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FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2004-5]

Extension of Administrative Fines Program

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: Section 639 of the Fiscal 2004 Omnibus Consolidated Appropriations Act ("2004 Appropriations Act") amended the Treasury and General Government Appropriations Act, 2000, by extending the expiration date in which the Federal Election Commission ("Commission") may assess civil monetary penalties for violations of the reporting requirements of section 434(a) of the Federal Election Campaign Act ("Act" or "FECA"). Accordingly, the Commission is extending the applicability of its rules and penalty schedules in implementing the administrative fines program ("AFP"). Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

EFFECTIVE DATE: February 11, 2004.

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

SUPPLEMENTARY INFORMATION:

Explanation and Justification for 11 CFR 111.30

Section 640 of the Treasury and General Government Appropriations Act, 2000, Pub. L. No. 106-58, 106th Cong., 113 Stat. 430, 476-77 (1999), amended 2 U.S.C. 437g(a)(4) to provide for a modified enforcement process for violations of certain reporting requirements. Under 2 U.S.C.

437g(a)(4)(C), the Commission may assess a civil monetary penalty for violations of the reporting requirements of 2 U.S.C. 434(a). This authority, however, terminated on December 31, 2003. See Pub. L. No. 107-67, 107th Cong., 640(c). Recently, section 639 of the 2004 Appropriations Act amended the Treasury and General Government Appropriations Act, 2000, by extending the sunset date to include all reports that cover activity between July 14, 2000 and December 31, 2005. Accordingly, the Commission is issuing this final rule to amend section 11 CFR 111.30 to renew the applicability of the administrative fines regulations, 11 CFR part 111, subpart B, to include all violations relating to reports that cover the period between July 14, 2000 and December 31, 2003 and the period between the date that this final rule is published in the **Federal Register** and December 31, 2005.

Until the 2004 Appropriations Act was enacted, the Commission did not have the authority to extend the AFP beyond December 31, 2003. Consequently, there is a gap in the applicability of the AFP from January 1, 2004 to February 10, 2004. All reports covering reporting periods that began and ended during this gap and that are due before February 11, 2004, the effective date of this final rule, are not subject to the AFP. This includes certain 48-hour reports and pre-election reports. These reports are, however, subject to the Commission's enforcement procedures set forth at 11 CFR subpart A. See 11 CFR 111.31(a).

The Commission notes that Congress, in extending the Commission's AFP authority, provided for continuous applicability of the AFP through December 31, 2005. Moreover, the AFP is procedural; the underlying substantive reporting requirements have remained continuously in effect. Consequently, it is appropriate to apply the AFP to reports that are due after February 10, 2004 even though those reports may relate to reporting periods that include the gap.

The Commission is promulgating this final rule without notice or an opportunity for comment because it falls under the "good cause" exemption of the Administrative Procedures Act, 5 U.S.C. 553(b)(3)(B). This exemption allows agencies to dispense with notice and comment if the procedures are

"impracticable, unnecessary, or contrary to public interest." *Id.* This final rule satisfies the "good cause" exemption because a notice and comment period is impracticable in that it would prevent this final rule from taking effect without an even larger gap in the applicability of the AFP. See *Administrative Procedures Act: Legislative History*, S. Doc. No. 248 200 (1946) ("'Impracticable' means a situation in which the due and required execution of the agency functions would be unavoidably prevented by its undertaking public rule-making proceedings"). In addition, this final rule merely extends the applicability of the AFP and does not change the substantive regulations themselves. Those regulations were already subject to notice and comment when they were proposed in March 2000, 65 FR 16534, and adopted in May 2000, 65 FR 31787, and again when substantive revisions to the AFP were proposed in April 2002, 67 FR 20461, and adopted in March 2003, 68 FR 12572. Thus, it is appropriate and necessary for the Commission to publish this final rule without providing a notice and comment period.

The Commission is making this final rule effective immediately upon publication in the **Federal Register** because it falls within the "good cause" exception to the thirty-day delayed effective date requirement set forth at section 553(d)(3) of the Administrative Procedures Act. See 5 U.S.C. 553(d)(3). The same reasons that justify the promulgation of this final rule without a notice and comment period, which are set forth above, also justify making this final rule effective without the thirty-day delay. Moreover, making this final rule effective immediately upon publication in the **Federal Register** is justified because a thirty-day delay of the effective date would increase the gap in the AFP.

