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FEDERAL ELECTION COMMISSION
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MEMORANDUM

TO: The Commission

THROUGH: James Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Acting Associate General Counsel

Mai T. Dinh
Acting Assistant General Counsel

Dawn M. Odrowski
Attorney

SUBJECT: Administrative Fines Final Rules

AGENDA ITEM
For Meeting of: 2-27-03

SUBMITTED LATE

Attached is a draft Final Rules to amend the Administrative Fines regulations. This draft reflects discussion on these final rules during the Regulations Committee meeting on February 6, 2003.

Recommendation

The Office of General Counsel recommends that the Commission approve the attached Final Rules for publication in the *Federal Register* and transmittal to Congress.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 111**

3 **[NOTICE 2003 -]**

4 **ADMINISTRATIVE FINES**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Final rules and transmittal of regulations to Congress.

7 **SUMMARY:** The Commission is amending its administrative fines regulations
8 to reduce the civil money penalties for political committees with
9 less than \$50,000 in financial activity in a reporting period that file
10 reports late or that do not file them at all. The revised rules create
11 two additional levels-of-activity brackets for such committees to
12 make further distinctions in the amount of the civil money penalty
13 assessed. The amendments also change the method for calculating
14 the "level of activity" on which civil money penalties are based for
15 unauthorized committees by excluding certain non-Federal activity
16 from the calculation. Additionally, these amended rules: clarify
17 how late filers and non-filers will be notified of reason-to-believe
18 findings, final determinations and other actions; and
19 clarify the factors that will not be considered "extraordinary
20 circumstances" when findings or penalties are challenged. Further
21 information is provided in the supplementary information that
22 follows.

1 **EFFECTIVE DATE:** [Insert date thirty days after date of publication in the Federal
2 Register]

3 **FOR FURTHER**
4 **INFORMATION**
5 **CONTACT:** Ms. Mai T. Dinh, Acting Assistant General Counsel,
6 or Ms. Dawn M. Odrowski, Attorney, at 999 E Street, N.W.,
7 Washington, D.C., 20463, (202) 694-1650 or
8 (800) 424-9530.

9 **SUPPLEMENTARY**
10 **INFORMATION:** The Commission is issuing final rules to make certain revisions to
11 its administrative fines program. The program enables the Commission to adjudicate reporting
12 violations of Section 434(a) of the Federal Election Campaign Act of 1971, as amended
13 (“FECA” or “Act”), 2 U.S.C. 431 et seq., by political committees and their treasurers who fail to
14 file, or untimely file, required campaign finance disclosure reports. The adjudication employs a
15 streamlined procedure that affords respondents due process rights and assesses a civil money
16 penalty for violations based on published penalty schedules. The Commission established the
17 administrative fines program in July 2000 pursuant to 2 U.S.C. 437g(a)(4). See Treasury and
18 Government Appropriations Act, 2000, Public Law 106-58, 106th Cong. § 640, 113 Stat. 430,
19 476-77 (1999), as amended by the Treasury and General Government Appropriations Act, 2002,
20 Public Law 107-67, 107th Cong. §642, 115 Stat. 514, 555 (2001) and Explanation and
21 Justification for Administrative Fines, 65 FR 31787 (May 19, 2000) and 66 FR 59680
22 (November 30, 2001). The sunset date of the program is December 31, 2003. See 11 CFR
23 111.30.

1 Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional
2 Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the
3 Speaker of the House of Representatives and the President of the Senate and publish them in the
4 Federal Register at least 30 calendar days before they take effect. The final rules on
5 administrative fines were transmitted to Congress on March ____, 2003.

6 **Explanation and Justification**

7 The Commission initiated this rulemaking by publishing a Notice of Proposed
8 Rulemaking ("NPRM") on April 25, 2002 in which it sought comment on proposed rules
9 amending the current administrative fines regulations based on its experience with the program.
10 67 FR 20461 (April 25, 2002). The NPRM sought comment on proposed amendments to lower
11 the civil money penalties for all late- and non-filers, and to clarify how it notifies respondents in
12 the administrative fines program of reason-to-believe findings and final determinations. The
13 NPRM also sought comment generally on: 1) Whether to limit the scope of the civil money
14 penalty reduction to those committees with less than \$50,000 in financial activity in a reporting
15 period, or alternatively, to limit reduction to the fine schedule applicable to late- or non-filed
16 non-election sensitive reports; 2) Whether to clarify that certain circumstances do not constitute
17 "extraordinary circumstances" for purposes of challenging a reason-to-believe finding; and 3)
18 Whether to revise the method of calculating the "level of activity" on which civil money
19 penalties are based to exclude certain non-Federal activity.

20 The comment period closed on May 28, 2002. Comments were received from FEC
21 Watch and from the law firm of Sandler, Reiff and Young.

22 11 CFR 111.35 If the respondent decides to challenge the alleged violation or the
23 proposed civil money penalty, what should the respondent do?

1 11 CFR 111.35(b) sets forth the requirements for written responses that a respondent may
2 choose to make to challenge a reason-to-believe finding or a proposed civil money penalty. It
3 contains specific circumstances that the Commission will consider in determining whether to
4 levy a civil money penalty, including the existence of “extraordinary circumstances” that were
5 beyond the respondents’ control, that continued for at least 48 hours, and that prevented the
6 timely filing of a report. Paragraph (b)(4) provides four broad examples of circumstances that
7 the Commission will not consider to be “extraordinary.” Respondents have raised a number of
8 other defenses that the Commission has determined are not “extraordinary circumstances.”

9 The NPRM sought comment as to whether 11 CFR 111.35 should be revised to state
10 more specifically the kinds of circumstances that the Commission will not accept as an
11 “extraordinary circumstances” defense. Neither of the commenters addressed this issue.

12 In the final rules that follow, the Commission adds to section 111.35(b)(4) two more
13 examples of circumstances that are not considered extraordinary. Specifically, paragraph
14 (b)(4)(iii) of 11 CFR 111.35 is being amended to include, in addition to staff illness, staff
15 “inexperience” and “unavailability.” The revision also clarifies that the term “staff” includes the
16 treasurer. The Commission strongly encourages political committees to name an assistant
17 treasurer so that their financial activities will not be disrupted, thus avoiding violating the
18 reporting requirements when their treasurer is unavailable.

