

Materials in **bold and underlined** are an additions
Materials in [ALL CAPS AND IN BRACKETTS] are deletions

2 AAC 50.855 is amended to read:

2 AAC 50.855. Penalty assessment procedure. (a) If, no later than 30 days after the due date, a person responsible for filing a registration, statement, or report required under AS 15.13, AS 24.45, AS 24.60.200 - 24.60.260, or AS 39.50 that is late or incomplete corrects the deficiency, the commission staff shall assess a penalty. The amount of the penalty must be determined by multiplying the applicable daily maximum penalty set out in AS 15.13.390, AS 24.45.141, AS 24.60.240, or AS 39.50.135 by the number of days the registration, statement, or report was late or incomplete. The number of late or incomplete days includes each day following the due date of the registration, statement, or report through the day a registration, statement, or report that substantially complies with the filing requirement is mailed or delivered to the commission.

(1) For late filing of a registration, statement, or report required under AS 39.50 and AS 24.60.200 – 24.60.260, the commission staff shall document the violation and

(A) waive the penalty assessed under (a) of this section 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 board or commission staff; 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 prior to the due date to 60 days after the due date;

(B) reduce the penalty to 25% of the maximum penalty under AS 39.50.135 or AS 24.60.240 if the filer is a first-time filer and the late filing is a

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candidate disclosure statement; however, the filer may submit an affidavit stating facts in mitigation, which the staff may apply to further reduce the penalty;

(C) reduce the penalty to 50% of the maximum penalty if

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

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

(D) reduce the penalty to 75% of the maximum penalty for all other late filings under (a)(1) of this section.

(2) For late filings required under AS 15.13, the commission staff shall

(A) not assess the penalty assessed under (a) of this section if

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

(ii) there were multiple or multi-day technical issues with the electronic filing system, including MyAlaska access, or a day-long problem on the filing due date, that prevented the filer from filing in a timely fashion;

(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 prior to the due date to 60 days after the due date, but the violation will be documented;

(iv) for a statement of contributions (form 15-5), the reporting error was the filer's first error, and the error was reported by the recipient of the contribution within 30 days after the due date; or

(v) for an independent expenditure report (form 15-6), the reporting error was the filer's first error, and the filing is not a form 15-6 report required to be filed within 24 hours;

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(B) reduce the penalty to 25% of the maximum penalty if

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

(ii) the filer self-reports the missing information to staff and discloses the missing information to the public within seven days. The penalty will be tolled as of the date the filer self-reported the error; the filer must notify staff of the error or late filing; filing the late or missing information without notifying staff does not constitute self-reporting;

(C) reduce the penalty to 50% of the maximum penalty if

(i) it is the filer'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 commission staff shall:

(A) not assess a penalty if the missing or incomplete information was readily available to the public through another forum;

(B) reduce the penalty to 50% of the maximum penalty if the missing or incomplete information was not readily available to the public through another forum, but the late or incomplete report is the first alleged violation;

(C) assess the maximum penalty for all other incomplete reports not addressed under (a)(1) or (a)(2) of this section.

(b) Notwithstanding (a) of this section, the staff shall

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(1) **not assess a penalty if a the amount of the deficiency is less than \$100 and is promptly corrected; or** [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

(2) **for reports required under AS 15.13.110(a)(2) or (b), 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 staff has received no evidence of an aggravating factor under 2 AAC 50.865(d); under such circumstances, 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.** [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).]

(c) When the staff assesses a penalty in compliance with (a) of this section, the staff shall, no later than 14 working days after receiving the materials that correct the deficiency, mail or deliver a written penalty assessment to the person responsible for filing the registration,

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statement, or report. The written penalty assessment must show the calculation of the penalty, and must state that the person responsible may appeal the penalty assessment as provided in 2 AAC 50.831 and 2 AAC 50.860.

