After consideration of all relevant material presented, including the information and recommendation submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this rule until 30 days after publication in the **Federal Register** because: (1) The 2005–06 crop year began on August 1, 2005, and the order requires that the rate of assessment for each crop year apply to all assessable raisins acquired during the year; (2) this action decreases the assessment rate; (3) handlers are aware of this action which was recommended at a public meeting and is similar to other assessment rate actions issued in past years; and (4) this rule provides a 60-day comment period, and all comments timely received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 989

Grapes, Marketing agreements, Raisins, Reporting and recordkeeping requirements.

■ For the reasons set forth in the preamble, 7 CFR part 989 is amended as followed:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

■ 1. The authority citation for 7 CFR part 989 continues to read as follows:

Authority: 7 U.S.C. 601–674.

■ 2. Section 989.347 is revised to read as follows:

§ 989.347 Assessment rate.

On and after August 1, 2005, an assessment rate of $7.50 per ton is established for assessable raisins produced from grapes grown in California.

Dated: February 15, 2006.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. 06–1582 Filed 2–21–06; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1427

RIN 0560–AH29

Cottonseed Payment Program; Correction

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Correcting amendment.

SUMMARY: This document corrects the final regulations published on January 26, 2006 to provide assistance to producers and first-handlers of the 2004 crop of cottonseed in counties declared a disaster by the President due to 2004 hurricanes and tropical storms. A correction is needed to change a reference from ''cotton'' to ''cottonseed.''

DATES: Effective February 22, 2006.

FOR FURTHER INFORMATION CONTACT: Chris Kyer, phone: (202) 720–7935; e-mail: *chris.kyer@wdc.usda.gov.*

SUPPLEMENTARY INFORMATION:

Background

This document corrects the final regulations published on January 26, 2006 (71 FR 4231–4234) to provide assistance to producers and first-handlers of the 2004 crop of cottonseed in counties declared a disaster by the President due to 2004 hurricanes and tropical storms. In the final rule, section 1427.1103(b) mistakenly refers to cotton, rather than cottonseed, in stating that ''Cotton must not have been destroyed or damaged by fire, flood, or other events such that its loss or damage was compensated by other local, State, or Federal government or private or public insurance or disaster relief payments'' in order to be eligible under the Cottonseed Payment Program. This correction changes the term ''cotton'' to ''cottonseed.''

List of Subjects in 7 CFR Part 1427

Agriculture, Cottonseed.

■ Accordingly, 7 CFR part 1427 is corrected as follows:

PART 1427—COTTON

■ 1. The authority citation for 7 CFR part 1427 continues to read as follows:

Authority: 7 U.S.C. 7231–7239; 15 U.S.C. 714b, 714c; Pub. L. 108–324, Pub. L. 108–447.

■ 2. Revise § 1427.1103(b) to read as follows:

§ 1427.1103 Eligible cottonseed and counties.

* * * * *

(b) Cottonseed must not have been destroyed or damaged by fire, flood, or other events such that its loss or damage was compensated by other local, State, or Federal government or private or public insurance or disaster relief payments.

Signed in Washington, DC, on February 15, 2006.

Michael W. Yost,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 06–1645 Filed 2–21–06; 8:45 am]

BILLING CODE 3410–05–P

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 2006–2]

Definition of Federal Election Activity

AGENCY: Federal Election Commission.

ACTION: Final rules.

SUMMARY: The Federal Election Commission (''Commission'') is revising its rules defining ''Federal election activity'' (''FEA'') under the Federal Election Campaign Act of 1971, as amended (''FECA''). These final rules modify the definitions of ''get-out-the-vote activity'' and ''voter identification'' consistent with the ruling of the U.S. District Court for the District of Columbia in *Shays* v. *FEC.* The final rules retain the definition of ''voter registration activity'' that the Commission promulgated in 2002, and provide a fuller explanation of what this term encompasses in response to the district court's decision. The Commission is also revising the definition of ''in connection with an election in which a candidate for Federal office appears on the ballot'' for FEA purposes. Further information is provided in the supplementary information that follows.

DATES: *Effective Date:* These rules are effective on March 24, 2006.

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Assistant General Counsel, Mr. J. Duane Pugh Jr., Senior Attorney, or Ms. Margaret G. Perl, 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 No. 107–155, 116 Stat. 81 (2002), amended FECA by adding a new term, ''Federal election activity,'' to describe certain activities that State, district, and local party

committees must pay for with either Federal funds or a combination of Federal and Levin funds.[1] 2 U.S.C. 431(20) and 441i(b)(1). The FEA requirements apply to all State, district, and local party committees regardless of whether they are registered as political committees with the Commission. The term also affects fundraising on behalf of tax-exempt organizations. National, State, district, and local party committees are prohibited from soliciting or directing non-Federal funds to tax-exempt entities organized under 26 U.S.C. 501(c) that engage in FEA or make other disbursements or expenditures in connection with a Federal election. 2 U.S.C. 441i(d)(1). Also, Federal candidates and officeholders may make only limited solicitations for funds on behalf of tax-exempt entities organized under 26 U.S.C. 501(c) whose principal purpose is to conduct certain types of FEA. 2 U.S.C. 441i(e)(4).

BCRA identifies four types of FEA: Voter registration activity (Type I); voter identification, get-out-the-vote activity (''GOTV activity''), or generic campaign activity (Type II); public communications that refer to clearly identified Federal candidates and that promote, support, attack or oppose (''PASO'') a candidate for that office (Type III); and services provided by an employee of a State, district, or local political party committee who spends more than 25 percent of that individual's compensated time on activities in connection with a Federal election (Type IV). *See* 2 U.S.C. 431(20)(A)(i)–(iv). Only the first two types of FEA are implicated in this rulemaking. The Commission defined the different components of Types I and II FEA in 11 CFR 100.24. *Final Rules and Explanation and Justification on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 FR 49064, 49066 (July 29, 2002) (''*Soft Money E&J*'').

In 2004, the Commission's rules defining ''voter registration activity,'' ''GOTV activity,'' and ''voter identification'' were reviewed by the U.S. District Court for the District of Columbia in *Shays* v. *FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004), *aff'd*, 414 F.3d 76 (DC Cir. 2005) (''*Shays*''). The district court invalidated certain aspects of these regulations because they did not satisfy the first step of the test set out in *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837 (1984) (''*Chevron*'').[2] *Shays*, 337 F. Supp. 2d at 98–100, 102–103. The district court held that other aspects of these regulations satisfied the *Chevron* step one analysis, but the 2002 NPRM did not fully notice the approach taken in the final rule, as required by the Administrative Procedure Act, 5 U.S.C. 553(b)(3) (''APA''). *Shays*, 337 F. Supp. 2d at 101, 105–107. The district court remanded the regulations to the Commission for further action consistent with the court's decision. *Id.* at 130. The Commission did not appeal the district court's ruling on these regulations.

In response to the district court's decision, the Commission published a Notice of Proposed Rulemaking on May 4, 2005. *See Notice of Proposed Rulemaking on the Definition of Federal Election Activity*, 70 FR 23068 (May 4, 2005) (''*2005 NPRM* or *NPRM*''). The NPRM proposed possible modifications to the definitions of ''voter registration activity,'' ''GOTV activity,'' and ''voter identification.'' The NPRM also proposed several changes to the definition of ''in connection with an election in which a candidate for Federal office appears on the ballot'' in 11 CFR 100.24(a)(1). The public comment period for the NPRM closed on June 3, 2005. The Commission received written comments from 14 commenters. The Commission held a public hearing on August 4, 2005, at which six witnesses testified. After the hearing, the Commission reopened the comment period until September 29, 2005 to allow interested parties to submit additional information or comments. *See Notice to Reopen Comment Period on the Definition of Federal Election Activity*, 70 FR 51302 (August 30, 2005). The Commission received two additional comments during this period. All comments and a transcript of the public hearing are available at *http://www.fec.gov/law/law_rulemakings.shtml* under ''Definition of Federal Election Activity.'' For purposes of this document, the terms ''comment'' and ''commenter'' apply to both written comments and oral testimony at the public hearing.

These final rules remove the exception to the definitions of ''get-out-the-vote activity'' and ''voter identification'' for associations or other similar groups of candidates for State and local office. These final rules also remove the reference to ''within 72 hours of an election'' from the definition of ''get-out-the-vote activity'' and amend the definition of ''voter identification'' so as to include ''acquiring information about potential voters, including, but not limited to, obtaining voter lists.'' The final rules retain the current definition of ''voter registration activity,'' and provide a fuller explanation of what this term encompasses. The Commission is also revising the definition of ''in connection with an election in which a candidate for Federal office appears on the ballot'' to remove restrictions on the rules for special elections to odd-numbered years.

Under the APA, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on February 10, 2006.

Explanation and Justification

A. Definitions of ''Voter Registration Activity'' (11 CFR 100.24(a)(2)) and ''GOTV Activity'' (11 CFR 100.24(a)(3))

BCRA uses the terms ''voter registration activity'' and ''get-out-the-vote activity'' within the definition of FEA. Congress did not, however, define those terms. *See* 2 U.S.C. 431(20)(A)(i)–(ii).[3] In 2002, the Commission defined ''voter registration activity'' to mean ''contacting individuals by telephone, in person, or by other individualized means to assist them in registering to vote. Voter registration activity includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms.'' 11 CFR 100.24(a)(2). Similarly, Commission regulations define ''GOTV activity'' to mean

[1] ''Federal funds'' are funds subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 11 CFR 300.2(g). ''Levin funds'' are funds raised by State, district, and local party committees pursuant to the restrictions in 11 CFR 300.31 and disbursed subject to the restrictions in 11 CFR 300.32. *See* 11 CFR 300.2(i).

