

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
Amendment of Section 1.80(b) of the)
Commission's Rules)
Adjustment of Civil Monetary Penalties to Reflect)
Inflation)

ORDER

Adopted: June 9, 2016

Released: June 9, 2016

By the Chief, Enforcement Bureau:

I. INTRODUCTION

1. This procedural Order amends Section 1.80(b) of the Commission's rules (the Rules)1 to adjust the forfeiture penalties for inflation, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (the 2015 Inflation Adjustment Act).2 As discussed below, agencies are required to publish interim final rules with the initial penalty adjustment amounts by July 1, 2016. The new penalty levels must take effect no later than August 1, 2016.

2. Any adjustments in civil monetary penalties that we adopt in this Order will apply only to such penalties assessed after the effective date of the amendments to Section 1.80(b).3 In addition to implementing the required inflation adjustments, we also amend Section 1.80(b) to reflect certain other changes required by the 2015 Inflation Adjustment Act.4

II. DISCUSSION

A. Background

3. On November 2, 2015, the President signed into law the Bipartisan Budget Act of 2015, which included, as Section 701 thereto, the 2015 Inflation Adjustment Act, which amended the Federal Civil Penalties Inflation Adjustment Act of 1990 (Pub. L. 101-410), to improve the effectiveness of civil monetary penalties and maintain their deterrent effect. Agencies must issue an interim final rulemaking and publish interim final rules by July 1, 2016, which will take effect by August 1, 2016. Agencies must

1 47 CFR 1.80(b).

2 Sec. 701, Pub. L. No. 114-74, 129 Stat. 599 (codified as amended 28 U.S.C. § 2461 note).

3 See 28 U.S.C. § 2461 note (6). All references to 28 U.S.C. 2461 note herein are to the note, as amended by Section 701(b) of the Bipartisan Budget Act of 2015 (the 2015 Inflation Adjustment Act).

4 The Commission last released an order adjusting its forfeiture amounts for inflation in August 2013. See Amendment of Section 1.80(b) of the Commission's Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation, Order, 28 FCC Rcd 10785 (2013) (2013 Forfeiture Adjustment Order). The adjustments adopted in that Order took effect on September 13, 2013. See Inflation Adjustment of Maximum Forfeiture Penalties, 78 Fed. Reg. 49,370 - 49,372 (August 14, 2013).

make subsequent annual adjustments for inflation. Annual adjustments must be published by January 15 each year.⁵

4. According to the 2015 Inflation Adjustment Act, the initial inflation adjustment will be the percentage by which the Consumer Price Index (CPI) for the month of October 2015 exceeds the CPI for the month of October of the calendar year during which the civil monetary penalty “was established or adjusted under a provision of law other than this Act.”⁶ The 2015 Inflation Adjustment Act requires the Director of the Office of Management and Budget (OMB) to issue guidance to agencies on implementing the Act.⁷ OMB issued that guidance on February 24, 2016,⁸ and this Order follows that guidance.

5. Pursuant to the 2015 Inflation Adjustment Act, we update the civil monetary penalties set forth in the Communications Act of 1934, as amended (Communications Act or Act),⁹ to reflect an “inflation adjustment”¹⁰ that derives from the “cost-of-living adjustment.”¹¹ The cost-of-living adjustment reflects the total inflation that has taken place in the years since the penalties were last set or adjusted by statute or rule. Specifically, the adjustment is “the percentage (if any)” by which the “(A) Consumer Price Index for the month of October preceding the date of the adjustment, exceeds (B) the Consumer Price Index for the month of October 1 year before the month of October referred to in subparagraph (A).”¹²

6. The 2015 Inflation Adjustment Act prescribes the following steps in making the initial adjustment to a given penalty for inflation. First, the Commission must identify the applicable civil monetary penalties. Second, it must determine when each penalty was “established or adjusted under a provision of law other than [the Inflation Adjustment Act].”¹³ Third, for each penalty, the Commission must calculate the catch-up adjustment, or the percentage increase, that must be applied, based upon the Consumer Price Index (CPI).¹⁴ OMB provided the applicable CPI rate to be applied for each year.¹⁵

7. The adjusted penalties addressed in this Order were established or adjusted at different times, and thus require individualized adjustments. Attachment A provides the multipliers, which OMB provided, used to adjust the penalty level or range of penalty levels based on the year the penalty was established or last adjusted by statute or regulation. After applying the multiplier, penalty levels are rounded to the nearest dollar.¹⁶ Attachment B sets forth the adjusted penalty or penalty range for each applicable Commission rule. Attachment C provides a sample adjustment calculation.

