

Proposed Rules

Federal Register

Vol. 67, No. 203

Monday, October 21, 2002

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 104, 105, 108 and 109

[Notice 2002–19]

Bipartisan Campaign Reform Act of 2002; Reporting

AGENCY: Federal Election Commission.
ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission seeks comments on the proposed regulations relating to new requirements for the reporting of electioneering communications and independent expenditures, monthly reporting by national political party committees and quarterly reporting by the principal campaign committees of candidates for the House of Representatives and Senate, as well as reporting related to building funds. These regulations would implement several requirements in the Bipartisan Campaign Reform Act of 2002 (“BCRA”) that significantly amend the Federal Election Campaign Act of 1971, as amended (“FECA” or “the Act”). Please note that the Commission has not made a final decision on any of these proposals. Further information is contained in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: Comments must be received on or before November 8, 2002.

ADDRESSES: All comments should be addressed to Mr. John Vergelli, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to BCRAreport@fec.gov and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments

should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its web site within ten business days of the close of the comment period.

FOR FURTHER INFORMATION CONTACT: Mr. John Vergelli, Acting 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 Bipartisan Campaign Reform Act of 2002 (“BCRA”), Public Law 107–155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This is one in a series of Notices of Proposed Rulemakings (“NPRM”) the Commission has recently published to meet the rulemaking deadlines set out in BCRA. The deadline for the promulgation of these rules is 270 days after the date of enactment, which is December 22, 2002.

Introduction

This NPRM addresses: (1) Reporting of electioneering communications; (2) reporting of independent expenditures; (3) quarterly reporting by the principal campaign committees of candidates for the House of Representatives and the Senate; (4) monthly reporting by political party committees; and (5) the reporting of funds for political party committee office buildings.

The Commission sought comments on two of these topics previously in Notices of Proposed Rulemakings on “Electioneering Communications,” 67 FR 51,131 (August 7, 2002); and “Coordinated and Independent Expenditures,” 67 FR 60,042 (September 25, 2002). Another topic, addressing the reporting of funds for the purchase or construction of party office buildings, is based on a recently published final rule (“Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule,” 67 FR 49,123 and 49,127 (July 29, 2002)). The last two topics addressing the schedule of reporting for national political party committees and the principal campaign committees of

House and Senate candidates have not previously been addressed in a BCRA-related NPRM.

In BCRA, Congress required the Commission to promulgate standards for reporting software, and also imposed certain other requirements on the Commission, and on various persons who file reports with the Commission, that will take effect when that computer software becomes available. 2 U.S.C. 434(a)(12). Although these Congressional mandates are related to reporting, which is the subject of this NPRM, the Commission does not propose to address the mandates here. The computer software standards will depend largely upon the results of this reporting rulemaking, and on the development of reporting forms following the completion of this rulemaking. Therefore, the Commission proposes to address the mandates in 2 U.S.C. 434(a)(12) as soon as feasible, and will solicit public comments on the mandates at that time.

Independent Expenditures and Electioneering Communications

Proposed 11 CFR 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*. Paragraph (a) of section 100.19 would be unaffected by this rulemaking, except for a new heading. Proposed paragraph (b) of section 100.19 would retain the pre-BCRA general rule that a document is considered timely filed if it is: (1) Delivered to the appropriate filing office (either the Commission or the Secretary of the Senate), or (2) sent by registered or certified mail and postmarked by 11:59 p.m. Eastern Standard/Daylight Time of the prescribed filing date—except for pre-election reports. The proposed revisions to paragraph (b) of section 100.19 would clarify that paragraph (b) is the general rule, but does not apply to reports addressed by paragraph (c) through proposed new paragraph (f).

Those exceptions would be as follows: Paragraph (c) for electronic filing—“filed” means received by the Commission at or before 11:59 p.m. Eastern Standard/Daylight Time on the filing date; paragraph (d) for 24-hour and 48-hour reports of independent expenditures—“filed” means received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of

the day following (24-hour reports) or the second day following (48-hour reports) the date on which the spending threshold is reached in accordance with 11 CFR 104.4(f); paragraph (e) for “48-hour notices of last-minute contributions” (48-hour notices filed by authorized committees of candidates of contributions of \$1,000 or more received after the 20th day but more than 48 hours before 12:01 a.m. of the day of an election)—“filed” means received by the Commission or the Secretary of the Senate within 48 hours of the receipt of a “last-minute” contribution of \$1,000 or more; proposed paragraph (f) for 24-hour statements of electioneering communications—“filed” means received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time of the day following the disclosure date (see 11 CFR 104.20).

Paragraphs (c) and (e) of §100.19 would remain unchanged, except for new headings.

Proposed revisions to paragraph (d) of section 100.19 would also require that the new 48-hour reports of independent expenditures, like the 24-hour reports, must be *received* rather than *filed* by the filing deadline. The proposed 48-hour reporting provision would allow filers to submit their reports using facsimile machines or electronic mail, as long as they are not required under 11 CFR 104.18 to file electronically. Under pre-BCRA paragraph (d) of §100.19, 24-hour reports of independent expenditures are only considered timely filed if they are *received* by the Commission or Secretary of the Senate within 24 hours of the time the expenditure is made.¹ Sending 24-hour reports by mail is not a viable option because it is unlikely these reports will be received by the Commission within 24 hours of the making of the expenditure. See “Final Rules and Explanation and Justification for 11 CFR 100.19,” 67 FR 12,834 (March 20, 2002). Pre-BCRA paragraph (d) also states that 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). Because the reasons behind the handling of 24-hour reports apply equally to the essentially similar 48-hour reports, the

Commission is proposing this parallel rule.

Under 2 U.S.C. 434(f)(1), electioneering communications must be reported within 24 hours of the “disclosure date.” See proposed 11 CFR 104.20. The Commission proposes to add new paragraph (f) to 11 CFR 100.19 to require these 24-hour statements to be *received* by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the disclosure date, rather than *filed* by that time. In addition, to assist filers with meeting this deadline, the proposed rule would allow them to file their 24-hour statements by facsimile machine or electronic mail. For the same reasons that are discussed with regard to proposed paragraph (d) of 11 CFR 100.19, this proposed paragraph would follow the timing and filing methods of 24-hour reports for independent expenditures.

11 CFR 104.5(g) and (j) Filing Dates (2 U.S.C. 434(a)(2))

Proposed paragraph (g) of 11 CFR 104.5 would move the pre-BCRA contents of paragraph (g) to proposed paragraph (g)(2) with revisions, and would add a new paragraph (g)(1), which would require that 48-hour reports of independent expenditures must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Note that the term “publicly distributed” refers to communications distributed by radio or television (*see* 11 CFR 100.29(a)(5)) and the term “publicly disseminated” refers to communications that are made public via other media, *e.g.*, newspaper, magazines, handbills. Pre-BCRA paragraph (g) of 11 CFR 104.5 states that 24-hour reports of independent expenditures must be received by the appropriate officers no later than 24 hours after such independent expenditure is made.

Proposed paragraph (j) of §104.5 would address the filing dates for electioneering communications. Specifically, it would provide that the 24-hour statements must be received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date of disclosure.

11 CFR 105.2 Place of Filing; Senate Candidates, Their Principal Campaign Committees, and Committees Supporting Only Senate Candidates (2 U.S.C. 434(g)(3))

The Commission’s pre-BCRA regulations require that 24-hour reports of independent expenditures supporting or opposing Senate candidates be filed with the Secretary of the Senate. See pre-BCRA 11 CFR 104.4(c), 109.2(b). In BCRA, Congress establishes the Commission as the place of filing for both 24- and 48-hour reports of independent expenditures, regardless of the office being sought by the clearly identified candidate. 2 U.S.C. 434(g)(3)(A). The proposed revisions to §105.2 would place the text of pre-BCRA 11 CFR 105.2 in proposed paragraph (a), adding the heading, “General Rule.” New proposed paragraph (b) of 11 CFR 105.2 would be headed, “Exception,” and would state that 24- and 48-hour reports of independent expenditures, must be filed with the Commission even if the communication refers to a candidate for the Senate. 2 U.S.C. 434(f).