19 11 CFR 111.43 What are the schedules of penalties?

20 1. Revised civil money penalty schedules

21 The NPRM proposed amendments to the civil money penalty schedule for election
22 sensitive and non-election sensitive reports that would have lowered civil money penalties for all
23 late- and non-filed reports. The Commission was concerned that, based on its experience with

1 the administrative fines program, the published fines schedules for political committees with
2 lower levels of financial activity, generally below \$50,000 in a reporting period, may have been
3 too high. Committees in this category are often those of candidates who have lost an election or
4 who have withdrawn from the race and fail to continue filing the required disclosure reports until
5 they are eligible to terminate. Fines for these committees can be relatively high due to their
6 failure to file because the civil money penalties are calculated using the estimated level of
7 activity from previously filed reports. Therefore, the fines may create a hardship for some
8 authorized committees and their treasurers since many unsuccessful campaigns lack fundraising
9 ability and their treasurers, who are sometimes volunteers, are legally liable for the fines.

10 The Commission was also concerned that the civil money penalty schedules at all levels
11 of activity may result in fines that are substantial compared with civil penalties for other types of
12 FECA violations that the Commission approves in conciliation agreements reached through the
13 traditional enforcement process. See 2 U.S.C. 437g(a). The concern was exacerbated by the fact
14 that the 25% recidivist factor was beginning to take effect for repeat violations.

15 The Commission sought comment in the NPRM on the impact of lowering civil money
16 penalties across the board, specifically: Whether the proposed reductions would still provide an
17 incentive for committees to file timely their reports and not become merely a cost of doing
18 business, and whether reductions would affect committees' decisions to challenge reason-to-
19 believe findings and proposed civil money penalties. The Commission specifically sought
20 comment on two alternatives to lowering the civil money penalties across the board: Lowering
21 the penalties only for committees with levels of financial activity below \$50,000 per report, or
22 lowering the penalties only for non-election sensitive reports.

1 One of the commenters generally agreed with more lenient treatment for committees with
2 minimal financial activity during a reporting period because such committees are often “defunct,
3 moribund or winding down and are often staffed by volunteer treasurers who are not able to deal
4 with complex federal election laws and regulations.” This commenter did not specifically
5 address reducing fines overall but rather urged a change in calculating the “level of activity” on
6 which the administrative fines are based. (See below).

7 The other commenter generally disagreed with lowering the civil money penalties “until
8 an adequate administrative record can be established.” The commenter rejected as a justification
9 for lowering fines across the board the concern that civil penalties in the administrative fines
10 program were high relative to civil penalties approved in conciliation agreements for other types
11 of FECA violations. The commenter argued that this disparity could also be interpreted as
12 evidence that civil penalties in conciliation agreements are too low. The commenter also
13 suggested that the recidivist factor could be lowered if the Commission was concerned it might
14 contribute to disproportionately high civil penalties. This commenter further urged that the
15 standard applied in adjusting the fines should be whether the fines are higher than necessary to
16 serve as incentive to file reports timely. The commenter referred to an April 25, 2002,
17 Commission press release that credited the administrative fines program with reducing the
18 percentage of late filers from 24% to 11% between 1998 and 2000. The commenter noted that,
19 although 11% non-compliance is still too high, these gains in disclosure should not be
20 undermined without substantial justification. Finally, the commenter urged that if the
21 Commission reduced the fines, it should selectively target the reduction at committees with lower
22 levels of financial activity where, according to the NPRM, the most undesirable results have
23 occurred.

1 Neither commenter opined on whether lowering the fines would affect committees'
2 decisions to challenge reason-to-believe findings or proposed civil money penalties.

3 Based on its continued experience with the administrative fines program, the Commission
4 has decided to target the reductions in the civil money penalty schedules to committees with
5 levels of financial activity below \$50,000 per report. As of January 31, 2003, 60% of the
6 political committees against whom the Commission made reason-to-believe findings and
7 proposed a civil money penalty had under \$50,000 of financial activity on the late- or non-filed
8 report. As noted in the NPRM, many committees in this category are winding down, or are
9 established by candidates who have lost, or have withdrawn from, an election. The concern that
10 a reduction in fines will serve as a disincentive to file timely future reports is not as relevant for
11 such committees. Moreover, the fact that these committees still face a fine continues to provide
12 an incentive for them to file a final report.

13 Although the Commission has decided not to reduce civil money penalties “across the
14 board,” it notes that it has revised its method of calculating the “level of activity” to exclude
15 receipts and disbursements for unauthorized committees that report a non-Federal share of
16 allocated Federal/non-Federal activity. This change, discussed below, will effectively lower
17 “across the board” penalties faced by certain unauthorized committees that allocate expenses
18 between Federal and non-Federal accounts. This will result in penalties that are more reflective
19 of a committee’s level of participation in Federal elections.

20 Accordingly, the final rules at amended 11 CFR 111.43 include two sets of civil money
21 penalty schedules. Paragraphs (a)(1) and (b)(1) maintain the previous penalty schedules for non-
22 election sensitive and election sensitive reports, respectively, with due dates before the effective
23 date of these rules. Paragraphs (a)(2) and (b)(2) include new schedules that reduce civil money

1 penalties for non-election sensitive and election sensitive reports of committees with less than
2 \$50,000 in activity. These new schedules will apply to reports that are due on or after the
3 effective date of these rules.

4 The previous and current civil money penalty schedules for late filers have two
5 components: A base amount that increases with the level of activity reflected in a report and an
6 additional charge for each day a report is late. The previous and current schedules for nonfilers
7 consist of a base amount that increases with the level of activity. Both late and nonfilers are
8 subject to a recidivist escalator that increases the penalty by 25% for each previous violation.

