



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon *JAP*
Staff Director

FROM: Lawrence M. Noble *LMN*
General Counsel

N. Bradley Litchfield *NBL/RG*
Associate General Counsel

Rosemary C. Smith *RCS*
Assistant General Counsel

Cheryl A. Fowle *CAF*
Attorney

SUBJECT: Notice of Proposed Rulemaking on Mandatory Electronic Filing:
(11 C.F.R. §104.18)

AGENDA ITEM
For Meeting of: 4-05-00

The Office of General Counsel has drafted proposed mandatory electronic filing rules and prepared an accompanying narrative. Public L. 106-58 requires that the Commission have final rules in effect on January 1, 2001. The proposed rules would establish a \$50,000 per year threshold above which political committees and other persons would be required to electronically file all reports, designations and statements. This Office worked with the Data Systems Development Division, the Reports Analysis Division, the Information Division, the Press Office, and the Public Disclosure Division in drafting the NPRM.

The suggestion had been made that one possibility would be to require all incumbents to file electronically. We note that, based on historical data from the 1996 and 1998 election cycles, that would result in approximately 42 to 88 House incumbents having to electronically file without having exceeded the \$50,000 annual threshold. Therefore, we have not included this approach in the narrative or proposed rules.

Recommendation

The Office of General Counsel recommends that the Commission approve the attached Notice of Proposed Rulemaking for publication in the *Federal Register*.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 101, 102, 104, 109, 114, 9003, 9033**

3 **[NOTICE 2000->]**

4 **ELECTRONIC FILING OF REPORTS BY**
5 **POLITICAL COMMITTEES**

6 **AGENCY:** Federal Election Commission

7 **ACTION:** Notice of Proposed Rulemaking

8 **SUMMARY:** The Federal Election Commission is seeking comment on proposed
9 rules to implement a mandatory electronic filing system for reports of
10 campaign finance activity filed with the agency. Political committees
11 and other persons would be required to file electronically when either
12 their total contributions or total expenditures within a calendar year
13 exceed \$50,000. The Commission has had a voluntary electronic filing
14 system in place since 1996. Voluntary electronic filing would still be
15 an option for political committees and persons who do not exceed the
16 \$50,000 threshold. This mandatory system is designed to reflect recent
17 changes in the Federal Election Campaign Act of 1971. Please note
18 that the draft rules that follow do not represent a final decision by the
19 Commission on the issues presented by this rulemaking. Further
20 information is provided in the supplementary information that follows.

21 **DATES:** Comments must be received on or before [insert date 30 days after date
22 of publication in the Federal Register].

ADDRESSES:

All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up to insure legibility. Electronic mail comments should be sent to Electronfile@fec.gov. Commenters sending comments by electronic mail should include their full name, electronic mail address and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The Commission will make every effort to have public comments posted on its web site within ten business days of the close of the comment period.

**FOR FURTHER
INFORMATION
CONTACT:**

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

SUPPLEMENTARY

INFORMATION: On September 29, 1999, Public Law 106-58 amended the Federal Election Campaign Act of 1971 ("the Act" or "FECA") to require, inter alia, that the Commission draft rules requiring persons who are required to file reports, designations or statements with the agency to "maintain and file a designation, statement or report for any calendar year in electronic form accessible by computers if the person has, or has reason to expect to have, aggregate

1 contributions or expenditures in excess of a threshold amount determined by the
2 Commission . . ." 113 Stat. 476 (1999). The new law requires this system to be in place for
3 reports covering periods after December 31, 2000.

4 The new law also requires the Commission to amend its regulations to add a system of
5 administrative fines for violations of reporting requirements and to require candidates and their
6 authorized committees to aggregate and report data on an election cycle-to-date rather than a
7 calendar year-to-date basis. These two topics are being addressed in two separate rulemakings.

8 Current Commission regulations at 11 CFR 104.18 invite committees to voluntarily file
9 electronically regardless of their level of financial activity. The new law maintains the voluntary
10 system for political committees or persons who do not exceed, or who do not have reason to
11 expect to exceed, the threshold of financial activity.

12 The goals of the electronic filing system include more complete and rapid on-line access to
13 reports on file with the Commission, reduced paper filing and manual processing, and more
14 efficient and cost-effective methods of operation for filers and for the Commission. The
15 amendment to the FECA requires that the Commission make electronically filed reports,
16 designations or statements available on its web site not later than 24 hours after the Commission
17 receives the filing. Currently, reports that are filed under the voluntary system of electronic
18 filing are posted in viewable form on the Commission's web site within five minutes and detailed
19 data are available in the Commission's databases within 24 to 48 hours (depending on the time of
20 receipt). In contrast, under the current paper filing system, the time between receipt of a report
21 and its appearance in viewable form on the Commission's web site is 48 hours. Additionally,
22 while some summary data is available in the Commission's indexes within 48 hours, it can take
23 as long as 30 days before the detailed data filed on paper is available in those databases. Thus,

1 the greater the number of pages that are filed electronically, the greater the volume of data that is
2 almost instantly available. Additionally, decreasing the volume of paper filed will decrease the
3 processing time of the reports that are filed on paper, making them more rapidly available in the
4 Commission's databases.

