

Rules and Regulations

Federal Register

Vol. 88, No. 7

Wednesday, January 11, 2023

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

FEDERAL RESERVE SYSTEM

12 CFR Part 263

[Docket No. R-1799]

RIN 7100-AG 52

Rules of Practice for Hearings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board of Governors of the Federal Reserve System (the “Board”) is issuing a final rule amending its rules of practice and procedure to adjust the amount of each civil money penalty (“CMP”) provided by law within its jurisdiction to account for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015.

DATES: This final rule is effective on January 11, 2023.

FOR FURTHER INFORMATION CONTACT: Thomas O. Kelly, Senior Counsel (202/974-7059), Legal Division, Board of Governors of the Federal Reserve System, 20th Street and Constitution Ave. NW, Washington, DC 20551. For users of Telecommunication Device for the Deaf (TDD) only, contact 202/263-4869.

SUPPLEMENTARY INFORMATION:

Federal Civil Penalties Inflation Adjustment Act

The Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 note (“FCPIA Act”), requires Federal agencies to adjust, by regulation, the CMPs within their jurisdiction to account for inflation. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the “2015 Act”) ¹ amended the FCPIA Act to require Federal agencies to make annual adjustments not later than January 15 of every year.² The Board is now issuing a

new final rule to set the CMP levels pursuant to the required annual adjustment for 2023. The Board will apply these adjusted maximum penalty levels to any penalties assessed on or after January 11, 2023, whose associated violations occurred on or after November 2, 2015. Penalties assessed for violations occurring prior to November 2, 2015, will be subject to the amounts set in the Board’s 2012 adjustment pursuant to the FCPIA Act.³

Under the 2015 Act, the annual adjustment to be made for 2023 is the percentage by which the Consumer Price Index for the month of October 2022 exceeds the Consumer Price Index for the month of October 2021. On December 15, 2022, as directed by the 2015 Act, the Office of Management and Budget (OMB) issued guidance to affected agencies on implementing the required annual adjustment which included the relevant inflation multiplier.⁴ Using OMB’s multiplier, the Board calculated the adjusted penalties for its CMPs, rounding the penalties to the nearest dollar.⁵

Administrative Procedure Act

The 2015 Act states that agencies shall make the annual adjustment “notwithstanding section 553 of title 5, United States Code.” Therefore, this rule is not subject to the provisions of the Administrative Procedure Act (the “APA”), 5 U.S.C. 553, requiring notice, public participation, and deferred effective date.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires a regulatory flexibility analysis only for rules for which an agency is required to publish a general notice of proposed rulemaking. Because the 2015 Act states that agencies’ annual adjustments are to be made notwithstanding section 553 of title 5 of United States Code—the APA

section requiring notice of proposed rulemaking—the Board is not publishing a notice of proposed rulemaking. Therefore, the Regulatory Flexibility Act does not apply.

Paperwork Reduction Act

There is no collection of information required by this final rule that would be subject to the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*

List of Subjects in 12 CFR Part 263

Administrative practice and procedure, Claims, Crime, Equal access to justice, Lawyers, Penalties.

Authority and Issuance

For the reasons set forth in the preamble, the Board amends 12 CFR part 263 to read as follows:

PART 263—RULES OF PRACTICE FOR HEARINGS

■ 1. The authority citation for part 263 continues to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 248, 324, 334, 347a, 504, 505, 1464, 1467, 1467a, 1817(j), 1818, 1820(k), 1829, 1831o, 1831p–1, 1832(c), 1847(b), 1847(d), 1884, 1972(2)(F), 3105, 3108, 3110, 3349, 3907, 3909(d), 4717; 15 U.S.C. 21, 781(i), 78o–4, 78o–5, 78u–2; 1639e(k); 28 U.S.C. 2461 note; 31 U.S.C. 5321; and 42 U.S.C. 4012a.

■ 2. Section 263.65 is revised to read as follows:

§ 263.65 Civil money penalty inflation adjustments.

(a) *Inflation adjustments.* In accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, which further amended the Federal Civil Penalties Inflation Adjustment Act of 1990, the Board has set forth in paragraph (b) of this section the adjusted maximum amounts for each civil money penalty provided by law within the Board’s jurisdiction. The authorizing statutes contain the complete provisions under which the Board may seek a civil money penalty. The adjusted civil money penalties apply only to penalties assessed on or after January 11, 2023, whose associated violations occurred on or after November 2, 2015.

(b) *Maximum civil money penalties.* The maximum (or, in the cases of 12 U.S.C. 334 and 1832(c), fixed) civil

³ 77 FR 68680 (Nov. 16, 2012).