9 The reduction in civil money penalties for committees with levels of activity below
10 \$50,000 is being accomplished in two ways. First, the bracket previously covering levels of
11 activity of under \$25,000 is now divided into three brackets covering levels of activity of \$1-
12 \$4,999.99, \$5,000-\$9,999.99 and \$10,000-\$24,999.99, respectively. This subdivision makes
13 more refined distinctions in penalties for committees at the lowest levels of financial activity.
14 Second, the base amount and/or the per day charge is being reduced in each level of activity
15 bracket below \$50,000. The civil money penalty reductions at these levels are identical to the
16 reductions proposed in the NPRM. The civil money penalty schedules for committees with
17 levels of activity of \$50,000 and above are unchanged from former 11 CFR 111.43(a) and (b).

18 For late-filed non-election sensitive reports with levels of activity of \$1-\$4,999.99, the
19 per day charge is being reduced from \$25 to \$5 and the base penalty is being reduced from \$100
20 to \$25; for reports with levels of activity of \$5,000-\$9,999.99, the per day charge is being
21 reduced from \$25 to \$5 and the base penalty is being reduced from \$100 to \$50; for reports with
22 levels of activity of \$10,000-\$24,999.99, the per day charge is being reduced from \$25 to \$5 and
23 the base penalty remains at \$100; and for reports with levels of activity of \$25,000-\$49,999.99,

1 the per day charge is being reduced from \$50 to \$20 and the base penalty remains at \$200.
 2 Reductions in the civil money penalties for late-filed non-election sensitive reports with less than
 3 \$50,000 of activity range between 12% and 79.4%. A chart illustrating the penalty reductions for
 4 late-filed non-election sensitive reports follows:

Level of Activity In Report	Civil Money Penalty for Late Filed Non-Election Sensitive Reports Due Before [Insert date 30 days after publication in the <u>Federal Register</u>]	Civil Money Penalty for Late-Filed Non-Election Sensitive Reports Due On or After [Insert date 30 days after publication in the <u>Federal Register</u>]
\$1 - 4,999.99 ^a	[\$100 + (\$25 x Number of days late)] x [1 + (.25 x Number of previous violations)]	[\$25 + (\$5 x Number of days late)] x [1 + (.25 x Number of previous violations)].
\$5,000 - \$9,999.99	[\$100 + (\$25 x Number of days late)] x [1 + (.25 x Number of previous violations)]	[\$50 + (\$5 x Number of days late)] x [1 + (.25 x Number of previous violations)]
\$10,000 - \$24,999.99	[\$100 + (\$25 x Number of days late)] x [1 + (.25 x Number of previous violations)]	[\$100 + (\$5 x Number of days late)] x [1 + (.25 x Number of previous violations)]
\$25,000 - 49,999.99	[\$200 + (\$50 x Number of days late)] x [1 + (.25 x Number of previous violations)]	[\$200 + (\$20 x Number of days late)] x [1 + (.25 x Number of previous violations)]

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1 Non-election sensitive reports are deemed not filed if they are filed more than 30 days late
 2 or not filed at all. The final rule at 11 CFR 111.43(a)(2)(iii) reduces the base penalty for reports
 3 with levels of activity of \$1-\$4,999.99 from \$900 to \$250; for reports with levels of activity of
 4 \$5,000-\$9,999.99 from \$900 to \$300; for reports with levels of activity of \$10,000-\$24,999.99
 5 from \$900 to \$500; and for reports with levels of activity of \$25,000-\$49,999.99 from \$1800 to
 6 \$900. Reductions in the civil money penalties for non-filed non-election sensitive reports with
 7 less than \$50,000 in activity range between 50% and 72%. A chart illustrating the penalty
 8 reductions for non-filed non-election sensitive reports follows:

Level of Activity in Report	Civil Money Penalty for Non-Election Sensitive Non-Filed Reports Due Before [Insert date 30 days after publication in the <u>Federal Register</u>]	Civil Money Penalty for Non-Election Sensitive Non-Filed Reports Due On or After [Insert date 30 days after publication in the <u>Federal Register</u>]
\$1 - 4,999.99	\$900 x [1 + (.25 x Number of previous violations)]	\$250 x [1 + (.25 x Number of previous violations)]
\$5,000 - 9,999.99	\$900 x [1 + (.25 x Number of previous violations)]	\$300 x [1 + (.25 x Number of previous violations)]
\$10,000 - 24,999.99	\$900 x [1 + (.25 x Number of previous violations)]	\$500 x [1 + (.25 x Number of previous violations)]
\$25,000 - 49,999.99	\$1800 x [1 + (.25 x Number of previous violations)]	\$900 x [1 + (.25 x Number of previous violations)]

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1 For late-filed election sensitive reports with levels of activity of \$1-\$4,999.99, the per day
 2 charge is being reduced from \$25 to \$10 and the base penalty is being reduced from \$150 to \$50;
 3 for reports with levels of activity of \$5,000-\$9,999.99, the per day charge is being reduced from
 4 \$25 to \$10 and the base penalty is being reduced from \$150 to \$100; for reports with levels of
 5 activity of \$10,000-\$24,999.99, the per day charge is being reduced from \$25 to \$10 and the base
 6 penalty remains at \$150; and for reports with levels of activity of \$25,000-\$49,999.99, the per
 7 day charge is being reduced from \$50 to \$25 and the base charge remains at \$300. Reductions in
 8 the civil money penalties for late-filed election sensitive reports with less than \$50,000 of activity
 9 range between 7.1% and 65.7%. A chart illustrating the penalty reductions for late-filed election
 10 sensitive reports follows:

Level of activity In Report	Civil Money Penalty for Late-Filed Election-Sensitive Reports Due Before [Insert date 30 days after publication in the <u>Federal Register</u>]	Civil Money Penalty for Late-filed Election Sensitive Reports Due On or After [Insert date 30 days after publication in the <u>Federal Register</u>]
\$1 - 4,999.99	$[\$150 + (\$25 \times \text{Number of days late})]$ $[1 + (.25 \times \text{Number of previous violations})]$	$[\$50 + (\$10 \times \text{Number of days late})]$ $\times [1 + (.25 \times \text{Number of previous violations})]$
\$5,000 - \$9,999.99	$[\$150 + (\$25 \times \text{Number of days late})]$ $\times [1 + (.25 \times \text{Number of previous violations})]$	$[\$100 + (\$10 \times \text{Number of days late})]$ $\times [1 + (.25 \times \text{Number of previous violations})]$

