

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: December 29, 2020

Released: December 29, 2020

By the Deputy Chief, Enforcement Bureau:

I. INTRODUCTION

1. This Order amends section 1.80(b) of the Commission’s rules¹ to adjust the forfeiture penalties for inflation, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act).² That Act requires agencies, starting in 2017, to adjust annually the civil monetary penalties covered thereunder, and to publish each such annual adjustment by January 15.³ The 2015 Inflation Adjustment Act provides that the new penalty levels shall apply to penalties assessed after the effective date of the increase, “including [penalties] whose associated violation predated such increase[.]”⁴

II. DISCUSSION

2. The Bipartisan Budget Act of 2015 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. That statute requires annual inflation adjustments for “any penalty, fine, or other sanction that . . . is for a specific monetary amount as provided by Federal law . . . or . . . has a maximum amount provided for by Federal law; and . . . is assessed or enforced by any agency pursuant to Federal law; and . . . is assessed or enforced pursuant to an administrative proceeding or a civil action in the Federal courts[.]”⁵ This adjustment thus applies only to penalties with a dollar amount.⁶ The adjustments are calculated pursuant to Office of Management and Budget (OMB) guidance.⁷

¹ 47 CFR § 1.80(b).

² Pub. L. No. 114-74, § 701, 129 Stat. 584, 599 (2015) (2015 Inflation Adjustment Act). The 2015 Inflation Adjustment Act amended the Federal Civil Penalties Inflation Adjustment Act of 1990, which is codified, as amended, at 28 U.S.C. § 2461 note (1990 Inflation Adjustment Act).

³ 1990 Inflation Adjustment Act § 4(a). See also Memorandum for the Heads of Executive Departments and Agencies, Implementation of Penalty Inflation Adjustments for 2021, Pursuant to the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, M-21-10 (Dec. 23, 2020) (OMB Dec. 2020 Guidance).

⁴ 1990 Inflation Adjustment Act § 6. See also OMB Dec. 2020 Guidance at 4.

⁵ 1990 Inflation Adjustment Act § 3(2), quoted in OMB Dec. 2020 Guidance at 2.

⁶ See OMB Dec. 2020 Guidance at 3.

⁷ 1990 Inflation Adjustment Act § 7.

3. On December 23, 2020, the Director of OMB issued guidance on the implementation of the annual adjustment rate for 2021 pursuant to the 2015 Inflation Adjustment Act,⁸ and this Order follows that guidance. OMB instructs that, in order to complete the annual adjustment for 2021, the Commission must first identify the applicable civil monetary penalties.⁹ Then the Commission must apply the OMB-supplied 2021 adjustment multiplier, which is 1.01182, to the most recently established or adjusted penalty amount.¹⁰ Then the Commission must round each penalty amount to the nearest dollar.¹¹

4. For 2021, the adjusted penalty or penalty range for each applicable penalty is calculated by multiplying the most recent penalty amount by the 2021 annual adjustment (1.01182), then rounding the result to the nearest dollar.¹² The adjustments in civil monetary penalties that we adopt in this Order apply only to such penalties assessed on and after January 15, 2021.

5. The Bureau notes that, although our annual inflation adjustment orders have specifically amended “section 1.80(b) of the Commission’s rules . . . to adjust the forfeiture penalties for inflation, in accordance with the Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 (2015 Inflation Adjustment Act),”¹³ we did not list all of the relevant rules in the Appendix to those orders. In addition, section 1.80(b) was recently amended to include new civil monetary penalties adopted since the prior inflation adjustment order.¹⁴ Therefore, we now include amendments to section 1.80(b)(1)-(8) of the Commission’s rules,¹⁵ and the penalties in paragraph (b)(6) associated with the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act).¹⁶ The penalties stated in these provisions reflect all appropriate inflation adjustments under the 2015 Inflation Adjustment Act, including the initial “catch up” adjustment where appropriate.¹⁷

III. PROCEDURAL MATTERS

6. The Enforcement Bureau is responsible for, among other things, rulemaking proceedings regarding general enforcement policies and procedures.¹⁸ 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.”¹⁹ In the 2015 Inflation Adjustment Act, Congress has mandated the periodic adjustment of the Commission’s civil monetary penalties to reflect inflation and specified the formula for calculating such adjustment, and the Commission has no discretion to set alternative levels of adjusted civil monetary penalties. Moreover,

⁸ See generally OMB Dec. 2020 Guidance.

⁹ OMB Dec. 2020 Guidance at 2.

¹⁰ *Id.* at 3. The adjustment is “based on the percent change between each published October’s CPI-U. In this case, October 2020 CPI-U (260.388) / October 2019 CPI-U (257.346) = 1.01182.” *Id.* at 1, n.4.

¹¹ OMB Dec. 2020 Guidance at 3.

¹² *Id.*

¹³ See, e.g., *Amendment of Section 1.80(b) of the Commission’s Rules, Adjustment of Civil Monetary Penalties to Reflect Inflation*, Order, 34 FCC Rcd 12824 (EB 2019).

