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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2023–21]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: As required by the Federal Civil Penalties Inflation Adjustment Act of 1990, the Federal Election Commission is adjusting for inflation the civil monetary penalties established under the Federal Election Campaign Act, the Presidential Election Campaign Fund Act, and the Presidential Primary Matching Payment Account Act. The civil monetary penalties being adjusted are those negotiated by the Commission or imposed by a court for certain statutory violations, and those imposed by the Commission for late filing of or failure to file certain reports required by the Federal Election Campaign Act. The adjusted civil monetary penalties are calculated according to a statutory formula and the adjusted amounts will apply to penalties assessed after the effective date of these rules.

DATES: This final rule is effective January 5, 2024.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, Mr. Joseph P. Wenzinger, Attorney, or Ms. Terrell D. Stansbury, Paralegal, Office of General Counsel, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990 (the “Inflation Adjustment Act”),¹ as amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act of

2015 (the “2015 Act”),² requires federal agencies, including the Commission, to adjust for inflation the civil monetary penalties within their jurisdiction according to prescribed formulas. A civil monetary penalty is “any penalty, fine, or other sanction” that (1) “is for a specific monetary amount” or “has a maximum amount” under federal law; and (2) that a Federal agency assesses or enforces “pursuant to an administrative proceeding or a civil action” in Federal court.³ Under the Federal Election Campaign Act, 52 U.S.C. 30101–45 (“FECA”), the Commission may seek and assess civil monetary penalties for violations of FECA, the Presidential Election Campaign Fund Act, 26 U.S.C. 9001–13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031–42.

The Inflation Adjustment Act requires federal agencies to adjust their civil penalties annually, and the adjustments must take effect no later than January 15 of every year.⁴ Pursuant to guidance issued by the Office of Management and Budget,⁵ the Commission is now adjusting its civil monetary penalties for 2024.⁶

The Commission must adjust for inflation its civil monetary penalties “notwithstanding Section 553” of the Administrative Procedures Act (“APA”).⁷ Thus, the APA’s notice-and-comment and delayed effective date requirements in 5 U.S.C. 553(b)–(d) do not apply because Congress has specifically exempted agencies from these requirements.⁸

Furthermore, because the inflation adjustments made through these final rules are required by Congress and involve no Commission discretion or policy judgments, these rules do not

need to be submitted to the Speaker of the United States House of Representatives or the President of the United States Senate under the Congressional Review Act, 5 U.S.C. 801 *et seq.* Moreover, because the APA’s notice-and-comment procedures do not apply to these final rules, the Commission is not required to conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for congressional review under FECA. *See* 5 U.S.C. 30111(d)(1), (4) (providing for congressional review when Commission “prescribe[s]” a “rule of law”).

The new penalty amounts will apply to civil monetary penalties that are assessed after the date the increase takes effect, even if the associated violation predated the increase.⁹

Explanation and Justification

The Inflation Adjustment Act requires the Commission to annually adjust its civil monetary penalties for inflation by applying a cost-of-living-adjustment (“COLA”) ratio.¹⁰ The COLA ratio is the percentage that the Consumer Price Index (“CPI”) ¹¹ “for the month of October preceding the date of the adjustment” exceeds the CPI for October of the previous year.¹² To calculate the adjusted penalty, the Commission must increase the most recent civil monetary penalty amount by the COLA ratio.¹³ According to the Office of Management and Budget, the COLA ratio for 2024 is 0.03241, or 3.241%; thus, to calculate the new penalties, the Commission must multiply the most recent civil monetary penalties in force by 1.03241.¹⁴

The Commission assesses two types of civil monetary penalties that must be adjusted for inflation. First are penalties that are either negotiated by the Commission or imposed by a court for violations of FECA, the Presidential Election Campaign Fund Act, or the Presidential Primary Matching Payment Account Act. These civil monetary

² Public Law 114–74, sec. 701, 129 Stat. 584, 599.

³ Inflation Adjustment Act sec. 3(2).

⁴ Inflation Adjustment Act sec. 4(a).

⁵ *See* Inflation Adjustment Act sec. 7(a) (requiring OMB to “issue guidance to agencies on implementing the inflation adjustments required under this Act”); *see also* Memorandum from Shalanda D. Young, Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, *M–24–07, Dec. 19, 2023, M–24–07–Implementation-of-Penalty-Inflation-Adjustments-for-2024.pdf* (whitehouse.gov) (“OMB Memorandum”).

⁶ Inflation Adjustment Act sec. 5.

⁷ Inflation Adjustment Act sec. 4(b)(2).

⁸ *See, e.g., Asiana Airlines v. FAA*, 134 F.3d 393, 396–99 (D.C. Cir. 1998) (finding APA “notice and comment” requirement not applicable where Congress clearly expressed intent to depart from normal APA procedures).

⁹ Inflation Adjustment Act sec. 6.

¹⁰ The COLA ratio must be applied to the most recent civil monetary penalties. Inflation Adjustment Act, sec. 4(a); *see also* OMB Memorandum at 2.

¹¹ The Inflation Adjustment Act, sec. 3, uses the CPI “for all-urban consumers published by the Department of Labor.”

¹² Inflation Adjustment Act, sec. 5(b)(1).

¹³ Inflation Adjustment Act, sec. 5(a), (b)(1).

¹⁴ OMB Memorandum at 1.

¹ Public Law 101–410, 104 Stat. 890 (codified at 28 U.S.C. 2461 note), *amended by* Debt Collection Improvement Act of 1996, Public Law 104–134, sec. 31001(s)(1), 110 Stat. 1321, 1321–373; Federal Reports Elimination Act of 1998, Public Law 105–362, sec. 1301, 112 Stat. 3280.

penalties are set forth at 11 CFR 111.24. Second are the civil monetary penalties assessed through the Commission's Administrative Fines Program for late filing or non-filing of certain reports required by FECA. *See* 52 U.S.C. 30109(a)(4)(C) (authorizing Administrative Fines Program), 30104(a) (requiring political committee treasurers to report receipts and disbursements

within certain time periods). The penalty schedules for these civil monetary penalties are set out at 11 CFR 111.43 and 111.44.

1. 11 CFR 111.24—Civil Penalties

FECA establishes the civil monetary penalties for violations of FECA and the other statutes within the Commission's jurisdiction. *See* 52 U.S.C. 30109(a)(5), (6), (12). Commission regulations in 11

CFR 111.24 provide the current inflation-adjusted amount for each such civil monetary penalty. To calculate the adjusted civil monetary penalty, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar.

The actual adjustment to each civil monetary penalty is shown in the chart below.

Section	Most recent civil penalty	COLA	New civil penalty
11 CFR 111.24(a)(1)	\$23,494	1.03241	24,255
11 CFR 111.24(a)(2)(i)	50,120	1.03241	51,744
11 CFR 111.24(a)(2)(ii)	82,188	1.03241	84,852
11 CFR 111.24(b)	7,028	1.03241	7,256
11 CFR 111.24(b)	17,570	1.03241	18,139

2. 11 CFR 111.43, 111.44—Administrative Fines

FECA authorizes the Commission to assess civil monetary penalties for violations of the reporting requirements of 52 U.S.C. 30104(a) according to the penalty schedules “established and published by the Commission.” 52 U.S.C. 30109(a)(4)(C)(i). The Commission has established two penalty schedules: The penalty schedule in 11 CFR 111.43(a) applies to reports that are not election sensitive, and the penalty schedule in 11 CFR 111.43(b) applies to reports that are election sensitive.¹⁵ Each penalty schedule contains two columns of penalties, one for late-filed reports and one for non-filed reports, with penalties based on the level of financial activity in the report and, if late-filed, its lateness.¹⁶ In addition, 11 CFR 111.43(c) establishes a civil monetary penalty for situations in which a committee fails to file a report and the Commission cannot calculate the relevant level of activity. Finally, 11 CFR 111.44 establishes a civil monetary penalty for failure to file timely reports of contributions received

less than 20 days, but more than 48 hours, before an election. *See* 52 U.S.C. 30104(a)(6).

To determine the adjusted civil monetary penalty amount for each level of activity, the Commission multiplies the most recent penalty amount by the COLA ratio and rounds that figure to the nearest dollar. The new civil monetary penalties are shown in the schedules in the rule text, below.

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement, Penalties.

For the reasons set out in the preamble, the Federal Election Commission amends 11 CFR part 111 as follows:

**PART 111—COMPLIANCE
PROCEDURE (52 U.S.C. 30109,
30107(a))**

■ 1. The authority citation for part 111 continues to read as follows:

Authority: 52 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 nt.

