

**Executive Order 12866 and Regulatory Flexibility Act**

This rule has been reviewed under Executive Order 12866. For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are amending the regulations by adding Austria to the list of regions where BSE exists because the disease has been detected in a native-born animal in that region. Austria has been listed among the regions that present an undue risk of introducing BSE into the United States. Regardless of which of the two lists a region is on, the same restrictions apply to the importation of ruminants and meat, meat products, and most other products and byproducts of ruminants that have been in the region. Therefore, this action, which is necessary in order to update the disease status of Austria regarding BSE, will not result in any change in the restrictions that apply to the importation of ruminants and meat, meat products, and certain other products and byproducts of ruminants that have been in Austria.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

**Executive Order 12988**

This rule has been reviewed under Executive Order 12988, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has retroactive effect to December 13, 2001; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

**Paperwork Reduction Act**

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*).

**List of Subjects in 9 CFR Part 94**

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, we are amending 9 CFR part 94 as follows:

**PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), EXOTIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS**

1. The authority citation for part 94 continues to read as follows:

**Authority:** 7 U.S.C. 450, 7711, 7712, 7713, 7714, 7751, and 7754; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331 and 4332; 7 CFR 2.22, 2.80, and 371.4.

**§ 94.18 [Amended]**

2. Section 94.18 is amended as follows:

- a. In paragraph (a)(1), by adding, in alphabetical order, the word "Austria,".
- b. In paragraph (a)(2), by removing the word "Austria,".

Done in Washington, DC, this 14th day of March, 2002.

**Bobby R. Acord,**

*Administrator, Animal and Plant Health Inspection Service.*

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**FEDERAL ELECTION COMMISSION****11 CFR Parts 100, 104, and 109**

[Notice 2002-3]

**Independent Expenditure Reporting**

**AGENCY:** Federal Election Commission.

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

**SUMMARY:** The Federal Election Commission is revising its regulations to implement statutory changes to the deadlines for filing certain reports of independent expenditures. Under the new law, reports of last minute independent expenditures ("24-hour reports") must be actually received by the Commission or the Secretary of the Senate's office within 24 hours of the time the independent expenditure was made. To assist those who must meet this new reporting deadline, the revised rules allow reports of last minute independent expenditures to be filed by facsimile machine or electronic mail, unless the filer participates in the Commission's electronic filing program. Electronic filers must continue to file all reports of independent expenditures (24-hour reports as well as regularly scheduled reports) using the Commission's electronic filing system. Further information is provided in the supplementary information that follows.

**DATES:** Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days. 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. Cheryl Fowle, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is issuing revised regulations at 11 CFR 100.19, 104.4, 104.5, 104.14, 104.18, 109.1 and 109.2. These revised rules implement Public Law 106-346 (Department of Transportation and Related Agencies Appropriations Act, 2001, 114 Stat. 1356 (2000)), which amended the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, ("the Act" or "FECA"). Paragraphs (b) and (c) of 2 U.S.C. 434 require political committees and other persons making independent expenditures to file reports or statements if their independent expenditures exceed \$250. In addition, if independent expenditures of \$1,000 or more are made less than twenty (20) days but more than twenty-four (24) hours before the day of an election, an additional statement must be filed within 24 hours. Public Law 106-346 required, *inter alia*, the Commission to issue rules requiring that reports of independent expenditures made less than twenty (20) days but more than twenty-four (24) hours before an election ("24-hour reports") be *received* by the Commission or the Secretary of the Senate, as appropriate,<sup>1</sup> within 24 hours of the time the independent expenditure was made. The statutory change permits those who must file 24-hour reports to do so using facsimile machines or electronic mail, except for those required to file electronically (*see* 11 CFR 104.18). In addition to their 24-hour reports, persons other than political committees may file by fax or e-mail other reports of independent expenditures in accordance with the regular filing schedule (*see* 11 CFR 104.5). Public Law 106-346 also requires the Commission to provide methods of verification of documents (other than requiring a signature on the document) for all purposes, including submission under penalty of perjury. These new filing methods are intended

<sup>1</sup> The Secretary of the United States Senate Office of Public Records is the proper recipient of reports of independent expenditures that either support or oppose only candidates for the United States Senate. 11 CFR 104.4(c)(2).

to speed up disclosure and to provide political committees and other filers with more flexibility in choosing methods of compliance with reporting requirements. The new law requires these methods to be in place for elections occurring after January 1, 2001, subject to regulations to be promulgated by the Commission.

In addition to the amendments regarding independent expenditures, the new law also requires the Commission to amend its regulations to exclude from the definition of "contribution" loans that candidates receive from brokerage accounts, lines of credit, or other credit instruments as long as the loans were made under commercially reasonable terms and were from a source that provides such loans in the normal course of business. That topic is being addressed in a separate rulemaking. See Notice of Proposed Rulemaking, 65 **Federal Register** 38576 (Wednesday, July 25, 2001).