(d) If the commission does not receive a required registration, statement, or report, or material information needed to complete a registration, statement, or report, or receives it later than 30 days after the due date, the staff shall assess a penalty as set out in this section. The written penalty assessment must also inform the person responsible for the registration, statement, or report that the amount of the penalty will continue to increase each day until the registration, statement, or report, and all material information required in the registration, statement, or report, is mailed or delivered to the commission. The staff shall also inform the person responsible for the registration, statement, or report that the staff will initiate action to enforce the remedies described in the applicable provisions of 2 AAC 50.850. (Eff. 12/22/2011, Register 200; am 1/16/2015, Register 213; am __/__/__, Register __)

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

2 AAC 50.860 is amended to read:

2 AAC 50.860. Procedure for disputing penalty. (a) A person who receives a penalty assessment under 2 AAC 50.855 may appeal the assessment to the commission by submitting a written statement

(1) explaining any reason the person disputes any fact relevant to the assessment;

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(2) including an affidavit that states facts to support any mitigating factor listed in 2 AAC 50.865 that is applicable to that person; and

(3) showing that any aggravating factor listed in 2 AAC 50.865(d) does not apply to that person.

(b) If, after applying the mitigation criteria in 2 AAC 50.865, the assessed penalty amounts to \$100 or less and the filer pays the assessed penalty within 30 days of being notified of the penalty, the matter will not be heard by the commission.

(c) [(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) - (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 the person who appealed does not agree to the revised penalty, staff shall provide a written recommendation to the commission and serve a copy on the person who appealed.

(d) [(c)] The commission will hear a penalty assessment appeal in compliance with the procedure for administrative appeals set out in 2 AAC 50.831. After considering the statement of reasons, the affidavit, and other relevant evidence, the commission may

(1) affirm the civil penalty if the commission determines that the penalty is computed in compliance with 2 AAC 50.855 and justified either because

(A) no mitigating factors have been shown; or

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(B) aggravating factors under 2 AAC 50.865(d) require imposition of the maximum penalties allowed under the relevant statutes;

(2) reduce or waive the civil penalty if the commission finds that mitigating factors justify a reduction in the amount of the assessed penalty; or

(3) reject the penalty assessment, or remand to the staff if the commission finds the penalty assessment is based on incomplete or inaccurate facts or application of the law.

(e) [(d)] If the commission determines to impose part or all of a civil penalty assessed under 2 AAC 50.855, the penalty is due no later than 30 days after the date the notice of the commission's decision is mailed or delivered.

(f) [(e)] A decision of the commission to impose any civil penalty may be appealed to the superior court as provided in AS 44.62.560 and Rules 601 - 612 of the Alaska Rules of Appellate Procedure. The commission will stay an obligation to pay the penalty as provided in (d) of this section when the commission decision is appealed to the superior court, but the stay terminates if the superior court affirms the commission's decision or if the appeal is withdrawn. A penalty imposed by the commission must be paid within 30 days after the superior court affirms the commission's decision or if the appeal is withdrawn. (Eff. 12/22/2011, Register 200; am ___/___/___, Register ___)

Authority: AS 15.13.030 AS 24.45.021 AS 24.60.220
AS 39.50.050

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

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(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) 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** [NO ACTIVITY SHOWN ON THE OVERDUE REPORT];

(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, **myAlaska access**, 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 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

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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 THE 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;]

(3) [(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 filer self-reported the error; **for purposes of this subparagraph, "self-reported" means that the filer**

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notified staff of the error, but filing the late or missing information without

notifying 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 subparagraph, 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 7-day or 24-hour reports, exceeds twice the value of the transactions that were not reported or 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;

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

(7) [(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 staff; [.]

(D) a violation of any provision in AS 15.13, AS 39.50, or AS 24.60.200

– 24.60.260 or related regulations in the preceding five years. (Eff. 12/22/2011, Register

200; am __/__/__, Register __)

Authority:	AS 15.13.030	AS 15.13.390	AS 24.45.021
	AS 24.45.141	AS 24.60.220	AS 24.60.240
	AS 39.50.050	AS 39.50.135	

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