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

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

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

List of Subjects in 11 CFR Part 111

Administrative practice and procedures, Elections, Law enforcement.

■ For the reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of Federal Regulations is amended as follows:

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

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

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

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

§ 111.30 When will subpart B apply?

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

Dated: February 5, 2004.

Bradley A. Smith,

Chairman, Federal Election Commission.

[FR Doc. 04-2845 Filed 2-10-04; 8:45 am]

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FEDERAL RESERVE SYSTEM

12 CFR Part 222

FEDERAL TRADE COMMISSION

16 CFR Part 602

[Regulation V; Docket Nos. R-1172 and R-1175; and Project No. PO44804]

RIN 3084-AA94

Effective Dates for the Fair and Accurate Credit Transactions Act of 2003

AGENCIES: Board of Governors of the Federal Reserve System (Board) and Federal Trade Commission (FTC).

ACTION: Joint final rules.

SUMMARY: The recently enacted Fair and Accurate Credit Transactions Act of 2003 (FACT Act or the Act) requires the Board and the FTC (the Agencies) jointly to adopt rules establishing the effective dates for provisions of the Act that do not contain specific effective dates. The Agencies are adopting joint final rules that establish a schedule of effective dates for many of the provisions of the FACT Act for which the Act itself does not specifically provide an effective date. The Agencies also are jointly making final rules that previously were adopted on an interim basis. Those rules establish December 31, 2003, as the effective date for provisions of the Act that determine the relationship between the Fair Credit Reporting Act (FCRA) and state laws and provisions that authorize rulemakings and other implementing action by various agencies.

EFFECTIVE DATE: Effective on March 12, 2004.

FOR FURTHER INFORMATION CONTACT:

Board: Thomas E. Scanlon, Counsel, Legal Division, (202) 452-3594; David A. Stein, Counsel, Minh-Duc T. Le, Ky Tran-Trong, Senior Attorneys, Krista P. DeLargy, Attorney, Division of Consumer and Community Affairs, (202) 452-3667 or (202) 452-2412; for users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263-4869.

FTC: Christopher Keller or Katherine Armstrong, Attorneys, Division of Financial Practices, (202) 326-3224.

SUPPLEMENTARY INFORMATION:

I. Background

The FACT Act became law on December 4, 2003. Pub. L. 108-159, 117 Stat. 1952. In general, the Act amends the FCRA to enhance the ability of consumers to combat identity theft, to increase the accuracy of consumer reports, and to allow consumers to

exercise greater control regarding the type and amount of marketing solicitations they receive. The FACT Act also restricts the use and disclosure of sensitive medical information. To bolster efforts to improve financial literacy among consumers, title V of the Act (entitled the "Financial Literacy and Education Improvement Act") creates a new Financial Literacy and Education Commission empowered to take appropriate actions to improve the financial literacy and education programs, grants, and materials of the Federal government. Lastly, to promote increasingly efficient national credit markets, the FACT Act establishes uniform national standards in key areas of regulation.

The Act includes effective dates for many of its sections that vary to take account of the need for rulemaking, implementation efforts by industry, and other policy concerns. Section 3 of the FACT Act requires the Agencies to prescribe joint regulations establishing an effective date for each provision of the Act "[e]xcept as otherwise specifically provided in this Act and the amendments made by this Act." The FACT Act requires that the Agencies jointly adopt final rules establishing the effective dates within two months of the date of the enactment of the Act. Thus, by law, the Agencies must complete these rulemaking efforts by February 4, 2004. The Act also provides that each of the effective dates set by the Agencies must be "as early as possible, while allowing a reasonable time for the implementation" of that provision, but in no case later than ten months after the date of issuance of the Agencies' joint final rules establishing the effective dates for the Act. 117 Stat. 1953.

In mid-December of 2003, the Agencies took two related actions to comply with the requirement to establish effective dates for the Act. In the first action, the Agencies implemented joint interim final rules that establish December 31, 2003, as the effective date for sections 151(a)(2), 212(e), 214(c), 311(b), and 711 of the FACT Act, each of which determines the relationship of State laws to areas governed by the FCRA. See 68 FR 74467 (Dec. 24, 2003). In the second action, the Agencies proposed joint rules that would establish a schedule of effective dates for certain other provisions of the FACT Act for which the Act itself does not specifically provide an effective date. See 68 FR 74529 (Dec. 24, 2003). The Agencies sought comment on both of these related actions.