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FEDERAL ELECTION COMMISSION

11 CFR Parts 104 and 111

[Notice 2000–10]

Administrative Fines

AGENCY: Federal Election Commission.

ACTION: Final Rule; transmittal of regulations to Congress.

SUMMARY: The Treasury and General Government Appropriations Act, 2000, amended the Federal Election Campaign Act of 1971 (hereinafter ''the Act'' or ''FECA'') to permit the Federal Election Commission to impose civil money penalties for violations of the reporting requirements of the FECA that occur between January 1, 2000, and December 31, 2001. The amendments are intended to expedite and streamline the Commission's enforcement procedures. The Commission is promulgating amendments to its compliance procedure regulations to implement the new program. Further information is provided in the supplementary information that follows.

EFFECTIVE DATE: July 14, 2000. The Commission transmitted the final rules and the Explanation and Justification to Congress pursuant to 2 U.S.C. 438(d) on May 12, 2000. The Commission anticipates that 30 legislative days will elapse by the effective date.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Mai T. Dinh, Staff Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is issuing final rules to establish the administrative fines program that Congress authorized in amendments to section 309(a)(4) of the FECA, 2 U.S.C. 437g(a)(4). These amendments were enacted as part of the Treasury and General Government Appropriations Act, 2000, Public Law 106–58, 106th Cong., Section 640, 113 Stat. 430, 476–77 (1999). Under 2 U.S.C. 434, treasurers of political committees are required to file reports periodically to the Commission by a certain deadline. Prior to enactment of the amendment to the FECA, the Commission handled failures to file the reports in a timely manner under the enforcement procedures in 11 CFR part 111. The purpose of the administrative fines program is to institute streamlined procedures, while preserving the respondents' due process rights, to process violations of the reporting requirements of 2 U.S.C. 434(a) and assess a civil money penalty based on the schedules of penalties for such violations. The final rules include new subpart B of 11 CFR part 111, and technical amendments to 11 CFR 104.5, 111.8, 111.20, and 111.24 to implement the administrative fines program.

Section 438(d) of Title 2, United States Code, requires that any rule or regulation prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on May 12, 2000.

Explanation and Justification

The Commission initiated this rulemaking by issuing a Notice of Proposed Rulemaking (NPRM) on March 29, 2000, in which it sought comments to the proposed rule. 65 FR 16534 (March 29, 2000). The comment period ended on April 28, 2000. The Commission received one comment in response to the NPRM from Akin, Gump, Strauss, Hauer & Feld. The comment included a request for a public hearing. Because Congress intended for this new program to apply to violations that occur in 2000 and 2001, the final rules need to be issued in a timely manner so that the program will be applicable to the reports that are due in 2000. Holding a public hearing would postpone publication of the final rules and delay the effective date, possibly until February or March, 2001. This late effective date would allow the Commission to apply the administrative fines procedure to only one major reporting period—the 2001 Mid-Year Report. This would not give the Commission a sufficient basis to determine whether to recommend that Congress make the program permanent. Also, the Commission received only one request for a public hearing and that requester did submit extensive comments. Therefore, the Commission will not hold a public hearing on this final rule.

General Comments

The commenter's overriding concern was that the proposed procedures do not afford adequate procedural due process and therefore, violate the Fifth Amendment's Due Process Clause of the U.S. Constitution. The commenter argued that the procedures do not meet the balancing test in *Mathews* v. *Eldridge,* 424 U.S. 319 (1976), by failing to recognize the respondents' private interests, by minimizing the potential risk of erroneous result, and by placing undue emphasis on administrative expediency. The commenter claimed that the potential risk of erroneous result is high because the civil money penalty calculation includes three factors that could be misapplied and because the advent of mandatory electronic filing could flood the Commission's computers and lead to a breakdown that would unfairly penalize the respondents.

The Commission disagrees with this assessment. The Commission does recognize that the respondents have a property interest at stake. Except for political committees with low levels of financial activity during the reporting period, the civil money penalty will not exceed fifteen percent of the level of activity in the report for respondents who have no previous violations. For committees whose financial activity is less than $25,000 and who do not have a previous violation, the civil money penalty will not exceed $1000 or the level of activity, whichever is less. Thus, the cost of additional procedures such as a hearing for the respondent as well as the Commission will exceed the benefit of having them. Also, the *Mathews* balancing test considers whether additional procedures will provide greater protection against deprivation of a property interest or error. Within the administrative fines program, additional procedures in most cases will not afford the respondents greater protection against either. As

stated in the NPRM, the factual and legal issues involved in violations of the reporting requirements of 2 U.S.C. 434(a) are relatively straightforward. The Commission will carefully review the facts and its records before it will even proceed with a reason to believe finding. For the most part, the factual disputes surrounding this type of violation are whether the respondent filed the report and when the report was filed. If the respondent disagrees with the facts in the notification of the reason to believe finding, he or she can send proof of the filing and the date of the filing. The Commission expects that the reviewing officer will be able to resolve these types of factual disputes based on the written submissions.

The Commission also disagrees with the commenter's assertion that the procedures set forth in the NPRM pose a large potential risk of erroneous result. The civil money penalty calculation is a simple arithmetic formula whereby an error can be readily corrected by the Commission or the reviewing officer when it is brought to their attention. It is premature to predict the impact of mandatory electronic filing on administrative fines. It will have no real effect on the administrative fines program during the year 2000 because mandatory electronic filing is not scheduled to begin until January, 2001. Given that most committees will file only two reports during 2001 (2000 Year End and 2001 Mid-Year reports) before the administrative fines program sunsets on December 31, 2001, the impact is likely to be minimal, if any. The Commission's electronic filing system has been designed to accommodate filings by all committees that will be mandated to file electronically in 2001. As a result, there is no expectation that the system will have an adverse impact on the ability of committees to file their reports in a timely manner. In fact, committees may find that electronic filing is easier, faster, and more convenient than paper filing. Nevertheless, any failure of the Commission's system that prevents committees from filing their reports when due would be recognized by the Commission as a circumstance beyond the control of the filer and would be taken into account when considering reason to believe findings or the final determination.