11 CFR 104.4 Independent Expenditures by Political Committees (2 U.S.C. 434(b), (g))

The Commission has established reporting requirements for political committees making independent expenditures in accordance with 2 U.S.C. 434(b) and (g). See pre-BCRA 11 CFR 104.4. Paragraph (a) of §104.4 would be unaffected, other than the addition of a new heading, a grammatical correction, and an updated cross-reference.

Proposed new paragraph (b) would address reports of independent expenditures made by a political committee at any point in the campaign up to and including the 20th day before an election. Proposed paragraph (b)(1) would address independent expenditures aggregating *less than \$10,000* with respect to a given election during the calendar year, up to and including the 20th day before an election. This calendar year aggregation would be based on 2 U.S.C. 434(b)(4), which requires calendar year aggregation for reports of independent expenditures by political committees. Under this calendar year approach, political committees would report the independent expenditures on Schedule E of FEC Form 3X, filed no later than the regular reporting date under 11 CFR 104.5. The Commission would interpret 2 U.S.C. 434(g), added to the Act by BCRA, to require aggregation toward the various thresholds for independent

¹Note that BCRA, as passed on February 14, 2002, in the House of Representatives and on March 20, 2002, in the Senate, would have required 24-hour reports to be *filed* rather than *received* within 24 hours of the time the independent expenditure was made. In technical corrections to BCRA, Congress amended section 212 of BCRA by reinstating the *received* requirement. H.R. Con. Res. 361, March 22, 2002.

expenditure reporting to be done on a per election basis within the calendar year. For example, if a political committee made \$5,000 in independent expenditures with respect to a Senate race, and \$5,000 in independent expenditures with respect to a House race, and both of these events occurred before the 20th day before the election, that political committee would not be required to file 48-hour reports, but would be required to disclose the independent expenditures in its regularly scheduled reports. If the political committee makes \$5,000 in independent expenditures with respect to a clearly identified candidate in the primary, and an additional \$5,000 in independent expenditures with respect to the same candidate in the general election, no 48-hour reports would be required; but again the committee would be required to disclose the independent expenditures in its regularly scheduled reports. The Commission requests comments on whether a different time period, such as an election cycle, should be employed instead of the calendar year period.

Paragraph (b)(2) would address independent expenditures aggregating \$10,000 or more during the calendar year up to and including the 20th day before an election. These reports would also be filed on Schedule E of FEC Form 3X. However, these reports would be required to be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Further, political committees would have to file an additional 48-hour report each time subsequent independent expenditures reach the \$10,000 threshold with respect to the same election to which the first report related.

The Commission proposes revisions to renumbered paragraph (c) (*i.e.*, pre-BCRA 11 CFR 104.4(b)) stating that 24-hour reports must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which the \$1,000 threshold is reached during the final 20 days before the election. Further, proposed revisions to this paragraph would specifically state that additional 24-hour reports must be filed each time during the 24-hour reporting period in which subsequent independent expenditures reach or exceed the \$1,000 threshold with respect to the same election to which the previous report related.

Proposed paragraph (d) would contain the report verification information currently found in pre-BCRA paragraph (b) of §104.4. There would be non-substantive grammatical changes to conform this paragraph to other changes in the overall section.

Proposed paragraph (e) would largely restate pre-BCRA paragraph (c) of §104.4. The most significant proposed change to this paragraph would be to make the Commission and not the Secretary of the Senate the place of filing for 24- and 48-hour reports of independent expenditures relating to Senate candidates. 2 U.S.C. 434(g)(3). See the discussion of 11 CFR 105.2, above.

Proposed paragraph (f) of 11 CFR 104.4 would address aggregation of independent expenditures for reporting purposes. The provisions of pre-BCRA 11 CFR 109.1(f) would be redesignated and revised to explain when and how political committees and other persons making independent expenditures must aggregate independent expenditures for purposes of determining whether 48-hour and 24-hour reports must be filed. Note that this proposed aggregation rule would apply to independent expenditures by political committees, as well as other persons; proposed 11 CFR 109.10(c) and (d) would cross-refer to this paragraph. Proposed paragraph (f) would establish that every date on which a communication that constitutes an independent expenditure is “publicly distributed” or otherwise publicly disseminated serves as the date that every person must use to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amounts (\$1,000 for 24-hour reports or \$10,000 for 48-hour reports). The term “publicly distributed” would have the same meaning as in new 11 CFR 100.29(b)(6), which the Commission is promulgating as part of a separate rulemaking. Thus, proposed paragraph (f) would set the same date as the starting date from which a person would have one or two days, where applicable, to file a 24-hour or 48-hour report on independent expenditures.

In addition, Congress changed the reporting requirements by adding the phrase “or contracts to make” to the statute. 2 U.S.C. 434(g)(1), (2). BCRA ties 24-hour and 48-hour reporting of independent expenditures to the time when a person “makes or contracts to make independent expenditures * * *” aggregating at or above the \$1,000 and \$10,000 thresholds, respectively. 2 U.S.C. 434(g)(4). Therefore, under proposed 11 CFR 104.4(f), each person

would be required to include as of the proposed trigger date, in the calculation of the aggregate amount of independent expenditures, both disbursements for independent expenditures and all contracts obligating funds for disbursement for independent expenditures. Under this approach and the proposed timing requirements described above, once a communication that constitutes an independent expenditure is publicly distributed or disseminated as explained above, the person who paid for, or who contracted to pay for, the communication would be able to determine whether the communication satisfied the “express advocacy” requirement of the definition of an independent expenditure (*see* 11 CFR 100.16) and would therefore be able to determine whether the disbursement for that communication constituted an independent expenditure. A person reaching or exceeding the applicable reporting threshold would be responsible for submitting a report by 11:59 p.m. Eastern Standard/Daylight Time of the day after, for 24-hour reporting, or two days after, for 48-hour reporting, the date of the public distribution or dissemination of that communication. Please note that under the proposed rules, independent expenditures would be reported by political committees 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 11:59 p.m. of the day following the day on which the independent expenditure is first publicly distributed or otherwise publicly disseminated.

In some situations, a political committee will not make payment or incur a reportable debt before the communication underlying the independent expenditure is publicly distributed or otherwise publicly disseminated. If the communication is both publicly distributed or otherwise publicly disseminated and paid for in the same reporting period, then the committee would report 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 would report the independent expenditure as a memo 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 distribution costs associated with an independent

expenditure in one reporting period, but not publicly distribute or otherwise publicly disseminate it until a later reporting period. In this case, the committee would report the payment as a disbursement on Schedule B for operating expenditures. When, in a subsequent reporting period, the communication is publicly distributed or otherwise publicly disseminated, the committee would file a Schedule E for the independent expenditure referencing the earlier Schedule B transaction. The committee would also report 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 disbursement is made, with no further reporting obligation except for the 48-hour report if the total disbursements for independent expenditures equal or exceed \$10,000 at the time the communication is publicly distributed or otherwise publicly 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 distributed or otherwise 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.

The Commission seeks comment on its proposed interpretation of BCRA's "makes or contracts to make" language and the triggering mechanism for 24-hour and 48-hour reports. Specifically, the Commission seeks comment on an alternative interpretation that would make the actual disbursement or the execution of the contract to make the disbursement for an independent expenditure, rather than the public distribution or dissemination of the resulting communication, the triggering mechanism for the reporting requirements once the disbursements and obligations equal or exceed the respective thresholds. This change would require earlier reporting than is currently required or proposed (*i.e.*, when the communication is publicly disseminated). The policy reasons for adopting this alternative interpretation would be similar to those described in the NPRM on the reporting of electioneering communications. *See*

"Electioneering Communications" NPRM, 67 FR 51,131 (Aug. 7, 2002).

Proposed 11 CFR 109.10 Independent Expenditure by Persons Other Than Political Committees

Proposed new § 109.10 would set forth the revised reporting requirements of pre-BCRA § 109.2. Under proposed new § 109.10, persons other than political committees would have to report their independent expenditures on either FEC Form 5 or in a signed statement containing certain information regarding the person who made the independent expenditure and the nature of the expenditure itself.