⁵ 28 U.S.C. § 2461 note (4).

⁶ 28 U.S.C. § 2461 note (5).

⁷ 28 U.S.C. § 2461 note (7).

⁸ Implementation of the Federal Penalties Inflation Adjustment Improvements Act of 2015, OMB M-16-06 (February 24, 2016).

⁹ 47 U.S.C. § 151 *et seq.*

¹⁰ 28 U.S.C. § 2461 note (5).

¹¹ *Id.*

¹² *Id.*; *see also id.* § 2461 note (3) (“‘Consumer Price Index’” means the Consumer Price Index for all-urban consumers published by the Department of Labor.”).

¹³ 28 U.S.C. § 2461 note (5).

¹⁴ Prior inflationary adjustments under the Inflation Adjustment Act will be excluded to address implementation challenges and to remedy the decline in the real value of penalty levels created by the 10 percent cap employed in previous adjustments. 28 U.S.C. § 2461 note (6).

¹⁵ *See* Attachment A, Table A.

¹⁶ In accordance with the 2015 Inflation Adjustment Act, penalty levels shall not be increased by more than 150 percent of the corresponding levels in effect on November 2, 2015. The 150 percent limitation is on the amount of (continued....)

III. PROCEDURAL MATTERS

8. The Enforcement Bureau is responsible for, among other things, rulemaking proceedings regarding general enforcement policies and procedures.¹⁷ Further, the Commission delegated to the Chief, Enforcement Bureau authority to perform such rulemaking functions that do not involve “[n]otices of proposed rulemaking and of inquiry and final orders in such proceedings.”¹⁸ Because Congress has mandated the periodic adjustment of the Commission’s civil monetary penalties to reflect inflation and specifies the formula for calculating such adjustment, the Commission has no discretion to set alternative levels of adjusted civil monetary penalties. Additionally, there will be no prior notice and solicitation of public comments.¹⁹ Accordingly, action on delegated authority is properly taken in this Order amending the Commission’s maximum civil monetary penalties, which are a part of the Commission’s general enforcement policies and procedures.

9. Because a notice of proposed rulemaking is not required for these rule changes, the Regulatory Flexibility Act does not apply.²⁰

10. We have analyzed the actions taken herein with respect to the Paperwork Reduction Act of 1995 (PRA),²¹ and we find them to impose no new or modified information collection(s) subject to the PRA. In addition, therefore, pursuant to the Small Business Paperwork Relief Act of 2002,²² our actions do not impose any new or modified “information collection burden for small business concerns with fewer than 25 employees.”²³

IV. ORDERING CLAUSES

11. Accordingly, pursuant to Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and the Bipartisan Budget Act of 2015, 28 U.S.C. § 2461 note, **IT IS ORDERED** that Section 1.80(b) of the Commission’s rules, 47 CFR § 1.80(b), is **AMENDED** as set forth in the Appendix, **EFFECTIVE** July 1, 2016. This action is properly taken pursuant to the functions of the Enforcement Bureau and the authority delegated to the Chief of the Enforcement Bureau found in Sections 0.111(a)(22) and 0.311 of the Commission’s rules, respectively, 47 CFR §§ 0.11(a)(22), 0.311.

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the increase; therefore, adjusted penalty levels will be up to 250 percent of the levels in effect on November 2, 2015. 28 U.S.C. § 2461 note (5).

¹⁷ See 47 CFR § 0.111(a)(22).

¹⁸ 47 CFR § 0.311. Pursuant to Section 0.311, the Chief, Enforcement Bureau is delegated authority to perform all functions of the Bureau, described in Section 0.111 of the Commission’s rules, 47 CFR § 0.111, including performing rulemakings except for notices of proposed rulemakings and of inquiry and final orders in such proceedings. See *id.* at § 0.311(a)(1).

¹⁹ The 2015 Inflation Adjustment Act provides that the statutory maximum forfeiture penalties shall be adjusted with an initial “catch-up” adjustment through interim final rulemaking. See 28 U.S.C. § 2461 note (4).

²⁰ Pub. L. No. 96-354, 94 Stat. 1164 (codified at 5 U.S.C. §§ 601-612); see 5 U.S.C. §§ 603-604.

