

**IV. Administrative Requirements*****Executive Order 12866***

This action has been classified as a Table 3 action for signature by the Regional Administrator under the procedures published in the Federal Register on January 19, 1989 (54 FR 2214-2225), as revised by a July 10, 1995 memorandum from Mary Nichols, Assistant Administrator for Air and Radiation. The Office of Management and Budget (OMB) has exempted this regulatory action from E.O. 12866 review.

***Regulatory Flexibility Act***

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. See 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

Attainment date extensions under section 186, as with SIP approvals under section 110 and subchapter I, part D of the Act, do not create any new requirements. Therefore, because the granting of the NYCMSA one-year CO attainment date extension does not impose any new requirements, I certify that it does not have a significant impact on any small entities. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co. v. E.P.A.*, 427 U.S. 246, 256-66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

***Unfunded Mandates***

Under section 202 of the Unfunded Mandates Reform Act of 1995 ("Unfunded Mandates Act"), signed into law on March 22, 1995, EPA must prepare a budgetary impact statement to accompany any proposed or final rule that includes a Federal mandate that may result in estimated annual costs to State, local, or tribal governments in the aggregate; or to the private sector, of \$100 million or more. Under section 205, EPA must select the most cost-effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for

informing and advising any small governments that may be significantly or uniquely impacted by the rule.

EPA has determined that an attainment date extension does not include a Federal mandate that may result in estimated annual costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. A finding that an area should be granted a one-year extension of the attainment date consists of factual determinations based on air quality considerations and the areas's compliance with certain prior requirements, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

***Submission to Congress and the General Accounting Office***

Under 5 U.S.C. 801(a)(1)(A) as added by the Small Business Regulatory Enforcement Fairness Act of 1996, EPA submitted a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives and the Comptroller General of the General Accounting Office prior to publication of this rule in today's Federal Register. This rule is not a "major rule" as defined by 5 U.S.C. 804(2).

***Petitions for Judicial Review***

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 6, 1997. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. See section 307(b)(2), 42 U.S.C. 7607(b)(2).

**List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: October 15, 1996.

William J. Muszynski,  
*Deputy Regional Administrator.*

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

**PART 52—[AMENDED]**

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7671q.

**Subpart H—Connecticut**

2. Section 52.372 is added to read as follows:

**§ 52.372 Extensions.**

Pursuant to section 186(a)(4) of the Clean Air Act, as amended in 1990, the Regional Administrator hereby extend for one year (until December 31, 1996) the attainment date for the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Carbon Monoxide nonattainment area.

**Subpart FF—New Jersey**

3. Section 52.1572 is added to read as follows:

**§ 52.1572 Extensions.**

Pursuant to section 186(a)(4) of the Clean Air Act, as amended in 1990, the Regional Administrator hereby extends for one year (until December 31, 1996) the attainment date for the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Carbon Monoxide nonattainment area.

**Subpart HH—New York**

4. Section 52.1672 is added to read as follows:

**§ 52.1672 Extensions.**

Pursuant to section 186(a)(4) of the Clean Air Act, as amended in 1990, the Regional Administrator hereby extends for one year (until December 31, 1996) the attainment date for the New York-Northern New Jersey-Long Island Consolidated Metropolitan Statistical Carbon Monoxide nonattainment area. [FR Doc. 96-28197 Filed 11-4-96; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION****Maritime Administration****46 CFR Part 221**

[Docket No. R-168]

RIN 2105-AC63

**Regulated Transactions Involving Documented Vessels and Other Maritime Interests; Inflation Adjustment of Civil Monetary Penalties**

**AGENCY:** Maritime Administration, DOT.  
**ACTION:** Final rule.

**SUMMARY:** In accordance with the Federal Civil Monetary Penalty Inflation Adjustment Act of 1996, as amended by the Debt Collection Improvement Act of 1996, this final rule incorporates inflation adjustments for the civil monetary penalties described in procedural regulations of the Maritime Administration (MARAD) contained in Subpart E of 46 CFR Part 221.

**EFFECTIVE DATE:** This rule is effective on November 7, 1996.

**FOR FURTHER INFORMATION CONTACT:** Edmund T. Sommer, Jr., Chief, Division of General and International Law, Maritime Administration, Tel. (202) 366-5181, Fax. (202) 366-7485.

**SUPPLEMENTARY INFORMATION:**

The Debt Collection Improvement Act of 1996

In an effort to maintain the remedial impact of civil money penalties (CMPs) and promote compliance with law, the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990 (P.L. 101-410) was amended by the Debt Collection Improvement Act of 1996 (P.L. 104-134) to require Federal agencies to regularly adjust certain CMPs for inflation. As amended, the law requires each agency to make an initial inflationary adjustment for all applicable CMPs, with specified exemptions, and to make further adjustments at least once every four years thereafter.