The Commission recognizes that the need to avoid administrative burdens is one of the stated purposes for the amendment to the FECA. Congressman William Thomas, Chairman of the Committee of House Administration, stated the following on the floor of the House of Representatives on September 15, 1999:

> Allowing the FEC to impose administrative fines for reporting violations without the lengthy procedural steps required in a normal enforcement case will free critical FEC resources for more important disclosure and enforcement efforts. The rights of those under these regulations are protected by preserving the option of appeal to a U.S. District Court for those who believe the FEC erred.

The Commission, however, disagrees with the commenter that the proposed rule sacrifices the respondents' rights and procedural due process in the interest of administrative efficiency. The Commission applied the *Mathews* balancing test in developing the administrative fines procedures, taking into consideration the private interests involved and the nature of the violation. The Commission believes that the procedures in the final rules more than adequately meet the *Mathews* test in providing the respondents with procedural due process.

Section 104.5 Filing Dates

Paragraph (i) is being added to section 104.5 to encourage political committees to keep proof that they filed their reports and the dates on which the reports were filed. Retaining this evidence will allow a respondent to demonstrate timely filing if the respondent disagrees with the Commission on whether the report was filed and if so, the date of the filing. No substantive comments were made concerning this proposed section.

Section 111.8 Internally Generated Matters; Referrals

Paragraph (d) is being added to section 111.8 to permit the Commission to process complaint-generated matters that allege violations of the reporting requirements of 2 U.S.C. 434(a) under the administrative fines program. The Commission received no substantive comment on this section.

Section 111.20 Public Disclosure of Commission Action

New paragraph (c) in section 111.20 is being added to provide for the public disclosure of the enforcement file once the matter is completely resolved. The Commission did not receive any substantive comments to this section.

Section 111.24 Civil Penalties

Revised paragraph (a) of section 111.24 allows for the imposition of civil money penalties so as to make section 111.24 consistent with 11 CFR part 111, subpart B. The Commission did not receive any substantive comments on this section.

Section 111.30 When Will Subpart B Apply?

The amendment to FECA authorizes the administrative fines procedures for violations of the reporting requirements of 2 U.S.C. 434(a) that occur between January 1, 2000 and December 31, 2001. Therefore, this section provides that subpart B only applies to violations that occur during that time frame and subpart B sunsets as of January 1, 2002. The Commission did not receive any substantive comments on this section.

Section 111.31 Does This Subpart Replace Subpart A of This Part for Violations of the Reporting Requirements of 2 U.S.C. 434(a)?

Under the amendment to FECA, the Commission has discretion to apply either the administrative fines procedures or the current enforcement procedures set forth in §§ 111.9 through 111.19 to violations of the reporting requirements of 2 U.S.C. 434(a). The amendment, however, still requires the Commission to find reason to believe that a violation has occurred prior to making a final determination. Thus, §§ 111.1 through 111.8, which include the Commission's reason to believe procedures, will apply to violations processed through the administrative fines procedures. Please note that under 2 U.S.C. 437g(b), the Commission will continue to publish the names of political committees that fail to file their reports when due in the calendar quarter preceding an election including pre-election reports if the committees do not respond within four business days of being notified by the Commission of their failure to file. Sections 111.20 through 111.24, which pertain to public disclosure, confidentiality, *ex parte* communications, representation by counsel, and civil penalties, will also apply to violations processed under subpart B. In addition, while the Commission anticipates that it will process most of these violations under the administrative fines procedures, § 111.31 makes clear that the Commission has the discretion to use the enforcement procedures in §§ 111.9 through 111.19 to handle these violations in circumstances the Commission deems appropriate.

Proposed § 111.31(b) is being modified to include complaint-generated matters that allege violations of the reporting requirements of 2 U.S.C. 434(a) along with violations of other provisions of the FECA in the administrative fines program. The alleged violations of the reporting

requirements will be processed through subpart B while the other alleged violations will be handled through the enforcement process of subpart A. The Commission made this modification to maintain consistency in its prosecution of alleged violations of the reporting requirement of 2 U.S.C. 434(a). The Commission did not receive any substantive comments on this section.

Section 111.32 How Will the Commission Notify Respondents of a Reason To Believe Finding and a Proposed Civil Money Penalty?

The Commission will follow its current procedures in finding reason to believe and in notifying the respondents of its finding. If the Commission, by an affirmative vote of at least four of its members, finds reason to believe that a violation has occurred, the Chairman or the Vice-Chairman will notify the respondent of the finding. The notification will include the legal and factual basis for the finding as well as the proposed civil money penalty in accordance with the schedules of penalties and an explanation of the respondent's right to challenge the finding and/or the proposed civil money penalty.

As stated in the NPRM, the Commission will also continue to follow its current procedure of notifying the political committees of their duty to file their reports and the dates on which the reports are due prior to the filing deadline. Thus, political committees will continue to be on notice of their legal obligation to file their reports in a timely manner.

The commenter urged that the Commission include a regulation stating when a report filed electronically is considered ''filed.'' The Commission agrees that the regulations should include such a provision but has decided that this topic is better addressed in the Commission's rulemaking regarding mandatory electronic filing.

Section 111.33 What Are the Respondent's Choices Upon Receiving the Reason To Believe Finding and the Proposed Civil Money Penalty?

Upon receipt of the notification of the reason to believe finding and the proposed civil money penalty, the respondents will have two options. They may pay the civil money penalties pursuant to § 111.34. The Commission will process the payment and then close the matter. Respondents may also challenge the reason to believe finding and/or the proposed civil money penalty by following the procedures set forth in § 111.35. The Commission did not receive any substantive comments on this section.

