Proposed Rules

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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, 104, and 109

[Notice 2018–01]

Independent Expenditures by Authorized Committees; Reporting Multistate Independent Expenditures and Electioneering Communications

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed changes to its regulations concerning independent expenditures by candidates. The Commission also requests comments on proposed changes to its regulations to address reporting of independent expenditures and electioneering communications that relate to presidential primary elections and that are publicly distributed in multiple states but that do not refer to any particular state's primary election. The Commission has made no final decision on the issues and proposals presented in this rulemaking.

DATES: Comments must be received on or before March 30, 2018.

ADDRESSES: All comments must be in writing. Comments may be submitted electronically via the Commission's website at *http://sers.fec.gov/fosers,* reference REG 2014–02. Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form. Paper comments must be sent to the Federal Election Commission, Attn.: Robert M. Knop, Assistant General Counsel. Comments submitted before the Commission's relocation on March 5, 2018 must be sent to 999 E Street NW, Washington, DC 20463; comments submitted after the Commission's relocation must be sent to 1050 First Street NE, Washington, DC 20463. *See* Change of Address; Technical Amendments, 82 FR 60852 (Dec. 26, 2017). Each commenter must provide, at a minimum, his or her first name, last name, city, state, and zip code. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission's website and in the Commission's Public Records room. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver's license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

The Commission may hold a public hearing on this notice of proposed rulemaking. Commenters wishing to testify at a hearing must so indicate in their comments. If a hearing is to be held, the Commission will publish a notification of hearing in the **Federal Register** announcing the date and time of the hearing.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, Ms. Esther D. Gyory, or Ms. Joanna S. Waldstreicher, Attorneys, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is considering revising some of its regulations concerning independent expenditures and electioneering communications, and it seeks comment on the proposed changes.

The Commission is proposing revisions to its regulations concerning whether authorized committees may make independent expenditures. The Federal Election Campaign Act, 52 U.S.C. 30101–46 (the ''Act'') and Commission regulations state that no political committee that ''supports'' more than one candidate may be designated as an authorized campaign committee. 52 U.S.C. 30102(e)(3); 11 CFR 102.12(c), 102.13(c). The statute and regulations do not define ''support'' for the purposes of these two provisions, except to state that the term ''does not include contributions by an authorized committee in amounts aggregating $2,000 or less per election to an authorized committee of any other candidate.'' 52 U.S.C. 30102(e)(3)(B); 11 CFR 102.12(c)(2), 102.13(c)(2). The Commission is considering revising its regulations to specifically state that for the purposes of these provisions, ''support'' includes making independent expenditures, or, in the alternative, that ''support,'' in this context, does not include independent expenditures. The Commission is seeking comment on the following proposed revisions to its regulations, which would clarify the meaning of ''support'' as it is used in 11 CFR 102.12(c)(2) and 102.13(c)(2). In the event that the Commission promulgates final rules that exclude independent expenditures from the definition of support, the Commission is also proposing changes to its reporting regulations at 11 CFR 104.3 and 104.4 to provide for authorized committees to report independent expenditures.

The Commission is also seeking comment on proposed revisions to its regulations concerning independent expenditures and electioneering communications as they apply to communications that relate to presidential primary elections and that are publicly distributed in multiple states but that do not refer to any particular state's primary election. The Act and Commission regulations require persons who make independent expenditures and electioneering communications to report certain information to the Commission within specified periods of time. *See* 52 U.S.C. 30104(b)–(c), (g); 11 CFR 104.3, 104.4, 104.20, 109.10. The Commission is considering revising its regulations to specifically address how these reporting requirements apply to an independent expenditure or electioneering communication that relates to a presidential primary election and is distributed in multiple states but does not refer to any particular state's primary election (a ''multistate independent expenditure'' or ''multistate electioneering communication''). The Commission is seeking comment on the following proposed revisions to its regulations, which would clarify when and how multistate independent expenditures and multistate electioneering communications must be reported.

I. Background

The Act and Commission regulations require that political committees report all disbursements. 52 U.S.C. 30104(b)(4); 11 CFR 104.3(b). Political committees must also itemize their

disbursements according to specific categories. 52 U.S.C. 30104(b)(4); 11 CFR 104.3(b)(1)–(2).

An ''independent expenditure'' is an expenditure that expressly advocates the election or defeat of a clearly identified federal candidate and is not coordinated with such candidate (or his or her opponent) or political party. 52 U.S.C. 30101(17); *see also* 11 CFR 100.16(a). Under existing regulations, a political committee (other than an authorized committee) that makes independent expenditures must itemize those expenditures on its regular periodic reports, stating, among other things, the name of the candidate whom the expenditure supports or opposes and the office sought by that candidate. 52 U.S.C. 30104(b)(4)(H)(iii), (6)(B)(iii); 11 CFR 104.4(a). Any person other than a political committee that makes independent expenditures aggregating in excess of $250 during a calendar year must disclose the same information in a statement filed with the Commission.[1] 52 U.S.C. 30104(c); 11 CFR 109.10(b).

In addition, any person that makes independent expenditures aggregating $10,000 or more for an election in any calendar year, up to and including the 20th day before an election, must report the expenditures within 48 hours. 52 U.S.C. 30104(g)(2)(A); 11 CFR 104.4(b)(2), 109.10(c). Additional reports must be filed within 48 hours each time the person makes further independent expenditures aggregating $10,000 or more with respect to the same election. 52 U.S.C. 30104(g)(2)(B); 11 CFR 104.4(b)(2), 109.10(c).

Any person that makes independent expenditures aggregating $1,000 or more less than 20 days, but more than 24 hours, before the date of an election must report the expenditures within 24 hours. 52 U.S.C. 30104(g)(1)(A); 11 CFR 104.4(c), 109.10(d). Additional reports must be filed within 24 hours each time the person makes further independent expenditures aggregating $1,000 or more with respect to the same election. 52 U.S.C. 30104(g)(1)(B); 11 CFR 104.4(c), 109.10(d).

