



[Billing Code 6750-01S]

FEDERAL TRADE COMMISSION

16 CFR Part 1

Adjustments to Civil Penalty Amounts

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (“FTC” or “Commission”) is confirming certain amendments made on an interim final basis to the civil penalty amounts within its jurisdiction in June 2016 and implementing further adjustments to the civil penalty amounts within its jurisdiction to account for inflation, as required by law.

DATES: Effective: **[INSERT 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 As mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015,² the Commission adjusted the maximum civil penalty amounts under its jurisdiction through an Interim Final Rulemaking in June 2016.³ This statutorily mandated “catch-up” adjustment was designed to

¹ 16 CFR 1.98.

² Pub. L. No. 114-74, § 701, 129 Stat. 599 (2015). The Act amends the Federal Civil Penalties Inflation Adjustment Act (“FCPIAA”), Pub. L. No. 101-410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note).

³ 81 FR 42476 (June 30, 2016).

address inflation since the civil penalties were first enacted. This Notice confirms those amendments and implements additional inflationary adjustments mandated by law.

Following the initial catch-up adjustment, the FCPIAA, as amended, directs agencies to adjust their civil penalties for inflation every January thereafter. Accordingly, the Commission is increasing these maximum civil penalty amounts to address inflation since the initial “catch-up” adjustment. The following adjusted amounts will take effect on **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**:

- Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1) (premerger filing notification violations under the Hart-Scott-Rodino Improvements Act)—Increase from \$40,000 to \$40,654;
- 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))—Increase from \$21,250 to \$21,598;
- Section 5(l) of the FTC Act, 15 U.S.C. 45(l) (unfair or deceptive acts or practices)—Increase from \$40,000 to \$40,654;
- Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) (unfair or deceptive acts or practices)—Increase from \$40,000 to \$40,654;
- Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B) (unfair or deceptive acts or practices)—Increase from \$40,000 to \$40,654;
- Section 10 of the FTC Act, 15 U.S.C. 50 (failure to file required reports)—Increase from \$525 to \$534;
- Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65 (failure by associations engaged solely in export trade to file required statements)—Increase from \$525 to \$534;

- Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b) (failure by wool manufacturers to maintain required records)— Increase from \$525 to \$534;
- Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e) (failure to maintain required records regarding fur products)—Increase from \$525 to \$534;
- Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2) (failure to maintain required records regarding fur products)—Increase from \$525 to \$534;
- Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a) (knowing violations of EPCA § 332, including labeling violations)—Increase from \$433 to \$440;
- Section 525(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) (recycled oil labeling violations)—Increase from \$21,250 to \$21,598;
- Section 525(b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(b) (willful violations of recycled oil labeling requirements)—Increase from \$40,000 to \$40,654;
- Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2) (knowing violations of the Fair Credit Reporting Act)—Increase from \$3,756 to \$3,817;
- 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)—Increase from \$14,142 to \$14,373; 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)—Increase from \$1,138,330 to \$1,156,953.

Calculation of inflation adjustments

The FCPIAA, as amended, directs federal agencies to adjust each civil monetary penalty under their jurisdiction for inflation no later than January 15 of every year pursuant to a cost-of-

living adjustment.⁴ The cost-of-living adjustment is based on the percent change between the U.S. Department of Labor’s Consumer Price Index for all-urban consumers (“CPI-U”) for the month of October preceding the date of the adjustment, and the CPI-U for October of the prior year.⁵ Based on that formula, the cost-of-living adjustment multiplier for 2017 is 1.01636. The FCPIAA also directs that these penalty level adjustments should be rounded to the nearest dollar. Agencies do not have discretion over whether to adjust a maximum civil penalty, or the method used to determine the adjustment.

The following chart illustrates the application of these adjustments to the civil monetary penalties under the Commission’s jurisdiction.

⁴ 28 U.S.C. 2461 note (4).

⁵ *Id.* (3), (5)(b); Office of Management and Budget, M-17-11, Memorandum for the Heads of Executive Departments and Agencies, Implementation of the 2017 annual adjustment pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Dec. 16, 2016), available at https://www.whitehouse.gov/sites/default/files/omb/memoranda/2017/m-17-11_0.pdf.

