



FEDERAL ELECTION COMMISSION  
Washington DC 20463

THIS IS THE BEGINNING OF ADMINISTRATIVE FINE CASE # 1955

DATE SCANNED 6/25/17

SCANNER NO. 2

SCAN OPERATOR Jms

29092630922



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

March 30, 2009

MEMORANDUM

TO: THE COMMISSION

THROUGH: ROBERT A. HICKEY  
STAFF DIRECTOR

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

PATRICIA CARMONA *PC for PC*  
ASSISTANT STAFF DIRECTOR  
REPORTS ANALYSIS DIVISION

BY: <sup>*NYE*</sup> NATALIYA IOFFE/RHIANNON MAGRUDER *RM*  
COMPLIANCE BRANCH

SUBJECT: REASON TO BELIEVE RECOMMENDATION -  
FAILURE TO FILE 48-HOUR NOTICES UNDER THE  
ADMINISTRATIVE FINE PROGRAM

Attached is the name of a principal campaign committee that has failed to file 48-hour notices with the Commission for contributions of \$1,000.00 or more received from the close of books for the Minnesota 12 Day Pre-General Election Report up to 48 hours before the November 4, 2008 General Election in accordance with 2 U.S.C. § 434(a)(6) and 11 CFR. § 104.5(f). The committee, Al Franken for Senate, represents a candidate who participated in the General Election for the Minnesota Senate seat. The outcome of this election is still being determined. The committee is being referred for failing to file 48-hour notices for contributions totaling \$49,726.00.

A 48-hour notice is required to report all contributions of a \$1,000.00 or more, to any authorized committee of a candidate, including contributions from the candidate, loans from the candidate and other non-bank sources and endorsements or guarantees of loans from banks, as per, 11 CFR § 104.5(f).

We have attached an information sheet which includes the contributor name, date of receipt and amount of the contributions for which a 48-hour notice was not filed.

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In accordance with the schedule of civil money penalties outlined within 11 CFR § 111.44, this committee should be assessed the civil money penalty so indicated.

Recommendation

1. Find reason to believe that Al Franken for Senate and Thomas Borman, Treasurer, violated 2 U.S.C. § 434(a)(6) and make a preliminary determination that a civil money penalty of \$5,962.00 be assessed.
2. Send the appropriate letter.

Attachment

29092630924

**Contributions for Which a 48-Hour Notice Was Not Received**

AF 1955

Committee ID: C00432278

Committee Name: Al Franken for Senate

Report Type: 30 Day Post-General Report (10/16/2008 – 11/24/2008)

48-Hour Reporting Period: 10/16/2008 – 11/1/2008

CONTRIBUTOR NAME	DATE	AMOUNT
ADOLFSEN, LOUIS G.	10/16/2008	1,000.00
ARNOW, ROBERT	10/16/2008	2,300.00
CLEMANTS, ELIZABETH	10/16/2008	1,000.00
COPPOLA, FRANCIS	10/16/2008	1,000.00
CURRY, RAVENEL, IV	10/16/2008	1,000.00
LAUDER, LAURA	10/16/2008	2,300.00
ROBERTI, VINCENT	10/16/2008	2,300.00
MIDLER, BETTE	10/20/2008	2,300.00
SACHS, N. R.	10/20/2008	1,000.00
SALKY, STEVEN	10/20/2008	1,500.00
LUCERO, VIOLA	10/21/2008	1,000.00
FROST, STACEY	10/22/2008	1,800.00
MILLER, CAROLYN	10/22/2008	2,300.00
MILLER, DANIEL	10/22/2008	2,300.00
REY, LILLI	10/22/2008	2,300.00
DOWNES, KATHERINE	10/23/2008	2,300.00
BUELL, MARK W.	10/24/2008	2,300.00
BURLOCK, LESLIE W.	10/24/2008	1,000.00
DZIVI, BARTLY	10/24/2008	2,300.00
GUND, LOUISE	10/24/2008	2,300.00
HELLERT, WILLIAM	10/24/2008	2,100.00
HUMAN RIGHTS CAMPAIGN PAC	10/24/2008	1,888.00
ISAACS, IAN	10/24/2008	2,300.00
MARINEAU, SUSAN	10/24/2008	2,300.00
ABELN, MARK B.	10/25/2008	1,500.00
ERICKSON, INGRID M.	10/25/2008	1,000.00
ENGEL, ANDREW	10/29/2008	1,150.00
HUMAN RIGHTS CAMPAIGN PAC	10/31/2008	1,888.00
	<b>TOTAL</b>	<b>49,726.00</b>

**Proposed Civil Money Penalty: \$5,962.00 ((9 Notices Not Filed at \$110 each) + (10% of Overall Contributions Not Filed))**

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AF#	Committee ID	Committee Name	Candidate Name	State	Election	Treasurer	Prev. Violations	Notices Not Filed	LOA	Penalty
1955	C00432278	AL FRANKEN FOR SENATE	FRANKEN, AL	MN	2008 General	THOMAS BORMAN	0	9	\$49,726	\$5,962

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
 )  
 Reason To Believe Recommendation - ) AF 1955  
 Failure to File 48-Hour Notices Under )  
 the Administrative Fine Program: Al )  
 Franken for Senate and Thomas Borman, )  
 Treasurer )

CERTIFICATION

I, Mary W. Dove, Secretary of the Federal Election Commission, do hereby certify that on March 31, 2009, the Commission decided by a vote of 6-0 to take the following actions in AF 1955:

1. Find reason to believe that Al Franken for Senate and Thomas Borman, Treasurer, violated 2 U.S.C. § 434(a)(6) and make a preliminary determination that a civil money penalty of \$5,962.00 be assessed.
2. Send the appropriate letter.