A. Independent Expenditures by Authorized Committees

The Act requires that every candidate for federal office (other than the nominee for Vice President) designate a political committee ''to serve as the principal campaign committee'' for that candidate. 52 U.S.C. 30102(e)(1); 11 CFR 102.12(a). The principal campaign committee of a candidate is ''authorized'' by the candidate to receive contributions or to make expenditures on behalf of that candidate. *See* 11 CFR 102.13(a)(1); 52 U.S.C. 30102(e)(1), (3). A candidate may also designate additional political committees to serve as authorized committees of that candidate. 52 U.S.C. 30102(e)(1); 11 CFR 102.13(a)(1). The Act and Commission regulations state that no political committee that ''supports'' more than one candidate may be designated as an authorized committee. 52 U.S.C. 30102(e)(3); 11 CFR 102.12(c), 102.13(c). The Act and regulations further state that for the purposes of these provisions, ''the term *support* does not include contributions by an authorized committee in amounts aggregating $2,000 or less per election to an authorized committee of any other candidate,'' but the term is not otherwise defined. 11 CFR 102.12(c)(2), 102.13(c)(2); 52 U.S.C. 30102(e)(3)(B).[2]

Until recently, the Commission had not definitively addressed whether the term ''support'' in section 30102(e)(3) includes independent expenditures.[3] In Matter Under Review (''MUR'') 6405 (Friends of John McCain Inc., *et al.*), the Commission dismissed an allegation that an authorized committee violated 52 U.S.C. 30102(e)(3) by running ads that expressly advocated the election of another candidate. Factual and Legal Analysis at 2–3, MUR 6405 (Friends of John McCain Inc., *et al.*) (Feb. 25, 2015), *http://eqs.fec.gov/eqsdocsMUR/15044371159.pdf* (''McCain''). In its analysis, the Commission cited the Supreme Court's decisions in *Buckley* v. *Valeo,* 424 U.S. 1 (1976) (striking down limits on independent expenditures for most individuals and groups), *Colorado Republican Federal Campaign Committee* v. *FEC,* 518 U.S. 604 (1996) (striking down limit on independent expenditures by political party committees on grounds that independent expenditures do not pose a risk of corruption or the appearance of corruption), and *Citizens United* v. *FEC,* 558 U.S. 310 (2010) (striking down prohibition on independent expenditures by corporations). McCain at 9–10. The Commission concluded that ''it is unlikely that independent spending by authorized committees would be deemed more potentially corrupting than independent expenditures by individuals, political parties, or corporations, each of which has been found [by the Supreme Court] to have a constitutional right to make unlimited independent expenditures.'' McCain at 10.

Currently, neither the regulations nor the Commission's reporting forms provide a mechanism for authorized committees to report independent expenditures. Section 104.3(b)(2), which covers reporting by authorized committees, does not include independent expenditures made by the reporting committee among the categories of disbursements that must be itemized. Similarly, § 104.3(b)(4) sets out the categories of information that authorized committees must report about itemized disbursements and does not contain a provision for independent expenditures. Finally, section 104.4 specifies that political committees that make independent expenditures must report them on Schedule E of FEC Form

[1] Further, Commission regulations provide that persons other than political committees ''shall [also] file a report or statement for any quarterly period during which any such independent expenditures that aggregate in excess of $250 are made and in any quarterly reporting period thereafter in which additional independent expenditures are made.'' 11 CFR 109.19(b).

[2] ''Support'' appears in other places in the regulations but is not defined in most of those other instances. *See, e.g.,* 11 CFR 100.24(b)(3) (defining ''federal election activity'' as public communication that refers to clearly identified candidate for federal office and that ''promotes or supports, or attacks or opposes any candidate for Federal office''), 104.5(d) (requiring treasurer of political committee ''supporting'' candidate for Vice President to file reports on same basis as principal campaign committee of presidential candidate), 110.1(h) (addressing circumstances in which person may contribute to more than one committee ''supporting'' the same candidate), 114.4(d)(1) (stating that corporation or labor organization may ''support or conduct'' voter registration and get-out-the-vote drives), 114.4(d)(2) (specifying that voter registration and get-out-the-vote drives are not expenditures when they meet certain criteria, including that individuals conducting drive are not paid on basis of number of individuals registered or transported ''who support one or more particular candidates''), 300.2(m) (stating that definition of ''solicitation'' does not include ''mere statements of political support''), 300.37(a)(3)(iv) (excluding from prohibition on fundraising for certain tax-exempt organizations a ''political committee under [s]tate law, that 'supports' only [s]tate or local candidates . . . .''). Section 100.6, which defines ''connected organization,'' states that, for the purposes of that provision, the term ''financially supports'' does not include contributions to a political committee, but does include payments of establishment, administration, and solicitation costs of a political committee.

[3] In MUR 2841 (Jenkins), the Commission stated that 2 U.S.C. 432(e) (now 52 U.S.C. 30102(e)) precluded a principal campaign committee from ''making expenditures on behalf of another candidate, thus supporting more than one candidate,'' but ultimately decided the matter on other grounds. *See* Conciliation Agreement ¶ IV.13 (Dec. 11, 1992), *http://www.fec.gov/disclosure_data/mur/2841.pdf.* In a subsequent MUR, the Office of the General Counsel, relying on the Commission's reasoning in MUR 2841 (Jenkins), recommended finding reason to believe that an authorized committee violated 2 U.S.C. 432(e). *See* First General Counsel's Report at 11, MUR 3676 (Stupak) (Jan. 11, 1995), all documents for MUR 3676 available at *http://www.fec.gov/disclosure_data/mur/3676.pdf.* The Commission rejected OGC's recommendation, though the four Commissioners did not agree on the reasoning for that decision. *See* Thomas Statement of Reasons; Aikens *et al.* Statement of Reasons, MUR 3676 (Stupak).

3X, but authorized committees file Form 3 (for House and Senate candidates) or Form 3P (for presidential candidates), neither of which contains Schedule E.

B. Multistate Independent Expenditures and Electioneering Communications

As described above, the Act and Commission regulations require any person who makes independent expenditures aggregating at or above certain threshold amounts and within certain periods prior to an election to report those independent expenditures within 48 or 24 hours. 52 U.S.C. 30104(g)(1)(A), (2)(A); 11 CFR 104.4(b)(2), (c), 109.10(c)–(d). The 48- and 24-hour filing requirements begin to run when the independent expenditures aggregating at least $10,000 or $1,000, respectively, are ''publicly distributed or otherwise publicly disseminated'' 11 CFR 104.4(b)(2), (c), (f), 109.10(c)–(d). For purposes of calculating these expenditures and determining if a communication is ''publicly distributed'' within an applicable 24-hour pre-election filing window, each state's presidential primary election is considered a separate election. *See* Advisory Opinion 2003–40 (U.S. Navy Veterans' Good Government Fund) at 3–4 (noting that ''publicly distributed'' in section 104.4 has same meaning as the term in 11 CFR 100.29(b)(3)(ii)(A), under which each state's presidential primary election is a separate election) (citing Bipartisan Campaign Reform Act of 2002 Reporting, 68 FR 404, 407 (Jan. 3, 2003); Electioneering Communications, 67 FR 65190, 65194 (Oct. 23, 2002)).