5 Before such a system for mandatory electronic filing can be successfully implemented, two
6 main factors must be considered. First, what is the optimal threshold that maximizes the
7 disclosure benefits of electronic filing yet does not encumber the regulated community? Second,
8 what are the technical and formatting requirements for electronically filed reports? The
9 Commission seeks comments on both of these concerns.

10 **Threshold**

11 Proposed paragraph (a) of 11 CFR 104.18 states that political committees and other persons
12 who are required to file with the agency must file electronically if they have, or have reason to
13 expect to have, aggregate contributions or expenditures exceeding \$50,000 in a calendar year.

14 The Commission proposes \$50,000 as the appropriate threshold for all political committees
15 and other persons because, as discussed below, data from the 1996 and 1998 election cycles¹
16 indicate that at that threshold, the goals of the statutory amendment are optimized and the effect
17 on the political committees and other persons is minimized.

¹ Please note that the data used to calculate these percentages are approximated from the Commission's databases. For the purpose of determining the appropriate threshold, the following approximations were used: For authorized committees: Contributions are the total of individual contributions plus party contributions plus other committee contributions plus candidate contributions plus candidate loans; and expenditures were considered to be operating expenditures. For unauthorized committees: Contributions consist of total receipts minus nonfederal transfers in; and expenditures are equal to total disbursements minus the nonfederal share of expenditures.

1 A. Candidates and Authorized Committees

2 Under the proposed rules, candidates and their authorized committees who file with the
3 agency would be required to file electronically if they have, or have reason to expect to have,
4 aggregate contributions or expenditures exceeding \$50,000 in a calendar year.

5 Data from the 1996 and 1998 election cycles show that this threshold would make 96% to
6 98%² of all financial activity reported by House and Presidential campaign committees almost
7 immediately available on both the FEC's web site and in the agency's on-line databases. The
8 historical information shows that of the 1,837 to 2,231 authorized committees filing with the
9 Commission between 1995 and 1998, 31% to 44% of the committees (599 to 982 committees)
10 had aggregate contributions or expenditures exceeding \$50,000. These authorized committees
11 filed 43% to 73% of the reports (2,162 to 12,646 reports), and 73% to 88% (66,569 to 282,339
12 pages) of the total number of pages filed by authorized committees. If 73% to 88% of the total
13 number of pages filed by authorized committees is filed electronically, the Commission can
14 manually process the remaining 12% to 29% of the pages more quickly to substantially reduce
15 the amount of time before the information is available in Commission databases.

16 The amendments to the FECA require that those who meet the threshold must file
17 "designations, statements or reports" electronically. Therefore, under the proposed regulations,
18 any candidate who expects to have aggregate contributions or expenditures exceeding \$50,000

² Because the data was taken over a period of two election cycles that included a Presidential-election year (1996), a midterm-election year (1998) and two non-election years (1995 and 1997), the number of committees, reports and pages filed and financial figures vary—increasing in election years, decreasing in non-election years. The percentages and numbers used in this document are the high and low figures of the four year span. Please note that the high or low percentage may have come from one year and the high or low actual number may have come from a different year.

1 would be required to electronically file his or her Statement of Candidacy (FEC Form 2), and his
2 or her authorized committee would be required to file its Statement of Organization (FEC Form
3 1) electronically. Additionally, under the proposed rules, all committees that have Internet web
4 sites would be required to provide the address of their web sites as part of their address on Form
5 1. Committees that are required to file electronically, and that have electronic mail addresses,
6 would be required to include their electronic mail addresses as part of the address on Form 1.

7 Please note, however, that the mandatory electronic filing provisions of Public Law 106-58
8 and new paragraph (a) of 11 CFR 104.18 apply only to those candidates and authorized
9 committees who are required to file reports, statements and designations with the FEC.

10 Therefore, mandatory electronic filing does not apply to candidates for United States Senate
11 because Senate candidates must file with the Secretary of the Senate. Senate candidates are,
12 however, invited to electronically file an **unofficial** copy of their reports, designations and
13 statements with the FEC for the purposes of faster disclosure.

14 Furthermore, under current Commission regulations, as a condition of receiving public
15 funding Presidential candidates are required to agree to file electronically if their data is
16 computerized. 11 CFR 9003.1(b)(11) and 9033.1(b)(13). In order for primary candidates to
17 receive matching funds, they must raise \$100,000 (\$5,000 in each of 20 states). The
18 Commission proposes removing electronic filing as a condition for receiving public funding
19 because these federally financed Presidential candidates will already have exceeded the \$50,000
20 threshold and will already be filing electronically. Consequently, 11 CFR 9003.1(b)(11) and
21 9033.1(b)(13) would be deleted.

1 If a \$50,000 threshold is adopted, the effect on candidates and authorized committees would
2 be minimal since, based on the 1996 and 1998 election cycle data, only the largest 30% to 40%
3 of registered authorized committees would be required to file electronically.

4 B. Party Committees

5 The Commission is proposing that party committees be required to file electronically if they
6 have, or have reason to expect to have, aggregate contributions or expenditures exceeding
7 \$50,000 in a calendar year.

8 At the \$50,000 level, historical data from the 1996 and 1998 election cycles show that of the
9 373 to 451 party committees filing with the Commission, 36% to 41% of them (142 to 182
10 committees) consistently disclosed over 99% (between \$213 million and \$459 million) of party
11 activity. Of the total number of pages filed by party committees, 93% to 96% (71,598 to 210,242
12 pages) would have been filed electronically, thereby greatly decreasing the amount of paper
13 processing by the committees and the FEC and considerably increasing the amount of data that
14 would be almost immediately available.

15 Based on the 1996 and 1998 election cycle data, the impact on party committees should be
16 relatively small since only 36% to 41% of all party committees registered with the Commission
17 during those election cycles would have been required to file electronically. Thus, the smallest
18 59% to 64% of party committees could continue to file paper reports.

19 C. Nonconnected Committees

20 The Commission is proposing that nonconnected committees be required to file electronically
21 if they have, or have reason to expect to have, aggregate contributions or expenditures exceeding
22 \$50,000 in a calendar year.

1 At the \$50,000 level, in the 1996 and 1998 election cycles, of the 840 to 933 nonconnected
2 committees filing with the Commission, 15% to 22% of them (128 to 202 committees) disclosed
3 88% to 93% of the activity by nonconnected committees (representing approximately \$29
4 million to \$65 million of the total \$33 million to \$70 million disclosed by nonconnected
5 committees). Additionally at that level, 59% to 68% (16,794 to 44,907 pages) of the total
6 number of pages filed by nonconnected committees would have been filed electronically, causing
7 a significant decrease in paper processing and a corresponding increase in the amount of data
8 more rapidly disclosed.

9 The number of nonconnected committees affected should be relatively small since the
10 historical data from the 1996 and 1998 election cycles show that only the largest 15% to 22% of
11 the nonconnected committees registered with the Commission would have been required to file
12 electronically.

13 D. Separate Segregated Funds

14 The Commission is proposing that the separate segregated funds (SSFs) of corporations and
15 labor organizations be required to file electronically if they have, or have reason to expect to
16 have, aggregate contributions or expenditures exceeding \$50,000 in a calendar year.

17 At the \$50,000 level, in the 1996 and 1998 election cycles, of the 2,938 to 2,976 SSFs
18 registered with the Commission, 22% to 28% of them (632 to 825 committees) disclosed 85% to
19 89% (\$138 million to \$211 million) of the total SSF financial activity. This represents 63% to
20 68% (between 94,670 and 110,864 pages) of the total number of pages filed by SSFs. Based on
21 historical data, the decrease in the amount of paper filed would represent a approximately
22 100,000 pages of data and hundreds of millions of dollars available almost instantly on the
23 Commission's web site and in the agency's databases.

1 The impact on SSFs should be small considering that, in the 1996 and 1998 election cycles,
2 only 22% to 28% of all SSFs registered with the Commission would have been required to file
3 electronically. Thus, the smallest 72% to 78% (approximately 2,300 committees) of SSFs would
4 continue to have the option of filing paper reports.

5 E. Other Persons

6 The amendment to the FECA requires that "a person" who is required to file under the Act
7 must file electronically if he or she exceeds, or has reason to expect to exceed, the threshold.
8 Therefore, in addition to the committees discussed above, the Commission proposes to apply the
9 \$50,000 threshold to any other persons defined in 11 CFR 110.10 who are required to file a
10 "designation, statement or report" with the Commission (e.g., individuals making independent
11 expenditures in excess of \$50,000, or corporations or labor organizations making
12 communications to their restricted classes at a cost of more than \$50,000). Thus, under the
13 proposed rules, these other persons would be required to file electronically if they have, or have
14 reason to expect to have, aggregate contributions or expenditures exceeding \$50,000 in a
15 calendar year.

