



FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[DA 20-1540; FRS 17365]

Annual Adjustment of Civil Monetary Penalties to Reflect Inflation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (Inflation Adjustment Act) requires the Federal Communications Commission to amend its forfeiture penalty rules to reflect annual adjustments for inflation in order to improve their effectiveness and maintain their deterrent effect. The Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, including when the penalties whose associated violation predate the increase.

DATES: The rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]. The civil monetary penalties are applicable beginning January 15, 2021.

ADDRESSES: Federal Communications Commission, 45 L Street, NE, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Lisa Gelb, Deputy Chief, Enforcement Bureau, at Lisa.Gelb@fcc.gov or 202-418-2019.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, DA 20-1540, adopted and released on December 29, 2020. The document is available for download at <https://www.fcc.gov/document/2021-annual-adjustment-civil-monetary-penalties-reflect-inflation>. The complete text of this document is also available for inspection and copying during normal business hours in the FCC Reference

Information Center, 45 L Street NE, Washington, DC 20554. To request this document in accessible formats for people with disabilities (e.g., Braille, large print, electronic files, audio format, etc.) or to request reasonable accommodations (e.g., accessible format documents, sign language interpreters, CART, etc.), send an email to fcc504@fcc.gov or call the FCC's Consumer and Governmental Affairs Bureau at (202) 418-0530 (voice), (202) 418-0432 (TTY).

The Bipartisan Budget Act of 2015 included, as section 701 thereto, the Inflation Adjustment Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), to improve the effectiveness of civil monetary penalties and maintain their deterrent effect. Under the Inflation Adjustment Act, agencies are required to make annual inflationary adjustments by January 15 each year, beginning in 2017. The adjustments are calculated pursuant to Office of Management and Budget (OMB) guidance. OMB issued guidance on December 23, 2020, and this Order follows that guidance. The Commission therefore updates the civil monetary penalties for 2021, to reflect an annual inflation adjustment based on the percent change between each published October's CPI-U; in this case, October 2020 CPI-U (260.388) / October 2019 CPI-U (257.346) = 1.01182. The Commission multiplies 1.01182 by the most recent penalty amount and then rounds the result to the nearest dollar.

The Bureau notes that, although our annual inflation adjustment orders have specifically amended "[§] 1.80(b) of the Commission's rules . . . to adjust the forfeiture penalties for inflation, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act)," we did not list all of the relevant rules in the Appendix to those orders. In addition, § 1.80(b) was recently amended to include new civil monetary penalties adopted since the prior inflation adjustment order. Therefore, we now include amendments to § 1.80(b)(1) through (8) of the Commission's rules, and the penalties in paragraph (b)(6) associated

with the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act). The penalties stated in these provisions reflect all appropriate inflation adjustments under the 2015 Inflation Adjustment Act, including the initial “catch up” adjustment where appropriate.

Paperwork Reduction Act

This document does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It does not contain any new or modified information collection burden for small business concerns with fewer than 25 employees, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, see 44 U.S.C. 3506(c)(4).

Congressional Review Act

The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs that this rule is non-major under the Congressional Review Act, 5 U.S.C. 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. 801(a)(1)(A).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure, Penalties.

FEDERAL COMMUNICATIONS COMMISSION

Lisa Gelb,
Deputy Chief, Enforcement Bureau.

Final Rules

For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR part 1 as follows:

PART 1--PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461, unless otherwise noted.

2. Amend § 1.80 by revising paragraphs (b)(1) through (8), the table in section III of the note to paragraph (b)(8), and paragraph (b)(10)(ii) to read as follows:

§ 1.80 Forfeiture proceedings.

* * * * *

(b) * * *

(1) *Forfeiture penalty for a broadcast station licensee, permittee, cable television operator, or applicant.* If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph (b)(1), the forfeiture penalty under this section shall not exceed \$51,827 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$518,283 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act. Notwithstanding the foregoing in this section, if the violator is a broadcast station licensee or permittee or an applicant for any broadcast license, permit, certificate, or other instrument of authorization issued by the Commission, and if the violator is determined by the Commission to have broadcast obscene, indecent, or profane material, the forfeiture penalty under this section shall not exceed \$419,353 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$3,870,946 for any single act or failure to act described in paragraph (a) of this section.

(2) *Forfeiture penalty for a common carrier or applicant.* If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed \$207,314 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$2,073,133 for any single act or failure to act described in paragraph (a) of this section.

(3) *Forfeiture penalty for a manufacturer or service provider.* If the violator is a manufacturer or service provider subject to the requirements of section 255, 716, or 718 of the Communications Act, and is determined by the Commission to have violated any such requirement, the manufacturer or service provider shall be liable to the United States for a forfeiture penalty of not more than \$119,055 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,190,546 for any single act or failure to act.

