



[Billing Code 6750-01S]

FEDERAL TRADE COMMISSION

16 CFR Part 1

Adjustments to Civil Penalty Amounts

AGENCY: Federal Trade Commission.

ACTION: Final rule amendments.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is increasing certain civil penalty amounts within its jurisdiction, as required by law. These adjustments reflect inflation since the penalty amounts were last adjusted.

DATES: Effective **[INSERT DATE THIRTY DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

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SUPPLEMENTARY INFORMATION: Commission Rule 1.98 sets forth civil penalty amounts for violations of certain laws enforced by the Commission.¹ The Commission is increasing many of these amounts to account for inflation, as required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (“FCPIAA”),² as amended by the Debt Collection Improvement Act of 1996.³ The following adjusted amounts will take effect on **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**:

¹ 16 CFR 1.98.

² 28 U.S.C. 2461 note.

³ Pub. L. 104-134, section 31001(s)(1), 110 Stat. 1321-373.

- Section 11(l) of the Clayton Act, 15 U.S.C. 21(l) (violations of cease and desist orders issued under Clayton Act section 11(b))—\$8,500;
- Section 10 of the FTC Act, 15 U.S.C. 50 (failure to file reports required by FTC Act)—\$210;
- Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65 (failure to file required business information with the Commission)—\$210;
- Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b) (failure to maintain proper records of fiber content)—\$210;
- Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e) (failure to maintain records)—\$210;
- Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2) (failure to maintain records)—\$210;
- Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a) (FTC enforcement of knowing violations)—\$210;
- Section 525(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) (recycled oil labeling violations)—\$8,500;
- Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Pub. L. No. 108-173, 21 U.S.C. 355 note (failure to comply with filing requirements)—\$12,100; and
- Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304 (violations of prohibitions on market manipulation and provision of false information to federal agencies)—\$1,100,000

The FCPIAA’s rounding rules do not permit adjustment of the other civil penalties listed in Rule 1.98 at this time.⁴

Calculation of inflation adjustments

The FCPIAA directs federal agencies to adjust civil monetary penalties under their jurisdiction for inflation at least once every four years pursuant to a statutory “cost-of-living adjustment.”⁵ The cost of living adjustment is defined as the percentage by which the U.S. Department of Labor’s Consumer Price Index for all-urban consumers (“CPI-U”) for the month of June for the year preceding the adjustment exceeds the CPI-U for the month of June for the year in which the amount of the penalty was last set or adjusted pursuant to law.⁶ Agencies do not have discretion over whether to adjust a maximum civil penalty at least once every four years, or the method used to determine the adjustment.

The Commission previously adjusted its civil penalty amounts in 1996, 2004, and 2009.⁷ No adjustments were warranted in 2000 due to the FCPIAA’s rounding rules.⁸

In 2009, the Commission adjusted civil penalties under Clayton Act sections 7A(g)(1) and 11(l), FTC Act sections 5(l) and 5(m)(1)(A)-(B), sections 525(a) and (b) of the Energy Policy and Conservation Act (“EPCA”), and section 621(a)(2) of the Fair Credit Reporting Act (“FCRA”). *See* 74 FR 857 (Jan. 9, 2009). For these civil penalties, the relevant inflation period is between June 2009 and June 2013. Within that timeframe, the CPI-U has increased from 215.693 to 233.504, or 8.3%. This increase triggers a statutory adjustment from \$7,500 to \$8,500 for civil penalties under Clayton Act section 11(l) and EPCA section 525(a).

⁴ 28 U.S.C. 2461 note (5)(a).

⁵ *Id.*

⁶ 28 U.S.C. 2461 note (3), (5)(b).

⁷ *See* 61 FR 54,548 (Oct. 21, 1996); 69 FR 76,611 (Dec. 22, 2004); 74 FR 857 (Jan. 9, 2009).

⁸ *See* 65 FR 69,665 (Nov. 20, 2000).

At this time, the statute's rounding rules do not authorize the FTC to increase the amounts of the other civil penalties previously adjusted in 2009. The FCPIAA contains specific rules for rounding each increase based on the size of the penalty.⁹ Increases in civil penalties of greater than \$10,000 and less than or equal to \$100,000 must be in \$5,000 increments, and the increase in the CPI between June 2009 and June 2013 was not high enough to round up any adjustment to \$5,000. Thus, the statute does not permit adjustments for civil penalties under Clayton Act sections 7A(g)(1), FTC Act sections 5(l) and 5(m)(1)(A)-(B), and EPCA section 525(b). Likewise, increases in civil penalties of greater than \$1,000 and less than or equal to \$10,000 must be in increments of \$1,000, and the increase in the CPI was not high enough to warrant an adjustment for civil penalties under FCRA section 621(a)(2).

