V. Parallel Proceedings

The Commission recognizes that persons self-reporting to the Commission may face special concerns in connection with parallel criminal investigations, State administrative proceedings, and/or civil litigation. The Commission expects that persons who self-report to the Commission will inform the Commission of any existing parallel proceedings. The Commission encourages persons who self-report to the Commission also to self-report related violations to any law enforcement agency with jurisdiction over the activity. This will assist the Commission, where appropriate and possible, in working with other Federal, State, and local agencies to facilitate a global and/or contemporaneous resolution of related violations by a self-reporting person. The possibility of such a resolution is enhanced when the self-reporting person expresses a willingness to engage other government agencies that may have jurisdiction over the conduct and to cooperate with joint discovery and disclosure of facts and settlement positions with respect to the different agencies.

In situations where contemporaneous resolution of parallel matters is not feasible, the Commission will consider whether terms contained in a conciliation agreement with the Commission may affect potential liability the same respondent realistically faces from another agency. In appropriate cases, where there has been self-reporting and full cooperation, the Commission may agree to enter into conciliation without requiring respondents to admit that their conduct was ''knowing and willful,'' even where there is evidence that may be viewed as supporting this conclusion. (The civil penalty, however, may be based on ''knowing and willful'' conduct.) The Commission has followed this practice in several self-reported matters where the organizational respondents promptly self-reported and took comprehensive and immediate corrective action that included the dismissal of all individual corporate officers whose actions formed the basis for the organization's potential ''knowing and willful'' violation.

The Commission, which has the statutory authority to refer ''knowing and willful'' violations of the FECA to the Department of Justice for potential criminal prosecution, 2 U.S.C. 437g(a)(5)(C), and to report information regarding violations of law not within its jurisdiction to appropriate law enforcement authorities, 2 U.S.C. 437d(a)(9), will not negotiate whether it refers, reports, or otherwise discusses information with other law enforcement agencies. Although the Commission cannot disclose information regarding an investigation to the public, it can and does share information on a confidential basis with other law enforcement agencies.

VI. Conclusion

In light of the considerations explained above, the Commission is considering issuing a policy statement to clarify how it exercises its discretion in enforcement matters involving self-reported violations of the FECA. The Commission invites comments on any aspect of the proposed policy statement, including:

(A) Whether and to what extent the Commission should consider the various factors described above, and/or other factors, in resolving self-reported violations of the FEC; and

(B) Whether and how to apply the new proposed Fast Track Resolution process in resolving self-reported violations of the FECA.

Dated: December 1, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. E6–20845 Filed 12–7–06; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 111

[Notice 2006–22]

Best Efforts in Administrative Fines Challenges

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks public comment on proposed revisions to its regulations regarding the Commission's administrative fines program. The administrative fines program is a streamlined process through which the Commission finds and penalizes violations of 2 U.S.C. 434(a), which requires committees registered with the Commission to file periodic reports. Current Commission regulations set forth several grounds upon which a respondent may base a challenge to an administrative fine. The proposed regulations replace the current ''extraordinary circumstances'' defense with a ''best efforts'' defense. The proposed regulations would also provide for Commission statements of reasons on administrative fines final determinations. The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before January 8, 2007.

ADDRESSES: All comments must be in writing, must be addressed to Mr. J. Duane Pugh Jr., Acting Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail to ensure timely receipt and consideration. E-mail comments must be sent to either *afbestefforts@fec.gov* or submitted through the Federal eRegulations Portal at *http://www.regulations.gov*. If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Mr. J. Duane Pugh Jr., Acting Assistant General Counsel, or Ms. Margaret G. Perl, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under the administrative fines program, the Commission may assess a civil money penalty for a violation of the reporting requirements of 2 U.S.C. 434(a) (such as not filing or filing late) without using the traditional enforcement procedures. 2 U.S.C. 437g(a)(4)(C). Congress intended the Commission to process these straightforward violations through a ''simplified procedure'' that would ease the enforcement burden on the Commission. H.R. Rep. No. 106–295 at 11 (1999). In the final rules establishing and governing the administrative fines program, the Commission created a streamlined procedure that balances the respondent's rights to notice and opportunity to be heard with the Congressional intent that the administrative fines program work in an expeditious manner to resolve these reporting violations without additional administrative burden. *Final Rule on Administrative Fines,* 65 FR 31787–88 (May 19, 2000).

The Federal Election Campaign Act (''FECA'') provides that ''[w]hen the treasurer of a political committee shows

that best efforts have been used to obtain, maintain, and submit the information required by this Act for the political committee, any report or any records of such committee shall be considered in compliance with [FECA].'' 2 U.S.C. 432(i).[1] The current administrative fines regulations enumerate grounds upon which a respondent may challenge a Commission determination that an administrative fine should be imposed, but a best efforts defense is not explicitly listed among these grounds.

In *Lovely* v. *FEC*, 307 F. Supp. 2d 294 (D. Mass. 2004), the court addressed a political committee's challenge to an administrative fine assessed by the Commission for the committee's failure to timely file a report. The committee argued that it had made best efforts to file the report and that this constituted a valid and complete defense to the fine. The court concluded that the plain language of the Act requires the Commission to entertain a best efforts defense in the administrative fines context, and that it was unclear from the record in the *Lovely* case whether the Commission had considered the best efforts defense raised by the committee. The court remanded the case to the Commission for further proceedings.[2] On remand, the Commission determined that the committee had failed to show best efforts and left the administrative fine in place. *Commission's Statement of Reasons in Administrative Fines Case #549 on Remand From the United States District Court for the District of Massachusetts,* Oct. 4, 2005, *available at http://www.fec.gov/members/toner/sor/soraf549.pdf*.

The proposed regulations would explicitly incorporate a best efforts defense into the process for challenging an administrative fine, would clarify the scope of the ''factual errors'' defense, and would provide for statements of reasons for administrative fines final determinations. These proposed changes are intended to address the concerns raised by the *Lovely* court as well as to provide greater clarity regarding permissible grounds for challenging administrative fines.

I. 11 CFR 111.35—Grounds for Challenging an Administrative Fines Reason To Believe Finding

Under the administrative fines regulations, if the Commission determines that it has reason to believe (''RTB'') that a committee has failed to timely file a required report, it notifies the respondent of this finding and of the proposed civil penalty. 11 CFR 111.32. The Commission makes RTB findings based on an internal process that identifies late filers. The amount of the penalty is determined using the schedules at 11 CFR 111.43. Following an RTB finding, a respondent has forty days to challenge the alleged violation. 11 CFR 111.35. Challenges are reviewed by Commission staff and ultimately decided by the Commission. 11 CFR 111.36, 111.37.

The current regulations set forth three permissible grounds upon which to challenge an administrative fines RTB finding. Respondents are permitted to challenge administrative fines on the basis of ''factual errors,'' the improper calculation of a penalty, or ''extraordinary circumstances that were beyond the control of the respondent and that were for a duration of at least 48 hours and that prevented the respondent from filing the report in a timely manner.'' 11 CFR 111.35(b)(1). The regulations also provide examples of situations that will not be considered ''extraordinary circumstances,'' including negligence, problems with vendors or contractors, illness, inexperience, or unavailability of staff, and computer failures (except failures of the Commission's computers). 11 CFR 111.35(b)(4).

This NPRM proposes a revision of 11 CFR 111.35 that clarifies the scope of the regulation's ''factual errors'' defense and also replaces the ''extraordinary circumstances'' defense with a best efforts defense.

A. 11 CFR 111.35(b)(1)(i)—Changes to the ''Factual Errors'' Defense

The proposed regulation retains a ''factual errors'' defense, currently at 11 CFR 111.35(b)(1)(i), but clarifies the boundaries of this defense by stating that the facts alleged to be in error must be facts upon which the Commission relied in its RTB finding. *Proposed* 11 CFR 111.35(b)(1). The proposed regulation also provides two examples of such factual errors: that the respondent was not required to file the report in question, and that the respondent did in fact timely file as described in 11 CFR 100.19. *Id.* For instance, a paper filer that has ''timely filed'' a report under the definition in 11 CFR 100.19 would be considered to have timely filed for purposes of the administrative fines program. This would be true even if the Commission does not ultimately receive the filing, due, for instance, to errors by the overnight delivery service or in the handling of the mail. The Commission seeks comment on this approach. Should other types of factual errors be allowed as grounds for challenge to the finding of a violation? Should the regulation include additional examples of qualifying factual errors?

B. 11 CFR 111.35(b)(1)(iii)—Replacing the ''Extraordinary Circumstances'' Defense With a Best Efforts Defense

The proposed regulation replaces the ''extraordinary circumstances'' defense currently at 11 CFR 111.35(b)(1)(iii) with a best efforts defense. The proposed regulation makes clear that a respondent may base a challenge to an administrative fine on a showing that respondent made best efforts to timely file the report in question. To show that it made best efforts to timely file, a respondent would be required to demonstrate that both (i) Respondent was prevented from filing in a timely manner because of unforeseen circumstances that were beyond the control of the respondent, and (ii) respondent filed the report in question within 24 hours of the respondent's no longer being prevented from filing. *Proposed* 11 CFR 111.35(b)(3). The proposed regulation gives two examples of unforeseen circumstances that were beyond the control of the respondent: a failure of Commission computers, Commission software, or the internet; and severe weather or other disaster-related incident. *Proposed* 11 CFR 111.35(c). The proposed regulation also gives examples of circumstances that will not be considered unforeseen and beyond the control of the respondent, including negligence; delays caused by committee vendors or contractors; illness, inexperience, or unavailability of the treasurer or other staff; committee computer or software failures; a committee's failure to know filing dates; or a committee's failure to use FEC filing software properly. *Proposed* 11 CFR 111.35(d). Like the current regulations, the proposed regulations would require a respondent to explain the factual basis supporting the respondent's challenge. *Proposed* 11 CFR 111.35(e).

