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For meeting of July 25, 2024



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

July 18, 2024

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*  
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Associate General Counsel

Robert M. Knop *NFS for RMK*  
Assistant General Counsel

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Attorney

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Attorney

SUBJECT: REG 2013-06 (Administrative Fines Program Expansion) Draft NPRM

Attached is draft NPRM for REG 2013-06 (Administrative Fines Program Expansion). One or more Commissioners have asked for this draft to be made public and placed on the agenda for the Commission's July 25, 2024, Open Meeting.

Attachment

# **FEDERAL ELECTION COMMISSION**

## **11 CFR Part 111**

**[NOTICE 2024 - XX]**

### **ADMINISTRATIVE FINES PROGRAM EXPANSION**

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** Since the inception of the Federal Election Commission's Administrative Fines Program in 2000, the Commission has been assessing civil monetary penalties for certain violations of the reporting requirements of the Federal Election Campaign Act of 1971, as amended. In 2013, Congress authorized the Commission to expand the Administrative Fines Program to include violations for reporting requirements not currently covered. Accordingly, the Commission proposes to extend its Administrative Fines Program to include violations in the timely filing of 24-Hour Reports of Independent Expenditures, 48-Hour Reports of Independent Expenditures, and 24-Hour Notices of Electioneering Communications. This proposal will allow more efficient and predictive adjudication of these filing violations. The Commission invites public comment on the proposed regulatory amendments.

**DATES:** Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]. The Commission may hold a public hearing on this rulemaking. Commenters wishing to testify at a hearing must so indicate in their comments. If a hearing is to be held, the Commission will publish a notice in the Federal Register announcing the date and time of the hearing.

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**ADDRESS:** All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission's website at <http://sers.fec.gov/fosers>, reference REG 2013-06. Alternatively, comments may be submitted in paper form addressed to the Federal Election Commission, Attn.: Mr. Robert M. Knop, Assistant General Counsel for Policy, 1050 First Street, NE, Washington, DC 20463 (for U.S. Postal Service) or 20002 (for all other delivery services).

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records Office.

Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

**FOR FURTHER INFORMATION CONTACT:** Robert M. Knop, Assistant General Counsel for Policy, Cheryl Hemsley, Attorney, or Lindsay Bird, Attorney, 1050 First Street NE, Washington, DC 20463 (for U.S. Postal Service) or 20002 (for all other delivery services), (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:**

**I. Background:**

Under the Commission’s Administrative Fines Program (“AFP”),<sup>1</sup> the Commission may utilize a streamlined process to assess civil monetary penalties for certain violations of the reporting requirements of the Federal Election Campaign Act of 1971, as amended (“FECA”). Currently, the Commission assesses civil penalties through the AFP when a political committee fails to file timely reports as required by 52 U.S.C. 30104(a) (requiring political committee treasurers to report receipts and disbursements within certain time periods).

In 2013, Congress authorized the Commission to expand the scope of the AFP to encompass violations for reports filed under 52 U.S.C. 30104(c) (certain independent expenditures), 52 U.S.C. 30104(e) (certain federal election activity reports), 52 U.S.C. 30104(f) (notices of electioneering communications), 52 U.S.C. 30104(g) (24- and 48-hour reports of independent expenditures), 52 U.S.C. 30104(i) (bundled contribution reports), and 52 U.S.C. 30105 (certain convention reports).<sup>2</sup>

On March 30, 2015, the Commission published a Notice of Availability seeking public comment on a Petition for Rulemaking (the “Petition”) that asked the Commission to expand the scope of the AFP to encompass the additional categories of reporting violations included in the 2013 statutory expansion.<sup>3</sup> The Commission received two substantive comments. One comment agreed with the Petition that the proposed changes

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<sup>1</sup> See 52 U.S.C. 30109(4); 11 CFR Part 111, Subpart B.

<sup>2</sup> See 52 U.S.C. 30109(4)(C)(iv).

<sup>3</sup> Rulemaking Petition Administrative Fines Program and Commission Forms, 80 FR 16594, (Mar. 30, 2015).

“would advance the goals of statutory compliance, enforcement and sound legal administration.” The other comment asked the Commission to be “lenient on small organizations” in administering the AFP.<sup>4</sup>

After reviewing these comments and engaging in additional deliberation, the Commission is now proposing the changes described in this notice. The Commission seeks comments on these proposals.

