

to calculate future fund needs. A licensee, whose rates for decommissioning costs cover only a portion of these costs, may make use of this method only for the portion of these costs that are collected in one of the manners described in this paragraph, (e)(1)(ii). This method may be used as the exclusive mechanism relied upon for providing financial assurance for decommissioning in the following circumstances:

(A) By a licensee that recovers, either directly or indirectly, the estimated total cost of decommissioning through rates established by "cost of service" or similar ratemaking regulation. Public utility districts, municipalities, rural electric cooperatives, and State and Federal agencies, including associations of any of the foregoing, that establish their own rates and are able to recover their cost of service allocable to decommissioning, are assumed to meet this condition.

(B) By a licensee whose source of revenues for its external sinking fund is a "non-bypassable charge," the total amount of which will provide funds estimated to be needed for decommissioning pursuant to §§ 50.75(c), 50.75(f), or 50.82 of this part.

\* \* \* \* \*

Dated at Rockville, Maryland, this 11th day of March, 2003.

For the Nuclear Regulatory Commission.

**Michael T. Lesar,**

*Federal Register Liaison Officer.*

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## FEDERAL ELECTION COMMISSION

### 11 CFR Part 111

#### [NOTICE 2003-6]

#### Administrative Fines

**AGENCY:** Federal Election Commission.

**ACTION:** Final rules and transmittal of regulations to Congress.

**SUMMARY:** The Commission is amending its administrative fines regulations to reduce the civil money penalties for political committees with less than \$50,000 in financial activity in a reporting period that file reports late or that do not file them at all. The revised rules create two additional levels-of-activity brackets for such committees to make further distinctions in the amount of the civil money penalty assessed. The amendments also change the method for calculating the "level of activity" on which civil money penalties are based

for unauthorized committees by excluding certain non-Federal activity from the calculation. Additionally, these amended rules: clarify how late filers and non-filers will be notified of reason-to-believe findings, final determinations and other actions; and clarify the factors that will not be considered "extraordinary circumstances" when findings or penalties are challenged. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

**EFFECTIVE DATE:** April 16, 2003.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mai T. Dinh, Acting Assistant General Counsel, or Ms. Dawn M. Odrowski, Attorney, at 999 E Street, NW., Washington, DC., 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is issuing final rules to make certain revisions to its administrative fines program. The program enables the Commission to adjudicate reporting violations of section 434(a) of the Federal Election Campaign Act of 1971, as amended ("FECA" or "Act"), 2 U.S.C. 431 *et seq.*, by political committees and their treasurers who fail to file, or untimely file, required campaign finance disclosure reports. The adjudication employs a streamlined procedure that affords respondents due process rights and assesses a civil money penalty for violations based on published penalty schedules. The Commission established the administrative fines program in July 2000 pursuant to 2 U.S.C. 437g(a)(4). See Treasury and Government Appropriations Act, 2000, Pub. L. 106-58, 106th Cong. § 640, 113 Stat. 430, 476-77 (1999), as amended by the Treasury and General Government Appropriations Act, 2002, Pub. L. 107-67, 107th Cong. § 642, 115 Stat. 514, 555 (2001) and Explanation and Justification for Administrative Fines, 65 FR 31787 (May 19, 2000) and 66 FR 59680 (November 30, 2001). The sunset date of the program is December 31, 2003. See 11 CFR 111.30.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on administrative fines were transmitted to Congress on March 7, 2003.

#### Explanation and Justification

The Commission initiated this rulemaking by publishing a Notice of Proposed Rulemaking ("NPRM") on April 25, 2002 in which it sought comment on proposed rules amending the current administrative fines regulations based on its experience with the program. 67 FR 20461 (April 25, 2002). The NPRM sought comment on proposed amendments to lower the civil money penalties for all late- and non-filers, and to clarify how it notifies respondents in the administrative fines program of reason-to-believe findings and final determinations. The NPRM also sought comment generally on: (1) Whether to limit the scope of the civil money penalty reduction to those committees with less than \$50,000 in financial activity in a reporting period, or alternatively, to limit reduction to the fine schedule applicable to late- or non-filed non-election sensitive reports; (2) Whether to clarify that certain circumstances do not constitute "extraordinary circumstances" for purposes of challenging a reason-to-believe finding; and (3) Whether to revise the method of calculating the "level of activity" on which civil money penalties are based to exclude certain non-Federal activity.

The comment period closed on May 28, 2002. Comments were received from FEC Watch and from the law firm of Sandler, Reiff and Young.

*11 CFR 111.35 If the Respondent Decides to Challenge the Alleged Violation Or the Proposed Civil Money Penalty, What Should the Respondent Do?*

11 CFR 111.35(b) sets forth the requirements for written responses that a respondent may choose to make to challenge a reason-to-believe finding or a proposed civil money penalty. It contains specific circumstances that the Commission will consider in determining whether to levy a civil money penalty, including the existence of "extraordinary circumstances" that were beyond the respondents' control, that continued for at least 48 hours, and that prevented the timely filing of a report. Paragraph (b)(4) provides four broad examples of circumstances that the Commission will not consider to be "extraordinary." Respondents have raised a number of other defenses that the Commission has determined are not "extraordinary circumstances."

The NPRM sought comment as to whether 11 CFR 111.35 should be revised to state more specifically the kinds of circumstances that the Commission will not accept as an