Before final promulgation of any rules or regulations to carry out the provisions of Title 2 of the United States Code, the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty legislative day review period. 2 U.S.C. 438(d). These rules on independent expenditure reporting were transmitted to Congress on March 15, 2002.

#### Explanation and Justification

The Commission published a Notice of Proposed Rulemaking ("NPRM") in the **Federal Register** on May 9, 2001, 65 FR 23628 (May 9, 2001). The NPRM contained proposed rules at 11 CFR 100.19, 104.4, 104.5, 104.15, 109.1 and 109.2 regarding, *inter alia*, when 24-hour reports are considered filed, the filing of 24-hour reports by facsimile machine or electronic mail, and a definition of when an independent expenditure is made. Additionally, the NPRM explicitly recognized that authorized committees may file reports of last-minute contributions (48-hour notices) using facsimile machines or the Commission's web site.

The comment period ended on June 8, 2001. The Commission received one written comment from the James Madison Center for Free Speech ("Madison Center").

#### *Section 100.19 File, filed or filing (2 U.S.C. 434(a))*

The Commission's regulations at 11 CFR 100.19 define *file*, *filed*, and *filing*. The introductory text of this section states that a document is considered filed if it is: (a) Delivered to the

appropriate filing office of the appropriate office, (b) sent by registered or certified mail and postmarked by midnight of the prescribed filing date—except for pre-election reports, or (c) electronically filed, and received and validated by the Commission's electronic filing system on or before 11:59 p.m. eastern time on the prescribed filing date. For clarification, the Commission has added a definition of "document" which mirrors the definition in the electronic filing regulations (11 CFR 104.18). A document is any report, statement, notice or designation required by the Act to be filed with the Commission or the Secretary of the Senate.

Paragraph (a) of this section states that a document is timely filed upon delivery to the Commission or Secretary of the Senate, as appropriate, by the close of the prescribed filing date. As explained below, revised paragraph (a) clarifies that the definition of "timely filed" is different for paper filers and electronic filers.

Under paragraph (b) of section 100.19 of the previous regulations, 24-hour reports were considered timely filed if they were deposited at a Post Office and were postmarked for certified or registered mail within 24 hours of the time the independent expenditure was made. Under Public Law 106-346 and the revised regulations at paragraph (b), 24-hour reports will only be considered timely filed if they are received by the Commission or Secretary of the Senate within 24 hours of the time the expenditure was made. Thus, sending 24-hour reports by mail will no longer be a viable option because it is unlikely that these reports will be received by the Commission within 24 hours of the making of the expenditure.

New paragraph (d) of section 100.19 defines "timely filed" with regard to 24-hour reports of independent expenditures. The new paragraph states that such reports are timely filed when they are received by the Commission or the Secretary of the Senate after a disbursement is made, or a debt reportable under 11 CFR 104.11(b) is incurred, for the independent expenditure, but no later than 24 hours from the time the independent expenditure is made. The new paragraph also states that such 24-hour reports may be filed by facsimile machine or electronic mail, in addition to other permissible means of filing (*e.g.*, hand delivery or overnight courier).

New paragraph (e) expressly incorporates the Commission's practice of allowing authorized committees to file their reports of contributions of

\$1,000 or more made less than twenty (20) days but more than forty-eight (48) hours before the day of an election (48-hour reports) using a fax machine or the Commission's web site. This change does not stem from Pub. L. 106-346. Rather, the Commission has for some time allowed authorized committees (if they are not electronic filers) to file these reports by facsimile machine in addition to other permissible filing methods. See Advisory Opinion ("AO") 1988-32. In the fall of 2000, the Commission began allowing all authorized committees who file with the Commission (including electronic filers) to file 48-hour reports on-line through the Commission's web site. Note that 48-hour reports filed with the Secretary of the Senate cannot be filed using the on-line program at the Commission's web site. They can, however be filed by fax to the Secretary of the Senate. New paragraph (e) of 11 CFR 100.19 specifically incorporates those filing methods in the regulations. The Commission received no comments on this section.

Note that the final rules differ from the rule proposed in the NPRM with regard to the web based filing of 48-hour reports. The proposed rule stated that only those who do not file electronically could use the Web based filing system implemented in the autumn of 2000. The Commission currently allows electronic filers to file 48 hour reports using either the electronic filing program or on the Commission's web site. Thus the final rules allow all authorized committees (including those who participate in the electronic filing program) to file their 48-hour notices using the Commission's web site.

