



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM
For Meeting of: 3-14-02

MEMORANDUM

MAR 08 2002

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

N. Bradley Litchfield
Associate General Counsel

Rosemary C. Smith
Assistant General Counsel

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SUBMITTED LATE

SUBJECT: Revised Final Rules and Explanation and Justification on Independent Expenditure Reporting

In accordance with the Commission's discussion of Agenda Document numbers 02-15, 02-15-A, 02-15-B and 02-15-C on February 28, 2002, the Office of General Counsel has revised the final rules and E&J on independent expenditure reporting by deleting from the final rules the provision addressing the republication of campaign materials.

In addition, the attached final rules and E&J contain 2 alternatives regarding when an independent expenditure is made. Alternative A states that an independent expenditure is made on the earliest of (1) the first date the communication is publicly disseminated or (2) the date that payment is made for the independent expenditure, providing the person making the payment knows that the payment constitutes an independent expenditure. In contrast, alternative B states that an independent expenditure is made on the first date on which the communication is publicly disseminated, but may be reported earlier. Alternatives A and B are found on pages 5 - 6, 13 - 21, 23, 26, 27 - 28, 29 - 30, 31 - 32, and 33.

A Commission vote is required to approve the attached final rules and Explanation and Justification for publication in the *Federal Register* and transmittal to Congress.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 100, 104, and 109**

3 **[NOTICE 2002->]**

4 **INDEPENDENT EXPENDITURE REPORTING**

5
6 **AGENCY:** Federal Election Commission.

7 **ACTION:** Final Rules and Transmittal of Regulations to Congress.

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

22 **DATES:** Further action, including the announcement of an effective date, will be
23 taken after these regulations have been before Congress for 30

1 legislative days. 2 U.S.C. 438(d). A document announcing the
2 effective date will be published in the Federal Register.

3 **FOR FURTHER**
4 **INFORMATION**

5 **CONTACT:**

Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Cheryl
6 Fowle, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202)
7 694-1650 or (800) 424-9530.

8 **SUPPLEMENTARY**

9 **INFORMATION:**

The Commission is issuing revised regulations at 11 CFR 100.19, 104.4,
10 104.5, 104.14, 104.18, 109.1 and 109.2. These revised rules implement Public Law 106-346
11 (Department of Transportation and Related Agencies Appropriations Act, 2001, 114 Stat. 1356
12 (2000)), which amended the Federal Election Campaign Act of 1971, 2 U.S.C. 431 et seq., ("the
13 Act" or "FECA"). Paragraphs (b) and (c) of 2 U.S.C. 434 require political committees and other
14 persons making independent expenditures to file reports or statements if their independent
15 expenditures exceed \$250. In addition, if independent expenditures of \$1,000 or more are made
16 less than twenty (20) days but more than twenty-four (24) hours before the day of an election, an
17 additional statement must be filed within 24 hours. Public Law 106-346 required, inter alia, the
18 Commission to issue rules requiring that reports of independent expenditures made less than
19 twenty (20) days but more than twenty-four (24) hours before an election ("24-hour reports") be
20 received by the Commission or the Secretary of the Senate, as appropriate,¹ within 24 hours of
21 the time the independent expenditure was made. The statutory change permits those who must

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

1 file 24-hour reports to do so using facsimile machines or electronic mail, except for those
2 required to file electronically (see 11 CFR 104.18). In addition to their 24-hour reports, persons
3 other than political committees may file by fax or e-mail other reports of independent
4 expenditures in accordance with the regular filing schedule (see 11 CFR 104.5). Public Law
5 106-346 also requires the Commission to provide methods of verification of documents (other
6 than requiring a signature on the document) for all purposes, including submission under penalty
7 of perjury. These new filing methods are intended to speed up disclosure and to provide political
8 committees and other filers with more flexibility in choosing methods of compliance with
9 reporting requirements. The new law requires these methods to be in place for elections
10 occurring after January 1, 2001, subject to regulations to be promulgated by the Commission.

11 In addition to the amendments regarding independent expenditures, the new law also requires
12 the Commission to amend its regulations to exclude from the definition of "contribution" loans
13 that candidates receive from brokerage accounts, lines of credit, or other credit instruments as
14 long as the loans were made under commercially reasonable terms and were from a source that
15 provides such loans in the normal course of business. That topic is being addressed in a separate
16 rulemaking. See Notice of Proposed Rulemaking, 65 Federal Register 38576 (Wednesday, July
17 25, 2001).

18 Before final promulgation of any rules or regulations to carry out the provisions of Title 2 of
19 the United States Code, the Commission transmits the rules or regulations to the Speaker of the
20 House of Representatives and the President of the Senate for a thirty legislative day review
21 period. 2 U.S.C. 438(d). These rules on independent expenditure reporting were transmitted to
22 Congress on March 7, 2002.

1 **Explanation and Justification**

2 The Commission published a Notice of Proposed Rulemaking (“NPRM”) in the Federal
3 Register on May 9, 2001, 65 FR 23628 (May 9, 2001). The NPRM contained proposed rules at
4 11 CFR 100.19, 104.4, 104.5, 104.15, 109.1 and 109.2 regarding, inter alia, when 24-hour
5 reports are considered filed, the filing of 24-hour reports by facsimile machine or electronic mail,
6 and a definition of when an independent expenditure is made. Additionally, the NPRM
7 explicitly recognized that authorized committees may file reports of last-minute contributions
8 (48-hour notices) using facsimile machines or the Commission’s web site.

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

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

12 The Commission’s regulations at 11 CFR 100.19 define file, filed, and filing. The
13 introductory text of this section states that a document is considered filed if it is: (a) delivered to
14 the appropriate filing office of the appropriate office, (b) sent by registered or certified mail and
15 postmarked by midnight of the prescribed filing date – except for pre-election reports, or (c)
16 electronically filed, and received and validated by the Commission’s electronic filing system on
17 or before 11:59 p.m. eastern time on the prescribed filing date. For clarification, the Commission
18 has added a definition of “document” which mirrors the definition in the electronic filing
19 regulations (11 CFR 104.18). A document is any report, statement, notice or designation
20 required by the Act to be filed with the Commission or the Secretary of the Senate.

21 Paragraph (a) of this section states that a document is timely filed upon delivery to the
22 Commission or Secretary of the Senate, as appropriate, by the close of the prescribed filing date.

1 As explained below, revised paragraph (a) clarifies that the definition of "timely filed" is
2 different for paper filers and electronic filers.

3 Under paragraph (b) of section 100.19 of the previous regulations, 24-hour reports were
4 considered timely filed if they were deposited at a Post Office and were postmarked for certified
5 or registered mail within 24 hours of the time the independent expenditure was made. Under
6 Public Law 106-346 and the revised regulations at paragraph (b), 24-hour reports will only be
7 considered timely filed if they are received by the Commission or Secretary of the Senate within
8 24 hours of the time the expenditure was made. Thus, sending 24-hour reports by mail will no
9 longer be a viable option because it is unlikely that these reports will be received by the
10 Commission within 24 hours of the making of the expenditure.

11 **Alternative A:**

12 New paragraph (d) of section 100.19 defines "timely filed" with regard to 24-hour reports of
13 independent expenditures. The new paragraph states that such reports are timely filed when they
14 are received by the Commission or the Secretary of the Senate within 24 hours of the time the
15 independent expenditure is made. The new paragraph also states that such 24-hour reports may
16 be filed by facsimile machine or electronic mail, in addition to other permissible means of filing
17 (e.g., hand delivery or overnight courier).

18 **Alternative B:**

19 New paragraph (d) of section 100.19 defines "timely filed" with regard to 24-hour reports of
20 independent expenditures. The new paragraph states that such reports are timely filed when they
21 are received by the Commission or the Secretary of the Senate after a disbursement is made, or a
22 debt reportable under 11 CFR 104.11(b) is incurred, for the independent expenditure, but no later
23 than 24 hours from the time the independent expenditure is made. The new paragraph also states

1 that such 24-hour reports may be filed by facsimile machine or electronic mail, in addition to
2 other permissible means of filing (e.g., hand delivery or overnight courier).

END
Att. B

3 New paragraph (e) expressly incorporates the Commission's practice of allowing authorized
4 committees to file their reports of contributions of \$1,000 or more made less than twenty (20)
5 days but more than forty-eight (48) hours before the day of an election (48-hour reports) using a
6 fax machine or the Commission's web site. This change does not stem from P.L. 106-346.
7 Rather, the Commission has for some time allowed authorized committees (if they are not
8 electronic filers) to file these reports by facsimile machine in addition to other permissible filing
9 methods. See Advisory Opinion ("AO") 1988-32. In the fall of 2000, the Commission began
10 allowing all authorized committees who file with the Commission (including electronic filers) to
11 file 48-hour reports on-line through the Commission's web site. Note that 48-hour reports filed
12 with the Secretary of the Senate cannot be filed using the on-line program at the Commission's
13 web site. They can, however be filed by fax to the Secretary of the Senate. New paragraph (e) of
14 11 CFR 100.19 specifically incorporates those filing methods in the regulations. The
15 Commission received no comments on this section.

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

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

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

9 Second, to enable filers to meet the new deadline, amended paragraph (b) of section 104.4
10 permits political committees to file 24-hour reports by facsimile machine or electronic mail, as
11 long as the filer is not part of the electronic filing program under 11 CFR 104.18.