Section 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 respondent who does not wish to challenge the reason to believe finding and the proposed civil money penalty must submit a check or money order equal to the amount of the proposed civil money penalty to the Commission within 40 days of the reason to believe determination. Once the Commission receives payment, it will send the respondent a final determination that the respondent has violated 2 U.S.C. 434(a) and acknowledgment of the respondent's payment of the civil money penalty. The matter would then be closed and the file would be placed on the public record pursuant to 11 CFR 111.20 and new 11 CFR 111.42. The Commission did not receive any substantive comments on this section.

Section 111.35 If the Respondent Decides To Challenge the Alleged Violation or Proposed Civil Money Penalty, What Should the Respondent Do?

Proposed § 111.35 in the NPRM set forth the requirements that respondents must meet to challenge a reason to believe finding and/or proposed civil money penalty. The requirements included filing a notice of intent to challenge within twenty days of the date of the Commission finding reason to believe and filing a written response with supporting documentation within forty days of that date. This proposed section also provided for circumstances the Commission will consider in determining whether to levy a civil money penalty and defenses that the Commission will not accept.

The commenter had several criticisms of this aspect of the administrative fines procedures. First, the commenter objected to the requirement of the notice of intent to challenge the reason to believe finding and/or proposed civil money penalty, stating that the requirement is ''contrary to the plain language of the statute, which forbids the Commission from making an adverse determination 'until the person has been given notice and an opportunity to be heard before the Commission' '' (citation omitted). While the Commission disagrees with the commenter's legal analysis on this issue, the Commission agrees that a notice of intent to challenge is not necessary. Consequently, that step has been eliminated from the final rules.

The commenter also objected to the use of the date of the Commission's reason to believe determination to trigger the time that the respondent has to file a notice of intent and the written response. The commenter suggested that the time to file the notice of intent and the written response should not begin until receipt of the notification of the Commission's reason to believe finding.

In determining when the time to appeal begins to toll, some federal agencies chose the date on which the decision was made, not the date of receipt, often providing thirty days from the date of the initial decision. *See e.g.,* Coast Guards Regulations on Suspension, Revocation, and Appeals, 33 CFR 158.190 (2000); Department of the Interior Regulations on Public Lands, 43 CFR 4.356 (2000). The Commission also notes that several agencies that begin to toll the time for appeal upon service of an initial adverse decision provide thirty days for a party to file the appeal. *See* Federal Retirement Thrift Investment Board Privacy Act Regulations, 5 CFR 1630.13 (2000); National Indian Gaming Commission Regulations on Appeals, 25 CFR parts 524 and 539 (2000); Postal Service Regulations on Suspension and Revocation of Appeal, 39 CFR 501.12 (2000). Seen in this context, the Commission believes that forty days is an ample and fair amount of time for respondents to file a written response. The Commission has extended the traditional thirty day appeal period an additional ten days to take into account the time it takes for Commission staff to prepare the mailing as well as for the Postal Service to deliver the notification, with a few additional days as a margin for error.

The commenter strongly disagrees with the list of defenses in proposed § 111.35 that the Commission will and will not consider, suggesting that the Commission has failed to balance the respondent's rights with ''administrative expediency'' for the Commission. The commenter recommends that the Commission eliminate proposed § 111.35(c)(1)(iii) and (c)(4) because the Commission has no rationale for limiting defenses to ''48-hour extraordinary circumstance'' and errors on the part of the Commission. In addition, the commenter believes that the Commission should allow ''good faith'' defenses.

The Commission has sound policy reasons for limiting the respondents' defenses beyond streamlining the administrative process. A key cornerstone of campaign finance law is the full and timely disclosure of the political committee's financial activity.

Such disclosure is essential to providing the public with accurate and complete information regarding the financing of federal candidates and political campaigns. Thus, violations of the reporting requirements of 2 U.S.C. 434(a) are strict liability offenses. Political committees are aware or should be aware of their legal duty to file the required reports in a timely manner, and the Commission makes ongoing efforts to remind committees of their duty. Committees are given ample time from the end of the reporting period to the filing deadline to prepare and file their reports. Absent extraordinary circumstances beyond the committees' control, the Commission sees no reason why committees cannot file their reports by the deadline. The rationale behind the ''48-hour extraordinary circumstances'' exception is that the Commission recognizes there may be instances such as 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. The Commission, however, expects the committee to file its report as soon as it can reasonably do so.

The commenter argues that under proposed § 111.35(c)(4)(iv) respondents may be held liable for the failure of the Commission's computers. 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. Therefore, § 111.35(c)(4)(iv) has been revised to exclude Commission computer failures from the list of circumstances that the Commission will not consider as extraordinary circumstances.

The commenter states that, under the Due Process Clause of the U.S. Constitution, the Commission bears the burden of proving the factual allegations, not the respondent. In its notification to the respondent of its reason to believe finding, the Commission does include the factual and legal basis for its finding based on the information available to it. Only the respondents can answer the Commission's allegations, devise their defenses, and provide the documents that would support their defenses. Supporting documentation will permit the reviewing officer to evaluate the respondents' factual allegations and defenses. Administrative procedures under other federal agencies also require respondents to provide the factual and legal basis for seeking relief or appealing a decision of the agency. *See e.g.*, 18 CFR 1312.12(d) (2000) (Tennessee Valley Authority's regulations requiring the petition for relief from an assessment of a civil penalty to ''set forth in full the legal and factual basis for the requested relief.''); 25 CFR 577.3 (2000) (The National Indian Gaming Commission's hearing regulations state that ''* * * the respondent shall file with the Commission a supplemental statement that states with particularity the relief desired and the grounds therefor and that includes, when available, supporting evidence in the form of affidavits.''). Therefore, requiring a respondent to include reasons for challenging the reason to believe finding and/or proposed civil money penalty and the factual basis for those reasons does not violate a respondent's rights under the Due Process Clause.

Section 111.36 Who Will Review the Respondent's Written Response?