⁴ OMB Memorandum M-23-05, *Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015* (Dec. 15, 2022).

⁵ Under the 2015 Act and implementing OMB guidance, agencies are not required to make an adjustment to a CMP if, during the 12 months preceding the required adjustment, such penalty increased due to a law other than the 2015 Act by an amount greater than the amount of the required adjustment. No other laws have adjusted the CMPs within the Board’s jurisdiction during the preceding 12 months.

¹ Public Law 114–74, 129 Stat. 599 (2015) (codified at 28 U.S.C. 2461 note).

² 28 U.S.C. 2461 note, sec. 4(b)(1).

money penalties as set forth in the referenced statutory sections are set forth in the table in this paragraph (b).

TABLE 1 TO PARAGRAPH (b)

Statute		Adjusted civil money penalty
12 U.S.C. 324	<i>Inadvertently late or misleading reports, inter alia</i>	\$4,745
	<i>Other late or misleading reports, inter alia</i>	47,454
	<i>Knowingly or reckless false or misleading reports, inter alia</i>	2,372,677
12 U.S.C. 334		345
12 U.S.C. 374a		345
12 U.S.C. 504		
	<i>First Tier</i>	11,864
	<i>Second Tier</i>	59,316
	<i>Third Tier</i>	2,372,677
12 U.S.C. 505		
	<i>First Tier</i>	11,864
	<i>Second Tier</i>	59,316
	<i>Third Tier</i>	2,372,677
12 U.S.C. 1464(v)(4)		4,745
12 U.S.C. 1464(v)(5)		47,454
12 U.S.C. 1464(v)(6)		2,372,677
12 U.S.C. 1467a(i)(2)		59,316
12 U.S.C. 1467a(i)(3)		59,316
12 U.S.C. 1467a(r)		
	<i>First Tier</i>	4,745
	<i>Second Tier</i>	47,454
	<i>Third Tier</i>	2,372,677
12 U.S.C. 1817(j)(16)		
	<i>First Tier</i>	11,864
	<i>Second Tier</i>	59,316
	<i>Third Tier</i>	2,372,677
12 U.S.C. 1818(i)(2)		
	<i>First Tier</i>	11,864
	<i>Second Tier</i>	59,316
	<i>Third Tier</i>	2,372,677
12 U.S.C. 1820(k)(6)(A)(ii)		390,271
12 U.S.C. 1832(c)		3,446
12 U.S.C. 1847(b)		59,316
12 U.S.C. 1847(d)		
	<i>First Tier</i>	4,745
	<i>Second Tier</i>	47,454
	<i>Third Tier</i>	2,372,677
12 U.S.C. 1884		345
12 U.S.C. 1972(2)(F)		
	<i>First Tier</i>	11,864
	<i>Second Tier</i>	59,316
	<i>Third Tier</i>	2,372,677
12 U.S.C. 3110(a)		54,224
12 U.S.C. 3110(c)		
	<i>First Tier</i>	4,339
	<i>Second Tier</i>	43,377
	<i>Third Tier</i>	2,168,915
12 U.S.C. 3909(d)		2,951
15 U.S.C. 78u-2(b)(1)		
	<i>For a natural person</i>	11,162
	<i>For any other person</i>	111,614
15 U.S.C. 78u-2(b)(2)		
	<i>For a natural person</i>	111,614
	<i>For any other person</i>	558,071
15 U.S.C. 78u-2(b)(3)		
	<i>For a natural person</i>	223,229
	<i>For any other person</i>	1,116,140
15 U.S.C. 1639e(k)(1)		13,627
15 U.S.C. 1639e(k)(2)		27,252
42 U.S.C. 4012a(f)(5)		2,577

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority.

Michele Taylor Fennell,

Deputy Associate Secretary of the Board.

[FR Doc. 2023–00327 Filed 1–10–23; 8:45 am]

BILLING CODE 6210–01–P

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 January 11, 2023.