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

Attest:

April 1, 2009  
 Date

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

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

April 6, 2009

Thomas Borman as Treasurer  
Al Franken for Senate  
P.O. Box 583144  
Minneapolis, MN 55458

C00432278  
AF#: 1955

Dear Thomas Borman:

The Federal Election Campaign Act of 1971, as amended, 2 U.S.C. § 431, *et seq.* ("the Act"), requires principal campaign committees of candidates for federal office to notify in writing either the Secretary of the Senate or the Federal Election Commission ("FEC"), and the Secretary of State, as appropriate, of any contribution of \$1,000 or more, received by any authorized committee of the candidate after the 20th day, but more than 48 hours before, any election. 2 U.S.C. 434(a)(6)(A). The Act further requires notification to be made within 48 hours after the receipt of the contribution and to include the name of the candidate and office sought, the date of receipt, the amount of the contribution, and the identification of the contributor. *Id.* The notification of these contributions shall be in addition to all other reporting requirements. 2 U.S.C. § 434(a). The Act was 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). Our records indicate that Al Franken for Senate did not submit 48-Hour Notices for contributions of \$1,000 or more, received between October 16, 2008 and November 1, 2008, totaling \$49,726, as required by 2 U.S.C. § 434(a)(6)(A). *See* Attachment 1.

On March 31, 2009, the FEC found that there is Reason to Believe ("RTB") that Al Franken for Senate and you as treasurer violated 2 U.S.C. § 434(a) by failing to file the 48-Hour Notices. Based on the FEC's schedule of civil money penalties at 11 C.F.R. § 111.44, the amount of your civil money penalty calculated at the RTB stage is \$5,962. Please see the attached copy of the Commission's administrative fine regulations at 11 C.F.R. §§ 111.30-11.46. Attachment 2. The Commission's website contains further information about how the administrative fine program works and how the fines are calculated. *See* <http://www.fec.gov/af/af.shtml>. 11 C.F.R. § 111.34. The amount of the civil money penalty is \$110 for each non-filed notice plus 10 percent of the dollar amount of the contributions not timely reported. The civil money penalty increases by 25 percent for each prior violation. Send your payment within forty (40) days of the finding, or by May 10, 2009.

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**To Pay the Calculated Civil Money Penalty**

If you should decide to pay the calculated civil money penalty, send the enclosed remittance form, along with 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**

If you should decide 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 within forty (40) days of the Commission's RTB finding, or May 10, 2009. 11 C.F.R. § 111.35(a). 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. 11 C.F.R. § 111.35(b). 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. *Id.* 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. 11 C.F.R. § 111.35(c). 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. 11 C.F.R. § 111.35(d). 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. § 111.36(c).

Pursuant to the Commission's regulations, the "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 Al Franken for Senate and you as treasurer violated 2 U.S.C. § 434(a) and assess a civil money penalty.

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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 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.

As noted earlier, you may obtain additional information on the FEC's administrative fine program, including the final regulations, on the FEC's website at <http://www.fec.gov/af/af.shtml>. 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.

On behalf of the Commission,



Steven T. Walther  
Chairman

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**ADMINISTRATIVE FINE REMITTANCE & PAYMENT INSTRUCTIONS**

In accordance with the schedule of penalties at 11 C.F.R. § 111.44, the amount of your civil money penalty calculated at RTB is \$5,962 for the 2008 General Election 48-Hour Notification 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 May 10, 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**  
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FOR: Al Franken for Senate

FEC ID#: C00432278

AF#: 1955

PAYMENT DUE DATE: May 10, 2009

PAYMENT AMOUNT DUE: \$5,962

156059260931

**Contributions for Which a 48-Hour Notice Was Not Received**

AF 1955

Committee ID: C00432278

Committee Name: Al Franken for Senate

Report Type: 30 Day Post-General Report (10/16/2008 – 11/24/2008)

