



FEDERAL ELECTION COMMISSION
Washington, DC 20463

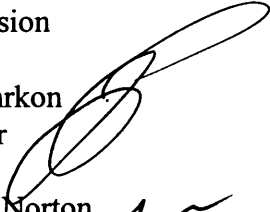
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
MEMORANDUM


TO: The Commission

THROUGH: James A. Pehrkon 
Staff Director

FROM: Lawrence H. Norton 
General Counsel

Rosemary C. Smith 
Acting Associate General Counsel

Mai T. Dinh 
Assistant General Counsel

Daniel E. Pollner 
Attorney

AGENDA ITEM
For Meeting of: 02-05-04

SUBMITTED LATE

SUBJECT: Final Rule for Extending the Administrative Fine Regulations

On January 23, 2004, the President signed H.R. 2673, the Fiscal 2004 Omnibus Consolidated Appropriations Act, P. Law No. 108-199 (118 Stat. 3) ("Appropriations Act"). Section 639 of the Appropriations Act states:

Section 640(c) of the Treasury and General Government Appropriations Act, 2000 (Public Law 106-58; 2 U.S.C. 437g note 1), as amended by section 642 of the Treasury and General Government Appropriations Act, 2002 (Public Law 107-67), is amended by striking "December 31, 2003" and inserting "December 31, 2005".

Thus, the Commission's authority to implement the Administrative Fine Program ("AFP") has been extended through December 31, 2005.

Section 111.30 of the Commission's regulations provides for the AFP regulations to sunset on December 31, 2003. Consequently, the AFP has not been in effect since that date and, until the President signed the Appropriations Act, the Commission did not have the authority to extend the program. Now that the Commission has the authority to extend the AFP, we are submitting the attached final rule for the Commission's approval.

This rulemaking is bypassing the Notice of Proposed Rulemaking stage by invoking the "good cause" exemption of the Administrative Procedures Act ("APA"), 5 U.S.C. 553(b)(B).

Under this exemption the Commission may adopt a final rule without providing notice and an opportunity for comment if providing them is “impracticable, unnecessary, or contrary to public interest.” The Office of General Counsel has concluded that the notice and comment period is impracticable and contrary to public interest in this case and has drafted the attached final rule to change the sunset date in 11 CFR 111.30. Consequently, the AFP will become effective again as soon as the final rule is published in the Federal Register, which we anticipate will be within a week after the Commission’s approval of the attached final rule.

Recommendation

The Office of General Counsel recommends that the Commission approve the attached final rule and Explanation and Justification for publication in the *Federal Register* and transmittal to Congress.

Attachment

1 **FEDERAL ELECTION COMMISSION**

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3 **11 CFR Part 111, Subpart B**

4
5 **[Notice 2004-]**

6
7 **EXTENSION OF ADMINISTRATIVE FINES PROGRAM**

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9 **AGENCY:** Federal Election Commission

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11 **ACTION:** Final rule and transmittal of regulations to Congress

12
13 **SUMMARY:** Section 639 of the Fiscal 2004 Omnibus Consolidated
14 Appropriations Act, Public Law No. 108-199 (118 Stat. 3)
15 (“2004 Appropriations Act”) amended the Treasury and
16 General Government Appropriations Act, 2000, by extending
17 the expiration date in which the Federal Election Commission
18 (“Commission”) may assess civil monetary penalties for
19 violations of the reporting requirements of section 434(a) of the
20 Federal Election Campaign Act (“Act” or “FECA”).
21 Accordingly, the Commission is extending the applicability of
22 its rules and penalty schedules in implementing the
23 administrative fines program (“AFP”). Further information is
24 provided in the Supplemental Information that follows.

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

26 **FOR FURTHER**
27 **INFORAMTION**
28 **CONTACT:**

Ms. Mai T. Dinh, Acting Assistant General Counsel, or

29 Mr. Daniel E. Pollner, Attorney, 999 E Street, N.W.,

30 Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

1 **SUPPLEMENTARY**
2 **INFORMATION:**

3
4 **Explanation and Justification for 11 CFR 111.30**

5
6 Section 640 of the Treasury and General Government Appropriations Act, 2000,
7 Pub. L. No. 106-58, 106th Cong., 113 Stat. 430, 476-77 (1999), amended 2 U.S.C.
8 437g(a)(4) to provide for a modified enforcement process for violations of certain
9 reporting requirements. Under 2 U.S.C. 437g(a)(4)(C), the Commission may assess a
10 civil monetary penalty for violations of the reporting requirements of 2 U.S.C. 434(a).
11 This authority, however, terminated on December 31, 2003. See Pub. L. No. 107-67,
12 107th Cong., 640(c). Recently, Section 639 of the 2004 Appropriations Act amended the
13 Treasury and General Government Appropriations Act, 2000, by extending the sunset
14 date to include all reports that cover activity between July 14, 2000 and December 31,
15 2005. Accordingly, the Commission is issuing this final rule to amend section 11 CFR
16 111.30 to renew the applicability of the administrative fines regulations, 11 CFR part
17 111, subpart B, to include all violations relating to reports that cover the period between
18 July 14, 2000 and December 31, 2003 and the period between the date that this final rule
19 is published in the Federal Register and December 31, 2005.