§ 111.24 [Amended]

■ 2. Section 111.24 is amended as shown the following table. For each paragraph indicated in the left column, remove the number indicated in the middle column, and add in its place the number indicated in the right column.

Paragraph	Remove	Add
(a)(1)	\$23,494	\$24,255
(a)(2)(i)	50,120	51,744
(a)(2)(ii)	82,188	84,852
(b)	7,028	7,256
(b)	17,570	18,139

■ 3. Section 111.43 is amended by revising paragraphs (a), (b), and (c) to read as follows:

§ 111.43 What are the schedules of penalties?

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in accordance with the following schedule of penalties:

TABLE 1 TO PARAGRAPH (a)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1–4,999.99 ^a	[\$42 + (\$6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$415 × [1 + (.25 × Number of previous violations)].
\$5,000–9,999.99	[\$83 + (\$6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$499 × [1 + (.25 × Number of previous violations)].
\$10,000–24,999.99	[\$178 + (\$6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$832 × [1 + (.25 × Number of previous violations)].
\$25,000–49,999.99	[\$353 + (\$33 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$1,497 × [1 + (.25 × Number of previous violations)].
\$50,000–74,999.99	[\$532 + (\$133 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$4,774 × [1 + (.25 × Number of previous violations)].

¹⁵ Election sensitive reports are certain reports due shortly before an election. *See* 11 CFR 111.43(d)(1).

¹⁶ A report is considered to be “not filed” if it is never filed or is filed more than a certain number of days after its due date. *See* 11 CFR 111.43(e).

TABLE 1 TO PARAGRAPH (a)—Continued

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$75,000–99,999.99	$[\$706 + (\$178 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$6,188 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$100,000–149,999.99 ...	$[\$1,059 + (\$221 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$7,958 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$150,000–199,999.99 ...	$[\$1,417 + (\$264 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$9,725 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$200,000–249,999.99 ...	$[\$1,767 + (\$308 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$11,493 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$250,000–349,999.99 ...	$[\$2,653 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$14,146 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$350,000–449,999.99 ...	$[\$3,537 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$15,914 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$450,000–549,999.99 ...	$[\$4,421 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$16,798 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$550,000–649,999.99 ...	$[\$5,303 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$17,683 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$650,000–749,999.99 ...	$[\$6,188 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$18,567 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$750,000–849,999.99 ...	$[\$7,072 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$19,450 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$850,000–949,999.99 ...	$[\$7,958 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$20,334 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$950,000 or over	$[\$8,842 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$21,218 \times [1 + (.25 \times \text{Number of previous violations})]$.

^a The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated in accordance with the following schedule of penalties:

TABLE 2 TO PARAGRAPH (b)

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1–\$4,999.99 ^a	$[\$83 + (\$15 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$832 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$5,000–\$9,999.99	$[\$167 + (\$15 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$997 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$10,000–24,999.99	$[\$249 + (\$15 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$1,497 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$25,000–49,999.99	$[\$532 + (\$42 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$2,328 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$50,000–74,999.99	$[\$796 + (\$133 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$5,303 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$75,000–99,999.99	$[\$1,059 + (\$178 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$7,072 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$100,000–149,999.99 ...	$[\$1,592 + (\$221 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$8,842 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$150,000–199,999.99 ...	$[\$2,123 + (\$264 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$10,609 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$200,000–249,999.99 ...	$[\$2,653 + (\$308 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$13,261 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$250,000–349,999.99 ...	$[\$3,978 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$15,914 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$350,000–449,999.99 ...	$[\$5,303 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$17,683 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$450,000–549,999.99 ...	$[\$6,631 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$19,450 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$550,000–649,999.99 ...	$[\$7,958 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$21,218 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$650,000–749,999.99 ...	$[\$9,283 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$22,988 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$750,000–849,999.99 ...	$[\$10,609 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$24,756 \times [1 + (.25 \times \text{Number of previous violations})]$.
\$850,000–949,999.99 ...	$[\$11,935 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$26,523 \times [1 + (.25 \times \text{Number of previous violations})]$.

TABLE 2 TO PARAGRAPH (b)—Continued

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$950,000 or over	$[\$13,261 + (\$353 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$.	$\$28,292 \times [1 + (.25 \times \text{Number of previous violations})]$.

^a The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be \$9,725.