An ''electioneering communication,'' in the context of a presidential election, is a broadcast, cable, or satellite communication that refers to a clearly identified candidate for President or Vice President and is ''publicly distributed'' within sixty days before a general election or thirty days before a primary election or nominating convention. 52 U.S.C. 30104(f)(3)(A)(i); 11 CFR 100.29(a). If the candidate identified in the communication is seeking a party's nomination for the presidential or vice presidential election, ''publicly distributed'' means the communication can be received by at least 50,000 people in a state where a primary election is being held within 30 days, or that it can be received by at least 50,000 people anywhere in the United States within the period between 30 days before the first day of the national nominating convention and the conclusion of the convention. 11 CFR 100.29(b)(3). A person who makes electioneering communications that aggregate in excess of $10,000 in a calendar year must file a statement with the Commission disclosing certain information about the electioneering communication, including the election to which the electioneering communication pertains. 52 U.S.C. 30104(f); 11 CFR 104.20(b)–(c). As with independent expenditures, each state's presidential primary election is considered a separate election for purposes of determining whether an electioneering communication is ''publicly distributed'' within the pre-election reporting window. *See* Advisory Opinion 2003–40 (U.S. Navy Veterans' Good Government Fund) at 3–4.

The Commission's current regulations do not specifically address how the public distribution criteria and other reporting requirements apply to independent expenditures or electioneering communications that are made in the context of a presidential primary election and that are distributed in multiple states. In particular, the regulations do not specify which state's primary election date is relevant for determining whether the communication falls within the 24-hour reporting window (for independent expenditures) or the 30-day definitional window (for electioneering communications).

In a 2012 advisory opinion, the Commission considered how the independent expenditure reporting requirements applied to independent expenditures that supported or opposed a presidential primary candidate and were distributed nationwide without referring to any specific state's primary election. *See* Advisory Opinion 2011–28 (Western Representation PAC). In that advisory opinion, the Commission concluded that a political committee making such an independent expenditure should divide the cost of the independent expenditure by the number of states that had not yet held their primary elections, and should use the resulting amounts to determine whether the committee must file 24- and 48-hour reports and for which states. *Id.*

In 2014, the Commission made available for public comment three alternative draft interpretive rules on this topic. Draft Notices of Interpretive Rule Regarding Reporting Nationwide Independent Expenditures in Presidential Primary Elections (Jan. 17, 2014) (''Draft Interpretive Rules''), *www.fec.gov/law/policy/nationwideiereporting/draftnationwideiereporting.pdf.*[4] Draft A would have followed the approach set forth in Advisory Opinion 2011–28 (Western Representation PAC), instructing persons making a nationwide independent expenditure to divide the cost of the nationwide independent expenditure by the number of states with upcoming presidential primary elections. Draft B would have instructed persons making a nationwide independent expenditure to report it as a single expenditure without indicating a state where the expenditure was made, instead using ''memo text'' [5] to indicate that the independent expenditure was made nationwide. Draft B also would have instructed filers to use the first day of the candidate's national nominating convention as the election date for determining whether they must file 24- and 48-hour reports. Finally, Draft C would have provided the same reporting guidance as Draft B, except that Draft C would have instructed filers to use the date of the next presidential primary election (rather than the beginning of the national nominating convention) as the election date.

The Commission received two comments on the Draft Interpretive Rules.[6] Both comments generally supported Draft B. Both comments also argued that the approach in Draft A was unnecessarily complex and would not provide clear information to the public about the reported independent expenditures.

After reviewing the comments and engaging in further deliberation, the Commission has determined that this issue would be better addressed through regulatory amendments than through an interpretive rule. Accordingly, the Commission is now seeking comment on proposed revisions to its regulations regarding reporting of independent expenditures and electioneering communications.

[4] The Draft Interpretive Rules referred to the type of independent expenditures that are the subject of this proposed rulemaking as ''nationwide independent expenditures.'' As discussed below, however, the Commission has not yet determined the number of states in which an independent expenditure or electioneering communication must be distributed to fall under the proposed rules. Accordingly, such communications are referred to in this Notice as ''multistate''—rather than ''nationwide''—independent expenditures and electioneering communications.

[5] ''Memo text'' refers to a means of including additional information or explanation about a receipt or disbursement on a Commission form. *See* FEC, Campaign Guide for Nonconnected Committees (2008), *https://www.fec.gov/resources/cms-content/documents/nongui.pdf.*

[6] These comments are available on the Commission's website at *http://www.fec.gov/law/policy.shtml.*

II. Proposed Revisions to 11 CFR Parts 102 and 104—Independent Expenditures by Authorized Committees of a Candidate

As set forth below, the Commission proposes revisions to section 102.12, concerning principal campaign committees, and section 102.13, concerning authorized committees. The Commission also proposes revisions to sections 104.3 and 104.4 regarding authorized committees' reporting of independent expenditures. The Commission seeks comment on these revisions, which are intended to clarify the type of activity that an authorized committee may engage in without ''supporting'' another candidate, as well as to require disclosure of independent expenditures by authorized committees if such expenditures are determined to be permissible.

A. Proposed New 11 CFR 102.12(c)(2)(i) and 102.13(c)(2)(i)—Definition of ''Support''

In both sections 102.12 and 102.13, the Commission is proposing to redesignate current paragraph (c)(2) as paragraph (c)(2)(ii) and to add new paragraph (c)(2)(i), which would define the term ''support.'' The Commission is proposing two alternative provisions for new 11 CFR 102.12(c)(2)(i) and 102.13(c)(2)(i) and seeks comment on whether either alternative is preferable.

Under either alternative, the regulations would continue to exclude from the definition of support contributions by an authorized committee in amounts aggregating $2,000 or less per election to an authorized committee of any other candidate. Under both alternatives, current §§ 102.12(c)(2) and 102.13(c)(2) would be redesignated as §§ 102.12(c)(2)(ii) and 102.13(c)(2)(ii), respectively.

Under Alternative A, new §§ 102.12(c)(2)(i) and 102.13(c)(2)(i) would state that for the purposes of the regulation, the term ''support'' includes an independent expenditure by an authorized committee. (The proposed regulations would clarify that this does not affect the ability of a national committee of a political party that has been designated as the principal campaign committee of that party's presidential candidate to make independent expenditures supporting or opposing other candidates. *See* 11 CFR 109.36.[7]) Under Alternative B, new §§ 102.12(c)(2)(i) and 102.13(c)(2)(i) would state that for the purposes of the regulation, the term ''support'' does *not* include independent expenditures by an authorized committee.

The Commission seeks comment on the two alternatives. Is either alternative preferable as a matter of statutory interpretation, taking into account the applicable case law? If both alternatives are statutorily permissible, is either alternative preferable as a matter of policy?