[2] The first step of the *Chevron* analysis, which courts use to review an agency's regulations, asks whether Congress has directly spoken to the precise questions at issue. The second step considers whether the agency's resolution of an issue not addressed in the statute is based on a permissible construction of the statute. *See Shays*, 337 F. Supp. 2d at 51–52 (citing *Chevron*, 467 U.S. at 842–43).

[3] The statute states that voter registration activity (Type I FEA) is FEA only when it is conducted 120 days or fewer before a regularly scheduled Federal election. *See* 2 U.S.C. 431(20)(A)(i). BCRA also specifies that GOTV activity (Type II FEA) is FEA only when it is conducted ''in connection with an election in which a candidate for Federal office appears on the ballot,'' *see* 2 U.S.C. 431(20)(A)(ii), which the Commission defined in 11 CFR 100.24(a)(1), as discussed below.

''contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting.'' 11 CFR 100.24(a)(3). This provision also includes a non-exhaustive list of examples of different types of GOTV activity. *See* 11 CFR 100.24(a)(3)(i)–(ii).

The *Shays* plaintiffs argued that the requirement that voter registration and GOTV activity ''assist'' in the registration of voters or the act of voting impermissibly narrowed the statutory definition of ''FEA'' by excluding activities that only ''encourage'' registration and voting. *See Shays*, 337 F. Supp. 2d at 98–99, 102–103. The district court did not invalidate these definitions on *Chevron* grounds. Instead, the district court found that the Commission's interpretation of section 431(20)(A) is permissible under the *Chevron* step one analysis because it does not conflict with expressed Congressional intent. *Shays*, 337 F. Supp. 2d at 99–100, 102–103. Specifically, the district court noted that ''it is possible to read the term 'voter registration activity' to encompass those activities that actually register persons to vote, as opposed to those that only encourage persons to do so without more. Moreover, the Court [did not] find based on the record presented that the 'common usage' of the term 'voter registration activity' necessarily includes the latter type of activities.'' *Shays*, 337 F. Supp. 2d at 99 (internal citation omitted); *see also Shays*, 337 F. Supp. 2d at 102–03 (GOTV activity). With respect to *Chevron* step two, the district court concluded that the ''exact parameters of the Commission's regulation[s] are subject to interpretation,'' and absent further guidance, the plaintiffs' challenges were not ripe. *Shays*, 337 F. Supp. 2d at 100 (voter registration activity); *see also Shays*, 337 F. Supp. 2d at 105 (GOTV activity). The district court concluded that if the parameters were sufficiently broad, it would alleviate any concerns that the regulations would ''unduly compromise[] the Act.'' *Shays*, 337 F. Supp. 2d at 100 and 105 (citing *Orloski* v. *FEC*, 795 F.2d 156, 164 (D.C. Cir. 1986)).

The district court remanded these regulations to the Commission because the court found that the NPRM for 11 CFR 100.24 did not provide sufficient notice that the Commission might limit the definitions of ''voter registration'' and ''GOTV activity'' to activities that ''assist'' individuals to register to vote or to vote. *Shays*, 337 F. Supp. 2d at 101, 105–107; *see also Notice of Proposed Rulemaking on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money*, 67 FR 35654 (May 20, 2002) (''2002 NPRM''). The district court concluded that the final rules could not have been reasonably anticipated based on the 2002 NPRM proposals and therefore interested parties did not have an adequate opportunity to comment. *Shays*, 337 F. Supp. 2d at 101, 105–107.

The Commission's 2005 NPRM proposed retaining the ''assist'' requirement in these definitions. The purpose of retaining the ''assist'' requirement is to exclude ''mere encouragement'' from the scope of the rules. In proposing to retain the ''assist'' requirement, the Commission was concerned that regulations that included activities that merely encouraged people to register and vote may sweep too broadly. The proposed rule addresses the financing of the voter registration and GOTV activities that Congress sought to regulate. At the same time, the Commission reviewed the statutory language and the legislative history of the FEA provision and found no evidence that Congress intended to capture every State or local party event where an individual ends a speech with the exhortation, ''Don't forget to vote!'' Both Congress and the Commission are aware that such speech is ubiquitous and often spontaneous in an election year.

The 2005 NPRM sought public comment on how to address the district court's concerns that the scope of the 2002 rules might be too narrow. In addition, the Commission asked whether there were any particular activities that should be specifically included in, or excluded from, these provisions.

