

Rules and Regulations

Federal Register

Vol. 85, No. 153

Friday, August 7, 2020

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents.

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[NOTICE 2020-06]

Civil Monetary Penalties Annual Inflation Adjustments

AGENCY: Federal Election Commission.

ACTION: Final rule.

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: The final rules are effective on August 7, 2020.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Joseph P. Wenzinger, Attorney, 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 2020.⁶

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 2020 is 0.01764, or 1.764%; thus, to calculate the new penalties, the Commission must multiply the most recent civil monetary penalties in force by 1.01764.¹⁴

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 penalties are set forth at 11 CFR 111.24. Second are the civil monetary penalties

⁹ Inflation Adjustment Act § 6.

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

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

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

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

¹⁴ OMB Memorandum at 1.

³ Inflation Adjustment Act § 3(2).

⁴ Inflation Adjustment Act § 4(a).

⁵ *See* Inflation Adjustment Act § 7(a) (requiring OMB to “issue guidance to agencies on implementing the inflation adjustments required under this Act”); *see also* Memorandum from Russell T. Vought, Acting Director, Office of Management and Budget, to Heads of Executive Departments and Agencies, M-20-05, Dec. 16, 2019, <https://www.whitehouse.gov/wp-content/uploads/2019/12/M-20-05.pdf> (“OMB Memorandum”).

⁶ Inflation Adjustment Act § 5.

⁷ Inflation Adjustment Act § 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).

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, 31001(s)(1), 110 Stat. 1321, 1321-373; Federal Reports Elimination Act of 1998, Public Law 105-362, 1301, 112 Stat. 3280.

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

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)	\$19,936	1.01764	20,288
11 CFR 111.24(a)(2)(i)	42,530	1.01764	43,280
11 CFR 111.24(a)(2)(ii)	69,743	1.01764	70,973
11 CFR 111.24(b)	5,964	1.01764	6,069
11 CFR 111.24(b)	14,910	1.01764	15,173

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 subchapter A of chapter I of title 11 of the Code of Federal Regulations 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.
- 2. Section 111.24 is amended as follows:

In the table below, for each section 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.

Section	Remove	Add
111.24(a)(1)	\$19,936	\$20,288
111.24(a)(2)(i)	42,530	43,280
111.24(a)(2)(ii)	69,743	70,973
111.24(b)	5,964	6,069
111.24(b)	14,910	15,173

- 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:

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)

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	[\$36 + (\$6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$347 × [1 + (.25 × Number of previous violations)].
\$5,000–9,999.99	[\$69 + (\$6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$417 × [1 + (.25 × Number of previous violations)].
\$10,000–24,999.99	[\$149 + (\$6 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$696 × [1 + (.25 × Number of previous violations)].
\$25,000–49,999.99	[\$295 + (\$28 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$1,252 × [1 + (.25 × Number of previous violations)].
\$50,000–74,999.99	[\$445 + (\$112 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$3,994 × [1 + (.25 × Number of previous violations)].
\$75,000–99,999.99	[\$591 + (\$149 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$5,176 × [1 + (.25 × Number of previous violations)].
\$100,000–149,999.99	[\$886 + (\$185 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$6,656 × [1 + (.25 × Number of previous violations)].
\$150,000–199,999.99	[\$1,185 + (\$221 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$8,135 × [1 + (.25 × Number of previous violations)].
\$200,000–249,999.99	[\$1,479 + (\$258 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$9,613 × [1 + (.25 × Number of previous violations)].
\$250,000–349,999.99	[\$2,219 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$11,832 × [1 + (.25 × Number of previous violations)].
\$350,000–449,999.99	[\$2,959 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$13,311 × [1 + (.25 × Number of previous violations)].
\$450,000–549,999.99	[\$3,697 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$14,050 × [1 + (.25 × Number of previous violations)].
\$550,000–649,999.99	[\$4,437 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$14,791 × [1 + (.25 × Number of previous violations)].
\$650,000–749,999.99	[\$5,176 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$15,529 × [1 + (.25 × Number of previous violations)].
\$750,000–849,999.99	[\$5,916 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$16,269 × [1 + (.25 × Number of previous violations)].
\$850,000–949,999.99	[\$6,656 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$17,008 × [1 + (.25 × Number of previous violations)].
\$950,000 or over	[\$7,395 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$17,748 × [1 + (.25 × 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	[\$69 + (\$13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$696 × [1 + (.25 × Number of previous violations)].
\$5,000–\$9,999.99	[\$139 + (\$13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$834 × [1 + (.25 × Number of previous violations)].
\$10,000–24,999.99	[\$209 + (\$13 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$1,252 × [1 + (.25 × Number of previous violations)].
\$25,000–49,999.99	[\$445 + (\$36 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$1,947 × [1 + (.25 × Number of previous violations)].
\$50,000–74,999.99	[\$666 + (\$112 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$4,437 × [1 + (.25 × Number of previous violations)].
\$75,000–99,999.99	[\$886 + (\$149 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$5,916 × [1 + (.25 × Number of previous violations)].
\$100,000–149,999.99	[\$1,331 + (\$185 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$7,395 × [1 + (.25 × Number of previous violations)].
\$150,000–199,999.99	[\$1,775 + (\$221 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$8,873 × [1 + (.25 × Number of previous violations)].
\$200,000–249,999.99	[\$2,219 + (\$258 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$11,093 × [1 + (.25 × Number of previous violations)].
\$250,000–349,999.99	[\$3,328 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$13,311 × [1 + (.25 × Number of previous violations)].
\$350,000–449,999.99	[\$4,437 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$14,791 × [1 + (.25 × Number of previous violations)].
\$450,000–549,999.99	[\$5,546 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$16,269 × [1 + (.25 × 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:
\$550,000–649,999.99	[\$6,656 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$17,748 × [1 + (.25 × Number of previous violations)].
\$650,000–749,999.99	[\$7,765 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$19,228 × [1 + (.25 × Number of previous violations)].
\$750,000–849,999.99	[\$8,873 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$20,706 × [1 + (.25 × Number of previous violations)].
\$850,000–949,999.99	[\$9,983 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$22,184 × [1 + (.25 × Number of previous violations)].
\$950,000 or over	[\$11,093 + (\$295 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$23,664 × [1 + (.25 × 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 \$8,135.