For the purposes of sections 102.12 and 102.13, the term ''support'' does not include contributions aggregating $2,000 or less. Thus, Alternative A would prohibit authorized committees from making independent expenditures in any amount, while not prohibiting those committees from making contributions (including coordinated expenditures and coordinated communications, *see* 52 U.S.C. 30116(a)(7)(B)(i); 11 CFR 109.20) of up to $2,000 to other candidates. If the Commission adopts Alternative A, should the Commission also exclude independent expenditures aggregating $2,000 or less per election from the definition of support? If the Commission adopts Alternative B, authorized committees would be allowed to make independent expenditures in any amount. What are the implications of authorized committees' potentially using substantial portions of their resources on independent expenditures?

B. Proposed Revisions to 11 CFR 104.3—Contents of Reports and 11 CFR 104.4—Independent Expenditures by Political Committees

Currently, all political committees—including authorized committees—must report the name and address of any person who has received any disbursement in an aggregate amount exceeding $200 within a certain period, along with the date, amount, and purpose of such disbursement. 52 U.S.C. 30104(b)(5), (6); 11 CFR 104.3(b)(3), (4). Additionally, political committees—other than authorized committees—must provide for each reported disbursement in connection with an independent expenditure the date, amount, and purpose of the independent expenditure, a statement indicating whether the independent expenditure was in support of, or in opposition to, a candidate, the name and office sought by that candidate, and a certification that the expenditure was, in fact, independent. 52 U.S.C. 30104(b)(6)(B); 11 CFR 104.3(b)(3)(vii).

If the Commission adopts Alternative B above, the Commission also proposes to revise 11 CFR 104.3 and 104.4 to provide a mechanism for authorized committees to report independent expenditures. Specifically, the Commission proposes revising § 104.3(b)(2) to add independent expenditures to the categories of itemized disbursements for authorized committees, and adding new § 104.3(b)(4)(iv) to require authorized committees to report the same information about independent expenditures that other political committees must report. Proposed § 104.3(b)(4)(iv) would bring authorized and non-authorized committees into parity by requiring that authorized committees report the same information about independent expenditures that non-authorized committees are required to report, using the same form (Schedule E).[8]

The Commission seeks comment on these proposed changes to § 104.3(b)(2) and (4), which are intended to require authorized committees that make independent expenditures to report the same information, in the same manner, as all other political committees. If authorized committees make independent expenditures, should they report more or less detailed information about those disbursements than other political committees? Is there another method that the Commission should use to allow for authorized committees to report independent expenditures?

The Commission also proposes revisions to 11 CFR 104.4 to refer to the new paragraphs that it proposes to add to section 104.3, described above. In § 104.4(a), (b), (c), and (d), the Commission proposes adding cross-references to 11 CFR 104.3(b)(4)(iv) to reflect the independent expenditure reporting requirements for authorized committees, described above. The Commission also proposes revising § 104.4(b)(1) and (2) to omit the specific references to FEC Form 3X because, as discussed above, authorized committees do not file that form. These proposed regulatory changes would be in conjunction with changes to Schedule E and to Forms 3 and 3P. The Commission

[7] Currently, both sections 102.12 and 102.13 state that the national party committee of a political party that has been designated as the principal campaign committee of that party's presidential candidate may contribute to another candidate in accordance with certain regulations. Section 102.13 states that such contributions must be made in accordance with 11 CFR part 109, subpart D (coordinated party expenditures) and part 110 (contribution limits and prohibitions); section 102.12, however, states only that such contributions must be made in accordance with 11 CFR part 110. Under both alternatives A and B, proposed paragraph 102.12(c)(2) would be revised to include a reference to 11 CFR part 109, subpart D, tracking the existing language in 11 CFR 102.13(c)(2).

[8] Because Schedule E is not currently included in the forms used by authorized committees, the Commission would add that schedule to Form 3 (for House and Senate candidates) and Form 3P (for presidential candidates).

seeks comment on these proposed changes.

III. Proposed Revisions to 11 CFR 104.3 and 104.4—Reporting Multistate Independent Expenditures by Political Committees

As set forth below, the Commission proposes revisions to section 104.3, concerning the content of independent expenditure reports by political committees, and section 104.4, concerning the timing of independent expenditure reports by political committees. The Commission seeks comment on these revisions, which are intended to clarify the reporting obligations of a political committee when it makes a multistate independent expenditure. The Commission is considering three alternative proposals and seeks comment on which alternative would be preferable.

A. Alternative A

1. Proposed New 11 CFR 104.3(b)(3)(vii)(C)—Content of Reports

In section 104.3, the Commission proposes adding new paragraph (b)(3)(vii)(C), which would require that when a political committee makes an independent expenditure in support of or in opposition to a candidate in a presidential primary election, and the communication is publicly distributed or otherwise disseminated in more than a specified number of states but does not refer to any particular state, the political committee must report the independent expenditure as a single expenditure and use memo text to indicate the states where the communication is distributed. The Commission would also redesignate current paragraph (b)(3)(vii)(C) as paragraph (b)(3)(vii)(D).

The Commission seeks comment on the proposed new provision. Would the proposed paragraph provide sufficient guidance to political committees reporting multistate independent expenditures? Is the proposed provision necessary or desirable to provide full, accurate, and timely disclosure to the public regarding multistate independent expenditures that are made by political committees?

If the Commission amends section 104.3(b)(4) to account for independent expenditures by authorized committees as described above in Section II.B, the Commission would propose to include regulatory text in revised section 104.3(b)(4) providing that the reporting requirements for authorized committees that make independent expenditures would mirror the reporting requirements for all other political committees that make independent expenditures. The Commission seeks comment on whether these proposed requirements should apply to multistate independent expenditures made by authorized committees.

The Commission also seeks comment on the number of states that would be the threshold for a communication to fall within the new paragraph. Requiring an independent expenditure to be ''nationwide''—*i.e.,* disseminated in all fifty states plus the District of Columbia (and possibly Puerto Rico, Guam, and American Samoa)—would exclude some independent expenditures that are distributed in a large number of states (*e.g.,* the entire continental United States). This would significantly limit the benefits and application of the proposed reporting rule. Alternatively, applying the new provision to independent expenditures that are disseminated in only a handful of states might result in independent expenditures that are targeted to a specific state's primary—but partially distributed in neighboring states that share its media markets—being misleadingly reported as ''multistate'' communications. In how many states should an independent expenditure have to be distributed to fall within the proposed new reporting rule? Should the rule specify a particular number of states, or are there other ways to effectively delineate the communications that would be reported as multistate independent expenditures?

The proposed new paragraph would represent a change from the Commission's previous guidance on this issue. In Advisory Opinion 2011–28 (Western Representation PAC), the Commission instructed a political committee to allocate the cost of a multistate independent expenditure among all the states where the communication was distributed. None of the persons who commented on the Draft Interpretive Rules supported retaining that approach, and the Commission is not proposing it here. Nonetheless, are there advantages to that approach that the Commission should consider in crafting the new rule?