CALCULATION OF ADJUSTMENTS TO MAXIMUM CIVIL MONETARY PENALTIES

<i>Citation</i>	<i>Description</i>	<i>Current Penalty (2016)</i>	<i>Adjustment multiplier</i>	<i>Adjusted Penalty</i>
16 CFR 1.98(a): 15 U.S.C. 18a(g)(1)	Premerger filing notification violations	\$40,000	1.01636	\$40,654
16 CFR 1.98(b): 15 U.S.C. 21(l)	Violations of cease and desist orders	\$21,250	1.01636	\$21,958
16 CFR 1.98(c): 15 U.S.C. 45(l)	Unfair or deceptive acts or practices	\$40,000	1.01636	\$40,654
16 CFR 1.98(d): 15 U.S.C. 45(m)(1)(A)	Unfair or deceptive acts or practices	\$40,000	1.01636	\$40,654
16 CFR 1.98(e): 15 U.S.C. 45(m)(1)(B)	Unfair or deceptive acts or practices	\$40,000	1.01636	\$40,654
16 CFR 1.98(f): 15 U.S.C. 50	Failure to file required reports	\$525	1.01636	\$534
16 CFR 1.98(g): 15 U.S.C. 65	Failure to file required statements	\$525	1.01636	\$534
16 CFR 1.98(h): 15 U.S.C. 68d(b)	Failure to maintain required records	\$525	1.01636	\$534
16 CFR 1.98(i): 15 U.S.C. 69a(e)	Failure to maintain required records	\$525	1.01636	\$534
16 CFR 1.98(j): 15 U.S.C. 69f(d)(2)	Failure to maintain required records	\$525	1.01636	\$534
16 CFR 1.98(k): 42 U.S.C. 6303(a)	Knowing violations	\$433	1.01636	\$440
16 CFR 1.98(l): 42 U.S.C. 6395(a)	Recycled oil labeling violations	\$21,250	1.01636	\$21,598
16 CFR 1.98(l): 42 U.S.C. 6395(b)	Willful violations	\$40,000	1.01636	\$40,654
16 CFR 1.98(m): 15 U.S.C. 1681s(a)(2)	Knowing violations	\$3,756	1.01636	\$3,817
16 CFR 1.98(n): 21 U.S.C. 355 note	Non-compliance with filing requirements	\$14,142	1.01636	\$14,373
16 CFR 1.98(o): 42 U.S.C. 17304	Market manipulation or provision of false information to federal agencies	\$1,138,330	1.01636	\$1,156,953

Effective Dates of New Penalties

These new penalty levels apply to civil penalties assessed after the effective date of the applicable adjustment, including civil penalties whose associated violation predated the effective

date.⁶ These adjustments do not retrospectively change previously assessed or enforced civil penalties that the FTC is actively collecting or has collected.

Procedural Requirements

The FCPIAA, as amended, directs agencies to publish the required inflation adjustments in the Federal Register by no later than January 15, 2017, notwithstanding section 553 of title 5, United States Code. Pursuant to this congressional mandate, prior public notice and comment under the APA and a delayed effective date are not required. For this reason, the requirements of the Regulatory Flexibility Act (“RFA”) also do not apply.⁷ Further, 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.

Text of Amendments

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

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:

⁶ 28 U.S.C. 2461 note (6).

⁷ 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.

§ 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 OF PUBLICATION IN THE FEDERAL REGISTER]**.

- (a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)—\$40,654;
- (b) Section 11(l) of the Clayton Act, 15 U.S.C. 21(l)—\$21,598;
- (c) Section 5(l) of the FTC Act, 15 U.S.C. 45(l)—\$40,654;
- (d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)—\$40,654;
- (e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)—\$40,654;
- (f) Section 10 of the FTC Act, 15 U.S.C. 50—\$534;
- (g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65—\$534;
- (h) Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b)—\$534;
- (i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)—\$534;
- (j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)—\$534;
- (k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a)—\$440;
- (l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively—\$21,598 and \$40,654, respectively;
- (m) Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2)—\$3,817;
- (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—\$14,373;
- (o) Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304—\$1,156,953; 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) through (f) of this section, as applicable.

By direction of the Commission.

Donald S. Clark,
Secretary.

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