



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT

2005 DEC 12 P 4: 09

DEC 12 2005

MEMORANDUM

**AGENDA ITEM**

For Meeting of: 12-15-05

**SUBMITTED LATE**

**TO:** The Commission

**THROUGH:** Robert J. Costa *ARC*  
Acting Staff Director

**FROM:** Lawrence H. Norton *LHN*  
General Counsel

Rosemary C. Smith *RC5*  
Associate General Counsel

Mai T. Dinh *MD*  
Assistant General Counsel

Margaret G. Perl *MGP*  
Attorney

**SUBJECT:** Draft Final Rules on Extension of Administrative Fines Program

Attached is a draft Final Rule and Explanation and Justification ("E&J") for the extension of the Administrative Fines Program ("AFP") at 11 CFR 111.30, pursuant to Section 721 of the Transportation, Treasury, Housing and Urban Development, Judiciary, District of Columbia, and Independent Agencies Appropriations Act, 2006. The 2006 Appropriations Act extended the Congressional authorization for the AFP from December 31, 2005 to December 31, 2008. This Final Rule amends 11 CFR 111.30 to reflect the new sunset date of December 31, 2008. The Final Rule does not make any other revisions to the AFP rules at this time.

The Office of General Counsel requests that this draft be placed on the agenda for the December 15, 2005 open meeting.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2  
3 **11 CFR Part 111**

4  
5 **[Notice 2005->>]**

6  
7 **EXTENSION OF ADMINISTRATIVE FINES PROGRAM**

8  
9 **AGENCY:** Federal Election Commission

10  
11 **ACTION:** Final Rule and Transmittal of Rules to Congress

12  
13 **SUMMARY:** Section 721 of the Transportation, Treasury, Housing and  
14 Urban Development, Judiciary, District of Columbia, and  
15 Independent Agencies Appropriations Act, 2006 (“2006  
16 Appropriations Act”) amended the Treasury and General  
17 Government Appropriations Act, 2000, to extend the expiration  
18 date for the Administrative Fines Program (“AFP”). Under the  
19 AFP, the Federal Election Commission (“Commission”) may  
20 assess civil monetary penalties for violations of the reporting  
21 requirements of section 434(a) of the Federal Election  
22 Campaign Act (“Act” or “FECA”). Accordingly, the  
23 Commission is extending the applicability of its rules and  
24 penalty schedules in implementing the AFP. Further  
25 information is provided in the Supplementary Information that  
26 follows.

27 **EFFECTIVE DATE:** [insert date of publication in the Federal Register]

28

1 **FOR FURTHER**  
2 **INFORAMTION**  
3 **CONTACT:**

Ms. Mai T. Dinh, Assistant General Counsel, or Ms. Margaret  
G. Perl, Attorney, 999 E Street, N.W., Washington, D.C.  
20463, (202) 694-1650 or (800) 424-9530.

6 **SUPPLEMENTARY**  
7 **INFORMATION:**

8  
9 **Explanation and Justification for 11 CFR 111.30**

10  
11 Section 640 of the Treasury and General Government Appropriations Act, 2000,  
12 Pub. L. No. 106-58, 113 Stat. 430, 476-77 (1999) (“2000 Appropriations Act”), amended  
13 2 U.S.C. 437g(a)(4) to provide for a modified enforcement process for violations of  
14 certain reporting requirements. Under 2 U.S.C. 437g(a)(4)(C), the Commission may  
15 assess a civil monetary penalty for violations of the reporting requirements of 2 U.S.C.  
16 434(a). These amendments to 2 U.S.C. 437g(a)(4) originally applied only to violations  
17 occurring between January 1, 2000 and December 31, 2001. See 2000 Appropriations  
18 Act, § 640(c). Congress, however, extended authorization for the AFP several times,  
19 with the most recent extension expiring on December 31, 2005. See Consolidated  
20 Appropriations Act, 2004, Pub. L. No. 108-199, § 639, 118 Stat. 3, 359 (2004).

21 Commission regulations governing the AFP can be found at 11 CFR part 111,  
22 subpart B. The Commission incorporated the legislative sunset date into its rule  
23 describing the applicability of the AFP in 11 CFR 111.30, and has consistently revised  
24 section 111.30 to extend the AFP sunset date in accordance with these statutory  
25 amendments. See, e.g., Final Rule on Extension of Administrative Fines Program, 69 FR  
26 6525 (Feb. 11, 2004) (changing sunset date in 11 CFR 111.30 to December 31, 2005).

1           Section 721 of the 2006 Appropriations Act amended the 2000 Appropriations  
2 Act by extending the sunset date to include most reports that cover activity between July  
3 14, 2000 and December 31, 2008. See 2006 Appropriations Act, Pub. L. No. 109-115,  
4 119 Stat. 2396 (Nov. 30, 2005). This final rule amends 11 CFR 111.30 to reflect the  
5 extended sunset date of December 31, 2008. The Commission is not making any other  
6 revisions to the AFP rules at this time.

7           The Commission is promulgating this final rule without notice or an opportunity  
8 for comment because it falls under the “good cause” exemption in the Administrative  
9 Procedure Act, 5 U.S.C. 553(b)(3)(B). This exemption allows agencies to dispense with  
10 notice and comment when “impracticable, unnecessary, or contrary to the public  
11 interest.” Id. The 2006 Appropriations Act was enacted only a month before the AFP’s  
12 sunset date of December 31, 2005. A notice and comment period for this final rule is  
13 impracticable because it would result in a gap in the applicability of the AFP between  
14 when the current regulation expires on December 31, 2005 and the date when a new final  
15 rule could be effective after additional notice and comment. See Administrative  
16 Procedure Act: Legislative History, S. Doc. No. 248 200 (1946) (“‘Impracticable’ means  
17 a situation in which the due and required execution of the agency functions would be  
18 unavoidably prevented by its undertaking public rule-making proceedings”).

19           In addition, this final rule merely extends the applicability of the AFP and does  
20 not change the substantive regulations themselves. Those regulations were already  
21 subject to notice and comment when they were proposed in March 2000, 65 FR 16534,  
22 and adopted in May 2000, 65 FR 31787, and again when substantive revisions to the AFP  
23 were proposed in April 2002, 67 FR 20461, and adopted in March 2003, 68 FR 12572.

1 Thus, this final rule satisfies the “good cause” exemption, and it is appropriate and  
2 necessary for the Commission to publish this final rule without providing a notice and  
3 comment period.

4 The Commission is making this final rule effective immediately upon publication  
5 in the Federal Register because it falls within the “good cause” exception to the thirty-day  
6 delayed effective date requirement set forth at section 553(d)(3) of the Administrative  
7 Procedure Act. See 5 U.S.C. 553(d)(3). The same reasons that justify the promulgation  
8 of this final rule without a notice and comment period, as set forth above, also justify  
9 making this final rule effective without the thirty-day delay. Otherwise, a thirty-day  
10 delay of the effective date would create a gap in the AFP between December 31, 2005,  
11 when the current regulation sunsets, and the delayed effective date.

12 The Commission is submitting this final rule to the Speaker of the House of  
13 Representatives and the President of the Senate pursuant to the Congressional Review of  
14 Agency Regulations Act, 5 U.S.C. 801(a)(1)(A), on \_\_\_\_\_. Since this is a non-  
15 major rule, it is not subject to the delayed effective date provisions of 5 U.S.C. 801(a)(3).

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

17 The provisions of the Regulatory Flexibility Act are not applicable to this final  
18 rule because the Commission was not required to publish a notice of proposed  
19 rulemaking or to seek public comment under 5 U.S.C. 553 or any other laws. 5 U.S.C.  
20 603(a) and 604(a). Therefore, no regulatory flexibility analysis is required.

21 **List of Subjects**

22 11 CFR Part 111

23 Administrative practice and procedures, Elections, Law enforcement

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

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

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

5 Authority: 2 U.S.C. 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

6 2. 11 CFR 111.30 is revised to read as follows:

7 **§ 111.30 When will subpart B apply?**

8 Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a)  
9 committed by political committees and their treasurers that relate to the reporting periods  
10 that begin on or after July 14, 2000 and end on or before December 31, ~~2008~~2005. This  
11 subpart, however, does not apply to reports that were ~~are~~ due between January 1, 2004  
12 and February 10, 2004 and that relate to reporting periods that begin and end between  
13 January 1, 2004 and February 10, 2004.

14

15

16

17

18

19

20

21

22

23

24

---

Scott E. Thomas  
Chairman  
Federal Election Commission

DATED: \_\_\_\_\_  
BILLING CODE: 6715-01-U