

Enforcement (Director) to support issuance of a Preliminary Notice of Violation (PNOV), a Final Notice of Violation (FNOV), and assessment of civil penalties. 10 CFR 820.24–820.25.

c. When an employee files a complaint with DOL under sec. 211 and DOL collects information relating to allegations of DOE contractor retaliation against a contractor employee for actions taken concerning nuclear safety, the Director may use this information as a basis for initiating enforcement action by issuing a PNOV. 10 CFR 820.24. DOE may consider information collected in the DOL proceedings to determine whether the retaliation may be related to a contractor employee's action concerning a DOE nuclear activity.

d. The Director may also use DOL information to support the determination that a contractor has violated or is continuing to violate the nuclear safety requirements against contractor retaliation and to issue civil penalties or other appropriate remedy in a FNOV. 10 CFR 820.25.

e. The Director will have discretion to give appropriate weight to information collected in DOL and OHA investigations and proceedings. In deciding whether additional investigation or information is needed, the Director will consider the extent to which the facts in the proceedings have been adjudicated as well as any information presented by the contractor. In general, the Director may initiate an enforcement action without additional investigation or information.

f. Normally, the Director will await the completion of a Part 708 proceeding before OHA or a sec. 211 proceeding at DOL before deciding whether to take any action, including an investigation under Part 820 with respect to alleged retaliation. A Part 708 or sec. 211 proceeding would be considered completed when there is either a final decision or a settlement of the retaliation complaint, or no additional administrative action is available.

g. DOE encourages its contractors to cooperate in resolving whistleblower complaints raised by contractor employees in a prompt and equitable manner. Accordingly, in deciding whether to initiate an enforcement action, the Director will take into account the extent to which a contractor cooperated in a Part 708 or sec. 211 proceeding, and, in particular, whether the contractor resolved the matter promptly without the need for an adjudication hearing.

h. In considering whether to initiate an enforcement action and, if so, what remedy is appropriate, the Director will also consider the egregiousness of the particular case including the level of management involved in the alleged retaliation and the specificity of the acts of retaliation.

i. In egregious cases, the Director has the discretion to proceed with an enforcement action, including an investigation with respect to alleged retaliation irrespective of the completion status of the Part 708 or sec. 211 proceeding. Egregious cases would include: (1) Cases involving credible allegations for willful or intentional violations of DOE rules, regulations, orders or Federal statutes which, if proven, would

warrant criminal referrals to the U.S. Department of Justice for prosecutorial review; and (2) cases where an alleged retaliation suggests widespread, high-level managerial involvement and raises significant public health and safety concerns.

j. When the Director undertakes an investigation of an allegation of DOE contractor retaliation against an employee under Part 820, the Director will apprise persons interviewed and interested parties that the investigative activity is being taken pursuant to the nuclear safety procedures of Part 820 and not pursuant to the procedures of Part 708.

k. At any time, the Director may begin an investigation of a noncompliance of the substantive nuclear safety rules based on the underlying nuclear safety concerns raised by the employee regardless of the status of completion of any related whistleblower retaliation proceedings. The nuclear safety rules include: 10 CFR part 830 (nuclear safety management); 10 CFR part 835 (occupational radiation protection); and 10 CFR part 820.11 (information accuracy requirements).

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## FEDERAL ELECTION COMMISSION

### 11 CFR Part 108

[Notice 2000–4]

#### Filing Copies of Campaign Finance Reports and Statements With State Officers

**AGENCY:** Federal Election Commission.

**ACTION:** Final rules; transmittal of regulations to Congress.

**SUMMARY:** The Federal Election Commission is revising its regulations that govern filing of campaign finance reports with State officers and the duties of State officers concerning the reports. The revisions implement amendments to the Federal Election Campaign Act that exempt States meeting certain criteria from these requirements.

**DATES:** Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694–1650 or toll free (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Federal Election Campaign Act (“FECA” or the “Act”), 2 U.S.C. 431 *et seq.*, at 2 U.S.C. 439(a) requires all persons who

file campaign finance reports and statements under the Act to file copies of these documents with the Secretary of State, or the officer charged by state law with maintaining state election campaign reports, in each State where contributions were received or expenditures made on behalf of a Federal candidate or candidates appearing on that State's ballot. Under 2 U.S.C. 439(b), these officers must receive and maintain the documents for two years after their date of receipt, and must make them available for public inspection and copying during regular business hours.

