

Proposed Rules

Federal Register

Vol. 69, No. 125

Wednesday, June 30, 2004

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 102, 106, and 109

[Notice 2004–11]

Coordinated and Independent Expenditures by Party Committees

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on the proposed deletion of its current rules that restrict the ability of political party committees to make both independent expenditures and coordinated party expenditures with respect to the same candidate in connection with a general election for Federal office. The current rules also prohibit a political party committee that makes coordinated expenditures with respect to a candidate from transferring funds to, or assigning authority to make coordinated expenditures to, or receive a transfer of funds from, a political party committee that has made or intends to make an independent expenditure with respect to that candidate. These rules were promulgated in order to implement section 213 of the Bipartisan Campaign Reform Act of 2002. However, in *McConnell v. FEC*, the U.S. Supreme Court held that section 213 is unconstitutional. Therefore, the Commission proposes to remove the rules implementing section 213. No final decision has been made by the Commission on the issues presented in this rulemaking. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

DATES: Comments must be received on or before July 30, 2004. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either electronic or written

form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be sent to *choiceprovision@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. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. 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. The Commission will post public comments on its Web site. If the Commission decides a hearing is necessary, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Brad C. Deutsch, Assistant General Counsel, or Mr. Ron B. Katwan, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Under the Federal Election Campaign Act of 1971 (“FECA” or the “Act”), as amended, 2 U.S.C. 431 *et seq.*, a national committee, State committee, or a subordinate committee of a State committee of a political party may make expenditures in coordination with a Federal candidate for that candidate's general election campaign up to prescribed limits without these expenditures counting against the party committee's contribution limits. 2 U.S.C. 441a(d)(1)–(3). While the Act limits coordinated expenditures, political party committees may make unlimited “independent expenditures,” which are not coordinated with a candidate's campaign. See *Colorado Republican Federal Campaign Committee v. FEC*, 518 U.S. 604 (1996) (“Colorado I”).¹

¹ The holding of Colorado I is limited to independent expenditures in connection with congressional campaigns. The opinion in Colorado I did not address the issue of whether regulation of independent expenditures is constitutionally permissible in connection with Presidential

Section 213 of the Bipartisan Campaign Reform Act of 2002 (Pub. L. 107–155 (Mar. 27, 2002)) (“BCRA”) amended 2 U.S.C. 441a(d), by prohibiting political party committees, under certain conditions, from making both coordinated party expenditures and independent expenditures with respect to the same candidate, and from making transfers and assignments to other political party committees. 2 U.S.C. 441a(d)(4).

In 2002, the Commission promulgated rules at 11 CFR 109.35 to implement section 213. Coordinated and Independent Expenditures; Final Rules, 68 FR 421, 422 (January 3, 2003).

Subsequently, in *McConnell v. FEC*, 540 U.S. ____; 124 S.Ct. 619, 700–704 (2003), the Supreme Court found section 213 unconstitutional. The Court held that by requiring political parties to choose between coordinated and independent expenditures during the post-nomination, pre-election period, section 213 placed an unconstitutional burden on the parties' right to make unlimited independent expenditures. 124 S.Ct. at 700–704. Accordingly, the Commission now proposes to remove its regulations at 11 CFR 109.35 implementing BCRA section 213 and to delete from other regulations cross-references to the rules that would be removed.

I. Proposed 11 CFR 102.6—Transfer of Funds; Collecting Agents

The Commission proposes to revise section 102.6 by deleting the cross-reference to current section 109.35, which the Commission proposes to remove.

campaigns. (“Since this case involves only the provision concerning congressional races, we do not address issues that might grow out of the public funding of Presidential campaigns.”) 518 U.S. at 612. Thus, the opinion in Colorado I did not reach the issue of whether former 11 CFR 110.7(a)(5) which prohibited independent expenditures by the national committee of a political party in connection with a presidential campaign was constitutional. Subsequently, however, BCRA effectively repealed section 110.7(a)(5) and the Commission replaced the section with 11 CFR 109.36, which prohibits independent expenditures by the national committee of a political party in connection with a presidential campaign only in certain circumstances in which the national committee of a political party serves as the principal campaign committee or authorized committee of its Presidential candidate. See Coordinated and Independent Expenditures; Final Rules, 68 FR 421, 447–48 (January 3, 2003).

II. Proposed 11 CFR 106.8—Allocation of Expenses for Political Party Committee Phone Banks That Refer to Clearly Identified Federal Candidate

The Commission proposes to revise section 106.8 by deleting the cross-reference to current section 109.35, which the Commission proposes to remove.

