

[Billing Code 6750-01]

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 publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, Office of General Counsel, FTC, 600 Pennsylvania Avenue, NW, Washington, DC 20580, (202) 326-2447, atang@ftc.gov.

SUPPLEMENTARY INFORMATION: As required at least once every four years by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note, as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, § 31001, 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).

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 the relevant period between June 1996 and June 2003, the CPI has increased from 156.7 to 183.7, or 17.2%. Applying this percentage increase to currently adjusted civil penalty amounts, the FTC is adjusting civil penalty amounts currently set at \$5,500 under two statutes: 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 \$6,500, in accordance with the rounding rules of the adjustment statute, and the FTC is amending paragraphs (b) and (l) of Rule 1.98 to reflect these adjustments, which will become effective thirty days following publication. The FTC is thus deleting the second sentence of the Rule's introductory text, regarding the prior effective date, which is potentially confusing and, in any event, superfluous.

The statute's 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 \$10,000 and less than or equal to \$100,000 must be in \$5,000 increments, and the increase in the CPI was not high enough to round up any adjustment to \$5,000. Likewise, 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 Rule 1.98 remain unchanged.

Likewise, the FTC is not adding any new adjustments to the rule for other statutory civil penalty amounts that have been enacted since the last adjustments, such as § 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s, or § 1115(a) of the Medicare Act, Pub. L. No. 108-173. These authorities are too recent to warrant adjustments for inflation.

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, 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 the introductory text of § 1.98 and paragraphs (b) and (l) 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 within the Commission's jurisdiction.

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(b) Section 11(l) of the Clayton Act, 15 U.S.C. 21(l)–\$6,500;

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(l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) and (b), respectively–\$6,500 and \$11,000, respectively; and

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By direction of the Commission.

Donald S. Clark,

Secretary.

Date: