MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Associate General Counsel

Mai T. Dinh
Assistant General Counsel

Albert J. Kiss
Attorney

SUBJECT: Final Rules and Explanation and Justification on Inflation Adjustments for Civil Penalties (11 CFR 111.24 and 111.44)

Attached are draft final rules and their explanation and justification that would apply inflation adjustments to some of FECA's civil penalties but not others. Certain inflation adjustments are required at this time by the Federal Civil Penalties Inflation Adjustment Act of 1990, 28 U.S.C. 2461 nt., as amended by the Debt Collection Improvement Act of 1996, Pub. L. 104-134, section 31001(s).

Recommendation

The Office of General Counsel recommends that the Commission approve the attached final rules at 11 CFR 111.24 and 111.44 and their explanation and justification for publication in the Federal Register.

Attachment
FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2005 - ___]

Inflation Adjustments for Civil Monetary Penalties

AGENCY: Federal Election Commission

ACTION: Final Rules.

SUMMARY: The Federal Election Commission ("Commission") is adopting final rules to apply inflation adjustments to certain civil monetary penalties under the Federal Election Campaign Act of 1971, as amended ("FECA"), the Presidential Election Campaign Fund Act and the Presidential Primary Matching Payment Account Act. The civil penalties being adjusted are for (1) certain violations of these statutes that are not knowing and willful, involving contributions and expenditures; (2) knowing and willful violations of the prohibition against the making of a contribution in the name of another; (3) knowing and willful violations of the confidentiality provisions of FECA; and (4) failure to file timely 48-hour notices. No other civil penalties are being adjusted. These adjustments are required by the Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996. Further information is provided in the supplementary information that follows.
These penalty adjustments are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Ms. Mai T. Dinh, Assistant General Counsel, or Mr. Albert J. Kiss, Attorney, 999 E Street N.W., Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

The Federal Civil Penalties Inflation Adjustment Act of 1990, as amended by the Debt Collection Improvement Act of 1996, ("Inflation Adjustment Act") requires Federal agencies to adopt regulations at least once every four years adjusting for inflation the civil monetary penalties within the jurisdiction of the agency.

A civil monetary penalty ("civil penalty") is defined in the Inflation Adjustment Act as any penalty, fine, or other sanction that is for a specific amount, or has a maximum amount, as provided by Federal law, and is assessed or enforced by an agency in an administrative proceeding or by a Federal court pursuant to Federal law. This definition covers the civil penalties provided for in the Federal Election Campaign Act of 1971 ("FECA"), as amended, 2 U.S.C. 431 et seq., for respondents who violate FECA, or violate the Presidential Election Campaign Fund Act, 26 U.S.C. 9001 et seq., or the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 et seq. (collectively "chapters 95 and 96 of Title 26"). Under the Inflation Adjustment Act, a civil penalty is adjusted by a cost-of-living adjustment ("COLA").

determined by multiplying the amount of the civil penalty by the percentage (if any) by which
the U.S. Department of Labor’s Consumer Price Index for all urban consumers ("CPI") for the
month of June for the year preceding the year of adjustment exceeds the CPI for the month of
June for the year in which the amount of the civil penalty was last set or adjusted.\(^4\) The amount
of the inflation adjustment is subject to rounding rules.\(^5\)

In March 1997, the Commission promulgated new rules to adjust FECA’s then-current
civil penalties pursuant to the Inflation Adjustment Act. Final Rules and Explanation and
Justification for Adjustments to Civil Monetary Penalty Amounts, 62 FR 11316 (Mar. 12,
1997) ("1997 Civil Penalty Adjustment E&J"). In January 2002, the Commission again
examined its civil penalty rules under the Inflation Adjustment Act, but did not adjust any civil
penalty rules because the operation of the Inflation Adjustment Act’s rounding rules did not
result in increases in any of the civil penalties. Agenda Doc. 02-06 (Jan. 17, 2002). As
explained in more detail below, the Commission has determined that certain civil penalties in
11 CFR 111.24 and 111.44 must be increased again in 2005 due to the increases in the CPI and
the application of the Inflation Adjustment Act’s rounding rules to these civil penalties.
However, other civil penalties in 11 CFR 111.24 and 111.43 are not being changed because the
rounding rules negate any increases in the civil penalties that would have resulted from the
increases in the CPI.