#### *Section 104.4 Independent Expenditures by Political Committees (2 U.S.C. 434(c))*

The Commission's regulations at 11 CFR 104.4 set forth the requirements for political committees reporting independent expenditures. Paragraph (b) of this section is being revised in three respects. First, this paragraph is being revised to state that 24-hour reports must be *received* by the appropriate officers (the Commission or Secretary of the Senate) within 24 hours of the time the independent expenditure is made. Such reports were previously timely if they were postmarked as certified or registered mail within 24 hours of the making of the independent expenditure.

Second, to enable filers to meet the new deadline, amended paragraph (b) of section 104.4 permits political committees to file 24-hour reports by facsimile machine or electronic mail, as

long as the filer is not part of the electronic filing program under 11 CFR 104.18.

Third, section 104.4(b) is being modified to make it easier for political committees to certify the independence of the expenditures falling under this paragraph. Schedule E contains a notarized certification under penalty of perjury as to whether the committee's expenditures were "coordinated" with any candidate, authorized committee or agent thereof, and, if the independent expenditures were made by a corporation, that the maker is a qualified nonprofit corporation (see 11 CFR 114.10). No other campaign finance reports filed with the Commission or the Secretary of the Senate need to be notarized.

Public Law 106-346 at § 502(a) requires the Commission to create methods, other than by requiring a signature on the document, of verifying the independent expenditure certification on 24-hour reports for all purposes, including penalties of perjury. Consequently, the revised regulations allow the 24-hour report filer to verify the report using self-verification. This means that Schedule E no longer needs to be notarized. Instead, the political committee must self-verify the document using either a handwritten signature of the treasurer on a paper document or by typing the treasurer's name on e-mailed documents. The Commission intends to make the appropriate conforming amendments to Schedule E after the promulgation of these rules. This will extend self-verification to all reports of independent expenditures, including those made before the 20th day before the election and those that exceed \$250 but are under \$1000.

New paragraphs (b) (1) and (2) of 11 CFR 104.4 set forth two methods for verifying 24-hour reports of independent expenditures. Paper reports (e.g., filed by hand delivery or fax machine), must be verified by the filer's signature under the certification of independence. Reports filed by electronic mail must be verified by the filer typing his or her name under the certification.

As an alternative to self-verification, the NPRM sought comments on retaining the notarization requirement for faxed reports and requiring electronic notarizations for e-mailed reports. Additionally, the Commission sought comments on using digital signatures verified by a "Trusted Third Party" for e-mailed reports. Digital signatures utilize a Public Key Infrastructure. That structure uses Public and Private Keys to encode a

message and to provide a method of positively identifying the sender. The Commission received no comments addressing this topic or offering other possible methods of verification.

The revised regulations remove the notarization requirement for several reasons. First, the statute simply requires verification, not notarization. Second, no other reports filed with the Commission require notarization. Third, the statement that the filer must sign carries the penalty for perjury if falsely made.

The Commission decided not to institute electronic notarization or digital signatures because they, as relatively new technologies, are not widespread enough to ensure access to everyone who might make an independent expenditure. For example, only a handful of states have electronic notarization statutes, effectively leaving citizens of other states without means of verification. Digital signatures must be purchased and, generally, require the purchaser to have a computer on which the private key (a computer generated string of digits) resides. The Commission is concerned that such a requirement would unduly burden the making or reporting of independent expenditures by those who do not have access to these means of verification.

#### *Section 104.5 Filing Dates (2 U.S.C. 434(a)(2))*

Section 104.5 sets forth the required filing dates for each type of political committee and other individuals. The Commission is revising paragraph (f) of this section to follow new paragraph (e) of 11 CFR 100.19 discussed above.

Revised paragraph (g) of 11 CFR 104.5 states that 24-hour reports of independent expenditures must be received by the appropriate officers within 24 hours of the making of the independent expenditure. Previously, 24-hour reports were considered timely filed when they were postmarked to be sent by registered or certified mail. This change conforms to the amendments to 11 CFR 100.19 and 104.4(b) discussed above.

The Commission received no comments on the amendments to this section.

#### *Section 104.14 Formal Requirements Regarding Reports and Statements*

Under 11 CFR 104.14, reports and statements must be signed. Two conforming amendments are being made to paragraph (a) of this section. First, new paragraph (a)(1) provides that reports or statements of independent expenditures filed by facsimile machine or electronic mail under 11 CFR

104.4(b) or 11 CFR 109.2 must be verified in accordance with those sections. Secondly, new paragraph (a)(2) states that reports, designations or statements filed electronically under 11 CFR 104.18 must follow the signature requirements of 11 CFR 104.18(g). The Commission received no comments on this section.