(4) *Forfeiture penalty for a 227(e) violation.* Any person determined to have violated section 227(e) of the Communications Act or the rules issued by the Commission under section 227(e) of the Communications Act shall be liable to the United States for a forfeiture penalty of not more than \$11,905 for each violation or three times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,190,546 for any single act or failure to act. Such penalty shall be in addition to any other forfeiture penalty provided for by the Communications Act.

(5) *Forfeiture penalty for a 227(b)(4)(B) violation.* Any person determined to have violated section 227(b)(4)(B) of the Communications Act or the rules in 47 CFR part 64 issued by the Commission under section 227(b)(4)(B) of the Communications Act shall be liable to the United States for a forfeiture penalty determined in accordance with paragraphs (A)-(F) of section 503(b)(2) plus an additional penalty not to exceed \$10,118.

(6) *Forfeiture penalty for a section 6507(b)(4) Tax Relief Act violation.* If a violator who is granted access to the Do-Not-Call registry of public safety answering points discloses or

disseminates any registered telephone number without authorization, in violation of section 6507(b)(4) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules in 47 CFR part 64, the monetary penalty for such unauthorized disclosure or dissemination of a telephone number from the registry shall be not less than \$111,493 per incident nor more than \$1,114,929 per incident depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(7) Forfeiture penalty for a section 6507(b)(5) Tax Relief Act violation. If a violator uses automatic dialing equipment to contact a telephone number on the Do-Not-Call registry of public safety answering points, in violation of section 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules in 47 CFR part 64, the monetary penalty for contacting such a telephone number shall be not less than \$11,149 per call nor more than \$111,493 per call depending on whether the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(8) Maximum forfeiture penalty for any case not previously covered. In any case not covered in paragraphs (b)(1) through (7) of this section, the amount of any forfeiture penalty determined under this section shall not exceed \$20,731 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$155,485 for any single act or failure to act described in paragraph (a) of this section.

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Note to paragraph (b)(8): * * *

Section III. Non-Section 503 Forfeitures That Are Affected by the Downward
Adjustment Factors

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Violation	Statutory Amount After 2021 Annual Inflation Adjustment
Sec. 202(c) Common Carrier Discrimination	\$12,439, \$622/day
Sec. 203(e) Common Carrier Tariffs	\$12,439, \$622/day
Sec. 205(b) Common Carrier Prescriptions	\$24,877
Sec. 214(d) Common Carrier Line Extensions	\$2,487/day
Sec. 219(b) Common Carrier Reports	\$2,487/day
Sec. 220(d) Common Carrier Records & Accounts	\$12,439/day
Sec. 223(b) Dial-a-Porn	\$128,904/day
Sec. 227(e) Caller Identification	\$11,905/violation \$35,715/day for each day of continuing violation, up to \$1,190,546 for any single act or failure to act
Sec. 364(a) Forfeitures (Ships)	\$10,366/day (owner)
Sec. 364(b) Forfeitures (Ships)	\$2,074 (vessel master)
Sec. 386(a) Forfeitures (Ships)	\$10,366/day (owner)
Sec. 386(b) Forfeitures (Ships)	\$2,074 (vessel master)
Sec. 511 Pirate Radio Broadcasting	\$2,023,640, \$101,182/day
Sec. 634 Cable EEO	\$919/day

(10) * * *

(ii) The application of the annual inflation adjustment required by the foregoing Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

Table 4 to Paragraph (b)(10)(ii)

U.S. Code citation	Maximum Penalty after 2021 Annual Inflation Adjustment
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47 U.S.C. 202(c)	\$12,439
	\$622
47 U.S.C. 203(e)	\$12,439
	\$622
47 U.S.C. 205(b)	\$24,877
47 U.S.C. 214(d)	\$2,487
47 U.S.C. 219(b)	\$2,487
47 U.S.C. 220(d)	\$12,439
47 U.S.C. 223(b)	\$128,904
47 U.S.C. 227(e)	\$11,905
	\$35,715
	\$1,190,546
47 U.S.C. 362(a)	\$10,366
47 U.S.C. 362(b)	\$2,074
47 U.S.C. 386(a)	\$10,366
47 U.S.C. 386(b)	\$2,074
47 U.S.C. 503(b)(2)(A)	\$51,827
	\$518,283
47 U.S.C. 503(b)(2)(B)	\$207,314
	\$2,073,133
47 U.S.C. 503(b)(2)(C)	\$419,353
	\$3,870,946
47 U.S.C. 503(b)(2)(D)	\$20,731
	\$155,485
47 U.S.C. 503(b)(2)(F)	\$119,055
	\$1,190,546
47 U.S.C. 507(a)	\$2,053

47 U.S.C. 507(b)	\$301
47 U.S.C. 511	\$2,023,640
	\$101,182
47 U.S.C. 554	\$919

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