The Commission is required by statute to adjust the civil penalties under its jurisdiction
by a COLA formula. This application of the COLA does not involve Commission discretion or
any policy judgments. Thus, the Commission finds that the “good cause” exception to the

\(^4\) 28 U.S.C. 2461 note (3)(3) and (5)(b).
notice and comment requirement in section 553 of the Administrative Procedure Act applies to
these rules because notice and comment are unnecessary. 5 U.S.C. 553(b)(B) and (d)(3). For
the same reasons, these rules do not need to be submitted to the Speaker of the House of
Representatives or the President of the Senate under the Congressional Review Act, 5 U.S.C.
801 et seq., and these rules are effective upon publication. 5 U.S.C. 808(2). Accordingly, these
amendments are effective on [INSERT DATE OF PUBLICATION IN THE FEDERAL
REGISTER]. The new civil penalty amounts are applicable only to violations that occur after
this effective date.

EXPLANATION AND JUSTIFICATION


FECA provides for civil penalties for any person who violates any portion of FECA or
chapters 95 and 96 of Title 26. FECA's civil penalties, found at 2 U.S.C. 437g(a)(5), (6), and
(12), are organized into two tiers; one tier of civil penalties for violations of FECA or chapters
95 and 96 of Title 26, and a higher tier of civil penalties for "knowing and willful" violations of
FECA or chapters 95 and 96 of Title 26. Commission regulations in section 111.24 set forth
each civil penalty established by section 437g(a)(5), (6) and (12), as adjusted pursuant to the
Inflation Adjustment Act.

1. 11 CFR 111.24(a)(1) Violations That Are Not Knowing and Willful

Under the core statutory provisions, the Commission may negotiate a civil penalty, or
may institute an action for a civil penalty, or a court may impose a civil penalty, for a violation
of FECA or of chapters 95 or 96 of Title 26 that does not exceed the greater of $5,000 or an
amount equal to any contribution or expenditure involved in the violation. 2 U.S.C.
437g(a)(5)(A), (6)(A) and (6)(B). The $5,000 civil penalty amount was increased to $5,500
when section 111.24(a) was promulgated in 1997.\textsuperscript{6} 1997 Civil Penalty Adjustment E&J at 11316.

At this time, to determine the appropriate COLA to apply to the $5,500 amount, the Commission uses the CPI for June of 2004, which is 189.7, and the CPI for June of 1997, which is 160.3.\textsuperscript{7} The COLA is determined by dividing the CPI for June of 2004 (189.7) by the CPI for June of 1997 (160.3), which equals 1.183 (189.7 / 160.3 = 1.183). To obtain the inflation-adjusted civil penalty amount, the $5,500 amount is multiplied by the COLA of 1.183, which equals $6,507 ($5,500 x 1.183 = $6,507). Thus, the increase is $1,007 ($6,507 - $5,500 = $1,007). The amount of the increase is subject to the Inflation Adjustment Act rounding rules. Under the rounding rules, where the existing civil penalty is greater than $1,000 but less than or equal to $10,000, the increase is rounded to the nearest multiple of $1,000. Therefore, the amount of the civil penalty increase is rounded to $1,000. Consequently, section 111.24(a)(1) is amended by adding $1,000 to the $5,500 civil penalty to obtain the new inflation-adjusted civil penalty of $6,500.

2. 11 CFR 111.24(a)(2)(i) – Knowing and Willful Violations

The Commission may seek, or a court may impose, a civil penalty for a "knowing and willful" violation of FECA or of chapters 95 or 96 of Title 26 that does not exceed the greater of $10,000 or an amount equal to 200% of any contribution or expenditure involved in the violation. 2 U.S.C. 437g(a)(5)(B) and (6)(C). The $10,000 civil penalty amount was increased

\textsuperscript{6} The Inflation Adjustment Act provides that the first adjustment to a civil penalty may not exceed ten percent of the penalty. Thus, the 1997 increase to the $5,000 civil penalty was limited to ten percent of $5,000, or $500, and this penalty was increased to $5,500.

\textsuperscript{7} The base period for the CPI figures is 1982 to 1984. Thus, the price of a basket of goods and services that would have cost $100 in 1982-1984, rose to $160.30 in June 1997, and to $189.70 in June 2004.
to $11,000 when section 111.24(a) was promulgated in 1997.\textsuperscript{8} 1997 Civil Penalty Adjustment E&J at 11316.

At this time, to obtain the inflation-adjusted civil penalty, $11,000 is multiplied by the same COLA calculated above, i.e., $13,013 ($11,000 x 1.183 = $13,103). Thus, the increase is $2,013 ($13,013 - $11,000 = $2,013). Under the rounding rules, where the existing civil penalty is greater than $10,000 but less than or equal to $100,000, the increase is rounded to the nearest multiple of $5,000. Therefore, the amount of the civil penalty increase is rounded to zero, and the $11,000 civil penalty is not changed.

Because no changes are being made at this time, the next adjustment will reflect inflationary changes since 1997 rather than 2005.

3. 11 CFR 111.24(a)(2)(ii) – Knowing and Willful Contributions Made In The Name of Another

The Bipartisan Campaign Reform Act of 2002, Public Law 107-155, 116 Stat. 81, 108, section 315 (2002) ("BCRA"), increased minimum and maximum civil penalties for knowing and willful violations of the prohibition on contributions made in the name of another in 2 U.S.C. 441f. As revised by BCRA, the civil penalty for such a violation is not less than 300 percent of the amount involved in the violation, and is not more than the greater of $50,000 or 1,000 percent of the amount involved in the violation. 2 U.S.C. 437g(a)(5)(B) and (6)(C); 11 CFR 111.24(a)(2)(ii). To determine the appropriate COLA to apply to the $50,000 amount, the Commission uses the CPI for June of 2004, which is 189.7, and the CPI for June of 2002,

\textsuperscript{8} As discussed above, the first adjustment to a civil penalty may not exceed ten percent of the penalty. Thus, the 1997 increase to the $10,000 civil penalty was limited to ten percent of $10,000, or $1,000, and this penalty was increased to $11,000.
which is 179.9. The COLA is determined by dividing the CPI for June of 2004 (189.7) by the
CPI for June of 2002 (179.9), which equals 1.054 (189.7 / 179.9 = 1.054). To obtain the
inflation-adjusted civil penalty, $50,000 is multiplied by the COLA of 1.054, which equals
$52,700 ($50,000 x 1.054 = $52,700). Thus, the increase is $2,700 ($52,700 - $50,000 =
$2,700). Under the rounding rules described above, $2,700 is rounded to $5,000.
Consequently, section 111.24(a)(2)(ii) is amended by adding $5,000 to the $50,000 civil
penalty to obtain the new inflation-adjusted civil penalty of $55,000.

4. 11 CFR 111.24(b) – Violations of Confidentiality

Any Commission member or employee, or any other person, who makes public any
notification or investigation under 2 U.S.C. 437g without receiving the written consent of the
person receiving such notification, or the person with respect to whom such investigation is
made, shall be fined not more than $2,000, except that any such member, employee, or other
person who knowingly and willfully violates this provision shall be fined not more than $5,000.
2 U.S.C. 437g(a)(12)(B). In 1997, the Commission promulgated 11 CFR 111.24(b) to increase
the $2,000 civil penalty to $2,200, and to increase the $5,000 civil penalty to $5,500.⁹ 1997
Civil Penalty Adjustment E&J at 11317.
For these civil penalties, the appropriate COLA is 1.183. See COLA calculation for
civil penalties under 11 CFR 111.24(a)(1), above. To obtain the inflation-adjusted civil penalty
for the $2,200 amount, $2,200 is multiplied by the COLA of 1.183, which equals $2,603

⁹ As discussed above, the first adjustment to a civil penalty may not exceed ten percent of the penalty. Thus, the
1997 increase to the $2,000 civil penalty was limited to ten percent of $2,000, or $200, and this penalty was
increased to $2,200. Similarly, the 1997 increase to the $5,000 civil penalty was limited to ten percent of $5,000,
or $500, and this penalty was increased to $5,500.
($2,200 \times 1.183 = $2,603). Thus, the increase is $403 ($2,603 - $2,200 = $403). Under the rounding rules described above, $403 is rounded to zero. Thus, the $2,200 civil penalty remains unchanged. Because no changes are being made at this time, the next adjustment will reflect inflationary changes since 1997 rather than 2005.

To obtain the inflation-adjusted civil penalty for the $5,500 amount, $5,500 is multiplied by the COLA of 1.183, equaling $6,507 ($5,500 \times 1.183 = $6,507). Thus, the increase is $1,007 ($6,507 - $5,500 = $1,007). Under the rounding rules, the $1,007 amount is rounded to $1,000. Consequently, section 111.24(b) is amended by adding $1,000 to the $5,500 amount to obtain the new inflation-adjusted civil penalty of $6,500 for knowing and willful violations of confidentiality.

11 CFR 111.43 – Schedules of Penalties

FECA permits the Commission to assess civil penalties for violations of the reporting requirements of 2 U.S.C. 434(a) in accordance with schedules of penalties established and published by the Commission. 2 U.S.C. 437g(a)(4)(C). The schedules of penalties for political committees that file their reports late or that fail to file reports are set out in 11 CFR 111.43, and were last amended in 2003. Final Rules and Explanation and Justification for Administrative Fines, 68 FR 12572, 12573-12575 (Mar. 17, 2003). To determine the appropriate COLA to apply to the schedules of penalties for violations of these reporting requirements, the Commission uses the CPI for June of 2004, which is 189.7, and the CPI for June of 2003, which is 183.7. Although applying the COLA of 1.033 (189.7 / 183.7 = 1.033) to all possible civil penalties under the schedules of penalties would result in a slight increase in the civil penalty amounts, the Inflation Adjustment Act rounding rules would round
down the increased civil penalty amounts to the current amounts. Consequently, the formulas
in the schedules of penalties in 11 CFR 111.43 are not changed.

