

Commission regulations and may be pursued by the Commission in an enforcement action under subpart A of 11 CFR part 111.

**11 CFR 111.45 What Actions Will Be Taken to Collect Unpaid Civil Penalties?**

11 CFR 111.45 is being revised to correct citations to regulations establishing the Federal Claims Collection Standards. After the Commission's administrative fines rules were promulgated on May 19, 2000, the Department of Justice and the Department of Treasury, in place of the General Accounting Office, revised and recodified the Federal Claims Collection Standards at 31 CFR parts 900 through 904. *See* 65 FR 70390 (November 22, 2000). No comments were received on this revision.

**11 CFR 111.46 How Will the Respondent Be Notified of Actions Taken by the Commission and the Reviewing Officer?**

Respondents who have challenged reason-to-believe findings in the administrative fines program have sometimes maintained that they did not receive notification because it was sent to an old address even though the Commission sent the notification to the political committee's address of record in the Statement of Organization on file with the Commission.

In the NPRM, the Commission proposed revisions to four regulations to clarify how notifications and other communications called for in subpart B of 11 CFR part 111 would be delivered to respondents. 67 FR 20464. Neither of the commenters addressed this issue.

The Commission has since concluded that this issue may be addressed more efficiently by adding a new regulation rather than by amending several current regulations. New 11 CFR 111.46 addresses how respondents will be notified of reason-to-believe findings, final determinations and all other communications authorized in subpart B of part 111 governing the administrative fines program. The final rule clarifies that unless a respondent has filed a statement designating counsel in accordance with 11 CFR 111.23, all notifications or other communications from the Commission or the administrative fines reviewing officer will be sent to a respondent political committee and its treasurer at the committee address listed in the most recent Statement of Organization or amendment thereto, filed with the Commission. If counsel has been designated, all contact will be with counsel unless the respondent

authorizes direct contact in writing. *See* 11 CFR 111.23. The substantive effect of new section 111.46 is identical to the revisions proposed in the NPRM.

This new rule is supported by the statute and case law. 2 U.S.C. 433(c) requires a political committee to file any changes in a previously filed Statement of Organization, including an address, within ten days after the change. Moreover, in a recent case in which a respondent in the administrative fines program challenged the Commission's final determination, the district court held that mailing a notification to the committee's last known address constitutes constitutionally significant notice. *See Cunningham v. FEC*, 2002 WL 31431557, at \*4 (S.D. Ind.)(2002).

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

The Commission certifies that the attached final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification for any small entities subject to the amended rules is that the civil money penalties are lower than those previously assessed and are scaled to better take into account the amount of financial activity on reports filed by political committees. Thus, committees with lower levels of financial activity are subject to lower fines than political committees with higher amounts. Moreover, the calculation of the civil money penalty has been revised so that it better takes into account the level of Federal activity for committees that finance allocable Federal and non-Federal activity. These committees would also be subject to lower civil penalties since they are now based only on the portion of their finances attributable to Federal activity. Finally, some entities affected by the rules, such as political committee treasurers and committees of the two major political parties, are not small entities under 5 U.S.C. 601 because they are not small businesses, organizations or small governmental jurisdictions.

**List of Subjects in 11 CFR Part 111**

Administrative practice and procedures, Elections, Law enforcement.

For the reasons set forth in the preamble, the Federal Election Commission amends subchapter A of Chapter I of Title 11 of the Code of Federal Regulations as follows:

**PART 111—COMPLIANCE PROCEDURES (2 U.S.C. 437g, 437d(a))**

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

**Authority:** 2 U.S.C. 437g, 437d(a), 438(a)(8).

2. Section 111.35 is amended by revising paragraph (b)(4)(iii) to read as follows:

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

\* \* \* \* \*

(b) \* \* \*

(4) \* \* \*

(iii) Illness, inexperience, or unavailability of staff, including the treasurer;

\* \* \* \* \*

3. Section 111.43 is amended by:

a. Revising paragraph (a);

b. Revising paragraph (b); and

c. Amending paragraph (d) by removing the definitions of *estimated level of activity* and *level of activity*.

The revised text reads as follows:

**§ 111.43 What are the schedules of penalties?**

(a) The civil money penalty for all reports that are filed late or not filed, except election sensitive reports and pre-election reports under 11 CFR 104.5, shall be calculated as follows:

(1) For reports due before April 16, 2003:

(i) *Level of activity* means the total amount of receipts and disbursements for the period covered by the late report. If the report is not filed, the level of activity is the estimated level of activity as set forth in paragraph (a)(1)(ii) of this section.

(ii) *Estimated level of activity* means total receipts and disbursements reported in the current two-year election cycle divided by the number of reports filed to date covering the activity in the current two-year election cycle. If the respondent has not filed a report covering activity in the current two-year election cycle, estimated level of activity means total receipts and disbursements reported in the prior two-year election cycle divided by the number of reports filed covering the activity in the prior two-year election cycle.

(iii) The civil money penalty shall be calculated in accordance with the following schedule: