

ORDER CERTIFYING THE CHANGES TO
REGULATIONS OF THE ALASKA PUBLIC OFFICES COMMISSION

The attached ten pages of regulations, dealing with mitigating factors and penalty assessment, are certified to be a correct copy of the regulation changes that the Alaska Public Offices Commission adopted at its _____, 2016 meeting, under the authority of AS 15.13.030, 15.13.390; AS 24.45.021, 24.45.141; AS 24.60.220, 24.60.240, 24.60.260; AS 39.50.050, 39.50.060, 39.50.070, 39.50.080, and 39.50.135 and after compliance with the Administrative Procedure Act (AS 44.62), specifically including notice under AS 44.62.190 and 44.62.200 and opportunity for public comment under AS 44.62.210.

This action is not expected to require an increased appropriation.

Although no public comments were received, the Alaska Public Offices Commission paid special attention to the cost to private persons of the regulatory action being taken.

The regulation changes described in this order take effect on the 30th day after they have been filed by the lieutenant governor, as provided in AS 44.62.180.

Date: _____
Anchorage, Alaska

Heather Hebdon, Interim Executive Director
Alaska Public Offices Commission

FILING CERTIFICATION

I, Byron Mallott, Lieutenant Governor for the State of Alaska, certify that on _____, 20____ at _____m., I filed the attached regulations according to the provisions of AS 44.62.040 - 44.62.120.

Byron Mallott, Lieutenant Governor

Effective: _____.

Register: _____.

2 AAC 50.855(b) is amended to read:

(b) Notwithstanding (a) of this section, [THE STAFF SHALL]

(1) for late filing of a statement or report required under AS 24.60.200 - 24.60.260 or AS 39.50, the staff shall document the violation and

(A) shall waive the assessed penalty if

(i) the late filing is an initial report due from a first-time filer who is also a first-time member of a board or commission who was not notified of the required filing by the staff of that board or commission; or

(ii) the late filing is from a member of the national guard or military reserves called to active duty during the period from 60 days before the due date to 60 days after the due date;

(B) shall reduce the assessed penalty to 25 percent of the maximum penalty under AS 24.60.240 or AS 39.50.135 if the person is a first-time filer and the late filing is a candidate disclosure statement;

(C) shall reduce the assessed penalty to 50 percent of the maximum penalty if

(i) the person is not a first-time filer; or

(ii) the late filing is a final statement due after leaving office;

and

(D) shall reduce the assessed penalty to 75 percent of the maximum penalty for all other late filings under this paragraph;

(2) for late filing of or an error in a registration, statement, or report

required under AS 15.13, the staff shall document the violation and

(A) may not assess a penalty if

(i) the person is a first-time filer;

(ii) there were multiple or multi-day technical issues with the electronic filing system, or a day-long technical issue on the filing due date, that prevented the person from timely filing;

(iii) the late filing is from a member of the national guard or military reserves called to active duty during the period from 60 days before the due date to 60 days after the due date;

(iv) for a statement of contributions, the reporting error was the person's first error, and the contribution was reported by the recipient of the contribution within 30 days after the due date for the statement of contributions; or

(v) for an independent expenditure report, the reporting error was the person's first error, and the filing is not a report required to be filed within 24 hours;

(B) shall reduce the penalty to 25 percent of the maximum penalty if

(i) the election cycle is the person's first election cycle and the report is the person's first late-filed report; or

(ii) the person self-reports the missing information to the staff and discloses the information to the public within seven days after the date of self-reporting; the penalty stops accruing on the date the person self-reported

the error by notifying the staff of the error; filing the late or missing information without notifying the staff of the error does not constitute self-reporting; and

(C) shall reduce the penalty to 50 percent of the maximum penalty if

(i) the election cycle is the person's first election cycle; or

(ii) the amount missing or erroneously reported on a filing is

under \$100;

(3) for incomplete filings of all types, the staff shall document the violation

and

(A) may not assess a penalty if the missing or incomplete information

was readily available to the public through another forum;

(B) shall reduce the penalty to 50 percent of the maximum penalty if

the missing or incomplete information was not readily available to the public

through another forum, but the incomplete report is the first alleged violation

against the person; and

(C) shall assess the maximum penalty for all other incomplete reports

not addressed under (1) or (2) of this subsection;