Proposed paragraph (a) of 11 CFR 109.10 would provide a cross-reference to 11 CFR 104.4 for political committees, under which they must report independent expenditures. Paragraph (a) of pre-BCRA 11 CFR 109.2 would be moved to proposed paragraphs (b) and (c) of § 109.10.

Proposed paragraph (c) would address reports of independent expenditures aggregating \$10,000 or more with respect to a given election from the beginning of the calendar year up to and including the 20th day before an election. This proposed paragraph would require that 48-hour reports of independent expenditures be *received* rather than *filed* by 11:59 pm of the second day after the date on which the \$10,000 threshold is reached. *See* discussion of *received* versus *filed* in § 100.19, above. Pre-BCRA paragraph (b) of § 109.2 indicates that 24-hour reports must be received after a disbursement is made for an independent expenditure, but no later than 24 hours after an independent expenditure is "made" under pre-BCRA paragraph 109.1(f). *See* the discussion of proposed 11 CFR 104.4(f), above. Under the proposed rules, paragraph (b) of pre-BCRA § 109.2 would be moved to new paragraph (d) of 11 CFR 109.10 and revised to reflect the modification to the aggregation and filing requirements in proposed 11 CFR 100.19(d) and 104.4 that are discussed above.

Proposed revisions to paragraph (d) of 11 CFR 109.10 (pre-BCRA 11 CFR 109.2(b)) would also mirror the changes in 11 CFR 104.4(c) as to when 24-hour reports of independent expenditures aggregating \$1,000 or more after the 20th day before the election.

Proposed paragraph (e) of 11 CFR 109.10 (*i.e.*, pre-BCRA 11 CFR 109.2(a)(1) and (c)) would address the contents and verification of statements filed in lieu of FEC Form 5. Proposed paragraph (e) would include one significant change from pre-BCRA 109.2(a)(1) and (c): A person making an

independent expenditure would now be required to certify that the expenditure was made independently from a political party committee and its agents, in addition to the pre-BCRA requirement of certification that the expenditure was not coordinated with a candidate, the candidate's authorized committee, or an agent of either of the foregoing. This change reflects the addition of political party committees to the definition of "independent expenditure" in 2 U.S.C. 431(17) and the description of coordination in 2 U.S.C. 441a(a)(7)(B)(ii) under BCRA. For the same reasons explained with reference to the definition of "independent expenditure" in proposed 11 CFR 100.16, the Commission would continue to include "consultation" in the description of activity that would cause an expenditure to lose its independence (*i.e.*, "in cooperation, consultation, or concert with" a candidate or political party committee) even though the statutory definition in 2 U.S.C. 431(17) does not retain the term.

Proposed 11 CFR 104.20—Reporting Electioneering Communications

1. Introduction

In the Electioneering Communications Final Rules, the Commission stated it would revise the proposed rules on reporting electioneering communications and re-propose the rules as part of this rulemaking.² Consequently, these proposed rules include the reporting requirements for electioneering communications. Although, the Electioneering Communications NPRM originally would have designated the reporting of electioneering communications as § 104.19, the proposed rules would designate reporting of electioneering communications as section proposed § 104.20. Please note that in the narrative that follows, citations to § 104.19 refer to the original proposed rules in the Electioneering Communications NPRM, and citations to § 104.20 refer to the proposed rules in this BCRA reporting NPRM.

2. Disclosure Date

BCRA requires persons who make electioneering communications costing more than \$10,000 to file disclosure statements with the FEC within 24 hours of the disclosure date. 2 U.S.C. 434(f)(1). In the Electioneering Communications NPRM, proposed § 104.19(b) would have defined

² The original proposed rules were part of the Electioneering Communications NPRM. *See* 67 FR 51,131, 51,145 (Aug. 7, 2002).

“disclosure date” as “the first date by which a person has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of \$10,000; * * *” 67 FR at 51,145 (August 7, 2002). The Electioneering Communications NPRM, however, sought comment on whether the disclosure date should be the date on which the electioneering communication aired. Thus, under this proposal, an organization could make disbursements or enter into a contract to make disbursements that exceed \$10,000, but would not be required to disclose the disbursements or contract until the electioneering communication is aired. Although BCRA uses the term “airing,” the Commission has determined that “publicly distributed” more accurately encompasses how electioneering communications are disseminated to the public, including the airing of these communications. In the Electioneering Communications Final Rules, the Commission defines “publicly distributed” to mean “aired, broadcast, cablecast, or otherwise disseminated through the facilities of a television station, radio station, cable television system, or satellite system.” 11 CFR 100.29(b)(6). Therefore, the proposed § 104.20(a)(5) would adopt the definition of “publicly distributed” in 11 CFR 100.29(b)(6) and the term “publicly distributed” would be used throughout the proposed rules instead of “airing.”

All of the commenters who addressed this issue disagreed with the proposed rule and advocated adopting a final rule that would define “disclosure date” as the date of the public distribution of the electioneering communication.³ They argued that there is no electioneering communication, and therefore no reporting requirement, until the communication is actually publicly distributed. One witness at the August 28, 2002 public hearing on electioneering communications did acknowledge that in some cases it may be difficult to ascertain when an electioneering communication is publicly distributed for purposes of triggering the 24-hour reporting period because the contract may not specify a precise time that the communication

will be publicly distributed or because in some instances the broadcaster does not air the communication during the block of time specified in the contract. In addition, the Commission believes that there could be legal and practical concerns with compelling disclosure of potential electioneering communications before they are finalized and publicly distributed, particularly when such disclosure could force reporting entities to divulge confidential strategic and political information about their possible future activities.

Taking into consideration the comments described above, the Commission proposes to make the date that an electioneering communication is publicly distributed as the disclosure date under proposed §104.20(a)(1). The Commission’s proposal reflects its concerns that there are legal and practical issues associated with compelling disclosure of potential electioneering communications before they are finalized and publicly distributed. To address the concern that a person may not know the exact time an electioneering communication will be publicly distributed during the day that it is scheduled to air, the Commission is proposing to interpret the 24-hour period in which to report the electioneering communication as starting at the end of the day in which the communication is publicly distributed. Therefore, proposed §104.20(b) would require reporting of an electioneering communication by the end of the following day. The Commission seeks comment on this interpretation.

3. Aggregation of Direct Costs of Producing or Airing Electioneering Communications

In the Electioneering Communications NPRM, proposed §104.19(a) would have required every person who makes a disbursement, or executes a contract, for the direct costs of producing or airing electioneering communications that aggregate in excess of \$10,000 during a calendar year to file a statement with the Commission. Furthermore, proposed §104.19(a)(2) would have included a non-exhaustive list of what constitutes direct costs of electioneering communications. The Commission sought comment on two issues relating to this proposed requirement. The first was whether the list in proposed §104.19(a)(2) was adequate and whether the list should be exhaustive. The second issue was whether the direct costs of producing an electioneering communication and the direct costs of airing it should be aggregated separately

or together to determine whether the \$10,000 threshold has been reached.

The commenters to the Electioneering Communications NPRM were split on the issue of whether the list of direct costs in proposed §104.19(a)(2) should be exhaustive or non-exhaustive. One commenter who supported an exhaustive list argued that it is clear what is involved in producing a communication, and the proposed rule adequately addresses that. Another commenter recommended a non-exhaustive list so that the Commission could retain flexibility to identify other costs associated with producing and airing communications not listed in the proposed rules.

In order to provide clear guidance on this issue, proposed 11 CFR 104.20(a)(2) would include an exhaustive list of direct costs associated with producing or airing electioneering communications within the proposed definition of “direct costs of producing or airing electioneering communications.” The Commission seeks comments on whether there are other direct costs associated with producing or airing electioneering communications that should be included in the proposed definition. In particular, the Commission seeks comment on what, if any, other in-house production costs should be considered direct costs. The Commission also welcomes additional comments on whether the list in proposed §104.20(a)(2) should be exhaustive.

The commenters also disagreed on the question of the aggregation of direct costs of producing or airing electioneering communications. Some commenters argued that BCRA should be read to require that these costs should be aggregated separately. Under this interpretation, if it costs a person \$7,000 to produce the electioneering communication and \$7,000 to air it, the threshold has not been met because neither the direct costs of producing or airing the electioneering communication reached \$10,000. In contrast, other commenters argued that BCRA mandates that the direct costs of producing and airing the electioneering communication be aggregated. Under this approach, the example above would result in the \$10,000 threshold being met because the direct costs of producing and airing would be \$14,000.