* * * * *

§ 111.44 [Amended]

■ 4. In § 111.44 amend paragraph (a)(1) by removing “\$146” and adding, in its place, “\$149”.

Dated: July 20, 2020.

On behalf of the Commission.

Ellen L. Weintraub,

Commissioner, Federal Election Commission.

[FR Doc. 2020–16032 Filed 8–6–20; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2020–0242; Airspace Docket No. 20–AEA–4]

RIN 2120–AA66

Amendment of Class E Airspace; Ithaca, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends Class E surface airspace, and Class E airspace designated as an extension to a Class D surface area at Ithaca Tompkins Regional Airport, Ithaca, NY due to the decommissioning of the Ithaca VOR/DME, and cancellation of associated approaches. Controlled airspace is necessary for the safety and management of instrument flight rules (IFR) operations in the area.

DATES: Effective 0901 UTC, November 5, 2020. The Director of the Federal Register approves this incorporation by reference action under Title 1 Code of

Federal Regulations part 51, subject to the annual revision of FAA Order 7400.11 and publication of conforming amendments.

ADDRESSES: FAA Order 7400.11D, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at https://www.faa.gov/air_traffic/publications/. For further information, you can contact the Airspace Policy Group, Federal Aviation Administration, 800 Independence Avenue SW, Washington, DC 20591; telephone: (202) 267–8783. The Order is also available for inspection at the National Archives and Records Administration (NARA). For information on the availability of FAA Order 7400.11D at NARA, email fedreg.legal@nara.gov or go to <https://www.archives.gov/federal-register/cfr/ibr-locations.html>.

FOR FURTHER INFORMATION CONTACT: John Fornito, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Ave, College Park, GA 30337; telephone (404) 305–6364.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA’s authority to issue rule regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the Agency’s authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it amends Class E airspace at Ithaca Tompkins Regional Airport, Ithaca, NY to support IFR operations in the area.

History

The FAA published a notice of proposed rulemaking in the **Federal Register** (85 FR 33589, June 2, 2020) for Docket No. FAA–2020–0242 to amend Class E surface airspace and Class E airspace designated as an extension to a Class D surface area at Ithaca Tompkins Regional Airport, Ithaca, NY, due to the decommissioning of the Ithaca VOR/DME, and cancellation of the associated approaches.

The Notice of Proposed Rulemaking (NPRM) also proposed to update the airport name in the descriptor by removing the city in the airport’s header.

Also, subsequent to publication of the NPRM, the FAA found the geographic coordinates of Ithaca Airport were transposed. This action corrects that error.

Interested parties were invited to participate in this rulemaking effort by submitting written comments on the proposal to the FAA. No comments were received.

Class E airspace designations are published in Paragraphs 6002, and 6004, respectively of FAA Order 7400.11D, dated August 8, 2019, and effective September 15, 2019, which is incorporated by reference in 14 CFR 71.1. The Class E airspace designations listed in this document will be published subsequently in the Order.

Availability and Summary of Documents for Incorporation by Reference

This document amends FAA Order 7400.11D, Airspace Designations and Reporting Points, dated August 8, 2019, and effective September 15, 2019. FAA Order 7400.11D is publicly available as listed in the **ADDRESSES** section of this document. FAA Order 7400.11D lists Class A, B, C, D, and E airspace areas, air traffic routes, and reporting points.