

§ 111.34

CFR 111.34 or submit a written response pursuant to 11 CFR 111.35.

§ 111.34 If the respondent decides to pay the civil money penalty and not to challenge the reason to believe finding, what should the respondent do?

(a) The respondent shall transmit payment in the amount of the civil money penalty to the Commission within forty (40) days of the Commission's reason to believe finding.

(b) Upon receipt of the respondent's payment, the Commission shall send the respondent a final determination that the respondent has violated the statute or regulations and the amount of the civil money penalty and an acknowledgment of the respondent's payment.

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

(a) Within forty (40) days of the Commission's reason to believe finding, the respondent shall submit to the Commission a written response.

(b) The written response shall contain the following:

(1) Reason(s) why the respondent is challenging the reason to believe finding and/or civil money penalty which may consist of:

(i) The existence of factual errors; and/or

(ii) The improper calculation of the civil money penalty; and/or

(iii) The existence of 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;

(2) The factual basis supporting the reason(s); and

(3) Supporting documentation.

(4) Examples of circumstances that will not be considered extraordinary include, but are not limited to, the following:

(i) Negligence;

(ii) Problems with vendors or contractors;

(iii) Illness of staff;

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(iv) Computer failures (except failures of the Commission's computers); and

(v) Other similar circumstances.

§ 111.36 Who will review the respondent's written response?

(a) A reviewing officer shall review the respondent's written response. The reviewing officer shall be a person who has not been involved in the reason to believe finding.

(b) The reviewing officer shall review the reason to believe finding with supporting documentation and the respondent's written response with supporting documentation. The reviewing officer may request supplemental information from the respondent and/or the Commission staff. The respondent shall submit the supplemental information to the reviewing officer within a time specified by the reviewing officer. The reviewing officer will be entitled to draw an adverse inference from the failure by the respondent to submit the supplemental information.

(c) All documents required to be submitted by the respondents pursuant to this section and § 111.35 should be submitted in the form of affidavits or declarations.

(d) If the Commission staff, after the respondent files a written response pursuant to § 111.35, forwards any additional documents pertaining to the matter to the reviewing officer for his or her examination, the reviewing officer shall also furnish a copy of the document(s) to the respondents.

(e) Upon completion of the review, the reviewing officer shall forward a written recommendation to the Commission along with all documents required under this section and 11 CFR 111.32 and 111.35.

(f) The reviewing office shall also forward a copy of the recommendation to the respondent. The respondent may file with the Commission Secretary a written response to the recommendation within ten (10) days of transmittal of the recommendation. This response may not raise any arguments not raised in the respondent's original written response or not directly responsive to the reviewing officer's recommendation.