#### *Section 104.18 Electronic Filing of Reports (2 U.S.C. 432(d) and 434(a)(11))*

Under the previous regulations at 11 CFR 104.18(h), those participating in the Commission's electronic filing program (either mandatory or voluntary) were required to file FEC Form 5 or Schedule E electronically accompanied by a paper copy in order to file a notarized document.

Public Law 106-346 does not allow electronic filers to use fax machines or electronic mail to file their independent expenditures reports. In order to afford all electronic filers the ability to comply with the new requirement that 24-hour reports be received by the appropriate office within 24 hours, the Commission is removing Schedule E and FEC Form 5 from the list in paragraph (h) of reports that require a paper follow-up. Instead, the revised rules require those in the electronic filing program to verify all reports of independent expenditures using the same process they use in filing any other report. Paragraph (h) is being reorganized to clarify which paper documents must accompany electronically filed reports, and when those paper copies must be filed.

The Commission's electronic filing software, FECFile, currently creates Schedule E for electronic filing by political committees. The Commission's electronic filing system accepts FEC Form 5 if created by another entity using the Commission's specifications (available on the FEC web site, [www.fec.gov](http://www.fec.gov)), but FECFile does not currently create Form 5. The Commission intends to make FEC Form 5 available in the FECFile software package. Note that this software is available for free from the Commission.

Further, the Commission is adding to the list of electronic filings that require paper follow-up Schedule C-P-1, used by Presidential candidates to report loans and lines of credit from lending institutions. Like Schedule C-1 (used by non-Presidential committees), Schedule C-P-1 requires the lending institution agent's signature.

On July 25, 2001, the Commission published in the **Federal Register** a Notice of Proposed Rulemaking on Brokerage Loans and Lines of Credit (65 FR 38576 (July 25, 2001)) which sought comments on further revisions to 11

CFR 104.18(h). Thus, additional changes to this section may be promulgated at a later time as part of that separate rulemaking.

*Section 109.1 Definitions (2 U.S.C. 432(17))*

Section 109.1 of the Commission's regulations contains definitions relevant to independent expenditures. Public Law 106-346 and the revised regulations at 11 CFR 100.19(d), 104.4(b), 104.5(g), and 109.2(b) require 24-hour reports to be received by the Commission or the Secretary of the Senate within 24 hours of the time the independent expenditure is made.

The NPRM sought comments on a three-pronged definition of when an independent expenditure is *made* that would apply to all independent expenditures, not just those reported on a 24-hour basis. That definition was taken from the statutory and regulatory definitions of "independent expenditure" (2 U.S.C. 431(17) and 11 CFR 100.8(a)(2)) and "expenditure" (2 U.S.C. 431(9)(A) and 11 CFR 109.1). Proposed new paragraph (f) of 11 CFR 109.1 stated that an independent expenditure is made at the earliest of three possible times: (1) The date on which a written contract, including a media contract, promise or agreement to make an independent expenditure is executed; (2) the first date on which the communication is printed, broadcast, or otherwise publicly disseminated; or (3) the date on which the person making the independent expenditure pays for it.

The sole commenter on this rulemaking objects to proposed paragraph (f) for several reasons. First, the commenter argues that the definition is a substantive change to the current provisions of the FECA and is, therefore, outside the Commission's regulatory authority. The commenter also asserts that the definition is illogical and that an independent expenditure is not made until the communication is disseminated to the public. Thus, the commenter argues, prong number one of the definition is incorrect.

The Commission believes that a legal basis arguably would exist for the first prong of its definition of "made". Language in the FECA states that an "independent expenditure is an expenditure" (2 U.S.C. 431(17)). An expenditure includes a "written contract, promise, or agreement to make an expenditure" (2 U.S.C. § 431(9)(A)(ii)). Thus, independent expenditures necessarily include written contracts, promises or agreements to make an expenditure for a communication. Nonetheless, here the

Commission is called upon to define when an independent expenditure should be considered "made" for purposes of reporting. Some practical and policy considerations come into play.

The Commission is dropping from the final rules the first prong of the test (the date on which a written contract, including a media contract, promise or agreement to make an independent expenditure, is executed). This will simplify the reporting rules, address the practical problem of reporting such transactions as independent expenditures and ensure that the relatively detailed rules on reporting debts at 11 CFR 104.11 apply only to political committees. Those latter rules require a debt (which includes a written contract debt) to be reported only if it exceeds \$500 or is for any amount that has been outstanding for more than 60 days.

The commenter also objects to the second prong of the proposed rule at 11 CFR 109.1(f)(2), which stated that an independent expenditure would be made "on the first date on which the communication is printed, broadcast or otherwise publicly disseminated." The commenter objects to the word "printed" on the grounds that fliers could be printed and sit in a garage for months, and thus not being publicly disseminated. The Commission is changing the word "printed" to "published" in the final rules to remove any confusion as to when a communication for an independent expenditure is made.