**II. Background of the Administrative Fines Program and the Scope of Proposed Regulations: What reporting violations are covered in the proposed expansion?**

Since its implementation, the AFP’s streamlined process has aimed to efficiently address applicable reporting violations based on a pre-existing penalty formula, providing transparency to affected persons while conserving Commission resources.

In 2000, the Commission set out the penalty formulas for most violations using four factors to calculate fines: (1) the election sensitivity of the report, (2) whether the report is considered late or not filed, (3) the level of activity (or estimated level of activity) on the report, and (4) the committee’s number of prior violations. These factors are incorporated into penalty tables at 11 CFR 111.43.

The Commission uses a different formula to calculate civil penalties when principal campaign committees fail to timely file 48-hour notices of contributions. Unlike other regularly scheduled reports, these notices are required within 48 hours of the date an authorized committee receives a contribution of \$1,000 or more received after the 20<sup>th</sup> day,

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<sup>4</sup> See Comments, Reg 2015-01 Administrative Fines and Forms, <https://sers.fec.gov/fosers/>.

but more than 48 hours before, any election.<sup>5</sup> The Commission explained that “because of the unique nature and timing of [the 48-hour notice] reporting requirement . . . failure to file these 48-hour notices in a timely manner is tantamount to failing to file them at all. Thus, the proposed schedule of penalties [for 48-hour notices of contributions] does not make a distinction between late filers and non-filers for the violations [of 52 U.S.C. 30104(a)(6)].”<sup>6</sup>

Accordingly, under 11 CFR 111.44, the calculation of fines for committees that fail to file timely 48-hour notices is \$178 (base amount)<sup>7</sup> for each untimely notice plus 10% of the amount in violation (dollar amount of the contributions not timely reported). The fine increases by 25% for each time a prior fine was assessed under the AFP during the current and previous two-year election cycles.

The Commission intends to expand the AFP so that its procedures can be extended to additional reporting violations. To maintain the AFP’s efficiency and further conserve resources, the Commission intends to limit the expansion to violations that can be quickly and objectively identified and do not involve complex legal issues or factual determinations.

Therefore, the Commission is proposing to expand the AFP to include violations resulting from the failure of persons to file, or to timely file, three types of filings: (1) 24-

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<sup>5</sup> 52 U.S.C. 30104(a)(6); 11 CFR 104.5(f).

<sup>6</sup> Administrative Fines, 65 FR 16534, 16537 (Mar. 29, 2000).

<sup>7</sup> As required by the Federal Civil Penalties Inflation Adjustment Act of 1990 (codified at 28 U.S.C. 2461), the base amount is adjusted annually for inflation.

hour reports of independent expenditures, (2) 48-hour reports of independent expenditures, and (3) 24-hour notices of electioneering communications.

24-hour reports of independent expenditures are required when a “person” makes or contracts to make independent expenditures aggregating \$1,000 or more after the 20<sup>th</sup> date, but more than 24 hours, before the date of an election.<sup>8</sup>

48-hour reports of independent expenditures are required when a “person” makes or contracts to make independent expenditures aggregating \$10,000 or more at any time up to and including the 20<sup>th</sup> date before the date of an election.<sup>9</sup>

24-hour notices of electioneering communications are required when a “person” makes a disbursement for the direct costs of producing and airing electioneering communications in an aggregate amount in excess of \$10,000 during any calendar year.<sup>10</sup>

The AFP currently applies only to violations committed by political committees. However, by authorizing the Commission to expand the scope of the AFP to cover reports of independent expenditures and notices of electioneering communications, Congress granted the Commission the authority to cover all “persons” required to file such reports and notices. The term “person” includes an individual, partnership, committee, association, corporation, labor organization, and any other organization, or group of

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<sup>8</sup> 52 U.S.C. 30104(g)(1); *see also* 11 CFR 100.16 (defining independent expenditure); 11 CFR 104.4 (reporting requirements for independent expenditures by political committees); 11 CFR 109.10 (reporting requirements for independent expenditures by political committees and other persons).

<sup>9</sup> 52 U.S.C. 30104(g)(2); *see also* 11 CFR 100.16 (defining independent expenditure); 11 CFR 104.4 (Independent expenditures by political committees); 11 CFR 109.10 (How do political committees and other persons report independent expenditures?).