12 Third, section 104.4(b) is being modified to make it easier for political committees to certify
13 the independence of the expenditures falling under this paragraph. Schedule E contains a
14 notarized certification under penalty of perjury as to whether the committee's expenditures were
15 "coordinated" with any candidate, authorized committee or agent thereof, and, if the independent
16 expenditures were made by a corporation, that the maker is a qualified nonprofit corporation (see
17 11 CFR 114.10). No other campaign finance reports filed with the Commission or the Secretary
18 of the Senate need to be notarized.

19 Public Law 106-346 at §502(a) requires the Commission to create methods, other than by
20 requiring a signature on the document, of verifying the independent expenditure certification on
21 24-hour reports for all purposes, including penalties of perjury. Consequently, the revised
22 regulations allow the 24-hour report filer to verify the report using self-verification. This means
23 that Schedule E no longer needs to be notarized. Instead, the political committee must self-verify

1 the document using either a handwritten signature of the treasurer on a paper document or by
2 typing the treasurer's name on e-mailed documents. The Commission intends to make the
3 appropriate conforming amendments to Schedule E after the promulgation of these rules. This
4 will extend self-verification to all reports of independent expenditures, including those made
5 before the 20th day before the election and those that exceed \$250 but are under \$1000.

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

10 As an alternative to self-verification, the NPRM sought comments on retaining the
11 notarization requirement for faxed reports and requiring electronic notarizations for e-mailed
12 reports. Additionally, the Commission sought comments on using digital signatures verified by a
13 "Trusted Third Party" for e-mailed reports. Digital signatures utilize a Public Key Infrastructure.
14 That structure uses Public and Private Keys to encode a message and to provide a method of
15 positively identifying the sender. The Commission received no comments addressing this topic
16 or offering other possible methods of verification.

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

21 The Commission decided not to institute electronic notarization or digital signatures because
22 they, as relatively new technologies, are not widespread enough to ensure access to everyone
23 who might make an independent expenditure. For example, only a handful of states have

1 electronic notarization statutes, effectively leaving citizens of other states without means of
2 verification. Digital signatures must be purchased and, generally, require the purchaser to have a
3 computer on which the private key (a computer generated string of digits) resides. The
4 Commission is concerned that such a requirement would unduly burden the making or reporting
5 of independent expenditures by those who do not have access to these means of verification.

6 **Section 104.5 Filing dates (2 U.S.C. 434(a)(2)).**

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

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

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

16 **Section 104.14 Formal requirements regarding reports and statements.**

17 Under 11 CFR 104.14, reports and statements must be signed. Two conforming amendments
18 are being made to paragraph (a) of this section. First, new paragraph (a)(1) provides that reports
19 or statements of independent expenditures filed by facsimile machine or electronic mail under
20 11 CFR 104.4(b) or 11 CFR 109.2 must be verified in accordance with those sections. Secondly,
21 new paragraph (a)(2) states that reports, designations or statements filed electronically under
22 11 CFR 104.18 must follow the signature requirements of 11 CFR 104.18(g). The Commission
23 received no comments on this section.

1 **Section 104.18 Electronic filing of reports (2 U.S.C. 432(d) and 434(a)(11)).**

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

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

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

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

1 On July 25, 2001, the Commission published in the Federal Register a Notice of Proposed
2 Rulemaking on Brokerage Loans and Lines of Credit (65 FR 38576 (July 25, 2001)) which
3 sought comments on further revisions to 11 CFR 104.18(h). Thus, additional changes to this
4 section may be promulgated at a later time as part of that separate rulemaking.

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

6 Section 109.1 of the Commission's regulations contains definitions relevant to independent
7 expenditures. Public Law 106-346 and the revised regulations at 11 CFR 100.19(d), 104.4(b),
8 104.5(g), and 109.2(b) require 24-hour reports to be received by the Commission or the Secretary
9 of the Senate within 24 hours of the time the independent expenditure is made.

10 The NPRM sought comments on a three-pronged definition of when an independent
11 expenditure is made that would apply to all independent expenditures, not just those reported on
12 a 24-hour basis. That definition was taken from the statutory and regulatory definitions of
13 "independent expenditure" (2 U.S.C. 431(17) and 11 CFR 100.8(a)(2)) and "expenditure"
14 (2 U.S.C. 431(9)(A) and 11 CFR 109.1). Proposed new paragraph (f) of 11 CFR 109.1 stated
15 that an independent expenditure is made at the earliest of three possible times: 1) The date on
16 which a written contract, including a media contract, promise or agreement to make an
17 independent expenditure is executed; 2) the first date on which the communication is printed,
18 broadcast, or otherwise publicly disseminated; or 3) the date on which the person making the
19 independent expenditure pays for it.

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

1 the communication is disseminated to the public. Thus, the commenter argues, prong number
2 one of the definition is incorrect.

