



**Billing Code 4910-81-P**

**DEPARTMENT OF TRANSPORTATION**

**Maritime Administration**

**46 CFR Parts 221, 307, 340, and 356**

**RIN 2133-AB89**

**Annual Civil Monetary Penalties Adjustment**

**AGENCY:** Maritime Administration, Department of Transportation

**ACTION:** Final rule.

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**SUMMARY:** The Maritime Administration (MARAD) is updating its regulations to reflect required annual inflation-related increases to the civil monetary penalties in its regulations, pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvement Act of 2015. This final rule adjusts civil penalty amounts for violations of procedures related to the American Fisheries Act, certain regulated transactions involving documented vessels, the Automated Mutual Assistance Vessel Rescue program (AMVER) and the Defense Production Act.

MARAD finds that good cause exists for immediate implementation of this final rule because prior notice and comment are unnecessary, per the specific provisions of the 2015 Act.

**DATES:** This rule is effective [INSERT DATE 10 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** Office of Chief Counsel, MAR 225, Maritime Administration, 1200 New Jersey Avenue, SE, West Building, Second Floor, Washington, DC 20590.

**FOR FURTHER INFORMATION CONTACT:** T. Mitchell Hudson, Jr., Office of Chief

Counsel, MARAD, telephone (202) 366-9373, email to: rulemakings.marad@dot.gov, 1200 New Jersey Ave, SE, Washington, DC 20590.

## **SUPPLEMENTARY INFORMATION:**

### **I. Background**

The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Sec. 701 of Pub. L. 114-74) (the “2015 Act”), which is intended to improve the effectiveness of civil monetary penalties and to maintain the deterrent effect of such penalties, requires agencies to adjust the civil monetary penalties for inflation annually.

### **II. Administrative Procedures Act**

Generally, agencies may promulgate final rules only after issuing a notice of proposed rulemaking and providing an opportunity for public comment under procedures required by the APA, as provided in 5 U.S.C. 553(b) and (c). The APA, in 5 U.S.C. 553(b)(3)(B), provides an exception from these requirements when notice and public comment procedures are “impracticable, unnecessary, or contrary to the public interest.” MARAD finds that prior notice and comment to this civil penalty adjustment is unnecessary because section 4 of the 2015 Act specifically requires the annual adjustments to be accomplished through final rule without notice and comment.

Also pursuant to the APA (5 U.S.C. 553 (d)(3)), the rule will be effective 10 days after publication in the Federal Register. Delaying the effective date for 30 days after publication would be contrary to the direction provided in the 2015 Act, which states that annual adjustments be made by January 15<sup>th</sup> of each year. As this final rule is already past that deadline, further delay would be contrary to the public interest.

### **III. Regulatory History**

On June 30, 2016, MARAD published an interim final rule using an initial “catch up” adjustment, as required by section 4 of the 2015 Act (81 FR 41453). Just like this final rule, the interim final rule made adjustments to civil penalty amounts for violations of procedures related to the American Fisheries Act, certain regulated transactions involving documented vessels, the Automated Mutual Assistance Vessel Rescue program (AMVER) and the Defense Production Act.

### **III. Calculation of Adjustment**

The annual inflation adjustment for each applicable civil monetary penalty is determined using the percent increase in the Consumer Price Index for all Urban Consumers (CPI-U) for the month of October of the year in which the amount of each civil penalty was most recently established or modified. In the December 16, 2016, OMB Memorandum for the Heads of Executive Agencies and Departments, M-17-11, *Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015*, OMB published the multiplier for the required annual adjustment. The cost-of-living adjustment multiplier for 2017, based on the CPI-U for the month of October 2016, not seasonally adjusted, is 1.01636.

Using the 2017 multiplier, MARAD adjusts all its applicable monetary penalties.

#### **Inflationary Adjustments to Penalty Amounts in 46 CFR Part 221**

#### **Changes to Civil Penalties for Regulated Transactions Involving Vessel Ownership Transfers and other Maritime Interests (46 CFR 221.61)**

The maximum civil penalties arising under 46 CFR 221.61 have not been updated since they were established, except for inflationary adjustments pursuant to the Inflation Adjustment Act of 1990. Applying the multiplier for the increase in CPI-U for 2017, the maximum civil

penalty for a single violation of any provision under 46 U.S.C. Chapter 313 and all of Subtitle III related MARAD regulations, except section 31329, specified in 31309 of Title 46 of the United States Code is adjusted to \$20,111. Likewise, the maximum civil penalty for a single violation of 31329 of Title 46 of the United States Code as it relates to the court sales of documented vessels, specified in 31330 of Title 46 of the United States Code, is adjusted to \$50,276. Lastly, for penalties arising under 46 CFR 221.61, the maximum civil penalty for a single violation of 56101 of Title 46 of the United States Code as it relates to approvals required to transfer a vessel to a noncitizen, specified in 56101(e) of Title 46 United States Code is adjusted to \$19,246.