The commenter further objects to what it believes to be a consequence of the revised regulation which would, in some instances, require disclosure before publication of the communication. The commenter expresses concern that this could lead to mischievous interference with communications from opposing campaigns. The commenter argues that such disclosure would allow incumbents the advantage of knowing when independent expenditures have been made on behalf of their opponents, thus giving them the opportunity to convince broadcasters not to run the advertisements in question.

While the Commission does not necessarily agree with the commenter's legal analysis, the Commission is dropping the third prong of the proposed definition. New paragraph (f) of the final regulations states that an independent expenditure is made on the first date on which the communication is published, broadcast or otherwise publicly disseminated. New language in 11 CFR 104.4(b), 104.5(g) and 109.2(b)

would, however, allow persons to report an independent expenditure before the underlying communication is publicly disseminated, notwithstanding other regulations (11 CFR 104.11(b) or 104.3(b)) that could fairly be read to require earlier disclosure. The statutory change for 24-hour reports reflects Congressional intent to emphasize and ensure timely disclosure of independent expenditures. Consequently, the final rules will enhance timely disclosure by requiring that independent expenditures be reported after a disbursement is made, or a debt reportable under 11 CFR 104.11(b) is incurred, for an independent expenditure but no later than 24 hours after the time they are first publicly disseminated. Note that independent expenditures that are mailed to their intended audiences are publicly disseminated at the time that they are relinquished to the U.S. Post Office.

*Examples for Political Committees*

In some situations, a political committee will not make payment or incur a reportable debt before the communication underlying the independent expenditure is publicly disseminated. If the communication is both publicly disseminated and paid for in the same reporting period, then the committee reports the independent expenditure on Schedule E for that reporting period. If the communication is aired in one reporting period (e.g., during the 24-hour reporting period) and payment is made in a later reporting period (e.g., during the post-general election period), then the committee reports the independent expenditure as a memo entry on Schedule E during the reporting period in which the communication is publicly disseminated and reports it again as a positive entry on Schedule E in the reporting period in which payment is made.

In other situations, however, a political committee may pay the production and distributions costs associated with an independent expenditure in one reporting period, but not publicly disseminate it until a later reporting period. In this case, the committee reports the payment as a disbursement on Schedule B for operating expenditures. When, in a subsequent reporting period, the communication is publicly disseminated, the committee files a Schedule E for the independent expenditure referencing the earlier Schedule B transaction. The committee also reports the disbursement for the independent expenditure as a negative entry on Schedule B so the total

disbursements are not inflated. Alternatively, if the committee wishes to disclose the independent expenditure before the communication is publicly disseminated, it could report the independent expenditure on Schedule E for the reporting period in which the payment is made, with no further reporting obligation at the time the communication is disseminated.

Obligations incurred but not yet paid (that are reportable debts), must be reported on Schedule D. When, in a subsequent reporting period, the communication is publicly disseminated, the committee must file a Schedule E referencing the debt on Schedule D. The committee must continue to report the debt on Schedule D (and any payment on it on Schedule E), until the debt is extinguished.

*Example 1:* Committee A makes a \$10,000 payment on October 5 for a newspaper ad urging the defeat of Candidate X, where the ad will run on the 10th day before the November general election (i.e., during the 24-hour reporting period). The committee reports the payment on Schedule B for Operating Expenditures for its pre-general election report. The committee must file a 24-hour report on Schedule E no later than 24 hours after the ad was first published. Further, on its post-general election report, the committee must report the independent expenditure on Schedule E and report the disbursement for the independent expenditure as a negative entry on Schedule B for Operating Expenditures. Alternatively, the committee could report the independent expenditure on Schedule E for its pre-general election report with no further reporting obligation during the 24-hour and post-general reporting periods.

*Example 2:* In September, Committee B, a quarterly filer, enters a contract, but does not pay, for a mailing containing an independent expenditure supporting candidate X. The cost of the mailing is \$450. Because the debt is less than \$500, and has been outstanding for less than 60 days, it is not reportable on Schedule D of the committee's third quarter report. The mailing is delivered to a U.S. Post Office on October 5 (during the pre-general reporting period). Committee B reports the independent expenditure on a 12-day pre-general election report as a Memo Schedule E, using October 5 as the date. Payment is made on November 1. No 24-hour report is needed, because the independent expenditure was distributed before the 20 day before the general election. On the post-general election report, Committee B reports the payment as a positive entry on Schedule E and includes a cross-reference to the Memo Schedule E entry on the 12-day pre-general report.

*Example 3:* Committee C, a monthly filer, contracts in August for airtime to begin on October 31, five days before the November 5 general election. The costs of producing the ads and the airtime will exceed \$500, but no payment is actually made during the August, September, or pre-general reporting periods.

These amounts are reportable as debts on Schedule D. The ads run from October 31 through November 2. Payment is made on November 1. Committee C files a 24-hour report of independent expenditures on Memo Schedule E to be received by the Commission or the Secretary of the Senate, as appropriate, within 24 hours of the first time the ad ran on October 31. This Memo Schedule E uses October 31 as the date of the independent expenditure and includes the committee's best estimate of the total cost as the amount. (In this case, the exact amount would be known as of November 1.) The committee, on its post-general election report, shows the November 1 payment to extinguish the debt on Schedule D and also reports the independent expenditure payment as a positive disbursement on Schedule E so the line totals on the Detailed Summary Page will be accurate.

#### Examples for Persons Other Than Political Committees

Persons other than political committees simply report their independent expenditures on FEC Form 5 or by letter (if they are not required to file electronically). If the independent expenditure is first distributed during the 24-hour reporting period (less than 20 days but more than 24 hours before an election), it must be reported no later than 24 hours after the first time the ad is distributed. If the independent expenditure is first publicly disseminated outside the 24-hour reporting period, it must be reported no later than by the end of the regular reporting period during which the ad is first distributed.

*Example 4:* Mr. Jones takes out a newspaper ad supporting Candidate X. The ad runs October 4th through October 7th in an election year. Mr. Jones must report the independent expenditure no later than 24 hours after the time the ad first runs on October 4th.

#### Section 109.2 Reporting of Independent Expenditures by Persons Other Than a Political Committee (2 U.S.C. 434(c)).

Section 109.2 of the Commission's regulations requires persons other than political committees to report their independent expenditures on either FEC Form 5 or in a signed statement containing certain information about the person who made the independent expenditure and about the nature of the expenditure itself. Under the previous regulations, regardless of whether the filer reported the independent expenditure on Form 5 or in a signed statement, the report had to be notarized. As discussed in the Explanation and Justification for 11 CFR 104.4 above, the revised regulations no longer require notarization of reports of independent expenditures, but do

require filers to self-verify their reports. Accordingly, the introductory text of paragraphs (a) and (a)(1) of section 109.2 is being revised to change the signature requirement on reports of independent expenditures to the verification of reports of independent expenditures. To implement the self-verification, the amendments to 11 CFR 109.2(a)(1)(v) require that persons other than political committees continue to include a prescribed statement of certification as to the independence of the expenditure. The Commission intends to make conforming amendments to FEC Form 5 at a later point.

The NPRM proposed adding new paragraph (a)(1)(vi) to section 109.2 (and renumbering paragraph (a)(1)(vi) as (a)(1)(vii)). Proposed paragraph (a)(1)(vi) would have required those who file a statement instead of FEC Form 5 to certify that the expenditure was not made to finance, disseminate, distribute or republish campaign materials prepared by a candidate or a candidate's agent or authorized committee. This statement is in addition to the statement of independence required in 11 CFR 109.2(a)(1)(v), discussed above. While this "republishing statement" has long been included in the certification on FEC Form 5 (and on Schedule E, filed by political committees), it has not been required of those who file by letter. The NPRM further noted, that, on the other hand, the statutory certifications required by 2 U.S.C. 434(b)(6)(B)(iii) and (c)(2)(A) do not address distribution of candidate-prepared materials.

Consequently, comments were requested on not adding the certification statement to paragraph (a)(1)(vi) and removing that part of the certification from FEC Form 5 and Schedule E. The commenter did not address this issue.

The Commission has decided to remove the "republishing statement" from FEC Form 5 and Schedule E, and to not include it in revised 11 CFR 109.2. A statement regarding republication of candidate materials is not specifically mentioned in 2 U.S.C. 434(b)(6)(B)(iii) or (c)(2). Corresponding changes will be made to FEC Form 5 and Schedule E.

Conforming changes are being made to paragraph (b) of section 109.2 to indicate that 24-hour reports must be received after a disbursement is made for an independent expenditure, but no later than 24 hours from the time the independent expenditure is made.

New paragraph (c) of 11 CFR 109.2 sets forth the acceptable methods of verification for both e-mailed and paper reports. Note that faxed reports are considered to be filed on paper and must contain the certification statement

required by 11 CFR 109.2(a)(i) and new paragraph (a)(vi) followed by the signature of the filer. Electronically mailed reports must contain the certification statements and information required by 11 CFR 109.2(a)(i) through (a)(vii) followed by the typewritten name of the filer. The Commission received no comments on these amendments.

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

The Commission certifies that these final rules will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the Commission is providing most filers with less than \$50,000 of activity with additional means of complying with the law, thereby increasing the filers' flexibility by allowing them to choose the most convenient and cost effective filing method. These additional filing methods will likely reduce costs for small entities.

**List of Subjects**

*11 CFR Part 100*

Elections.

*11 CFR Part 104*

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

*11 CFR Part 109*

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the *Code of Federal Regulations* is amended to read as follows:

**PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)**

1. The authority citation for part 100 is revised to read as follows:

**Authority:** 2 U.S.C. 431, 434(a)(11), 434(c) and 438(a)(8).

2. Section 100.19 is revised to read as follows:

**§ 100.19 File, filed or filing (2 U.S.C. 434(a)).**

With respect to documents required to be filed under 11 CFR parts 101, 102, 104, 105, 107, 108 and 109, and any modifications or amendments thereto, the terms *file*, *filed*, and *filing* mean one of the actions set forth in paragraphs (a) through (e) of this section. For purposes of this section, document means any report, statement, notice or designation

required by the Act to be filed with the Commission or the Secretary of the Senate.

(a) Except for documents electronically filed under paragraph (c) of this section, a document is timely filed upon delivery to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463; or the Secretary of the United States Senate, Office of Public Records, 119 D Street NE., Washington, DC 20510 as required by 11 CFR part 105, by the close of business on the prescribed filing date.

(b) A document other than a 24-hour report of an independent expenditure under 11 CFR 104.4(b) or 109.2(c) is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than midnight of the day of the filing date, except that pre-election reports so mailed must be postmarked no later than midnight of the fifteenth day before the date of the election. Documents sent by first class mail must be received by the close of business on the prescribed filing date to be timely filed.

(c) For electronic filing purposes, a document is timely filed when it is received and validated by the Federal Election Commission at or before 11:59 p.m., Eastern Standard/Daylight Time, on the filing date.

(d) A 24-hour report of independent expenditures under 11 CFR 104.4(b) or 109.2(c) is timely filed when it is received by the appropriate filing officer as listed in 11 CFR 104.4(c) after a disbursement is made, or, in the case of a political committee, a debt reportable under 11 CFR 104.11(b) is incurred, for an independent expenditure, but no later than 24 hours from the time the independent expenditure was made. In addition to other permissible means of filing, a 24-hour report may be filed using a facsimile machine or by electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18.

(e) In addition to other permissible means of filing, authorized committees that are not required to file electronically may file 48-hour notifications of contributions using facsimile machines. All authorized committees that file with the Commission, including electronic filers, may use the Commission's web site's on-line program to file 48-hour notifications of contributions. See 11 CFR 104.5(f).

**PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)**

3. The authority citation for part 104 continues to read as follows:

**Authority:** 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b) and 439a.

4. Section 104.4 is amended by revising paragraph (b) to read as follows:

**§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(c)).**

\* \* \* \* \*

(b) *24-hour reports.* Reports of any independent expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election, shall be received by the appropriate officers listed in paragraph (c) of this section after a disbursement is made, or a debt reportable under 11 CFR 104.11(b) is incurred, for an independent expenditure, but no later than 24 hours after such independent expenditure is made. Such report shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. In addition to other permissible means of filing, a 24-hour report may be filed using a facsimile machine or electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18. Such report shall be verified by one of the methods stated in paragraph (b)(1) or (b)(2) of this section. Any report verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(1) For reports filed on paper (e.g., by hand delivery, U.S. Mail or facsimile machine), the certification required by 11 CFR 104.3(b)(3)(vii) shall be immediately followed by the handwritten signature of the treasurer of the political committee that made the independent expenditure and who certifies, under penalty of perjury, its independence.

(2) For reports filed by electronic mail, the certification required by 11 CFR 104.3(b)(3)(vii) shall be immediately followed by the typewritten name of the treasurer of the political committee that made the independent expenditure and who certifies, under penalty of perjury, its independence.

\* \* \* \* \*

5. Section 104.5 is amended by revising paragraphs (f) and (g) to read as follows:

**§ 104.5 Filing Dates (2 U.S.C. 434(a)(2)).**

\* \* \* \* \*

(f) *48-hour notification of contributions.* If any contribution of \$1,000 or more is received by any

authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01 a.m. of the day of the election, the principal campaign committee of that candidate shall notify the Commission, the Secretary of the Senate and the Secretary of State, as appropriate, within 48 hours of receipt of the contribution. The notification shall be in writing and shall include the name of the candidate and office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be filed in accordance with 11 CFR 100.19. The notification shall be in addition to the reporting of these contributions on the post-election report.