²¹ Pub. L. No. 104-13, 109 Stat. 163 (codified at 13 U.S.C. § 91, 44 U.S.C. §§ 101 note, and 44 U.S.C. §§ 3501-3520).

²² Pub. L. No. 107-198, 116 Stat. 729 (codified at 5 U.S.C. § 601 note, 44 U.S.C. §§ 101 note, 3504, 3506, 3520, 3521).

²³ See 44 U.S.C. § 3506(c)(4).

12. **IT IS FURTHER ORDERED THAT**, pursuant to the Congressional Review Act, Pub. L. No. 104-121, 110 Stat. 868 (codified at 5 U.S.C. §§ 801-808), the Commission **SHALL SEND** a copy of this Order in a report to Congress and the Government Accountability Office, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Travis LeBlanc
Chief
Enforcement Bureau

APPENDIX

Part 1 of Chapter 1 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 1---PRACTICE AND PROCEDURE

Subpart A---General Rules of Practice and Procedure

Miscellaneous Proceedings

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

Authority: 15 U.S.C. 79 et seq., 47 U.S.C. 151, 154(i) and (j), 155, 157, 225, 227, 303(r), and 309.

2. Section 1.80 is amended by revising the table following paragraph (b)(8) “Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors” and revising paragraph (b)(9) to read as follows:

§1.80 Forfeiture proceedings.

* * * * *

Section III. Non-Section 503 Forfeitures That Are Affected by the Downward Adjustment Factors

Violation	Statutory Amount (\$)
Sec. 202(c) Common Carrier Discrimination	\$11,362, \$568/day
Sec. 203(e) Common Carrier Tariffs	\$11,362, \$568/day
Sec. 205(b) Common Carrier Prescriptions	\$22,723
Sec. 214(d) Common Carrier Line Extensions	\$2,272/day
Sec. 219(b) Common Carrier Reports	\$2,272/day
Sec. 220(d) Common Carrier Records & Accounts	\$11,362/day
Sec. 223(b) Dial-a-Porn	\$117,742
Sec. 227(e) Caller Identification	\$10,874/violation \$32,622/day for each day of continuing violation, up to \$1,087,450 for any single act or failure to act
Sec. 364(a) Forfeitures (Ships)	\$9,468/day (owner)
Sec. 364(b) Forfeitures (Ships)	\$1,894 (vessel master)
Sec. 386(a) Forfeitures (Ships)	\$9,468/day (owner)
Sec. 386(b) Forfeitures (Ships)	\$1,894 (vessel master)

Sec. 634 Cable EEO \$839

(9) Inflation adjustments to the maximum forfeiture amount.

(i) Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act), Public Law 114-74 (129 Stat. 599-600), which amends the Federal Civil Monetary Penalty Inflation Adjustment Act of 1990, Public Law 101-410 (104 Stat. 890; 28 U.S.C. 2461 note), the statutory maximum amount of a forfeiture penalty assessed under this section shall be adjusted for inflation with an initial “catch-up” adjustment through an interim final rulemaking and interim final rules published by July 1, 2016, to take effect by August 1, 2016. Subsequent annual adjustments shall be published by January 15 each year. Catch-up adjustments will be based on the ‘cost-of-living adjustment’ (CPI), which is the percentage (if any) by which the CPI for October in the year of the previous adjustment exceeds the CPI for October 2015. Annual inflation adjustments will be based on the percentage (if any) by which the CPI for October preceding the date of the adjustment exceeds the prior year’s CPI for October. The Office of Management and Budget has provided “Table A: 2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year” (Table A) to determine the civil monetary penalty catch-up adjustment multiplier by calendar year. The Catch-up adjustment is determined by

- (A) Identifying from Table A, column A the latest year the penalty level or penalty range was established or last adjusted by statute or regulation (other than pursuant to the Inflation Adjustment Act), and from column B, identifying the corresponding multiplier to adjust the penalty level or range for inflation;
- (B) Multiplying the corresponding amount from column B by the amount of the maximum penalty level or the range of minimum and maximum penalties as most recently established or adjusted by statute or regulation (other than pursuant to the Inflation Adjustment Act before November 2, 2015);
- (C) Rounding to the nearest dollar; and
- (D) Comparing the new amount or range of the penalty with the amount or range in the prior year to ensure the maximum increase is not more than 150 percent of the most recent levels.