Several commenters supported the Commission's proposal to retain the current definitions of ''voter registration activity'' and ''GOTV activity.'' These commenters argued that the ''assist'' requirement effectuates BCRA and gives State, district, and local party committees a rule that is understandable. Some commenters asserted that including ''encouragement'' to register and/or to vote would broaden the reach of these provisions to cover nearly every activity of State, district, and local party committees. These commenters stated that local party committees would find it particularly difficult to comply with more expansive rules. According to these commenters, most local parties are small volunteer-centered organizations that operate largely autonomously from the State and national committees. Many local party committees do not have the resources to comply with the complexities of Federal law, and their response to BCRA has been to avoid voter registration and GOTV activities that might trigger Federal reporting and financing requirements. These commenters urged the Commission not to expand the FEA definitions because any further expansion of these definitions could preclude local parties at the grassroots level from answering simple voter inquiries about where to register or from referring voters to those who could legally assist them in registering.

Other commenters urged the Commission to amend the definitions of ''voter registration activity'' and ''GOTV activity'' to include ''encouragement'' to register and/or to vote, arguing that this approach would better reflect Congressional intent, and that the ''assist'' requirement improperly narrows the reach of these provisions. These commenters urged the Commission to adopt a standard such that a ''mere exhortation to register to vote,'' without any additional activity to assist the individual in doing so, would be covered by the FEA definitions and funding requirements. These commenters argued that any concerns about the FEA definition sweeping too broadly are alleviated by the fact that the rule applies only to State, district, or local party committees [4] and that the funding requirements on voter registration activity are limited to the period of 120 days before a Federal election.

The Commission has decided to retain the current definitions of ''voter registration activity'' and ''GOTV activity,'' which exclude mere encouragement of registration and/or voting from these definitions. *See* 11 CFR 100.24(a)(2) and (a)(3). The district court emphasized that ''it is possible to read the term 'voter registration activity' to encompass those activities that actually register persons to vote, as opposed to those that only encourage persons to do so without more. Moreover, the Court [did not] find based on the record presented that the 'common usage' of the term 'voter registration activity' necessarily includes the latter type of activities.'' *Shays*, 337 F. Supp. 2d at 99 (internal citation omitted); *see also Shays*, 337 F. Supp. 2d at 102–03 (GOTV activity).

The Commission's regulations are consistent with BCRA, which seeks to regulate the funds used to influence Federal elections. The final rules regulate actual voter registration activity

[4] However, as noted above, the FEA definition also affects the ability of national, State, district or local party committees and Federal candidates and officeholders to raise funds for tax-exempt entities organized under 26 U.S.C. 501(c).

without capturing incidental speech, such as responding to voter inquiries by providing publicly available information, such as the address on the FEC's website for the National Voter Registration Form or the 1–800 number of a State's Division of Elections. Should a State, district, or local party expend funds actually to register individuals to vote, such uses of funds are clearly covered by the Commission's regulations.

Moreover, in the Commission's extensive enforcement experience, general exhortations to register to vote and to vote are so common in political party communications that including encouragement to register to vote and to vote would be overly broad, is not necessary to effectively implement BCRA, and could have an adverse impact on grassroots political activities. As the Supreme Court has repeatedly stressed, where First Amendment rights are affected, ''[p]recision of regulation must be the touchstone.'' *Edenfield* v. *Fane*, 507 U.S. 761, 777 (1993). The Commission notes that these definitions will not lead to circumvention of FECA because the regulations prohibit the use of non-Federal funds for disbursements that State, district, and local parties make for those activities that actually register individuals to vote. Additionally, many programs for widespread encouragement of voter registration to influence Federal elections would be captured as public communications under Type III FEA.

Commenters who supported including ''encouragement'' in the definitions noted that these definitions do not exactly match the definition of ''voter registration and get-out-the-vote activities'' in 11 CFR 100.133. Section 100.133 exempts from the definition of ''expenditure'' the costs of non-partisan activity ''designed to encourage individuals to register to vote or to vote.'' However, the district court agreed with the Commission that these regulations are not in conflict. *Shays*, 337 F. Supp. 2d at 100. Indeed, these regulations are consistent because both provisions promote the public policy goal of encouraging civic participation through voter registration and voting. For reasons similar to the policy rationale that underlies the exception to the funding restrictions on expenditures in section 100.133, the Commission declines to impose FEA funding restrictions on State, district, and local party committees' mere ''encouragement'' of registering to vote or voting.

Therefore, the Commission is reaffirming its interpretation of the statutory FEA provision in its definitions at 11 CFR 100.24(a)(2) and (a)(3).

1. Examples of ''Voter Registration Activity''

As stated above, the district court concluded that the scope of the ''assist'' requirement was unclear. *Shays*, 337 F. Supp. 2d at 100. Commenters disagreed about whether particular State, district, or local party committee activities would meet the current definition of ''voter registration activity.'' The Commission has decided to include some additional examples in this Explanation and Justification to provide more guidance on which activities are, and are not, covered by this rule. These examples are illustrations only.[5]

The following are examples of activity that *are* Type I FEA voter registration activity:

1. At a county fair, a local political party committee sponsors a booth. The booth has banners reading, ''Don't forget to register to vote!'' Party staff at the booth provides voter registration forms and answers questions about completing and submitting the forms. They also accept completed forms and mail them to the appropriate governmental agency.