<sup>10</sup> 52 U.S.C. 30104(f); *see also* 11 CFR 100.29 (defining electioneering communication); 11 CFR 104.20 (reporting electioneering communications).

persons.<sup>11</sup> Thus, the proposed rules would broaden the AFP's scope beyond violations committed by political committees.

Currently, violations committed by any person resulting from their failure to file, or to timely file, reports of independent expenditures and notices of electioneering communications are adjudicated through the Commission's traditional enforcement process. The proposed rules would allow the Commission to shift the adjudication of applicable reporting violations from its traditional enforcement process to the AFP. This shift would provide filers with a more efficient and predictable resolution while allowing the Commission to ensure consistent enforcement of similar violations.

### **III. Proposed Rules**

#### *1. Proposed amendment to 11 CFR 111.35(d)*

Current paragraph (d) of section 111.35 provides a list of circumstances that are not considered valid defenses for untimely filing because they are not considered reasonably unforeseen and beyond the control of the respondent. Paragraph (d)(5) provides that a respondent's failure to know the filing dates is not reasonably unforeseeable. The Commission proposes to amend paragraph (d)(5) to include failure to know "reporting periods, deadlines, and reporting instructions" as circumstances that would not serve as valid defenses. The Commission is proposing this change because such circumstances are similarly foreseeable and as within the control of the respondent as "filing dates" in current paragraph (d)(5). The Commission requests comments on the proposed change.

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<sup>11</sup> 52 U.S.C. 30101(11); 11 CFR 100.10.



2. *Proposed amendment to 11 CFR 111.44*

Currently, section 111.44 applies only to violations of 48-hour notices of contributions, which is unclear from the title of this section. Because the Commission proposes to expand the AFP to cover untimely filed 48-hour independent expenditure reports, the Commission proposes to amend the title to section 111.44 by changing “notices” to “notices of contributions.” This section would continue to apply penalties to untimely filed or non-filed notices of contributions, while new section 111.45, discussed below, would impose new penalties for untimely filed or non-filed 48-hour independent expenditure reports.

3. *Proposed new section 11 CFR 111.45*

The Commission proposes replacing currently Reserved section 111.45 with new regulations that would implement administrative fines for untimely filings of 24- and 48-hour reports of independent expenditures and 24-hour notices of electioneering communications.

Paragraphs (a), (b), and (c) propose formulas for calculating civil penalties for violations in timely filing the 24-hour reports of independent expenditures, 48-hour reports of independent expenditures, and 24-hour notices of electioneering communications, respectively, with each paragraph proposing two alternative formulas for calculating penalties for that type of violation. The Commission is not limiting its consideration of formulas to the two alternatives proposed for each of these paragraphs and ultimately may adopt other formulas. Proposed paragraph (d) would add 25% to each civil penalty calculated for each prior violation, where “prior violation” would mean a civil penalty assessed against the respondent under the AFP in the current two-year election cycle or the

previous two-year election cycle. This would mirror the provision currently in use for 48-hour notices of contributions under section 111.44(a)(2).

The proposed penalty calculation formulas for violations in timely filing reports of independent expenditures and notices of electioneering communications are similar to the penalty calculation formula for 48-hour notices of contributions violations by principal campaign committees under the current AFP. Because the 48-hour notice reporting requirement must be met within 48 hours of the predicate event (the receipt of a covered contribution), the penalty formulas for 48-hour notices of contributions under the current AFP do not distinguish between late or non-filing or between election-sensitive and non-election sensitive reports, unlike formulas for other types of reporting violations covered under 11 CFR 111.43. Similarly, because 24- and 48-hour reports of independent expenditures and 24-hour notices of electioneering communications requirements must be met within 24 or 48 hours of the predicate event (contracting for or making payment for a covered independent expenditure or distribution of a covered electioneering communication), the proposed penalty formulas for these filings also would not distinguish between late or non-filing or between election-sensitive and non-election sensitive reports.

A. Civil Penalty Formulas for violations in timely filing 24- and 48-hour reports of independent expenditures.

**Proposed Civil Penalty Formula A – Aligned with current 11 CFR 111.44**

As discussed above, the formula for determining civil penalties for failing to timely file 48-hour notices of contributions received by principal campaign committees is \$178 (“base amount”) + (10% x AIV). Proposed Alternatives A under paragraphs (a) and (b) would use the same formula for failing to timely file 24- and 48-hour reports of

independent expenditures. Using the same formula that the Commission has applied to similar reporting violations for over 20 years would be consistent with prior Commission administrative fines practice and promote fairness in the application of the law. It would also be easy to administer, minimizing the burden on Commission staff. Are there any reasons that the Commission should not use this formula to calculate civil penalties for violations in timely filing 24- and 48-hour reports of independent expenditures? Are the reports included in the proposed expansion commensurate in amount and election sensitivity?

**Proposed Civil Penalty Formula B – Approximating recent violation amounts**

Proposed Alternative B under paragraphs (a) and (b) would use the same base amount — \$178 — but lower multipliers. The formula for 24-hour reports of independent expenditures in paragraph (a) would be  $\$178 + (7.5\% \times \text{AIV})$ , and the formula for 48-hour reports of independent expenditures in paragraph (b) would be  $\$178 + (5\% \times \text{AIV})$ .

Alternative B formulas would result in fines similar to those the Commission has approved for these types of violations through its traditional enforcement process. Thus, the formulas under Alternative B would also be consistent with prior Commission practice and promote fairness in the application of the law. Specifically, during the last two two-year election cycles, the Commission approved civil penalties for untimely filed 24-hour reports of independent expenditures at approximately 7.61% of AIV. For 48-hour reports of independent expenditures over the same period, the Commission approved penalties at approximately 6.31% of AIV. The proposed civil penalties under Alternative B would apply this recent historical data as the measure of an appropriate penalty amount. Is this percentage approximation appropriate or should the Commission consider using different

percentages as approximation? Should the Commission consider data from a longer time period or other additional data in calculating the average penalty amounts used to determine an appropriate penalty formula?

The Commission notes that Alternative B would use a higher multiplier for untimely filed 24-hour reports of independent expenditures than for 48-hour reports of independent expenditures, which would result in higher penalties being assessed for 24-hour reports than 48-hour reports. In the Commission's view, this would be appropriate because 24-hour reports of independent expenditures are due closer to the date of the election and therefore failure to timely file those reports has a more significant electoral impact. This would be consistent with the final civil penalties the Commission has historically approved through its enforcement of similar violations. Should the Commission instead use the same multiplier for both 24- and 48-hour reports of independent expenditures and, if so, why?

Of the two proposed alternative formulas, which one would be most appropriate to determine civil penalties for violations of timely filing these reports of independent expenditures, and why? Should the Commission consider any other formulas? Does the inherently time-sensitive nature of independent expenditure reports warrant a higher penalty formula than the Commission has historically applied in AFP matters?

B. Civil Penalty Formulas for violations in timely filing 24- hour notices of electioneering communications.

Each alternative in proposed paragraph (c) of section 111.45 would provide a formula for calculating civil penalties for violations for failure to timely file 24-hour notices of electioneering communications. The Commission proposes the same two

alternative formulas for 24-hour notices of electioneering communications as for 24-hour reports of independent expenditures.

**Civil Penalty Formula Alternative A – Aligned with current 111.44**

As with both 24- and 48-hour reports of independent expenditures, and for the same reasons, the Commission proposes in Alternative A:  $\$178 + (10\% \times \text{AIV})$  to align with the current formula used in 11 CFR 111.44.

**Civil Penalty Formula Alternative B – Aligned with proposed Alternative B for 24-hour reports of independent expenditures.**

Proposed Alternative B for 24-hour notices of electioneering communications is the same as the proposed Alternative B for 24-hour reports of independent expenditures, discussed above:  $(\$178 + (7.5\% \times \text{AIV}))$ .<sup>12</sup> In the Commission's view, this is appropriate because both reports are due within 24-hours of the predicate event and relatively close to the election date, which makes them similarly election sensitive.

Should the Commission instead apply a different formula for 24-hour notices of electioneering communications than 24-hour reports of independent expenditures? For instance, does the fact that 24-hour notices of electioneering communications and 24-hour reports of independent expenditures have slight differences in time period and more significant differences in amount threshold justify applying a different penalty formula and, if so, what would the appropriate formula be? The Commission notes that the requirement to file 24-hour notices of electioneering communications is triggered on the

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<sup>12</sup> Unlike with 24-hour reports of independent expenditures, the Commission does not have a body of data for violations in timely filing 24-hour notices of electioneering communications from the recent past on which to propose a formula.

disclosure date of an electioneering communication, which, by definition, would fall within 30 days of a primary or 60 days of a general election, when the person making the electioneering communication has spent or contracted to spend more than \$10,000 within the calendar year on the communication. In contrast, the requirement to file a 24-hour report of independent expenditures is triggered when the person making the independent expenditure has publicly distributed/disseminated or contracted to make an independent expenditure that costs \$1,000 or more after the 20th day, but more than 24 hours before an election. Are these differences sufficient to justify using a different formula and, if so, what would be the appropriate formula?