48-Hour Reporting Period: 10/16/2008 – 11/1/2008

CONTRIBUTOR NAME	DATE	AMOUNT
ADOLFSSEN, LOUIS G.	10/16/2008	1,000.00
ARNOW, ROBERT	10/16/2008	2,300.00
CLEMANTS, ELIZABETH	10/16/2008	1,000.00
COPPOLA, FRANCIS	10/16/2008	1,000.00
CURRY, RAVENEL, IV	10/16/2008	1,000.00
LAUDER, LAURA	10/16/2008	2,300.00
ROBERTI, VINCENT	10/16/2008	2,300.00
MIDLER, BETTE	10/20/2008	2,300.00
SACHS, N. R.	10/20/2008	1,000.00
SALKY, STEVEN	10/20/2008	1,500.00
LUCERO, VIOLA	10/21/2008	1,000.00
FROST, STACEY	10/22/2008	1,800.00
MILLER, CAROLYN	10/22/2008	2,300.00
MILLER, DANIEL	10/22/2008	2,300.00
REY, LILLI	10/22/2008	2,300.00
DOWNS, KATHERINE	10/23/2008	2,300.00
BUELL, MARK W.	10/24/2008	2,300.00
BURLOCK, LESLIE W.	10/24/2008	1,000.00
DZIVI, BARTLY	10/24/2008	2,300.00
GUND, LOUISE	10/24/2008	2,300.00
HELLERT, WILLIAM	10/24/2008	2,100.00
HUMAN RIGHTS CAMPAIGN PAC	10/24/2008	1,888.00
ISAACS, IAN	10/24/2008	2,300.00
MARINEAU, SUSAN	10/24/2008	2,300.00
ABELN, MARK B.	10/25/2008	1,500.00
ERICKSON, INGRID M.	10/25/2008	1,000.00
ENGEL, ANDREW	10/29/2008	1,150.00
HUMAN RIGHTS CAMPAIGN PAC	10/31/2008	1,888.00
<b>TOTAL</b>		<b>49,726.00</b>

Proposed Civil Money Penalty: \$5,962.00 ((9 Notices Not Filed at \$110 each) + (10% of Overall Contributions Not Filed))

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Federal Election Commission

§ 111.32

penalty shall not exceed the greater of \$11,000 or an amount equal to 200% of any contribution or expenditure involved in the violation.

(ii) Notwithstanding paragraph (a)(2)(i) of this section, in the case of a knowing and willful violation of 2 U.S.C. 441f, the civil penalty shall not be less than 300% of the amount of any contribution involved in the violation and shall not exceed the greater of \$55,000 or 1,000% of the amount of any contribution involved in the violation.

(b) Any Commission member or employee, or any other person, who in violation of 2 U.S.C. 437g(a)(12)(A) makes public any notification or investigation under 2 U.S.C. 437g without receiving the written consent of the person receiving such notification, or the person with respect to whom such investigation is made, shall be fined not more than \$2,200. Any such member, employee, or other person who knowingly and willfully violates this provision shall be fined not more than \$6,500.

[62 FR 11317, Mar. 12, 1997; 62 FR 18167, Apr. 14, 1997; 65 FR 31794, May 19, 2000; 67 FR 76977, Dec. 13, 2002; 70 FR 34635, June 15, 2005]

Subpart B—Administrative Fines

SOURCE: 65 FR 31794, May 19, 2000, unless otherwise noted.

§ 111.30 When will subpart B apply?

Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a) committed by political committees and their treasurers that relate to the reporting periods that begin on or after July 14, 2000 and end on or before December 31, 2008. This subpart, however, does not apply to reports that were due between January 1, 2004 and February 10, 2004 and that relate to reporting periods that begin and end between January 1, 2004 and February 10, 2004.

[70 FR 75718, Dec. 21, 2005]

§ 111.31 Does this subpart replace subpart A of this part for violations of the reporting requirements of 2 U.S.C. 434(a)?

(a) No; §§ 111.1 through 111.8 and 111.20 through 111.24 shall apply to all compliance matters. This subpart will

apply, rather than §§ 111.9 through 111.19, when the Commission, on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, and when appropriate, determines that the compliance matter should be subject to this subpart. If the Commission determines that the violation should not be subject to this subpart, then the violation will be subject to all sections of subpart A of this part.

(b) Subpart B will apply to compliance matters resulting from a complaint filed pursuant to 11 CFR 111.4 through 111.7 if the complaint alleges a violation of 2 U.S.C. 434(a). If the complaint alleges violations of any other provision of any statute or regulation over which the Commission has jurisdiction, subpart A will apply to the alleged violations of these other provisions.

§ 111.32 How will the Commission notify respondents of a reason to believe finding and a proposed civil money penalty?

If the Commission determines, by an affirmative vote of at least four (4) of its members, that it has reason to believe that a respondent has violated 2 U.S.C. 434(a), the Chairman or Vice-Chairman shall notify such respondent of the Commission's finding. The written notification shall set forth the following:

(a) The alleged factual and legal basis supporting the finding including the type of report that was due, the filing deadline, the actual date filed (if filed), and the number of days the report was late (if filed);

(b) The applicable schedule of penalties;

(c) The number of times the respondent has been assessed a civil money penalty under this subpart during the current two-year election cycle and the prior two-year election cycle;

(d) The amount of the proposed civil money penalty based on the schedules of penalties set forth in 11 CFR 111.43 or 111.44; and

(e) An explanation of the respondent's right to challenge both the reason to believe finding and the proposed civil money penalty.

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§ 111.33

11 CFR Ch. I (1-1-08 Edition)

§ 111.33 What are the respondent's choices upon receiving the reason to believe finding and the proposed civil money penalty?

The respondent must either send payment in the amount of the proposed civil money penalty pursuant to 11 CFR 111.34 or submit a written response pursuant to 11 CFR 111.35.

§ 111.34 If the respondent decides to pay the civil money penalty and not to challenge the reason to believe finding, what should the respondent do?

(a) The respondent shall transmit payment in the amount of the civil money penalty to the Commission within forty (40) days of the Commission's reason to believe finding.

(b) Upon receipt of the respondent's payment, the Commission shall send the respondent a final determination that the respondent has violated the statute or regulations and the amount of the civil money penalty and an acknowledgment of the respondent's payment.