2. A State party committee conducts a phone bank contacting possible voters. The party staff making the calls encourages the individuals to register to vote, provides information about how to register to vote, and offers to mail registration forms with a prepaid postage envelope to the individuals.

Both of these examples illustrate activity where a State, district, or local party committee is providing potential voters with personal assistance in registering to vote. Both examples go beyond general statements encouraging voter registration. In example 1, providing registration forms and personal assistance in completing and submitting those forms are actions that actually assist individuals in registering to vote. In example 2, the State party committee is affirmatively contacting individual potential voters to provide them with registration information and offering to provide registration forms. Therefore, these examples would satisfy the definition of ''voter registration activity'' and are FEA if conducted within 120 days of a Federal election.

The following is an example of activity that is *not* Type I FEA voter registration activity:

3. A guest speaker at a local party committee rally for a mayoral candidate extols the virtues of the candidate and concludes his remarks by stating: ''Don't forget to register and vote!'

In contrast to examples 1 and 2 above, example 3 involves a State or local party committee speaker merely encouraging registration and voting without any additional concrete action that would be considered personal assistance to potential voters. General statements of encouragement alone are not enough to trigger the FEA definition. Congress did not express an intent in BCRA to require that Federal funds be used for an entire State or local party committee rally on behalf of non-Federal candidates on the basis of speeches that merely encourage the audience to register to vote. Additionally, this type of party event would not lead to actual or apparent corruption of Federal candidates or officeholders. Under BCRA, Congress continued to allow these organizations to use non-Federal funds for this type of State, district, or local activity generally, and there is no legislative history or administrative record that general encouragement to vote is similar to the other corrupting activity Congress was concerned with when it required certain activity to be funded with Federal dollars.

Congress, as a policy matter, has historically recognized the importance of encouraging voters to register to vote and to vote in a variety of laws. *See, e.g.*, FECA, 2 U.S.C. 431(9)(B)(ii) (exception to the definition of ''expenditure'' for non-partisan voter registration efforts and GOTV activity); Voting Rights Act of 1965, 42 U.S.C. 1973b(a)(1)(F)(iii) (a jurisdiction which wants to terminate ''Section 5'' coverage must show that it has ''engaged in * * * constructive efforts, such as expanded opportunity for convenient registration''); National Voter Registration Act of 1993, 42 U.S.C. 1973gg(b)(1) (purpose of the Act is to ''establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office''); Help America Vote Act of 2002, 42 U.S.C. 15483 (standards for computerized statewide voter registration lists and registering to vote by mail). The Commission believes that BCRA should be interpreted to be faithful to these purposes.

2. Examples of ''GOTV Activity''

The Commission's 2002 definition of ''GOTV activity'' included examples of activity that meet the ''assist'' requirement for GOTV activity in 11 CFR 100.24(a)(3)(i) and (ii). The first example is ''[p]roviding to individual voters, *within 72 hours of an election*, information such as the date of the election, the times when polling places

[5] All of these examples exclude public communications that PASO any Federal candidate and, therefore, would not raise the possibility of otherwise qualifying as Type III FEA. *See* 11 CFR 100.24(b)(3).

are open, and the location of particular polling places.'' 11 CFR 100.24(a)(3)(i) (emphasis added). The district court rejected the plaintiffs' challenge to the 72-hour provision in the first example at 11 CFR 100.24(a)(3)(i), noting that the general definition of ''GOTV activity'' in section 100.24(a)(3) makes clear that the list of examples is non-exhaustive. *Shays*, 337 F. Supp. 2d at 103. Similar to its *Chevron* step two analysis of the ''assist'' requirement discussed above, the district court held that the 72-hour provision was not ripe for review because it was unclear what activity the Commission would consider to be GOTV activity if conducted outside of this 72-hour window. *Shays*, 337 F. Supp. 2d at 105.

The NPRM sought public comment as to whether to revise the list of examples of GOTV activity in 11 CFR 100.24(a)(3)(i)–(ii) to address the district court's ruling on the 72-hour example. Most of the commenters urged the Commission to remove the 72-hour example, although for different reasons. Some commenters argued that GOTV activity occurs weeks and months before an election, and this example could suggest that no GOTV activity is covered until 72-hours before the election. Other commenters claimed that this example created confusion for State, district, and local party committees as to the timing, method, and content of communications that might be considered GOTV activity. Many commenters noted that it was unclear how the Commission would apply the 72-hour provision with regard to absentee balloting and early voting, which is now available in most states. One commenter argued that the Commission should include an exhaustive, yet narrow, list of covered activities in the definition of ''GOTV activity,'' while another commenter urged the Commission to eliminate all of the regulatory examples.