Proposed § 111.36 in the NPRM provided for an impartial reviewing officer to review the reason to believe finding, the proposed civil money penalty, the Commission's documentation, and the respondent's written response and to make a recommendation to the Commission. The reviewing officer may request that the respondent and/or the Commission staff submit supplemental information. Paragraph (b) is being revised to clarify the consequence of failure by the respondent to file the supplemental information. Such failure will entitle the reviewing officer to draw an adverse inference.

The commenter expressed concern that the procedures described in proposed § 111.36 fail to meet the statutory requirements of Administrative Procedure Act (APA), 5 U.S.C. 551, *et. seq.,* and the Due Process Clause of the U.S. Constitution. The commenter states that the proposed rule does not include provisions that incorporate 5 U.S.C. 555(b) and (c), which entitle a party to appear in person, to be represented by counsel, and to have access to documents that are the basis of the reviewing officer's recommendation to the Commission. The commenter argues that oral hearings will fulfill the requirements of 5 U.S.C. 555(b) and the *Mathews* balancing test to determine whether an agency's procedures afford respondents adequate procedural due process. The commenter contends that oral hearings would give greater meaning to the respondents' right to an ''opportunity to be heard''; would settle disputes without need for litigation, thereby conserving resources; and would develop a full administrative record for the purposes of judicial review. The Commission disagrees with some of these contentions and believes that these objectives can be achieved in all cases without need for an oral hearing.

With regard to the respondents' right to be represented by counsel, new § 111.31 explicitly incorporates § 111.23, which allows for respondents to be represented by counsel in any matter before the Commission. The commenter cited to 5 U.S.C. 555(c) as the basis for requiring the Commission to give respondents access to documents used by the reviewing officer in formulating his or her recommendation. The Commission disagrees with this reading of this section of the APA. Section 555(c) states that a ''person compelled to submit data or evidence is entitled to retain or * * * procure a copy or transcript thereof.'' Thus, respondents are entitled to keep a copy of their written submissions or ask the Commission to send them a copy of their written submissions. It does not grant the respondents the right to obtain or review other documents that the reviewing officer relied upon to make his or her recommendation. The Commission, however, recognizes that a respondent should be given copies of any additional documents that the reviewing officer examines after the respondent has filed a challenge to the reason to believe finding and/or proposed civil money penalty. For example, Commission staff might possibly provide additional materials regarding receipt of an electronically filed report. Therefore, paragraph (d) is being added to revised § 111.36 to provide for that procedure. Revised § 111.36 also adds new paragraph (f) to require the reviewing officer to send the respondent a copy of the recommendation to the Commission and allows the respondent to file with the Commission Secretary a written response to the recommendation within ten days of the transmittal of the recommendation. However, the respondent will not be able to make any new arguments, that is, the respondent may not make arguments that the respondent did not make in its original written response or that are not in direct response to the arguments made by the reviewing officer in his or her recommendation to the Commission.

The commenter interprets the second sentence of 5 U.S.C. 555(b) as creating an independent right to appear in person with counsel whenever there is an agency proceeding. The Commission disagrees with this interpretation. In reading 5 U.S.C. 555(b) as a whole, it is apparent that the entitlement described in the second sentence is triggered only

if the person is compelled to appear in person in an agency proceeding. Thus, if a person is compelled to appear in person, the person may chose to appear by himself or herself, to appear with counsel, or send counsel or a duly qualified representative in his or her stead. The right to appear under 5 U.S.C. 555(b) ''is not blindly absolute, without regard to the status or nature of the proceedings and concern for the orderly conduct of public business.'' *DeVyver* v. *Warden*, 388 F.Supp. 1213, 1222 (M.D. Pa. 1974) (citing *Easton Utilities Commission* v. *Atomic Energy Commission*, 424 F.2d 847, 852 (D.C. Cir. 1970)).

Moreover, 5 U.S.C. 555(b) does not afford the respondents a right to a hearing. The Supreme Court has held that even where a statute requires an ''opportunity for hearing,'' it ''cannot impute to Congress the design requiring, nor does due process demand, a hearing when it appears conclusively from the applicant's 'pleadings' that the applicant cannot succeed.'' *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609, 621 (1973) (involving the Federal Drug Administration's procedure for withdrawing approval of a new drug application). Similarly, lower courts have held that agencies may make a decision solely on the written submission, much like summary judgment, where there are no disputed issues of material fact that cannot be resolved by the written submissions. *State of Pennsylvania* v. *Riley*, 84 F.3d 125, 130 (3rd Cir. 1996) (citing *Moreau* v. *F.E.R.C.*, 982 F.2d 556, 568 (D.C. Cir.1993); *Altenheim German Home* v. *Turnock*, 902 F.2d 582, 584 (7th Cir. 1990); *California* v. *Bennett*, 843 F.2d, 333, 340 (9th Cir. 1988); *Bell Telephone Co. of Pennsylvania* v. *FCC*, 503 F.2d 1250, 1267–68 (3rd Cir. 1974); *Puerto Rico Aqueduct & Sewer Auth.* v. *E.P.A.*, 35 F.3d 600, 606 (1st Cir. 1994); *Louisiana Ass'n of Indep. Producers and Royalty Owners* v. *FERC*, 958 F.2d 1101, 1113–15 (D.C. Cir. 1992); *City of St. Louis* v. *Department of Transp.*, 936 F.2d 1528, 1534 n. 1 (8th Cir. 1991)).

The court in *Puerto Rico Aqueduct & Sewer* recognized the need for administrative summary judgment. It stated that:

> The choice between summary judgment and full adjudication—in virtually any context—reflects a balancing of the value of efficiency against the values of accuracy and fairness. Seen in that light, summary judgment often makes especially good sense in an administrative forum, for, given the volume of matters coursing through an agency's hallways, efficiency is perhaps more central to an agency than to a court. . . . Administrative summary judgment is not only widely accepted, but also intrinsically valid. An agency's choice of such a procedural device is deserving of deference under ''the very basic tenet of administrative law that agencies should be free to fashion their own rules of procedure.'' *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 544, 98 S.Ct. 1197, 1212, 55 L.Ed.2d 460 (1978).

