



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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**MEMORANDUM**

TO: The Commission

THROUGH: James A. Pehrkon  
Staff Director

FROM: Lawrence M. Noble  
General Counsel

Bradley Litchfield  
Associate General Counsel

Rosemary C. Smith  
Assistant General Counsel

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Attorney

SUBJECT: Notice of Proposed Rulemaking on Administrative Fines

**AGENDA ITEM**  
For Meeting of: 3-23-00

**SUBMITTED LATE**

On March 17, 2000, the Office of General Counsel circulated for the March 23, 2000 open session the Notice of Proposed Rulemaking to implement the new Administrative Fines. Agenda Doc. No. 00-38. In accordance with the Commission discussion on March 21, 2000, this Office has prepared the attached amendments to that agenda document. The amendments to the NPRM and the proposed rule concern 48-hour notice violations and "election sensitive" reports.

**Recommendation**

The Office of General Counsel recommends that the Commission approve the attached amendment to Notice of Proposed Rulemaking for publication in the *Federal Register*.

Attachment

1 **Inclusion of 48 Hour Notices to the NPRM**

2 1. Page 12, line 5 would be changed to **Schedules of Penalties for Reports Other**  
3 **than 48-Hour Notices**

4 2. Pages 15 - 16, delete paragraph that starts on line 21 of page 15 and insert the  
5 following:

6 **Schedule of Penalties for 48-Hour Notices**

7 Under 2 U.S.C. 434(a)(6), principal campaign committees are required to report  
8 within 48 hours contributions of \$1000 or more that are received after the 20<sup>th</sup> day but  
9 more than 48 hours before an election. It has been the Commission's experience that in the  
10 cases regarding alleged violations of the 48-hour notice requirements, the respondents  
11 generally fail to file these notices rather than file them late. Also, because of the unique  
12 nature and timing of this reporting requirement, the Commission believes that failure to file  
13 these 48-hour notices in a timely manner is tantamount to failing to file them at all. Thus,  
14 the proposed schedule of penalties does not make a distinction between late filers and non-  
15 filers for violations of 2 U.S.C. 434(a)(6). The schedule of penalties set forth in proposed  
16 11 CFR 111.44 would be calculated based on the number of previous civil money penalties  
17 assessed against the respondent in the current two-year election cycle and the prior two-  
18 year election cycle, as well as a percentage of contribution(s) not timely reported. The  
19 Commission seeks comments on this approach to handling the failure to file timely the 48  
20 hour notices.

21 3. Page 37, §111.44. **Will the Debt Collection Improvement Act of 1996 be used**  
22 **to collect unpaid civil money penalties?** would be re-designated as §111.45.

1 4. Insert the following on p. 37, line 18:

2 **§111.44. What is the schedule of penalties for 48-hour notices?**

3 (a) If the respondent fails to file timely a notice regarding contribution(s) received after  
4 the 20<sup>th</sup> day but more than 48 hour hours before the election as required under 2 U.S.C.  
5 434(a)(6), the civil money penalty will be calculated as follows:

6 (1) Civil money penalty = \$100 + (.15 x amount of the contribution(s) not timely  
7 reported).

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

10 (b) For this section, prior violation means a civil money penalty that have been  
11 assessed against the respondent in the current two-year election cycle and the prior two-  
12 | year election cycle.

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**Election Sensitive Reports**

5. Page 13, lines 17-18, strike "The Commission considers respondents to be non-filers if they do not file their pre-election reports within eight days of their due dates or if they do not file any other report within thirty days of its due date" and replace with "The Commission considers respondents to be non-filers if they do not file their election sensitive reports prior to four (4) days before the election or if they do not file any other report within thirty days of its due date".

6. Replace page 29 - 38 with the following pages. The revisions are marked by strikethroughs for deleted text and underlines for added text. These pages contain the revisions to §111.44 and §111.45 discussed above.

1 §111.42. Will the enforcement file be made available to the public?

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

3 (b) If neither the Commission nor the respondent commences a civil action, the  
4 Commission shall make the enforcement file available to the public pursuant to 11 CFR  
5 4.4(a)(3).

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

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9 §111.43. What are the schedules of penalties?

