



FEDERAL ELECTION COMMISSION
Washington, DC 20463

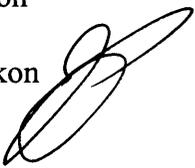
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MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon 
Staff Director

FROM: Lawrence H. Norton 
General Counsel

James A. Kahl 
Deputy General Counsel

Rosemary C. Smith 
Acting Associate General Counsel

Mai T. Dinh 
Acting Assistant General Counsel

Daniel E. Pollner 
Attorney

SUBJECT: Final Rule for Extending the Administrative Fine Regulations

AGENDA ITEM
For Meeting of: 02-05-04

SUBMITTED LATE

This memorandum and the attached draft final rule is a substitute for Agenda Document No. 04-13, which was circulated to the Commission on February 2, 2004. The attached draft final rule includes a revised discussion of the gap caused when Congress did not renew the Commission's authority to implement the administrative fines program before the existing authority expired on December 31, 2003.

Recommendation

The Office of General Counsel recommends that the Commission approve the attached final rule and Explanation and Justification for publication in the *Federal Register* and transmittal to Congress.

Attachment

1 **FEDERAL ELECTION COMMISSION**

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3 **11 CFR Part 111, Subpart B**

4
5 **[Notice 2004-]**

6
7 **EXTENSION OF ADMINISTRATIVE FINES PROGRAM**

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9 **AGENCY:** Federal Election Commission

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11 **ACTION:** Final rule and transmittal of regulations to Congress

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13 **SUMMARY:** Section 639 of the Fiscal 2004 Omnibus Consolidated
14 Appropriations Act (“2004 Appropriations Act”) amended the
15 Treasury and General Government Appropriations Act, 2000,
16 by extending the expiration date in which the Federal Election
17 Commission (“Commission”) may assess civil monetary
18 penalties for violations of the reporting requirements of section
19 434(a) of the Federal Election Campaign Act (“Act” or
20 “FECA”). Accordingly, the Commission is extending the
21 applicability of its rules and penalty schedules in implementing
22 the administrative fines program (“AFP”). Further information
23 is provided in the Supplemental Information that follows.

24 **EFFECTIVE DATE:** [insert date of publication in the Federal Register]

25 **FOR FURTHER**
26 **INFORMTION**
27 **CONTACT:**

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

30 **SUPPLEMENTARY**
31 **INFORMATION:**

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Explanation and Justification for 11 CFR 111.30

Section 640 of the Treasury and General Government Appropriations Act, 2000, Pub. L. No. 106-58, 106th Cong., 113 Stat. 430, 476-77 (1999), amended 2 U.S.C. 437g(a)(4) to provide for a modified enforcement process for violations of certain reporting requirements. Under 2 U.S.C. 437g(a)(4)(C), the Commission may assess a civil monetary penalty for violations of the reporting requirements of 2 U.S.C. 434(a). This authority, however, terminated on December 31, 2003. See Pub. L. No. 107-67, 107th Cong., 640(c). Recently, Section 639 of the 2004 Appropriations Act amended the Treasury and General Government Appropriations Act, 2000, by extending the sunset date to include all reports that cover activity between July 14, 2000 and December 31, 2005. Accordingly, the Commission is issuing this final rule to amend section 11 CFR 111.30 to renew the applicability of the administrative fines regulations, 11 CFR part 111, subpart B, to include all violations relating to reports that cover the period between July 14, 2000 and December 31, 2003 and the period between the date that this final rule is published in the Federal Register and December 31, 2005.

Until the 2004 Appropriations Act was enacted, the Commission did not have the authority to extend the AFP beyond December 31, 2003. Consequently, there is a gap in the applicability of the AFP from January 1, 2004 to [insert date of publication in the Federal Register], the effective date of this final rule. All reports covering reporting periods that began and ended during this gap and that are due before [insert date of publication in the Federal Register], the effective date of this final rule, are not subject to the AFP. This includes certain 48-hour reports and pre-election reports. These reports

1 are, however, subject to the Commission’s enforcement procedures set forth at 11 CFR
2 subpart A. See 11 CFR 111.31(a).