* * * * *

§ 111.44 [Amended]

■ 4. Amend § 111.44 in paragraph (a)(1) by removing “\$172” and adding in its place “\$178”.

Dated: December 29, 2023.

On behalf of the Commission.

Dara S. Lindenbaum,

Chair, Federal Election Commission.

[FR Doc. 2024-00028 Filed 1-4-24; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF STATE

22 CFR Parts 35, 103, 127, and 138

[Public Notice: 12298]

RIN 1400-AF72

Department of State 2024 Civil Monetary Penalties Inflationary Adjustment

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This final rule is issued to adjust the civil monetary penalties (CMP) for regulatory provisions maintained and enforced by the Department of State. The revised CMP adjusts the amount of civil monetary penalties assessed by the Department of State based on the December 2023 guidance from the Office of Management and Budget and by recent legislation. For penalties adjusted according to the December 2023 guidance, the new amounts will apply only to those penalties assessed on or after the effective date of this rule, regardless of the date on which the underlying facts or violations occurred.

DATES: This final rule is effective on January 5, 2024.

FOR FURTHER INFORMATION CONTACT:

Alice Kottmyer, Attorney-Adviser, Office of Management, kottmyeram@state.gov. ATTN: Regulatory Change, CMP Adjustments, (202) 647-2318.

SUPPLEMENTARY INFORMATION: The Federal Civil Penalties Inflation Adjustment Act of 1990, Public Law 101-410, as amended by the Debt Collection Improvement Act of 1996, Public Law 104-134, required the head of each agency to adjust its CMPs for inflation no later than October 23, 1996 and required agencies to make adjustments at least once every four years thereafter. The Federal Civil Penalties Inflation Adjustment Act Improvements Act of 2015, Section 701 of Public Law 114-74 (the 2015 Act) further amended the 1990 Act by requiring agencies to adjust CMPs, if necessary, pursuant to a “catch-up” adjustment methodology prescribed by the 2015 Act, which mandated that the catch-up adjustment take effect no later than August 1, 2016. Additionally, the 2015 Act required agencies to make annual adjustments to their respective CMPs in accordance with guidance issued by the Office of Management and Budget (OMB).

Based on these statutes, the Department of State (the Department) published a final rule in June 2016¹ to implement the “catch-up” provisions, followed by annual updates in January of each year. The most recent update was in January 2023.²

On December 19, 2023, OMB notified agencies that the annual cost-of-living adjustment multiplier for fiscal year (FY) 2024, based on the Consumer Price Index, is 1.03241. Additional information may be found in OMB Memorandum M-24-07. This final rule amends Department CMPs for fiscal year 2024.

Overview of the Areas Affected by This Rule

See the table for specific changes. Within the Department of State (title 22,

Code of Federal Regulations), this rule affects four areas:

(1) Part 35, which implements the Program Fraud Civil Remedies Act of 1986 (PFCRA), codified at 31 U.S.C. 3801-3812. The PFCRA, enacted in 1986, authorizes agencies, with approval from the Department of Justice, to pursue individuals or firms for false claims;

(2) Part 103, which implements the Chemical Weapons Convention Implementation Act of 1998 (CWC Act) (22 U.S.C. 6761). The CWC Act provided domestic implementation of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction. The penalty provisions of the CWC Act are codified at 22 U.S.C. 6761(a);

(3) Part 127, which implements the penalty provisions of sections 38(e), 39A(c), and 40(k) of the Arms Export Control Act (AECA) (22 U.S.C. 2778(e), 2779a(c), and 2780(k)). The Assistant Secretary of State for Political-Military Affairs is responsible for the imposition of CMPs under the International Traffic in Arms Regulations (ITAR), which is administered by the Directorate of Defense Trade Controls (DDTC); and

(4) Part 138, which implements section 319 of Public Law 101-121, codified at 31 U.S.C. 1352, provides penalties for recipients of Federal contracts, grants, and loans who use appropriated funds to lobby the executive or legislative branches of the Federal Government in connection with a specific contract, grant, or loan. Any person who violates that prohibition is subject to a civil penalty. The statute also requires each person who requests or receives a Federal contract, grant, cooperative agreement, loan, or a Federal commitment to insure or guarantee a loan, to disclose any lobbying; there is a penalty for failure to disclose.

¹ 81 FR 36771 (Jun. 8, 2016).

² 88 FR 1505 (Jan. 11, 2023).