

Dated: October 15, 1996.

Sue E. Eckert,

Assistant Secretary for Export Administration.

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FEDERAL TRADE COMMISSION

16 CFR Parts 1, 305, 306, 460

Debt Collection Improvement Act of 1996

AGENCY: Federal Trade Commission (FTC).

ACTION: Final rule.

SUMMARY: This rule implements the Debt Collection Improvement Act of 1996 by making inflation adjustments in the dollar amounts prescribed for each type of violation established by the statutory civil penalty provisions within the FTC's jurisdiction.

EFFECTIVE DATE: November 20, 1996.

FOR FURTHER INFORMATION CONTACT: Alex Tang, Attorney, (202) 326-2447, Office of General Counsel, FTC, Sixth Street & Pennsylvania Avenue, N.W., Washington, D.C. 20580.

SUPPLEMENTARY INFORMATION: This regulation implements the Debt Collection Improvement Act (DCIA) of 1996, Pub. L. 104-134, section 31001(s) (Apr. 26, 1996) (amending the Federal Civil Penalties Inflation Adjustment Act (FCPIAA) of 1990, 28 U.S.C. 2461 note). The DCIA requires that the Commission publish regulations, no later than 180 days after the enactment of the statute and at least once every four years thereafter, making inflation adjustments in the dollar amount of "each civil monetary penalty provided by law within the [agency's] jurisdiction * * *." Pub. L. 104-134 at section 31001(s)(1)(A) (amending FCPIAA section 4). See also FCPIAA section 3(2) (defining "civil monetary penalty" as any "penalty, fine, or other sanction" for a "specific monetary amount" or "maximum" amount that is "assessed or enforced" by the agency in an "administrative proceeding" or through a "civil action" in federal court).

The DCIA requires that the adjustments be determined in accordance with section 5 of the FCPIAA, as amended. Section 5 provides that each civil penalty amount prescribed by statute is to be adjusted by a cost-of-living increase equal to the percentage, if any, by which the U.S. Department of Labor's Consumer Price Index (CPI) for June of the calendar year preceding the adjustment exceeds the June CPI for the calendar year in which

the civil penalty amount was "last set or adjusted pursuant to law." FCPIAA section 5 (b). These calculations are based on the comprehensive CPI for all urban consumers (1913 to present, base year 1967). FCPIAA section 3(3) (defining CPI). The increase is then mathematically rounded, pursuant to section 5 (a) of the FCPIAA, to arrive at the final adjusted figure, which may not exceed 10% of the current statutory civil penalty amount in the case of the initial adjustment. Pub. L. 104-134 at section 31001(s)(2) (limitation on initial adjustment).

Due to inflation since the civil penalty amounts in the Commission's statutes were "last set or adjusted pursuant to law," the increase will, in every case, be the maximum 10% initially permitted under the DCIA. *Id.* The increases to civil penalty amounts specified in the FTC Act will also apply with respect to civil penalties authorized pursuant to the FTC Act under other laws that the Commission is responsible for administering or enforcing. See, e.g., Wool Products Labeling Act sections 6(a), 8, et al., 15 U.S.C. 68d(a), 68f, et al.; Textile Fiber Products Identification Act sections 6, 7, et al., 15 U.S.C. 70d, 70e, et al.; Fair Credit Reporting Act (Consumer Credit Protection Act section 621), 15 U.S.C. 1681s; Equal Credit Opportunity Act (Consumer Credit Protection Act section 704(c)), 15 U.S.C. 1691c(c); Petroleum Marketing Practices Act section 203(e), 15 U.S.C. 2823(e); Telephone Disclosure and Dispute Resolution Act section 201(c), 15 U.S.C. 5711(c); Telemarketing and Consumer Fraud and Abuse Prevention Act section 6(b), 15 U.S.C. 6105(b); etc.

This regulation is being added to Part 1 of the Commission's existing Rules of Practice in a new Subpart L, entitled "Civil Penalty Adjustments Under the Debt Collection Improvement Act of 1996." Conforming amendments are also being made to 16 CFR 1.97 and 305.4 (Appliance Labeling penalty proceedings and Rule, respectively), to 16 CFR 306.1 (Fuel Rating Rule), and to 16 CFR 460.1 (R-Value Rule). The adjustments set forth in this regulation are effective 30 days after publication, as noted earlier, and will apply only to violations occurring after the effective date. See Pub. L. 104-134 at section 31001(s)(1)(C) (adding FCPIAA section 7).

The Commission has no discretion in determining the amounts of the published adjustments. Accordingly, the Commission finds it unnecessary to seek public comment in this matter. See 5 U.S.C. 553(b)(B) (exemption from notice-and-comment rulemaking procedures under the Administrative

Procedure Act). For that reason, the requirements of the Regulatory Flexibility Act also do not apply. See 5 U.S.C. 603 & 604 (requiring initial and final analyses only where notice-and-comment is required by 5 U.S.C. 553, *supra*). In promulgating this regulation, the Commission has consulted the Department of Justice (DOJ) with respect to those FTC civil penalty statutes concurrently administered or enforced by DOJ.

List of Subjects

16 CFR Part 1

Administrative practice and procedure, Penalties, Trade practices.

16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Penalties, Reporting and recordkeeping requirements.

16 CFR Part 306

Gasoline, Labeling, Penalties, Reporting and recordkeeping requirements, Track practices.

16 CFR Part 460

Advertising, Insulation, Labeling, Reporting and recordkeeping requirements, Trade practices.

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

SUBCHAPTER A—ORGANIZATION, PROCEDURES AND RULES OF PRACTICE

PART 1—GENERAL PROCEDURES

1. The authority for Part 1 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46), unless otherwise noted.

2. Section 1.97 is amended by revising the first sentence of the introductory text to read as follows:

§ 1.97 Amount of penalty.

All penalties assessed under this subchapter shall be in the amount per violation as described in section 333(a) of the Energy Policy and Conservation Act, 42 U.S.C. 6303(a), adjusted for inflation pursuant to § 1.98, unless the Commission otherwise directs.* * *

* * * * *

3. Part 1 is amended by adding a new Subpart L consisting of § 1.98 to read as follows:

Subpart L—Civil Penalty Adjustments Under the Debt Collection Improvement Act of 1996

Sec.

1.98 Adjustment of civil monetary penalty amounts.

Authority: Pub. L. 101-410 (28 U.S.C. 2461 note), as amended by sec. 31001(s), Pub. L. 104-134 (Apr. 26, 1996), 110 Stat. 3009 *et seq.*

Subpart L—Civil Penalty Adjustments Under the Debt Collection Improvement Act of 1996**§ 1.98 Adjustment of civil monetary penalty amounts.**

Effective November 20, 1996, dollar amounts specified in civil monetary penalty provisions within the Commission's jurisdiction are adjusted for inflation in accordance with paragraphs (a) through (l) of this section. The adjustments set forth in this section apply to violations occurring after November 20, 1996. The adjustments are as follows:

(a) Clayton Act section 7A(g)(1), 15 U.S.C. 18a(g)(1), adjusted from \$10,000 to \$11,000 per violation;

(b) Clayton Act section 11(j), 15 U.S.C. 21(j), adjusted from \$5,000 to \$5,500 per violation;

(c) FTC Act section 5(l), 15 U.S.C. 45(l), adjusted from \$10,000 to \$11,000 per violation;

(d) FTC Act section 5(m)(1)(A), 15 U.S.C. 45(m)(1)(A), adjusted from \$10,000 to \$11,000 per violation;

(e) FTC Act section 5(m)(1)(B), 15 U.S.C. 45(m)(1)(B), adjusted from \$10,000 to \$11,000 per violation;

(f) FTC Act section 10, 15 U.S.C. 50, adjusted from \$100 to \$110 per violation;

(g) Webb-Pomerene (Export Trade) Act section 5, 15 U.S.C. 65, adjusted from \$100 to \$110 per violation;

(h) Wool Products Labeling Act section 6(b), 15 U.S.C. 68d(b), adjusted from \$100 to \$110 per violation;

(i) Fur Products Labeling Act section 3(e), 15 U.S.C. 69a(e), adjusted from \$100 to \$110 per violation;

(j) Fur Products Labeling Act section 8(d)(2), 15 U.S.C. 69f(d)(2), adjusted from \$100 to \$110 per violation;

(k) Energy Policy and Conservation Act section 333(a), 42 U.S.C. 6303(a), adjusted from \$100 to \$110 per violation; and

(l) Civil monetary penalties authorized by reference to the Federal Trade Commission Act under any other provision of law within the jurisdiction of the Commission, adjusted in accordance with paragraphs (c), (d), (e) and (f) of this section, as applicable.

SUBCHAPTER C—REGULATIONS UNDER SPECIFIC ACTS OF CONGRESS**PART 305—RULE CONCERNING DISCLOSURES REGARDING ENERGY CONSUMPTION AND WATER USE OF CERTAIN HOME APPLIANCES AND OTHER PRODUCTS REQUIRED UNDER THE ENERGY POLICY AND CONSERVATION ACT ("APPLIANCE LABELING RULE")**

4. The authority for Part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

5. Section 305.4 is amended by revising the introductory text of paragraph (a) and the introductory text of paragraph (b) to read as follows:

§ 305.4 Prohibited acts.

(a) It shall be unlawful and subject to the enforcement penalties of section 333 of the Act, as adjusted for inflation pursuant to § 1.98 of this chapter, for each unit of any new covered product to which the part applies:

* * * * *

(b) It shall be unlawful and subject to the enforcement penalties of section 333 of the Act, as adjusted for inflation pursuant to § 1.98 of this chapter, for any manufacturer or private labeler knowingly to:

* * * * *

PART 306—AUTOMOTIVE FUEL RATINGS, CERTIFICATION AND POSTING

6. The authority for Part 306 continues to read as follows:

Authority: 15 U.S.C. 2801 *et seq.*

7. Section 306.1 is amended by revising the last sentence to read as follows:

§ 306.1 What this rule does.

* * * You can be fined up to \$10,000 (plus an adjustment for inflation, under § 1.98 of this chapter each time you break a rule.

SUBCHAPTER D—TRADE REGULATION RULES**PART 460—LABELING AND ADVERTISING OF HOME INSULATION**

8. The authority for Part 460 is revised to read as follows:

Authority: 38 Stat. 717, as amended (15 U.S.C. 41 *et seq.*).

9. Section 460.1 is amended by revising the last sentence to read as follows:

§ 460.1 What this regulation does.

* * * You can be fined heavily (up to \$10,000 plus an adjustment for

inflation, under § 1.98 of this chapter each time you break a rule.

By direction of the Commission.

Donald S. Clark,

Secretary.

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CONSUMER PRODUCT SAFETY COMMISSION**16 CFR Part 1500****Hazardous Substances and Articles: Administration and Enforcement Regulations**

AGENCY: Consumer Product Safety Commission.

ACTION: Revocation of statement of policy.

SUMMARY: The Commission revokes the statement of policy under the Federal Hazardous Substances Act that sets forth examples of a hazard warning label acceptable for containers of ethylene glycol-base radiator antifreeze. The examples contain first aid instructions—to induce vomiting—that are no longer appropriate.

DATES: The revocation is effective October 21, 1996. It applies to products introduced into commerce on or after October 21, 1996.

FOR FURTHER INFORMATION CONTACT: Mary Toro, Division of Regulatory Management, Consumer Product Safety Commission, Washington, D.C. 20207; telephone (301) 504-0400 ext. 1378.

SUPPLEMENTARY INFORMATION:**A. Background**

Radiator antifreeze containing ethylene glycol is a hazardous substance which must be labeled in accordance with the requirements of the Federal Hazardous Substances Act ("FHSA"). Before the Consumer Product Safety Commission ("the Commission") existed, the Food and Drug Administration ("FDA") was responsible for implementing the FHSA. When Congress established the Commission it transferred to the Commission the authority to administer the FHSA. 15 U.S.C. 2079(a). In 1967, the FDA issued a policy statement describing two labels for ethylene glycol-base radiator antifreeze that would meet the labeling requirements of the FHSA. 16 CFR 1500.132. The suggested labeling provides:

WARNING—HARMFUL OR FATAL IF SWALLOWED

Do not drink antifreeze or solution. If swallowed, induce vomiting immediately.