III. Proposed 11 CFR 109.30—How Are Political Party Committees Treated for Purposes of Coordinated and Independent Expenditures?

The Commission proposes to revise section 109.30 by deleting the cross-references to current section 109.35, which the Commission proposes to remove.

IV. Proposed 11 CFR 109.33—May a Political Party Committee Assign Its Coordinated Party Expenditure Authority to Another Political Party Committee?

The Commission proposes to revise section 109.33 by deleting the cross-reference to current section 109.35, which the Commission proposes to remove.

V. Proposed 11 CFR 109.35—What Are the Restrictions on a Political Party Committee Making Both Independent Expenditures and Coordinated Party Expenditures in Connection With the General Election of a Candidate?

The Commission proposes to remove and reserve current section 109.35, because, as explained above, the statutory foundation for this section, 2 U.S.C. 441a(d)(4), has been invalidated by the Supreme Court.

VI. Proposed 11 CFR 109.36—Are There Additional Circumstances Under Which a Political Party Committee Is Prohibited From Making Independent Expenditures?

The Commission proposes to revise section 109.36 by deleting the word “additional” in the heading of section 109.36, because, if section 109.35 is removed, the circumstances described in section 109.36 will be the only circumstances under which a political party committee is prohibited from making independent expenditures.

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

Regulatory Flexibility Act

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the national, State, and local party

committees of the two major political parties are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions.

To the extent that political party committees may fall within the definition of “small entities,” their number is not substantial. In addition, the proposed rules would remove, not add, restrictions applicable to political party committees.

List of Subjects

11 CFR Part 102

Political committees and parties, reporting and recordkeeping requirements.

11 CFR Part 106

Political candidates, campaign funds, political committees and parties.

11 CFR Part 109

Coordinated expenditures, independent expenditures, political committees and parties.

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 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

1. The authority citation for Part 102 would continue to read as follows:

Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), 441d.

2. Section 102.6 would be amended by revising paragraph (a)(1)(ii) to read as follows:

§ 102.6 Transfers of funds; collecting agents.

- (a) * * *
- (1) * * *

(ii) Subject to the restrictions set forth at 11 CFR 300.10(a), 300.31 and 300.34(a) and (b), transfers of funds may be made without limit on amount between or among a national party committee, a State party committee and/or any subordinate party committee whether or not they are political committees under 11 CFR 100.5 and whether or not such committees are affiliated.

* * * * *

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

3. The authority citation for Part 106 would continue to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

4. Section 106.8 would be amended by revising paragraph (b)(2)(ii) to read as follows:

§ 106.8 Allocation of expenses for political party committee phone banks that refer to a clearly identified Federal candidate.

* * * * *

- (b) * * *
- (2) * * *

(ii) A coordinated expenditure or an independent expenditure, subject to the limitations, restrictions, and requirements of 11 CFR 109.10, 109.32, and 109.33; or

* * * * *

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a(a) and (d), AND PUB. L. 107–155 SEC. 214(c))

5. The authority citation for Part 109 would continue to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441a, 441d; Sec. 214(c) of Pub. L. 107–155, 116 Stat. 81.

6. Section 109.30 would be revised to read as follows:

§ 109.30 How are political party committees treated for purposes of coordinated and independent expenditures?

Political party committees may make independent expenditures subject to the provisions in this subpart. See 11 CFR 109.36. Political party committees may also make coordinated party expenditures in connection with the general election campaign of a candidate, subject to the limits and other provisions in this subpart. See 11 CFR 109.32 through 11 CFR 109.34.

7. Section 109.33 would be amended by revising paragraph (a) to read as follows:

§ 109.33 May a political party committee assign its coordinated party expenditure authority to another political party committee?

(a) *Assignment.* The national committee of a political party and a State committee of a political party, including any subordinate committee of a State committee, may assign its authority to make coordinated party expenditures authorized by 11 CFR 109.32 to another political party committee. Such an assignment must be made in writing, must state the amount

of the authority assigned, and must be received by the assignee committee before any coordinated party expenditure is made pursuant to the assignment.

* * * * *

§ 109.35 [Removed and Reserved]

8. Section 109.35 would be removed and reserved.

9. Section 109.36 would be amended by revising the heading to read as follows:

§ 109.36 Are there circumstances under which a political party committee is prohibited from making independent expenditures?

* * * * *

Dated: June 24, 2004.

Ellen L. Weintraub,

Vice Chair, Federal Election Commission.