FOR FURTHER INFORMATION CONTACT: Marie Choi, Attorney (202–326–3368), Office of the General Counsel, Federal Trade Commission, 600 Pennsylvania Avenue NW, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act Improvements Act (“FCPIAA”) of 2015¹ directs agencies to adjust the civil penalty maximums under their jurisdiction for inflation every January. Accordingly, the Commission issues annual adjustments to the maximum civil penalty amounts under its jurisdiction.²

Commission Rule § 1.98 sets forth the applicable civil penalty amounts for violations of certain laws enforced by the Commission.³ As directed by the FCPIAA, the Commission is issuing adjustments to increase these maximum civil penalty amounts to address inflation since its prior 2022 adjustment. The following adjusted amounts will take effect on January 11, 2023:

- Section 7A(g)(1) of the Clayton Act, 15 U.S.C. 18a(g)(1) (premerger filing notification violations under the Hart-Scott-Rodino Improvements Act)—Increase from \$46,517 to \$50,120;
- Section 11(l) of the Clayton Act, 15 U.S.C. 21(l) (violations of cease and desist orders issued under Clayton Act section 11(b))—Increase from \$24,714 to \$26,628;
- Section 5(l) of the FTC Act, 15 U.S.C. 45(l) (unfair or deceptive acts or practices)—Increase from \$46,517 to \$50,120;
- Section 5(m)(1)(A) of the FTC Act, 15 U.S.C. 45(m)(1)(A) (unfair or deceptive acts or practices)—Increase from \$46,517 to \$50,120;
- Section 5(m)(1)(B) of the FTC Act, 15 U.S.C. 45(m)(1)(B) (unfair or deceptive acts or practices)—Increase from \$46,517 to \$50,120;
- Section 10 of the FTC Act, 15 U.S.C. 50 (failure to file required reports)—Increase from \$612 to \$659;
- Section 5 of the Webb-Pomerene (Export Trade) Act, 15 U.S.C. 65 (failure by associations engaged solely in export trade to file required statements)—Increase from \$612 to \$659;
- Section 6(b) of the Wool Products Labeling Act, 15 U.S.C. 68d(b) (failure by wool manufacturers to maintain required records)—Increase from \$612 to \$659;
- Section 3(e) of the Fur Products Labeling Act, 15 U.S.C. 69a(e) (failure to maintain required records regarding fur products)—Increase from \$612 to \$659;
- Section 8(d)(2) of the Fur Products Labeling Act, 15 U.S.C. 69f(d)(2) (failure to maintain required records regarding fur products)—Increase from \$612 to \$659;
- Section 333(a) of the Energy Policy and Conservation Act (EPCA), 42 U.S.C. 6303(a) (knowing violations of EPCA section 332, including labeling violations)—Increase from \$503 to \$542;
- Section 525(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(a) (recycled oil labeling violations)—Increase from \$24,714 to \$26,628;

- Section 525(b) of the Energy Policy and Conservation Act, 42 U.S.C. 6395(b) (willful violations of recycled oil labeling requirements)—Increase from \$46,517 to \$50,120;

- Section 621(a)(2) of the Fair Credit Reporting Act, 15 U.S.C. 1681s(a)(2) (knowing violations of the Fair Credit Reporting Act)—Increase from \$4,367 to \$4,705;

- Section 1115(a) of the Medicare Prescription Drug Improvement and Modernization Act of 2003, Public Law 108–173, as amended by Public Law 115–263, 21 U.S.C. 355 note (failure to comply with filing requirements)—Increase from \$16,445 to \$17,719; and

- Section 814(a) of the Energy Independence and Security Act of 2007, 42 U.S.C. 17304 (violations of prohibitions on market manipulation and provision of false information to Federal agencies)—Increase from \$1,323,791 to \$1,426,319.

Calculation of Inflation Adjustments

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.⁴ 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.⁵ Based on that formula, the cost-of-living adjustment multiplier for 2023 is 1.07745. 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

Citation	Description	2022 Penalty level	Adjustment multiplier	2023 Penalty level rounded to the nearest dollar
16 CFR 1.98(a): 15 U.S.C. 18a(g)(1)	Premerger filing notification violations	\$46,517	1.07745	\$50,120
16 CFR 1.98(b): 15 U.S.C. 21(l)	Violations of cease and desist orders	24,714	1.07745	26,628

¹ Public Law 114–74, 701, 129 Stat. 599 (2015). The Act amends the Federal Civil Penalties Inflation Adjustment Act, Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note).

² 81 FR 42476 (2016); 82 FR 8135 (2017); 83 FR 2902 (2018); 84 FR 3980 (2019); 85 FR 2014 (2020); 86 FR 2539 (2021); 87 FR 1070 (2022).

³ 16 CFR 1.98.

⁴ 28 U.S.C. 2461 note (4).

⁵ *Id.* (3), (5)(b); Office of Management and Budget, Memorandum M–23–05, *Implementation of Penalty Inflation Adjustments for 2023, Pursuant to the Federal Civil Penalties Inflation Adjustment Act*

Improvements Act of 2015 (December 15, 2022), available at: <https://www.whitehouse.gov/wp-content/uploads/2022/12/M-23-05-CMP-CMP-Guidance.pdf>.