



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 1918

DATE SCANNED 8-17-09

SCANNER NO. 2

SCAN OPERATOR JmH

29092641358



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

SENSITIVE

December 16, 2008

MEMORANDUM

TO: THE COMMISSION

THROUGH: JOSEPH F. STOLTZ *JFS*
ACTING STAFF DIRECTOR

FROM: JOHN D. GIBSON *JDG*
CHIEF COMPLIANCE OFFICER

PATRICIA CARMONA *PC*
ASSISTANT STAFF DIRECTOR
REPORTS ANALYSIS DIVISION

BY: NATALIYA IOFFE/RHANNON MAGRUDER/CHRIS RITCHEE *NUS RM*
COMPLIANCE BRANCH

SUBJECT: REASON TO BELIEVE RECOMMENDATION -- 2008 OCTOBER
QUARTERLY REPORT (NON-ELECTION SENSITIVE) FOR THE
ADMINISTRATIVE FINE PROGRAM

2008 DEC 16 2:02 PM

RECEIVED
STANDARD

Attached is a list of political committees and their treasurers who failed to file the 2008 October Quarterly Report in accordance with 2 U.S.C. 434(a). The October Quarterly Report was due on October 15, 2008.

The committees listed in the attached RTB Circulation Report either failed to file the report, filed the report more than five (5) days after the due date, or filed the report more than thirty (30) days after the due date (considered a non-filed report). In accordance with the schedule of civil money penalties for reports at 11 CFR 111.43, these committees should be assessed the civil money penalties highlighted on the attached circulation report.

Recommendation

1. Find reason to believe that the political committees and their treasurers listed on the RTB Circulation Report violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalties would be the amounts indicated on the RTB Circulation Report.
2. Send the appropriate letters.

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Federal Election Commission
Reason to Believe Circulation Report
2008 OCTOBER QUARTERLY Not Election Sensitive 10/15/2008 H_S_P_UNAUTH

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
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1912	C00436790	BOB OLSON FOR U S SENATE	OLSON, ROBERT A.	LEE CONNERTON	\$158,365	0		Not Filed	\$31,273 (est)	\$900
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1917	C00448423	GREG SOWARDS FOR CONGRESS LLC	SOWARDS, GREGORY EDDIE	KIMBALL HAKES	\$628,017	0		Not Filed	\$209,339 (est)	\$6,500
1918	C00445775	JOE PENNACCHIO FOR U S SENATE	PENNACCHIO, JOSEPH	ALAN ZAKIN	\$853,114	0	10/23/2008	8	\$19,315	\$140

1920	C00444844	KOPLIN FOR CONGRESS	KOPLIN, ANDREW DAVID	RALPH J. STEPHENS	\$682,097	1	10/30/2008	15	\$8	\$125
1921	C00444406	OGONOWSKI FOR SENATE	OGONOWSKI, JAMES	KATHLEON HAAS OGONOWSKI	\$1,108,035	0	11/13/2008	29	\$3,913	\$170

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12/16/2008 10:28 AM

AF#	Committee ID	Committee Name	Candidate Name	Treasurer	Threshold	PV	Receipt Date	Days Late	LOA	RTB Penalty
1922	C00443558	SABRIN FOR SENATE	SABRIN, MURRAY	CHRISTOPHER R. WHALEN, CPA	\$1,315,150	0	11/19/2008	Not Filed	\$12,887	\$500
1923	C00443465	SEAN O'KANE FOR US CONGRESS COMMITTEE	O'KANE, SEAN THOMAS	WILLIAM J. SAMMON	\$231,618	1		Not Filed	\$1,000	\$312
1924	C00414821	STEVE RATHJE FOR US SENATE	RATHJE, STEVE	KENNETH R. KOLEK	\$210,598	0		Not Filed	\$30,085 (est)	\$900

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BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
 Reason To Believe Recommendation - 2008)
 October Quarterly Report (Non-Election)
 Sensitive) for The Administrative Fine)
 Program:)
 OGONOWSKI FOR SENATE, and) AF# 1921
 KATHLEON IIAAS OGONOWSKI as)
 treasurer;)
 KOPPLIN FOR CONGRESS, and RALPH) AF# 1920
 J STEPHENS as treasurer;)
 JOE PENNACCHIO FOR U S SENATE,) AF# 1918
 and ALAN ZAKIN as treasurer;)

BOB OLSON FOR U S SENATE, and LEE) AF# 1912
 CONNERTON as treasurer:)

GREG SOWARDS FOR CONGRESS) AF# 1917
 LLC, and KIMBALL HAKES as treasurer;)

SABRIN FOR SENATE, and) AF# 1922
 CHRISTOPHER R WHALEN CPA as)
 treasurer;)

SEAN O'KANE FOR US CONGRESS) AF# 1923
COMMITTEE, and WILLIAM J)
SAMMON as treasurer,)
STEVE RATHJE FOR US SENATE, and) AF# 1924
KENNETH R KOLEK as treasurer;)

CERTIFICATION

I, Mary W. Dove, Secretary of the Federal Election Commission, do hereby certify that on December 18, 2008 the Commission took the following actions on the Reason To Believe Recommendation - 2008 October Quarterly Report (Non-Election Sensitive) for The Administrative Fine Program as recommended in the Reports Analysis Division's Memorandum dated December 16, 2008, on the following committees:

AF#1921 Decided by a vote of 6-0 to: (1) find reason to believe that OGONOWSKI FOR SENATE, and KATHLEON HAAS OGONOWSKI as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#1920 Decided by a vote of 6-0 to: (1) find reason to believe that KOPPLIN FOR CONGRESS, and RALPH J STEPHENS as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#1918 Decided by a vote of 6-0 to: (1) find reason to believe that JOE PENNACCHIO FOR U S SENATE, and ALAN ZAKIN as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

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AF#1912 Decided by a vote of 6-0 to: (1) find reason to believe that BOB OLSON FOR U S SENATE, and LEE CONNERTON as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#1917 Decided by a vote of 6-0 to: (1) find reason to believe that GREG SOWARDS FOR CONGRESS LLC, and KIMBALL HAKES as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

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AF#1922 Decided by a vote of 6-0 to: (1) find reason to believe that SABRIN FOR SENATE, and CHRISTOPHER R WHALEN CPA as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#1923 Decided by a vote of 6-0 to: (1) find reason to believe that SEAN O'KANE FOR US CONGRESS COMMITTEE, and WILLIAM J SAMMON as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

AF#1924 Decided by a vote of 6-0 to: (1) find reason to believe that STEVE RATHJE FOR US SENATE, and KENNETH R KOLEK as treasurer violated 2 U.S.C. 434(a) and make a preliminary determination that the civil money penalty would be the amount indicated on the report; (2) send the appropriate letter. Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and Weintraub voted affirmatively for the decision.

Attest:

December 23, 2008
Date

Mary W. Dove
for Mary W. Dove
Secretary of the Commission

29092641395



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

December 22, 2008

Alan Zakin
Joe Pennacchio for U S Senate
136 Columbia Turnpike
P.O. Box 12
Florham Park, NJ 7932

C00445775
AF#: 1918

Dear Alan Zakin:

The Federal Election Campaign Act of 1971, as amended ("the Act"), requires that your committee file an October Quarterly Report of Receipts and Disbursements every calendar year. This report, covering the period through September 30th, shall be filed no later than October 15th. 2 U.S.C. 434(a). Records at the Federal Election Commission ("FEC") indicate that this report was filed on 10/23/2008, 8 days late.

The Act was further amended in 1999 to permit the FEC to impose civil money penalties for violations of the reporting requirements of 2 U.S.C. 434(a). 2 U.S.C. 437g(a)(4). On 12/18/2008, the FEC found that there is reason to believe ("RTB") that Joe Pennacchio for U S Senate and you, as treasurer, violated 2 U.S.C. 434(a) by failing to file timely this report on or before October 15th. Based on the FEC's schedules of civil money penalties at 11 C.F.R. 111.43, the amount of your civil money penalty calculated at the RTB stage is \$140. It is due by 1/27/2009 and is based on these factors:

Election Sensitivity of Report: Not Election Sensitive
Level of Activity: \$19,315
Number of Days Late: 8
Number of Previous Civil Money Penalties Assessed: 0

To Pay the Calculated Civil Money Penalty

To pay the calculated civil money penalty, send the enclosed remittance and your payment to the FEC at the address on page 4. Upon receipt of your payment, the FEC will send you a final determination letter.

To Challenge the RTB Finding and/or Calculated Civil Money Penalty

To challenge the RTB finding and/or calculated civil money penalty, you must submit a written response, including the AF# found on page one, to the FEC's Office of Administrative Review, 999 E Street, NW, Washington, DC 20463. Your response must be received by

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1/27/2009. Your written response must include the reason(s) why you are challenging the RTB finding and/or calculated civil money penalty. The FEC will only consider challenges that are based on a factual error in the RTB finding; miscalculation of the calculated civil money penalty by the FEC; or your demonstrated use of best efforts to file in a timely manner when prevented from doing so by reasonably unforeseen circumstances that were beyond your control. In order for a challenge to be considered on the basis of best efforts, you must have filed the required report no later than 24 hours after the end of these reasonably unforeseen circumstances. Examples of circumstances that will be considered reasonably unforeseen and beyond your control include, but are not limited to, a failure of Commission computers or Commission-provided software despite you seeking technical assistance from Commission personnel and resources; a widespread disruption of information transmissions over the Internet that is not caused by the Commission's or your computer systems or Internet service provider; and severe weather or other disaster-related incident. **Examples of circumstances that will not be considered reasonably unforeseen and beyond your control include, but are not limited to, negligence; delays caused by vendors or contractors; treasurer and staff illness, inexperience or unavailability; committee computer, software, or internet service provider failures; failure to know filing dates; and failure to use filing software properly.** Your response must include the factual basis supporting the reason(s) and supporting documentation. The FEC strongly encourages that documents be submitted in the form of affidavits or declarations. 11 C.F.R. 111.35.

Your failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of your right to present such argument in a petition to the district court under 2 U.S.C. 437g. 11 C.F.R. 111.38.

If you intend to be represented by counsel, please advise the Office of Administrative Review. You should provide, in writing, the name, address and telephone number of your counsel and authorize counsel to receive notifications and communications relating to this challenge and imposition of the calculated civil money penalty.

If You Do Not Pay the Calculated Civil Money Penalty or Submit a Challenge

If you do not pay the calculated civil money penalty or submit a written response, the FEC will assume that the preceding factual allegations are true and make a final determination that Joe Pennacchio for U S Senate and you, as treasurer, violated 2 U.S.C. 434(a) and assess a civil money penalty.

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA") as amended by the Debt Collection Improvement Act of 1996, 31 U.S.C. 3701 et seq. The FEC may take any and all appropriate action authorized and required by the DCA, as amended, including transfer to the U.S. Department of the Treasury for collection. 11 C.F.R. 111.45.

This matter was generated based on information ascertained by the FEC in the normal course of carrying out its supervisory responsibilities. 2 U.S.C. 437g(a)(2). It will remain confidential in accordance with 2 U.S.C. 437g(a)(4)(B) and 437g(a)(12)(A) until it is placed on

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the public record in accordance with 11 C.F.R. 111.42, unless you notify the FEC in writing that you wish the matter to be made public.

Additional information on the FEC's administrative fine program, including the final regulations, is located at the FEC's website at www.FEC.gov. If you have questions regarding the payment of the calculated civil money penalty, please contact Rhiannon Magruder in the Reports Analysis Division at our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130. If you have questions regarding the submission of a challenge, please contact the Office of Administrative Review at our toll free number (800) 424-9530 (press 0, then ext. 1660) or (202) 694-1660.

Sincerely,

A handwritten signature in black ink, appearing to read "DFM II", with a stylized flourish at the end.

Donald F. McGahn II
Chairman

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ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 C.F.R. 111.43, the amount of your civil money penalty calculated at RTB is \$140 for the 2008 October Quarterly Report.

Please mail this remittance with a check or money order made payable to the Federal Election Commission to the following address:

Federal Election Commission
P.O. Box 979058
St. Louis, MO 63197-9000

If you choose to send your remittance and payment by courier or overnight delivery, please use this address:

U.S. Bank - Government Lockbox
FEC #979058
1005 Convention Plaza
Attn: Government Lockbox, SL-MO-C2GL
St. Louis, MO 63101

The remittance and your payment are due by 1/27/2009. Upon receipt of your remittance and payment, the FEC will send you a final determination letter.

PAYMENTS BY PERSONAL CHECK

Personal checks will be converted into electronic funds transfers (EFTS). Your account will be electronically debited for the amount on your check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: Joe Pennacchio for U S Senate

FEC ID#: C00445775

AF#: 1918

PAYMENT DUE DATE: 1/27/2009

PAYMENT AMOUNT DUE: \$140

29092641369

FEC OFFICE OF ADMIN REVIEW

JOE PENNACCHIO FOR US SENATE
136 COLUMBIA TURNPIKE
P.O. BOX 12
FLORHAM PARK, NJ 07932

2009 JAN 28 A 8 48

January 27, 2009

Federal Election Commission

Office of Administrative Review

999 E Street, NW

Washington, DC 20463

AF#: 1918 & AF#1810

RE: Pennacchio for US Senate, 2008 Primary Campaign

Via fax (202) 208 1574 and mail

Dear Sir or Madam:

The following is a response to the letter, dated December 27, 2009, that our committee received from your office. We concede the facts as presented by the Federal Election Commission for the report due October 15, 2008.

Per my discussion with Shawn Werth, I would like to contrast the facts of this matter, which we concede, to that of AF#1810:

1. We arrived at the Parsippany Post Office, Rt. 46, Parsippany, NJ while it was still open on April 15, 2008; it was open late, until midnight, due to the April 15 tax deadline.
2. We intended to mail the report via certified mail as required by the FEC regulations.
3. By the time that we learned that the possibility of certified or registered mail was unavailable to us, it was after 10pm, and no other alternative such as FedEx or UPS was available to us.

For these reasons we request that these two matters be merged, and our entire penalty be determined to be the \$140 owing for the AF#1918.

Thank you for you kind consideration. Please contact me if you have any questions, or need any additional information.

Very Truly Yours,

Alan J. Zakin, Treasurer

29092641370



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Via First Class Mail

January 28, 2009

Alan Zakin, as Treasurer
Joe Pennacchio for US Senate
136 Columbia Turnpike
P.O. Box 12
Florham Park, NJ 07932

C00445775
AF# 1918

Dear Mr. Zakin:

On January 28, 2009, the Commission received your written response ("challenge") via facsimile, which is being reviewed by the Office of Administrative Review. Please also send a hard copy to this Office if you have not already done so. The mailing address is 999 E Street, NW, Washington, DC 20463. If you have any questions regarding your challenge, contact this Office on our toll free number (800)424-9530 (press 0, then ext. 1660) or (202)694-1660.

Sincerely,

A handwritten signature in cursive script that reads "Jill Sugarman".

Jill Sugarman
Reviewing Analyst
Office of Administrative Review

29092641371

Date: February 3, 2009

**REFERRAL TO OFFICE OF ADMINISTRATIVE REVIEW
CHALLENGE RECEIVED**

AF#: 1918

Committee Name: Joe Pennacchio for U S Senate

Committee ID#: C00445775

Committee Address (if different than in RTB letter): N/A

Treasurer Name (if different than in RTB finding): N/A

Attachments:

**Copy of RTB Circulation Report, dated December 8, 2008 and RTB
Certification, dated December 10, 2008: Previously Forwarded**

Attachment #: N/A

Certified Return Receipt (to be forwarded at later date if not yet received)(Y/N):Y

Attachment #: 1

Other Relevant Telecoms (Y/N): N

Attachment #: N/A

Original Correspondence Received by RAD in Response to RTB Letter (Y/N): N

Attachment #: N/A

RAD Staff Declaration (Y/N): Y

-Prior Notice, dated September 21, 2008.

-RTB Letter, dated December 22, 2008.

Attachment #: 3

Other RAD Information: (Y/N): N

Attachment#: N/A

2009 FEB -3 P 1:31

FEC OFFICE OF
ADMIN REVIEW

29092641372

SENDER: COMPLETE THIS SECTION

Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the mailpiece, or on the front if space permits.

Article Addressed to:

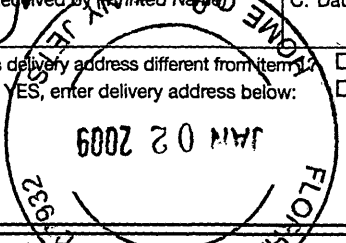
Alan Zakim
Joe Pennacchio For U S Senate
36 Columbia Turnpike
P.O. Box 12
Florham Park, NJ 07932

COMPLETE THIS SECTION ON DELIVERY

A. Signature Agent Addressee
Alan Zakim

B. Received by (Printed Name) C. Date of Delivery

D. Is delivery address different from item 1? Yes No
If YES, enter delivery address below:



3. Service Type
 Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

Article Number: 7005 1820 0001 7501 3826
(Transfer from service label)

Form 3811, February 2004 Domestic Return Receipt 102595-02-M-1540

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DECLARATION OF NATALIYA IOFFE

1. I am the Chief of the Compliance Branch for the Reports Analysis Division of the Federal Election Commission ("Commission"). In my capacity as Chief of the Compliance Branch, I oversee the initial processing of the Administrative Fine Program. I make this declaration based on my personal knowledge and, if called upon as a witness, could and would testify competently to the following matters.
2. I hereby certify that documents identified herein are true and accurate copies of the following sent by the Commission to Joe Pennacchio for U S Senate:
- A) Prior Notice, dated September 21, 2008, referencing the 2008 October Quarterly Report (sent via electronic mail to: AZACONSULT@MSN.COM);
 - B) Reason-to-Believe Letter, dated December 22, 2008, referencing the 2008 October Quarterly Report.
3. I hereby certify that I have searched the Commission's public records and find that Joe Pennacchio for U S Senate filed the 2008 October Quarterly Report with the Secretary of Senate on October 23, 2008.
4. Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the foregoing is true and correct and that all relevant telecoms for the matter have been provided. This declaration was executed at Washington, D.C. on the 3rd day of February, 2009.



Nataliya Ioffe
Chief, Compliance Branch
Reports Analysis Division
Federal Election Commission

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OCTOBER QUARTERLY
REPORT NOTICE

FEDERAL ELECTION COMMISSION

CONGRESSIONAL COMMITTEES

September 21, 2008

CURRENT REPORT DUE

REPORTING DATES

REPORT	REPORTING PERIOD ¹	REG./CERT. & OVERNIGHT MAILING DEADLINE	FILING DEADLINE
October Quarterly	07/01/08 - 09/30/08	10/15/08	10/15/08

PRE- AND POST-ELECTION REPORTS

A committee whose candidate participates in a 2008 state primary, nominating convention or runoff election – even if unopposed – must also file a pre-election report 12 days prior to the primary, nominating convention or runoff. The campaign committee of a candidate who participates in the general election must file pre- and post-general election reports. Separate notices will be sent to explain these additional reporting obligations. See the January 2008 Record, which can be found on the FEC web site at www.fec.gov/pdf/record/2008/jan08.pdf

Supplemental Filing Information is available on pages 3 and 4 of this notice.

¹These dates indicate the beginning and the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

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REPORTING SCHEDULE FOR REMAINDER OF 2008

REPORTING DATES

REPORT	REPORTING PERIOD ¹	REG./CERT. & OVERNIGHT MAILING DEADLINE	FILING DEADLINE
Pre-General	10/01/08 - 10/15/08	10/20/08	10/23/08
48 Hour Notices	10/16/08 - 11/01/08	---see p. 4 of notice---	
Post-General	10/16/08 - 11/24/08	12/04/08	12/04/08
Year-End	11/25/08 - 12/31/08	01/31/09	01/31/09 ²

PRE- AND POST-ELECTION REPORTS

A committee whose candidate participates in a 2008 state primary, nominating convention or runoff election – even if unopposed – must also file a pre-election report 12 days prior to the primary, nominating convention or runoff. The campaign committee of a candidate who participates in the general election must file pre- and post-general election reports. Separate notices will be sent to explain these additional reporting obligations. See the January 2008 Record, which can be found on the FEC web site at www.fec.gov/pdf/record/2008/jan08.pdf.

Supplemental Filing Information is available on pages 3 and 4 of this notice.

¹These dates indicate the beginning and the end of the reporting period. A reporting period always begins the day after the closing date of the last report filed. If the committee is new and has not previously filed a report, the first report must cover all activity that occurred before the committee registered up through the close of books for the first report due.

²Notice that this filing deadline falls on a weekend. Filing deadlines are not extended when they fall on nonworking days. Accordingly, reports filed by methods other than Registered, Certified or Overnight Mail, or electronically, must be received before the Commission's (or for Senate candidates, the Secretary of the Senate's) close of business on the last business day before the deadline.