**Inflationary Adjustments to Penalty Amounts in 46 CFR Part 307**

**Changes to Civil Penalties for Failure to File an AMVER Report (46 CFR 307.19)**

Applying the multiplier for the increase in CPI-U for 2017, the maximum civil penalty for a single violation of 50113 of Title 46 of the United States Code related to use and performance reports by operators of vessels as specified in 50113(b) of Title 46 of the United States Code is adjusted to \$127.00.

**Inflationary Adjustments to Penalty Amounts in 46 CFR Part 340**

**Changes to Civil Penalties for Violating Procedures for the Use and Allocation of Shipping Services, Port Facilities and Services for National Security and National Defense Operations (46 CFR 340.9)**

Applying the multiplier for the increase in CPI-U for 2017, the maximum civil penalty for a single violation of 4501 of Title 50 of the United States Code, specified in 4513 of Title 50 of the United States Code, at 46 CFR 340.9, is adjusted to \$25,409.

**Inflationary Adjustments to Penalty Amounts in 46 CFR Part 356**

**Changes to Civil Penalties for Violations in Applying For or Renewing a Vessel's Fishery Endorsement (46 CFR 356.49)**

Applying the multiplier for the increase in CPI-U for 2017, the maximum civil penalty for a single violation of 12151 of Title 46 of the United States Code for engaging in fishing operations as defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act, within the Exclusive Economic Zone, specified in 12151(c) of Title 46 of the United States Code, and at 46 CFR 356.49, is adjusted to \$147,396 for each day such vessel engaged in fishing.

**IV. Rulemaking Analyses and Notices**

**Executive Order 12866, Executive Order 13563, and DOT Regulatory Policies and Procedures**

MARAD has considered the impact of this rulemaking action under Executive Order 12866, Executive Order 13563, and the Department of Transportation's regulatory policies and procedures. This rulemaking document was not reviewed under Executive Order 12866 or Executive Order 13563. This action is limited to the adoption of adjustments of civil penalties under statutes that the agency enforces, and has been determined to be not "significant" under the Department of Transportation's regulatory policies and procedures and the policies of the Office of Management and Budget. Because this rulemaking does not change the number of entities that are subject to civil penalties, the impacts are limited. Furthermore, excluding the penalties in 46 CFR 221.61, 307.19, 340.9 and 356.49 for violating certain long standing procedures, this final rule does not establish civil penalty amounts that MARAD is required to seek.

We also do not expect the increase in the civil penalty amount in any of these regulations to be economically significant. Over the last five years, MARAD has not collected

any civil penalties under these regulations. Increasing the current civil penalty amount by 150 percent would not result in an annual effect on the economy of \$100 million or more.

### **Regulatory Flexibility Act**

We have also considered the impacts of this regulation under the Regulatory Flexibility Act. I certify that this rule will not have a significant economic impact on a substantial number of small entities. Since this regulation does not establish a penalty amount that MARAD is required to seek, except for the long standing civil penalties set forth in 46 CFR 221.61, 307.19, 340.9 and 356.49, this rule will not have a significant economic impact on small businesses. Additionally, over the last five years, MARAD has not collected any civil penalties under these regulations. Accordingly, increasing the civil penalty amount is unlikely to have any economic impact on any small businesses.

### **Executive Order 13132 (Federalism)**

Executive Order 13132 requires MARAD to develop an accountable process to ensure “meaningful and timely input by State and local officials in the development of regulatory policies that have federalism implications.” “Policies that have federalism implications” is defined in the Executive Order to include regulations that have “substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.” Under Executive Order 13132, the agency may not issue a regulation with Federalism implications, that imposes substantial direct compliance costs, and that is not required by statute, unless the Federal government provides the funds necessary to pay the direct compliance costs incurred by State and local governments, the agency consults with State and local governments, or the agency consults with State and local officials early in the process of developing the regulation.

This rule will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government, as specified in Executive Order 13132. This rule only updates existing penalties, pursuant to statute. MARAD has not collected any civil penalties under these regulations within the last five years and if it were to assess penalties, due to the amounts involved, it would not have a substantial direct effect on a State. Thus, the requirements of Section 6 of the Executive Order do not apply.

#### **Unfunded Mandates Reform Act of 1995**

The Unfunded Mandates Reform Act of 1995, Public Law 104-4, requires agencies to prepare a written assessment of the cost, benefits and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of more than \$100 million annually. Because this rule will not have a \$100 million effect, no Unfunded Mandates assessment will be prepared.

#### **Executive Order 12778 (Civil Justice Reform)**

This rule does not have a retroactive or preemptive effect. Judicial review of this rule may be obtained pursuant to 5 U.S.C. 702. That section does not require that a petition for reconsideration be filed prior to seeking judicial review.