In 1995, Congress enacted 2 U.S.C. 439(c), which exempts from these receipt and maintenance requirements any State that the Commission determines to have in place a system that permits electronic access to and duplication of reports and statements that are filed with the Commission. Pub. L. 104–79, 109 Stat. 791, section 2. If the Commission does not make this determination, the State remains obligated to maintain copies of the statements and disclosure reports that have been filed with it. These new rules revise the Commission's regulations at 11 CFR Part 108 to reflect this statutory change.

In September 1997, the Commission published a Notice of Proposed Rulemaking (“NPRM”) that proposed a number of revisions to the Commission's recordkeeping and reporting requirements, including those addressed in this document, and corresponding changes to the relevant disclosure forms. 62 FR 50708 (Sept. 26, 1997). The Commission received three written comments in response to the NPRM, two of which addressed the state filing issues: one from the Secretary of State of South Dakota, and one from David S. Addington, Esq. In addition, the Internal Revenue Service submitted a comment in which it said that the proposed rules were not inconsistent with their regulations or the Internal Revenue Code. On February 11, 1998, the Commission held a public hearing on the NPRM at which one witness testified but did not discuss waivers of state filing requirements. One further comment was submitted in response to the announcement of the hearing.

The Commission has decided to proceed separately with this portion of the rulemaking, both because these issues are more straightforward than those addressed in other parts of the NPRM, and because the Commission is in the process of granting waivers pursuant to section 439(c) to States that meet certain requirements.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on March 17, 2000.

### Explanation and Justification

#### Part 108—Filing Copies of Reports and Statements with State Officers

##### Section 108.1 Filing Requirements

Section 11 CFR 108.1, which sets out the general filing requirements for statements and reports, is being divided into two paragraphs. Paragraph (a) generally follows the previous rule setting out the requirement for filing with the appropriate State offices, and references the new statutory exception. New paragraph (b) tracks the language of 2 U.S.C. 439(c), stating that the filing requirements and duties of State officers under 11 CFR part 108 shall not apply to a State if the Commission has determined that the State maintains a system that can electronically receive and duplicate reports and statements that are filed with the Commission. In addition, the Commission is exempting from these requirements reports and statements that are not filed with the Commission, but which can nevertheless be accessed electronically from the Commission's site on the World Wide Web, [www.fec.gov](http://www.fec.gov).

On October 14, 1999, the Commission approved a State filing waiver program to implement this provision of the Act. In order to qualify for the waiver, a State must certify that it has a system in place that ensures public Internet access to the FEC's web site, where visitors can view and copy reports and statements. The system must include at least one computer terminal that can electronically access the Commission's web page, with at least one printer, connected either directly or through a network. The State must also certify that it will, to the greatest extent possible, allow anyone requesting Federal campaign finance data to use the computer terminal at any time during regular business hours.

Each State that wishes to obtain a waiver of the section 439 receipt and maintenance requirements must submit a written certification to the Commission that describes its system for electronically receiving and duplicating reports from the Commission, and the extent to which that system is available to the public. If

the system satisfies the above criteria, the Commission will so notify the State. It will also publish this information in the *FEC Record*, and place it on the Commission's web site. If a State fails to submit a such a certification, the Commission will be unable to make the requisite determination, and the State will remain subject to the section 439(a) and (b) receipt and maintenance requirements. A number of States have already obtained waivers through this process, and further requests are pending.

Both commenters who addressed this issue objected to this portion of the proposed rule. They specifically questioned the NPRM's proposal to continue the obligation of a State to maintain duplicate reports if the Commission does not make the determination described above and, thus, the State does not meet the statutory requirements to be released from these duties. These commenters asserted that the provision is unconstitutional because the Federal Government cannot impose duties on State officers to execute Federal laws. *Printz v. United States*, 117 S. Ct. 2365, 2384 (1997) (invalidating the Brady Handgun Violence Prevention Act's requirement at 18 U.S.C. 922(s)(2) that the States' chief law enforcement officers conduct background checks on prospective handgun purchasers as an unconstitutional obligation on State officers to execute Federal laws); see also *United States v. New York*, 505 U.S. 144 (1992) (invalidating provisions of the Low-Level Radioactive Waste Policy Act that required States to accept ownership of waste or to regulate it according to congressional instructions). They suggested that the Commission change the proposed rule to request, but not require, State offices to discharge the filing and maintenance duties set out in the statute and in the NPRM.