\$10,000 – \$24,999.99	[\$150 + (\$25 x Number of days late)] x [1 + (.25 x Number of previous violations)]	[\$150 + (\$10 x Number of days late)] x [1 + (.25 x Number of previous violations)]
\$25,000 - \$49,999.99	[\$300 + (\$50 x Number of days late)] x [1 + (.25 x Number of previous violations)]	[\$300 + (\$25 x Number of days late)] x [1 + (.25 x Number of previous violations)]

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Election sensitive reports are deemed not filed if they are not filed prior to four days before an election. The final rule at 11 CFR 111.43(b)(2)(iii) reduces the base penalty for these reports with levels of activity of \$1-4,999.99 from \$1,000 to \$500, for levels of activity of \$5,000-\$9,999.99 from \$1,000 to \$600; for levels of activity of \$10,000-\$24,999.99 from \$1,000 to \$900; and for levels of activity of \$25,000-\$49,999.99 from \$2,000 to \$1,400. Reductions in the civil money penalties for non-filed election sensitive reports with less than \$50,000 of activity range between 10% and 50%. A chart illustrating the penalty reductions for non-filed election sensitive reports follows:

Level of Activity in Report	Civil Money Penalty for Election Sensitive Non-Filed Reports Due Before [Insert date 30 days after publication in the <u>Federal Register</u>]	Civil Money Penalty for Election Sensitive Non-Filed Reports Due On or After [Insert date 30 days after publication in the <u>Federal Register</u>]
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\$1 - 4,999.99	\$1,000 x [1 + (.25 x Number of previous violations)]	\$500 x [1 + (.25 x Number of previous violations)]
\$5,000 - 9,999.99	\$1,000 x [1 + (.25 x Number of previous violations)]	\$600 x [1 + (.25 x Number of previous violations)]
\$10,000 - 24,999.99	\$1,000 x [1 + (.25 x Number of previous violations)]	\$900 x [1 + (.25 x Number of previous violations)]
\$25,000 - 49,999.99	\$2,000 x [1 + (.25 x Number of previous violations)]	\$1,400 x [1 + (.25 x Number of previous violations)]

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3 2. Revised calculation of the “level of activity” and “estimated level of activity”

4 The Commission calculates civil money penalties by applying the civil money penalty
5 schedules at 11 CFR 111.43 to a political committee’s “level of activity.” Under the previous
6 rule at 11 CFR 111.43(d), the “level of activity” is defined as the “total amount of receipts and
7 disbursements for the period covered by the late-filed report.” If the report is not filed, the “level
8 of activity” is based on the “estimated level of activity,” which is an estimate of total receipts and
9 disbursements based on previously reported amounts.

10 The NPRM reflected the Commission’s concern, based on its experience with the
11 administrative fines program, that using total receipts and disbursements as the basis for the
12 penalty calculation may have unfairly resulted in higher fines for political committees that
13 finance non-Federal activity through their Federal accounts. For example, unauthorized
14 committees that finance activities in connection with both Federal and non-Federal elections
15 must allocate disbursements for those activities between their Federal and non-Federal accounts

1 and must pay for those expenses from their Federal account or from a separate Federal allocation
2 account. See generally 11 CFR 106.6 and 106.7. Non-Federal funds must be transferred into the
3 Federal accounts to pay for the non-Federal share of the activity, thereby resulting in higher total
4 receipts and disbursements for those committees than for political committees that do not have
5 allocable activity.

6 The NPRM sought comment on whether the Commission should alter the way it
7 calculates the level of activity. 67 FR 20463. The Commission sought comment generally on
8 whether the level of activity should exclude all receipts or disbursements that are not for the
9 purpose of influencing a Federal election. In addition to the receipt of non-Federal transfers to
10 pay for the non-Federal share of allocable activity, the Commission asked whether other types of
11 disbursements should be excluded and gave several examples, such as disbursements by an
12 authorized committee made to influence the election of candidates to State or local office.

13 One of the commenters urged the Commission to exclude from the “level of activity”
14 definition those disbursements for the non-Federal portion of allocated Federal/non-Federal
15 activity, such as certain generic get-out-the-vote drives, as well as the receipt of non-Federal fund
16 transfers to pay for those disbursements. The commenter maintained that including these
17 receipts and disbursements “unfairly punished” State and local political party committees, whose
18 activities are focused more on State and local elections. The commenter illustrated this point by
19 using an example of a local party committee. Using a similar example under the current
20 allocation regime for State and local party committees, depending on the election cycle, only
21 15% to 36% of allocable activity under 11 CFR 106.7 is considered Federal. Under the
22 Commission’s allocation regulations, such a committee must make disbursements from its
23 Federal account to cover the 64% to 85% of the activity that is attributable to non-Federal

1 elections and then reimburse the Federal account via transfers from its non-Federal account.
2 Under the prior rules, the civil money penalty was based on the total of Federal and non-Federal
3 activity since both are reported. As an alternative to changing the way “level of activity” is
4 calculated, the commenter argued that the Commission should create a separate, more lenient
5 schedule for committees that allocate expenses.

6 The other commenter disagreed with that approach. It noted that the Explanation and
7 Justification (“E&J”) for the administrative fines rules issued in May 2000 rejected a suggestion
8 that the “level of activity” be based on contributions and expenditures rather than total receipts
9 and disbursements. The E&J noted that 2 U.S.C. 437g(a)(4), which permits the Commission to
10 implement the administrative fines program, requires the Commission to “take[s] into account,
11 the amount of the violation involved,” and concluded that, since 2 U.S.C 434 required
12 committees to report all receipts and disbursements, the “amount of the violation involved” was
13 equal to the total receipts and disbursements. See Explanation and Justification for Final Rules
14 on Administrative Fines, 65 FR 31792 (May 19, 2000). The commenter observed that the
15 Commission’s regulations required committees to report non-Federal disbursements that are part
16 of an allocable Federal/non-Federal activity and are paid for via non-Federal transfers to the
17 Federal account. By excluding these amounts in the civil penalty calculation, the commenter
18 argued that the Commission would effectively treat the disclosure of some types of receipts and
19 disbursements as less important than others.