However, the Commission is correcting a typographical error in the schedule at section
111.43(a)(2)(iii). Under the column entitled "[I]f the level of activity in the report was," the
level of activity of $450,000 - $549,999.99 is missing the first instance of the number "4."
Thus, this level of activity is erroneously listed as "$50,000 - 549,999.99." The Commission is
correcting this to read "$450,000 - $549,999.99."

11 CFR 111.44 – Schedule of Penalties for 48-Hour Notices

Principal campaign committees are required to report, within 48 hours of receipt, any
contributions of $1,000 or more that are received after the 20th day, but more than 48 hours
before any election. 2 U.S.C. 434(a)(6). FECA permits the Commission to assess civil
penalties for violations of this reporting requirement. 2 U.S.C. 437g(a)(4)(C). In 2000, the
Commission adopted rules setting forth the civil penalties for failure to file timely notices of
these last-minute contributions. Final Rules and Explanation and Justification for
Administrative Fines, 65 FR 31787, 31793 (May 19, 2000). The amount of the civil penalty for
each notice not filed timely is $100 plus ten percent of the amount of the contribution(s) not
timely reported, and is increased for prior violations. 11 CFR 111.44. To determine the
appropriate COLA to apply to the $100 amount, the Commission uses the CPI for June of 2004,
which is 189.7, and the CPI for June of 2000, which is 172.4. The COLA is obtained by
dividing the CPI for June of 2004 (189.7) by the CPI for June of 2000 (172.4), which equals
1.100 (189.7 / 172.4 = 1.100). To obtain the inflation-adjusted civil penalty amount, $100 is
multiplied by the COLA of 1.100, which equals $110 ($100 x 1.100 = $110). Thus, the
increase is $10 ($110 - $100 = $10). The Inflation Adjustment Act rounding rules do not
not change the amount of this increase. Consequently, section 111.44 is amended by adding $10 to the $100 civil penalty to obtain the new inflation-adjusted civil penalty of $110.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The provisions of the Regulatory Flexibility Act are not applicable to this final rule because the Commission was not required to publish a notice of proposed rulemaking or to seek public comment under 5 U.S.C. 553 or any other laws. 5 U.S.C. 603(a) and 604(a).

Therefore, no regulatory flexibility analysis is required.

List of Subjects

11 CFR Part 111

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

\[^{10}\text{Under the rounding rules, where the existing penalty is less than or equal to $100, the increase is rounded to the nearest multiple of $10. Therefore, the amount of the penalty increase is rounded to $10, the same amount as it was prior to application of the rounding rules.}\]
For the reasons set out in the preamble, the Federal Election Commission amends

subchapter A of chapter I of title 11 of the Code of Federal Regulations as follows:

PART 111 – COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))

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

   Authority: 2 U.S.C. 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

2. In section 111.24, paragraphs (a)(1), (a)(2)(ii) and (b) are revised to read as follows:

§ 111.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).

(a) * * *

(1) Except as provided in paragraph (a)(2) of this section, in the case of a violation

of the Act or chapters 95 or 96 of title 26 (26 U.S.C.), the civil penalty shall not

exceed the greater of $5,500-6,500 or an amount equal to any contribution or

expenditure involved in the violation.

(2) * * *

(ii) Notwithstanding paragraph (a)(2)(i) of this section, in the case of a

knowing and willful violation of 2 U.S.C. 441f, the civil penalty shall not

be less than 300% of the amount of any contribution involved in the

violation and shall not exceed the greater of $50,000-55,000 or 1,000%

of the amount of any contribution involved in the violation.

(b) Any Commission member or employee, or any other person, who in violation of 2

U.S.C. 437g(a)(12)(A) makes public any notification or investigation under 2 U.S.C.

437g without receiving the written consent of the person receiving such notification, or

the person with respect to whom such investigation is made, shall be fined not more
than $2,200. Any such member, employee, or other person who knowingly and willfully
violates this provision shall be fined not more than $5,500,500. 

3. In section 111.43, paragraph (a)(2)(iii) is amended by removing "$50,000 -
$549,999.99" and adding in its place "$450,000 – 549,999.99".

4. In section 111.44, paragraph (a)(1) is revised to read as follows:

§ 111.44 What is the schedule of penalties for 48-hour notices that are not filed or are filed late?

(a) * * *

(1) Civil money penalty = $110,000 + (.10 x amount of the contribution(s) not
timely reported).

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Scott E. Thomas
Chairman
Federal Election Commission

DATED ____________
BILLING CODE: 6715-01-U