While the Supreme Court has invalidated a number of Federal statutes imposing burdens on the States, the Commission believes that 2 U.S.C. 439 would pass constitutional muster under Congress' authority to regulate the time, place and manner of holding Federal elections. U.S. Const., Art. I, sec. 4, cl. 1. See *Foster v. Love*, 118 S.Ct. 464 (1997) (holding Louisiana's open primary system to violate 2 U.S.C. 1, 7 (which imposes a uniform national election day), which was enacted pursuant to the Elections Clause); *Smiley v. Holm*, 285 U.S. 335, 366–67 (1932) (Elections Clause encompasses congressional power to prevent "corrupt practices"); *Ex Parte Siebold*, 100 U.S. 371, 392 (1879) ("(T)he (Elections Clause) contemplates such co-operation

(between the States and the Federal government) whenever Congress deems it expedient to alter or add to existing regulations of the State" (emphasis added)); *Condon v. Reno*, 913 F.Supp. 946 (D. S.C. 1995) (holding as valid under the Elections Clause imposition upon States of National Voter Registration Act).

As explained above, the Commission is not planning to force unwilling States to seek exemptions from the records receipt and maintenance requirements. Rather, the Commission is granting waivers from these requirements only to those States that request them. Moreover, the Commission has actively worked with the States to insure that the procedures to obtain a waiver are reasonable and not unduly burdensome.

The Commission also considered whether the new regulations would trigger the requirements of the Unfunded Mandates Reform Act of 1995, Pub. L. 104–4, 109 Stat. 48. See 2 U.S.C. 658(1). That Act prohibits federal agencies from imposing costly new burdens on State governments unless certain procedures are followed. These include consulting State and local governments that would be affected by the new rules, and checking to determine whether Federal funds might be available to help with the cost of their implementation.

The Commission believes the new rules do not trigger that Act, since the cost of implementation should fall far short of the \$100,000,000 figure cited as the threshold for coverage. See 2 U.S.C. 1532(a). Also, as part of the waiver program, the Commission is offering to provide participating offices with free computer equipment and free Internet access for the remainder of the 2000 election cycle, provided that the State agrees to provide the access effective March 1, 2001, at its own expense. The Commission is also providing staff training and assistance with state efforts to publicize this program, to those States that request this.

The final rules at part 108 are also consistent with Executive Order ("E.O.") 13132, "Federalism," which was issued on August 4, 1999 and took effect on November 2, 1999. 64 FR 43255 (Aug. 10, 1999). The Commission is not subject to this Executive Order, which at section 1(c) incorporates the definition of agency found in the Paperwork Reduction Act at 44 U.S.C. 3502(1). That definition specifically excludes the Commission, at 44 U.S.C. 3502(1)(B). However, the procedures the Commission has adopted to implement the waiver program are consistent with the Executive Order's emphasis on cooperation between the States and the

Federal Government in addressing matters of mutual concern.

Please note that certain candidates and political committees do not file their reports directly with the Commission. Candidates for nomination for election or election to the office of United States Senator; authorized committees supporting such candidates; other political committees that support only Senate candidates; and the National Republican Senatorial Committee ("NRSC") and the Democratic Senatorial Campaign Committees ("DSCC") file their reports with the Secretary of the Senate, who in turn provides copies to the Commission. 2 U.S.C. 432(g)(1); 11 CFR 105.2.

At its current level of technology, the Secretary of the Senate is unable to provide to the Commission copies of reports from Senate candidates and most unauthorized committees supporting Senate candidates in a form that can be reproduced on the Internet. Thus, these reports cannot currently be accessed electronically by State offices. Therefore, for the time being, copies of these reports must continue to be filed with the appropriate State office(s), and those offices must continue to maintain them and make them available to the public.

However, the Commission now receives copies of reports filed by the NRSC and the DSCC in a format that can be reproduced over the Internet, so these reports are available on the Commission's web site. The Commission anticipates that, over time, reports filed by Senate candidates and other committees that support them will also become available on the web site. As this occurs, and as more States are certified to be eligible for a waiver, the responsibility of State offices to receive and maintain paper copies of these reports will diminish.

**Section 108.2 Filing Copies of Reports and Statements in Connection with the Campaign of any Candidate Seeking Nomination for Election to the Office of President or Vice-President**

The Commission is adding a cross reference to new 11 CFR 108.1(b), the records receipt and maintenance exception, to the first sentence of this section.

**Section 108.3 Filing Copies of Reports and Statements in Connection With the Campaign of any Congressional Candidate**

This section has been restructured to reflect the potential exemption. New paragraph (a) addresses Senate candidates, their authorized committees, committees that support

only Senate candidates, and the NRSC and the DSCC, who must continue to file duplicate copies of reports with State officers, unless such reports are available on the Commission's web site, and the State has received a waiver pursuant to these rules. Paragraph (b) notes that other candidates and committees need not file duplicate reports in those States that have obtained a waiver pursuant to 2 U.S.C. 439(c). New paragraph (c) retains the language in the current rule stating that, for committees other than authorized committees, where reports cover activity in more than one State, the committees need file, and State offices retain, only those portions of reports that are applicable to candidates seeking election in that State. Please note that this applies only to States that have not obtained a waiver.

**Section 108.4 Filing Copies of Reports by Committees Other Than Principal Campaign Committees**

The Commission has added a cross reference to new paragraph 11 CFR 108.1(b) to this section, which requires unauthorized committees that file reports and statements in connection with Presidential elections to file copies with the State officer(s) of the State(s) in which both the recipient and the contributing committees have their headquarters. The Commission has also slightly reworded this section for clarity.

**Section 108.6 Duties of State Officers**

The Commission has added a cross reference to new paragraph 11 CFR 108.1(b) to this section, which provides guidance to State officers on how to organize, preserve and make available for public copying and inspection the reports and statements filed with those offices. It is also revising paragraph (b) to provide that paper or microfilm copies of documents that are available electronically from the Commission need not be kept for two years. This is consistent with the language at 2 U.S.C. 439(b)(2), which states that covered documents must be kept for two years "either in original filed form or in facsimile copy by microfilm or otherwise" (emphasis added). The Commission interprets this to cover reports that it makes available through its web site, and its practice is to make electronic copies available for more than two years.

The Commission is also adding a new paragraph (e) to this section, which allows States that obtain waivers to charge reasonable fees to those who access and copy campaign finance documents electronically. The new

paragraph is consistent with paragraph (c) of this section, which allows States to charge reasonable fees to those making copies of paper or microfilm documents.

The Commission is also correcting the reference in the introductory material to read "108.6(a) through (e)".

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

The attached rules will not have a significant economic impact on a substantial number of small entities. The new rules conform to statutory amendments, and also reduce the reporting burden of affected entities. Therefore, these rules will not have a significant economic effect on a substantial number of small entities.

**List of Subjects in 11 CFR Part 108**

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, Subchapter A of Chapter I, Title 11 of the *Code of Federal Regulations* is amended to read as follows:

**PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)**

1. The authority citation for Part 108 continues to read as follows:

**Authority:** 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

2. Section 108.1 is amended by redesignating the text as paragraph (a), revising the first sentence of newly redesignated paragraph (a), and adding new paragraph (b) to read as follows:

**§ 108.1 Filing Requirements (2 U.S.C. 439(a)(1)).**

(a) Except as provided in paragraph (b) of this section, a copy of each report and statement required to be filed by any person under the Act shall be filed either with the Secretary of State of the appropriate State or with the State officer who is charged by State law with maintaining state election campaign reports. \* \* \*

(b) The filing requirements and duties of State officers under this part 108 shall not apply to a State if the Commission has determined that the State maintains a system that can electronically receive and duplicate reports and statements filed with the Commission. Once a State has obtained a waiver pursuant to this paragraph, the waiver shall apply to all reports that can be electronically accessed and duplicated from the Commission, regardless of whether the

report or statement was originally filed with the Commission.