20 The Commission continues to believe that, in most cases, “total receipts and
21 disbursements” is a fair basis on which to calculate a civil money penalty for violations of
22 2 U.S.C. 434(a). However, based on its experience with the administrative fines program, the
23 Commission concludes that basing a civil money penalty on “total receipts and disbursements”

1 may unfairly inflate the level of activity for unauthorized committees that allocate expenses
2 between Federal and non-Federal accounts because a large portion of their receipts and
3 disbursements may be attributable to non-Federal activity that must be reported through a Federal
4 account. The Commission concludes that it is a permissible construction of 2 U.S.C. 437g(a)(4)
5 to exclude from the definition of “level of activity” receipts and disbursements attributable to the
6 payment of allocable non-Federal activity. Section 437g(a)(4) of FECA permits the Commission
7 to establish and publish a schedule of penalties “which takes into account the amount of the
8 violation involved . . . and other factors as the Commission deems appropriate.” (Emphasis
9 added). It is both appropriate and fair to exclude from the civil money penalty calculation those
10 receipts and disbursements solely attributable to payment of the non-Federal portion of allocated
11 Federal/non-Federal activity. This approach ensures that the civil money penalty is
12 proportionate to a committee’s level of participation in Federal elections.

13 Other disbursements that may be characterized as non-Federal but that are paid for with
14 Federal funds, such as a disbursement by an authorized committee to a State or local candidate,
15 will not be excluded from the “level of activity” calculation. In these cases, a political committee
16 chooses to use Federally-permissible receipts deposited in a Federal account for a non-Federal
17 purpose. In contrast, where non-Federal funds are used to pay the non-Federal share of allocable
18 activities, these funds flow through, and are reported by, the Federal account because
19 Commission regulations so require.

20 Because only unauthorized committees are affected by the allocation rules, the definitions
21 of “level of activity” and “estimated level of activity” have been amended only as applied to
22 them. The definitions of these terms remain the same for late-filed or non-filed reports of all
23 political committees before the effective date of these rules and for late- or non-filed reports of

1 authorized committees due on or after the effective date of these rules. To make these
2 distinctions clear, the definitions of “level of activity” and “estimated level of activity” have been
3 moved in the final rules from 11 CFR 111.43(d) into revised section 111.43(a) and (b).

4 Specifically, the definitions of “level of activity” and “estimated level of activity” remain
5 the same for late- and non-filed reports of all political committees that are due before the
6 effective date of these rules as set forth in 11 CFR 111.43(a)(1)(i), 111.43(a)(1)(ii),
7 111.43(b)(1)(i) and 111.43(b)(1)(ii) and correspond to the schedule of penalties for reports due
8 before the effective date of these final rules. The definitions of these terms also remain
9 unchanged when applied to late- and non-filed reports of authorized committees that are due on
10 or after the effective date of these rules as set forth in 11 CFR 111.43(a)(2)(i)(A),
11 111.43(a)(2)(ii)(A), 111.43(b)(2)(i) and 111.43(b)(2)(ii).

12 However, the final rules include revised definitions of “level of activity” and “estimated
13 level of activity” as applied to late-filed and non-filed reports of unauthorized committees due on
14 or after the effective date of these rules. Specifically, the final rule applicable to late- or non-
15 filed non-election sensitive reports in 11 CFR 111.43(a)(2)(i)(B) provides that the definition of
16 “level of activity” for these unauthorized committees means “total amount of receipts and
17 disbursements” for the period covered by the late report minus the total of: 1) transfers received
18 from non-Federal account(s) (from Schedule H3) as reported on Line 18(a) of FEC Form 3X, and
19 2) disbursements for the non-Federal share of operating expenditures attributable to allocated
20 Federal/non-Federal activity (from Schedule H4) as reported on Line 21(a)(ii) covered by the late
21 report. The final rule applicable to late-filed or non-filed election-sensitive reports at new
22 11 CFR 111.43(b)(2)(i) refers back to that definition.

1 Similarly, the final rule applicable to late- and non-filed non-election sensitive reports of
2 unauthorized committees due on or after the effective date contains a new definition of
3 “estimated level of activity” expressed in a formula. New 11 CFR 111.43(a)(2)(ii)(B)(1)
4 provides that “estimated level of activity” is calculated as follows: [(total receipts and
5 disbursements reported in the prior two-year election cycle) – (transfers received from non-
6 Federal account(s) as reported on either Line 18(a) of FEC Form 3X or Line 18 of FEC Form 3X
7 if before March 1, 2003 + disbursements for the non-Federal Share of operating expenditures
8 attributable to allocated Federal/non-Federal activity as reported on Line 21(a)(ii) of Form 3X)] ÷
9 number of reports filed covering the activity in the prior two-year election cycle.

10 The final rule applicable to late-filed or non-filed election-sensitive reports of unauthorized
11 committees at new 11 CFR 111.43(b)(2)(ii) refers back to that definition. Please note that the
12 line number for transfers is different when referring to pre-BCRA reports.

13 Finally, new 11 CFR 111.43(a)(2)(ii)(B)(2) addresses the calculation of “estimated level
14 of activity” when an unauthorized committee has not filed a non-election sensitive report
15 covering activity in the current two-year election cycle. In that case, “estimated level of activity”
16 is calculated as: [(total receipts and disbursements reported in the prior two-year election cycle) –
17 (transfers received from non-Federal account(s) as reported on either Line 18(a) of FEC Form 3X
18 or Line 18 of FEC Form 3X if before March 1, 2003 + disbursements for the non-Federal Share
19 of operating expenditures attributable to allocated Federal/non-Federal activity as reported on
20 Line 21(a)(ii) of Form 3X)] ÷ number of reports filed covering the activity in the prior two-year
21 election cycle. New 11 CFR 111.43(b)(2)(ii) refers back to that definition for election-sensitive
22 reports.