If the proposed new paragraph is adopted, the Commission recognizes that implementing it would likely require modifying the instructions for the Commission's Schedule E form. The Commission anticipates that these modified instructions would provide political committees flexibility on how to report the states where the multistate independent expenditure is distributed. For example, the instructions would permit the memo text for a multistate independent expenditure to indicate that the independent expenditure was distributed ''nationwide,'' in ''all fifty states,'' in ''IN, OH, WI, MI, MN, IL, PA, MO,'' or in ''all states except Alaska and Hawaii,'' etc. Would such instructions provide sufficient guidance and flexibility to filers? Should the Commission provide more specific guidelines on how political committees should indicate the states where multistate independent expenditures are distributed? Should the proposed new regulation address this issue specifically? If so, how?

2. Proposed New 11 CFR 104.4(f)(2)—Timing of Reports

In section 104.4, the Commission is proposing to redesignate current paragraph (f) as paragraph (f)(1) and add new paragraph (f)(2), concerning when a political committee must file a 24- or 48-hour report for a multistate independent expenditure.

Following the approach proposed in Draft Interpretive Rule B, a political committee that makes a multistate independent expenditure would report it as a single expenditure, as discussed above, and the political committee would use the date of the national nominating convention for the clearly identified candidate's party as the date of the election to determine whether the independent expenditure is within the 20 days before the election and is therefore subject to the 24-hour reporting requirement under 52 U.S.C. 30104(g)(1).

The Commission seeks comment on this proposal. Does it provide sufficient guidance to political committees as to how to determine whether they must file 24-hour or 48-hour reports for multistate independent expenditures? Is this proposal preferable to the Commission's existing guidance under Advisory Opinion 2011–28 (Western Representation PAC)? Would this proposal enhance the public's access to full, accurate, and timely information about multistate independent expenditures?

B. Alternative B

1. Proposed New 11 CFR 104.3(b)(3)(vii)(C)—Content of Reports

In section 104.3, the Commission proposes making the same changes as described above under Alternative A, adding new paragraph (b)(3)(vii)(C) and redesignating current paragraph (b)(3)(vii)(C) as paragraph (b)(3)(vii)(D).

2. Proposed New 11 CFR 104.4(f)(2)—Timing of Reports

Similar to Alternative A, in section 104.4, the Commission is proposing to

redesignate current paragraph (f) as paragraph (f)(1) and add new paragraph (f)(2), concerning when a political committee must file a 24- or 48-hour report for a multistate independent expenditure. However, under Alternative B, which follows the approach proposed in Draft Interpretive Rule C, the political committee would determine whether the independent expenditure is within the 20 days before the election and is therefore subject to the 24-hour reporting requirement under 52 U.S.C. 30104(g)(1) by using as the date of the election the date of the next upcoming presidential primary among the presidential primaries to be held in the states in which the independent expenditure is distributed or disseminated.

The Commission seeks comment on this proposal. Does it provide sufficient guidance to political committees as to how to determine whether they must file 24-hour or 48-hour reports for multistate independent expenditures? Is this proposal preferable to the Commission's existing guidance under Advisory Opinion 2011–28 (Western Representation PAC)? Would this proposal enhance the public's access to full, accurate, and timely information about multistate independent expenditures?

C. Alternative C

1. Proposed New 11 CFR 104.3(b)(3)(vii)(C)—Multistate Independent Expenditures

As with Alternatives A and B, for Alternative C the Commission proposes to amend section 104.3 by adding new paragraph (b)(3)(vii)(C). For Alternative C, however, the new paragraph would provide that for any independent expenditure in support of or in opposition to a candidate in a presidential primary election, where the communication is publicly distributed or otherwise disseminated in more than a specified number of states but does not refer to any particular state, the political committee must report the independent expenditure according to new section 104.4(f)(2), discussed below. The Commission would also redesignate current paragraph (b)(3)(vii)(C) as paragraph (b)(3)(vii)(D).

2. Proposed New 11 CFR 104.4(f)(2)—Reporting Multistate Independent Expenditures

As with Alternatives A and B, for Alternative C the Commission proposes to amend section 104.4 by redesignating current paragraph (f) as paragraph (f)(1) and adding new paragraph (f)(2). Under Alternative C, new paragraph (f)(2) would bring together all of the aggregation and reporting requirements for multistate independent expenditures in one paragraph. New section 104.4(f)(2) would set forth the requirements for determining whether and when a 24- or 48-hour report is required, along with the specific information to be included in such a report.

In contrast to Alternatives A and B, which would require a political committee to determine whether a 24-hour report is required based on the total amount of the independent expenditure, Alternative C would require political committees to allocate the amount of the expenditure among the states where it is distributed whose primary elections have yet to occur. Political committees who file electronically would be able to rely on the new electronic filing system that the Commission expects to introduce before the 2020 election cycle or third-party electronic filing software to do this calculation. If this alternative is adopted, the Commission also proposes to make a calculator available on its website to aid political committees that do not file electronically in making the necessary allocations.

Under Alternative C, a political committee would disregard any states where the communication was distributed but where the presidential primary election has already occurred, and would allocate the total amount of the independent expenditure among the remaining states, according to a ratio based on the number of U.S. House of Representatives districts apportioned to each state.

For purposes of determining whether the independent expenditure is within the 20 days before the election and is therefore subject to the 24-hour reporting requirement under 52 U.S.C. 30104(g)(1), the political committee would use the date of the next upcoming primary election among the states where the independent expenditure was distributed. If that date is more than 20 days away from the date of the expenditure and the amount allocated to that state causes the political committee's aggregate spending in that state to exceed $10,000, the committee would be required to file a 48-hour report. If that date is between 1 and 20 days away and the amount allocated to that state causes the political committee's aggregate spending in that state to exceed $1,000, the committee would be required to file a 24-hour report.

Information about the dates of the major-party presidential primary elections and the number of House districts apportioned to each state would be incorporated into the Commission's electronic filing system, so a political committee that filed electronically would be able to enter the date and amount of the independent expenditure and the states where it was distributed, and the software would do the calculation to determine whether any reports were required. The same information would be provided on the Commission's website for the benefit of any political committees that do not file electronically, in the form of a calculator that would perform the allocation calculation when a political committee enters the amount and date of a communication and the states in which it is publicly distributed.