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

(a) To challenge a reason to believe finding or proposed civil money penalty, the respondent must submit a written response to the Commission within forty (40) days of the Commission's reason to believe finding.

(b) The respondent's written response must assert at least one of the following grounds for challenging the reason to believe finding or proposed civil money penalty:

(1) The Commission's reason to believe finding is based on a factual error including, but not limited to, the committee was not required to file the report, or the committee timely filed the report in accordance with 11 CFR 100.19;

(2) The Commission improperly calculated the civil money penalty; or

(3) The respondent used best efforts to file in a timely manner in that:

(i) The respondent was prevented from filing in a timely manner by reasonably unforeseen circumstances that were beyond the control of the respondent; and

(ii) The respondent filed no later than 24 hours after the end of these circumstances.

(c) Circumstances that will be considered reasonably unforeseen and beyond the control of respondent include, but are not limited to:

(1) A failure of Commission computers or Commission-provided software despite the respondent seeking technical assistance from Commission personnel and resources;

(2) 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; and

(3) Severe weather or other disaster-related incident.

(d) Circumstances that will not be considered reasonably unforeseen and beyond the control of respondent include, but are not limited to:

(1) Negligence;

(2) Delays caused by committee vendors or contractors;

(3) Illness, inexperience, or unavailability of the treasurer or other staff;

(4) Committee computer, software or Internet service provider failures;

(5) A committee's failure to know filing dates; and

(6) A committee's failure to use filing software properly.

(e) Respondent's written response must detail the factual basis supporting its challenge and include supporting documentation.

[72 FR 14667, Mar. 29, 2007]

§ 111.36 Who will review the respondent's written response?

(a) A reviewing officer shall review the respondent's written response. The reviewing officer shall be a person who has not been involved in the reason to believe finding.

(b) The reviewing officer shall review the reason to believe finding with supporting documentation and the respondent's written response with supporting documentation. The reviewing officer may request supplemental information from the respondent and/or the Commission staff. The respondent shall submit the supplemental information to the reviewing officer within

a time specified by the reviewing officer. The reviewing officer will be entitled to draw an adverse inference from the failure by the respondent to submit the supplemental information.

(c) All documents required to be submitted by the respondents pursuant to this section and § 111.35 should be submitted in the form of affidavits or declarations.

(d) If the Commission staff, after the respondent files a written response pursuant to § 111.35, forwards any additional documents pertaining to the matter to the reviewing officer for his or her examination, the reviewing officer shall also furnish a copy of the document(s) to the respondents.

(e) Upon completion of the review, the reviewing officer shall forward a written recommendation to the Commission along with all documents required under this section and 11 CFR 111.32 and 111.35.

(f) The reviewing office shall also forward a copy of the recommendation to the respondent. The respondent may file with the Commission Secretary a written response to the recommendation within ten (10) days of transmittal of the recommendation. This response may not raise any arguments not raised in the respondent's original written response or not directly responsive to the reviewing officer's recommendation.

**§ 111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?**

(a) If the Commission, after having found reason to believe and after reviewing the respondent's written response and the reviewing officer's recommendation, determines by an affirmative vote of at least four (4) of its members, that the respondent has violated 2 U.S.C. 434(a) and the amount of the civil money penalty, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(b) If the Commission, after reviewing the reason to believe finding, the respondent's written response, and the reviewing officer's written recommendation, determines by an affirmative vote of at least four (4) of its

members, that no violation has occurred (either because the Commission had based its reason to believe finding on a factual error or because the respondent used best efforts to file in a timely manner) or otherwise terminates its proceedings, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

(c) The Commission will modify the proposed civil money penalty only if the respondent is able to demonstrate that the amount of the proposed civil money penalty was calculated on an incorrect basis.

(d) When the Commission makes a final determination under this section, the statement of reasons for the Commission action will, unless otherwise indicated by the Commission, consist of the reasons provided by the reviewing officer for the recommendation, if approved by the Commission, although statements setting forth additional or different reasons may also be issued. If the reviewing officer's recommendation is modified or not approved, the Commission will indicate the grounds for its action and one or more statements of reasons may be issued.

[65 FR 31794, May 19, 2000, as amended at 72 FR 14668, Mar. 29, 2007]

**§ 111.38 Can the respondent appeal the Commission's final determination?**

Yes; within thirty (30) days of receipt of the Commission's final determination under 11 CFR 111.37, the respondent may submit a written petition to the district court of the United States for the district in which the respondent resides, or transacts business, requesting that the final determination be modified or set aside. The respondent's failure to raise an argument in a timely fashion during the administrative process shall be deemed a waiver of the respondent's right to present such argument in a petition to the district court under 2 U.S.C. 437g.

**§ 111.39 When must the respondent pay the civil money penalty?**

(a) If the respondent does not submit a written petition to the district court of the United States, the respondent must remit payment of the civil money

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§ 111.40

penalty within thirty (30) days of receipt of the Commission's final determination under 11 CFR 111.37.

(b) If the respondent submits a written petition to the district court of the United States and, upon the final disposition of the civil action, is required to pay a civil money penalty, the respondent shall remit payment of the civil money penalty to the Commission within thirty (30) days of the final disposition of the civil action. The final disposition may consist of a judicial decision which is not reviewed by a higher court.

