

[Billing Code 6750-01]

FEDERAL TRADE COMMISSION

16 CFR Parts 1 and 311

Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule amendments.

SUMMARY: The Commission is correcting certain previously published adjustments to civil penalty amounts within its jurisdiction. These corrections will maintain the civil penalty amounts currently published in Commission Rule 1.98, as last adjusted in 1996.

These corrections will not affect certain related amendments intended to incorporate previously omitted adjustments in civil penalty amounts for Recycled Oil Rule violations.

EFFECTIVE DATE: These amendments are effective November 20, 2000.

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SUPPLEMENTARY INFORMATION: The Commission is correcting certain civil penalty inflation adjustments, 65 FR 60857 (Oct. 13, 2000), that were intended to update civil penalty amounts that the Commission last adjusted for inflation in 1996 under the Federal Civil Penalties Inflation Adjustment Act of 1990 (FCPIAA), as amended by the Debt Collection Improvement Act of 1996 (DCIA), 28 U.S.C. 2461 note. See 61 FR 54548 (Oct. 21, 1996), 55840 (Oct. 29, 1996). Section 5 of the FCPIAA requires, in relevant part, that any inflation “increase” since the last adjustment be rounded to the

nearest multiple of \$10 (for “penalties less than or equal to \$100”), the nearest \$100 (for “penalties greater than \$100 but less than or equal to \$1,000”), the nearest \$1,000 (for “penalties greater than \$1,000 but less than or equal to \$10,000”), or the nearest \$5,000 (for “penalties greater than \$10,000 but less than or equal to \$100,000”).

In determining how these rounding categories apply, the Commission had referred to the original statutory penalty amounts. For example, for penalties under section 5 of the FTC Act, the Commission used the rounding category “for penalties greater than \$1,000 but less than or equal to \$10,000” (i.e., increases are rounded in multiples of \$1,000), even though section 5 penalties had been increased to \$11,000 in 1996.

The rounding categories, however, do not expressly rely upon or refer to the original statutory amounts of the penalties, nor is the Commission aware of any legislative history to support a retroactive reading of “penalties” once the original statutory penalty amount has been increased. Rather, in calculating increases, the statute expressly refers to the increase since the penalties were last set “or adjusted” by law. See FCPIAA § 5(b) (defining cost-of-living adjustment). Thus, for example, increases in the penalty for a violation of section 5 of the FTC Act (i.e., \$11,000) must be rounded in multiples of \$5,000 (rather than multiples of \$1,000, as when the penalty was only \$10,000).

Applying the rounding rules this way, the Commission has determined that the relevant increase in the Consumer Price Index (CPI) since the last adjustment in 1996 is not large enough yet to authorize the recently published increases in the civil penalty

amounts within the Commission's jurisdiction.<sup>1</sup> Accordingly, the Commission has determined that the civil penalty amounts in Commission Rule 1.98, 16 CFR 1.98, as last adjusted in 1996, should remain unchanged for now. This determination does not affect the previously published rule amendments to include civil penalties for Recycled Oil Rule violations, which were inadvertently omitted from the 1996 adjustment. The Commission is re-publishing its final rule amendments to preserve these conforming amendments while making the civil penalty corrections discussed earlier.

These procedural amendments are exempt from the notice-and-comment requirements of the Administrative Procedure Act. See 5 U.S.C. 553(b)(B). The requirements of the Regulatory Flexibility Act also do not apply. See 5 U.S.C. 603, 604.

#### List of Subjects

##### 16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

##### 16 CFR Part 311

Energy conservation, Labeling, Recycled oil, Trade practices.

For the reasons set forth in the preamble, the Federal Trade Commission amends Title 16, chapter I, subchapters A and C, of the Code of Federal Regulations, as follows:

#### SUBCHAPTER A--ORGANIZATION, PROCEDURES AND RULES OF PRACTICE

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<sup>1</sup> For adjustment purposes, inflation is determined by calculating the percentage by which the June CPI for the calendar year preceding the adjustment (166.2 in 1999) exceeds the June CPI for the year when the last adjustment was made (156.7 in 1996). See FCPIAA § 5(b). Thus, the relevant inflation increase is 6.1% (not the figure previously stated by the Commission). In any event, this amount is not yet large enough to justify the inflation increases authorized by the statute's rounding rules.

## PART 1--GENERAL PROCEDURES

1. Revise the title of subpart L to read as follows:

SUBPART L--CIVIL PENALTY ADJUSTMENTS UNDER THE FEDERAL CIVIL PENALTIES INFLATION ADJUSTMENT ACT OF 1990, AS AMENDED BY THE DEBT COLLECTION IMPROVEMENT ACT OF 1996

2. Revise the authority for subpart L to read as follows:

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

3. Revise section 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 civil penalty amounts apply to violations occurring after November 20, 2000:

- (a) Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1)--\$11,000;
- (b) Section 11(l) of the Clayton Act, 15 U.S.C. 21(l)--\$5,500;
- (c) Section 5(l) of the FTC Act, 15 U.S.C. 45(l)-- \$11,000;
- (d) Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A)--\$11,000;
- (e) Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B)--\$11,000;
- (f) Section 10 of the FTC Act, 15 U.S.C. 50--\$110;
- (g) Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65--\$110;
- (h) Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b)--\$110;
- (i) Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e)--\$110;
- (j) Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2)--\$110;

(k) Section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C.

6303(a)--\$110;

(l) Sections 525(a) and (b) of the Energy Policy and Conservation Act, 42 U.S.C.

6395(a) and (b)--\$5,500 and \$11,000, respectively; and

(m) 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.

#### SUBCHAPTER C--REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS

#### PART 311--TEST PROCEDURES AND LABELING STANDARDS FOR RECYCLED

#### OIL

4. The authority for part 311 continues to read as follows:

Authority: 42 U.S.C. 6363(d).

5. Amend § 311.6 by revising the last sentence to read as follows:

#### **§ 311.6 Prohibited acts.**

\* \* \* Violations will be subject to enforcement through civil penalties (as adjusted for inflation pursuant to § 1.98 of this chapter), imprisonment, and/or injunctive relief in

accordance with the enforcement provisions of Section 525 of the Energy Policy and Conservation Act (42 U.S.C. 6395).

By direction of the Commission.

Donald S. Clark  
Secretary