Example: A political committee spent $40,000 on an independent expenditure broadcast in Texas, Arizona, New Mexico, and Oklahoma on March 15, where the next upcoming primary election was going to be in Oklahoma on March 20. There are a total of 53 House districts in those four states: 9 in Arizona, 3 in New Mexico, 5 in Oklahoma, and 36 in Texas. On the date the communication was distributed, all four states where it was distributed had yet to hold their presidential primary elections. Therefore the political committee would allocate the $40,000 according to each state's proportion of House districts out of the 53 total: $6,792 for Arizona (40,000 × (9/53)), $2,264 for New Mexico (40,000 × (3/53)), $3,773 for Oklahoma (40,000 × (5/53)), and $27,169 for Texas (40,000 × (36/53)). Because the next upcoming primary election where the communication was distributed would be within 20 days, in Oklahoma, and the political committee would have spent more than $1,000 in that state, a 24-hour report would be required.

The Commission acknowledges that the proposed allocation calculation may seem complex, but notes that this proposal would allow political committees to take advantage of advancing technology to relieve them of the burden of determining whether and when to report multistate independent expenditures. A political committee would need only enter the date and total amount of an independent expenditure and the states in which it was publicly distributed, and the electronic filing system or calculator would determine whether a 24- or 48-hour report was required and what amount to allocate to each state. The Commission would not implement Alternative C until the new electronic filing system and calculator were in place so as to avoid requiring any political committee to perform the allocation calculation manually.

Would Alternative C satisfy the Act's provisions for reporting independent expenditures? Would this approach enhance the public's access to full, accurate, and timely information about multistate independent expenditures? Would this proposal provide sufficient guidance to political committees as to how to determine whether they must file 24-hour or 48-hour reports for multistate independent expenditures and what information to include in such reports? Is this proposal preferable to the Commission's existing guidance under Advisory Opinion 2011–28 (Western Representation PAC)? Does the feasibility of this proposal depend on whether a political committee files electronically, and if so, is the number of political committees that make multistate independent expenditures but do not file electronically significant?

The Commission seeks comment on whether it is appropriate or desirable to use House representation, which is based on population, as a basis for allocation. Does the use of House districts assume that the entire population of a state receives the communication, and does that question make a difference in how independent expenditures should be reported? Does this proposed use of House districts to determine whether and when independent expenditures must be reported differ materially from proposed Alternatives A and B?

The Commission also seeks overall comment on which of the three alternatives (A, B or C) is preferable with respect to (1) the burden on the political committees that must report their multistate independent expenditures, and (2) the usefulness of the information disclosed to the public. Are there other approaches that might be preferable to any of these proposed alternatives?

IV. Proposed Revision to 11 CFR 109.10—Reporting Multistate Independent Expenditures by Persons Other Than Political Committees

In 11 CFR 109.10(e)—which addresses the content of independent expenditure reports filed by persons other than political committees—the Commission proposes to reference the requirements for reporting multistate independent expenditures that the Commission proposes to add to section 104.3(b)(3)(vii)(C) or in new section 104.4(f)(2). Specifically, revised section 109.10(e)(1)(iv) would provide that when a person other than a political committee makes an expenditure meeting the criteria set forth in section 104.3(b)(3)(vii)(C) (*i.e.,* an independent expenditure that supports or opposes a presidential primary candidate and that is distributed in more than the specified number of states but does not refer to any particular state), the person must report the expenditure pursuant to the provisions of section 104.3(b)(3)(vii)(C) or section 104.4(f)(2).

The Commission requests comments on this proposed revision to 11 CFR 109.10. Should the reporting requirements for multistate independent expenditures made by persons other than political committees parallel the reporting requirements for multistate independent expenditures made by political committees? Although Advisory Opinion 2011–28 (Western Representation PAC) and the Draft Interpretive Rules did not address how persons other than political committees should report multistate independent expenditures, is there any legal or policy reason that the reporting requirements for political committees and for other persons should differ in the context of multistate independent expenditures? Does the proposed revision to section 109.10 clarify the reporting obligations of persons who make multistate independent expenditures? Is the proposed revision to section 109.10 necessary or desirable to provide full, accurate, and timely disclosure to the public regarding multistate independent expenditures made by persons other than political committees? Would the proposed revision reduce or increase the administrative burden on such persons? If the proposed revision does increase the administrative burden on such persons, is that burden outweighed by the usefulness of the information disclosed to the public?

V. Proposed Revision to 11 CFR 104.20—Electioneering Communications

In section 104.20(c), which concerns the content of reports regarding electioneering communications, the Commission proposes to add a new paragraph (c)(6) and redesignate current paragraphs (c)(6)–(9) as paragraphs (c)(7)–(10). Proposed new paragraph (c)(6) would apply when the relevant election (which the reporting person is required to disclose pursuant to paragraph (c)(5)) is a presidential primary election and the electioneering communication is distributed in more than a specified number of states but does not refer to any particular state's primary election.

In such situations, this new paragraph would parallel the new reporting requirements for multistate independent expenditures as discussed above, either new section 104.3(b)(3)(vii)(C) if Alternative A or B is adopted, or new section 104.4(f)(2) if Alternative C is adopted. If Alternative A or B is adopted, new paragraph (c)(6) would provide that the reporting person must report the electioneering communication as a single communication and use a memo text to indicate the states in which the communication constitutes an electioneering communication (as defined in 11 CFR 100.29(a)).

If Alternative C is adopted, new paragraph (c)(6) would provide that the reporting person must allocate the cost of the communication among the states where it is publicly distributed and whose presidential primary elections have not yet occurred as set forth in new section 104.4(f)(2). The proposed revision would thus treat multistate electioneering communications similarly to multistate independent expenditures, as discussed above.

The Commission seeks comment on the proposed revision to section 104.20. Should multistate electioneering communications be treated similarly to multistate independent expenditures, or are there differences between the two types of communications or the persons that make them that would call for different reporting requirements? Should the same number of states constitute the threshold for multistate independent expenditures and multistate electioneering communications? Should the cost of an electioneering communication be allocated among the states where the communication is publicly distributed for reporting purposes?

Would the proposed new paragraph increase or decrease the administrative burden on persons reporting electioneering communications? If the proposed revision does increase the administrative burden on such persons, is that burden outweighed by the usefulness of the information disclosed to the public? Would the proposed revision provide sufficient information on how persons making multistate electioneering communications should disclose them? Is the proposed revision necessary or desirable to provide full, accurate, and timely disclosure of information about multistate electioneering communications to the public?

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

The Commission certifies that the attached proposed rules, if adopted, would not have a significant economic impact on a substantial number of small entities. The proposed rules would

clarify whether authorized committees may make independent expenditures and provide a mechanism for authorized committees to report independent expenditures. The proposed reporting requirements would only affect authorized committees that choose to make independent expenditures. Moreover, authorized committees are already required to report all disbursements, as well as the name and address of any person who has received any disbursement in an aggregate amount exceeding $200 within a certain period, along with the date, amount, and purpose of such disbursement. Thus, the proposed rules would not materially change the amount of information reported, but rather would change how disbursements for independent expenditures are identified on reports.