For proposed formulas under Alternative A and B in paragraphs (a), (b), and (c), the Commission would set the multiplier based on the actual civil penalty amounts that the Commission negotiated with respondents for violations of timely filing 24- and 48-hour reports of independent expenditures via the traditional enforcement from July 1, 2020 through December 31, 2023. Would this provide an appropriate base for comparison? If not, how many years' data should the Commission use?

C. Proposed increase in civil penalty for each previous violation.

Proposed paragraph (d) of 111.45(d) would apply to penalties calculated under paragraphs (a), (b), and (c), and would include a 25% increase in civil penalty for each previous violation, in parity with current 11 CFR 111.44.

The penalty formula for untimely 48-hour notices of contributions under 11 CFR 111.44 adds 25% to each civil penalty for each prior violation. Under section 111.44, "prior violation" means "a final civil money penalty that has been assessed against the respondent under" the same section of the rule "in the current two-year election cycle or

the prior two-year election cycle.”<sup>13</sup> The Commission is proposing to include this same requirement in proposed section 111.45(d) regarding the civil penalties for violations in timely filing the reports covered by this proposed expansion. The Commission seeks comments on this proposal.

D. Calculating civil penalties for each report vs. calculating civil penalties for multiple reports as one violation.

In addition to using formulas to calculate civil penalties for violations in proposed 11 CFR 111.45(a), (b), and (c), the Commission is considering whether to treat each report the respondent has failed to timely file as a separate violation, or whether all reports that the respondent has failed to timely file within a certain time period should be treated as a single violation.

For example, under Alternative A (10% multiplier), if Person A makes independent expenditures of \$1,000 eighteen days before the election, and \$3,000 fifteen days before the election, triggering the 24-hour reporting requirement for each independent expenditure but filing no reports, should the penalties be calculated for each report that was required to be filed:  $\$178 + \$178 + (.10 \times \$4,000) = \$756$ ? Or should the Commission instead treat this as one violation:  $\$178 + (.10 \times \$4,000) = \$578$ ?

Treating multiple reports the respondent has failed to timely file as a single violation would be easier to administer, but it may unfairly treat such filers the same as those who failed to timely file one report. For example, it would treat Filer A, who made two independent expenditures in the 18 days before an election, the same as Filer B, who

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<sup>13</sup> 11 CFR 111.44(b).

made one independent expenditure 12 days before the election. If the Commission were to take the single violation approach, should it adjust the formula to account for the more significant violation of Filer A vis-à-vis Filer B?

E. Other considerations

Finally, should the Commission consider different enhancements or reductions in the civil penalty formula? For example, should the Commission consider whether the person failing to timely file is a political committee, a small organization, or an individual?

### **III. Proposed Conforming Amendments**

*A. Adding statutory citations of reports proposed for the expanded AFP*

To accommodate the expansion, the Commission is proposing to make a technical and conforming amendment in 11 CFR 111.30, 111.31, 111.32, 111.37, and 111.40 by adding cites to paragraphs (f) and (g) of 52 U.S.C. 30104, as appropriate, to each instance of the cite covering the reports currently included in the Administrative Fines Program.

*B. Conforming amendments to clarify that the proposed expansion of AFP would apply not only to political committees but to any person failing to timely file reports subject to the AFP*

Under the proposed expansion of AFP, 24- and 48- hour reports of independent expenditures and 24-hour notices of electioneering communications must be filed by any “person” who meets the filing requirements as discussed in Section II, Scope of Proposed Regulations, above.

To accommodate the proposed expansion of the AFP from reporting violations committed only by political committees to violations committed by persons filing the reports included in the proposed expansion, the Commission proposes in 11 CFR 111.30 to



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replace the phrase, “political committees and their treasurers” with “any person.”

Additionally, the Commission proposes to replace the word “committee” with “respondent” in 11 CFR 111.35(b)(2) and throughout paragraph (d) of that section.

Current section 111.46 requires that if a respondent has not filed a designation of counsel, all notifications and other communications to a respondent as part of the AFP will be sent to the committee at the address on file with the Commission from the committee’s most recent Statement of Organization, or amendment thereto, filed with the Commission in accordance with 11 CFR 102.2.

The Commission proposes to make conforming edits to the second sentence of section 111.46 to state that all notifications and communications will be sent the respondent, and if the respondent is a political committee, communications will be sent to the 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.

*C. Further conforming amendments not required by the proposed AFP*

*Expansion*

The Commission proposes to make two further conforming amending in 11 CFR 111.30 and 111.37, addressed above that do not relate to the proposed AFP expansion.

In 11 CFR 111.30, the Commission proposes two changes to update the regulation by removing outdated information. First, the Commission proposes removing the beginning and statutory end date of the AFP in the first sentence. Further, the Commission proposes removing the last sentence announcing a gap in the applicability of the AFP for

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reports relating to reporting periods that ended between January 1, and January 21, 2014.<sup>14</sup>

This information is now outdated, and the statute of limitations has expired on any violations for that time period.

In 11 CFR 111.37(a), the Commission proposes to add “determines” before “the amount of the civil money penalty” to conform the language of this provision with the language used in section 111.40(a). Each of these sections require a Commission determination as to the amount of the civil penalty before further Commission action, albeit under differing circumstances.

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<sup>14</sup> See Extension of Administrative Fines Program, Final Rule, 79 FR 3302 (Jan. 21, 2014).

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

The Commission certifies that the attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities.

The proposed rules do not create any new recordkeeping, reporting, or financial obligations. Any small entities that would be subject to the proposed rules are already liable for civil penalties if they violate the applicable reporting requirements. These violations are currently adjudicated through the traditional enforcement process. The proposed rules will allow the Commission to shift the adjudication of applicable reporting violations from its traditional enforcement process to the more efficient AFP.

The proposed rules would result in published penalty schedules for the applicable reporting violations, providing clarity and certainty to respondents navigating the compliance process. The AFP's streamlined process and clear penalty schedules make it less likely that a small entity would need to hire additional staff or retain professional services to address and remedy reporting violations.

Moreover, the penalty formulas that the Commission is considering will take into account the amount of the disbursements or expenditures that were not timely reported. Thus, civil penalties will be scaled so that respondents who spend less on disbursements for electioneering communications or independent expenditures will be subject to lower fines.

Therefore, the attached proposed rules, if promulgated, will not have a significant economic impact on a substantial number of small entities.

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**List of Subjects**

11 CFR Part 111\_ Compliance procedure (52 U.S.C. 30109, 30107(a)).

Administrative practice and procedures, Elections, Law Enforcement, Penalties

For reasons set out in the preamble, the Federal Election Commission proposes revising 11 CFR Part 11, Subpart B as follows:

**Part 111 - COMPLIANCE PROCEDURES (2 U.S.C. 30109, 30107(a))**

1. Authority: The authority for part 111 continues to read as follows: 2 U.S.C. 30102(i), 30109, 30107(a), 30111(a)(8); 28 U.S.C. 2461 nt.

**§ 111.30 When will subpart B apply?**

2. Revise § 111.30 to read as follows:

Subpart B applies to violations of the reporting requirements of 52 U.S.C. 30104(a), (f), and (g). ~~committed by political committees and their treasurers that relate to the reporting periods that begin on or after July 14, 2000, and that end on or before the date specified by 52 U.S.C. 30109(a)(4)(C)(v). This subpart, however, does not apply to reports that relate to reporting periods that end between January 1, 2014, and January 21, 2014.~~

**§ 111.31. Does this subpart replace subpart A of this part for violations of the reporting requirements of 52 U.S.C. 30104(a)?**

3. Amend § 111.31 by revising paragraph (b) to read as follows:

\* \* \* \* \*

(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 [52 U.S.C. 30104\(a\), \(f\), or \(g\)](#). 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?**

4. Amend § 111.32 by revising the introductory language and paragraph (d) to read as follows:

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 52 U.S.C. 30104(a), (f), or (g), the Chairman or Vice-Chairman shall notify such respondent of the Commission's finding. The written notification shall set forth the following:

\* \* \* \* \*

(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,~~ or 111.45; and

\* \* \* \* \*

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

5. Amend §111.35 by revising paragraphs (b)(1) and (d)(2), (3), (5), and (6) to read as follows:

\* \* \* \* \*

(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~~ respondent was not required to file the report, or the ~~committee~~ respondent timely filed the report in accordance with 11 CFR 100.19;

(2) \* \* \*

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(c) \* \* \* \* \*

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

(1) \* \* \*

(2) Delays caused by ~~committee~~ respondent's vendors or contractors;

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

(4) \* \* \*;

(5) A ~~committee~~ respondent's failure to know filing ~~dates~~ requirements, including reporting periods, deadlines, and reporting instructions; and

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

\* \* \* \* \*

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

6. Amend § 111.37 by revising it paragraph (a) to read as follows:

(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 52 U.S.C. 30104(a), (f), or (g) and determines the amount of the civil money penalty, the Commission shall authorize the reviewing officer to notify the respondent in writing of its final determination.

\* \* \* \* \*

**§ 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](#)?**

7. Amend § 111.40 by revising paragraph (a) to read as follows:

(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 [52 U.S.C. 30104\(a\), \(f\), or \(g\)](#), and determines the amount of the civil money penalty, the respondent shall be notified in writing of its final determination.

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

8. The title of § 111.44 would be revised by adding “of contributions” after “notices”.

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**§ 111.45 What is the schedule of penalties for 24- and 48 hour reports of independent expenditures and for 24-hour notices of electioneering communications not filed or filed late?**

9. Amend § 111.45 by removing [reserved] and adding in its place new § 111.45 to read as follows.

**24-Hour Reports of Independent Expenditures Civil Penalty Formula Alternative A**



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(a) 24-hour reports of independent expenditures

If the respondent fails to file timely a 24-hour report of independent expenditures as required under 52 U.S.C 30104(g)(1), (3), and (4), the civil money penalty will be calculated as follows: Civil money penalty = \$178 + (.10 x amount of expenditures not timely reported).

**or**

**24-Hour Reports of Independent Expenditures Formula Civil Penalty Alternative B**

(a) 24-hour reports of independent expenditures

If the respondent fails to file timely a 24-hour report of independent expenditures as required under 52 U.S.C 30104(g)(1), (3), and (4), the civil money penalty will be calculated as follows: Civil money penalty = \$178 + (.075 x amount of expenditures not timely reported).

**48-Hour Reports of Independent Expenditures Formula Civil Penalty Alternative A**

(b) 48-hour reports of independent expenditures

If the respondent fails to file timely a 48-hour report of independent expenditures as required under 52 U.S.C 30104(g)(2), (3), and (4) the civil money penalty will be calculated as follows: Civil money penalty = \$178 + (.10 x amount of expenditures not timely reported).

**or**

**48-Hour Reports of Independent Expenditures Civil Penalty Formula Alternative B**

(b) 48-hour reports of independent expenditures

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If the respondent fails to file timely a 48-hour report of independent expenditures as required under 52 U.S.C 30104(g)(2), (3), and (4), the civil money penalty will be calculated as follows: Civil money penalty = \$178 + (.05 x amount of expenditures not timely reported).

**24-Hour Notices of Electioneering Communications Civil Penalty Formula Alternative A**

(c) 24-hour notices of electioneering communications

If the respondent fails to file timely a 24-hour notice of electioneering communications as required under 52 U.S.C. 30104(f), the civil money penalty will be calculated as follows: Civil money penalty = \$178 + (.10 x amount of expenditures not timely reported).

**or**

**24-Hour Notices of Electioneering Communications Civil Penalty Formula Alternative B**

(c) 24-hour notices of electioneering communications

If the respondent fails to file timely a 24-hour notice of electioneering communications as required under 52 U.S.C 30104(f), the civil money penalty will be calculated as follows: Civil money penalty = \$178 + (.075 x amount of expenditures not timely reported).

(d) The civil money penalties calculated in paragraphs (a), (b), and (c), of this section shall be increased by twenty five percent (25%) for each prior violation. For purposes of this section, “prior violation” means a final civil money penalty that has been assessed

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against the respondent under this subpart in the current two-year election cycle or the prior two-year election cycle.

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

10. § 111.46 would be revised to read as follows:

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. If the respondent is a political committee, communications will be sent to the 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.

Dated: \_\_\_\_\_

On behalf of the Commission,

**Sean J. Cooksey,**

*Chairman,*

*Federal Election Commission.*

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