(g) 24-hour report of independent expenditures. Statements disclosing any independent expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election, must be received by the appropriate officers listed in 11 CFR 104.4(c) after a disbursement is made, or in the case of a political committee, a debt reportable under 11 CFR 104.11(b) is incurred, but no later than 24 hours after such independent expenditure is made. Such statement shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

\* \* \* \* \*

6. Section 104.14 is amended by revising paragraph (a) to read as follows:

**§ 104.14 Formal Requirements Regarding Reports and Statements.**

(a) Each individual having the responsibility to file a designation, report or statement required under this subchapter shall sign the original designation, report or statement except that:

(1) Reports or statements of independent expenditures filed by facsimile machine or electronic mail under 11 CFR 104.4(b) or 11 CFR 109.2 must be verified in accordance with those sections; and

(2) Reports, designations, or statements filed electronically under 11 CFR 104.18 must follow the signature requirements of 11 CFR 104.18(g).

\* \* \* \* \*

7. Section 104.18 is amended by revising paragraph (h) to read as follows:

**§ 104.18 Electronic Filing of Reports (2 U.S.C. 432(d) and 434(a)(11)).**

\* \* \* \* \*

(h) Schedules and forms with special requirements.

(1) The following are schedules and forms that require the filing of additional documents and that have special signature requirements:

- (i) Schedules C-1 and C-P-1, Loans and Lines of Credit From Lending Institutions (see 11 CFR 104.3(d)); and
- (ii) Form 8, Debt Settlement Plan (see 11 CFR 116.7(e)).

(2) If a person files a report electronically by submitting a diskette to the Commission and is required to file any of the schedules or forms listed in paragraph (h)(1) of this section, the person shall file a paper copy of the required schedule or form with the electronic submission, or a digitized version as a separate file in the electronic submission, by the close of business on the prescribed filing date.

(3) If a person files a report electronically by uploading the data to the Commission's electronic filing system and is required to file any schedules or forms listed in paragraph (h)(1) of this section, the person shall file a paper copy or a digitized version of the required schedule or form by the close of business on the prescribed filing date.

\* \* \* \* \*

**PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c))**

8. The authority for part 109 continues to read as follows:

**Authority:** 2 U.S.C. 431(17), 434(a)(11) and (c), 438(a)(8), and 441d.

9. Section 109.1 is amended by adding new paragraph (f) to read as follows:

**§ 109.1 Definitions (2 U.S.C. 431(17)).**

\* \* \* \* \*

(f) Notwithstanding 11 CFR 100.8(a)(2) and 104.11(b), an independent expenditure is made on the first date on which the communication is published, broadcast or otherwise publicly disseminated. For purposes of this section, a communication that is mailed to its intended audience is publicly disseminated when it is relinquished to the U.S. Postal Service.

10. Section 109.2 is amended by revising the introductory text in paragraphs (a) and (a)(1), by revising paragraphs (a)(1)(v), (a)(2), and (b), and adding new paragraph (c) to read as follows:

**§ 109.2 Reporting of independent expenditures by persons other than a political committee (2 U.S.C. 434(c)).**

(a) Every person other than a political committee, who makes independent expenditures aggregating in excess of

\$250 in a calendar year shall file a verified statement or report on FEC Form 5 with the Commission or Secretary of the Senate in accordance with 11 CFR 104.4(c).

(1) If a verified statement is submitted, the statement shall include:

\* \* \* \* \*

(v) A verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation or concert with, or at the request or suggestion of any candidate or any authorized committee or agent thereof; and

\* \* \* \* \*

(2) Reports or statements filed under this section shall be filed at the end of the reporting period (quarterly, pre-election, post-election, semi-annual or annual) (See 11 CFR 104.5)) during which any independent expenditure which aggregates in excess of \$250 is made and in any reporting period thereafter in which additional independent expenditures are made.

(b) Reports of independent expenditures aggregating \$1,000 or more made by any person after the twentieth day, but more than 24 hours before 12:01 a.m. of the day of an election must be received by the appropriate officers as listed in paragraph (c) of this section after a disbursement is made for an independent expenditure, but no later than 24 hours after such independent expenditure is made. Such report or statement shall contain the information required by paragraph (a) of this section indicating whether the independent expenditure is made in support of, or in opposition to, a particular candidate.

(c) Verification of independent expenditure statements and reports: For reports filed on paper (e.g., by hand delivery, U.S. Mail or facsimile machine), the certification required by paragraph (a)(1)(v) of this section must be immediately followed by the handwritten signature of the person who made the independent expenditure and who certifies, under penalty of perjury, its independence. For reports filed by electronic mail, the certification required by paragraph (a)(1)(v) of this section must be immediately followed by the typewritten name of the person who made the independent expenditure and who certifies, under penalty of perjury, its independence.

Dated: March 15, 2002.

David. M. Mason,

Chairman, Federal Election Commission.

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