Activity conducted earlier than 72 hours before the election that meets the general definition of ''GOTV activity'' in 11 CFR 100.24(a)(3) is Type II FEA. As the Commission explained in the *Soft Money E&J*, the non-exhaustive list of examples in section 100.24(a)(3)(i)–(ii) is merely illustrative of the types of activity that would satisfy the definition of ''GOTV activity.'' *See Soft Money E&J*, 67 FR at 49067. For example, a State party committee could hire a consultant a month prior to the election to design a GOTV program for the State party committee and recruit volunteers to drive voters to the polls on election day. The consultant's work performed well before the 72-hour time period would be considered Type II FEA and must be paid for by the State party committee only with Federal funds or an allocated mix of Federal and Levin funds. Also, the definition of ''GOTV activity'' would apply equally to actions taken with regard to absentee balloting or early voting.

The 72-hour provision in the first example was included in the rule as an effort to provide an example of what activity would clearly be covered by the definition of ''GOTV activity,'' and was not intended to exclude activity in any other timeframe. The Commission based the example on its understanding that the execution of most GOTV activity tends to occur within 72 hours of an election. However, based on the comments received by the Commission, it appears that the 72-hour provision in the first example has given rise to uncertainty and potential confusion over whether GOTV activity conducted earlier in the election cycle would not be covered by the rule. No such time limitation exists, and the removal of the 72-hour reference will clarify that this has always been the case. Therefore, the Commission is removing the phrase ''within 72 hours of an election'' from the example in 11 CFR 100.24(a)(3)(i). The remainder of the example in section 100.24(a)(3)(i) gives proper guidance as to the type of activity covered by the rule, regardless of when it occurs inside the Type II FEA window.

B. Definition of ''Voter Identification'' (11 CFR 100.24(a)(4))

In 2002, the Commission's regulations defined ''voter identification'' to mean ''*creating or enhancing voter lists* by verifying or adding information about the voters' likelihood of voting in an upcoming election or their likelihood of voting for specific candidates.'' *See* 11 CFR 100.24(a)(4) (2002) (emphasis added). This definition did not include the initial acquisition of a voter list because the Commission concluded that political party committees might acquire voter lists for a number of reasons other than for voter identification in connection with an election in which a Federal candidate appears on the ballot. Such reasons include fundraising and off-year party building activities. *See Soft Money E&J,* 67 FR at 49069. The district court in *Shays* held that the Commission's decision not to include acquisition of voter lists in the definition of ''voter identification'' failed *Chevron* step one. *Shays*, 337 F. Supp. 2d at 108.

To comport with this ruling, the NPRM proposed revising section 100.24(a)(4) to include the acquisition of voter lists in the definition of ''voter identification.'' Most of the commenters agreed that the Commission is required to include the acquisition of voter lists.

The NPRM also sought comment on whether the Commission should use the date a voter list is purchased or the date a voter list is used to determine whether the acquisition of a voter list occurs ''in connection with an election in which a candidate for Federal office appears on the ballot,'' as defined in 11 CFR 100.24(a)(1). A few commenters urged the Commission to adopt a ''use'' test to foreclose the possibility of State, district, and local party committees purchasing a list outside the FEA period and then using it inside the FEA period. Most commenters, however, supported the ''purchase'' test, noting the burdensome tracking that would be required of State, district, and local party committees under a ''use'' test. In addition, these commenters noted that a ''purchase'' test would not unfairly burden State, district, and local party committees that acquire lists in odd-numbered years for voter identification uses outside of the FEA windows. Some commenters also noted that a ''use'' test would effectively eliminate the FEA window for voter identification because any subsequent ''use'' of a voter list would reach back and retroactively convert a non-FEA acquisition into FEA.

The Commission has decided to amend the definition of ''voter identification'' to include ''acquiring information about potential voters, including, but not limited to, obtaining voter lists.'' *See* revised 11 CFR 100.24(a)(4). Under the new rule, the acquisition of a voter list is considered FEA if it occurs after the earliest filing deadline for the ballot in an even-numbered year and for those States that do not conduct primaries, on January 1 of an even-numbered year, and after the date is set for a special election in which a candidate for Federal office appears on the ballot. *See* 11 CFR 100.24(a)(1) and 100.24(b)(2). Under these revised rules, State, district, and local party committees should use the date the information was purchased, rather than the date the information was used, to determine whether the acquisition of a voter list falls within the FEA timeframes. The revised rule states that ''[t]he date a voter list is acquired shall govern whether a State, district, or local party committee has obtained a voter list.'' *See* revised 11 CFR 100.24(a)(4). Any acquisition of voter lists during the FEA period would come within this revised definition, and must be paid for with Federal funds or an allocated mix of Federal and Levin funds. The purchase of any voter list before the FEA period begins may be made with an allocated mixture of

Federal and non-Federal funds under 11 CFR 106.7(c). Any subsequent use of the voter list during the FEA period will not be considered a separate FEA cost unless the political party is also ''enhancing'' the voter list by verifying or adding information. *See* 11 CFR 100.24(a)(4).