3. Section 108.2 is amended by revising the first sentence to read as follows:

**§ 108.2 Filing copies of reports and statements in connection with the campaign of any candidate seeking nomination for election to the Office of President or Vice-President (2 U.S.C. 439(a)(2)).**

Except as provided in § 108.1(b), a copy of each report and statement required to be filed under the Act (including 11 CFR part 104) by a Presidential or Vice Presidential candidate's principal campaign committee, or under 11 CFR 104.4 or part 109 by any other person making independent expenditures, in connection with a candidate seeking nomination for election to the office of President or Vice-President, shall be filed with the State officer of each State in which an expenditure is made in connection with the campaign of a candidate seeking nomination for election to the office of President or Vice-President. \* \* \*

4. Section 108.3 is revised to read as follows:

**§ 108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidate (2 U.S.C. 439(a)(2)).**

(a) Except as provided in § 108.1(b), a copy of each report and statement required to be filed under 11 CFR part 104 by candidates, and the authorized committees of candidates, for nomination for election or election to the office of Senator; by other committees that support only such candidates; and by the National Republican Senatorial Committee and the Democratic Senatorial Campaign Committees shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(b) Except as provided in § 108.1(b), a copy of each report and statement required to be filed under 11 CFR part 104 by candidates, and authorized committees of candidates, for nomination for election or election to the office of Representative in, Delegate or Resident Commissioner to the Congress, or by unauthorized committees, or by any other person under 11 CFR part 109, in connection with these campaigns shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign.

(c) Unauthorized committees that file reports pursuant to paragraph (b) of this

section are required to file, and the Secretary of State is required to retain, only that portion of the report applicable to candidates seeking election in that State.

5. Section 108.4 is revised to read as follows:

**§ 108.4 Filing copies of reports by committees other than principal campaign committees (2 U.S.C. 439(a)(2)).**

Except as provided in § 108.1(b), any unauthorized committee that makes contributions in connection with a Presidential election and that is required to file a report(s) and statement(s) under the Act shall file a copy of such report(s) and statement(s) with the State officer of the State in which both the recipient and contributing committees have their headquarters.

6. Section 108.6 is amended by revising the introductory text and paragraph (b), by removing the period and adding “; and” at the end of paragraph (d), and by adding new paragraph (e), to read as follows:

**§ 108.6 Duties of State officers (2 U.S.C. 439(b)).**

Except as provided in § 108.1(b), the Secretary of State, or the equivalent State officer, shall carry out the duties set forth in paragraphs (a) through (e) of this section:

\* \* \* \* \*

(b) Preserve such reports and statements (either in original form or in facsimile copy by microfilm or otherwise) filed under the Act for a period of 2 years from the date of receipt, except that reports and statements that can be accessed and duplicated electronically from the Commission need not be so preserved;

\* \* \* \* \*

(d) \* \* \* ; and

(e) If the State has received a waiver of these filing requirements pursuant to § 108.1(b), allow access to and duplication of reports and statements covered by that waiver, except that such access and duplication shall be at the expense of the person making the request and at a reasonable fee.

Dated: March 17, 2000.

**Darryl R. Wold,**

*Chairman, Federal Election Commission.*

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**NATIONAL CREDIT UNION ADMINISTRATION**

**12 CFR Part 701**

**Organization and Operations of Federal Credit Unions**

**AGENCY:** National Credit Union Administration (NCUA).

**ACTION:** Final rule.

**SUMMARY:** NCUA is amending its lending regulation to permit federal credit unions to advance money to members to cover account deficits without having a credit application from the member on file if the credit union has a written overdraft policy. The change will enable credit unions to offer this service without subjecting credit unions to undue risk.

**DATES:** This rule is effective July 1, 2000.

**ADDRESSES:** National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428.

**FOR FURTHER INFORMATION CONTACT:** Michael J. McKenna, Senior Staff Attorney, or Regina M. Metz, Staff Attorney, in the Division of Operations, Office of General Counsel, at the above address or telephone: (703) 518-6540.

**SUPPLEMENTARY INFORMATION:**

**A. Background**

The Federal Credit Union Act does not specifically address a federal credit union's (FCU's) authority to pay or honor a share draft that will result in an overdrawn account. NCUA's longstanding position has been that an overdraft, as a financial accommodation to a member, constitutes a loan or line of credit to a member.

A number of FCUs and trade associations contended that FCUs are at a competitive disadvantage because they are unable to cover a member's overdraft absent a prearranged, written agreement for the extension of credit. The NCUA Board believed this argument had merit although there might be some safety and soundness concerns with extending credit to a member without a written lending agreement. Therefore, on September 16, 1999, the NCUA Board issued a proposed amendment to its general lending regulation with a sixty-day comment period (64 FR 52694 September 30, 1999).

The proposed amendment to section 701.21(c)(3) provided that a credit union could advance money to a member to cover his or her account deficit without having a credit application on file if the credit union had a written overdraft policy. Specifically, the NCUA Board proposed that a credit union's written