(c) Failure to pay the civil money penalty may result in the commencement of collection action under 31 U.S.C. 3701 *et seq.* (1996), or a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A), or any other legal action deemed necessary by the Commission.

**§ 111.40 What happens if the respondent does not pay the civil money penalty pursuant to 11 CFR 111.34 and does not submit a written response to the reason to believe finding pursuant to 11 CFR 111.35?**

(a) If the Commission, after the respondent has failed to pay the civil money penalty and has failed to submit a written response, determines by an affirmative vote of at least four (4) of its members that the respondent has violated 2 U.S.C. 434(a) and determines the amount of the civil money penalty, the respondent shall be notified by letter of its final determination.

(b) The respondent shall transmit payment of the civil money penalty to the Commission within thirty (30) days of receipt of the Commission's final determination.

(c) Failure to pay the civil money penalty may result in the commencement of collection action under 31 U.S.C. 3701 *et seq.* (1996), or a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A), or any other legal action deemed necessary by the Commission.

**§ 111.41 To whom should the civil money penalty payment be made payable?**

Payment of civil money penalties shall be made in the form of a check or

11 CFR Ch. I (1-1-08 Edition)

money order made payable to the Federal Election Commission.

**§ 111.42 Will the enforcement file be made available to the public?**

(a) Yes; the Commission shall make the enforcement file available to the public.

(b) If neither the Commission nor the respondent commences a civil action, the Commission shall make the enforcement file available to the public pursuant to 11 CFR 4.4(a)(3).

(c) If a civil action is commenced, the Commission shall make the enforcement file available pursuant to 11 CFR 111.20(c).

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

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated as follows:

(1) For reports due before April 16, 2003:

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

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

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

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If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1-24,999.99*	[\$100 + (\$25 x Number of days late)] x [1 (.25 x Number of previous violations)].	+\$900 x [1 + (.25 x Number of previous violations)]
\$25,000-49,999.99	[\$200 + (\$50 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$1800 x [1 + (.25 x Number of previous violations)]
\$50,000-74,999.99	[\$300 + (\$75 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$2700 x [1 + (.25 x Number of previous violations)]
\$75,000-99,999.99	[\$400 + (\$100 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$3500 x [1 + (.25 x Number of previous violations)]
\$100,000-149,999.99	[\$600 + (\$125 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$4500 x [1 + (.25 x Number of previous violations)]
\$150,000-199,999.99	[\$800 + (\$150 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$5500 x [1 + (.25 x Number of previous violations)]
\$200,000-249,999.99	[\$1,000 + (\$175 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$6500 x [1 + (.25 x Number of previous violations)]
\$250,000-349,999.99	[\$1500 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$8000 x [1 + (.25 x Number of previous violations)]
\$350,000-449,999.99	[\$2000 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$9000 x [1 + (.25 x Number of previous violations)]
\$450,000-549,999.99	[\$2500 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$9500 x [1 + (.25 x Number of previous violations)]
\$550,000-649,999.99	[\$3000 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$10,000 x [1 + (.25 x Number of previous violations)]
\$650,000-749,999.99	[\$3500 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$10,500 x [1 + (.25 x Number of previous violations)]
\$750,000-849,999.99	[\$4000 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$11,000 x [1 + (.25 x Number of previous violations)]
\$850,000-949,999.99	[\$4500 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$11,500 x [1 + (.25 x Number of previous violations)]
\$950,000 or over	[\$5000 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$12,000 x [1 + (.25 x Number of previous violations)]

\* The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(2) For reports due on or after April 16, 2003:

(i) *Level of activity* means:

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

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

(ii) *Estimated level of activity* means:

(A) For an authorized committee, total receipts and disbursements re-

ported in the current two-year election cycle divided by the number of reports filed to date covering the activity in the current two-year election cycle. If the respondent has not filed a report covering activity in the current two-year election cycle, estimated level of activity for an authorized committee means total receipts and disbursements reported in the prior two-year election cycle divided by the number of reports filed covering the activity in the prior two-year election cycle.

(B)(i) For an unauthorized committee, estimated level of activity is calculated as follows: [(Total receipts and disbursements reported in the current two-year cycle) - (Transfers received from non-Federal account(s) as reported on either Line 18(a) of FEC Form 3X or Line 18 of FEC Form 3X if before March 1, 2003 + Disbursements for the non-Federal share of operating expenditures attributable to allocated Federal/non-Federal activity as Reported on Line 21(a)(ii) of FEC Form 3X)] + Number of reports filed to date covering the activity in the current two-year election cycle.