1 The Commission emphasizes that the exclusion of non-Federal receipts and
2 disbursements attributable to allocable activity from the calculation of “level of activity” does not
3 change an unauthorized committee’s obligation to fully disclose these amounts. Failure to do so
4 is a violation of the Act and Commission regulations and may be pursued by the Commission in
5 an enforcement action under subpart A of 11 CFR part 111.

6 11 CFR 111.45 What actions will be taken to collect unpaid civil penalties?

7 11 CFR 111.45 is being revised to correct citations to regulations establishing the Federal
8 Claims Collection Standards. After the Commission’s administrative fines rules were
9 promulgated on May 19, 2000, the Department of Justice and the Department of Treasury, in
10 place of the General Accounting Office, revised and recodified the Federal Claims Collection
11 Standards at 31 CFR parts 900 through 904. See 65 FR 70390 (November 22, 2000). No
12 comments were received on this revision.

13 11 CFR 111.46 How will the respondent be notified of actions taken by the Commission
14 and the reviewing officer?

15 Respondents who have challenged reason-to-believe findings in the administrative fines
16 program have sometimes maintained that they did not receive notification because it was sent to
17 an old address even though the Commission sent the notification to the political committee’s
18 address of record in the Statement of Organization on file with the Commission.

19 In the NPRM, the Commission proposed revisions to four regulations to clarify how
20 notifications and other communications called for in subpart B of 11 CFR part 111 would be
21 delivered to respondents. 67 FR 20464. Neither of the commenters addressed this issue.

22 The Commission has since concluded that this issue may be addressed more efficiently by
23 adding a new regulation rather than by amending several current regulations. New 11 CFR

1 111.46 addresses how respondents will be notified of reason-to-believe findings, final
2 determinations and all other communications authorized in subpart B of part 111 governing the
3 administrative fines program. The final rule clarifies that unless a respondent has filed a
4 statement designating counsel in accordance with 11 CFR 111.23, all notifications or other
5 communications from the Commission or the administrative fines reviewing officer will be sent
6 to a respondent political committee and its treasurer at the committee address listed in the most
7 recent Statement of Organization or amendment thereto, filed with the Commission. If counsel
8 has been designated, all contact will be with counsel unless the respondent authorizes direct
9 contact in writing. See 11 CFR 111.23. The substantive effect of new section 111.46 is
10 identical to the revisions proposed in the NPRM.

11 This new rule is supported by the statute and case law. 2 U.S.C. 433(c) requires a
12 political committee to file any changes in a previously filed Statement of Organization, including
13 an address, within ten days after the change. Moreover, in a recent case in which a respondent in
14 the administrative fines program challenged the Commission's final determination, the district
15 court held that mailing a notification to the committee's last known address constitutes
16 constitutionally significant notice. See Cunningham v. FEC, 2002 WL 31431557, at *4 (S.D.
17 Ind.)(2002).

18

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

20 The Commission certifies that the attached final rules will not have a significant
21 economic impact on a substantial number of small entities. The basis for this certification for
22 any small entities subject to the amended rules is that the civil money penalties are lower than
23 those previously assessed and are scaled to better take into account the amount of financial

1 activity on reports filed by political committees. Thus, committees with lower levels of financial
2 activity are subject to lower fines than political committees with higher amounts. Moreover, the
3 calculation of the civil money penalty has been revised so that it better takes into account the
4 level of Federal activity for committees that finance allocable Federal and non-Federal activity.
5 These committees would also be subject to lower civil penalties since they are now based only on
6 the portion of their finances attributable to Federal activity. Finally, some entities affected by the
7 rules, such as political committee treasurers and committees of the two major political parties,
8 are not small entities under 5 U.S.C. 601 because they are not small businesses, organizations or
9 small governmental jurisdictions.

10 **List of Subjects in 11 CFR Part 111**

11 Administrative practice and procedures, Elections, Law enforcement.

12

1 For the reasons set forth in the preamble, the Federal Election Commission amends
2 subchapter A of Chapter I of Title 11 of the Code of Federal Regulations as follows:

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

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

5 Authority: 2 U.S.C. 437g, 437d(a), 438(a)(8).

6 2. Section 111.35 is amended by revising paragraph (b)(4)(iii) to read as follows:

7 **§ 111.35 If the respondent decides to challenge the alleged violation or proposed civil**
8 **money penalty, what should the respondent do?**

9 * * * * *

10 (b) * * *

11 (4) * * *

12 (iii) Illness, inexperience, or unavailability of staff, including the treasurer;

13 * * * * *

14 3. Section 111.43 is amended by:

15 a. Revising paragraph (a);

16 b. Revising paragraph (b); and

17 c. Revising paragraph (d) by removing the definitions of estimated level of activity and
18 level of activity.

19 The revised text reads as follows:

20
21 **§ 111.43 What are the schedules of penalties?**

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

1 (1) For reports due before [insert date 30 days after the date of publication in the
2 Federal Register];

3 (i) Level of activity means the total amount of receipts and disbursements for
4 the period covered by the late report. If the report is not filed, the level of
5 activity is the estimated level of activity as set forth in paragraph (a)(1)(ii)
6 of this section.

7 (ii) Estimated level of activity means total receipts and disbursements reported
8 in the current two-year election cycle divided by the number of reports
9 filed to date covering the activity in the current two-year election cycle. If
10 the respondent has not filed a report covering activity in the current two-
11 year election cycle, estimated level of activity means total receipts and
12 disbursements reported in the prior two-year election cycle divided by the
13 number of reports filed covering the activity in the prior two-year election
14 cycle.

15 (iii) The civil money penalty shall be calculated in accordance with the
16 following schedule:

17

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 - 24,999.99 ^a	[\$100 + (\$25 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$900 x [1 + (.25 x Number of previous violations)]

18

1

\$25,000 - 49,999.99	[\$200 + (\$50 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$1800 x [1 + (.25 x Number of previous violations)]
\$50,000 - 74,999.99	[\$300 + (\$75 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$2700 x [1 + (.25 x Number of previous violations)]
\$75,000 - 99,999.99	[\$400 + (\$100 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$3500 x [1 + (.25 x Number of previous violations)]
\$100,000 - 149,999.99	[\$600 + (\$125 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$4500 x [1 + (.25 x Number of previous violations)]
\$150,000 - 199,999.99	[\$800 + (\$150 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$5500 x [1 + (.25 x Number of previous violations)]
\$200,000 - 249,999.99	[\$1,000 + (\$175 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$6500 x [1 + (.25 x Number of previous violations)]
\$250,000 - 349,999.99	[\$1500 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$8000 x [1 + (.25 x Number of previous violations)]

2

\$350,000 - 449,999.99	$[\$2000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$9000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$450,000 - 549,999.99	$[\$2500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$9500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$550,000 - 649,999.99	$[\$3000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$10,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$650,000 - 749,999.99	$[\$3500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$10,500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$750,000 - 849,999.99	$[\$4000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$11,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$850,000 - 949,999.99	$[\$4500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$11,500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$950,000 or over	$[\$5000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$12,000 \times [1 + (.25 \times \text{Number of previous violations})]$

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

3 (2) For reports due on or after [insert date 30 days after the date of publication in the
4 Federal Register]:

5 (i) Level of activity means:

6 (A) For an authorized committee, the total amount of receipts and
7 disbursements for the period covered by the late report. If the
8 report is not filed, the level of activity is the estimated level of
9 activity as set forth in paragraph (a)(2)(ii)(A) of this section.

10 (B) For an unauthorized committee, the total amount of receipts and
11 disbursements for the period covered by the late report minus the
12 total of: transfers received from non-Federal account(s) as reported
13 on Line 18(a) of FEC Form 3X and disbursements for the non-
14 Federal share of operating expenditures attributable to allocated
15 Federal/non-Federal activity as reported on Line 21(a)(ii) of FEC
16 Form 3X for the period covered by the late report. If the report is
17 not filed, the level of activity is the estimated level of activity as set
18 forth in paragraph (a)(2)(ii)(B) of this section.

19 (ii) Estimated level of activity means:

20 (A) For an authorized committee, total receipts and disbursements
21 reported in the current two-year election cycle divided by the
22 number of reports filed to date covering the activity in the current
23 two-year election cycle. If the respondent has not filed a report

1 covering activity in the current two-year election cycle, estimated
2 level of activity for an authorized committee means total receipts
3 and disbursements reported in the prior two-year election cycle
4 divided by the number of reports filed covering the activity in the
5 prior two-year election cycle.

- 6 (B) (1) For an unauthorized committee, estimated level of activity
7 is calculated as follows: [(Total receipts and disbursements
8 reported in the current two-year cycle) – (Transfers
9 received from non-Federal account(s) as reported on either
10 Line 18(a) of FEC Form 3X or Line 18 of FEC Form 3X if
11 before March 1, 2003 + Disbursements for the non-Federal
12 share of operating expenditures attributable to allocated
13 Federal/non-Federal activity as Reported on Line 21(a)(ii)
14 of FEC Form 3X)] ÷ Number of reports filed to date
15 covering the activity in the current two-year election cycle.
- 16 (2) If the unauthorized committee has not filed a report
17 covering activity in the current two-year election cycle, the
18 estimated level of activity is calculated as follows: [(Total
19 receipts and disbursements reported in the prior two-year
20 election cycle) – (Transfers received from non-Federal
21 account(s) as reported on either Line 18(a) of FEC Form
22 3X or Line 18 of FEC Form 3X if before March 1, 2003 +
23 Disbursements for the non-Federal Share of operating

expenditures attributable to allocated Federal/non-Federal activity as reported on Line 21(a)(ii) of FEC Form 3X] +
Number of reports filed covering the activity in the prior
two-year election cycle.

(iii) The civil money penalty shall be calculated in accordance with the
following schedule:

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:
<u>\$1-4,999.99^a</u>	<u>[\$25 + (\$5 x Number of days late)] x [1 + (.25 x Number of previous violations)].</u>	<u>\$250 x [1 + (.25 x Number of previous violations)]</u>
<u>\$5,000-9,999.99</u>	<u>[\$50 + (\$5 x Number of days late)] x [1 + (.25 x Number of previous violations)]</u>	<u>\$300 x [1 + (.25 x Number of previous violations)]</u>
<u>\$10,000 - 24,999.99</u>	<u>[\$100 + (\$5 x Number of days late)] x [1 + (.25 x Number of previous violations)]</u>	<u>\$500 x [1 + (.25 x Number of previous violations)]</u>
<u>\$25,000 - 49,999.99</u>	<u>[\$200 + (\$20 x Number of days late)] x [1 + (.25 x Number of previous violations)]</u>	<u>\$900 x [1 + (.25 x Number of previous violations)]</u>

1

\$50,000 - 74,999.99	$[\$300 + (\$75 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$2700 \times [1 + (.25 \times \text{Number of previous violations})]$
\$75,000 - 99,999.99	$[\$400 + (\$100 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$3500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$100,000 - 149,999.99	$[\$600 + (\$125 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$4500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$150,000 - 199,999.99	$[\$800 + (\$150 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$5500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$200,000 - 249,999.99	$[\$1,000 + (\$175 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$6500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$250,000 - 349,999.99	$[\$1500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$8000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$350,000 - 449,999.99	$[\$2000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$9000 \times [1 + (.25 \times \text{Number of previous violations})]$

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\$450,000 - 549,999.99	$[\$2500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$9500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$550,000 - 649,999.99	$[\$3000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$10,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$650,000 - 749,999.99	$[\$3500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$10,500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$750,000 - 849,999.99	$[\$4000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$11,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$850,000 - 949,999.99	$[\$4500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$11,500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$950,000 or over	$[\$5000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$12,000 \times [1 + (.25 \times \text{Number of previous violations})]$

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

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

1 (1) For reports due before [insert date 30 days after the date of publication in the
2 Federal Register]:

3 (i) Level of activity has the same meaning as paragraph (a)(1)(i) of this
4 section.