The language in proposed §104.20(b) would be identical to the language originally proposed in §104.19(a). Thus, when the direct costs of producing or airing an electioneering communication exceed \$10,000 when aggregated together, the person who is making the electioneering communication would be

³ Two commenters, submitting joint written comments, originally supported a two-step reporting process—a general report when there is a disbursement or a contract followed later by a specific report when the electioneering communication is aired. While testifying at the Commission’s public hearing, these commenters agreed that defining “disclosure date” as the date of airing is an acceptable alternative.

required to file a statement with the Commission when the electioneering communication is publicly distributed.

4. *Direction or Control*

The Electioneering Communication NPRM included two proposed alternatives, identified as Alternative 4-A and Alternative 4-B, to implement the BCRA requirement to disclose "any person sharing or exercising direction or control over the activities" of the person making the disbursement for electioneering communications. See 2 U.S.C. 434(f)(2)(A). Many of the commenters expressed concern that both alternatives are vague and could encompass a large number of people, especially for electioneering communications made by membership organizations. Some of the commenters were also concerned that disclosing this information may reveal sensitive or confidential information and the decision-making processes of organizations, especially non-profit organizations, thereby placing them at a competitive disadvantage. For these reasons, these commenters argued that the Commission should require limited, if any, disclosure of persons who share or exercise direction or control over the person who makes disbursements for electioneering communications or the activities involved in making electioneering communications.

In contrast, several commenters, including the Congressional sponsors of BCRA, disagreed with both alternatives because in their view neither would disclose sufficiently the information required by BCRA. See *id.* They argued that the purpose of this disclosure requirement is to reveal not only those who have direction or control over the electioneering communications, but also those who have direction or control over the organization that makes the electioneering communications.

While the Commission appreciates the concerns of those who objected to disclosure of the decision-making process of their organizations, BCRA requires persons who make electioneering communications to disclose those who share or exercise direction or control over the person making the disbursement for electioneering communications. 2 U.S.C. 434(f)(2)(A). Because neither Alternative 4-A nor Alternative 4-B in the Electioneering Communications NPRM appear to encompass the disclosure required by BCRA, proposed §104.20(c)(2) would not incorporate either of the two alternatives. Instead, proposed paragraph (c)(2) would adopt the language of 2 U.S.C. 434(f)(2)(A).

The Electioneering Communications NPRM sought comment on whether the proposed rules should define "direction or control over the activities" and whether such definition should draw upon the existing earmarking regulations at 11 CFR 110.6(d) or the definition of "to direct" at 11 CFR 300.2(n). A commenter suggested that the definition should be broadly defined and should include those persons with the ability to influence the decision-making process concerning electioneering communications. While this same commenter agreed that the definition of "to direct" could be modified for inclusion into the definition of "direction or control over the activities," another commenter stated that it is unsuitable to use the definition of "to direct" or the earmarking regulations in this context.

To provide further guidance on proposed §104.20(c)(2), the proposed rules would include a definition of "sharing or exercising direction or control." Because it appears that "direction or control" in the context of 2 U.S.C. 434(f)(2)(A) refers to the management or decision-making process of an organization or a qualified nonprofit corporation ("QNC"), proposed §104.20(a)(3) would define "sharing or exercising direction or control" to mean exercising authority or responsibility for policy formulation, day-to-day management, obligation of funds, or hiring or firing employees. The Commission believes that these functions would provide sufficient scope to capture responsible persons and entities without sweeping too broadly.

In the alternative, the Commission could define "sharing or exercising direction or control" to mean the officers, directors, partners, or any other individuals who have the authority to bind the organization, entity, or person making the disbursement for electioneering communication. This alternative, which is not reflected in the proposed rules, seeks a more objective, bright-line definition of "direction or control" and would focus the definition on those persons who have the authority to act on behalf of the organization. The Commission seeks comments on these approaches to implementing 2 U.S.C. 434(f)(2)(A). The Commission also seeks comments on how these proposals would apply to individuals making electioneering communications.

5. *Identification of Candidates and Elections*

Under 2 U.S.C. 434(f)(2)(D), the elections to which the electioneering communications pertain, as well as the

names of all clearly identified candidates referred to in the communications, must be disclosed. The Electioneering Communications NPRM provided two alternatives to proposed 11 CFR 104.19(b)(5), identified as Alternative 5-A and Alternative 5-B, which would implement this statutory provision. 67 FR 51,146. Both alternatives would require disclosure of the election and all clearly identified candidates who are referred to in the electioneering communication, but contain different language. Commenters preferred the language of Alternative 5-B because it would be easier to read and would be more consistent with 2 U.S.C. 434(f)(2)(D). Alternative 5-B arguably also is more consistent with what the Commission is proposing as the disclosure date, see above, as there is no doubt as to the names of clearly identified candidates appearing in a communication once a communication is publicly distributed. Accordingly, proposed §104.20(c)(5) would incorporate the language of Alternative 5-B of the Electioneering Communications NPRM.

6. *Disclosure of Donors*

BCRA requires persons who make electioneering communications and create segregated bank accounts for electioneering communications to disclose the names and addresses of contributors who contribute an aggregate of \$1,000 or more to that segregated account. 2 U.S.C. 434(f)(2)(E). If the organization that makes electioneering communications does not use a segregated bank account, then it would be required to disclose the names and addresses of contributors who contribute an aggregate of \$1,000 or more to that organization from the beginning of the preceding year through the disclosure date. 2 U.S.C. 434(f)(2)(F).

A. *Contributions/Contributors v. Donations/Donors*

In the Electioneering Communications NPRM, the Commission sought comment on whether amounts given to persons who make disbursements for electioneering communications are contributions subject to the limitations, prohibitions, and reporting requirements of the Act. The Commission proposed to treat amounts given to political committees as contributions because BCRA refers to "funds contributed" and "contributors." See 2 U.S.C. 434(f)(2)(E) and (F). Conversely, amounts given to persons who are not political committees would not be considered contributions. Comments on this issue were generally

favorable to the Commission's approach.⁴

Upon further analysis of this issue, the Commission proposes a different approach as to the question of whether amounts given for electioneering communications are contributions or donations. As stated in the Electioneering Communications Final Rules, the definition of "electioneering communications" does not include expenditures or independent expenditures that are subject to the limitations, prohibitions, and reporting requirements of the Act and the Commission's regulations. 11 CFR 100.29(c)(3). Communications made by political committees that would otherwise qualify as electioneering communications would be reported as expenditures or independent expenditures because they are made in connection with Federal elections. By operation of the exemption of expenditures and independent expenditures from the definition of "electioneering communications," these communications would not be considered electioneering communications. Therefore, political committees, by definition, do not make electioneering communications. Consequently, only persons who are not political committees would make disbursements for electioneering communications.

As stated above and in the Electioneering Communications NPRM, the Commission proposed to designate amounts given for electioneering communications purposes to persons who are not political committees as "donations." The Commission believes that amounts given to entities that are not political committees for electioneering communications should not be treated as contributions and should not count towards political committee status, unless these amounts would otherwise constitute a contribution under subparts B and C of part 100. Although the statutory language of BCRA uses the terms "contributor" and "contributed," it does not use the term "contribution" nor does it amend the definition of "contribution" in 2 U.S.C. 431(8). Thus, it appears that Congress did not intend these amounts to be contributions automatically to persons who are not

political committees, especially in light of the statutory exemption for expenditures and independent expenditures from the definition of "electioneering communications." Accordingly, proposed §104.20(c) refers to amounts given for electioneering communications as "donations" and the givers of the amounts as "donors." Additionally, all comments on the Electioneering Communications NPRM on this issue favored this approach. The Commission again seeks comment on this approach.

B. Disclosure Requirements

In reading 2 U.S.C. 434(f)(2)(E) and (F) together with 2 U.S.C. 441b(c)(3)(B), the Commission stated in the Electioneering Communications NPRM that these disclosure requirements for segregated bank accounts appear to apply only to qualified nonprofit corporations organized under 26 U.S.C. 501(c)(4). See 67 FR 51,143. Therefore, proposed 11 CFR 104.19(b)(6) would have required only QNCs to disclose their contributors for purposes of electioneering communications. See 11 CFR 114.10 for QNC status.