3 The Commission believes that a legal basis arguably would exist for the first prong of its
4 definition of "made". Language in the FECA states that an "independent expenditure is an
5 expenditure" (2 U.S.C. 431(17)). An expenditure includes a "written contract, promise, or
6 agreement to make an expenditure" (2 U.S.C. §431(9)(A)(ii)). Thus, independent expenditures
7 necessarily include written contracts, promises or agreements to make an expenditure for a
8 communication. Nonetheless, here the Commission is called upon to define when an
9 independent expenditure should be considered "made" for purposes of reporting. Some practical
10 and policy considerations come into play.

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

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

1 "printed" to "published" in the final rules to remove any confusion as to when a communication
2 for an independent expenditure is made.

3 **Alternative A:**

4 The commenter further objects to what it believes to be a consequence of the revised
5 regulation which would, in some instances, require disclosure before publication of the
6 communication. The commenter expresses concern that this could lead to mischievous
7 interference with communications from opposing campaigns. The commenter argues that such
8 disclosure would allow incumbents the advantage of knowing when independent expenditures
9 have been made on behalf of their opponents, thus giving them the opportunity to convince
10 broadcasters not to run the advertisements in question. First, even if this practice were followed
11 more often on the part of incumbents, it would not override the Commission's need to follow the
12 most obvious legal interpretation of when an independent expenditure is made. Second, the
13 Commission notes that the statutory change for 24-hour reports reflects Congressional intent to
14 speed up timely disclosure of independent expenditures. The revised rules further this goal by
15 requiring disclosure when payment is made before publication.

16 New paragraph (f) of the final regulations states that an independent expenditure is made on
17 the earlier of: (1) the first date on which the communication is published, broadcast or otherwise
18 publicly disseminated, or (2) the date on which any payment is made for the production or
19 dissemination of the communication, provided that the person making the payment knows the
20 payment constitutes an independent expenditure. The condition attached to the second prong of
21 the rules stems from the fact that in some cases a payment to a vendor may be made for
22 production work or advertising time or space without knowing whether the communication will
23 qualify as an independent expenditure.

Alt. A
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1 Examples for Political Committees:

2 In most situations, the political committee paying for the communication will know before
3 the end of that reporting period that the communication will constitute an independent
4 expenditure. In these cases, the committee will simply report the independent expenditure on
5 Schedule E.

6 In some situations, a political committee making a payment for a communication may not
7 know by the end of that reporting period that the disbursement is for an independent expenditure
8 (e.g., purchasing air time before determining which specific candidate will be featured in the ad
9 that will run). In this case, the committee reports the purchase as a disbursement on Schedule B
10 for Operating Expenditures. When, in a subsequent reporting period, the committee determines
11 that the disbursement was for an independent expenditure it must file a Schedule E for the
12 independent expenditure referencing the earlier Schedule B transaction. The committee must
13 also report the disbursement for the independent expenditure as a negative entry on Schedule B
14 so the total disbursements are not inflated.

15 If the obligation is incurred but not yet paid and is a reportable debt, the committee reports it
16 on Schedule D. When, in a subsequent reporting period, the committee determines that the
17 communication will be an independent expenditure and makes a payment on the debt, it must file
18 a Schedule E showing the payment as an independent expenditure and referencing the debt on
19 Schedule D, and it must continue to report the debt on Schedule D (and any payment on it on
20 Schedule E), until the debt is extinguished. If the committee that has reported only debt on
21 Schedule D determines in a subsequent reporting period that the communication will be an
22 independent expenditure, but does not make any payment on it, it need only continue to report
23 the debt on Schedule D, identifying the candidate's name in the nature of debt (purpose) field.

Alt. A
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1 Example 1: Committee A makes a \$10,000 payment on October 5 for a newspaper ad urging
2 the defeat of Candidate X it knows will be run on the 10th day before the November general
3 election (i.e., during the 24 hour reporting period). The committee reports the payment on
4 Schedule E for its pre-general election report. No further report need be filed when the ad
5 actually runs during the 24-hour reporting period.

6 Example 2: In March, Committee B, a quarterly filer, pays \$10,000 for airtime in late
7 September, but does not know whether it will run ads opposing candidate X or candidate Y.
8 Committee B reports the payment on Schedule B for Operating Expenditures in its first quarter
9 report. In early September (within the third quarter reporting period), the committee determines
10 that it will use the airtime for an independent expenditure targeting candidate X. The
11 nonconnected committee reports the independent expenditure on Schedule E on its third quarter
12 report referencing the previous Schedule B transaction. Additionally, in the third quarter report,
13 in order to not understate the committee's cash on hand, the committee backs out the previously
14 reported Operating Expenditure disbursement by reporting a negative entry on Schedule B with a
15 reference of the originally reported transaction.

16 Example 3: Committee C, a monthly filer, pays \$10,000 for airtime in March. The airtime
17 is on October 31 (within the 24-hour reporting period), and the committee does not decide until
18 that date that the ad will be an independent expenditure attacking candidate Y. As in the
19 previous example, the committee reports the expenditure in the report covering March as a
20 Schedule B item. The committee reports the independent expenditure on a Memo Schedule E
21 referencing the earlier Schedule B transaction, and files it in time to be received by the
22 Commission within 24 hours of the time the committee determined the ad to be an independent
23 expenditure (which here coincides with the time the ad first was broadcast). Then, in the post-

Alt. A.
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1 general election report, the committee reports the independent expenditure on Schedule E, again
2 referencing the original disbursement previously reported on Schedule B in March, and reports a
3 negative Schedule B entry referencing the same March disbursement to assure accurate totals.

4 Example 4: In September, Committee D, a quarterly filer, contracts, but does not pay, for
5 handbills containing an independent expenditure supporting candidate X. The cost of the
6 handbills is \$450. Because the debt is less than \$500 and has been outstanding for less than 60
7 days it is not reportable on Schedule D of the committee's third quarter report. The handbills are
8 distributed on October 5 (during the pre-general reporting period). The committee reports the
9 independent expenditure on a 12-day pre-general election report as a Memo Schedule E using
10 October 5 as the date. Payment is made on November 1. No 24-hour report is needed, since the
11 pre-general report disclosed the making of this independent expenditure. On the post-general
12 election report, the committee reports the payment as a positive entry on Schedule E and includes
13 a cross-reference to the Memo Schedule E entry on the 12-day pre-general report.

14 Example 5: Committee E, a monthly filer, contracts in August for airtime to begin on
15 October 31, five days before the November 5 general election. The costs of producing the ads
16 and the airtime will exceed \$500, but no payment is actually made during the August,
17 September, or pre-general reporting periods. These obligations are reportable on Schedule D of
18 these reports. The ads run from October 31 through November 2. Payment is made on
19 November 1. The committee must file a 24-hour report of independent expenditures on Memo
20 Schedule E to be received by the Commission or the Secretary of the Senate, as appropriate,
21 within 24 hours of the first time the ad ran on October 31. This Memo Schedule E uses October
22 31 as the date of the independent expenditure and uses the committee's best estimate of the total
23 cost as the amount. (In this case, the exact amount would be known as of November 1.) The

Alt. A
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1 committee, on its post-general election report, shows the November 1 payment to extinguish the
2 debt on Schedule D and also reports the independent expenditure payment as a positive
3 disbursement on Schedule E so the line totals on the Detailed Summary Page will be accurate.

4 Examples for Individuals and Other Entities

5 Individuals and other entities that are not political committees have simpler reporting
6 requirements for independent expenditures. Those persons report their independent expenditures
7 on FEC Form 5 or by letter in some cases. Consequently, they will be required to report only at
8 the earliest of 1) the date on which any payment is made for the production or dissemination of
9 the communication, provided the person making the payment knows the payment constitutes an
10 independent expenditure, or 2) the first date on which the communication is published, broadcast
11 or otherwise publicly disseminated. No memo entries need appear on Form 5 and no other
12 schedules, such as Schedule D's for debt reporting, need be filed.

13 Example 6: In August, Citizen X contracts, but does not pay, for \$1,000 of newspaper space
14 to run an independent expenditure ad three days before the November general election. Citizen
15 X pays for the ad in September (during the third quarter reporting period). He reports the
16 independent expenditure on FEC Form 5 (or by letter, if applicable) at the end of the third quarter
17 reporting period. No further reporting is required when the ad actually runs.

18 Example 7: In August, Citizen Y contracts, but does not pay, for airtime to broadcast an
19 independent expenditure ad three days before the general election (during the 24-hour reporting
20 period). Citizen Y does not pay for the ad until two days after the ad runs. Y must file FEC
21 Form 5 (or a letter, if appropriate), which must be received by the Commission within 24 hours
22 of the time the ad was first broadcast. Y must use the date the ad ran (three days before the

1 general election) as the date of the ad, and must use his best estimate as the amount). Y may file
2 Form 5 using a fax machine, e-mail or the Commission's web site.

3 Example 8: In June 2002, Qualified Nonprofit Corporation ("QNC") Z contracts, but does
4 not pay, for airtime in early October (which falls within the pre-general reporting period). QNC
5 Z does not know in June the specific contents of the ad. The cost of airtime is greater than \$500
6 but, because it is not a political committee, QNC Z has no obligation to report the debt. QNC Z
7 pays for the airtime in July (which falls within the third quarter reporting period) but does not
8 decide which of several communications it will air until the day it airs in early October. QNC Z
9 reports the independent expenditure on FEC Form 5 (or by letter, if appropriate) at anytime
10 before the due date of the 12 day pre-general election report.

11 Example 9: Using the previous example, suppose that QNC Z pays for the airtime in July
12 and knows at that time that the ad will be an independent expenditure supporting candidate X.
13 QNC Z reports the independent expenditure on FEC Form 5 (or by letter, if appropriate) anytime
14 before the October 15 deadline for 3rd quarter reports.