The other civil penalties in Rule 1.98 did not qualify for adjustment in 2009.¹⁰ These additional penalties were last adjusted in 1996.¹¹ Thus, the relevant inflation period is between June 1996 and June 2013. Within that time frame, the CPI-U has increased from 156.7 to 233.504 for a total percentage increase of 49.0%. Applying this percentage increase results in an adjustment from \$110 to \$210 for civil penalties under the following statutory provisions: FTC Act section 10, Webb-Pomerene (Export Trade) Act section 5, Wool Products Labeling Act section 6(b), Fur Products Labeling Act sections 3(e) and 8(d)(2), and EPCA section 333(a).

The FTC is increasing the civil penalty amount under section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003 ("MMA") for the first time.¹²

⁹ 28 U.S.C. 2461 note (5)(a)(1)-(6).

¹⁰ 74 FR at 858.

¹¹ The Commission reviewed these civil penalties for potential adjustments in 2000 and 2004, but determined that no adjustments inflation were warranted at that time. *See* 65 FR at 69665; 69 FR at 76612. In 2004, only the civil penalties under section 11(l) of the Clayton Act and sections 525(a)-(b) of EPCA were adjusted for inflation, 69 FR at 76612. These penalties were subsequently adjusted for inflation again in 2009, along with the others identified above. 74 FR at 858.

¹² In 2004 and 2009, the Commission reviewed the penalties under Section 1115(a) of the MMA but determined that no adjustments were warranted by inflation at that time. 69 FR at 76612; 74 FR at 858.

From June 2003 to June 2013, the CPI-U has increased from 183.7 to 233.504, a 27.1% increase. Because the FCPIAA imposes a ten percent cap on initial civil penalty adjustments, the Commission is adjusting this penalty from \$11,000 to \$12,100.¹³

In addition, the FTC is adjusting civil penalties under section 814(a) of the Energy Independence and Security Act of 2007 (“EISA”)¹⁴ The CPI-U has increased from 208.352 in June 2007 to 233.504 in June 2013, or 12.1%. Applying this percentage increase and the FCPIAA’s ten percent cap on initial adjustments, this penalty will increase from \$1,000,000 to \$1,100,000.

To reflect these adjustments, the FTC is amending Commission Rule 1.98 by modifying paragraphs (b) and (f)-(l), adding new paragraphs (n)-(o), and redesignating current paragraph (n) as paragraph (p). These changes take effect on [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Procedural Requirements

Under the Administrative Procedure Act (“APA”), a final rule may be issued without public notice and comment if an agency finds good cause that notice and comment are impractical, unnecessary, or contrary to the public interest. 5 U.S.C. 553(b)(3)(B). Because the Commission must adjust its civil penalties according to a statutory formula, the Commission finds that good cause exists to forego public notice and comment under the APA. *Id.* Because these adjustments are mandated by statute and do not involve the exercise of Commission discretion or any policy judgments, public notice and comment is unnecessary. For this reason,

¹³ 28 U.S.C.2461 note (citing Pub. L. No. 104-134, section 31001(s)(2), 110 Stat. 1321, 1373 (1996)).

¹⁴ The Commission determined in 2009 that its civil penalty authority under EISA was too recent to warrant adjustment for inflation. 74 FR at 858.

the requirements of the Regulatory Flexibility Act (“RFA”) also do not apply.¹⁵ Finally, this rule does not contain any collection of information requirements as defined by the Paperwork Reduction Act of 1995 as amended. 44 U.S.C. 3501 *et seq.*

List of Subjects for 16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapter A, of the Code of Federal Regulations, as follows:

PART 1 – GENERAL PROCEDURES

Subpart L – [Amended]

1. The authority citation for subpart L continues to read as follows:

Authority: 28 U.S.C. 2461 note.

2. Revise § 1.98 to read as follows:

§ 1.98 Adjustment of civil monetary penalty amounts.

This section makes inflation adjustments in the dollar amounts of civil monetary penalties provided by law within the Commission’s jurisdiction. The following civil penalty amounts apply to violations occurring after **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

(a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—\$16,000;

(b) Section 11(l) of the Clayton Act, 15 U.S.C. 21(l)—\$8,500;

(c) Section 5(l) of the FTC Act, 15 U.S.C. 45(l)—\$16,000;

(d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—\$16,000;

¹⁵ A regulatory flexibility analysis under the RFA is required only when an agency must publish a notice of proposed rulemaking for comment. *See* 5 U.S.C. 603.

- (e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—\$16,000;
- (f) Section 10 of the FTC Act, 15 U.S.C. 50—\$210;
- (g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—\$210;
- (h) Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b)—\$210;
- (i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—\$210;
- (j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—\$210;
- (k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—\$210;
- (l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively—\$8,500 and \$16,000, respectively;
- (m) Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2)—\$3,500;
- (n) Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Pub. L. No. 108-173, 21 U.S.C. 355 note—\$12,100;
- (o) Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304—\$1,100,000; and
- (p) Civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission—refer to the amounts set forth in paragraphs (c), (d), (e) and (f) of this section, as applicable.

By direction of the Commission.

Donald S. Clark,
Secretary.

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