10 (a) The civil money penalty for all reports that are filed late or not filed, except election  
11 sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated in  
12 accordance with the following schedule of penalties:

If the level of activity in the report was:	And the report was filed 30 days or less late, the fine is:	Or the report was filed more <del>than 30 days late</del> or was not filed, the fine is:
\$1 - 24,999.99	[\$100 + (\$25 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$1600 x [1 + (.25 x Number of previous violations)]
\$25,000 - 49,999.99	[\$200 + (\$50 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$3200 x [1 + (.25 x Number of previous violations)]

\$50,000 - 74,999.99	[\$300 + (\$75 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$4800 x [1 + (.25 x Number of previous violations)]
\$75,000 - 99,999.99	[\$400 + (\$100 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$6400 x [1 + (.25 x Number of previous violations)]
\$100,000 - 149,999.99	[\$600 + (\$125 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$8100 x [1 + (.25 x Number of previous violations)]
\$150,000 - 199,999.99	[\$800 + (\$150 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$9800 x [1 + (.25 x Number of previous violations)]
\$200,000 - 249,999.99	[\$1,000 + (\$175 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$11,500 x [1 + (.25 x Number of previous violations)]
\$250,000 - 349,999.99	[\$1500 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$13,500 x [1 + (.25 x Number of previous violations)]
\$350,000 - 449,999.99	[\$2000 + (\$200 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$14,000 x [1 + (.25 x Number of previous violations)]

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\$450,000 - 549,999.99	$[\$2500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$14,500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$550,000 - 649,999.99	$[\$3000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$15,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$650,000 - 749,999.99	$[\$3500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$15,500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$750,000 - 849,999.99	$[\$4000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$16,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$850,000 - 949,999.99	$[\$4500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$16,500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$950,000 or over	$[\$5000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$17,000 \times [1 + (.25 \times \text{Number of previous violations})]$

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3 (b) The civil money penalty for election sensitive reports that are filed late or not filed  
4 shall be calculated in accordance with the following schedule of penalties:

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If the level of activity in the report was:	And the report was filed 30-days or less late, the fine is:	Or the report was filed more than 30 days late or was not filed, the fine is:
\$1 - 24,999.99	[\$150 + (\$25 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$1650 x [1 + (.25 x Number of previous violations)]
\$25,000 - 49,999.99	[\$300 + (\$50 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$3300 x [1 + (.25 x Number of previous violations)]
\$50,000 - 74,999.99	[\$450 + (\$75 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$4950 x [1 + (.25 x Number of previous violations)]
\$75,000 - 99,999.99	[\$600 + (\$100 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$6600 x [1 + (.25 x Number of previous violations)]
\$100,000 - 149,999.99	[\$900 + (\$125 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$8400 x [1 + (.25 x Number of previous violations)]
\$150,000 - 199,999.99	[\$1200 + (\$150 x Number of days late)] x [1 + (.25 x Number of previous violations)]	\$10,200 x [1 + (.25 x Number of previous violations)]



\$200,000 - 249,999.99	$[\$1500 + (\$175 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$12,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$250,000 - 349,999.99	$[\$2250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$14,250 \times [1 + (.25 \times \text{Number of previous violations})]$
\$350,000 - 449,999.99	$[\$3000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$15,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$450,000 - 549,999.99	$[\$3750 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$15,750 \times [1 + (.25 \times \text{Number of previous violations})]$
\$550,000 - 649,999.99	$[\$4500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$16,500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$650,000 - 749,999.99	$[\$5250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$17,250 \times [1 + (.25 \times \text{Number of previous violations})]$
\$750,000 - 849,999.99	$[\$6000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$18,000 \times [1 + (.25 \times \text{Number of previous violations})]$

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\$850,000 - 949,999.99	$[\$6250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$18,750 \times [1 + (.25 \times \text{Number of previous violations})]$
\$950,000 or over	$[\$7500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$19,500 \times [1 + (.25 \times \text{Number of previous violations})]$

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3 (e) — The civil money penalty for pre-election reports under 11 CFR 104.5 that are filed  
4 late or not filed shall be calculated in accordance with the following schedule of penalties:

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If the level of activity in the report was:	And the report was filed 8 days or less late, the fine is:	Or the report was filed more than 8 days late or was not filed, the fine is:
<del>\$1 — 24,999.99</del>	<del><math>\{ \\$150 + (\\$25 \times \text{Number of days late}) \} \times [1 + (.25 \times \text{Number of previous violations})]</math></del>	<del><math>\\$1650 \times [1 + (.25 \times \text{Number of previous violations})]</math></del>
<del>\$25,000 — 49,999.99</del>	<del><math>\{ \\$300 + (\\$50 \times \text{Number of days late}) \} \times [1 + (.25 \times \text{Number of previous violations})]</math></del>	<del><math>\\$3300 \times [1 + (.25 \times \text{Number of previous violations})]</math></del>
<del>\$50,000 — 74,999.99</del>	<del><math>\{ \\$450 + (\\$75 \times \text{Number of days late}) \} \times [1 + (.25 \times \text{Number of previous violations})]</math></del>	<del><math>\\$4950 \times [1 + (.25 \times \text{Number of previous violations})]</math></del>