This approach has a number of benefits. It provides a sensible, bright line rule. In addition, this interpretation is consistent with the Commission's reporting requirements, as political party committees are required to report disbursements for a voter list at the time of purchase. *See* 11 CFR 300.36. Finally, the Commission's rule allows for off-year party fundraising and party building activities not connected to Federal elections by using voter lists acquired outside of the FEA window without automatic imposition of the FEA rules.

The NPRM also sought public comment on a proposed exception to the definition of ''voter identification'' when a State party committee uses the voter list in connection with an election where no Federal candidates appear on the ballot. *See NPRM,* 70 FR at 23070. Most of the commenters who discussed this proposed exception opposed it as exceeding the Commission's statutory authority under BCRA. The Commission has decided not to adopt any new exceptions to the voter identification provision at this time. Additionally, this proposed exception would be challenging for State, district, and local party committees to apply and for the Commission to enforce because it is difficult to determine when a voter list is, or is not, ''used'' by a State party committee. Finally, any acquisitions of voter lists to be used in odd-numbered year, non-Federal elections would most likely occur outside the FEA timeframes, and would therefore not be considered FEA.

C. Exceptions for Non-Federal Candidate Associations in GOTV Activity (11 CFR 100.24(a)(3)) and Voter Identification (11 CFR 100.24(a)(4))

The 2002 regulatory definitions of ''GOTV activity'' and ''voter identification'' included exceptions for associations or similar groups of candidates for State or local office or of individuals holding State or local office (collectively ''non-Federal candidate associations''). *See* 11 CFR 100.24(a)(3) and (4). The Commission intended that these exceptions would keep State and local candidates' grassroots and local political activity a question of State, not Federal law. *See Soft Money E&J,* 67 FR at 49067. The Commission decided not to interpret BCRA in a way that would ''undertake * * * a vast federalization of State and local activity without greater direction from Congress.'' *See id.,* 67 FR at 49067.

The district court found that these exceptions ''run[] contrary to Congress's clearly expressed intent'' as enacted in BCRA and fail step one of *Chevron. See Shays*, 337 F. Supp. 2d at 104 and 107 n.83. The district court also observed that the Supreme Court rejected the federalism concerns underlying these exceptions in *McConnell* v. *FEC*, 540 U.S. 93 (2003). *See Shays*, 337 F. Supp. 2d at 104 (citing *McConnell*, 540 U.S. at 186).

To comply with the district court's opinion, the NPRM proposed removing from both definitions the exceptions for non-Federal candidate associations. *See NPRM,* 70 FR at 23072. The NPRM also sought comment on the impact of removing the exceptions, and whether other alternatives could address the Commission's concerns while still satisfying Congressional intent as determined by the *Shays* court. *See id.*, 70 FR at 23069 and 23070.

Several commenters agreed that BCRA or the district court's decision in *Shays* requires the removal of these exceptions from the definitions of ''GOTV activity'' and ''voter identification.'' One commenter urged the Commission to leave the definition of ''FEA'' undisturbed ''to the maximum extent permitted by the court's judgment in *Shays*.'' All of the commenters who addressed the issue believed that non-Federal candidate associations would be required to use Federal funds for FEA in the absence of these exceptions. No commenter provided any specific alternatives that would address the Commission's concerns that gave rise to these exceptions and satisfy Congressional intent as determined by the *Shays* court.

In light of these comments and the district court's reasoning, the Commission has decided to remove the exception for non-Federal candidate associations from the definitions of ''GOTV activity'' and ''voter identification.'' *See* revised 11 CFR 100.24(a)(3) and (4). These revisions require that non-Federal candidate associations use only Federal funds to pay for FEA. *See* 2 U.S.C. 441i(b)(1) and 11 CFR 300.32(a)(1).

D. Type II FEA Time Periods (11 CFR 100.24(a)(1))

BCRA provides that voter identification, GOTV activity, and generic campaign activity constitute FEA only when ''conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for State or local office also appears on the ballot).'' 2 U.S.C. 431(20)(A)(ii). In 2002, the Commission defined this period as beginning on the date of the earliest filing deadline for a primary election ballot for Federal candidates in each particular State and ending on the date of the general election, up to and including any runoff election date. *See* 11 CFR 100.24(a)(1)(i) (2002). For States that do not hold primary elections, the period begins January 1 of each even-numbered year. *Id.* For special elections in which Federal candidates are on the ballot, the period begins when the date of the special election is set and ends on the date of the special election. *See* 11 CFR 100.24(a)(1)(ii). By its terms, the 2002 rule for special elections applied in odd-numbered years only. *Id.*[6]