The Debt Collection Improvement Act of 1996 further stipulates that any resulting increases in a CMP due to the calculated inflation adjustments (i) should apply only to the violations that occur after October 23, 1996, the Act's effective date, and (ii) should not exceed 10 percent of the penalty indicated.

**Method of Calculation**

Under the Act, the inflation adjustment for each applicable CMP is determined by increasing the maximum CMP amount per violation by the cost of living adjustment. The "cost of living" adjustment is defined as the percentage of each CMP by which the Consumer Price Index (CPI) 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 the CMP last set or adjusted pursuant to law. Any calculated increase under this adjustment is subject to a specific rounding formula set in the Act.

*Civil Penalties Under 46 U.S.C. 31309 and 31330; 46 App. U.S.C. 808*

MARAD has provisions in its regulations at 46 CFR Part 221 prescribing procedures for three civil

penalties that it may assess under the following authorities:

1. 46 U.S.C. 31309—a general civil penalty of up to \$10,000 for violation of 46 U.S.C. Chapter 313—Commercial Instruments and Maritime Liens.

2. 46 U.S.C. 31330—a penalty of up to \$25,000 for violation of 46 U.S.C. 31328 or 31329, relating to requirements for trustees of mortgaged vessels and vessel interests and purchasers of documented vessels under order of a district court.

3. 46 App. U.S.C. 808—a penalty of up to \$10,000 for the unlawful transfer of a documented vessel or interests therein.

MARAD is amending its regulations at 46 CFR 221.61 to adjust the maximum amount of each of these three civil monetary penalties. Each of the \$10,000 maximum penalties is being increased to \$11,000. The \$25,000 maximum penalty is being increased to \$27,500.

**Rulemaking Analysis and Notices**

*Executive Order 12866 (Regulatory Planning and Review), and Department of Transportation (DOT) Regulatory Policies; P.L. 104-121.*

This final rule is exempt from review by OMB under E.O. 12866 because it is limited to the adoption of statutory language without interpretation. It also is not considered a major rule for purposes of Congressional review under P.L. 104-121.

**Administrative Procedure Act**

The Administrative Procedure Act (5 U.S.C. 553) provides an exception to the notice and comment procedures because they are unnecessary or contrary to the public interest. MARAD finds that under 5 U.S.C. 553(b)(3)(B) good cause exists for dispensing with notice and comment since this rule only implements statutory authority as mandated in P.L. 104-134, with no issues of policy discretion. Accordingly, opportunity for public comment is unnecessary.

**Federalism**

MARAD has analyzed this rulemaking in accordance with principles and criteria contained in E.O. 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

**Regulatory Flexibility**

The Maritime Administrator certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities. Any penalties that may be assessed by MARAD will be based on the nature of the violation and not the size of the

entity. The aggregate impact of any enforcement action that might be taken by MARAD on violations can be expected to have a negligible impact on small business entities.

**Environmental Assessment**

MARAD has concluded that this final rule has no environmental impact and that an environmental impact statement is not required.

**Paperwork Reduction**

This rulemaking contains no new or amended information collection or recordkeeping requirements which have been or require approval by the Office of Management and Budget. This rule does not impose any unfunded mandates.

**List of Subjects in 46 CFR Part 221**

Maritime carriers, Mortgages, Reporting and recordkeeping requirements, Trust and trustees.

Accordingly, 46 CFR Part 221 is amended as follows:

1. The authority citation continues to read as follows:

Authority: 46 App. U.S.C. 802, 803, 808, 835, 839, 841a, 114(b), 1195; 46 U.S.C. chs. 301 and 313; 49 U.S.C. 336; 49 CFR 1.66

2. Section 221.61 is revised to read as follows:

**§ 221.61 Purpose.**

This subpart describes procedures for the administration of civil penalties that the Maritime Administration may assess under 46 U.S.C. 31309 and 31330, and section 9(d) of the Shipping Act, 1916, as amended (46 App. U.S.C. 808(d), pursuant to 49 U.S.C. 336.

Note: Pursuant to 46 U.S.C. 31309, a general penalty of not more than \$11,000 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. 31328 or 31329 and the regulations promulgated thereunder is liable for a civil penalty of not more than \$27,500 for each violation. A person that charters, sells, transfers or mortgages a vessel, or an interest therein, in violation of 46 App. U.S.C. 808 is liable for a civil penalty of not more than \$11,000 for each violation. These penalty amounts are in accordance with Public Law 101-410, as amended by Public Law 104-134. Criminal penalties may also apply to violations of these statutes.

By Order of the Maritime Administrator.

Dated: October 31, 1996.

Joel C. Richard,

Secretary, Maritime Administration.

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