End Alt.
A

15 **Alternative B:**

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

23 While the Commission does not necessarily agree with the commenter's legal analysis, the
24 Commission is dropping the third prong of the proposed definition. New paragraph (f) of the
25 final regulations states that an independent expenditure is made no later than the first date on

AH.B
cont'd

1 which the communication is published, broadcast or otherwise publicly disseminated. This new
2 paragraph would, therefore, allow persons to report an independent expenditure before the
3 underlying communication is publicly disseminated, notwithstanding other regulations (11 CFR
4 104.11(b) or 104.3(b)) that could fairly be read to require earlier disclosure. The statutory
5 change for 24-hour reports reflects Congressional intent to emphasize and ensure timely
6 disclosure of independent expenditures. Consequently, the final rules will enhance timely
7 disclosure by requiring that independent expenditures be reported after a disbursement is made,
8 or a debt reportable under 11 CFR 104.11(b) is incurred, for an independent expenditure but no
9 later than 24 hours of the time they are first publicly disseminated. Note that independent
10 expenditures that are mailed to their intended audiences are publicly disseminated at the time that
11 they are relinquished to the U.S. Post Office.

12 Examples for Political Committees:

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

22 In other situations, however, a political committee may pay the production and distributions
23 costs associated with an independent expenditure in one reporting period, but not publicly
24 disseminate it until a later reporting period. In this case, the committee reports the payment as a
25 disbursement on Schedule B for operating expenditures. When, in a subsequent reporting period,
26 the communication is publicly disseminated, the committee files a Schedule E for the
27 independent expenditure referencing the earlier Schedule B transaction. The committee also
28 reports the disbursement for the independent expenditure as a negative entry on Schedule B so
29 the total disbursements are not inflated. Alternatively, if the committee wishes to disclose the
30 independent expenditure before the communication is publicly disseminated, it could report the

1 independent expenditure on Schedule E for the reporting period in which the payment is made,
2 with no further reporting obligation at the time the communication is disseminated.

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

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

18 Example 2: In September, Committee B, a quarterly filer, enters a contract, but does not pay,
19 for a mailing containing an independent expenditure supporting candidate X. The cost of the
20 mailing is \$450. Because the debt is less than \$500, and has been outstanding for less than 60
21 days, it is not reportable on Schedule D of the committee's third quarter report. The mailing is
22 delivered to a U.S. Post Office on October 5 (during the pre-general reporting period).
23 Committee B reports the independent expenditure on a 12-day pre-general election report as a
24 Memo Schedule E, using October 5 as the date. Payment is made on November 1. No 24-hour
25 report is needed, because the independent expenditure was distributed before the 20 day before
26 the general election. On the post-general election report, Committee B reports the payment as a
27 positive entry on Schedule E and includes a cross-reference to the Memo Schedule E entry on the
28 12-day pre-general report.

29 Example 3: Committee C, a monthly filer, contracts in August for airtime to begin on
30 October 31, five days before the November 5 general election. The costs of producing the ads

AH. B
cont'd

1 and the airtime will exceed \$500, but no payment is actually made during the August,
2 September, or pre-general reporting periods. These amounts are reportable as debts on Schedule
3 D. The ads run from October 31 through November 2. Payment is made on November 1.
4 Committee C files a 24-hour report of independent expenditures on Memo Schedule E to be
5 received by the Commission or the Secretary of the Senate, as appropriate, within 24 hours of the
6 first time the ad ran on October 31. This Memo Schedule E uses October 31 as the date of the
7 independent expenditure and includes the committee's best estimate of the total cost as the
8 amount. (In this case, the exact amount would be known as of November 1.) The committee, on
9 its post-general election report, shows the November 1 payment to extinguish the debt on
10 Schedule D and also reports the independent expenditure payment as a positive disbursement on
11 Schedule E so the line totals on the Detailed Summary Page will be accurate.

12 Examples for Persons Other Than Political Committees

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

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

23 Section 109.2 Reporting of independent expenditures by persons other than a political 24 committee (2 U.S.C. 434(c)).

25 Section 109.2 of the Commission's regulations requires persons other than political
26 committees to report their independent expenditures on either FEC Form 5 or in a signed
27 statement containing certain information about the person who made the independent
28 expenditure and about the nature of the expenditure itself. Under the previous regulations,

End
Att. B

1 regardless of whether the filer reported the independent expenditure on Form 5 or in a signed
2 statement, the report had to be notarized. As discussed in the Explanation and Justification for
3 11 CFR 104.4 above, the revised regulations no longer require notarization of reports of
4 independent expenditures, but do require filers to self-verify their reports. Accordingly, the
5 introductory text of paragraphs (a) and (a)(1) of section 109.2 is being revised to change the
6 signature requirement on reports of independent expenditures to the verification of reports of
7 independent expenditures. To implement the self-verification, the amendments to
8 11 CFR 109.2(a)(1)(v) require that persons other than political committees continue to include a
9 prescribed statement of certification as to the independence of the expenditure. The Commission
10 intends to make conforming amendments to FEC Form 5 at a later point.

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

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

5 **Alternative A:**

6 Conforming changes are being made to paragraph (b) of section 109.2 to indicate that 24-
7 hour reports must be received within 24 hours of the time the independent expenditure is made.

8 **Alternative B:**

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

12 New paragraph (c) of 11 CFR 109.2 sets forth the acceptable methods of verification for both
13 e-mailed and paper reports. Note that faxed reports are considered to be filed on paper and must
14 contain the certification statement required by 11 CFR 109.2(a)(i) and new paragraph (a)(vi)
15 followed by the signature of the filer. Electronically mailed reports must contain the certification
16 statements and information required by 11 CFR 109.2(a)(i) through (a)(vii) followed by the
17 typewritten name of the filer. The Commission received no comments on these amendments.

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

19 The Commission certifies that these final rules will not have a significant economic impact
20 on a substantial number of small entities. The basis of this certification is that the Commission is
21 providing most filers with less than \$50,000 of activity with additional means of complying with
22 the law, thereby increasing the filers' flexibility by allowing them to choose the most convenient

1 and cost effective filing method. These additional filing methods will likely reduce costs for
2 small entities.

3 **List of Subjects**

4 **11 CFR Part 100**

5 Elections.

6 **11 CFR Part 104**

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

9 **11 CFR Part 109**

10 Elections, Reporting and recordkeeping requirements.

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

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

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

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

6 2. Section 100.19 is revised to read as follows:

7 **§ 100.19 File, filed or filing (2 U.S.C. 434(a)).**

8 With respect to documents required to be filed under 11 CFR parts 101, 102 104, 105,
9 107, 108 and 109, and any modifications or amendments thereto, the terms file, filed, and filing
10 mean one of the actions set forth in paragraphs (a) through (e) of this section. For purposes of
11 this section, document means any report, statement, notice or designation required by the Act to
12 be filed with the Commission or the Secretary of the Senate.

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

18 (b) A document other than a 24-hour report of an independent expenditure under 11 CFR
19 104.4(b) or 109.2(c) is timely filed upon deposit as registered or certified mail in an established
20 U.S. Post Office and postmarked no later than midnight of the day of the filing date, except that
21 pre-election reports so mailed must be postmarked no later than midnight of the fifteenth day
22 before the date of the election. Documents sent by first class mail must be received by the close
23 of business on the prescribed filing date to be timely filed.

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

4 **Alternative A:**

5 (d) A 24-hour report of independent expenditures under 11 CFR 104.4(b) or 109.2(c) is
6 timely filed when it is received by the appropriate filing officer as listed in 11 CFR 104.4(c)
7 within 24 hours of the time the independent expenditure was made. In addition to other
8 permissible means of filing, a 24-hour report may be filed using a facsimile machine or by
9 electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18.

10 **Alternative B:**

11 (d) A 24-hour report of independent expenditures under 11 CFR 104.4(b) or 109.2(c) is
12 timely filed when it is received by the appropriate filing officer as listed in 11 CFR 104.4(c) after
13 a disbursement is made, or, in the case of a political committee, a debt reportable under 11 CFR
14 104.11(b) is incurred, for an independent expenditure, but no later than 24 hours from the time
15 the independent expenditure was made. In addition to other permissible means of filing, a 24-
16 hour report may be filed using a facsimile machine or by electronic mail if the filer is not
17 required to file electronically in accordance with 11 CFR 104.18.

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

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

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

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

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

5 **§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(c)).**

6 * * * * *

7 **Alternative A:**

8 (b) 24-hour reports. Reports of any independent expenditures aggregating \$1,000 or more
9 made after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election,
10 shall be received by the appropriate officers listed in paragraph (c) of this section within 24 hours
11 after such independent expenditure is made. Such report contain the information required by
12 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or
13 in opposition to, the candidate involved. In addition to other permissible means of filing, a 24-
14 hour report may be filed using a facsimile machine or electronic mail if the filer is not required to
15 file electronically in accordance with 11 CFR 104.18. Such report shall be verified by one of the
16 methods stated in paragraph (b)(1) or (b)(2) of this section. Any report verified under either of
17 these methods shall be treated for all purposes (including penalties for perjury) in the same
18 manner as a document verified by signature.

19 **Alternative B:**

20 (b) 24-hour reports. Reports of any independent expenditures aggregating \$1,000 or more
21 made after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election,
22 shall be received by the appropriate officers listed in paragraph (c) of this section after a
23 disbursement is made, or a debt reportable under 11 CFR 104.11(b) is incurred, for an

1 independent expenditure, but no later than 24 hours after such independent expenditure is made.
2 Such report shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether
3 the independent expenditure is made in support of, or in opposition to, the candidate involved. In
4 addition to other permissible means of filing, a 24-hour report may be filed using a facsimile
5 machine or electronic mail if the filer is not required to file electronically in accordance with 11
6 CFR 104.18. Such report shall be verified by one of the methods stated in paragraph (b)(1) or
7 (b)(2) of this section. Any report verified under either of these methods shall be treated for all
8 purposes (including penalties for perjury) in the same manner as a document verified by
9 signature.

End Alt.
B

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

15 (2) For reports filed by electronic mail, the certification required by 11 CFR
16 104.3(b)(3)(vii) shall be immediately followed by the typewritten name of the
17 treasurer of the political committee that made the independent expenditure and
18 who certifies, under penalty of perjury, its independence.

19 * * * * *

20 5. Section 104.5 is amended by revising paragraphs (f) and (g) to read as follows:
21

1 § 104.5 Filing dates (2 U.S.C. 434(a)(2)).

2 * * * * *

3 (f) 48-hour notification of contributions. If any contribution of \$1,000 or more is received by
4 any authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01
5 a.m. of the day of the election, the principal campaign committee of that candidate shall notify
6 the Commission, the Secretary of the Senate and the Secretary of State, as appropriate, within 48
7 hours of receipt of the contribution. The notification shall be in writing and shall include the
8 name of the candidate and office sought by the candidate, the identification of the contributor,
9 and the date of receipt and amount of the contribution. The notification shall be filed in
10 accordance with 11 CFR 100.19. The notification shall be in addition to the reporting of these
11 contributions on the post-election report.

12 **Alternative A:**

13 (g) 24-hour report of independent expenditures. Statements disclosing any independent
14 expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours, before
15 12:01 a.m. of the day of the election, must be received by the appropriate officers listed in
16 11 CFR 104.4(c) within 24 hours after such independent expenditure is made. Such statement
17 shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the
18 independent expenditure is made in support of, or in opposition to, the candidate involved.

19 **Alternative B:**

20 (g) 24-hour report of independent expenditures. Statements disclosing any independent
21 expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours, before
22 12:01 a.m. of the day of the election, must be received by the appropriate officers listed in
23 11 CFR 104.4(c) after a disbursement is made, or in the case of a political committee, a debt

1 reportable under 11 CFR 104.11(b) is incurred, but no later than 24 hours after such independent
2 expenditure is made. Such statement shall contain the information required by
3 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or
4 in opposition to, the candidate involved.

END All
B

5 * * * * *

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

7 **§ 104.14 Formal requirements regarding reports and statements.**

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

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

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

15 * * * * *

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

17 **§ 104.18 Electronic filing of reports (2 U.S.C. 432(d) and 434(a)(11)).**

18 * * * * *

19 (h) Schedules and forms with special requirements.

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

22 (i) Schedules C-1 and C-P-1, Loans and Lines of Credit From Lending
23 Institutions (see 11 CFR 104.3(d)); and

(ii) Form 8, Debt Settlement Plan (see 11 CFR 116.7(e)).

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

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

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

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

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

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

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

Alternative A:

(f) An independent expenditure is made on the earliest of -

(1) The first date on which the communication is published, broadcast or otherwise publicly disseminated; or

(2) The date on which any payment is made for the production or dissemination of the communication, provided that the person making the payment knows the payment constitutes an independent expenditure.

End Alt.
A

4 **Alternative B:**

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

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

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

(a) Every person other than a political committee, who makes independent expenditures aggregating in excess of \$250 in a calendar year shall file a verified statement or report on FEC Form 5 with the Commission or Secretary of the Senate in accordance with 11 CFR 104.4(c).

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

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

1 * * * * *

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

7 **Alternative A:**

8 (b) Reports of independent expenditures aggregating \$1,000 or more made by any person
9 after the twentieth day, but more than 24 hours before 12:01 a.m of the day of an election must
10 be received by the appropriate officers as listed in paragraph (c) of this section within 24 hours
11 after such independent expenditure is made. Such report or statement shall contain the
12 information required by paragraph (a) of this section indicating whether the independent
13 expenditure is made in support of, or in opposition to, a particular candidate.

14 **Alternative B:**

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

22 (c) Verification of independent expenditure statements and reports: For reports filed on
23 paper (e.g., by hand delivery, U.S. Mail or facsimile machine), the certification required by

1 the person who made the independent expenditure and who certifies, under penalty of perjury, its
2 independence. For reports filed by electronic mail, the certification required by paragraph
3 (a)(1)(v) of this section must be immediately followed by the typewritten name of the person
4 who made the independent expenditure and who certifies, under penalty of perjury, its
5 independence.

6
7
8
9
10 David M. Mason
11 Chairman
12 Federal Election Commission

13
14 DATED: _____
15 BILLING CODE: 6715-01-P