The best efforts defense set forth in the proposed regulation would serve as a proxy for a full factual investigation of a respondent committee's internal

[1] The Commission has long interpreted the ''best efforts'' provision as a statutory safe harbor limited to political committees' obligation to report certain substantive information that may be beyond the control of the committees to obtain. 11 CFR 104.7 (defining ''best efforts'' for purposes of obtaining and submitting contributor information).

[2] The *Lovely* case did not involve a challenge to the validity of the administrative fines program rules, and those rules have continued in full force and effect since the district court order. However, the court stated that the Commission could ''refine by regulation what best efforts means in the context of submitting a report.'' *Lovely*, 307 F. Supp. 2d at 300.

practices regarding filing of reports and an analysis of whether such practices were sufficient to constitute best efforts. Such an investigation would be particularly burdensome in the context of the administrative fines program, which is meant to be a ''streamlined procedure.'' *Final Rule on Administrative Fines*, 65 FR at 31787.

The Commission seeks comment on the proposed best efforts defense. Will the proposed test serve as a sufficient proxy for a full best efforts investigation? Are there other circumstances not contemplated by the proposed regulations that could prevent a respondent from timely filing, notwithstanding the respondent having taken best efforts to ensure that the report would be timely filed? Should the Commission apply a ''but for'' test, a ''contributing factor'' test, or some other test for determining whether a respondent was prevented from timely filing by particular circumstances? Should the Commission retain an extraordinary circumstances defense? Should the Commission entertain defenses based on extreme financial hardship? Should the regulations be more specific as to what constitutes computer or Internet failures, or severe weather or disaster? Should the list of circumstances that will not be considered unforeseen and beyond the control of the respondent be expanded or contracted, and if so by which elements? Should the 24 hour period be longer or shorter, or should committees be required to file as soon as would be practicable? What sort of supporting evidence should a respondent be required to provide? Are there other important factors that the Commission should incorporate into a best efforts defense? Alternatively, should the Commission refrain from adding a specific best efforts defense to the administrative fines regulation? Does Lovely preclude this approach?

II. 11 CFR 111.37—Commission Action on Administrative Fines Challenges

Section 111.37 of the Commission's rules guides Commission decisions regarding the final determination of administrative fines challenges. The proposed regulations direct the Commission to conclude that no violation has occurred if the Commission based its RTB finding on a factual error or if the respondent made best efforts to timely file. *Proposed* 11 CFR 111.37(b). The proposed regulations also include a new section 111.37(d), which makes clear that the staff recommendation regarding the challenge, including any changes made by the Commission, will serve as the Commission's statement of reasons regarding the administrative fine at issue. This change is intended to satisfy the *Lovely* court's concern that, in that case, the Commission had issued no opinion or statement of reasons along with its final determination. *Lovely*, 307 F. Supp. 2d at 301. Finally, the proposed regulations amend section 111.37(d) to eliminate reference to the ''extraordinary circumstances'' defense, which would no longer be applicable.

The Commission seeks comment on these changes. Are there additional conforming amendments required to implement the proposed best efforts defense?

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

The Commission certifies that the attached proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that any individuals and not-for-profit entities that would be affected by these proposed rules are not ''small entities'' under 5 U.S.C. 601. The definition of ''small entity'' does not include individuals, but classifies a not-for-profit enterprise as a ''small organization'' if it is independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties or any other political committees might be considered ''small organizations,'' the number that would be affected by this proposed rule is not substantial.

Furthermore, any separate segregated funds that would be affected by these proposed rules are not-for-profit political committees that do not meet the definition of ''small organization'' because they are financed by a combination of individual contributions and financial support for certain expenses from corporations, labor organizations, membership organizations, or trade associations, and therefore are not independently owned and operated. Most of the other political committees that would be affected by these proposed rules are not-for-profit committees that do not meet the definition of ''small organization.'' Most political committees are not independently owned and operated because they are not financed by a small identifiable group of individuals. In addition, most political committees rely on contributions from a large number of individuals to fund the committees' operations and activities.