¹⁴ *Amendment of Section 1.80 of the Commission’s Rules, Implementing Section 2 of the Preventing Illegal Radio Abuse Through Enforcement Act (PIRATE Act)*, Order, DA 20-1490 (EB & OMD Dec. 17, 2020) (*PIRATE Act Order*).

¹⁵ 47 CFR § 1.80(b)(1)-(8).

¹⁶ Preventing Illegal Radio Abuse Through Enforcement Act, Pub. L. No. 116-109, 134 Stat. 3 (2020) (codified at 47 U.S.C. § 511) (*PIRATE Act*).

¹⁷ 1990 Inflation Adjustment Act §§ 4(b)(1), 5(b)(2). See also *PIRATE Act Order*, DA 20-1490 at para. 3 n. 12.

¹⁸ See 47 CFR § 0.111(a)(22).

¹⁹ 47 CFR § 0.311(a)(1).

that Act expressly provided that the annual adjustments shall be made “notwithstanding” the notice and comment rulemaking procedures that might otherwise apply under section 553 of the Administrative Procedure Act.²⁰ Therefore, 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. In addition, because a notice of proposed rulemaking is not required for these rule changes, no regulatory flexibility analysis is required.²¹

7. We have analyzed the actions taken herein with respect to the Paperwork Reduction Act of 1995 (PRA),²² and we find them to impose no new or modified information collection(s) subject to the PRA. In addition, pursuant to the Small Business Paperwork Relief Act of 2002,²³ our actions do not impose any new or modified “information collection burden for small business concerns with fewer than 25 employees.”²⁴

8. The Commission has determined, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, concurs, that this rule is “non-major” under the Congressional Review Act, 5 U.S.C. § 804(2). The Commission will send a copy of this Order to Congress and the Government Accountability Office pursuant to 5 U.S.C. § 801(a)(1)(A).

IV. ORDERING CLAUSES

9. Accordingly, pursuant to the Bipartisan Budget Act of 2015, 28 U.S.C. § 2461 note, and sections 0.111(a)(22) and 0.311 of the Commission’s rules, 47 CFR §§ 0.111(a)(22), 0.311, **IT IS ORDERED** that this Order **IS ADOPTED**.

10. **IT IS FURTHER ORDERED** that section 1.80(b) of the Commission’s rules, 47 CFR § 1.80(b), is **AMENDED** as set forth in the Appendix.

11. **IT IS FURTHER ORDERED** that this Order and the foregoing amendments to the Commission’s rules **SHALL BE EFFECTIVE** upon publication in the Federal Register.

12. **IT IS FURTHER ORDERED** that the Office of the Managing Director, Performance Evaluation and Records Management, **SHALL SEND** a copy of this Order in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Lisa S. Gelb
Deputy Chief
Enforcement Bureau

²⁰ 2015 Inflation Adjustment Act § 4(b)(2). *See also* OMB Dec. 2020 Guidance at 3.

²¹ 5 U.S.C. § 604(a).

²² 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).

²³ 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).

²⁴ *See* 44 U.S.C. § 3506(c)(4).

APPENDIX

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

PART 1---PRACTICE AND PROCEDURE

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

Authority: 47 U.S.C. chs. 2, 5, 9, 13; 28 U.S.C. 2461 note, unless otherwise noted.

2. Amend § 1.80 by revising paragraphs (b)(1)-(8), the table in section III of the note to paragraph (b)(8), and paragraph (b)(10)(ii) to read as follows:

§1.80 Forfeiture proceedings.

* * * * *

(b) * * *

(1) If the violator is a broadcast station licensee or permittee, a cable television operator, or an applicant for any broadcast or cable television operator license, permit, certificate, or other instrument of authorization issued by the Commission, except as otherwise noted in this paragraph, the forfeiture penalty under this section shall not exceed \$51,827 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$518,283 for any single act or failure to act described in paragraph (a) of this section. There is no limit on forfeiture assessments for EEO violations by cable operators that occur after notification by the Commission of a potential violation. See section 634(f)(2) of the Communications Act. Notwithstanding the foregoing in this section, if the violator is a broadcast station licensee or permittee or an applicant for any broadcast license, permit, certificate, or other instrument of authorization issued by the Commission, and if the violator is determined by the Commission to have broadcast obscene, indecent, or profane material, the forfeiture penalty under this section shall not exceed \$419,353 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$3,870,946 for any single act or failure to act described in paragraph (a) of this section.

(2) If the violator is a common carrier subject to the provisions of the Communications Act or an applicant for any common carrier license, permit, certificate, or other instrument of authorization issued by the Commission, the amount of any forfeiture penalty determined under this section shall not exceed \$207,314 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$2,073,133 for any single act or failure to act described in paragraph (a) of this section.

(3) If the violator is a manufacturer or service provider subject to the requirements of section 255, 716, or 718 of the Communications Act, and is determined by the Commission to have violated any such requirement, the manufacturer or service provider shall be liable to the United States for a forfeiture penalty of not more than \$119,055 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$1,190,546 for any single act or failure to act.

(4) Any person determined to have violated section 227(e) of the Communications Act or the rules issued by the Commission under section 227(e) of the Communications Act shall be liable to the United States for a forfeiture penalty of not more than \$11,905 for each violation or three times that amount for each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a

total of \$1,190,546 for any single act or failure to act. Such penalty shall be in addition to any other forfeiture penalty provided for by the Communications Act.

(5) Any person determined to have violated section 227(b)(4)(B) of the Communications Act or the rules issued by the Commission under section 227(b)(4)(B) of the Communications Act shall be liable to the United States for a forfeiture penalty determined in accordance with paragraphs(A)-(F) of section 503(b)(2) plus an additional penalty not to exceed \$10,118.

(6) If a violator who is granted access to the Do-Not-Call registry of public safety answering points discloses or disseminates any registered telephone number without authorization, in violation of section 6507(b)(4) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules, the monetary penalty for such unauthorized disclosure or dissemination of a telephone number from the registry shall be not less than \$111,493 per incident nor more than \$1,114,929 per incident depending upon whether the conduct leading to the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(7) If a violator uses automatic dialing equipment to contact a telephone number on the Do-Not-Call registry of public safety answering points, in violation of section 6507(b)(5) of the Middle Class Tax Relief and Job Creation Act of 2012 or the Commission's implementing rules, the monetary penalty for contacting such a telephone number shall be not less than \$11,149 per call nor more than \$111,493 per call depending on whether the violation was negligent, grossly negligent, reckless, or willful, and depending on whether the violation was a first or subsequent offense.

(8) In any case not covered in paragraphs (b)(1) through (b)(7) of this section, the amount of any forfeiture penalty determined under this section shall not exceed \$20,731 for each violation or each day of a continuing violation, except that the amount assessed for any continuing violation shall not exceed a total of \$155,485 for any single act or failure to act described in paragraph (a) of this section.

(9) * * *

Note to paragraph (b)(9):

* * * * *

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

* * * * *

Violation	Statutory Amount After 2021 Annual Inflation Adjustment
Sec. 202(c) Common Carrier Discrimination	\$12,439, \$622/day
Sec. 203(e) Common Carrier Tariffs	\$12,439, \$622/day
Sec. 205(b) Common Carrier Prescriptions	\$24,877
Sec. 214(d) Common Carrier Line Extensions	\$2,487/day
Sec. 219(b) Common Carrier Reports	\$2,487/day
Sec. 220(d) Common Carrier Records & Accounts	\$12,439/day

Sec. 223(b) Dial-a-Porn	\$128,904/day
Sec. 227(e) Caller Identification	\$11,905/violation
	\$35,715/day for each day of continuing violation, up to \$1,190,546 for any single act or failure to act
Sec. 364(a) Forfeitures (Ships)	\$10,366/day (owner)
Sec. 364(b) Forfeitures (Ships)	\$2,074 (vessel master)
Sec. 386(a) Forfeitures (Ships)	\$10,366/day (owner)
Sec. 386(b) Forfeitures (Ships)	\$2,074 (vessel master)
Sec. 511 Pirate Radio Broadcasting	\$2,023,640, \$101,182/day
Sec. 634 Cable EEO	\$919/day

(10) * * *

(i) * * *

(ii) The application of the annual inflation adjustment required by the foregoing Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015 results in the following adjusted statutory maximum forfeitures authorized by the Communications Act:

Table 1 to Paragraph (b)(10)(ii)

U.S. Code citation	Maximum Penalty after 2021 Annual Inflation Adjustment
47 U.S.C. 202(c)	\$12,439
	\$622
47 U.S.C. 203(e)	\$12,439
	\$622
47 U.S.C. 205(b)	\$24,877
47 U.S.C. 214(d)	\$2,487
47 U.S.C. 219(b)	\$2,487
47 U.S.C. 220(d)	\$12,439
47 U.S.C. 223(b)	\$128,904
47 U.S.C. 227(e)	\$11,905
	\$35,715
	\$1,190,546
47 U.S.C. 362(a)	\$10,366
47 U.S.C. 362(b)	\$2,074
47 U.S.C. 386(a)	\$10,366
47 U.S.C. 386(b)	\$2,074
47 U.S.C. 503(b)(2)(A)	\$51,827

	\$518,283
47 U.S.C. 503(b)(2)(B)	\$207,314
	\$2,073,133
47 U.S.C. 503(b)(2)(C)	\$419,353
	\$3,870,946
47 U.S.C. 503(b)(2)(D)	\$20,731
	\$155,485
47 U.S.C. 503(b)(2)(F)	\$119,055
	\$1,190,546
47 U.S.C. 507(a)	\$2,053
47 U.S.C. 507(b)	\$301
47 U.S.C. 511	\$2,023,640
	\$101,182
47 U.S.C. 554	\$919

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