The proposed rules would also provide for consolidated reporting of certain independent expenditures and electioneering communications that the Commission's current reporting guidance indicates should be allocated among elections in multiple states. The Commission anticipates that the proposed consolidation of these reports would generally result in a modest reduction of the administrative burdens on reporting entities, and it would not impose any new reporting obligations. Thus, to the extent that any entities affected by these proposed rules might fall within the definition of ''small businesses'' or ''small organizations,'' the economic impact of complying with these rules would not be significant.

List of Subjects

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104

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

11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend 11 CFR chapter 1, as follows:

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (52 U.S.C. 30103)

■ 1. The authority citation for part 102 continues to read as follows:

Authority: 52 U.S.C. 30102, 30103, 30104(a)(11), 30111(a)(8), and 30120.

■ 2. Revise paragraph (c)(2) of § 102.12 to read as follows:

§ 102.12 Designation of principal campaign committee (52 U.S.C. 30102(e)(1) and (3)).

* * * * *

(c) * * *

Alternative A

(2)(i) For purposes of paragraph (c) of this section, the term *support* includes an independent expenditure by an authorized committee.

(ii) For purposes of paragraph (c) of this section, the term *support* does not include contributions by an authorized committee in amounts aggregating $2,000 or less per election to an authorized committee of any other candidate.

(iii) Nothing in paragraph (c)(2) of this section affects the ability of a national committee of a political party that has been designated as the principal campaign committee of that party's presidential candidate to contribute to or make independent expenditures in support of another candidate in accordance with 11 CFR part 109, subpart D, and 11 CFR part 110.

Alternative B

(2) For purposes of paragraph (c) of this section, the term *support* does not include:

(i) Independent expenditures by an authorized committee in any amount; or

(ii) Contributions by an authorized committee in amounts aggregating $2,000 or less per election to an authorized committee of any other candidate, except that the national committee of a political party which has been designated as the principal campaign committee of that party's presidential candidate may contribute to another candidate in accordance with 11 CFR part 109, subpart D, and part 110.

■ 3. Revise paragraph (c)(2) of § 102.13 to read as follows:

§ 102.13 Authorization of political committees (52 U.S.C. 30102(e)(1) and (3)).

* * * * *

(c) * * *

Alternative A

(2)(i) For purposes of paragraph (c) of this section, the term *support* includes an independent expenditure by an authorized committee.

(ii) For purposes of paragraph (c) of this section, the term *support* does not include contributions by an authorized committee in amounts aggregating $2,000 or less per election to an authorized committee of any other candidate.

(iii) Nothing in paragraph (c)(2) of this section affects the ability of a national committee of a political party that has been designated as the principal campaign committee of that party's presidential candidate to contribute to or make independent expenditures in support of another candidate in accordance with 11 CFR part 109, subpart D, and 11 CFR part 110.

Alternative B

(2) For purposes of paragraph (c) of this section, the term *support* does not include:

(i) Independent expenditures by an authorized committee in any amount; or

(ii) Contributions by an authorized committee in amounts aggregating $2,000 or less per election to an authorized committee of any other candidate, except that the national committee of a political party which has been designated as the principal campaign committee of that party's presidential candidate may contribute to another candidate in accordance with 11 CFR part 109, subpart D, and 11 CFR part 110.

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

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

Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(i), 30104, 30111(a)(8) and (b), 30114, 30116, 36 U.S.C. 510.

§ 104.3 [Amended]

■ 5. Redesignate paragraphs (b)(2)(vi) and (b)(2)(vii) as (b)(2)(vii) and (b)(2)(viii).

■ 6. Add new paragraph (b)(2)(vi) and revise paragraphs (b)(3)(vii)(C) and (D) and (b)(4)(vi) to read as follows:

§ 104.3 Contents of Reports.

Alternatives A and B

* * * * *

(b) * * *

(2) * * *

(vi) Independent expenditures made by the reporting committee;

* * * * *

(3) * * *

(vii) * * *

(C) For an independent expenditure that is made in support of or opposition to a presidential primary candidate and is publicly distributed or otherwise publicly disseminated in more than __ states but does not refer to any particular state, the political committee must report the independent

expenditure as a single expenditure—*i.e.,* without allocating it among states—and must use memo text to indicate the states in which the communication is distributed.

(D) The information required by 11 CFR 104.3(b)(3)(vii)(A) through (C) shall be reported on Schedule E as part of a report covering the reporting period in which the aggregate disbursements for any independent expenditure to any person exceed $200 per calendar year. Schedule E shall also include the total of all such expenditures of $200 or less made during the reporting period.

(4) * * *

(iv)(A) Each person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure(s);

(B) For each independent expenditure reported, the committee must also provide a statement which indicates whether such independent expenditure is in support of, or in opposition to a particular candidate, as well as the name of the candidate and office sought by such candidate (including State and Congressional district, when applicable), and a certification, under penalty of perjury, as to whether such independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any other candidate or any other authorized committee or agent of such committee;

(C) For an independent expenditure that is made in support of or opposition to a presidential primary candidate and is publicly distributed or otherwise publicly disseminated in more than __ states but does not refer to any particular state, the political committee must report the independent expenditure as a single expenditure—*i.e.,* without allocating it among states—and must use memo text to indicate the states in which the communication is distributed.

(D) The information required by 11 CFR 104.3(b)(4)(iv)(A) through (C) shall be reported on Schedule E as part of a report covering the reporting period in which the aggregate disbursements for any independent expenditure to any person exceed $200 per calendar year. Schedule E shall also include the total of all such expenditures of $200 or less made during the reporting period.

* * * * *

Alternative C

* * * * *

(b) * * *

(2) * * *

(vi) Independent expenditures made by the reporting committee;

* * * * *

(3) * * *

(vii) * * *

(C) For an independent expenditure that is made in support of or opposition to a presidential primary candidate and is publicly distributed or otherwise publicly disseminated in more than __ states but does not refer to any particular state, the political committee must report the independent expenditure according to 11 CFR 104.4(f)(2).

(D) The information required by 11 CFR 104.3(b)(3)(vii)(A) through (C) shall be reported on Schedule E as part of a report covering the reporting period in which the aggregate disbursements for any independent expenditure to any person exceed $200 per calendar year. Schedule E shall also include the total of all such expenditures of $200 or less made during the reporting period.

(4) * * *

(iv)(A) Each person who receives any disbursement during the reporting period in an aggregate amount or value in excess of $200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure(s);

(B) For each independent expenditure reported, the committee must also provide a statement which indicates whether such independent expenditure is in support of, or in opposition to a particular candidate, as well as the name of the candidate and office sought by such candidate (including State and Congressional district, when applicable), and a certification, under penalty of perjury, as to whether such independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any other candidate or any other authorized committee or agent of such committee;

(C) For an independent expenditure that is made in support of or opposition to a presidential primary candidate and is publicly distributed or otherwise publicly disseminated in more than __ states but does not refer to any particular state, the political committee must report the independent expenditure according to 11 CFR 104.4(f)(2).

