

[Billing Code 6750-01S]

**FEDERAL TRADE COMMISSION**

**16 CFR Part 1**

**Federal Civil Penalties Inflation Adjustment Act**

**AGENCY:** Federal Trade Commission (FTC).

**ACTION:** Final rule amendments.

**SUMMARY:** The FTC is making adjustments to certain civil penalty amounts within its jurisdiction, as required by law. These adjustments reflect inflation since the penalty amounts were last adjusted.

**EFFECTIVE DATE:** [insert date thirty days after date of publication in the FEDERAL REGISTER].

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**SUPPLEMENTARY INFORMATION:** As required at least once every four years by the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), 28 U.S.C. § 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001(s)(1), 110 Stat. 1321-373, the FTC is making certain regulatory adjustments to civil penalty amounts within its jurisdiction. The civil penalty amounts adjusted by the FTC are set forth in Commission Rule 1.98, 16 CFR § 1.98. The FTC published the original adjustments in 1996. See 61 FR 54548 (Oct. 21, 1996), 55840 (Oct. 29, 1996). No adjustments were warranted under the law in 2000. See 65 FR 69665 (Nov. 20, 2000). The FTC published adjustments to civil penalties under the Clayton Act § 11(l)

and the Energy Policy and Conservation Act § 525(a) in 2004. See 69 FR 76611 (Dec. 22, 2004).

Adjustments are based on the increase in the Consumer Price Index (CPI) between June of the year in which the prior adjustment was made and June of the year preceding the year in which the adjustment is being made. Thus, for civil penalties adjusted in 2004, the relevant CPI period is between June, 2004 and June, 2007. Within that time frame, the CPI has increased from 189.7 to 208.352, or 9.8%. Applying this percentage increase to currently adjusted civil penalty amounts, the FTC is adjusting civil penalty amounts currently set at \$6,500 under two statutes: the Clayton Act § 11(l), for violations of cease-and-desist orders issued under § 11(b) of that Act; and § 525(a) of the Energy Policy and Conservation Act, for recycled oil labeling violations. Each will be adjusted to \$7,500, in accordance with the rounding rules of the adjustment statute.

For civil penalties that were last adjusted in 1996, the relevant CPI period is between June, 1996 and June, 2007. During this period, the CPI increased from 156.7 to 208.352 for a total percentage increase of 32.96%. Applying this percentage increase to the civil penalties as they were adjusted in 1996 results in an increase from \$11,000 to \$16,000 for civil penalties in the following statutes: premerger notification violations under the Hart-Scott-Rodino Antitrust Improvements Act § 7A(g)(1), unfair or deceptive acts or practices under the FTC Act §§ 5(l), (m)(1)(A) and (m)(1)(B), and energy conservation violations under the Energy Policy and Conservation Act § 525(b). Further, applying the CPI increase to credit reporting violations under the Fair Credit Reporting Act § 621(a)(2) raises that penalty amount from \$2,500 to \$3,500.

The FTC is amending Commission Rule 1.98 by modifying paragraphs (a) through (e), (l) and (m) and adding paragraph (n) to reflect these adjustments, which will become effective thirty days following publication.

The FCPIAA rounding rules do not authorize the FTC at this time to increase the amounts of the other civil penalties within its jurisdiction. Increases in civil penalties of greater than \$100 and less than or equal to \$1,000 must be in \$100 increments, and the increase in the CPI was not high enough to round up any adjustment to \$100. Accordingly, all other paragraphs of Commission Rule 1.98 remain unchanged.

Likewise, the FTC is not adding new adjustments for other statutory civil penalty amounts that have been enacted since the last adjustments, such as the Energy Independence and Security Act of 2007 § 814(a). This authority is too recent to warrant adjustments for inflation. Similarly, the FTC is not adjusting § 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003 because the amount of inflation since the inception of this authority is insufficient to warrant adjustment.

In light of the ministerial nature of the adjustments, the public comment requirements of the Administrative Procedure Act (APA) do not apply to this action. 5 U.S.C. § 553(b)(B) (exception when public comment is unnecessary). For this reason, the requirements of the Regulatory Flexibility Act also do not apply. 5 U.S.C. §§ 603 and 604 (no regulatory flexibility analyses required where the APA does not require public comment).

## 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**

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

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

2. Revise § 1.98 paragraphs (a) through (e), (l) and (m) and add paragraph (n) 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 thirty 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)--\$7,500;

(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;

(e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)--\$16,000;

\* \* \*

(l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively--\$7,500 and \$16,000, respectively;

(m) Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2)--  
\$3,500; and

(n) 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.

Richard C. Donohue  
Acting Secretary