35 F. 3d at 606.

The balancing of accuracy and fairness with the need for efficiency in an agency contains two of the three prongs of the *Mathews* test. Unlike other types of violations that may involve complex factual and legal issues requiring extensive fact finding and analysis and witness testimony, the legal and factual issues pertaining to violations of the reporting requirements of 2 U.S.C. 434(a), are elementary and readily ascertainable by review of written submissions. Because of this, a hearing will not significantly increase accuracy and fairness but will drain the Commission's resources and hinder its efficiency. Therefore, the Commission does not believe that a hearing is legally required especially in light of the additional procedures that are being added to the final rules. *See supra.*

Paragraph (c) is being added to revised § 111.36 to strongly encourage respondents to submit documents to the reviewing officer under §§ 111.35 and 111.36 that are sworn to in the form of affidavits or declarations. More weight and credibility are generally given to statements and documents that are given under oath or are subject to the penalty of perjury.

The commenter had several additional comments with regard to the reviewing officer. First, the commenter stated that the reviewing officer could not be viewed as impartial if he or she is within the Reports Analysis Division (RAD) or the Office of General Counsel (OGC) and suggested an independent position be created to ensure objectivity and to shield the reviewing officer from the supervision of the General Counsel or the Assistant Staff Director of RAD. The Commission agrees that ''[i]mpartiality does not require total independence from the government agency or the presence of an administrative law judge * * * [but] only decisionmaker independence * * * from the individual action to be decided.'' P. Verkuil, *A Study of Informal Adjudication,* 43 U. Chi. L. Rev. 739, 750 n.45 (1976) (citing *Goldberg* v. *Kelly,* 397 U.S. 254, 271 (1970)). The Commission recognizes the need to separate its prosecutorial functions from its role as the decider of facts. Consequently, at this time, the Commission anticipates that the reviewing officer most likely will not be an employee within OGC or RAD.

The commenter also suggested that the civil money penalties in the schedules of penalties in § 111.43 should be considered the maximum civil money penalty and that the reviewing officer should have the authority to reduce the civil money penalty after considering mitigating factors and the totality of the circumstances to create ''more flexibility in applying the new rules.'' The Commission disagrees. Allowing the reviewing officer to reduce the civil money penalty would vest in the reviewing officer the authority to make final decisions, contrary to the FECA and long standing practice. *See* 2 U.S.C. 437c(c). Final agency decisions must be made by an affirmative vote of four members of the Commission. Also, if the reviewing officer is granted the discretion to reduce the civil money penalties, different civil money penalty amounts may be levied against political committees that commit identical violations, resulting in lack of uniformity and certainty and giving rise to the perception of unfairness.

Finally with respect to the reviewing officer, the commenter advocated that this person should be subject to the Commission's ethics regulation. Further, the person ''should not be a member of the enforcement staff who previously served as counsel in a matter where the current respondent was either a witness or a respondent'' because it will create a conflict of interest and an appearance of impropriety. As an employee of the Commission and the federal government, the reviewing officer will be subject to the Commission's Standards of Conduct set forth at 11 CFR part 7, and the Standards of Ethical Conduct for Employees of the Executive Branch. The conflict of interest standard in 11 CFR 7.2(c) is designed to address instances where the employee's private interests are inconsistent with the efficient and impartial conduct of his or her official duties and responsibilities. Nothing in the rules bars an employee from serving in different capacities at different times such as employees in the Office of General Counsel subsequently filling positions in Commissioners' offices.

Section 111.37 What Will the Commission Do Once It Receives the Respondent's Written Response and the Reviewing Officer's Recommendation?

The Commission will make a final determination, by an affirmative vote of at least four of its members, as to whether the respondent has violated the reporting requirements of 2 U.S.C. 434(a) and the amount of the civil

money penalty, if any. The Commission will then authorize the reviewing officer to notify the respondent of its decision. The Commission did not receive any substantive comments on this section.

Section 111.38 Can the Respondent Appeal the Commission's Final Determination?

This section follows the amendment to the FECA by specifying that respondents may appeal a final adverse determination by the Commission to a federal district court where the respondents reside or conduct business by filing a written petition within thirty days of receipt of the Commission's final determination. Respondents, however, may not raise any issue that they did not timely raise in the administrative proceeding. The Commission received no substantive comments on this section.

Section 111.39 When Must the Respondent Transmit Payment of the Civil Money Penalty?

Unless the respondent appeals the Commission's final determination, the respondent must send a check or money order to the Commission within thirty days of receipt of the final determination. Once there is a final determination of the civil money penalty amount, the civil money penalty will be a debt owed to the United States. If the respondent does not submit full payment, the Commission may forward the debt to the U.S. Department of the Treasury for collection under the Debt Collection Improvement Act of 1996 within 180 days of the date after the final determination. 31 U.S.C. 3711(g); 31 U.S.C. 3716(c)(6). In the alternative, the Commission may initiate a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A). The Commission did not receive any substantive comments on this section.

Section 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?

The Commission will make a final determination and assess a civil money penalty, if any. The respondents will be notified by letter of the final determination. The respondent must pay any assessed civil money penalty within thirty days of receipt of the final determination. Unpaid civil money penalties are debts owed to the United States and may be transferred to the U.S. Department of the Treasury for collection. 31 U.S.C. 3711(g); 31 U.S.C. 3716(c)(6). In the alternative, the Commission may initiate a civil suit pursuant to 2 U.S.C. 437g(a)(6)(A). There were no substantive comments on this section.

Section 111.41 To Whom Should the Civil Money Penalty Payment Be Made Payable?