\$75,000 – 99,999.99	$\{ \$600 + (\$100 \times \text{Number of days late}) \} \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$	$\$6600 \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$
\$100,000 – 149,999.99	$\{ \$900 + (\$125 \times \text{Number of days late}) \} \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$	$\$8400 \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$
\$150,000 – 199,999.99	$\{ \$1200 + (\$150 \times \text{Number of days late}) \} \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$	$\$10,200 \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$
\$200,000 – 249,999.99	$\{ \$1500 + (\$175 \times \text{Number of days late}) \} \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$	$\$12,000 \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$
\$250,000 – 349,999.99	$\{ \$2250 + (\$200 \times \text{Number of days late}) \} \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$	$\$14,250 \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$
\$350,000 – 449,999.99	$\{ \$3000 + (\$200 \times \text{Number of days late}) \} \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$	$\$15,000 \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$
\$450,000 – 549,999.99	$\{ \$3750 + (\$200 \times \text{Number of days late}) \} \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$	$\$15,750 \times \{ 1 + (.25 \times \text{Number of previous violations}) \}$

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\$550,000—649,999.99	$[\$4500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$16,500 \times [1 + (.25 \times \text{Number of previous violations})]$
\$650,000—749,999.99	$[\$5250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$17,250 \times [1 + (.25 \times \text{Number of previous violations})]$
\$750,000—849,999.99	$[\$6000 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$18,000 \times [1 + (.25 \times \text{Number of previous violations})]$
\$850,000—949,999.99	$[\$6250 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$18,750 \times [1 + (.25 \times \text{Number of previous violations})]$
\$950,000 or over	$[\$7500 + (\$200 \times \text{Number of days late})] \times [1 + (.25 \times \text{Number of previous violations})]$	$\$19,500 \times [1 + (.25 \times \text{Number of previous violations})]$

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3 (dc) If the respondent fails to file a required report and the Commission cannot calculate  
4 the level of activity under paragraph (e) of this section, then the civil money penalty shall  
5 be \$5500.

6 (ed) Definitions. For this section only, the following definitions will apply:

7 Election Sensitive Reports means third quarter reports due on October 15<sup>th</sup> before  
8 the general election (unless the candidate does not participate in that general

1 election), and monthly reports due October 20<sup>th</sup> before the general election (unless  
2 the candidate does not participate in that general election), and pre-election reports  
3 under 11 CFR 104.5.

4 Estimated level of activity means total receipts and disbursements reported in the  
5 current election cycle divided by the number of reports filed to date covering the  
6 activity in the current two-year election cycle. If the respondent has not filed a  
7 report covering activity in the current two-year election cycle, estimated level of  
8 activity means total receipts and disbursements reported in the prior two-year  
9 election cycle divided by the number of reports filed covering the activity in the  
10 prior two-year election cycle.

11 Level of activity means the total amount of receipts and disbursements for the  
12 period covered by the late report. If the report is not filed, the level of activity is the  
13 estimated level of activity.

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

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

- 18 (1) Reports that are not election sensitive reports are considered to be filed  
19 late if they are filed after their due dates but within thirty (30) days of  
20 their due dates. These reports are considered to be not filed if they are  
21 filed after thirty (30) days of their due dates or not filed at all.
- 22 (2) Election sensitive reports are considered to be filed late if they are filed  
23 after their due dates but prior to four (4) days before the primary election

1 for pre-primary reports, or prior to four (4) days before the general  
2 election for all other election sensitive reports. These reports are  
3 considered to be not filed if they are not filed prior to four (4) days  
4 before the primary election for pre-primary reports, or prior to four (4)  
5 days before the general election for all other election sensitive reports.  
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7 **§111.44. What is the schedule of penalties for 48-hour notices?**

8 (a) If the respondent fails to file timely a notice regarding contribution(s) received after  
9 the 20<sup>th</sup> day but more than 48 hour hours before the election as required under 2 U.S.C.  
10 434(a)(6), the civil money penalty will be calculated as follows:

11 (1) Civil money penalty = \$100 + (.15 x amount of the contribution(s) not timely  
12 reported).

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

15 (b) For this section, prior violation means a civil money penalty that have been  
16 assessed against the respondent in the current two-year election cycle and the prior two-  
17 year election cycle.

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**§111.454. Will the Debt Collection Improvement Act of 1996 be used to collect unpaid civil money penalties?**

Yes. The Commission hereby adopts by cross-reference the debt collection regulations issued by the Department of Treasury at 31 CFR part 285 including all future amendments to the regulations. The Commission also adopts by reference the Federal Claims Collection Standards issued jointly by the Department of Justice and the Government Accounting Office at 4 CFR parts 101 - 104 including all future amendments to the regulations.

\_\_\_\_\_  
Darryl R. Wold  
Chairman  
Federal Election Committee

**Dated:** \_\_\_\_\_  
**Billing Code 6715-01-P**

