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 implementing adjustments to the civil penalty amounts within its jurisdiction to account for inflation, as required by law.

DATES: Effective date: January 22, 2018.

FOR FURTHER INFORMATION CONTACT:
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SUPPLEMENTARY INFORMATION:

Commission Rule 1.98 sets forth civil penalty amounts for violations of certain laws enforced by the Commission. As mandated by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, the Commission adjusted the maximum civil penalty amounts under its jurisdiction through an Interim Final Rulemaking in June 2016 and a subsequent annual inflation adjustment in January 2017. Following the initial catch-up adjustment, the FCPIAA, as amended, directs federal agencies to adjust each civil monetary penalty under their jurisdiction for inflation in January of each year pursuant to a cost-of-living adjustment. 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. Based on that formula, the cost-of-living adjustment multiplier for 2018 is 1.02041. 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.

### Calculation of Adjustments to Maximum Civil Monetary Penalties

<table>
<thead>
<tr>
<th>Citation</th>
<th>Description</th>
<th>Current penalty (2017)</th>
<th>Adjustment multiplier</th>
<th>Adjusted penalty</th>
</tr>
</thead>
<tbody>
<tr>
<td>16 CFR 1.98(a): 15 U.S.C. 18a(g)(1)</td>
<td>Premerger filing notification violations</td>
<td>$40,654</td>
<td>1.02041</td>
<td>$41,484</td>
</tr>
<tr>
<td>16 CFR 1.98(c): 15 U.S.C. 45(l)</td>
<td>Unfair or deceptive acts or practices</td>
<td>40,654</td>
<td>1.02041</td>
<td>41,484</td>
</tr>
<tr>
<td>16 CFR 1.98(d): 15 U.S.C. 45(m)(1)(A)</td>
<td>Unfair or deceptive acts or practices</td>
<td>40,654</td>
<td>1.02041</td>
<td>41,484</td>
</tr>
</tbody>
</table>

1 16 CFR 1.98.
3 81 FR 42476 (June 30, 2016).
4 82 FR 8135 (Jan. 24, 2017).
6 Id. [3], [5]; Office of Management and Budget, Memorandum M–18–03, Implementation of Penalty

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.7 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 adjust civil monetary penalties through rulemaking and to publish the required inflation adjustments in the Federal Register, 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.8 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:

8 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.

PART I—GENERAL PROCEDURES

Subpart L—Civil Penalty Adjustments Under the Federal Civil Penalties Inflation Adjustment Act of 1990, as Amended

§ 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 maximum civil penalty amounts apply only to penalties assessed after January 22, 2018, including those penalties whose associated violation predated January 22, 2018.

Authority:

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


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 maximum civil penalty amounts apply only to penalties assessed after January 22, 2018, including those penalties whose associated violation predated January 22, 2018.

Authority:

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


2. Revise § 1.98 to read as follows:

SUMMARY: The National Indian Gaming Commission is amending its fee regulations. The rule amends the regulations that describe when the Commission adopts annual fee rates, defines the fiscal year of the gaming operation that will be used for calculating the fees, and includes additional revisions clarifying the fee calculation and submission process for gaming operations.