Respondents must pay the civil money penalties by check or money order and make the check or money order payable to the Federal Election Commission. The Commission did not receive any substantive comments on this section.

Section 111.42 Will the Enforcement File Be Made Available to the Public?

Once the enforcement matter is closed, the file will be made available to the public subject to the provisions of 11 CFR 4.4(a)(3). A matter is considered closed when neither the Commission nor the respondent files a civil action in federal court or when there is a final disposition of the civil action pursuant to 11 CFR 111.20(c). The Commission received no substantive comments on this section.

Section 111.43 What Are the Schedules of Penalties?

Proposed § 111.43 contained two schedules of penalties—one for election sensitive reports and one for all other reports. The Commission took into account the level of activity in the report, the number of days late, the election sensitivity of the reports, and the existence of previous violations in developing the schedules. Two of these factors—the level of activity and the existence of previous violations—are mandated by the FECA. The Commission included the number of days as a factor because fairness demands that a report that is only a few days late should not be treated in the same manner as one that is many days late or not filed. Similarly, several state agencies responsible for overseeing state campaign finance laws levy fines on a per day basis for violations of their reporting requirements. *See e.g.,* Fla. Stat. Ann. § 106.04(8) (West 2000); Haw. Rev. Stat. § 11–193(a)(5) (1999); N.M. Stat. Ann. § 1–19–35A (Michie 1999). Because of the need to disseminate campaign finance information prior to an election for it to have a meaningful impact, the Commission concluded that it is especially important for reports due prior to an election to be filed in a timely manner and before the election. Thus, the Commission developed a different schedule of penalties for election sensitive reports that imposes a higher civil money penalty for these reports than other types of reports. In addition, the schedule of penalties for election sensitive reports uses an earlier cut-off date in considering a report not to be filed than the date used for reports that are not election sensitive.

The commenter made several comments and suggestions regarding the schedules of penalties. First, the commenter urged the Commission to calculate the level of activity based on contributions and expenditures less overhead and administrative costs, rather than receipts and disbursements, arguing that a calculation based on receipts and disbursements does not further the goals of FECA and discriminates against political action committees. This argument implicitly assumes that disclosure of some types of receipts and disbursements is of lesser importance than disclosure of other types. The Commission disagrees with this assumption. The amendment to the FECA clearly states that the Commission must take into account the ''amount of the violation involved,'' which is not limited to contributions and expenditures. Under section 434 of the Act, political committees are required to disclose all receipts and disbursements in their reports, not just contributions and expenditures. Moreover, Congress could have drafted the amendment to include just contributions and expenditures, as it did for mandatory electronic filing in Section 639 within the same amendment, but it did not. This difference in terms used in these two sections is strong evidence that Congress intended these two provisions to reach different types of financial activity. Thus, the Commission concludes that the ''amount of the violation involved'' is equal to receipts and disbursements.

The commenter suggested that the final rules should state that committees with no receipts or disbursements will not be subject to the administrative fines, and urged the Commission to allow committees to send an affidavit attesting to the fact that they did not have any receipts or disbursements in lieu of filing a report. The Commission cannot do so because it does not have the authority to waive reporting requirements in this situation. While the Commission theoretically could make a final determination that a committee with no receipts and disbursements is in violation of 2 U.S.C. 434(a), the Commission could not assess a civil money penalty against the committee because the schedules of penalties only provides for civil money penalties if the level of activity is $1.00 or more. However, committees with no financial activity should file their reports; otherwise, the Commission will calculate an estimated level of activity

based on the average level of activity over the current or previous two-year election cycle. Unless the committees file their reports disclosing no financial activity, the Commission will assess civil money penalties based on these estimated levels of activity or $5500 if the Commission cannot calculate the estimated levels of activity.

The commenter advocates the creation of a ''safe harbor'' for committees that do not have any contributions or expenditures in the given reporting period because these committees have not engaged in any political activity in that period. As discussed above, one of the mandated factors in determining the civil money penalty is the amount of the violation, which is not limited to just contributions and expenditures. Committees are required to file reports even if the committees did not have any contributions or expenditures. To create such a ''safe harbor'' would be to implicitly allow committees to ignore their affirmative and legal duty to file the required reports.

The commenter characterized the schedules of penalties in the NPRM as lacking a rational basis and as discriminating against small committees. The commenter suggested that the Commission break down the level of activity by $5,000 increments. The basis for the schedules of penalties is discussed above. The Commission believes the breakdowns in the schedules of penalties using the levels of activity fairly and equitably assess civil money penalties that reflect the nature and scope of the violation. The Commission notes, however, that the commenter was correct in stating that small committees that fall within the first range, $1–$24,999.99, could potentially pay a civil money penalty that exceeds their total financial activity for a given reporting period. Therefore, the two schedules in § 111.43 are being amended to include a provision stating that respondents with no previous violations will not be assessed a civil money penalty that exceeds the levels of activity in the report.

The preamble to the NPRM included an alternative method for calculating the schedule of penalties for the election sensitive reports. Instead of a fifty percent increase in the base amounts, the NPRM sought comment on adding a flat amount of $1000 to the base amounts for all levels of activity. No comments directly addressing this issue were received. However, the commenter expressed concern that the schedules of penalties discriminated against committees with low levels of financial activity. The Commission has determined that a flat $1000 addition to the base amounts would impose on committees with low levels of financial activity a significantly higher civil money penalty relative to their level of activity than committees with higher levels of financial activity. Consequently, the Commission has decided to adopt a schedule of penalties that increases the base amounts by fifty percent for election sensitive reports instead of adding a flat $1000 to the base amounts.

The commenter suggested that the civil money penalties in the schedules of penalties may be too high in some instances. The Commission agrees that the civil money penalties it initially proposed for non-filers were too high. Therefore, the civil money penalties for non-filers are being reduced in the schedules of penalties in § 111.43 (a) and (b). With respect to both election sensitive reports and non-election sensitive reports, the resulting civil money penalties for non-filers are higher than the civil money penalties for reports filed 30 days late, but are not as high as the civil money penalties proposed in the NPRM.