20 Until the 2004 Appropriations Act was enacted, the Commission did not have the
21 authority to extend the AFP beyond December 31, 2003. Consequently, there is a gap in
22 the applicability of the AFP from January 1, 2004 to [insert date of publication in the
23 Federal Register], the effective date of this final rule. All reports covering reporting
24 periods that began during the gap are not subject to the AFP. This includes, for example,
25 monthly reports for January and February 2004, quarterly reports for the first quarter of
26 2004, and certain 48-hour reports and pre-election reports. These reports are, however,

1 subject to the Commission’s enforcement procedures set forth at 11 CFR subpart A.

2 See 11 CFR 111.31(a).

3 The Commission is promulgating the final rule without notice or an opportunity
4 for comment because it falls under the “good cause” exemption of the Administrative
5 Procedures Act, 5 U.S.C. 553(b)(3)(B). This exemption allows agencies to dispense with
6 notice and comment if the procedures are “impracticable, unnecessary, or contrary to
7 public interest.” Id. This final rule satisfies the “good cause” exemption because a notice
8 and comment period is impracticable in that it would prevent this final rule from taking
9 effect without an even larger gap in the applicability of the AFP. See Administrative
10 Procedures Act: Legislative History, S. Doc. No. 248 200 (1946) (“‘Impracticable’ means
11 a situation in which the due and required execution of the agency functions would be
12 unavoidably prevented by its undertaking public rule-making proceedings”). In addition,
13 this final rule merely extends the applicability of the AFP and does not change the
14 substantive regulations themselves. Those regulations were already subject to notice and
15 comment when they were proposed in March 2000, 65 FR 16534, and adopted in May
16 2000, 65 FR 31787, and again when substantive revisions to the AFP were proposed in
17 April 2002, 67 FR 20461, and adopted in March 2003, 68 FR 12572. Thus, it is
18 appropriate and necessary for the Commission to publish this final rule without providing
19 a notice and comment period.

20 The Commission is making this final rule effective immediately upon publication
21 in the Federal Register because it falls within the “good cause” exception to the thirty-day
22 delayed effective date requirement set forth at section 553(d)(3) of the Administrative
23 Procedures Act. See 5 U.S.C. 553(d)(3). The same reasons that justify the promulgation

1 of this final rule without a notice and comment period, which are set forth above, also
2 justify making this final rule effective without the thirty-day delay. Moreover, making
3 this final rule effective immediately upon publication in the Federal Register is justified
4 because a thirty-day delay of the effective date would increase the gap in the AFP.

5 The Commission is submitting this final rule to the Speaker of the House of
6 Representatives and the President of the Senate pursuant to the Congressional Review of
7 Agency Regulations Act, 5 U.S.C. 801(a)(1)(A), on February ____, 2004. Since this is a
8 non-major rule, it is not subject to the delayed effective date provisions of 5 U.S.C.
9 801(a)(3).

10

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

12 The attached final rule will not have a significant impact on a substantial number
13 of small entities. The basis for this certification is that this final rule merely extends the
14 applicability of existing regulations for two more years. The existing regulations have
15 already been certified as not having a significant economic impact on a substantial
16 number of small entities. 65 FR 31793 (2000). Therefore, the extension of these existing
17 regulations will not have a significant economic impact on a substantial number of small
18 entities.

19

20 **List of Subjects**

21 11 CFR Part 111

22 Administrative practice and procedures, Elections, Law enforcement

23

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

3

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

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

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

7 2. 11 CFR 111.30 is revised to read as follows:

8 **§ 111.30 When will subpart B apply?**

9 Subpart B applies to violations of the reporting requirements of 2 U.S.C. 434(a)
10 committed by political committees and their treasurers that relate to the reporting periods
11 that begin on or after July 14, 2000 and end on or before December 31, 2003, and the
12 reporting periods that begin on or after [insert date of publication in the Federal Register]
13 and end on or before December 31, 2005.

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Bradley A. Smith
Chairman
Federal Election Commission

DATED: _____
BILLING CODE: 6715-01-U