5 (ii) Estimated level of activity has the same meaning as paragraph (a)(1)(ii) of
6 this section.

7 (iii) The civil money penalty shall be calculated in accordance with the
8 following schedule:

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 - 24,999.99 ^a	[\$150 + (\$25 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$1000 x [1 + (.25 x Number of previous violations)]
\$25,000 - 49,999.99	[\$300 + (\$50 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$2000 x [1 + (.25 x Number of previous violations)]
\$50,000 - 74,999.99	[\$450 + (\$75 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$3000 x [1 + (.25 x Number of previous violations)]

10

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\$75,000 - 99,999.99	$[\$600 + (\$100 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$4000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$100,000 - 149,999.99	$[\$900 + (\$125 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$5000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$150,000 - 199,999.99	$[\$1200 + (\$150 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$6000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$200,000 - 249,999.99	$[\$1500 + (\$175 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$7500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$250,000 - 349,999.99	$[\$2250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$9000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$350,000 - 449,999.99	$[\$3000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$10,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$450,000 - 549,999.99	$[\$3750 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$11,000 \times [1 + (.25 \times \text{Number of previous violations})]$

2

1

\$550,000 - 649,999.99	$[\$4500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$12,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$650,000 - 749,999.99	$[\$5250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$13,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$750,000 - 849,999.99	$[\$6000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$14,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$850,000 - 949,999.99	$[\$6750 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$15,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$950,000 or over	$[\$7500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$16,000 \times [1 + (.25 \times \text{Number of previous violations})]$

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

4 (2) For reports due on or after [insert date 30 days after the date of publication in the
5 Federal Register]:

6 (i) Level of activity has the same meaning as paragraph (a)(2)(i) of this
7 section.

8

1 (ii) Estimated level of activity has the same meaning as paragraph (a)(2)(ii) of
2 this section.

3 (iii) The civil money penalty shall be calculated in accordance with the
4 following schedule:

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:
<u>\$1-\$4,999.99^a</u>	<u>[\$50 + (\$10 x Number of days late)] x [1 + (.25 x Number of previous violations)]</u>	<u>\$500 x [1 + (.25 x Number of previous violations)]</u>
<u>\$5,000-\$9,999.99</u>	<u>[\$100 + (\$10 x Number of days late)] x [1 + (.25 x Number of previous violations)]</u>	<u>\$600 x [1 + (.25 x Number of previous violations)]</u>
<u>\$10,000 - 24,999.99</u>	<u>[\$150 + (\$10 x Number of days late)] x [1 + (.25 x Number of previous violations)]</u>	<u>\$900 x [1 + (.25 x Number of previous violations)]</u>
<u>\$25,000 - 49,999.99</u>	<u>[\$300 + (\$25 x Number of days late)] x [1 + (.25 x Number of previous violations)]</u>	<u>\$1,400 x [1 + (.25 x Number of previous violations)]</u>
<u>\$50,000 - 74,999.99</u>	<u>[\$450 + (\$75 x Number of days late)] x [1 + (.25 x Number of previous violations)]</u>	<u>\$3000 x [1 + (.25 x Number of previous violations)]</u>

1

\$75,000 - 99,999.99	$[\$600 + (\$100 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$4000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$100,000 - 149,999.99	$[\$900 + (\$125 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$5000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$150,000 - 199,999.99	$[\$1200 + (\$150 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$6000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$200,000 - 249,999.99	$[\$1500 + (\$175 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$7500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$250,000 - 349,999.99	$[\$2250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$9000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$350,000 - 449,999.99	$[\$3000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$10,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$450,000 - 549,999.99	$[\$3750 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$11,000 \times [1 + (.25 \times \text{Number of previous violations})]$

2

1

\$550,000 - 649,999.99	$[\$4500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$12,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$650,000 - 749,999.99	$[\$5250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$13,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$750,000 - 849,999.99	$[\$6000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$14,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$850,000 - 949,999.99	$[\$6750 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$15,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$950,000 or over	$[\$7500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$16,000 \times [1 + (.25 \times \text{Number of previous violations})]$

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

4 * * * * *

5 (d) * * *

6 Estimated level of activity means total receipts and disbursements reported in the current
7 two-year election cycle divided by the number of reports filed to date covering the activity in the
8 current two-year election cycle. If the respondent has not filed a report covering activity in the

1 ~~current two-year election cycle, estimated level of activity means total receipts and disbursements~~
2 ~~reported in the prior two-year election cycle divided by the number of reports filed covering the~~
3 ~~activity in the prior two-year election cycle.~~

4 ~~Level of activity means the total amount of receipts and disbursements for the period~~
5 ~~covered by the late report. If the report is not filed, the level of activity is the estimated level of~~
6 ~~activity.~~

7 * * * * *

8 4. Section 111.45 is amended by removing in the second sentence “4 CFR parts 100 through
9 105” and by replacing it with “31 CFR parts 900 through 904,” and by removing in the second
10 sentence “General Accounting Office” and replacing it with “the U.S. Department of the
11 Treasury.”

12 5. Section 111.46 is added to read as follows:

13 **§ 111.46 How will the respondent be notified of actions taken by the Commission and the**
14 **reviewing officer?**

15 **If a statement designating counsel has been filed in accordance with 11 CFR 111.23, all**
16 **notifications and other communications to a respondent provided for in subpart B of this part will**
17 **be sent to designated counsel. If a statement designating counsel has not been filed, all**
18 **notifications and other communications to a respondent provided for in subpart B of this part will**
19 **be sent to respondent political committee and its treasurer at the political committee’s address as**
20

1 listed in the most recent Statement of Organization, or amendment thereto, filed with the
2 Commission in accordance with 11 CFR 102.2.

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Ellen L. Weintraub
Chair
Federal Election Commission

Dated: _____
Billing Code: 6715-01-P