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(2) If the unauthorized committee has not filed a report covering activity in the current two-year election cycle, the estimated level of activity is calculated as follows: [(Total receipts and disbursements reported in the prior two-year election cycle)—(Transfers received from non-Federal account(s) as reported on either Line 18(a) of FEC Form 3X or Line 18 of FEC Form 3X if before March 1, 2003 + Disbursements

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

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

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1-4,999.99*	[\$25 + (\$5 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$250 x [1 + (.25 x Number of previous violations)]
\$5,000-9,999.99	[\$50 + (\$5 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$300 x [1 + (.25 x Number of previous violations)]
\$10,000-24,999.99	[\$100 + (\$5 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$500 x [1 + (.25 x Number of previous violations)]
\$25,000-49,999.99	[\$200 + (\$20 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$900 x [1 + (.25 x Number of previous violations)]
\$50,000-74,999.99	[\$300 + (\$75 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$2700 x [1 + (.25 x Number of previous violations)]
\$75,000-99,999.99	[\$400 + (\$100 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$3500 x [1 + (.25 x Number of previous violations)]
\$100,000-149,999.99	[\$600 + (\$125 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$4500 x [1 + (.25 x Number of previous violations)]
\$150,000-199,999.99	[\$800 + (\$150 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$5500 x [1 + (.25 x Number of previous violations)]
\$200,000-249,999.99	[\$1,000 + (\$175 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$6500 x [1 + (.25 x Number of previous violations)]
\$250,000-349,999.99	[\$1,500 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$8000 x [1 + (.25 x Number of previous violations)]
\$350,000-449,999.99	[\$2,000 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$9000 x [1 + (.25 x Number of previous violations)]
\$450,000-549,999.99	[\$2,500 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$9500 x [1 + (.25 x Number of previous violations)]
\$550,000-649,999.99	[\$3,000 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$10,000 x [1 + (.25 x Number of previous violations)]
\$650,000-749,999.99	[\$3,500 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$10,500 x [1 + (.25 x Number of previous violations)]
\$750,000-849,999.99	[\$4,000 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$11,000 x [1 + (.25 x Number of previous violations)]
\$850,000-949,999.00	[\$4,500 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$11,500 x [1 + (.25 x Number of previous violations)]
\$950,000 or over	[\$5,000 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$12,000 x [1 + (.25 x Number of previous violations)]

\*The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(b) The civil money penalty for election sensitive reports that are filed late or not filed shall be calculated as follows:

(1) For reports due before April 16, 2003:

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

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

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

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1-24,999.99*	[\$150 + (\$25 x Number of days late)] x [1 + (.25 x Number of previous violations)].	\$1000 x [1 + (.25 x Number of previous violations)]

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If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$25,000-49,999.99 .....	$[\$300 + (\$50 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$2000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$50,000-74,999.99 .....	$[\$450 + (\$75 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$3000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$75,000-99,999.99 .....	$[\$600 + (\$100 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$4000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$100,000-149,999.99 .....	$[\$900 + (\$125 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$5000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$150,000-199,999.99 .....	$[\$1200 + (\$150 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$6000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$200,000-249,999.99 .....	$[\$1500 + (\$175 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$7500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$250,000-349,999.99 .....	$[\$2250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$9000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$350,000-449,999.99 .....	$[\$3000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$10,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$450,000-549,999.99 .....	$[\$3750 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$11,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$550,000-649,999.99 .....	$[\$4500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$12,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$650,000-749,999.99 .....	$[\$5250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$13,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$750,000-849,999.99 .....	$[\$6000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$14,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$850,000-949,999.99 .....	$[\$6750 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$15,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$950,000 or over .....	$[\$7500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$16,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .

\* The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(2) For reports due on or after April 16, 2003:

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

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

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

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$1-\$4,999.99* .....	$[\$50 + (\$10 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$500 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$5,000-\$9,999.99 .....	$[\$100 + (\$10 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$600 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$10,000-24,999.99 .....	$[\$150 + (\$10 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$900 \times [1 + (.25 \times \text{Number of previous violations})]$ *
\$25,000-49,999.99 .....	$[\$300 + (\$25 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$1,400 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$50,000-74,999.99 .....	$[\$450 + (\$75 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$3000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$75,000-99,999.99 .....	$[\$600 + (\$100 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$4000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$100,000-149,999.99 .....	$[\$900 + (\$125 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$5000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$150,000-199,999.99 .....	$[\$1200 + (\$150 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$6000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$200,000-249,999.99 .....	$[\$1500 + (\$175 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$7500 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$250,000-349,999.99 .....	$[\$2250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$9000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$350,000-449,999.99 .....	$[\$3000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$10,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$450,000-549,999.99 .....	$[\$3750 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$11,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$550,000-649,999.99 .....	$[\$4500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$12,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .
\$650,000-749,999.99 .....	$[\$5250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$ .	$\$13,000 \times [1 + (.25 \times \text{Number of previous violations})]$ .

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If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
\$750,000-849,999.99 .....	[\$6000 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$14,000 × [1 + (.25 × Number of previous violations)].
\$850,000-949,999.99 .....	[\$6750 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$15,000 × [1 + (.25 × Number of previous violations)].
\$950,000 or over .....	[\$7500 + (\$200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	\$16,000 × [1 + (.25 × Number of previous violations)].

\*The civil money penalty for a respondent who does not have any previous violations will not exceed the level of activity in the report.

(c) If the respondent fails to file a required report and the Commission cannot calculate the level of activity under paragraph (d) of this section, then the civil money penalty shall be \$5,500.

(d) *Definitions.* For this section only, the following definitions will apply:

*Election Sensitive Reports* means third quarter reports due on October 15th before the general election (for all committees required to file this report except committees of candidates who do not participate in that general election); monthly reports due October 20th before the general election (for all committees required to file this report except committees of candidates who do not participate in that general election); and pre-election reports for primary, general, and special elections under 11 CFR 104.5.

*Number of previous violations* mean all prior final civil money penalties assessed under this subpart during the current two-year election cycle and the prior two-year election cycle.