[FR Doc. 04-14817 Filed 6-29-04; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF COMMERCE

International Trade Administration

DEPARTMENT OF THE INTERIOR

15 CFR Part 303

[Docket No. 040609177-4177-01]

RIN 0625-AA65

Changes in the Insular Possessions Watch, Watch Movement and Jewelry Programs

AGENCIES: Import Administration, International Trade Administration, Department of Commerce; Office of Insular Affairs, Department of the Interior.

ACTION: Notice of proposed rulemaking and request for comments.

SUMMARY: The Departments of Commerce and the Interior (the Departments) propose amending their regulations governing watch duty-exemption allocations and the watch and jewelry duty-refund benefits for producers in the United States insular possessions (the U.S. Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands). The proposed rule would amend existing regulations by updating the maximum total value of watch components per watch that are eligible for duty-free entry into the United States under the insular program.

DATES: Written comments must be received on or before July 30, 2004.

ADDRESSES: Address written comments to Faye Robinson, Acting Director,

Statutory Import Programs Staff, FCB, Suite 4100W, U.S. Department of Commerce, 14th and Constitution Ave., NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Faye Robinson, (202) 482-3526, same address as above.

SUPPLEMENTARY INFORMATION: The insular possessions watch industry provision in Sec. 110 of Pub. L. No. 97-446 (96 Stat. 2331) (1983), as amended by Sec. 602 of Pub. L. No. 103-465 (108 Stat. 4991) (1994); additional U.S. Note 5 to chapter 91 of the Harmonized Tariff Schedule of the United States (“HTSUS”), as amended by Pub. L. 94-241 (90 Stat. 263) (1976) requires the Secretary of Commerce and the Secretary of the Interior (“the Secretaries”), acting jointly, to establish a limit on the quantity of watches and watch movements which may be entered free of duty during each calendar year. The law also requires the Secretaries to establish the shares of this limited quantity which may be entered from the Virgin Islands, Guam, American Samoa and the Commonwealth of the Northern Mariana Islands. After the Departments have verified the data submitted on the annual application (Form ITA-334P), the producers’ duty-exemption allocations are calculated from the territorial share in accordance with 15 CFR 303.14 and each producer is issued a duty-exemption license. The law further requires the Secretaries to issue duty-refund certificates to each territorial watch and watch movement producer based on the company’s duty-free shipments and creditable wages paid during the previous calendar year.

Proposed Amendments

We propose amending Sec. 303.14(b)(3) by raising the maximum total value of watch components per watch that are eligible for duty-free entry into the U.S. from \$500 to \$800. The insular watch program producers requested an increase primarily due to a substantial increase in the price of gold and the weakness of the dollar against the euro over the last several years. Also, there has not been an adjustment in the maximum value since 1998. Raising the value levels of watch components that may be used in the assembly of duty-free watches will help producers maintain the level of diversity in the kinds of watches they assemble, thereby affording them an opportunity to maintain or hopefully increase shipments and raise territorial employment.

Administrative Law Requirements

Regulatory Flexibility Act. In accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, the Chief Counsel for Regulation at the Department of Commerce has certified to the Chief Counsel for Advocacy, Small Business Administration, that the proposed rule, if promulgated as final, will not have a significant economic impact on a substantial number of small entities. There are currently four watch companies in the insular watch program, all of which are small entities. This rulemaking would update the total maximum value of watch components per watch that are eligible for duty-free entry into the U.S. Increases in the price of gold and a weakened dollar against the euro have driven up the price of gold watch components. Therefore, companies are faced with a difficult situation because if the value limit is exceeded, the watch becomes ineligible for the duty-free benefit under the program (due to the fact that the insular possessions are outside the Customs territory of the United States). Adoption of this rule would increase the maximum value of watch components per watch that would be eligible for duty-free treatment into the United States. This would allow producers to include higher-priced components in their watches. As a result, producers would realize an economic benefit in that they would regain greater flexibility in the types of watches they could produce, which, hopefully, will lead to increased sales and employment to help the insular economy. There would be no adverse economic impact from this proposed change.

This proposed rule also would not change reporting or recordkeeping requirements. The changes in the regulations will also not duplicate, overlap or conflict with other laws or regulations. Consequently, the changes are not expected to meet of the RFA criteria of having a “significant” economic effect on a “substantial number” of small entities, as stated in 5 U.S.C. 603 *et seq.* Therefore, a regulatory flexibility analysis was not prepared.

Paperwork Reduction Act. This proposed rulemaking does not contain revised collection of information requirements subject to review and approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995. Collection activities are currently approved by the Office of Management and Budget under control numbers 0625-0040 and 0625-0134.