#### **Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1980, we state that there are no requirements for information collection associated with this rulemaking action.

#### **List of Subjects**

46 CFR Part 221

Administrative practice and procedure, Maritime carriers, Mortgages, Penalties, Reporting and recordkeeping requirements, Trusts and trustees.

46 CFR Part 307

Marine safety, Maritime carriers, Penalties, Reporting and recordkeeping requirements.

46 CFR Part 340

Harbors, Maritime carriers, National defense, Packaging and containers.

46 CFR Part 356

Citizenship and naturalization, Fishing vessels, Mortgages, Penalties, Reporting and recordkeeping requirements, Vessels.

In consideration of the foregoing, 46 CFR parts 221, 307, 340, and 356 are amended as set forth below.

**PART 221--REGULATED TRANSACTIONS INVOLVING DOCUMENTED VESSELS  
AND OTHER MARITIME INTERESTS**

1. The authority citation for 46 CFR part 221 continues to read as follows:

AUTHORITY: 46 U.S.C. chs. 301, 313, and 561; Pub. L. 114-74; 49 CFR 1.93.

2. Section 221.61 is revised to read as follows:

**§ 221.61 Compliance.**

(a) This subpart describes procedures for the administration of civil penalties that the Maritime Administration may assess under 46 U.S.C. 31309, 31330 and 56101, pursuant to 49 U.S.C. 336.

(b) Pursuant to 46 U.S.C. 31309, a general penalty of not more than \$20,111 may be assessed for each violation of chapter 313 or 46 U.S.C. subtitle III administered by the Maritime Administration, and the regulations in this part that are promulgated thereunder, except that a

person violating 46 U.S.C. 31329 and the regulations promulgated thereunder is liable for a civil penalty of not more than \$50,276 for each violation. A person that charters, sells, transfers or mortgages a vessel, or an interest therein, in violation of 46 U.S.C. 56101(e) is liable for a civil penalty of not more than \$19,246 for each violation.

**PART 307—ESTABLISHMENT OF MANDATORY POSITION REPORTING SYSTEM FOR VESSELS**

3. The authority citation for 46 CFR part 307 continues to read as follows:

AUTHORITY: Pub. L. 109-304; 46 U.S.C. 50113; Pub. L. 114-74; 49 CFR 1.93.

4. Section 307.19 is revised to read as follows:

**§ 307.19 Penalties.**

The owner or operator of a vessel in the waterborne foreign commerce of the United States is subject to a penalty of \$127.00 for each day of failure to file an AMVER report required by this part. Such penalty shall constitute a lien upon the vessel, and such vessel may be libeled in the district court of the United States in which the vessel may be found.

**PART 340--PRIORITY USE AND ALLOCATION OF SHIPPING SERVICES, CONTAINERS AND CHASSIS, AND PORT FACILITIES AND SERVICES FOR NATIONAL SECURITY AND NATIONAL DEFENSE RELATED OPERATIONS**

5. The authority citation for 46 CFR part 340 continues to read as follows:

AUTHORITY: 50 U.S.C. 4501 *et seq.* (“The Defense Production Act”); Executive Order 13603 (77 FR 16651); Executive Order 12656 (53 FR 47491); Pub. L. 114-74; 49 CFR 1.45; 49 CFR 1.93(l).

6. Section 340.9 is revised to read as follows:

**§ 340.9 Compliance.**

Pursuant 50 U.S.C. 4513 any person who willfully performs any act prohibited, or willfully fails to perform any act required, by the provisions of this regulation shall, upon conviction, be fined not more than \$25,409 or imprisoned for not more than one year, or both.

**PART 356--REQUIREMENTS FOR VESSELS OF 100 FEET OR GREATER IN REGISTERED LENGTH TO OBTAIN A FISHERY ENDORSEMENT TO THE VESSEL'S DOCUMENTATION**

7. The authority citation for 46 CFR part 356 continues to read as follows:

AUTHORITY: 46 U.S.C. 12102; 46 U.S.C. 12151; 46 U.S.C. 31322; Pub. L. 105-277, division C, title II, subtitle I, section 203 (46 U.S.C. 12102 note), section 210(e), and section 213(g), 112 Stat. 2681; Pub. L. 107-20, section 2202, 115 Stat. 168-170; Pub. L. 114-74; 49 CFR 1.93.

8. Revise § 356.49(b) to read as follows:

**§ 356.49 Penalties.**

\* \* \* \* \*

(b) A fine of up to \$147,396 may be assessed against the vessel owner for each day in which such vessel has engaged in fishing (as such term is defined in section 3 of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1802) within the exclusive economic zone of the United States; and

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Dated: April 19, 2017.  
By Order of the Maritime Administrator.

**T. Mitchell Hudson, Jr.,**  
*Secretary, Maritime Administration.*  
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