SUPPLEMENTAL FILING INFORMATION

PLEASE NOTE: The Commission provides reminders of upcoming filing dates as a courtesy to help committees comply with the filing deadlines set forth in the Act and Commission regulations. Committee treasurers must comply with all applicable filing deadlines established by law, and the lack of prior notice does not constitute an excuse for failing to comply with any filing deadline.

WHO MUST FILE

Principal campaign committees of congressional candidates³ (including unopposed candidates and candidates whose names do not appear on the ballot) must file an October Quarterly Report by October 15, 2008.⁴

Campaigns that raise or spend more than \$5,000 for the 2008 election cycle (and thus trigger registration and reporting requirements) must file quarterly reports throughout 2008, even if the candidate plans to retire, withdraws from the race prior to the primary election, loses the primary or drops out of the race prior to the general election. Before a committee can stop filing with the FEC, it must file a termination report with the Commission. Committees must continue to file reports until the Commission notifies them in writing that their termination report has been accepted.

METHODS OF FILING REPORTS

Electronic Filing

Reports filed electronically must be received and validated by the Commission by 11:59 p.m. Eastern Time on the filing deadline. For additional information, call the Electronic Filing Office at (800) 424-9530 or (202) 694-1642 or visit our website at www.fec.gov/electfil/electron.shtml.

Under the Commission's mandatory electronic filing regulations, U.S. House committees that receive contributions or make expenditures in excess of \$50,000 in a calendar year, or that have reason to expect to do so, must file all reports and statements with the FEC electronically. Other U.S. House committees may voluntarily file electronically; however, any entity that files electronically, whether required to do so or not, must comply with the electronic filing rules. U.S. Senate committees that file with the Secretary of the Senate are not subject to the mandatory electronic filing rules, but may file an unofficial copy of their reports with the Commission in order to speed disclosure.

Registered & Certified Mail

Reports sent by Registered or Certified Mail must be postmarked on or before the mailing deadline to be considered timely filed. A committee sending its reports by Certified Mail should keep its certified mailing receipt with the U.S. Postal Service (USPS) postmark as proof of filing because the USPS does not keep complete records of items sent by Certified Mail. A committee sending its report by Registered Mail should keep its proof of mailing. Note that a Certificate of Mailing from the USPS is not sufficient to prove that a report is timely filed using Registered, Certified or Overnight Mail.

Overnight Mail

Reports filed via overnight mail will be considered timely filed if the report is received by the delivery service on or before the mailing deadline. "Overnight mail" includes Priority or Express Mail having a delivery confirmation, or an overnight delivery service with which the report is scheduled for next business day delivery and is recorded in the service's on-line tracking system.

³Generally, an individual becomes a candidate for Federal office (and thus triggers registration and reporting obligations) when his or her campaign exceeds \$5,000 in either contributions received or expenditures made. If the campaign has not exceeded the \$5,000 threshold, it is not required to file reports. See 11 CFR 100.3(a).

⁴If a candidate has more than one authorized committee, the principal campaign committee must also file a consolidated report on Form 3Z.

Other Means of Filing

Reports filed by any other means—including first class mail and courier—must be received by the Commission (or for Senate committees, the Secretary of the Senate) before the close of business on the last business day before the filing deadline.

Forms are available for downloading and printing at the FEC website at www.fec.gov/info/forms.shtml.

48 HOUR NOTICES ON CONTRIBUTIONS

Notices are required if the committee receives any contribution (**including in-kind gifts or advances of goods or services; Loans from the candidate or other non-bank sources; and guarantees or endorsements of bank loans to the candidate or committee**) of \$1,000 or more per source, during the period less than 20 days but more than 48 hours before any election in which the candidate is running.

The notices, which may be filed using Form 6, or under limited circumstances Form 10, must reach the appropriate federal and/or state filing office(s) within 48 hours of the committee's receipt of the contribution(s). U.S. Senate candidates must transmit the notices to the Secretary of the Senate by fax at (202) 224-1851. **Campaign committees that file electronically MUST submit their 48-hour notices electronically.** For more information, visit the FEC web site at www.fec.gov/electfil/online.shtml.

U.S. House candidates faxing 48-hour notices should transmit them to the FEC at (202) 219-0174. Paper forms are available at the FEC web site at www.fec.gov/info/forms.shtml.

COMPLIANCE

Treasurer Responsibility. Treasurers of political committees are responsible for both the timeliness and the accuracy of all reports. They may be subject to monetary penalties if reports are inaccurate or are not filed on time. For additional information, see the Commission's *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings* on the web site at www.fec.gov/law/policy/2004/notice2004-20.pdf.

Administrative Fine Program. Under the Administrative Fine Program, political committees and their treasurers who fail to file their reports on time may be subject to civil money penalties up to \$16,000 (or more for repeat late- and non-filers).⁵ For additional information, visit the FEC website at www.fec.gov/af/af.shtml.

Report Format. In addition, political committees that file illegible reports or use non-FEC forms (except for FEC-approved, computer-generated forms) will be required to refile their reports.

Electronic Filers Must File Electronically. Electronic filers who instead file on paper, or who submit an electronic report (either by direct transmission, 3.5" diskette or CD) that does not pass the validation program by 11:59 p.m. Eastern Time on the filing deadline, will be considered non-filers and may be subject to enforcement actions (including administrative fines).

IMPORTANT FILING INFORMATION - PAPER FILERS

In response to the anthrax threat, the U.S. Postal Service is irradiating mail directed to many federal agencies, including the FEC and the Secretary of the Senate.⁶ This process has not only delayed mail delivery, it has also damaged and in some cases destroyed pieces of mail. As a result, committees that file reports with the FEC may want to consider submitting their reports by some means other than U.S. mail. Alternative methods include electronic filing, overnight mail service, and hand delivery.

⁵Penalties for late- or non-filing of 48-hour notices are based on the amount of contributions not timely disclosed. As a result, these penalties may exceed \$16,000, even for first-time violations.

⁶Senate committees should contact the Secretary of the Senate at (202) 224-0322 for more on filing reports via US mail.

FOR INFORMATION, CALL: (800) 424-9530 or (202) 694-1100

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FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

FEDERAL ELECTION COMMISSION
SECRETARIAT

2009 MAR 10 P 12: 26

March 10, 2009

MEMORANDUM

To: The Commission

Through: Joseph F. Stoltz *JFS*
Acting Staff Director

From: John D. Gibson *JDG*
Chief Compliance Officer

Shawn Woodhead Wertz *SW*
Reviewing Officer
Office of Administrative Review

By: Jill Sugarman *JS*
Reviewing Analyst

Subject: AF# 1810 and AF# 1918 – Pennacchio for US Senate and Alan J. Zakin,
as Treasurer (C00445775)

SENSITIVE

The attached Reviewing Officer Recommendation is being circulated on an informational basis. A copy was also sent to the respondents in accordance with 11 C.F.R. § 111.36(f). The respondents may file with the Commission Secretary a written response within 10 days of transmittal of the recommendation.

After the 10 day period, the Reviewing Officer Recommendation and the respondents' written response, if any, will be circulated to the Commission to make a final determination.

Attachment

29092641379



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

March 10, 2009

**REVIEWING OFFICER RECOMMENDATION
OFFICE OF ADMINISTRATIVE REVIEW ("OAR")**

AF# 1810 and AF# 1918 – Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer
(C00445775)

On September 19 and December 18, 2008, the Commission found reason to believe ("RTB") that the respondents violated 2 U.S.C. § 434(a) for failing to timely file the 2008 April and October Quarterly Reports, respectively. On these dates, the Commission also made a preliminary determination that the civil money penalty was \$2,000 for the April Quarterly Report and \$140 for the October Quarterly Report based on the schedule of penalties for non-election sensitive reports at 11 C.F.R. § 111.43. They were notified by the Reports Analysis Division ("RAD") on September 22 and December 22, 2008, respectively, of the Commission's RTB findings and civil money penalties. A copy of the RTB letter for AF# 1810 was faxed to them on October 22, 2008.

Respondents' Response

On October 30, 2008, the Commission received the written response ("challenge") from the Treasurer for the April Quarterly Report (AF# 1810). He asks that the civil penalty be reversed, or alternatively reduced, for these reasons. First, they got to the post office on the afternoon of the April 15 tax deadline and found a very long line. The post office was no longer accepting certified or registered mail but, by the time they found this out, it was too late in the evening to go to another post office or send the report by an overnight delivery service. Their only choice was to wait in the line for 4 ½ hours to get postage and have the envelope hand canceled. Second, the amount of the fine is not appropriate for a ministerial, not substantive, violation as the report was received at the same time as if it had been sent certified or registered mail and they took all due care to have it mailed that way. Third, they should not be penalized for the 8 day delay as a result of the Secretary of the Senate's cumbersome security procedure. Fourth, they can not electronically file their report because of the Senate's rules.

On February 11, 2009, the Commission received the challenge from the Treasurer for the October Quarterly Report (AF# 1918). He asks that this case be merged with AF# 1810 and that the penalty for both cases be the \$140 owed for AF# 1918. He concedes the facts for the October Quarterly Report and contrasts that situation to what occurred for the April Quarterly Report: they arrived at the post office while it was still open; the post office was open until midnight that day because of the tax deadline; they intended to mail the report by certified mail; they did not learn until after 10 p.m. that they could not send it by certified or registered mail; and they had no alternative such as FedEx or UPS available to use.

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Because the respondents ask that the Commission consider their challenges for AF# 1810 and AF# 1918 together, the Reviewing Officer is addressing both cases in this Reviewing Officer Recommendation.

Analysis

The April Quarterly Report was sent first class mail on April 15, 2008 and received on April 23, 2008. It was filed 8 days late. The October Quarterly Report was sent by overnight delivery on October 23, 2008. It was filed 8 days late.

The Federal Election Campaign Act ("Act") requires that quarterly reports be filed by the treasurer of a principal campaign committee no later than the 15th day after the last day of each calendar quarter. 2 U.S.C. § 434(a)(2)(A)(iii) and 11 C.F.R. § 104.5(a)(1)(i). All reports required to be filed by the principal campaign committee of a candidate for the office of U.S. Senator shall be filed with the Secretary of the Senate. 2 U.S.C. § 432(g)(1) and 11 C.F.R. § 105.2. April and October Quarterly Reports sent by certified or registered mail, Priority or Express Mail with delivery confirmation, or by an overnight delivery service with an on-line tracking system and scheduled for next business day delivery must be postmarked or deposited with the mailing service no later than April 15 or October 15, respectively, to be timely filed. Reports sent by first class mail must be received by the close of business on the filing date to be timely filed. 2 U.S.C. § 434(a)(5), and 11 C.F.R. §§ 100.19(b) and 104.5(e). The treasurer shall be personally responsible for the timely filing of reports. 11 C.F.R. § 104.14(d).