(4) the staff may not assess a penalty if the amount of the reporting error or

the amount of a transaction missing in a report is less than \$100 [WAIVE AN ASSESSED

PENALTY IF A DEFICIENCY IS INSIGNIFICANT] and is promptly corrected

(A) without receiving a notice from the staff; or

(B) within the time allowed by any notice of deficiency from the staff; or

(5) for reports required under AS 15.13.110(a)(2) or (b), the staff shall assess a penalty of not more than \$500 per day for each day a deficiency exists before the relevant election and reduce the penalty to \$50 per day for each day a deficiency remains uncorrected after the relevant election, if the staff has received no evidence of an aggravating factor under 2 AAC 50.865(d); the amount of a penalty assessed under this paragraph is limited to not more than five times the amount of the expenditure or contribution erroneously reported or unreported [(2) REDUCE AN ASSESSED PENALTY

BY 50 PERCENT IF

(A) THE AMOUNT OF THE PENALTY IS LESS THAN \$100;

(B) THE PERSON AGAINST WHOM THE PENALTY IS ASSESSED SHOWS BY MEANS OF AN AFFIDAVIT THAT ONE OR MORE MITIGATING FACTORS SET OUT IN 2 AAC 50.865(b)(1) - (5) WOULD JUSTIFY REDUCING THE PENALTY; AND

(C) STAFF HAS RECEIVED NO EVIDENCE OF AN AGGRAVATING FACTOR UNDER 2 AAC 50.865(d)].

(Eff. 12/22/2011, Register 200; am 1/16/2015, Register 213; am ___/___/____, Register ____)

Authority:	AS 15.13.030	AS 24.60.220	AS 39.50.060
	AS 15.13.390	AS 24.60.240	AS 39.50.070
	AS 24.45.021	AS 24.60.260	AS 39.50.080
	AS 24.45.141	AS 39.50.050	AS 39.50.135

2 AAC 50.860(b) is amended to read:

(b) The staff shall review any facts disputed in an appeal, including facts relevant to mitigating and aggravating factors. For any appeal of a penalty less than \$250, if the staff has no evidence of an aggravating factor, the staff may determine that facts shown in mitigation under **2 AAC 50.865(b)(1) - (4)** [2 AAC 50.865(b)(1) - (5)] justify reducing the penalty by 50 percent, and may calculate the reduced penalty. If the person who appealed the penalty assessment agrees to the revised penalty assessment and pays the amount due no later than 30 days after receiving the revised penalty assessment, the appeal will be considered withdrawn, and the matter resolved. **If, after applying the mitigating factors in 2 AAC 50.865(a) or (b), the staff reduces the assessed penalty to \$100 or less and the person who appealed pays the revised penalty no later than 30 days after receiving the revised penalty assessment, the appeal will be considered withdrawn, and the matter resolved.** If the person who appealed does not agree to the revised penalty, **the** staff shall provide a written recommendation to the commission and serve a copy on the person who appealed.

(Eff. 12/22/2011, Register 200; am 1/16/2015, Register 213; am __/__/____, Register ____)

Authority: AS 15.13.030 AS 24.60.220 AS 39.50.050

AS 24.45.021

2 AAC 50.865 is amended to read:

2 AAC 50.865. Mitigating factors; aggravating factors. (a) A civil penalty determined under 2 AAC 50.855 may be reduced by up to 50 percent if

- (1) a person required to file a statement or other filing

(A) has a good filing history; in this subparagraph, "good filing history"

means

(i) [(1)] no late filings in the immediately preceding five years;

and

(ii) for groups, no more than \$500 in non-administrative activity shown on the group's overdue report [(2) NO ACTIVITY SHOWN ON THE OVERDUE REPORT]; **or**

(B) is an inexperienced filer; in this subparagraph, "inexperienced filer"

means a person required to file reports under this chapter if that person has been subject to a registration or reporting requirement for less than 365 days, **or a person engaged in the person's first election cycle;**

(2) a technical error at the commission, including a communication, facsimile machine, computer program, **electronic filing system,** or other equipment problem may have contributed to the late or incomplete filing;

(3) any unreported or mistakenly reported information had a value of \$100 or less; or

(4) any unreported or mistakenly reported information had a value higher than \$100 but no more than \$1,000, and a factor listed in (b) of this section also applies.

(b) A civil penalty **determined under** [SET OUT IN] 2 AAC 50.855 may be reduced by a percentage greater than 50 percent, or waived entirely based on the following factors:

(1) the person required to file, or a family member of the person required to file, experienced a personal emergency, including a call for military service, a natural disaster, a civil

disturbance, or an incapacitating illness that prevented the person from filing on or before the due date; this mitigating factor is only available to a natural person;

(2) a significant cause of the late filing is commission staff error, including

(A) furnishing reporting materials too late for filing on or before the due date;

(B) giving incorrect oral or written information to a person required to submit a statement or other filing; **or**

(C) failing to deliver required notices when due; [OR

(D) CONFIRMED TECHNICAL PROBLEMS WITH OPERATION OF COMMISSION EQUIPMENT, INCLUDING THE ELECTRONIC FILING PROGRAM;]

(3) [A MUNICIPAL CLERK OR THE CLERK'S DESIGNEE FAILED TO NOTIFY A MUNICIPAL OFFICIAL, AS PROVIDED IN 2 AAC 50.850(f), THAT THE MUNICIPAL OFFICIAL'S FILING IS DELINQUENT OR INCOMPLETE;

(4)] a late or erroneous report included only administrative costs [IN A GROUP REPORT];

(4) [(5)] a late or incomplete report did not cause significant harm to the public, and aggravating factors under (d) of this section do not exist; for purposes of this paragraph, a late or incomplete report did not cause significant harm to the public if

(A) the dollar amount missing from a form or disclosure is \$100 or less;

(B) the dollar amount for the information missing from a form or disclosure is more than \$100 but no more than \$1,000, and the **person required to file**

[FILER] self-reported the error; **for purposes of this subparagraph, the error is self-reported if the person notified the staff of the error, but filing the late or missing information without notifying the staff does not constitute self-reporting;** or

(C) the missing or incomplete information is readily available to the public through another forum;

(5) [(6)] the civil penalty assessment is significantly out of proportion to the degree of harm to the public for not having the information; for purposes of this paragraph, absent the presence of aggravating factors in (d) of this section, an assessed penalty is significantly out of proportion if it exceeds the value of the transactions that were not reported or were reported late, or, in the case of seven-day or 24-hour reports, exceeds twice the value of the transactions that were not reported or were reported late; or

(6) [(7)] a unique circumstance justifies reducing or waiving the penalty.

(c) The commission will not accept any of the following as mitigating factors to reduce the amount of a penalty:

(1) relying on another person or mailroom to mail, postmark, or submit the statement on or before a due date;

(2) forgetting to file;

(3) being a volunteer;

(4) having no change in reportable information from previous filed statements;

(5) relying on the responsible person's staff to remind the person of the filing deadline **or to complete or file the report;**

(6) being too busy to file;

(7) [EXPERIENCING STAFF TURNOVER, UNLESS THE TURNOVER CREATED TURMOIL SERIOUS ENOUGH TO JUSTIFY A FINDING OF UNIQUE CIRCUMSTANCES;

(8)] absence caused by travel, unless the travel was unplanned or unavoidable, including travel for a personal emergency, or weather-related travel problems.

(d) A civil penalty determined under 2 AAC 50.855 may be increased to the maximum amount allowed under the applicable statute if a person required to file a statement or other filing has

(1) failed to substantially comply with financial disclosure requirements by omitting a significant source of income, interest in real property, business interest, loan, trust, or other substantial financial interest; in this paragraph, "substantial financial interest" means an interest with a value greater than \$1,000; or

(2) a poor reporting history; indicators of a poor reporting history include any of the following:

(A) more than one late filing in the immediately preceding five years;

(B) evidence suggesting deliberate non-reporting;

(C) failure to cooperate with the staff;

(D) a violation of any provision of AS 15.13, AS 24.45, AS 24.60.200 -

24.60.260, AS 39.50, or this chapter in the preceding five years. (Eff. 12/22/2011,

Register 200; am ___/___/___, Register ___)

Authority:	AS 15.13.030	AS 24.45.141	AS 39.50.050
	AS 15.13.390	AS 24.60.220	AS 39.50.135

Register ____, _____ 2017

ADMINISTRATION

AS 24.45.021

AS 24.60.240