(D) The information required by 11 CFR 104.3(b)(4)(iv)(A) through (C) shall be reported on Schedule E as part of a report covering the reporting period in which the aggregate disbursements for any independent expenditure to any person exceed $200 per calendar year. Schedule E shall also include the total of all such expenditures of $200 or less made during the reporting period.

* * * * *

■ 6. Amend § 104.4 by

■ a. In paragraphs (a), (b), (c), and (d), adding ''and (b)(4)(vi)'' after ''11 CFR 104.3(b)(3)(iv)'';

■ b. In paragraph (b) removing ''FEC Form 3X'' and adding, in its place, the words ''the applicable FEC Form'';

■ c. Revising paragraph (f) as to read as follows:

§ 104.4 Independent expenditures by political committees.

* * * * *

(f) *Aggregating independent expenditures for reporting purposes.* (1) 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 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 during the calendar year for independent expenditures, and all enforceable contracts, either oral or written, obligating funds for disbursements during the calendar year for independent expenditures, where those independent expenditures are made with respect to the same election for Federal office.

Alternative A

(2) For purposes of determining whether 24-hour or 48-hour reports must be filed in accordance with paragraphs (b) and (c) of this section and 11 CFR 109.10(c) and (d), if the independent expenditure is made in support of or opposition to a candidate in a presidential primary election and is publicly distributed or otherwise publicly disseminated in more than __ states but does not refer to any particular state, the date of the election is the first day of the national nominating convention of the party whose nomination the candidate is seeking.

Alternative B

(2) For purposes of determining whether 24-hour or 48-hour reports

must be filed in accordance with paragraphs (b) and (c) of this section and 11 CFR 109.10(c) and (d), if the independent expenditure is made in support of or opposition to a candidate in a presidential primary election and is publicly distributed or otherwise publicly disseminated in more than __ states but does not refer to any particular state, the date of the election is the date of the next upcoming presidential primary election among the presidential primary elections to be held in the states in which the independent expenditure is publicly distributed or disseminated.

Alternative C

(2) *Multistate independent expenditures.* (i) If an independent expenditure is made in support of or opposition to a candidate in a presidential primary election and is publicly distributed or otherwise publicly disseminated in more than __ states but does not refer to any particular state, the political committee must allocate the total amount of the expenditure among each of the states where it is publicly distributed or disseminated and where the presidential primary election has yet to occur, according to the number of Congressional districts apportioned to each such state relative to the total number of Congressional districts in all such states.

(ii) If the communication is publicly distributed or otherwise publicly disseminated up to and including the 20th day before the next upcoming presidential primary election in any of the states, and the amount calculated in paragraph (f)(2)(i) of this section aggregates to $10,000 or more with respect to any of the states in that calendar year, the political committee must file a 48-hour report in accordance with paragraph (b)(2) of this section.

(iii) If the communication is publicly distributed or otherwise publicly disseminated after the 20th day but more than 24 hours before 12:01 a.m. of the day of the next upcoming presidential primary election in any of the states, and the amount calculated in paragraph (f)(2)(i) of this section aggregates to $1,000 or more with respect to any of the states, the political committee must file a 24-hour report in accordance with paragraph (c) of this section.

(iv) For any report of an independent expenditure included on a political committee's regular report under paragraph (b)(1) of this section, or any 48- or 24-hour report of an independent expenditure, the political committee must indicate the date and amount of the expenditure, and list the states in which the communication is publicly disseminated or otherwise publicly distributed.

§ 104.20 [Amended]

■ 7. In § 104.20:

■ a. Redesignate paragraphs (c)(6) through (c)(9) as paragraphs (c)(7) through (c)(10).

■ b. Revise the heading and add new paragraph (c)(6) to read as follows:

§ 104.20 Reporting electioneering communications (52 U.S.C. 30104(f)).

* * * * *

(c) * * *

Alternatives A and B

(6) If the election identified pursuant to paragraph (c)(5) of this section is a presidential primary election and the electioneering communication is publicly distributed or otherwise disseminated in more than __ states but does not refer to any particular state, the electioneering communication shall be reported as a single communication, and the states in which it constitutes an electioneering communication (as defined in 11 CFR 100.29(a)) shall be indicated in memo text.

Alternative C

(6) If the election identified pursuant to paragraph (c)(5) of this section is a presidential primary election and the electioneering communication is publicly distributed or otherwise disseminated in more than __ states but does not refer to any particular state, the cost of the electioneering communication shall be allocated among the states where it is publicly distributed or otherwise disseminated in accordance with § 104.4(f)(2)(A).

* * * * *

PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (52 U.S.C. 30101(17), 30116(A) AND (D), AND PUBLIC LAW 107–155 SEC. 214(C))

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

Authority: 52 U.S.C. 30101(17), 30104(c), 30111(a)(8), 30116, 30120; Sec. 214(c), Pub. L. 107–155, 116 Stat. 81.

■ 9. Revise paragraph (e)(1)(iv) of § 109.10 as follows:

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

* * * * *

(e) * * *

(1) * * *

Alternatives A and B

(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; if the expenditure meets the criteria set forth in § 104.3(b)(3)(vii)(C), memo text must be used to indicate the states in which the communication is distributed, as prescribed in that section;

Alternative C

(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; if the expenditure meets the criteria set forth in § 104.3(b)(3)(vii)(C), the communication must be reported in accordance with § 104.4(f)(2);

* * * * *

On behalf of the Commission.

Dated: January 17, 2018.

Caroline C. Hunter,

Chair, Federal Election Commission.

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BILLING CODE 6715–01–P

SMALL BUSINESS ADMINISTRATION

13 CFR Part 125

RIN 3245–AG85

Ownership and Control of Service-Disabled Veteran-Owned Small Business Concerns

AGENCY: U.S. Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The U.S. Small Business Administration (SBA or Agency) proposes to amend its regulations to implement provisions of The National Defense Authorization Act for Fiscal Year 2017 (NDAA 2017). The NDAA 2017 placed the responsibility for issuing regulations relating to ownership and control for the Department of Veterans Affairs verification of Veteran-Owned (VO) and Service-Disabled Veteran-Owned (SDVO) Small Business Concern (SBC) with the SBA. Pursuant to NDAA 2017, there will be one definition of ownership and control for these concerns, which will apply to the Department of Veterans Affairs in its verification and Vets First Contracting Program procurements, and all other government acquisitions which require self-certification. The legislation also provides that in certain circumstances a