3 The Commission notes that Congress, in extending the Commission’s AFP
4 authority, provided for continuous applicability of the AFP through December 31, 2005.
5 Moreover, the AFP is procedural; the underlying substantive reporting requirements have
6 remained continuously in effect. Consequently, it is appropriate to apply the AFP to
7 reports that are due after [insert date of publication in the Federal Register] even though
8 those reports may relate to reporting periods that include the gap.

9 The Commission is promulgating this final rule without notice or an opportunity
10 for comment because it falls under the “good cause” exemption of the Administrative
11 Procedures Act, 5 U.S.C. 553(b)(3)(B). This exemption allows agencies to dispense with
12 notice and comment if the procedures are “impracticable, unnecessary, or contrary to
13 public interest.” Id. This final rule satisfies the “good cause” exemption because a notice
14 and comment period is impracticable in that it would prevent this final rule from taking
15 effect without an even larger gap in the applicability of the AFP. See Administrative
16 Procedures Act: Legislative History, S. Doc. No. 248 200 (1946) (“‘Impracticable’ means
17 a situation in which the due and required execution of the agency functions would be
18 unavoidably prevented by its undertaking public rule-making proceedings”). In addition,
19 this final rule merely extends the applicability of the AFP and does not change the
20 substantive regulations themselves. Those regulations were already subject to notice and
21 comment when they were proposed in March 2000, 65 FR 16534, and adopted in May
22 2000, 65 FR 31787, and again when substantive revisions to the AFP were proposed in
23 April 2002, 67 FR 20461, and adopted in March 2003, 68 FR 12572. Thus, it is

1 appropriate and necessary for the Commission to publish this final rule without providing
2 a notice and comment period.

3 The Commission is making this final rule effective immediately upon publication
4 in the Federal Register because it falls within the “good cause” exception to the thirty-day
5 delayed effective date requirement set forth at section 553(d)(3) of the Administrative
6 Procedures Act. See 5 U.S.C. 553(d)(3). The same reasons that justify the promulgation
7 of this final rule without a notice and comment period, which are set forth above, also
8 justify making this final rule effective without the thirty-day delay. Moreover, making
9 this final rule effective immediately upon publication in the Federal Register is justified
10 because a thirty-day delay of the effective date would increase the gap in the AFP.

11 The Commission is submitting this final rule to the Speaker of the House of
12 Representatives and the President of the Senate pursuant to the Congressional Review of
13 Agency Regulations Act, 5 U.S.C. 801(a)(1)(A), on February ____, 2004. Since this is a
14 non-major rule, it is not subject to the delayed effective date provisions of 5 U.S.C.
15 801(a)(3).

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

18 The attached final rule will not have a significant impact on a substantial number
19 of small entities. The basis for this certification is that this final rule merely extends the
20 applicability of existing regulations for two more years. The existing regulations have
21 already been certified as not having a significant economic impact on a substantial
22 number of small entities. 65 FR 31793 (2000). Therefore, the extension of these existing

1 regulations will not have a significant economic impact on a substantial number of small
2 entities.

3

4 **List of Subjects**

5 11 CFR Part 111

6 Administrative practice and procedures, Elections, Law enforcement

7

1 For the reasons set out in the preamble, subchapter A, Chapter I of Title 11 of the Code of
2 Federal Regulations is amended as follows:

3

4 **Part 111 - COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))**

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

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

7 2. 11 CFR 111.30 is revised to read as follows:

8 **§ 111.30 When will subpart B apply?**

9 Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a)
10 committed by political committees and their treasurers that relate to the reporting periods
11 that begin on or after July 14, 2000 and end on or before December 31, 2005. This
12 subpart, however, does not apply to reports that are due between January 1, 2004 and
13 [insert date of publication in the Federal Register] and that relate to reporting periods that
14 begin and end between January 1, 2004 and [insert date of publication in the Federal
15 Register].

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Bradley A. Smith
Chairman
Federal Election Commission

DATED: _____
BILLING CODE: 6715-01-U