The Electioneering Communications NPRM narrative that explained proposed section 104.19(b)(7) clearly states that all persons who make electioneering communications, including QNCs that do not use segregated bank accounts, would be required to disclose their contributors who contribute an aggregate of over \$1,000 during the prescribed time period. 67 FR 51,143. Nevertheless, some commenters interpreted proposed §104.19(b)(7) to apply only to QNCs and objected to limiting the disclosure requirements to only QNCs. They argued that BCRA does not limit the requirements of 2 U.S.C. 434(f)(2)(E) and (F) to just QNCs. Consequently, they recommended that all persons who make electioneering communications should be required to disclose their contributors under proposed §104.19(b)(7) and the option for segregated bank accounts in proposed §104.19(b)(6) should be extended to all persons who make electioneering communications. Additionally, some commenters expressed concern as to the requirement that organizations would be required to disclose their donors because donors may become inhibited from making donations aggregating over \$1,000.

Because the Commission sees merit in these arguments, the revised proposed rules reflect the commenters' suggestions and would make clear that the application of proposed §§104.20(c)(7) and (8) would include all

persons who make electioneering communications, not just QNCs. Proposed paragraphs (c)(7) and (8) would incorporate the language in proposed §§104.19(b)(6) and (7) with modifications as discussed below.

(1) *Disclosure of donors when exclusively using segregated bank accounts to make disbursements for electioneering communications*

Under proposed §104.19(b)(6) in the Electioneering Communications NPRM, QNCs that use segregated bank accounts to make disbursements for electioneering communications would be required to disclose only contributors who contributed an aggregate in excess of \$1,000 to that segregated bank account. As stated above, the Commission agrees with the suggestion that this option should be made available to all persons who may make electioneering communications. Accordingly, proposed § 104.20(c)(7) would allow all such persons to establish a separate bank account to limit their reporting of the identities of their donors of \$1,000 or more to those who have donated directly to that bank account, as long as only funds from the separate bank account are used to pay for electioneering communications. Additionally, the Commission notes that the final rules at 11 CFR 114.14(d) provide such persons that are not QNCs with the option of establishing a segregated bank account similar to that allowed to QNCs.

(2) *Disclosure of donors when not exclusively using segregated bank accounts to make disbursements for electioneering communications*

Because there was some confusion as to the scope of the reporting requirement in proposed 11 CFR 104.19(b)(7), proposed 11 CFR 104.20(c)(8) would differ from proposed § 104.19(b)(7) in that it would remove the reference to QNCs. Thus, proposed § 104.20(c)(8) would make clear that all persons who make electioneering communications would be required to disclose their donors who donate over \$1,000 in the aggregate, if they do not use segregated bank accounts.

One commenter to the Electioneering Communications NPRM argued that the members of the organizations it represented could be subject to negative consequences if their names are disclosed in connection with an electioneering communication. The FECA provides for an advisory opinion process concerning the application of any of the statutes within the Commission's jurisdiction or any regulations promulgated by the Commission, and such a group could also seek an advisory opinion from the

⁴ Further, one commenter, in response to the Commission's question concerning treatment of amounts given to non-Federal accounts of a separate segregated fund or to non-connected committees, argued that amounts given to non-Federal accounts should not be treated as contributions subject to the prohibitions against corporations and labor organization funding electioneering communications.

Commission to determine if the group would be entitled to an exemption from disclosure that would be analogous to the exemption provided to the Socialist Workers Party in Advisory Opinions 1990–13 and 1996–46 (both of which allowed the Socialist Workers Party to withhold the identities of its contributors and persons to whom it had disbursed funds because of a reasonable probability that the compelled disclosure of the party's contributors' names would subject them to threats, harassment, or reprisals from either Government officials or private parties.). BCRA's legislative history recognizes the need for limited exceptions in these circumstances. See 148 Cong. Rec. S2136 (daily ed. Mar. 20, 2002) (remarks of Sen. Snowe).

7. Other Content Requirements

Proposed § 104.20(c) would require disclosure of additional information, not described above, in connection with the reporting of electioneering communications as mandated by BCRA. See 2 U.S.C. 434(f)(2)(A) and (C). Proposed paragraph (c)(1) would require identification of the person making the disbursement or the person's principal place of business. Proposed paragraph (c)(3) would require identification of the custodian of the books and accounts. Proposed paragraph (c)(4) would require disclosure of information about disbursements that exceed \$200. Proposed paragraph (c)(6) would require identifying the disclosure date.

8. Recordkeeping Requirement

Proposed 11 CFR 104.20(d) would require all persons who make electioneering communications or accept donations for the purpose of making electioneering communications to maintain records in accordance with 11 CFR 104.14. In the Electioneering Communications NPRM, proposed § 104.19(c) would have exempted QNCs from the recordkeeping requirements. The commenters who addressed this issue were split on whether QNCs should be exempted from the recordkeeping requirements. A commenter who did not support the exemption argued that because these entities are required to report their electioneering communications, they should also be required to maintain records that relate to the electioneering communications in order to support their reports.

In determining that all of the reporting and recordkeeping requirements for political committees were too burdensome for QNCs making independent expenditures, the Supreme Court in *FEC v. Massachusetts Citizens*

For Life, Inc. (“MCFL”) noted that MCFL, Inc. was subject to more “extensive requirements and more stringent restrictions” than unincorporated nonprofit organizations. 479 U.S. 238, 254–255 (1986). In contrast, proposed § 104.20(d) would require QNCs to maintain only those records that pertain to their electioneering communications which should not be burdensome for them. Additionally, this recordkeeping requirement is no different than what is required of any other person, including unincorporated nonprofit organizations, that make disbursements for electioneering communications. Furthermore, the availability of these records would be necessary to assess the accuracy of the electioneering communications reports filed by QNCs. Therefore, proposed paragraph (d) would not include an exemption for QNCs. The Commission welcomes further comments on this issue.

9. Proposed Amendment to 11 CFR 105.2

The Electioneering Communications NPRM proposed amending current 11 CFR 105.2 to require principal campaign committees of Senatorial candidates and other political committees that support only Senatorial candidates to file their statements of electioneering with the Commission. The Commission, however, has determined that political committees do not make electioneering communications by operation of the definition of “electioneering communications” in 11 CFR 100.29. Therefore, proposed § 105.2(b) would not incorporate the language from the electioneering communications NPRM or include mention of statements of electioneering communications.

10. Filing with the Secretary of State

Unlike the proposed provisions for independent expenditures, the proposed rules for electioneering communications do not include provisions that remove the requirement to file reports of electioneering communications with the Secretary of State if that state has obtained a waiver under 11 CFR 108.1(b). See proposed 11 CFR 104.4(e), below. The Commission seeks comments on whether proposed 11 CFR 104.20 should include such a provision. (At the current time, only 1 state, Montana, and two territories, Guam and Puerto Rico, have not obtained waivers.)

Principal Campaign Committee and National Political Party Committee Reporting Schedules

Proposed 11 CFR 104.5(a)—Principal Campaign Committees of House and Senate Candidates

Proposed 11 CFR 104.5(a) would set forth the new reporting schedule for the principal campaign committees of House of Representatives and Senate candidates. Prior to BCRA, the principal campaign committees of House and Senate candidates were allowed, in the non-election years, to file semi-annually. After November 6, 2002, excluding reports for runoff elections, principal campaign committees of House and Senate candidates must file quarterly in non-election years, as well as in the election year. 2 U.S.C. 434(a)(2)(B). Proposed revised § 104.5(a)(1) would state that these committees must file quarterly. Like other quarterly reports, these must be complete as of March 31, June 30, September 30, and December 31, and must be filed by April 15, July 15, October 15, and January 31 of the following year, respectively. Proposed paragraph (a)(2) of 11 CFR 104.5 would set forth the requirements for pre-election and post-general election reports in the election year, which would be identical to paragraphs (a)(1)(i) and (ii) of the pre-BCRA section. The rules regarding semi-annual reporting (in pre-BCRA § 104.5(a)) would be deleted. Please note that these new reporting dates do not affect the principal campaign committees or other authorized committees of Presidential candidates.