The proposed rules also would not impose any additional restrictions or increase the costs of compliance for respondents within the administrative fines program. Instead, the proposed rules would provide additional defenses available to respondents in the administrative fines program, thereby and potentially increasing the situations in which the Commission imposes no civil money penalty. Moreover, the proposed rules would apply only in the administrative fines program, where penalties are proportionate to the amount of a political committee's financial activity. Any political committee meeting the definition of ''small entity'' would be subject to lower fines than larger committees with more financial activity. Therefore, the attached proposed rules, if promulgated, would 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, the Federal Election Commission proposes to amend Subchapter A of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

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

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

Authority: 2 U.S.C. 432(i), 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt.

2. Section 111.35 is revised 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?

(a) To challenge a reason to believe finding or proposed civil money penalty, the respondent must submit a written response to the Commission within forty days of the Commission's reason to believe finding.

(b) The respondent's written response must establish at least one of the following grounds for challenging the reason to believe finding and/or civil money penalty:

(1) The Commission's reason to believe finding is based on a factual error. Examples of a factual error include, but are not limited to, that the committee was not required to file or that the committee timely filed as described in 11 CFR 100.19 (such as by timely depositing a paper filing with an overnight delivery service);

(2) The Commission improperly calculated the civil money penalty; or

(3) The respondent made best efforts to file in a timely manner in that:

(i) The respondent was prevented from filing in a timely manner because of unforeseen circumstances that were beyond the control of the respondent; and

(ii) The respondent filed within 24 hours thereafter.

(c) Circumstances that will be considered unforeseen and beyond the control of respondent include, but are not limited to, a failure of Commission computers, Commission-provided software, or the Internet, and severe weather or other disaster-related incident.

(d) Circumstances that will not be considered unforeseen and beyond the control of respondent include, but are not limited to, negligence; delays caused by committee vendors or contractors; illness, inexperience, or unavailability of the treasurer or other staff; committee computer or software failures; a committee's failure to know filing dates; or a committee's failure to use filing software properly.

(e) Respondent's written response must detail the factual basis supporting the grounds and include any supporting documentation.

3. In § 111.37, paragraphs (b) and (d) are revised to read as follows:

§ 111.37 What will the Commission do once it receives the respondent's written response and the reviewing officer's recommendation?

* * * * *

(b) If the Commission, after reviewing the reason to believe finding, the respondent's written response, and the reviewing officer's written recommendation, determines by an affirmative vote of at least four (4) of its members, that no violation has occurred (either because the Commission had based its reason to believe finding on a factual error or because the respondent made best efforts to file in a timely manner) or otherwise terminates its proceedings, the Commission shall authorize the reviewing officer to notify the respondent by letter of its final determination.

* * * * *

(d) When the Commission makes a final determination under this section, the statement of reasons for the Commission action consists of the reasons provided in the reviewing officer's recommendation, if adopted by the Commission, subject to any Commission amendments, additions, substitutions, or statements of reasons.

Dated: November 30, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. E6–20735 Filed 12–7–06; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2006–26462; Directorate Identifier 2006–NM–221–AD]

RIN 2120–AA64

Airworthiness Directives; Empresa Brasileira de Aeronautica S.A. (EMBRAER) Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU Airplanes and Model ERJ 190 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for certain EMBRAER Model ERJ 170–100 LR, –100 STD, –100 SE, –100 SU, –200 LR, –200 STD, and –200 SU airplanes and Model ERJ 190 airplanes. This proposed AD would require inspecting to determine the part number and serial number of the deployment actuator of the ram air turbine (RAT) and related investigative and corrective actions if necessary. This proposed AD results from reports that the RAT may not fully deploy due to galling between the piston rod and gland housing of the deployment actuator. We are proposing this AD to prevent the RAT from failing to deploy, which could result in loss of control of the airplane during in-flight emergencies.

DATES: We must receive comments on this proposed AD by January 8, 2007.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- Government-wide rulemaking Web site: Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL–401, Washington, DC 20590.
- Fax: (202) 493–2251.
- Hand Delivery: Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street, SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Contact Empresa Brasileira de Aeronautica S.A. (EMBRAER), P.O. Box 343–CEP 12.225, Sao Jose dos Campos–SP, Brazil, for service information identified in this proposed AD.

FOR FURTHER INFORMATION CONTACT: Todd Thompson, Aerospace Engineer, International Branch, ANM–116, Transport Airplane Directorate, FAA, 1601 Lind Avenue, SW., Renton, Washington 98057–3356; telephone (425) 227–1175; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed in the **ADDRESSES** section. Include the docket number ''FAA–2006–26462; Directorate Identifier 2006–NM–221–AD'' at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments received by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You may review the DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you may visit *http://dms.dot.gov.*