In April 2007, the Commission revised its administrative fine regulations and added the best efforts defense. Under this defense, the Commission may decide that no violation occurred because the respondents used their best efforts to file on time. 11 C.F.R. § 111.35(b)(3) and (c).

The best efforts defense is a two-part test. The first part consists of the respondents demonstrating that they were prevented from filing on time by reasonably unforeseen circumstances that were beyond their control. The Commission states in its Explanation and Justification that this defense is an

objective test, which uses a reasonable person standard and does not depend upon the committee's treasurer or staff's subjective ability to foresee a particular circumstance.... It is not sufficient for reasonably unforeseen circumstances to make it merely more difficult than usual ... to file on time. The circumstance must cause the respondent to be *unable* to file in a timely and proper manner, despite ... attempting to use all available methods of filing.... If the respondent is prevented from using one method of filing by a problem..., the respondent cannot claim the "best efforts" defense if it did not attempt to use other available methods to file timely.... Therefore, to satisfy the "best efforts" defense, a respondent must demonstrate that it attempted to use all available methods to file, but timely filing by each method was *prevented* by the reasonably unforeseen circumstances beyond the control of the respondent. [Emphasis in original.]

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The Treasurer is correct that, as a principal campaign committee of a Senate candidate, the electronic filing rules do not apply to them. Nonetheless, they have several methods by which they can file their reports. The respondents had 15 days after the report's close of business to prepare and file the April Quarterly Report by any of these methods: first class mail, Express or Priority mail with delivery confirmation, certified or registered mail, or an overnight delivery service.

They waited until the filing deadline to file the report. From their description of what occurred (they stood in line for 4 ½ hours and did not find out until after 10 p.m. that they could not send it certified or registered mail), they arrived at the post office in the late afternoon. Going to the post office on April 15 and encountering a very long line because it is also the tax filing deadline is not a reasonably unforeseen circumstance. Had they gone to the post office earlier in the day and encountered the same situation, they may have afforded themselves enough time to go to another post office and send it certified or registered mail, or send it by an overnight delivery service. Since the post office was no longer accepting certified or registered mail, the respondents still could have filed the report on time by two other 2 U.S.C. § 434(a)(5) "safe harbor" options: Express or Priority mail with delivery confirmation. By waiting until the filing deadline and going to the post office late in the afternoon, they limited, and did not avail themselves of all, their filing options. Thus, the respondents do not meet the first part of the "best efforts" test.

With respect to security procedures contributing to the delay in the report's receipt, Senate filers are warned about possible mail delays caused by the Postal Service's irradiation screening. This warning was included the April Quarterly Report's Prior Notice which was emailed to them at the address they provided on their Statement of Organization. Had they sent the report using any of the "safe harbor" filing methods, the report would have been considered filed on the date of the postmark or deposit with the delivery service regardless of how long it took for the report to get to the Senate.

The respondents also ask that the cases be merged and one fine, the \$140 RTB civil money penalty for the October Quarterly Report, be assessed for both cases. Under the administrative fine regulations, civil money penalties are calculated on a per report basis just as challenges submitted by respondents are reviewed on a case by case basis. 11 C.F.R. §§ 111.35 and 111.43. There is no provision in the regulations to concede the facts and agree to pay the penalty for one case as a basis for the Commission to accept the defense raised in another case and not assess a penalty.

The issues raised in their challenges do not fall within the list of defenses enumerated at 11 C.F.R. § 111.35(b). These are: (i) the RTB finding is based on factual errors; and/or (ii) the improper calculation of the civil money penalty; and/or (iii) they used best efforts to file on time but were prevented from doing so by reasonably unforeseen circumstances that were beyond their control and they filed the report no later than 24 hours after the end of these circumstances. The Reviewing Officer, therefore, recommends that the Commission make a final determination in AF# 1810 and AF# 1918 that the respondents violated 2 U.S.C. § 434(a) and assess civil money penalties of \$2,000 and \$140, respectively.

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OAR Recommendations

- (1) Adopt the Reviewing Officer recommendation for AF# 1810 involving Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer, in making the final determination;
- (2) Make a final determination in AF# 1810 that Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$2,000;
- (3) Adopt the Reviewing Officer recommendation for AF# 1918 involving Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer, in making the final determination;
- (4) Make a final determination in AF# 1918 that Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$140; and
- (5) Send the appropriate letters.

Reviewing Analyst: Jill I. Sugarman

Attachments

Attachment 1 – Challenge Received from Respondents for AF# 1810

Attachment 2 – Challenge Received from Respondents for AF# 1918

Attachment 3 – Declaration from RAD for AF# 1810 _____

Attachment 4 – Declaration from RAD for AF# 1918 _____

Attachment 5 – Federal Register – Vol. 72, No. 60, 14662, 14664-14666, March 29, 2007

Attachment 6 – Declaration from OAR

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extensively to the stabilization of producer prices, which prior to 1980 experienced wide fluctuations from year-to-year. National Agricultural Statistics Service records show that the average price paid for both classes of spearmint oil ranged from \$4.00 per pound to \$11.10 per pound during the period between 1968 and 1980. Prices have been consistently more stable since the marketing order's inception in 1980, with an average price for the period from 1980 to 2005 of \$12.72 per pound for Scotch spearmint oil and \$9.84 per pound for Native spearmint oil.

During the period of 1998 through 2005, however, large production and carry-in inventories have contributed to prices below the 26-year average, despite the Committee's efforts to balance available supplies with demand. Prices have ranged from \$8.00 to \$11.00 per pound for Scotch spearmint oil and between \$9.10 and \$10.00 per pound for Native spearmint oil. The 2005 Native price exceeded the 26-year average by \$0.16. Producers stated, however, that fuel cost increases more than offset the price increase.

According to the Committee, the recommended salable quantities and allotment percentages are expected to achieve the goals of market and price stability.

As previously stated, annual salable quantities and allotment percentages have been issued for both classes of spearmint oil since the order's inception. Accordingly, this action will not impose any additional reporting or recordkeeping requirements on either small or large spearmint oil producers or handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

The AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

As noted in the initial regulatory flexibility analysis, USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this final rule.

In addition, the Committee's meeting was widely publicized throughout the spearmint oil industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 4, 2006, meeting was a public meeting and

all entities, both large and small, were able to express views on this issue.

A proposed rule concerning this action was published in the **Federal Register** on January 22, 2007 (71 FR 2639). Copies of the rule were provided to Committee staff, which in turn made it available to spearmint oil producers, handlers, and other interested person. Finally, the rule was made available through the Internet by the Office of the Federal Register and USDA. A 30-day comment period ending February 21, 2007, was provided to allow interested persons to respond to the proposal. No comments were received.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: <http://www.ams.usda.gov/fv/moab.html>. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

After consideration of all relevant matter presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 985

Marketing agreements, Oils and fats, Reporting and recordkeeping requirements, Spearmint oil.

■ For the reasons set forth in the preamble, 7 CFR part 985 is amended as follows:

PART 985—MARKETING ORDER REGULATING THE HANDLING OF SPEARMINT OIL PRODUCED IN THE FAR WEST

■ 1. The authority citation for 7 CFR part 985 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. A new § 985.226 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 985.226 Salable quantities and allotment percentages—2007–2008 marketing year.

The salable quantity and allotment percentage for each class of spearmint oil during the marketing year beginning on June 1, 2007, shall be as follows:

(a) *Class 1 (Scotch) oil*—a salable quantity of 886,667 pounds and an allotment percentage of 45 percent.

(b) *Class 3 (Native) oil*—a salable quantity of 1,062,336 pounds and an allotment percentage of 48 percent.

Dated: March 23, 2007.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E7–5811 Filed 3–28–07; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2007–7]

Best Efforts in Administrative Fines Challenges

AGENCY: Federal Election Commission.

ACTION: Final Rules and Transmittal of Rules to Congress.

SUMMARY: The Federal Election Commission is revising its regulations to amend four aspects of its Administrative Fines Program (“AFP”), a streamlined process through which the Commission assesses civil money penalties for late filers and non-filers under the Federal Election Campaign Act of 1971, as amended (“FECA”). First, the Commission is revising its rules regarding the permissible grounds for challenging a proposed civil money penalty by clarifying the scope of the defense based on factual errors. Second, the Commission is incorporating a defense for political committees that demonstrate that they used their best efforts to file reports timely. Third, the Commission is revising its rules regarding its final determinations to clarify when the Commission finds that no violation has occurred. Lastly, the rules are being amended to explain that the Commission’s statement of reasons for its final decision in an AFP matter usually consists of the reasons set forth by the Commission’s reviewing officer as adopted by the Commission. The supplementary information that follows provides further information.

EFFECTIVE DATE: April 30, 2007.

FOR FURTHER INFORMATION CONTACT: Mr. J. Duane Pugh Jr., Acting Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Through the AFP, the Commission may assess a civil money penalty for a violation of the reporting requirements of 2 U.S.C. 434(a) (such as not filing or filing late) without using the traditional enforcement procedures reserved for more serious violations under 2 U.S.C.

the rule regarding the "factual errors" defense as proposed in the *NPRM*, except for stylistic changes. The revised rule states that the facts alleged to be in error must be facts upon which the Commission relied in its RTB finding. See revised 11 CFR 111.35(b)(1). Thus, a respondent may not challenge an RTB finding based on factual errors that are irrelevant to the Commission's actual RTB finding, such as errors in the RTB finding regarding individual names or titles of committee staff.

The revised rule provides two examples of the type of factual errors that would properly support a challenge: the respondent was not required to file the report in question, and the respondent did in fact timely file as described in 11 CFR 100.19. See revised 11 CFR 111.35(b)(1). For example, a political committee that is not subject to electronic filing requirements could challenge an RTB finding and proposed civil money penalty under section 111.35(b)(1) by showing that the paper copy was filed on time and the Commission relied on the factual error that the committee was required instead to file electronically. See 11 CFR 104.18(a). As referenced in the rule's second example, Commission rules currently state that certain reports are "timely filed" if they are deposited as registered or certified mail with the U.S. Post Office, as Priority Mail or Express Mail through the U.S. Post Office, or with an overnight delivery service to be delivered the next business day with a postmark no later than 11:59 p.m. EST on the filing date. See 11 CFR 100.19(b). Thus, a respondent who is not required to file electronically could challenge an RTB finding based on evidence that it deposited the report in the proper manner pursuant to section 100.19(b) on the filing date, even if the Commission did not receive the report because of a delivery failure by the U.S. Post Office or other delivery service. The Commission emphasizes that the revisions to section 111.35(b)(1) do not create any new "factual errors" defenses, but simply recognize the types of errors that the Commission has accepted previously as a defense in the AFP.