(ii) The application of the inflation adjustments required by the 2015 Inflation Adjustment Act, 28 U.S.C. 2461 note, results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

U.S. Code citation	Maximum Penalty after 2015 Inflation Adjustment Act adjustment (\$)
47 U.S.C. 202(c)	\$11,362 \$568
47 U.S.C. 203(e)	\$11,362 \$568

47 U.S.C. 205(b)	\$22,723
47 U.S.C. 214(d)	\$2,272
47 U.S.C. 219(b)	\$2,272
47 U.S.C. 220(d)	\$11,362
47 U.S.C. 223(b)	\$117,742
47 U.S.C. 227(e)	\$10,874
	\$32,622
	\$1,087,450
47 U.S.C. 362(a)	\$9,468
47 U.S.C. 362(b)	\$1,894
47 U.S.C. 386(a)	\$9,468
47 U.S.C. 386(b)	\$1,894
47 U.S.C. 503(b)(2)(A)	\$47,340
	\$473,402
47 U.S.C. 503(b)(2)(B)	\$189,361
	\$1,893,610
47 U.S.C. 503(b)(2)(C)	\$383,038
	\$3,535,740
47 U.S.C. 503(b)(2)(D)	\$18,936
	142,021
47 U.S.C. 503(b)(2)(F)	\$108,745
	\$1,087,450
47 U.S.C. 507(a)	\$1,875
47 U.S.C. 507(b)	\$275
47 U.S.C. 554	\$839

* * * * *

THE FOLLOWING ATTACHMENTS WILL NOT APPEAR IN THE CFR

ATTACHMENT A

Table A:

2016 Civil Monetary Penalty Catch-Up Adjustment Multiplier by Calendar Year*

A	B	A	B	A	B
Year	Multiplier	Year	Multiplier	Year	Multiplier
1914*	23.54832	1948	9.74746	1982	2.42422
1915	23.31745	1949	10.03536	1983	2.35483
1916	21.04761	1950	9.66821	1984	2.25867
1917	17.61763	1951	9.07779	1985	2.18802
1918	14.86488	1952	8.90779	1986	2.15628
1919	13.14022	1953	8.80881	1987	2.06278
1920	11.95166	1954	8.87455	1988	1.97869
1921	13.59074	1955	8.84156	1989	1.89361
1922	14.24180	1956	8.64865	1990	1.78156
1923	13.74786	1957	8.40417	1991	1.73099
1924	13.82779	1958	8.22969	1992	1.67728
1925	13.43718	1959	8.08973	1993	1.63238
1926	13.51352	1960	7.98114	1994	1.59089
1927	13.66885	1961	7.92793	1995	1.54742
1928	13.82779	1962	7.82362	1996	1.50245
1929	13.74786	1963	7.72201	1997	1.47177
1930	14.41442	1964	7.64752	1998	1.45023
1931	15.96228	1965	7.50278	1999	1.41402
1932	17.88256	1966	7.22912	2000	1.36689
1933	18.01803	1967	7.05751	2001	1.33842
1934	17.61763	1968	6.73762	2002	1.31185
1935	17.36044	1969	6.37635	2003	1.28561
1936	16.98843	1970	6.03650	2004	1.24588
1937	16.29027	1971	5.81511	2005	1.19397
1938	16.98843	1972	5.62265	2006	1.17858
1939	16.98843	1973	5.21575	2007	1.13833
1940	16.98843	1974	4.65436	2008	1.09819
1941	15.54497	1975	4.33220	2009	1.10020
1942	14.24180	1976	4.10774	2010	1.08745
1943	13.66885	1977	3.86101	2011	1.05042
1944	13.43718	1978	3.54453	2012	1.02819
1945	13.14022	1979	3.16274	2013	1.01838
1946	11.43452	1980	2.80469	2014	1.00171
1947	10.34078	1981	2.54645	2015	1.00000

*Multipliers are based on the latest year when the penalty level was established (originally enacted by Congress) or last adjusted by statute or regulation (other than pursuant to the Inflation Adjustment Act before November 2, 2015).