Proposed 11 CFR 104.5(c)—Committees Other Than Authorized Committees of Candidates

Proposed revisions to the introductory language for paragraph (c) would clarify that while non-authorized political committees may choose to file quarterly or monthly, a national committee of a political party must report monthly under proposed 11 CFR 104.5(c)(4).

Proposed 11 CFR 104.5(c)(4) would be a new provision implementing the BCRA requirement that national political party committees must report on a monthly basis. 2 U.S.C. 434(a)(4)(B). Previously, national party committees were allowed to file quarterly in the election year and semi-annually in the non-election years. The changes to the Act by BCRA specifically state that national political party committees must file monthly, including pre-general election and post-general election reports. These changes may have been intended to remove any

doubt as to whether national political party committees that filed quarterly had to file these reports if they did not make any contributions or expenditures on behalf of candidates in these elections during pre-BCRA election reporting periods. These rules would implement BCRA's amendment.

The proposed rules would apply to the Congressional campaign committees of the political parties as national political party committees. The Commission seeks comments on whether Congressional campaign committees should so specifically be included in the regulations.

11 CFR 104.3(g)—Funds for Party Office Buildings

Before BCRA, the Act and Commission regulations provide an exception to the definition of contribution and expenditure for donations to a national or State party committee that are specifically designated to defray any cost incurred for the construction or purchase of its office facility. Pre-BCRA 2 U.S.C. 431(8)(B)(vii); pre-BCRA 11 CFR 100.7(b)(12). This exception is reflected in current 11 CFR 104.3(g), which provides that funds or anything of value that were designated for party office building funds and received by a party committee must be reported as memo entries.

To implement BCRA, the Commission adopted new regulations at 11 CFR 300.12 and 300.35, which eliminate this exception for national party committees and provide that the source and reporting of donations used for the costs incurred by a State, district, or local party committee for the purchase or construction of its office building are subject to State law if donated to a non-Federal account of the committee.

“Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule,” 67 FR 49,123 and 49,127. However, if funds or things of value are contributed to (or for use by) the Federal account of a State, district, or local party committee for the purchase or construction of its office building, then the amounts donated are contributions under the Act. Consequently, proposed paragraph (g) of 11 CFR 104.3 would make it clear that any funds or things of value received by a Federal account and used for the purchase or construction of an office building, regardless of a specific contributor designation, are contributions and are not treated differently from other funds or things of value donated to a Federal account.

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

The Commission certifies that the attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The bases of this certification are several. There are four areas in which new rules are being proposed. The economic impact on small entities of each subject of new proposed rules is addressed below.

Independent expenditure reporting First, with regard to the proposed new rules addressing independent expenditures that the national, State, and local party committees of the two major political parties, and other political committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. Further, individual citizens operating under these rules are not small entities.

The small entities to which the rules would apply would not be unduly burdened by the proposed rules because there is no significant extra cost involved, as independent expenditures must already be reported. Collectively, the differential costs will not exceed 100 million dollars per year. In addition, new reporting requirements would not significantly increase costs, as they only apply to those spending \$10,000 or more on independent expenditures, and the actual reporting requirements are the minimum necessary to comply with the new statute enacted by Congress.

Electioneering communications Second, with regard to the proposed rules addressing electioneering communications, the only burden the proposed rules impose is on persons who make electioneering communications, and that burden is a minimal one, requiring persons who make such communications to provide the names and addresses of those who made donations to that person when the costs of the electioneering communication exceed \$10,000. If that person is a corporation that qualifies as a QNC, then it must also certify that it meets that status. The number of small entities affected by the proposed rules is not substantial.

The Commission would adopt several rules that seek to reduce any burden that might accrue to persons who must file reports. First, the Commission would interpret the reporting requirement such that no reporting is required until after an electioneering communication is publicly distributed. More than likely, this would only

require that person to file one report with the Commission. Also, the Commission would allow all persons paying for electioneering communications to establish segregated accounts, and to report the names and addresses of only those persons who contributed to those accounts. Further, the Commission would interpret the statute to not require that a certification of QNC status be filed until the person is also required to file a disclosure report. These are significant steps the Commission would take to reduce the burden on those who would make electioneering communications. The overall burden on the small entities affected by these proposed rules for reporting electioneering communications would not amount to \$100 million on an annual basis. Moreover, these proposed rules would be no more than what is strictly necessary to comply with the new statute enacted by Congress.

Reporting schedules for house and senate candidates Third, regarding the new rules requiring a different non-election year reporting schedule for the authorized committees of House and Senate candidates, the reporting frequencies have increased, however, the burden would not amount to \$100 million on an annual basis. Moreover, these proposed rules would be no more than what is strictly necessary to comply with the new statute enacted by Congress.

Reporting schedules for national committees of political parties Fourth, regarding the new rules requiring a different reporting schedule for national committees of political parties, as noted above, the two major national party committees are not small entities under 5 U.S.C. 601.

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 105

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

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

11 CFR Part 109

Elections, Reporting and Recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapter A of chapter I of title 11 of the Code of Federal Regulations as follows:

PART 100—SCOPE AND DEFINITIONS

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

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

2. Section 100.19 is amended as follows:

a. Revising the introductory text and paragraphs (b) through (e).

b. Adding a heading to paragraph (a) and adding paragraph (f).

The revisions and additions 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 (f) 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) *Where to deliver reports.* * * *

(b) *Timely filed. General rule.* A document other than those addressed in paragraphs (c) through (f) of this section, is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time of the day of the filing date, except that pre-election reports so mailed must be postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time 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) *Electronically filed reports.* 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) *48-hour and 24-hour reports of independent expenditures.*

(1) *48-hour reports of independent expenditures.* A 48-hour report of independent expenditures under 11 CFR 104.4(b) or 109.10(c) is timely filed when it is received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the second

day following the date on which independent expenditures aggregate \$10,000 or more in accordance with 11 CFR 104.4(f), any time during the calendar year up to and including the 20th day before an election.

(2) *24-hour reports of independent expenditures.* A 24-hour report of independent expenditures under 11 CFR 104.4(c) or 109.10(d) is timely filed when it is received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which independent expenditures aggregate at least \$1,000, in accordance with 11 CFR 104.4(f), during the period less than 20 days but more than 24 hours before an election.

(3) *Permissible means of filing.* In addition to other permissible means of filing, a 24-hour report or 48-hour report of independent expenditures 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) *48-hour statements of last-minute contributions.* 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).

(f) *24-hour statements of electioneering communications.* A 24-hour statement of electioneering communications under 11 CFR 104.20 is timely filed when it is received by the Commission within 24 hours of the disclosure date (see 11 CFR 104.20(a)(1)). In addition to other permissible means of filing, a 24-hour statement of electioneering communications 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.

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. In § 104.3, paragraph (g) is revised to read as follows:

§ 104.3 Contents of reports (2 U.S.C. 434(b), 439a).

* * * * *

(g) Building funds.

(1) A political party committee must report gifts, subscriptions, loans, advances, deposits of money, or anything of value that are used by the political party committee's Federal accounts to defray the costs of construction or purchase of the committee's office building. See 11 CFR 300.35. Such a receipt is a contribution subject to the limitations and prohibitions of the Act and reportable as a contribution, regardless of whether the contributor has designated the funds or things of value for such purpose and regardless of whether such funds are deposited in a separate Federal account dedicated to that purpose.

(2) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that are donated to a non-Federal account of a State, district, or local party committee and are used by that account for the purchase or construction of its office building are not contributions subject to the reporting requirements of the Act. The reporting of such funds or things of value is subject to State law.

(3) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that are used by a national committee of a political party to defray the costs of construction or purchase of the national committee's office building are contributions subject to the requirements of paragraph (g)(1) of this section.

* * * * *

5. Section 104.4 is revised to read as follows:

§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(b), (d), and (g)).

(a) *Regularly scheduled reporting.* Every political committee that makes independent expenditures must report all such independent expenditures on Schedule E in accordance with 11 CFR 104.3(b)(3)(vii). Every person other than a political committee must report independent expenditures in accordance with 11 CFR 109.10.

(b) *Reports of independent expenditures made at any time up to and including the 20th day before an election.*

(1) Independent expenditures aggregating less than \$10,000 in a calendar year. Political committees must report on Schedule E of FEC Form 3X at the time of their regular reports in accordance with 11 CFR 104.3, 104.5 and 104.9, all independent expenditures aggregating less than \$10,000 with respect to a given election any time during the calendar year up to and

including the 20th day before an election.

(2) Independent expenditures aggregating \$10,000 or more in a calendar year. Political committees must report on Schedule E of FEC Form 3X all independent expenditures aggregating \$10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election. Political committees must ensure that the Commission receives these reports no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional \$10,000 or more, the political committee must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures. See 11 CFR 104.4(f) for aggregation. Each 48-hour report must 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 political committee may file the 48-hour reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(c) *Reports of independent expenditures made less than 20 days, but more than 24 hours before the day of an election.* Political committees must ensure that the Commission receives reports of independent expenditures aggregating \$1,000 or more with respect to a given election, after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election, no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate \$1,000 or more, the political committee must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures. Each 24-hour 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. Political committees may file reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(d) *Verification.* Political committees must verify reports of independent

expenditures filed under paragraph (b) or (c) of this section by one of the methods stated in paragraph (d)(1) or (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 treasurer of the political committee that made the independent expenditure must certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(2) For reports filed by electronic mail, the treasurer of the political committee that made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(e) *Where to file.* Reports of independent expenditures under this section and part 109 shall be filed as follows.

(1) For independent expenditures in support of or in opposition to, a candidate for President or Vice President: with the Commission and the Secretary of State for the State in which the expenditure is made.

(2) For independent expenditures in support of, or in opposition to, a candidate for the Senate or the House of Representatives: with the Commission and the Secretary of State for the State in which the candidate is seeking election.

(3) Notwithstanding the requirements of paragraphs (e)(1) and (2) of this section, political committees and other persons shall not be required to file reports of independent expenditures with the Secretary of State if that State has obtained a waiver under 11 CFR 108.1(b).

(f) *Aggregating independent expenditures for reporting purposes.* For purposes of determining whether 24-hour and 48-hour reports must be filed in accordance with paragraphs (b) and (c) of this section and 11 CFR 109.10(c) and (d), aggregations of independent expenditures must be calculated as of the first date during the calendar year on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated, and as of the date that any such communication with respect to the same election is subsequently publicly distributed or otherwise publicly disseminated. Every

person must include in the aggregate total all disbursements for independent expenditures, and all enforceable contracts, either oral or written, obligating funds for disbursements for independent expenditures, made with respect to any communication that has been publicly distributed or otherwise publicly disseminated, during the calendar year, with respect to a given election for Federal office.

6. In § 104.5, paragraphs (a) and (g) are revised and introductory text to paragraph (c), and paragraphs (c)(4) and (j) are added to read as follows:

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

(a) *Principal campaign committee of House or Senate candidate.* Each treasurer of a principal campaign committee supporting a candidate for the House of Representatives or for the Senate must file reports on the dates specified at paragraph (a)(1) of this section in election years and non-election years, and paragraph (a)(2) of this section in election years.

(1) *Quarterly reports.*

(i) Quarterly reports must be filed no later than the 15th day following the close of the immediately preceding calendar quarter (on April 15, July 15, and October 15), except that the report for the final calendar quarter of the year must be filed no later than January 31 of the following calendar year.

(ii) The report must be complete as of the last day of each calendar quarter.

(iii) The requirement for a quarterly report shall be waived if, under paragraph (a)(2) of this section, a pre-election report is required to be filed during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

(2) *Additional reports in the election year.*

(i) *Pre-election reports.*

(A) Pre-election reports for the primary and general election must be filed no later than 12 days before any primary or general election in which the candidate seeks election. If sent by registered or certified mail, the report must be mailed no later than the 15th day before any election.

(B) The pre-election report must disclose all receipts and disbursements as of the 20th day before a primary or general election.

(ii) *Post-general election report.*

(A) The post-general election report must be filed no later than 30 days after any general election in which the candidate seeks election.

(B) The post-general election report must be complete as of the 20th day after the general election.

* * * * *

(c) *Committees other than authorized committees of candidates.* Each political committee that is not the authorized committee of a candidate, except for a national committee of a political party (including the national Congressional campaign committees of a political party), which must comply with paragraph (c)(4) of this section, must file either: Election year and non-election year reports as prescribed at paragraphs (c)(1) and (2) of this section; or monthly reports as prescribed at paragraph (c)(3) of this section. A political committee reporting under 11 CFR 104.5(c), except for a national committee of a political party (including the national Congressional campaign committees of a political party), may elect to change the frequency of its reporting from monthly to quarterly and semi-annually or vice versa. A committee, except for national committee of a political party (including the national Congressional campaign committees of a political party), may change its filing frequency only after notifying the Commission in writing of its intention at the time it files a required report under its current filing frequency. Such committee will then be required to file the next required report under its new filing frequency. A committee may change its filing frequency no more than once per calendar year.

* * * * *

(4) A national committee of a political party, including a national Congressional campaign committee, must report monthly in accordance with paragraph (c)(3) of this section.

* * * * *

(g) *Reports of independent expenditures.*

(1) *48-hour reports of independent expenditures.* Every person who or which must file a 48-hour report under 11 CFR 104.4(b) must ensure the Commission receives the report no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate \$10,000 or more, that person must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures no later than 11:59 p.m. Eastern

Standard/Daylight Time of the second day following the date on which the \$10,000 threshold is reached or exceeded. See 11 CFR 104.4(f) for aggregation.

(2) *24-hour report of independent expenditures.* Every person who or which must file a 24-hour report under 11 CFR 104.4(c) must ensure that the Commission receives the report no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate \$1,000 or more, that person must ensure that the Commission receives a 24-hour report of the subsequent independent expenditures no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which the \$1,000 threshold is reached or exceeded. See 11 CFR 104.4(f) for aggregation.

(3) Each 24-hour or 48-hour report of independent expenditures filed under this section 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.

(4) For purposes of this part, a communication that is mailed to its intended audience is publicly disseminated when it is relinquished to the U.S. Postal Service.

* * * * *

(j) *24-hour statements of electioneering communications.* Every person who has made a disbursement or who has executed a contract to make a disbursement for the direct costs of producing or airing electioneering communications as defined in 11 CFR 100.29 aggregating in excess of \$10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time of the day following the disclosure date. The statement shall be filed under penalty of perjury and in accordance with 11 CFR 104.20.

§ 104.19 [Reserved]

7. Section 104.19 is added and reserved.

8. Section 104.20 is added to read as follows:

§ 104.20 Reporting electioneering communications (2 U.S.C. 434(f)).

(a) *Definitions.*

(1) Disclosure date means:

(i) The first date during the calendar year on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of \$10,000; or

(ii) Any other date during the same calendar year on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of \$10,000 since the most recent disclosure date during such calendar year.

(2) Direct costs of producing or airing electioneering communications means the following:

(i) Costs charged by a production company, such as studio rental time, staff salaries, costs of video or audio recording media, and talent; or

(ii) The cost of airtime on broadcast, cable or satellite radio and television stations, and the charges for a broker to purchase the airtime.

(3) Sharing or exercising direction or control means exercising authority or responsibility for:

(i) Development, establishment, or change of policy for the organization or corporation;

(ii) Day-to-day management of the organization or corporation;

(iii) Obligation of funds or signing contracts; or

(iv) Hiring or firing employees.

(4) Identification has the same meaning as in 11 CFR 100.12.

(5) Publicly distributed has the same meaning as in 11 CFR 100.29(a)(5).

(b) *Who must report.* Every person who has made a disbursement or who has executed a contract to make a disbursement for the direct costs of producing or airing electioneering communications, as defined in 11 CFR 100.29, aggregating in excess of \$10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time of the day following the disclosure date. The statement shall be filed under penalty of perjury and contain the information set forth in paragraph (c) of this section. Persons other than political committees must file these 24-hour statements on FEC Form 9.

(c) *Contents of statement.* Every person described in paragraph (b) of this

section shall disclose the following information:

(1) The identification of the person who made the disbursement, or who executed a contract to make a disbursement, and, if the person is not an individual, the person's principal place of business;

(2) The identification of any person sharing or exercising direction or control over the activities of the person who made the disbursement, or who executed a contract to make a disbursement, for electioneering communications;

(3) The identification of the custodian of the books and accounts from which the disbursements for electioneering communications were made;

(4) The amount of each disbursement, or amount obligated, of more than \$200 during the period covered by the statement, the date the disbursement was made, or the contract was executed, and the identification of the person to whom that disbursement was made;

(5) All clearly identified candidates referred to in the communication and the elections in which they are candidates;

(6) The disclosure date as defined in this section.

(7) If the disbursements were paid exclusively out of a segregated bank account consisting of funds provided solely by individuals who are United States citizens, United States nationals, or who are lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20), the name and address of each donor who donated an amount aggregating \$1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year; and

(8) If the disbursements were not paid exclusively from the segregated bank account, the name and address of each donor who donated an amount aggregating \$1,000 or more to the person making the disbursement, aggregating since the first day of the preceding calendar year.

(d) *Recordkeeping.* All persons who make electioneering communications or who accept donations for the purpose of making electioneering communications, must maintain records in accordance with 11 CFR 104.14.

PART 105—DOCUMENT FILING (2 U.S.C. 432(g))

9. The authority citation for part 105 is revised to read as follows:

Authority: 2 U.S.C. 432(g), 434, 438(a)(8).

10. Section 105.2 is revised to read as follows:

§ 105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (2 U.S.C. 432(g)(2), 434(g)(3)).

(a) *General Rule.* Except as provided in paragraph (b) of this section, all designations, statements, reports, and notices as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a candidate for nomination or election to the office of United States Senator, by his or her principal campaign committee or by any other political committee(s) that supports only candidates for nomination for election or election to the Senate of the United States shall be filed in original form with, and received by, the Secretary of the Senate, as custodian for the Federal Election Commission.

(b) *Exception.* 24-hour and 48-hour reports of independent expenditures must be filed with the Commission and not with the Secretary of the Senate, even if the communication refers to a Senate candidate:

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

11. The authority citation for part 108 continues to read as follows:

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

12. Paragraph (b) of § 108.1 is revised to read as follows:

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

* * * * *

(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. The list of states that have obtained waivers under this section is available on the Commission's web site.

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a, Pub. L. 107–155 Sec. 214(c) (March 27, 2002))

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

Authority: 2 U.S.C. 431(17), 434(c), 441a; Pub. L. 155–107 sec. 214(c).

§ 109.2 [Removed and reserved]

14. Section 109.2 is removed and reserved.

15. Section 109.10 is added to read as follows:

§ 109.10 How do political committees and other persons report independent expenditures?

(a) Political committees, including political party committees, must report independent expenditures under 11 CFR 104.4.

(b) Every person, other than a political committee, who makes independent expenditures aggregating in excess of \$250 with respect to a given election in a calendar year shall file a verified statement, or report on FEC Form 5 in accordance with 11 CFR 104.4(e) containing the information required by paragraph (e) of this section. Every person filing a report or statement under this section shall do so at the end of the reporting period during which any such independent expenditures that aggregate in excess of \$250 are made and in any reporting period thereafter in which additional independent expenditures are made.

(c) Every person, other than a political committee, who makes independent expenditures aggregating \$10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election, must report the independent expenditures on FEC Form 5, or by signed statement if the person is not otherwise required to file electronically under 11 CFR 104.18. (See 11 CFR 104.4(f) for aggregation). The person making the independent expenditures aggregating \$10,000 or more must ensure that the Commission receives the report or statement no later than 11:59 p.m. Eastern Standard/Daylight Time of the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional \$10,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures. Each 48-hour report must contain the information required by paragraph (e)(1) of this section.

(d) Every person making, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of an election, independent expenditures aggregating \$1,000 or more with respect to a given election must report those independent expenditures and ensure that the Commission receives the report or

signed statement no later than 11:59 p.m. Eastern Standard/Daylight Time of the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate \$1,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures. See 11 CFR 104.4(f) for aggregation. Such report or statement shall contain the information required by paragraph (e) of this section.

(e) Content of verified statements and verification of reports and statements.

(1) Contents of verified statement. If a signed statement is submitted, the statement shall include:

(i) The reporting person's name, mailing address, occupation, and the name of his or her employer, if any;

(ii) The identification (name and mailing address) of the person to whom the expenditure was made;

(iii) The amount, date, and purpose of each expenditure;

(iv) A statement that indicates whether such expenditure was in support of, or in opposition to a candidate, together with the candidate's name and office sought;

(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 a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents; and

(vi) The identification of each person who made a contribution in excess of \$200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.

(2) Verification of independent expenditure statements and reports. Every person shall verify reports and statements of independent expenditures filed pursuant to the requirements of this section by one of the methods stated in paragraph (e)(2)(i) or (ii) of this section. Any report or statement 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.

(i) For reports or statements filed on paper (e.g., by hand-delivery, U.S. Mail, or facsimile machine), the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately

following the certification required by paragraph (e)(1)(v) of this section.

(ii) For reports or statements filed by electronic mail, the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by paragraph (e)(1)(v) of this section.

Dated: October 11, 2002.

David. M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02-26394 Filed 10-18-02; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2002-CE-18-AD]

RIN 2120-AA64

Airworthiness Directives; Cessna Aircraft Company Models 441 and F406 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 2002-09-13, which currently requires a one-time inspection of the fuel boost pump wiring inside and outside the boost pump reservoir and repair or replacement of the wiring as necessary on certain Cessna Aircraft Company (Cessna) Model 441 airplanes. AD 2002-09-13 resulted from several reports of chafing and/or arcing of the fuel boost pump wiring inside and outside the fuel pump reservoir. This proposed AD would retain the actions required in AD 2002-09-13, make the one-time inspection repetitive, require the inspection and possible replacement of the wire harness, lead wires and fuel boost pump on Model F406 airplanes, and require eventual installation of an improved design wire harness and fuel boost pump as terminating action for the repetitive inspections. The actions specified by this proposed AD are intended to detect, correct, and prevent chafing and/or arcing fuel boost pump wiring, which could result in arcing within the wing fuel storage system. Such a condition could lead to ignition of explosive vapor within the fuel storage system.

DATES: The Federal Aviation Administration (FAA) must receive any

comments on this proposed rule on or before December 30, 2002.

ADDRESSES: Submit comments to FAA, Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 2002-CE-18-AD, 901 Locust, Room 506, Kansas City, Missouri 64106. You may view any comments at this location between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. You may also send comments electronically to the following address: 9-ACE-7-Docket@faa.gov. Comments sent electronically must contain "Docket No. 2002-CE-18-AD" in the subject line. If you send comments electronically as attached electronic files, the files must be formatted in Microsoft Word 97 for Windows or ASCII text.

You may get service information that applies to this proposed AD from Cessna Aircraft Company, Product Support, P.O. Box 7706, Wichita, Kansas 67277; telephone: (316) 517-5800; facsimile: (316) 942-9006. You may also view this information at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Robert Adamson, Aerospace Engineer, FAA, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Wichita, Kansas 67209; telephone: 316-946-4145; facsimile: 316-946-4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

How Do I Comment on This Proposed AD?

The FAA invites comments on this proposed rule. You may submit whatever written data, views, or arguments you choose. You need to include the rule's docket number and submit your comments to the address specified under the caption **ADDRESSES**. We will consider all comments received on or before the closing date. We may amend this proposed rule in light of comments received. Factual information that supports your ideas and suggestions is extremely helpful in evaluating the effectiveness of this proposed AD action and determining whether we need to take additional rulemaking action.

Are There Any Specific Portions of This Proposed AD I Should Pay Attention To?

The FAA specifically invites comments on the overall regulatory, economic, environmental, and energy aspects of this proposed rule that might suggest a need to modify the rule. You may view all comments we receive before and after the closing date of the rule in the Rules Docket. We will file a report in the Rules Docket that