B. Revised 11 CFR 111.35(b)(3)—"Best Efforts" Defense

The *NPRM* also sought comment on whether to replace the "extraordinary circumstances" defense in the prior rule with a "best efforts" defense for challenging an RTB finding based upon 2 U.S.C. 432(i). See *NPRM*, 71 FR at 71094-95 and former 11 CFR 111.35(b)(1)(iii). The comment generally supported the idea of a "best efforts"

defense. The Commission has decided to adopt the *Lovely* court's interpretation of 2 U.S.C. 432(i) and to incorporate a "best efforts" defense into the AFP. It appears in revised 11 CFR 111.35(b)(3) and is the same as the proposed rule, except for the changes noted below. The "best efforts" defense in the revised rule completely replaces the prior "extraordinary circumstances" defense because the two defenses are largely coextensive. The Commission reiterates its policy determination, as stated in the initial rulemaking for the AFP, that respondents' defenses in the AFP should be limited because the complete and timely disclosure of the political committee's financial activity is a "cornerstone of campaign finance law." See *Admin Fines E&J*, 65 FR at 31789.

The *Lovely* court recognized that the Commission could "refine by regulation what best efforts means in the context of submitting a report." *Lovely*, 307 F. Supp. 2d at 300. In exercising its authority to interpret how to incorporate a "best efforts" defense into the AFP rules, the Commission is mindful of the statutory terms chosen by Congress. As also explained by the Commission in its statement of reasons in the *Lovely* case after remand, section 432(i) creates a safe harbor for treasurers who demonstrate that best efforts have been used to submit reports required by FECA. "Best" is an adjective of the superlative degree. Therefore, best efforts requires more than "some" or "good" efforts. Section 432(i)'s use of the phrase "best efforts," instead of a "good faith" standard, means that an AFP respondent cannot rely upon the state of mind of the committee's treasurer or staff to claim this defense.⁶ Instead, the Commission's revised rule at 11 CFR 111.35(b)(3), which sets forth the "best efforts" defense, focuses on actions taken by the respondent committee or treasurer to comply with reporting deadlines.

The "best efforts" defense is described in the revised rule as a two-part test. The AFP respondent must demonstrate that: (1) The respondent was prevented from filing in a timely manner by "reasonably unforeseen circumstances that were beyond the control" of the respondent; and (2) the respondent filed the report in question no later than 24 hours after the end of the reasonably unforeseen circumstances preventing the timely filing. See revised 11 CFR 111.35(b)(3). The Commission believes this test is straightforward and should be easy for

⁶ See *Statement of Reasons in Administrative Fines Case 549* (Oct. 4, 2005).

respondents to understand and document in their written responses. The final rule differs slightly from the proposed rule, which would have stated that the respondent must be prevented from filing in a timely manner by "unforeseen" circumstances. The Commission is making this change to emphasize that the "best efforts" defense is an objective test, which uses a reasonable person standard and does not depend upon the committee's treasurer or staff's subjective ability to foresee a particular circumstance. The examples included in the rule in 11 CFR 111.35(c) and (d), described below, illustrate how this defense operates as an objective test.

Under the first part of the defense, the respondent bears the burden of showing that the reasonably unforeseen circumstances in fact prevented the timely and proper filing of the required report. The *NPRM* requested public comment regarding whether the Commission should apply a "but for" or "contributing factor" test for determining whether a respondent was prevented from timely filing under the rule. See *NPRM*, 71 FR at 71095. The comment did not address this issue. The Commission has decided that this rule requires a strict causal relationship between the circumstances described in the challenge (such as a natural disaster) and the respondent's inability to file the report timely. It is not sufficient for reasonably unforeseen circumstances to make it merely more difficult than usual for the respondent to file on time. The circumstance must cause the respondent to be unable to file in a timely and proper manner, despite the respondent attempting to use all available methods of filing. "Best efforts" is a high standard set by FECA, and the Commission reminds respondents that there are multiple ways for a committee to file required reports properly and timely. See, e.g., 11 CFR 100.19(b) (political committees not required to file electronically may file on paper by hand delivery, first class, registered, certified, Priority or Express U.S. Mail, or overnight delivery service); 11 CFR 104.18 (mandatory electronic filings accepted through the Commission's filing system via internet, modem, or by submission of diskette or CD). If the respondent is prevented from using one method of filing by a problem (such as a technical problem with the Commission's modems), the respondent cannot claim the "best efforts" defense if it did not attempt to use other available methods to file timely (such as

submission on a diskette or CD).⁷ Therefore, to satisfy the "best efforts" defense, a respondent must demonstrate that it attempted to use all available methods to file, but that timely filing by each method was prevented by the reasonably unforeseen circumstances beyond the control of the respondent.

The direct causal link between the reasonably unforeseen circumstances and the ability of the respondent to file the report also underlies the second part of the test for the "best efforts" defense. A respondent must show that the report was properly filed no later than 24 hours after the resolution of the circumstances preventing the timely filing. When the situation (such as a problem with Commission computers) is resolved, the Act's high standard of "best efforts" requires that the respondent file the report within a reasonably short period of time. The NPRM requested public comment regarding whether the 24-hour period in the proposed rule was appropriate for the "best efforts" defense. See NPRM, 71 FR at 71095. The comment did not address this issue. The Commission has determined that a 24-hour period best serves the interest in disclosure of the information as soon as practicable after the circumstances preventing the timely disclosure are resolved.

C. Examples of Circumstances Under the "Best Efforts" Defense

To provide further guidance to respondents regarding the scope of the "best efforts" defense, the revised rule includes examples of circumstances that will be considered "reasonably unforeseen and beyond the control of the respondent," and examples of circumstances that will not be considered "reasonably unforeseen and beyond the control of the respondent." See revised 11 CFR 111.35(c) and (d). The comment argued that the rule should not be limited to examples of defenses that would be unacceptable under the new "best efforts" defense, but should also include examples of defenses that would meet the new defense to provide guidance to

committees and treasurers. The revised rule provides such illustrations. The examples of defenses in the revised rule are the same as proposed in the NPRM, except as noted otherwise below. Both sets of examples in revised section 111.35(c) and (d) are non-exhaustive lists and should not be read to override the general requirements of the defense in revised section 111.35(b)(3) as discussed above.

1. Revised 11 CFR 111.35(c)—Reasonably Unforeseen Circumstances Beyond Respondents' Control

Revised section 111.35(c) provides three examples of circumstances that the Commission will consider "reasonably unforeseen and beyond the control" of the respondent under a "best efforts" defense. The first example is that a failure of Commission computers or Commission-provided software, despite the respondent seeking technical assistance, caused the respondent's untimely electronic filing. See revised 11 CFR 111.35(c)(1). This example is similar to the example in the prior rules, in which a failure of Commission computers satisfied the "extraordinary circumstances" defense. See former 11 CFR 111.35(b)(4)(iv); *Admin Fines E&J*, 65 FR at 31790 ("Any failure of the Commission's system that prevents committees from filing their reports when due would be recognized as an extraordinary circumstance beyond the respondents' control.")⁸ The revised rule differs from the proposed rule by including the respondent's seeking technical assistance as part of the example. Consistent with the prior defense based on Commission computer failures, the revised example clarifies that political committees must use all Commission resources available to aid with electronic filing, such as technical support manuals and personnel, before a respondent will be considered "prevented" from timely filing by Commission computer or software failures. Thus, any failure of Commission computers, servers, filing system or Commission-provided software of sufficient severity that it results in a respondent being unable to file, despite the respondent seeking assistance from the Commission's technical support personnel, is a

reasonably unforeseen circumstance beyond the respondent's control.

The second example in revised section 111.35(c)(2) is a "widespread disruption of information transmissions over the Internet not caused by any failure of the Commission's or respondent's computer systems or Internet service provider." This example covers circumstances in which technological problems at a third-party hub or information transfer location, rather than the Commission's or respondent's computer systems, caused widespread communication failures on the Internet that left the respondent unable to send, or the Commission unable to receive, an electronically filed report. This failure to transmit information must occur irrespective of any failures of the Commission's or respondent's computer systems or Internet service providers. If a respondent demonstrates such a widespread disruption of information transmissions occurred, the Commission will consider it "reasonably unforeseen circumstances that were beyond the control" of the respondent. As with all the examples in revised section 111.35(c)(2), the respondent bears the burden of showing that these reasonably unforeseen circumstances *in fact prevented* the respondent from filing timely, despite attempts to file by any available alternative methods permitted under Commission regulations.⁹ This example has been refined from the proposed rule to clarify the types of transmission failures contemplated.

The final example in the rule states that a "[s]evere weather or other disaster-related incident" is a reasonably unforeseen circumstance beyond the control of the respondent. See revised 11 CFR 111.35(c)(3). Under the prior rule, the Commission deemed certain weather conditions (lasting more than 48 hours) met the "extraordinary circumstances" test, explaining that "natural disasters where a committee's office is located in the disaster area and the committee cannot timely file a report because of lack of electricity or flooding or destruction of committee records" would satisfy the defense. See previous 11 CFR 111.35(b)(1)(iii); *Admin Fines E&J*, 65 FR at 31790. The revised rule permits such severe weather-related events occurring at the respondent's or Commission's location

⁷ The Commission's guidance and instructions to political committees required to file electronically makes clear that if a report is successfully uploaded and accepted by the Commission, a confirmation receipt (including a validation number) is immediately sent to the committee via e-mail, fax or both. If a committee does not receive such a receipt, the committee should not assume the filing was received and should contact the Commission's technical support personnel. See, e.g., "Frequently Asked Questions About Electronic Filing," available at http://www.fec.gov/support/faq_filing.shtml (last visited Mar. 16, 2007); "Common Electronic Filing Mistakes," available at <http://www.fec.gov/elecfill/mistakes.shtml> (last visited Mar. 16, 2007).

⁸ In order to satisfy the prior "extraordinary circumstances" defense, the failure of Commission computers had to last at least 48 hours. See former 11 CFR 111.35(b)(1)(iii). The new "best efforts" defense does not contain any minimum time period for the "reasonably unforeseen circumstances that were beyond the control" of the respondent. See revised 11 CFR 111.35(b)(3).

⁹ The Commission's electronic filing manuals detail step-by-step instructions for the various methods of acceptable electronic filing via the Internet, modem, or by saving the report to a diskette or CD. See, e.g., "FECFile User Manual for Candidate Committees," available at http://www.fec.gov/elecfill/authorized_manual/manual.shtml (last visited Mar. 16, 2007).

to form the basis for a "best efforts" defense. The Commission is not defining with specificity the level of severity for weather or other disaster-related incidents in revised section 111.35(c)(3) because a respondent's challenge must show that the weather or disaster-related incident *in fact prevented* the respondent from filing timely. Given that the effects upon the respondent of each weather or disaster-related incident will vary, the Commission will evaluate the particular facts contained in individual challenges, instead of mandating such details in a rule of general application.

2. Revised 11 CFR 111.35(d)—Circumstances That Are Not Reasonably Unforeseen or Beyond Respondents' Control

Revised section 111.35(d) includes a non-exhaustive list of circumstances that are *not* considered "reasonably unforeseen and beyond the control" of the respondent, and will not support a "best efforts" finding. See revised 11 CFR 111.35(d)(1) through (6). All but two of these examples are drawn from the list of events that did not constitute "extraordinary circumstances" under the Commission's prior rule: Negligence; delays caused by committee vendors or contractors; illness, inexperience or unavailability (including death) of the treasurer or other staff; and committee computer, software or Internet service provider failures. Compare revised 11 CFR 111.35(d)(1) through (4) with former 11 CFR 111.35(b)(4). One example concerns Internet service provider failures. See revised 11 CFR 111.35(d)(4). The proposed rule described this example as failures of committee computers or software. The final rule also includes Internet service provider failures. Because many Internet service providers are available, a failure limited to one provider is not a defense for late filing or not filing. The revised rule adds two examples to this list based upon the Commission's experience with respondent challenges in the AFP: A failure to know filing dates and a failure to use Commission software properly. See revised 11 CFR 111.35(d)(5) and (6).

Under the revised rule, a respondent's challenge will not succeed if its "best efforts" defense is based on any of these circumstances as the cause of the failure to file timely. The Commission notes that the examples in revised section 111.35(d) are not exhaustive, but are illustrative of the types of situations that are not reasonably unforeseen and beyond the respondent's control. The Commission strongly encourages all political committees to name assistant treasurers and have additional staff

available so that their ability to file reports on time will not be compromised due to the unavailability or inexperience of the treasurer or other staff. See *Final Rules on Administrative Fines*, 68 FR 12572, 12573 (Mar. 17, 2003) (adding staff "inexperience" and "unavailability" as examples of circumstances that will not be considered "extraordinary" under former 11 CFR 111.35(b)(4)(iii)).

The Commission's implementation of the "best efforts" defense set forth in this revised rule serves as a proxy for the factual investigation of a respondent's internal practices regarding filing of reports that would ordinarily be necessary to determine whether such practices were sufficient to constitute best efforts. The comment argued that the Commission should conduct a full examination of the business models and management procedures of each committee to determine whether the committee implemented proper back-up systems and other measures reflecting management "best practices" in the relevant industry to reduce the risk of a late filing. However, such an investigation would be resource-intensive for the Commission, burdensome for the respondent, and inappropriate in the AFP, which is a streamlined procedure created by Congress to alleviate the Commission's enforcement burden for routine and minor filing violations. Absent reasonably unforeseen circumstances that were beyond the control of the respondent, the Commission sees no reason why political committees cannot file reports on time.¹⁰ Thus, the Commission's implementation of the "best efforts" defense appropriately incorporates a statutory "best efforts" standard, while taking into account the unique streamlined nature of the AFP.

D. Revised 11 CFR 111.35(e)—Factual Basis for Challenge

The Commission is adding paragraph (e) to 11 CFR 111.35 to require that the respondent's written response must detail the factual basis supporting its challenge. Furthermore, respondents must provide supporting documentation for their challenges. The comment did not address this provision, which is identical to the proposed rule.

The three defenses specified in sections 111.35(b)(1) through (3) (factual

¹⁰ See *Admin Fines E&J*, 65 FR at 31790 (stating that political committees should be aware of their reporting duties and noting that the Commission makes efforts to send reminders of deadlines and political committees have ample time from the end of the reporting period to the filing deadline to prepare and file reports).

error, miscalculation of civil money penalty, and best efforts) are the only permissible grounds for challenging the Commission's RTB finding or proposed civil money penalty, and a respondent's written response must be based on one of these grounds to be considered by the reviewing officer and the Commission. Respondents bear the burden of showing that a permissible defense is satisfied.¹¹

II. Revised 11 CFR 111.37—Commission Review of Respondent's Challenge and Reviewing Officer's Recommendation

A. Revised 11 CFR 111.37(b)—Commission Finding That No Violation Has Occurred

Revised section 111.37 sets forth procedures regarding the Commission's final determination for AFP matters upon receipt of the respondent's challenge and the reviewing officer's recommendation. See revised 11 CFR 111.37(a) through (d). The NPRM sought comment on proposed revisions to section 111.37(b) regarding Commission determinations that no violation has occurred where the RTB finding is based on a factual error, and where the respondent demonstrated it used best efforts to file timely. See NPRM, 71 FR at 71095. The comment did not address these rules. The Commission is revising section 111.37(b) to clarify that the existence of factual errors or a finding of best efforts are complete defenses. Thus, if one of these defenses is satisfied, the Commission will conclude that no violation of FECA has occurred. Please note that the defense based on an incorrect basis for calculating the civil money penalty (section 111.35(b)(2)) is a defense only as to the amount of the civil money penalty and does not serve as a basis for a finding of no violation under the AFP.

B. Revised 11 CFR 111.37(d)—Commission Statement of Reasons in AFP Final Determinations

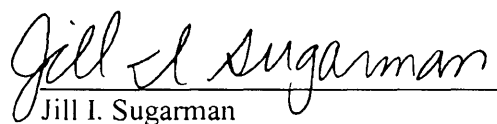
The NPRM sought comment on proposed revisions to section 111.37(d) to make clear that the reasons for the reviewing officer's recommendation regarding the challenge, unless modified or rejected by the Commission, will serve as the Commission's statement of reasons regarding the final determination in the AFP matter.¹² See NPRM, 71 FR at 71095. This proposed

¹¹ The Commission considers affidavits more persuasive evidence than unsworn statements submitted in support of the respondent's challenge.

¹² These revisions do not affect any statements of reasons the Commissioners may issue in enforcement matters under review.

DECLARATION OF JILL I. SUGARMAN

1. I am the Reviewing Analyst in the Office of Administrative Review for the Federal Election Commission ("Commission"). In my capacity as Reviewing Analyst, I conduct research with respect to all challenges submitted in accordance with the Administrative Fine program.
2. The 2008 April Quarterly Report is due April 15, 2008. The 2008 October Quarterly Report is due October 15, 2008. Senate principal campaign committees must file reports with the Secretary of the Senate. Reports sent by first class mail are considered filed on the date of receipt. Reports sent by an overnight delivery service with an on-line tracking system and scheduled for next business day delivery are considered filed on the date of deposit with the delivery service.
3. It is the practice of the Commission's Information Division to send, via email, prior notification of a report's due date to committees and treasurers approximately 3 weeks before the due date if they have provided an email address on the Statement of Organization. It is also the practice of this Division to place reporting notices on the Commission's web site for public access at http://www.fec.gov/info/report_dates.shtml#quarterly.
4. It is the practice of the Office of Public Records, Secretary of the Senate to date stamp each report as it is received and complete an envelope processing page disclosing the method used to file the report as well as either the date of receipt or postmark.
5. I hereby certify that I have searched the Commission's public records and that the documents identified herein are true and accurate copies of:
 - (a) Page 1 of the Statement of Organization filed by Joe Pennacchio for US and Alan J. Zakin, as Treasurer. According to Commission records, the Statement was received on February 20, 2008. On Line 1, the committee's e-mail address is azaconsult@msn.com;
 - (b) Page 1 of the Summary Page, envelope, and Senate Office of Public Records postmark sheet for the 2008 April Quarterly Report filed via first class mail by Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer. According to Commission records, the report covers the period from September 1, 2007 through March 31, 2008, was sent on April 15, 2008, and received on April 23, 2008; and
 - (c) Page 1 of the Summary Page, envelope, and Senate Office of Public Records postmark sheet for the 2008 October Quarterly Report filed via Federal Express for next business day delivery by Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer. According to Commission records, the report covers the period from July 1 through September 30, 2008, was sent on October 23, 2008, and received on October 27, 2008.
6. Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct and that this declaration was executed at Washington on the 10th of March, 2009.



Jill I. Sugarman
Reviewing Analyst
Office of Administrative Review
Federal Election Commission

29092641360

29092641389

28020032937

FEC FORM 1

STATEMENT OF ORGANIZATION

SECRETARY OF THE SENATE
08 FEB 20 AM 10:40

Office Use Only

1. NAME OF COMMITTEE (in full)

(Check if name is changed)

Example: If typing, type over the lines.

12FE4M5

Vote Pennacchio for U.S. Senate

ADDRESS (number and street)

1361 Columbian Ave



(Check if address is changed)

P.O. Box 112

Filothalam Park

NJ

07193-0211

CITY

STATE

ZIP CODE

COMMITTEE'S E-MAIL ADDRESS

azacoinswit@msn.com

COMMITTEE'S WEB PAGE ADDRESS (URL)

http://www.vote08.com

COMMITTEE'S FAX NUMBER

973-966-6897

2. DATE

MM/DD/YYYY

3. FEC IDENTIFICATION NUMBER

C

4. IS THIS STATEMENT



NEW (N)

OR



AMENDED (A)

I certify that I have examined this Statement and to the best of my knowledge and belief it is true, correct and complete.

Type or Print Name of Treasurer

Alan J. Zakin

Signature of Treasurer

Alan J. Zakin

Date

MM/DD/YYYY

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Statement to the penalties of 2 U.S.C. §437g.

ANY CHANGE IN INFORMATION SHOULD BE REPORTED WITHIN 10 DAYS.