Finally, paragraphs (d) and (e) are being revised to clarify that election sensitive reports include reports due before special elections.

Examples of Civil Money Penalties

Example 1: The respondent files an October quarterly report 20 days late. The level of activity on the report is $105,000. The civil money penalty is calculated as follows. The base amount is $900. The per day amount is $125 multiplied by 20 days, which equals $2500. The civil money penalty is the sum of these two amounts, which is $3400.

Example 2: The respondent in the above example has one prior violation in the current two-year election cycle. The premium for the one prior violation is 25% of the civil money penalty calculated in example 1, which equals $850. The civil money penalty is the sum of this premium and the civil money penalty from example 1, which is $4250.

Example 3: The respondent files a July quarterly report on September 1. The report contains $500 in receipts and disbursements. The respondent is a non-filer because the report was more than thirty days late. The civil money penalty is $500 because it is the lesser of the level of activity in the report and $900, which is the civil money penalty for a non-filer whose level of activity is less than $25,000.

Example 4: The respondent in the example 3 had one prior violation in the current two-year election cycle. Because this is not the respondent's first violation, the civil money penalty is not capped by the respondent's level of activity. The civil money penalty is the $900 assessed against non-filers whose level of activity is less than $25,000 plus a 25% premium equaling $225 for the one prior violation. Therefore, the civil money penalty for this respondent is $1125.

Section 111.44 What Is the Schedule of Penalties for 48-Hour Notices?

Committees are required to report within 48 hours of receipt of those contributions of $1000 or more that are received after the 20th day but more than 48 hours before an election. 2 U.S.C. 434(a)(6). The Commission developed a different schedule of penalties for failure to file these notices on time because of the nature and timing of these notices and the need to have them filed on time. The schedule proposed in the NPRM did not distinguish between notices that are filed late and those that are not filed at all, and would have imposed a civil money penalty equal to fifteen percent of the amount of the contribution(s) not reported on time plus $100. In the final rules that follow, this schedule of penalties is also being reduced because the resulting civil money penalties may be too high. The amount in the final schedule of penalties is being reduced to 10% of the amount of the contribution(s) not timely reported plus $100.

Section 111.45 What Actions Will Be Taken To Collect Unpaid Civil Money Penalties?

The Commission may take any and all appropriate 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.*). This section adopts the Federal Claims Collection Standards issued jointly by the Department of Justice and the General Accounting Office, 4 CFR parts 101–105, to provide procedures for the collection of the debt. This section also adopts by cross-reference the regulations issued by U.S. Department of the Treasury at 31 CFR 285.2, 285.4, and 285.7. Changes are being made to this section in the final rules for clarification purposes. The Commission did not receive any substantive comments on this section.

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

The attached final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the final rule will impose penalties which are scaled to take into account the size of the financial activity of the political committees. Thus, committees with less financial activity will be subject to lower fines than committees with more

financial activity. Also, the Commission anticipates that there will not be a large number of small committees that would be subject to the process in the proposed rules. Therefore, the final rules will not have a significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 104

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement.

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

PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

1. The authority for part 104 continues to read as follows:

Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a.

2. 11 CFR 104.5 is amended by adding new paragraph (i) to read as follows:

§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).

* * * * *

(i) Committees should retain proof of mailing or other means of transmittal of the reports to the Commission.

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

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

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

4. 11 CFR 111.8 is amended by adding new paragraph (d) to read as follows:

§ 111.8 Internally generated matters; referrals (2 U.S.C. 437g(a)(2)).

* * * * *

(d) Notwithstanding §§ 111.9 through 111.19, for violations of 2 U.S.C. 434(a), the Commission, when appropriate, may review internally generated matters under subpart B of this part.

5. 11 CFR 111.20 is amended by adding new paragraph (c) to read as follows:

§ 111.20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).

* * * * *

(c) For any compliance matter in which a civil action is commenced, the Commission will make public the non-exempt 2 U.S.C. 437g investigatory materials in the enforcement and litigation files no later than thirty (30) days from the date on which the Commission sends the complainant and the respondent(s) the required notification 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.

6. 11 CFR 111.24(a) is revised to read as follows:

§ 111.24 Civil Penalties (2 U.S.C. 437g(a)(5), (6), (12), 28 U.S.C. 2461 nt.).

(a) Except as provided in 11 CFR part 111, subpart B and in paragraph (b) of this section, a civil penalty negotiated by the Commission or imposed by a court for a violation of the Act or chapters 95 or 96 of title 26 (26 U.S.C.) shall not exceed the greater of $5,500 or an amount equal to any contribution or expenditure involved in the violation. In the case of a knowing and willful violation, the civil penalty shall not exceed the greater of $11,000 or an amount equal to 200% of any contribution or expenditure involved in the violation.

* * * * *

7. Part 111 is amended by designating 11 CFR 111.1 through 111.24 as subpart A—Enforcement—and by adding new subpart B to read as follows:

Subpart B—Administrative Fines

Sec.

111.30 When will subpart B apply?
111.31 Does this subpart replace subpart A of this part for violations of the reporting requirements of 2 U.S.C. 434(a)?
111.32 How will the Commission notify respondents of a reason to believe finding and a proposed civil money penalty?
111.33 What are the respondent's choices upon receiving the reason to believe finding and the proposed civil money penalty?
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?
111.35 If the respondent decides to challenge the alleged violation or proposed civil money penalty, what should the respondent do?
111.36 Who will review the respondent's written response?
111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?
111.38 Can the respondent appeal the Commission's final determination?
111.39 When must the respondent pay the civil money penalty?
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?
111.41 To whom should the civil money penalty payment be made payable?
111.42 Will the enforcement file be made available to the public?
111.43 What are the schedules of penalties?
111.44 What is the schedule of penalties for 48-hour notices that are not filed or filed late?
111.45 What actions will be taken to collect unpaid civil money penalties?

