U.S.C. 42106 | Adverse shipping conditions/Merchant Marine Act of 1920 | \$1,950,461 | \$2,071,819 |
| 46 U.S.C. 42108 | Operating after tariff or service contract suspension/Merchant Marine Act of 1920 | \$97,523 | \$103,591 |
| 46 U.S.C. 44102, 44104 | Failure to establish financial responsibility for non-performance of transportation | \$24,634 \$822 | \$26,167 \$873 |

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|------------------------|---|-------------------|-------------------|
| 46 U.S.C. 44103, 44104 | Failure to establish financial responsibility for death or injury | \$24,634 \$822 | \$26,167 \$873 |
| 31 U.S.C. 3802(a)(1) | Program Fraud Civil Remedies Act/making false claim | \$11,803 | \$12,537 |
| 31 U.S.C. 3802(a)(2) | Program Fraud Civil Remedies Act/giving false statement | \$11,803 | \$12,537 |

By the Commission.

William Cody
Secretary