Office Use Only

For further information contact:
Federal Election Commission
Toll Free 800-424-9530
Local 202-694-1100

FEC FORM 1
(Revised 12/2007)

FEC FORM 3

REPORT OF RECEIPTS AND DISBURSEMENTS For An Authorized Committee

SECRETARY OF THE SENATE

08 APR 23 AM 9:54

Office Use Only

1. NAME OF COMMITTEE (in full) TYPE OR PRINT Example: If typing, type over the lines. 12FE4M5 PENNACCHIO FOR UNITED STATES SENATE

ADDRESS (number and street) 136 COLUMBIA TURNPIKE PO BOX 12 FLORENCE PARK NJ 07934- Check if different than previously reported. (ACC)

2. FEC IDENTIFICATION NUMBER 00445775 3. IS THIS REPORT X NEW (N) OR AMENDED (A) NJ

4. TYPE OF REPORT (Choose One) (a) Quarterly Reports: April 15 Quarterly Report (Q1) X July 15 Quarterly Report (Q2) October 15 Quarterly Report (Q3) January 31 Year-End Report (YE) Termination Report (TER) (b) 12-Day PRE-Election Report for the: Primary (12P) General (12G) Runoff (12R) Convention (12C) Special (12S) Election on MM/DD/YYYY in the State of (c) 30-Day POST-Election Report for the: General (30G) Runoff (30R) Special (30S) Election on MM/DD/YYYY in the State of

5. Covering Period 09/01/2007 through 03/31/2008

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete. Type or Print Name of Treasurer ALAN J. ZAKIN Signature of Treasurer [Signature] Date 04/15/2008

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

Office Use Only grid and FEC FORM 3 (Revised 02/2003)

29092641390

28020220007

FOR US SAVING

Sam Park, No 107...

OFFICE OF

Secretary of the Senate

Washington DC 20510

Screened by 23
Senate Office
Apr 22 2008



NANCY ERICKSON
SECRETARY

PAMELA B. GAVIN
SUPERINTENDENT

HART SENATE OFFICE BUILDING
SUITE 232
WASHINGTON, DC 20510-2118
PHONE: (202) 224-0322

United States Senate

OFFICE OF THE SECRETARY

OFFICE OF PUBLIC RECORDS

THE PRECEDING DOCUMENT WAS:

HAND DELIVERED _____

Date of Receipt

USPS FIRST CLASS MAIL 04-15-08

Postmark

USPS REGISTERED/CERTIFIED _____

Postmark

USPS PRIORITY MAIL _____

Postmark

DELIVERY CONFIRMATION OR SIGNATURE CONFIRMATION LABEL

USPS EXPRESS MAIL _____

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OVERNIGHT DELIVERY SERVICE:

SHIPPING DATE

NEXT BUSINESS DAY DELIVERY

FEDERAL EXPRESS _____

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AIRBORNE EXPRESS _____

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FAX _____

Date of Receipt

OTHER _____

Date of Receipt or Postmark

PREPARER RD DATE PREPARED 0423-08

29092641392

28020220053

FEC FORM 3

REPORT OF RECEIPTS AND DISBURSEMENTS For An Authorized Committee

SECRETARY OF THE SENATE 08 OCT 27 PM 12:15

Office Use Only

1. NAME OF COMMITTEE (In full) TYPE OR PRINT Example: If typing, type over the lines. 12PE4M5

Pennacchio For US Senate

ADDRESS (number and street) 1136 Columbia Turnpike PO Box 12 Florham Park NJ 07932

2. FEC IDENTIFICATION NUMBER 000445775 3. IS THIS REPORT NEW (N) OR AMENDED (A) NJ

4. TYPE OF REPORT (Please One) (a) Quarterly Reports: April 15 (Q1), July 15 (Q2), October 15 (Q3), January 31 (YE), Termination Report (TER) (b) 12-Day PRE-Election Report for the: Primary (12P), General (12G), Runoff (12R), Convention (12C), Special (12S) Election on 01 03 2008 in the State of NJ (c) 30-Day POST-Election Report for the: General (30G), Runoff (30R), Special (30S) Election on in the State of

5. Covering Period 09 01 2008 through 09 30 2008

I certify that I have examined this Report and to the best of my knowledge and belief it is true, correct and complete. Type or Print Name of Treasurer ALAN J. ZAHIN Signature of Treasurer Alan J. Zahin Date 10 15 2008

NOTE: Submission of false, erroneous, or incomplete information may subject the person signing this Report to the penalties of 2 U.S.C. §437g.

Office Use Only

FEC FORM 3 (Revised 02/2003)

29092641393

28020701000



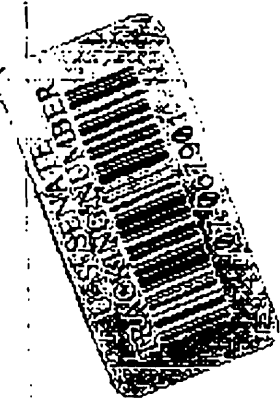
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Post Office

FOR INSPECTION

United States Senate
Post Office

FOR INSPECTION

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fedex.com 1.800.GoFedEx 1.800.463.3339

RECIPIENT: PEEL HERE

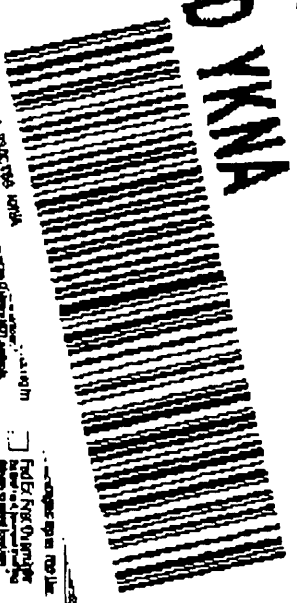
1 From: ALBU 4161 5227 Recd Tracking Number: 865441615227

2 Your Internal Billing Reference: 200-2540756

3 To: US Senate Office of the Clerk
200-2540756
Office of the Clerk
20510

Address: 20510

City: DC State: DC ZIP: 20510



4a Expedited Freight Service

5 Packaging

6 Special Handling

7 Payment

8 Residential Delivery Signature Options



8654 4161 5227

91010702082

NANCY ERICKSON
SECRETARY

PAMELA B. DAYN
SUPERINTENDENT
HART SENATE OFFICE BUILDING
SUITE 203
WASHINGTON, DC 20510-7110
PHONE: (202) 224-0322

United States Senate

OFFICE OF THE SECRETARY

OFFICE OF PUBLIC RECORDS

THE PRECEDING DOCUMENT WAS:

HAND DELIVERED _____
Date of Receipt

USPS FIRST CLASS MAIL _____
Postmark

USPS REGISTERED/CERTIFIED _____
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USPS PRIORITY MAIL _____
Postmark

DELIVERY CONFIRMATION OR SIGNATURE CONFIRMATION LABEL

USPS EXPRESS MAIL _____
Postmark

OVERNIGHT DELIVERY SERVICE:

	SHIPPING DATE	NEXT BUSINESS DAY DELIVERY
FEDERAL EXPRESS	10-23-08	<input checked="" type="checkbox"/>
UPS	_____	<input type="checkbox"/>
DHL	_____	<input type="checkbox"/>
AIRBORNE EXPRESS	_____	<input type="checkbox"/>

RECEIVED FROM FEDERAL ELECTION COMMISSION _____
Date of Receipt

POSTMARK ILLEGIBLE NO POSTMARK

FAX _____
Date of Receipt

OTHER _____
Date of Receipt or Postmark

PREPARER RD DATE PREPARED 10-27-08

29092641395

29020701017



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

VIA OVERNIGHT DELIVERY

March 11, 2009

Alan Zakin, as Treasurer
Joe Pennacchio for US Senate
P.O. Box 12
Florham Park, NJ 07932

C00445775
AF# 1810 and AF# 1918

Dear Mr. Zakin:

On September 19 and December 18, 2008, the Federal Election Commission ("Commission") found reason to believe ("RTB") that Joe Pennacchio for US Senate and you, as Treasurer ("respondents"), violated 2 U.S.C. § 434(a) for failing to timely file the 2008 April and October Quarterly Reports, respectively. The Commission also made a preliminary determination that the civil money penalty was \$2,000 for the April Quarterly Report and \$140 for the October Quarterly Report based on the schedule of penalties at 11 C.F.R. § 111.43.

After reviewing the written responses and any supplemental information submitted by you and Commission staff, the Reviewing Officer has recommended that the Commission make a final determination in these matters. A copy of the Reviewing Officer's recommendation is attached.

You may file with the Commission Secretary a written response to the recommendations within 10 days of the date of this letter. Your written response should be sent to the Commission Secretary, 999 E Street, NW, Washington, DC 20463. As a result of the anthrax threat in the Washington, DC area, US Postal Service mail delivery to federal agencies, including the Commission, has been interrupted. Until regular mail delivery resumes, you may also file your written response with the Commission Secretary via facsimile (202-208-3333) or by courier at the same address (if you use an overnight delivery service, please use zip code 20004 instead of zip code 20463). Please include the AF numbers in your response. Your response may not raise any arguments not raised in the original written response or not directly responsive to the Reviewing Officer's recommendation. 11 C.F.R. § 111.36(f). The Commission will then make final determinations in these matters.

Please contact me at the toll free number 800-424-9530 (press 0, then press 1660) or 202-694-1660 if you have any questions.

Sincerely,

A handwritten signature in cursive script that reads "Jill I. Sugarman".

Jill I. Sugarman
Reviewing Analyst
Office of Administrative Review

Attachment

29092641396

JOE PENNACCHIO FOR US SENATE
136 COLUMBIA TURNPIKE
P.O. BOX 12
FLORHAM PARK, NJ 07932

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2009 MAR 27 A 7:58

March 26, 2009

Federal Election Commission

Office of Administrative Review

999 E Street, NW

Washington, DC 20463

AF#: 1918 & AF#1810

RE: Pennacchio for US Senate, 2008 Primary Campaign

Via fax (202) 208 1574 and mail

Dear Sir or Madam:

The following is a response to the letter, dated March 11, 2009, that our committee received from your office.

Per my discussion with Ms. Jill Sugarman, I would like to respond to the recommendations from the Office of Administrative Review:

1. We arrived at the Parsippany Post Office, Rt. 46, Parsippany, NJ around 5:30pm, with knowledge that it was opened until midnight. We, in fact expected a long line, and we expected that we might have to be there until midnight, and in fact we were there until almost 11:00 pm, until our mail was processed. However, I do not think that it is foreseeable that certified and registered mail would be unavailable. We made sure that our mail was postmarked April 15, and left after being at the post office for over 5 hours.
2. We chose the option of using the U.S. Post Office to send out report registered or certified by the April 15 deadline. While it was reasonably foreseeable that this would be difficult or inconvenient, this would explain our expectation of waiting for almost five hours on line. It, however, does not make it foreseeable, that once successfully waiting in this line, that the opportunity to send the mail registered or certified was unavailable.
3. Had we not waited on line and simply sent the package via overnight mail on April 16, it would have arrived at your office April 17 and our penalty would have been reduced as it would have arrived earlier. However, we made the effort to comply sending a properly postmarked package from the U.S. Post Office by the deadline, because we were (we believe unforeseeably) unable to send it registered or certified, we believe the penalty should be eliminated or reduced.

29092641397

We thank you for you kind consideration. Please contact me if you have any questions, or need any additional information.

Very Truly Yours,

A handwritten signature in black ink, appearing to read "Alan J. Zakin". The signature is fluid and cursive, with the first name "Alan" being the most prominent.

Alan J. Zakin, Treasurer

29092641398



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

RECEIVED
FEDERAL ELECTION
COMMISSION
SECRETARIAT

2009 APR -2 A 9:05

April 1, 2009

MEMORANDUM

SENSITIVE

To: The Commission

Through: Robert A. Hickey
Staff Director

From: John D. Gibson
Chief Compliance Officer

Shawn Woodhead Werft
Reviewing Officer
Office of Administrative Review

By: Jill I. Sugarman
Reviewing Analyst

Subject: Final Determination Recommendation in AF# 1810 and AF# 1918 –
Pennacchio for US Senate and Alan J. Zakin, as Treasurer
(C00445775)

On September 19 and December 18, 2008, the Commission found reason to believe that the respondents violated 2 U.S.C. § 434(a) for failing to timely file the 2008 April and October Quarterly Reports, respectively. The Commission also made a preliminary determination that the civil money penalty was \$2,000 for the April Quarterly Report and \$140 for the October Quarterly Report based on the schedule of penalties at 11 C.F.R. § 111.43.

On October 30, 2008 and February 11, 2009, the Commission received their written responses (“challenge”). After reviewing the challenges, the Reviewing Officer’s recommendation dated March 10, 2009 was forwarded to the Commission, a copy was forwarded to the respondents, and is hereby incorporated by reference. The Reviewing Officer recommended that the Commission make a final determination that they violated 2 U.S.C. § 434(a) and assess civil money penalties of \$2,000 and \$140 for the 2008 April and October Quarterly Reports, respectively, because they submitted no evidence that a factual error was made in the RTB findings, that the penalties were miscalculated at RTB or that they used best efforts to file on time. 11 C.F.R. § 111.35(b).

29092641399

Within 10 days of transmittal of the recommendation, they may file a written response with the Commission Secretary which may not raise any arguments not raised in their challenge or not directly responsive to the Reviewing Officer's recommendation. 11 C.F.R. § 111.36(f).

On March 26, 2009, the Commission received the written response from the Treasurer. Other than asking for consideration of the issues raised in the challenges and addressed in the Reviewing Officer recommendation, he does not raise any new facts. They chose to send the report by registered or certified mail and arrived at the post office around 5:30pm on April 15 knowing that it would be open until midnight. They expected a long line but it was unforeseeable that certified and registered mail would be unavailable. They waited over 5 hours to make sure the report was postmarked April 15. Had they sent the report by overnight mail on April 16, it would have been received on April 17 and the penalty would have been reduced. However, they made an effort to comply by sending the report properly postmarked by the filing deadline and ask that the penalty be eliminated or reduced. The response is attached for your review.

The Reviewing Officer recommends that the Commission make a final determination that they violated 2 U.S.C. § 434(a) and assess civil money penalties of \$2,000 and \$140 for the 2008 April and October Quarterly Reports, respectively.

OAR Recommendations

- (1) Adopt the Reviewing Officer recommendation for AF# 1810 involving Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer, in making the final determination;
- (2) Make a final determination in AF# 1810 that Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$2,000;
- (3) Adopt the Reviewing Officer recommendation for AF# 1918 involving Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer, in making the final determination;
- (4) Make a final determination in AF# 1918 that Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$140; and
- (5) Send the appropriate letters.

Attachment

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of)
)
Final Determination Recommendation:) AF 1810 and 1918
Pennacchio for US Senate and Alan J.)
Zakin, as Treasurer (C00445775))

CERTIFICATION

I, Mary W. Dove, Secretary of the Federal Election Commission, do hereby certify that on April 16, 2009, the Commission decided by a vote of 6-0 to take the following actions in AF 1810 and 1918:

1. Adopt the Reviewing Officer recommendation for AF 1810 involving Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer, in making the final determination.
2. Make a final determination in AF 1810 that Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$2,000.
3. Adopt the Reviewing Officer recommendation for AF 1918 involving Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer, in making the final determination.
4. Make a final determination in AF 1918 that Joe Pennacchio for US Senate and Alan J. Zakin, as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty of \$140.
5. Send the appropriate letters.

29092641401

Federal Election Commission
AF 1810 and AF 1918
April 16, 2009

Commissioners Bauerly, Hunter, McGahn II, Petersen, Walther, and
Weintraub voted affirmatively for the decision.

Attest:

April 16, 2009
Date

Mary W. Dove
Mary W. Dove
Secretary of the Commission

29092641402



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

April 28, 2009

VIA CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Alan Zakin, as Treasurer
Joe Pennacchio for US Senate
136 Columbia Turnpike
P.O. Box 12
Florham Park, NJ 07932

C00445775
AF# 1918

Dear Mr. Zakin:

On December 18, 2008, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Joe Pennacchio for US Senate and you, as Treasurer, violated 2 U.S.C. § 434(a) for failing to timely file the 2008 October Quarterly Report. By letter dated December 22, 2008, the Commission sent you notification of the RTB finding that included a civil money penalty calculated at RTB of \$140 in accordance with the schedule of penalties at 11 C.F.R. § 111.43. On February 11, 2009, the Office of Administrative Review received the written response from you challenging the RTB civil money penalty.

The Reviewing Officer reviewed the Commission's RTB finding with its supporting documentation and the written response. Based on this review, the Reviewing Officer recommended that the Commission make a final determination that Joe Pennacchio for US Senate and you, as Treasurer, violated 2 U.S.C. § 434(a) and assess a civil money penalty in the amount of \$140 in accordance with 11 C.F.R. § 111.43. The basis for the Reviewing Officer's recommendation was included in the Final Determination Report, a copy of which was sent to you on March 11, 2009.

On April 16, 2009, the Commission adopted the Reviewing Officer's recommendation and made a final determination that Joe Pennacchio for US Senate and you, as Treasurer, violated 2 U.S.C. § 434(a) and assessed a civil money penalty of \$140. It is based on the same factors used to calculate the civil money penalty at RTB. A copy of the final determination recommendation is attached.

To Pay the Civil Money Penalty

If you should decide to pay the civil money penalty, send the enclosed form and payment to the address on page 3 within 30 days of receipt of this letter.

29092641403

If You Do Not Pay the Civil Money Penalty

Unpaid civil money penalties assessed through the Administrative Fine regulations will be subject to the Debt Collection Act of 1982 ("DCA") as amended by the Debt Collection Improvement Act of 1996 ("DCIA"), 31 U.S.C. § 3701 et seq. If you do not pay this debt within 30 days (or file a written petition to a federal district court - see below), the Commission will transfer the debt to the U.S. Department of the Treasury ("Treasury") for collection. Within 5 days of the transfer to Treasury, Treasury will contact the debtor and request payment. Treasury currently charges a fee of 28% of the civil money penalty amount for its collection services. The fee will be added to the amount of the civil money penalty that you owe. Should Treasury's attempts fail, Treasury will refer the debt to a private collection agency ("PCA"). If the debt remains unpaid, Treasury may recommend that the Commission refer the matter to the Department of Justice for litigation.

If You Choose to Appeal the Final Determination and/or Civil Money Penalty

If you choose to appeal the final determination, you should submit a written petition, within 30 days of receipt of this letter, to the district court of the United States for the district in which the committee or treasurer reside, or transact business, requesting that the final determination be modified or set aside. See 2 U.S.C. § 437g(a)(4)(C)(iii). Your failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondents' right to present such argument in a petition to the district court under 2 U.S.C. § 437g. 11 C.F.R. § 111.38.

The confidentiality provisions at 2 U.S.C. § 437g(a)(12) no longer apply and this matter is now public. The file will be made a part of the public record pursuant to 11 C.F.R. § 111.42(b). Although the file must be placed on the public record within 30 days from the date of the Commission's notification, this could occur at any time following certification of the Commission's vote.

If you have any questions regarding the payment of the civil money penalty, please contact Jill Sugarman on our toll free number (800)424-9530 (press 0, then ext. 1660) or (202)694-1660.

On behalf of the Commission,



Steven T. Walther
Chairman

Attachment

20092641409

ADMINISTRATIVE FINE PAYMENT INSTRUCTIONS

In accordance with the schedule of penalties at 11 C.F.R. § 111.43, the civil money penalty is \$140 for the 2008 October Quarterly Report.

This penalty should be paid by check or money order, made payable to the Federal Election Commission. It should be sent by mail to:

Federal Election Commission
PO Box 979058
St. Louis, MO 63197-9000

If you choose to send your payment by courier or overnight delivery, please use this address:

U.S. Bank - Government Lockbox
FEC # 979058
1005 Convention Plaza
Attn: Government Lockbox, SL-MO-C2GL
St. Louis, MO 63101

The form and payment are due within 30 days of receipt of this letter.

PAYMENTS BY PERSONAL CHECK

Personal checks will be converted into electronic funds transfers (EFTs). Your account will be electronically debited for the amount on the check, usually within 24 hours, and the debit will appear on your regular statement. We will destroy your original check and keep a copy of it. In case the EFT cannot be processed for technical reasons, you authorize us to process the copy in lieu of the original check. Should the EFT not be completed because of insufficient funds, we may try to make the transfer twice.

PLEASE DETACH AND RETURN THE PORTION BELOW WITH YOUR PAYMENT

FOR: Joe Pennacchio for US Senate

FEC ID#: C00445775

AF#: 1918

PAYMENT AMOUNT DUE: \$140

29092641405

29092641406



QUALITY IS OUR PRIORITY FOR LOCKBOX 9058
SEQ# 001 \$ 000214000 BA# 1 06-10-09 20 9



DIANE PENNACCHIO JOSEPH PENNACCHIO PENNACCHIO PROPERTIES		55-2-212	3704
PINE BROOK, NJ 07058		6-7	20-09 ✓
EXECUTIVE ONLY	PAY TO THE ORDER OF	Federal Election Commission \$2,140.00 ✓	
	- Two Thousand One Hundred and Forty DOLLARS		
WACHOVIA BANK, N.A. WACHOVIA.COM			
FOR _____		<i>J. Pennacchio</i> MP	



FEDERAL ELECTION COMMISSION
Washington DC 20463

THIS IS THE END OF ADMINISTRATIVE FINE CASE # 1918

DATE SCANNED 8-17-09

SCANNER NO. 2

SCAN OPERATOR JmD

29092641407