** For penalties established or last adjusted prior to 1914, the multiplier for 1914 is used.

ATTACHMENT B

Section 1.80 Maximum Forfeiture Penalties and “Catchup” Penalties

U.S. Code Citation	Maximum Forfeiture Penalty on November 2, 2015	Maximum Forfeiture “Catchup” Penalty
47 U.S.C. 202(c)	\$9,600 \$530/day	\$11,362 \$568/day
47 U.S.C. 203(e)	\$9,600 \$530/day	\$11,362 \$568/day
47 U.S.C. 205(b)	\$23,200	\$22,723
47 U.S.C. 214(d)	\$1,320	\$2,272
47 U.S.C. 219(b)	\$1,320	\$2,272
47 U.S.C. 220(d)	\$9,600/day	\$11,362
47 U.S.C. 223(b)	\$80,000	\$117,742
47 U.S.C. 227(e)	\$10,000/violation \$30,000/day for each day of continuing violation up to \$1,025,000 for any single act or failure to act	\$10,874/violation \$32,622/day for each day of continuing violation up to \$1,087,450 for any single act or failure to act
47 U.S.C. 364(a)	\$7,500	\$9,468
47 U.S.C. 364(b)	\$1,100	\$1,894
47 U.S.C. 386(a)	\$7,500	\$9,468
47 U.S.C. 386(b)	\$1,100	\$1,894
47 U.S.C. 503(b)(2)(A)	\$37,500/violation or each day of a continuing violation up to \$400,000 for any single act or failure to act	\$47,340/violation or each day of a continuing violation up to \$473,402 for any single act or failure to act
47 U.S.C. 503(b)(2)(B)	\$160,000/violation or each day of a continuing violation up to \$1,575,000 for any single act or failure to act	\$189,361/violation or each day of a continuing violation up to \$1,893,610 for any single act or failure to act
47 U.S.C. 503(b)(2)(C)	\$350,000/violation or each day of a continuing violation up to \$3,300,000 for any single act or failure to act	\$383,038/violation or each day of a continuing violation up to \$3,535,740 for any single act or failure to act
47 U.S.C. 503(b)(2)(D)	\$16,000/violation or each day of a continuing violation up to \$122,500 for any single act or failure to act	\$18,936/violation or each day of a continuing violation up to \$142,021 for any single act or failure to act
47 U.S.C. 503(b)(2)(F)	\$105,000/violation or each day of a continuing violation up to \$1,050,000 for any single act or failure to act	\$108,745/violation or each day of a continuing violation up to \$1,087,450 for any single act or failure to act
47 U.S.C. 507(a)	\$750	\$1,875
47 U.S.C. 507(b)	\$110	\$275
47 U.S.C. 554	\$650/day	\$839

ATTACHMENT C

The following illustrates the inflation adjustment calculation and maximum forfeiture penalty for violations of Section 205 of the Act.²⁴ As the calculation below shows, the maximum penalty for these violations will increase from \$12,000 to \$22,723 when adjusted for inflation.

Step 1: Determine the year and amount that the maximum penalty level or the range of minimum and maximum penalties was established or last adjusted by statute or regulation (excluding any previous adjustments made under the Inflation Adjustment Act). Then, identify the corresponding multiplier from Table A, Colum B.

Because the penalty for Section 205 was last established or adjusted in 1989, the applicable multiplier from Table A is 1.89361.

a. Year: 1989 b. Multiplier: 1.89361 c. Penalty Level or Range: \$12,000

Step 2: Use the applicable multiplier (b.) to multiply the penalty level or range (c.) and achieve the penalty level or range adjusted for inflation (d.). Round to the nearest dollar.

d. $1.89361 \times \$12,000 = \$22,723$ (rounded to the nearest dollar)

Step 3: Identify the penalty level(s) in effect on November 2, 2015, including Inflation Adjustment Act increases.

e. November 2, 2015, Penalty Level Range: \$23,200

Step 4: Multiply the November 2, 2015 level(s) (e.) by 2.5 to achieve a 150 percent increase (f.). Round to the nearest dollar.

f. $\$23,200 \times 2.5 = \$58,000$ (rounded to the nearest dollar)

²⁴ Section 205(b) establishes the civil monetary penalty that common carriers – or their officers, representatives, agents, receivers (or agents of receivers), trustees (or agents of trustees), lessees (or agents of lessees) – must pay for violations of orders the Commission issues under Section 205(a) with respect to just and reasonable charges, classifications, regulations, and practices. See 47 U.S.C. § 205.

Step 5: Compare the amounts of (d.) and (f.). If the maximum penalty level or range in (d.) is larger than the maximum penalty level or range in (f.), the 150 percent limit applies, and the penalty level or range in (f.) should be selected.

The new "Catchup" Penalty is \$22,723 (the lesser of \$22,723 or \$58,000)