1. FEA Time Period for Special Elections During Odd-Numbered Years

In the NPRM, the Commission proposed eliminating the odd-numbered year limitation on the Type II FEA time period for special elections. *NPRM,* 70 FR at 23071 and 23072. All of the commenters who addressed this topic supported the proposed change. The Commission has decided to remove the limitation from former 11 CFR 100.24(a)(1)(ii) that made it applicable only to those special elections that take place in odd-numbered years. For any special elections that are scheduled in even-numbered years, the same Type II FEA time period should apply. Therefore, the phrase ''In an odd-numbered year,'' no longer appears in revised 11 CFR 100.24(a)(1)(ii).

2. Other Proposed Changes to Type II FEA Time Period.

The NPRM also sought comment on limited exceptions to the Type II FEA time period in 11 CFR 100.24(a)(1). *See NPRM,* 70 FR 23071 and 23072. The Commission received several comments on the issues raised in the NPRM. The Commission is promulgating an Interim Final Rule in a separate rulemaking to address these issues.

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

The Commission certifies that the attached final rule will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the organizations affected by this rule are State, district, and local party committees, which are not ''small

[6] None of these rules was challenged in *Shays.*

entities'' under 5 U.S.C. 601. These not-for-profit committees do not meet the definition of ''small organization,'' which requires that the enterprise be independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately. To the extent that any State party committees representing minor political parties might be considered ''small organizations,'' the number affected by this rule is not substantial.

List of Subjects in 11 CFR Part 100

Elections.

■ For the reasons set out in the preamble, Subchapter A of Chapter 1 of Title 11 of the *Code of Federal Regulations* is amended as follows:

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

■ 1. The authority citation for 11 CFR part 100 continues to read as follows:

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

■ 2. In section 100.24, paragraph (a) is revised to read as follows:

§ 100.24 Federal Election Activity (2 U.S.C. 431(20)).

(a) As used in this section, and in part 300 of this chapter,

(1) *In connection with an election in which a candidate for Federal office appears on the ballot* means:

(i) The period of time beginning on the date of the earliest filing deadline for access to the primary election ballot for Federal candidates as determined by State law, or in those States that do not conduct primaries, on January 1 of each even-numbered year and ending on the date of the general election, up to and including the date of any general runoff.

(ii) The period beginning on the date on which the date of a special election in which a candidate for Federal office appears on the ballot is set and ending on the date of the special election.

(2) *Voter registration activity* means contacting individuals by telephone, in person, or by other individualized means to assist them in registering to vote. Voter registration activity includes, but is not limited to, printing and distributing registration and voting information, providing individuals with voter registration forms, and assisting individuals in the completion and filing of such forms.

(3) *Get-out-the-vote activity* means contacting registered voters by telephone, in person, or by other individualized means, to assist them in engaging in the act of voting. Get-out-the-vote activity includes, but is not limited to:

(i) Providing to individual voters information such as the date of the election, the times when polling places are open, and the location of particular polling places; and

(ii) Offering to transport or actually transporting voters to the polls.

(4) *Voter identification* means acquiring information about potential voters, including, but not limited to, obtaining voter lists and creating or enhancing voter lists by verifying or adding information about the voters' likelihood of voting in an upcoming election or their likelihood of voting for specific candidates. The date a voter list is acquired shall govern whether a State, district, or local party committee has obtained a voter list within the meaning of this section.

* * * * *

Dated: February 10, 2006.

Michael E. Toner,

Chairman, Federal Election Commission.

[FR Doc. 06–1679 Filed 2–21–06; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 3

[Docket No. 06–02]

RIN 1557–AC90

FEDERAL RESERVE SYSTEM

12 CFR Parts 208 and 225

[Regulation H and Y; Docket No. R–1087]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

RIN 3064–AC46

Risk-Based Capital Guidelines; Market Risk Measure; Securities Borrowing Transactions

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the Agencies) are issuing a final rule that amends their market risk rules to revise the risk-based capital treatment for cash collateral that is posted in connection with securities borrowing transactions. This final rule will make permanent, and expand the scope of, an interim final rule issued in 2000 (the interim rule) that reduced the capital requirement for certain cash-collateralized securities borrowing transactions of banks and bank holding companies (banking organizations) that have adopted the market risk rule. This action more appropriately aligns the capital requirements for these transactions with the risk involved and provides a capital treatment for U.S. banking organizations that is more in line with the capital treatment to which their domestic and foreign competitors are subject.

DATES: *Effective:* February 22, 2006.

FOR FURTHER INFORMATION CONTACT: *OCC:* Margot Schwadron, Risk Expert, Capital Policy (202) 874–6022, or Carl Kaminski, Attorney, Legislative and Regulatory Activities Division (202) 874–5090, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.