(e) For purposes of the schedules of penalties in paragraphs (a) and (b) of this section,

(1) Reports that are not election sensitive reports are considered to be filed late if they are filed after their due dates but within thirty (30) days of their due dates. These reports are considered to be not filed if they are filed after thirty (30) days of their due dates or not filed at all.

(2) Election sensitive reports are considered to be filed late if they are filed after their due dates but prior to four (4) days before the primary election for pre-primary reports, prior to four (4) days before the special election for pre-special election reports, or prior to four (4) days before the general election for all other election sensitive reports. These reports are considered to

be not filed if they are not filed prior to four (4) days before the primary election for pre-primary reports, prior to four (4) days before the special election for pre-special election reports or prior to four (4) days before the general election for all other election sensitive reports.

[65 FR 31794, May 19, 2000, as amended at 68 FR 12577, Mar. 17, 2003; 70 FR 34636, June 15, 2005]

**§ 111.44 What is the schedule of penalties for 48-hour notices that are not filed or are filed late?**

(a) If the respondent fails to file timely a notice regarding contribution(s) received after the 20th day but more than 48 hours before the election as required under 2 U.S.C. 434(a)(6), the civil money penalty will be calculated as follows:

(1) Civil money penalty = \$110 + (.10 × amount of the contribution(s) not timely reported).

(2) The civil money penalty calculated in paragraph (a)(1) of this section shall be increased by twenty-five percent (25%) for each prior violation.

(b) For purposes of this section, prior violation means a civil money penalty that has been assessed against the respondent under this subpart in the current two-year election cycle or the prior two-year election cycle.

[65 FR 31794, May 19, 2000, as amended at 70 FR 34636, June 15, 2005]

**§ 111.45 What actions will be taken to collect unpaid civil money penalties?**

The Commission may take any and all appropriate collection actions authorized and required by the Debt Collection Act of 1982, as amended by the Debt Collection Improvement Act of 1996 (31 U.S.C. 3701 et. seq.). The U.S.

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Department of the Treasury regulations at 31 CFR 285.2, 285.4, and 285.7 and the Federal Claims Collection Standards issued jointly by the Department of Justice and the U.S. Department of the Treasury at 31 CFR parts 900 through 904 also apply.

[65 FR 31794, May 19, 2000, as amended at 68 FR 12580, Mar. 17, 2003; 68 FR 16715, Apr. 7, 2003]

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

If a statement designating counsel has been filed in accordance with 11 CFR 111.23, all notifications and other communications to a respondent provided for in subpart B of this part will be sent to designated counsel. If a statement designating counsel has not been filed, all notifications and other communications to a respondent provided for in subpart B of this part will be sent to respondent political committee and its treasurer at the political committee's address as listed in the most recent Statement of Organization, or amendment thereto, filed with the Commission in accordance with 11 CFR 102.2.

[68 FR 12580, Mar. 17, 2003]

**PART 112—ADVISORY OPINIONS (2 U.S.C. 437f)**

**Sec.**

- 112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).
- 112.2 Public availability of requests (2 U.S.C. 437f(d)).
- 112.3 Written comments on requests (2 U.S.C. 437f(d)).
- 112.4 Issuance of advisory opinions (2 U.S.C. 437f (a) and (b)).
- 112.5 Reliance on advisory opinions (2 U.S.C. 437f(c)).
- 112.6 Reconsideration of advisory opinions.

**AUTHORITY:** 2 U.S.C. 437f, 438(a)(8).

**SOURCE:** 45 FR 15123, Mar. 7, 1980, unless otherwise noted.

**§ 112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).**

(a) Any person may request in writing an advisory opinion concerning the application of the Act, chapters 95 or 96 of the Internal Revenue Code of 1954, or

any regulation prescribed by the Commission. An authorized agent of the requesting person may submit the advisory opinion request, but the agent shall disclose the identity of his or her principal.

(b) The written advisory opinion request shall set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, do not qualify as advisory opinion requests.

(c) Advisory opinion requests shall include a complete description of all facts relevant to the specific transaction or activity with respect to which the request is made.

(d) The Office of General Counsel shall review all requests for advisory opinions submitted under 11 CFR 112.1. If the Office of General Counsel determines that a request for an advisory opinion is incomplete or otherwise not qualified under 11 CFR 112.1, it shall, within 10 calendar days of receipt of such request, notify the requesting person and specify the deficiencies in the request.

(e) Advisory opinion requests should be sent to the Federal Election Commission, Office of General Counsel, 999 E Street, NW., Washington, DC 20463.

(f) Upon receipt by the Commission, each request which qualifies as an advisory opinion request (AOR) under 11 CFR 112.1 shall be assigned an AOR number for reference purposes.

[45 FR 15123, Mar. 7, 1980, as amended at 50 FR 50778, Dec. 12, 1985]

**§ 112.2 Public availability of requests (2 U.S.C. 437f(d)).**

(a) Advisory opinion requests which qualify under 11 CFR 112.1 shall be made public at the Commission promptly upon their receipt.

(b) A copy of the original request and any supplements thereto, shall be available for public inspection and purchase at the Public Disclosure Division of the Commission.



FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

COMMUNICATIONS SECTION  
SECRETARIAT  
2009 MAY 18 P 3:03

May 18, 2009

MEMORANDUM

**SENSITIVE**

TO: THE COMMISSION

THROUGH: ROBERT A. HICKEY  
STAFF DIRECTOR

FROM: JOHN D. GIBSON  
CHIEF COMPLIANCE OFFICER

PATRICIA CARMONA *AC for PC*  
ASSISTANT STAFF DIRECTOR  
REPORTS ANALYSIS DIVISION

BY: *NUS* NATALIYA IOFFE/RHIANNON MAGRUDER *RM*  
COMPLIANCE BRANCH

SUBJECT: FINAL DETERMINATION RECOMMENDATION -  
FAILURE TO FILE 48-HOUR NOTICES UNDER THE  
ADMINISTRATIVE FINE PROGRAM

Attached is a circulation report identifying a political committee and its treasurer against which the Commission has found reason to believe (RTB) and assessed a proposed civil money penalty calculated at RTB for failure to file the appropriate 48-Hour Notices for the 2008 General Election. The committee has paid the civil money penalty requested at RTB.

In accordance with 11 C.F.R. 111.34, the Commission shall send a final determination notice to the respondent that has paid the civil money penalty.

**RAD Recommendation**

- (1) Make final determination that the political committee and its treasurer on the attached report violated 2 U.S.C. 434(a) and assess the final civil money penalty so indicated.
- (2) Send the appropriate letter.

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AF#	Committee Name	State	Election	Candidate Name	Committee ID	Treasurer	Report Type	Prev Violations	Notices Not Filed	LOA	RTB Date	Civil Money Penalty	Date Paid	Amount Paid
1955	AL FRANKEN FOR SENATE	MN	2008 GENERAL	FRANKEN, AL	C00432278	THOMAS BORMAN	48H	0	9	\$49,726	03/31/2009	\$5,962	05/05/2009	\$5,962

BEFORE THE FEDERAL ELECTION COMMISSION

In the Matter of )  
)  
Final Determination Recommendation – ) AF 1955  
Failure to File 48-Hour Notices under the )  
Administrative Fine Program: Al )  
Franken For Senate and Thomas Borman, )  
as treasurer )

CERTIFICATION

I, Mary W. Dove, Secretary of the Federal Election Commission, do hereby certify that on May 19, 2009, the Commission decided by a vote of 6-0 to take the following actions in AF 1955:

1. Make a final determination that Al Franken For Senate and Thomas Borman, as treasurer, violated 2 U.S.C. 434(a) and assess the final civil money penalty in the amount of \$5,962.
2. Send the appropriate letter.

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

Attest:

May 20, 2009  
Date

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

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FEDERAL ELECTION COMMISSION  
WASHINGTON, D.C. 20463

May 21, 2009

Thomas Borman as Treasurer  
Al Franken for Senate  
P.O. Box 583144  
Minneapolis, MN 55458

C00432278  
AF#: 1955

Dear Mr. Borman:


On March 31, 2009, the Federal Election Commission ("the Commission") found reason to believe ("RTB") that Al Franken for Senate and you as treasurer violated 2 U.S.C. § 434(a) for failing to file 48-Hour Notices for contributions of \$1,000 or more, received between October 16, 2008 and November 1, 2008, totaling \$49,726. By letter dated April 6, 2009, the Commission sent you notification of the RTB finding that included a civil money penalty calculated at the RTB stage of \$5,962 in accordance with the schedule of penalties at 11 C.F.R. § 111.44.

On May 5, 2009, the FEC received payment of your civil money penalty calculated at the RTB stage. The FEC made a final determination on May 19, 2009 that you as treasurer and Al Franken for Senate violated 2 U.S.C. § 434(a), assessed a civil money penalty in the amount of \$5,962 in accordance with 11 C.F.R. § 111.44 and voted to close the file.

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 thirty (30) days from the date of the Commission's notification, this could occur at anytime following certification of the Commission's vote.

If you have any questions regarding this matter, please contact Rhiannon Magruder on our toll free number (800) 424-9530 (at the prompt press 5) or (202) 694-1130.

On behalf of the Commission,

  
Steven T. Walther  
Chairman

29092630945

QUALITY IS OUR PRIORITY FOR LOCKBOX 90589092630946  
SEQ# 001 \$ 0000596200 BA# 2 05-04-09 20 4



4797

Wells Fargo Bank, N.A.  
Minneapolis, MN 55402  
17-1-910

AI Franken for Senate  
P.O. Box 5531  
Minneapolis, MN 55408

Federal Election Commission

Five Thousand Nine Hundred Sixty-Two and 00/100

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

MEMO C00432278 AF #1955

PAY TO THE ORDER OF

\$ \*\*5,962.00

5/12/09

DOLLARS

*Shel S. Hess*  
AUTHORIZED SIGNATURE

Security features. Details on back.

FOR: AI Franken for Senate

FEC ID#: C00432278

AF#: 1955

PAYMENT DUE DATE: May 10, 2009

PAYMENT AMOUNT DUE: \$5,962

4-30

v Hsh



FEDERAL ELECTION COMMISSION  
Washington DC 20463

THIS IS THE END OF ADMINISTRATIVE FINE CASE # 1955

DATE SCANNED 4/25/17

SCANNER NO. 2

SCAN OPERATOR Jrup

29092630947