§ 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 on or after July 14, 2000, and on or before December 31, 2001.

§ 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.

§ 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) Within forty (40) days of the Commission's reason to believe finding, the respondent shall submit to the Commission a written response.

(b) The written response shall contain the following:

(1) Reason(s) why the respondent is challenging the reason to believe finding and/or civil money penalty which may consist of:

(i) The existence of factual errors; and/or

(ii) The improper calculation of the civil money penalty; and/or

(iii) The existence of extraordinary circumstances that were beyond the control of the respondent and that were for a duration of at least 48 hours and that prevented the respondent from filing the report in a timely manner;

(2) The factual basis supporting the reason(s); and

(3) Supporting documentation.

(4) Examples of circumstances that will not be considered extraordinary include, but are not limited to, the following:

(i) Negligence;

(ii) Problems with vendors or contractors;

(iii) Illness of staff;

(iv) Computer failures (except failures of the Commission's computers); and

(v) Other similar circumstances.

§ 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, 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) The Commission may determine, by an affirmative vote of at least four of its members, that a violation of 2 U.S.C. 434(a) has occurred but waive the penalty because the respondent has convincingly demonstrated the existence of extraordinary circumstances that were beyond the respondent's control and that were for a duration of at least 48 hours. The Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

§ 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 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 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 in accordance with the following schedule of penalties:

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–24,999.99 [a]	[$100 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$900 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$200 + ($50 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1800 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$300 + ($75 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$2700 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$400 + ($100 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3500 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$600 + ($125 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4500 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$800 + ($150 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5500 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$1000 + ($175 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6500 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$1500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$8000 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$2000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9000 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$2500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9500 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$3000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,000 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$3500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,500 × [1 + (.25 × Number of previous violations)].
$750,000–849,999.99	[$4000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,000 × [1 + (.25 × Number of previous violations)].

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:
$850,000–949,999.99	[$4500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,500 × [1 + (.25 × Number of previous violations)].
$950,000 or over	[$5000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,000 × [1 + (.25 × Number of previous violations)].

[a] 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 in accordance with the following schedule of penalties.

If the level of activity in the report was:	And the report was filed late, the civil money penalty is:	Or the report was not filed, the civil money penalty is:
$1–24,999.99 [a]	[$150 + ($25 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$1000 × [1 + (.25 × Number of previous violations)].
$25,000–49,999.99	[$300 + ($50 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$2000 × [1 + (.25 × Number of previous violations)].
$50,000–74,999.99	[$450 + ($75 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$3000 × [1 + (.25 × Number of previous violations)].
$75,000–99,999.99	[$600 + ($100 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$4000 × [1 + (.25 × Number of previous violations)].
$100,000–149,999.99	[$900 + ($125 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$5000 × [1 + (.25 × Number of previous violations)].
$150,000–199,999.99	[$1200 + ($150 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$6000 × [1 + (.25 × Number of previous violations)].
$200,000–249,999.99	[$1500 + ($175 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$7500 × [1 + (.25 × Number of previous violations)].
$250,000–349,999.99	[$2250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$9000 × [1 + (.25 × Number of previous violations)].
$350,000–449,999.99	[$3000 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$10,000 × [1 + (.25 × Number of previous violations)].
$450,000–549,999.99	[$3750 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$11,000 × [1 + (.25 × Number of previous violations)].
$550,000–649,999.99	[$4500 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$12,000 × [1 + (.25 × Number of previous violations)].
$650,000–749,999.99	[$5250 + ($200 × Number of days late)] × [1 + (.25 × Number of previous violations)].	$13,000 × [1 + (.25 × Number of previous violations)].
$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)].

[a] 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.

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.

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.

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.

§ 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 = $100 + (.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.

§ 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. 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 Government Accounting Office at 4 CFR parts 101 through 105 also apply.

Dated: May 12, 2000.

Darryl R. Wold,

Chairman, Federal Election Committee.

[FR Doc. 00–12484 Filed 5–18–00; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. FAA–2000–7110; Amendment No. 91–262]

RIN 2120–AG94

Special Visual Flight Rules

AGENCY: Federal Aviation Administration, DOT.

ACTION: Direct final rule; confirmation of effective date.

SUMMARY: This action amends the language regarding aircraft operating in accordance with Special Visual Flight Rules (SVFR). Specially, this action will permit a general aviation pilot at a satellite airport where weather reporting is not available, to depart in meteorological conditions less than basic Visual Flight Rules (VFR) weather minimums provided that the pilot determines that he has the requisite flight visibility. The FAA is taking this action to reduce the number of unnecessary flight delays being faced by general aviation aircraft while providing an equivalent level of safety.

EFFECTIVE DATE: The rule is effective on May 23, 2000.

FOR FURTHER INFORMATION CONTACT: Avis P. Person, Airspace and Rules Division (ATA–400), Air Traffic Airspace Management Program, Federal Aviation Administration, 800 Independence Avenue, SW, Washington, DC 20591; telephone number (202) 267–8783.

SUPPLEMENTARY INFORMATION: The FAA published this direct final rule with a request for comments in the **Federal Register** on March 24, 2000 (65 FR 16114). The FAA uses the direct final rulemaking procedure for a non-controversial rule where the FAA believes that there will be no adverse public comment. This direct final rule advised the public that no adverse comments were anticipated, and that unless a written adverse comment, or a written notice of intent to submit such an adverse comment, were received within the comment period, the regulation would become effective on May 23, 2000. No adverse comments were received, and thus this notice confirms that this final rule will become effective on that date.

Issued in Washington, DC, on May 12, 2000.

Donald P. Byrne,

Assistant Chief Counsel, Regulations Division.

[FR Doc. 00–12561 Filed 5–18–00; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 97

[Docket No. 30042; Amdt. No. 1991]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows: