MEMORANDUM

TO: The Commission

THROUGH: Robert J. Costa
Acting Staff Director

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Associate General Counsel

Mai T. Dinh
Assistant General Counsel

Margaret G. Perl
Attorney

SUBJECT: Draft Final Rules on Extension of Administrative Fines Program

Attached is a draft Final Rule and Explanation and Justification ("E&J") for the extension of the Administrative Fines Program ("AFP") at 11 CFR 111.30, pursuant to Section 721 of the Transportation, Treasury, Housing and Urban Development, Judiciary, District of Columbia, and Independent Agencies Appropriations Act, 2006. The 2006 Appropriations Act extended the Congressional authorization for the AFP from December 31, 2005 to December 31, 2008. This Final Rule amends 11 CFR 111.30 to reflect the new sunset date of December 31, 2008. The Final Rule does not make any other revisions to the AFP rules at this time.

The Office of General Counsel requests that this draft be placed on the agenda for the December 15, 2005 open meeting.

Attachment
FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2005-]]

EXTENSION OF ADMINISTRATIVE FINES PROGRAM

AGENCY: Federal Election Commission

ACTION: Final Rule and Transmittal of Rules to Congress

SUMMARY: Section 721 of the Transportation, Treasury, Housing and Urban Development, Judiciary, District of Columbia, and Independent Agencies Appropriations Act, 2006 ("2006 Appropriations Act") amended the Treasury and General Government Appropriations Act, 2000, to extend the expiration date for the Administrative Fines Program ("AFP"). Under the AFP, the Federal Election Commission ("Commission") may assess civil monetary penalties for violations of the reporting requirements of section 434(a) of the Federal Election Campaign Act ("Act" or "FECA"). Accordingly, the Commission is extending the applicability of its rules and penalty schedules in implementing the AFP. Further information is provided in the Supplementary Information that follows.

EFFECTIVE DATE: [insert date of publication in the Federal Register]
FOR FURTHER INFORMATION

CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, N.W., Washington, D.C.

20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Explanation and Justification for 11 CFR 111.30


Commission regulations governing the AFP can be found at 11 CFR part 111, subpart B. The Commission incorporated the legislative sunset date into its rule describing the applicability of the AFP in 11 CFR 111.30, and has consistently revised section 111.30 to extend the AFP sunset date in accordance with these statutory amendments. See, e.g., Final Rule on Extension of Administrative Fines Program, 69 FR 6525 (Feb. 11, 2004) (changing sunset date in 11 CFR 111.30 to December 31, 2005).

The Commission is promulgating this final rule without notice or an opportunity for comment because it falls under the “good cause” exemption in the Administrative Procedure Act, 5 U.S.C. 553(b)(3)(B). This exemption allows agencies to dispense with notice and comment when “impracticable, unnecessary, or contrary to the public interest.” Id. The 2006 Appropriations Act was enacted only a month before the AFP’s sunset date of December 31, 2005. A notice and comment period for this final rule is impracticable because it would result in a gap in the applicability of the AFP between when the current regulation expires on December 31, 2005 and the date when a new final rule could be effective after additional notice and comment. See Administrative Procedure Act: Legislative History, S. Doc. No. 248 200 (1946) (“‘Impracticable’ means a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings”).

In addition, this final rule merely extends the applicability of the AFP and does not change the substantive regulations themselves. Those regulations were already subject to notice and comment when they were proposed in March 2000, 65 FR 16534, and adopted in May 2000, 65 FR 31787, and again when substantive revisions to the AFP were proposed in April 2002, 67 FR 20461, and adopted in March 2003, 68 FR 12572.
Thus, this final rule satisfies the “good cause” exemption, and it is appropriate and necessary for the Commission to publish this final rule without providing a notice and comment period.

The Commission is making this final rule effective immediately upon publication in the Federal Register because it falls within the “good cause” exception to the thirty-day delayed effective date requirement set forth at section 553(d)(3) of the Administrative Procedure Act. See 5 U.S.C. 553(d)(3). The same reasons that justify the promulgation of this final rule without a notice and comment period, as set forth above, also justify making this final rule effective without the thirty-day delay. Otherwise, a thirty-day delay of the effective date would create a gap in the AFP between December 31, 2005, when the current regulation sunsets, and the delayed effective date.

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

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 procedures, Elections, Law enforcement
For the reasons set out in the preamble, subchapter A, Chapter I of Title 11 of the Code of Federal Regulations is amended as follows:

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

1. The authority 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. 11 CFR 111.30 is revised to read as follows:

§ 111.30 When will subpart B apply?

Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a) committed by political committees and their treasurers that relate to the reporting periods that begin on or after July 14, 2000 and end on or before December 31, 2005. This subpart, however, does not apply to reports that were due between January 1, 2004 and February 10, 2004 and that relate to reporting periods that begin and end between January 1, 2004 and February 10, 2004.

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Scott E. Thomas
Chairman
Federal Election Commission

DATED: ______________________
BILLING CODE: 6715-01-U