16 Data from the 1996 and 1998 election cycles show that the between 7% and 19% (between 2
17 and 24 persons) of other persons filing with the Commission had aggregate contributions or
18 aggregate expenditures exceeding \$50,000 in a calendar year. During that four year period, those
19 persons who exceeded the threshold accounted for 33% and 50% of all activity by other persons
20 in the non-election years, and as high 94% of all activity by other persons in the Presidential
21 election year and 91% in the midterm election year.

22 The effect of the proposed rule on this category of filer should be small because historical
23 data show that the number of these other filings is very small. For example, in the 1995 and

1 1997 (the non-election years), only two of 28 and 23 filers (less than 10% in each case),
2 respectively, would have been required to file electronically under the proposed rules. In 1996
3 and 1998 (1996 being a Presidential election year), the total numbers of filers who would have
4 been affected were 24 of 128 filers (19%) and 13 of 75 filers (17%), respectively.

5 F. All Committees

6 The historical data for the 1996 and 1998 election cycles show that if a \$50,000 mandatory
7 electronic filing threshold had been in place at that time, hundreds of thousands of pages would
8 have been filed electronically, dramatically decreasing the amount of paper processed by both
9 committees and the Commission. Additionally, the amount of financial data that would have
10 been almost instantly disclosed by electronic filing would have been between \$544 million and
11 \$1.2 billion.

12 Please note that the amendments to the FECA require that those who meet the threshold must
13 file "designations, statements or reports" electronically. Therefore, under the proposed
14 regulations, committees that have reason to expect to have aggregate contributions or
15 expenditures exceeding \$50,000 would be required to electronically file their Statements of
16 Organization (Form 1). Additionally, under the proposed rules, all committees that have official
17 web sites would be required to include the Internet address of their web sites as part of their
18 address on Form 1. Committees that are required to file electronically and that have electronic
19 mail addresses would be required to provide their electronic mail addresses as part of the address
20 on Form 1.

21 The Commission seeks comments on thresholds both lower and higher for all committees and
22 other persons. For example, should there be different thresholds for different types of
23 committees? Should there be only one threshold but at a level different than that proposed?

1 Should separate segregated funds of corporations and labor organizations have a lower threshold
2 because their administrative and solicitation costs may be paid by their connected organization?

3 G. Joint Fundraising Representatives

4 The Commission proposes that joint fundraising representatives (see 11 CFR 102.17) be
5 required to file electronically if they have, or have reason to expect to have, total contributions or
6 total expenditures exceeding the \$50,000 threshold. Thus, if, for example, a joint fundraiser
7 raises total contributions of \$65,000 that it divides equally between the three participating
8 committees, including itself, the joint fundraising representative would be required to file
9 electronically.

10 H. "Have Reason to Expect to Have Aggregate Contributions or Expenditures" Above the
11 Threshold

12 The Commission requests comments on how to implement the statutory requirement that
13 persons file electronically if they "... have reason to expect to have ..." aggregate contributions
14 or expenditures above the threshold amount. Two approaches that are included in the proposed
15 rules at 11 CFR 104.18(a)(3) are — (1) a committee should expect to have financial activity
16 above the \$50,000 threshold if it exceeded this amount during the comparable year of the
17 previous election cycle; or (2) a committee should expect to have financial activity exceeding the
18 threshold if the committee's aggregate contributions or expenditures exceeded the threshold
19 during the previous calendar year.

20 Comments are sought on three other possible approaches that are not included in the
21 proposed rules — (1) Should the Commission base the expectation solely on the committee's or
22 person's own projections during the year? If so, at what point during the year will political

1 committees and other persons be expected to make the projection? Should it be a one-time
2 forecast at the beginning of the year or a rolling projection that changes as necessary throughout
3 the calendar year? (2) Should new committees having no historical data on which to base a
4 projection, base their expectations of aggregate contributions and expenditures on historical data
5 for similarly situated committees in the previous election cycle; or should such new committees
6 be presumed to have no reason to expect to exceed the threshold until such time as they actually
7 do so? (3) Should a committee have reason to expect to exceed the threshold if it raises or
8 spends more than one quarter of the proposed yearly threshold in the first calendar quarter, or if it
9 raises or spends more than half the threshold in the first half of the calendar year? For example,
10 should a committee be required to file electronically if it raises \$30,000 in the first calendar
11 quarter on the grounds that it has reason to expect to exceed the \$50,000 threshold within the
12 calendar year?

13 I. Cash On Hand and Outstanding Debt

14 The Commission proposes that for purposes of the contribution and expenditure thresholds,
15 cash on hand or debt that is outstanding at the beginning of the calendar year would not be
16 included. Thus, the calculation in the proposed rules that follow takes into account only those
17 contributions received or expenditures made, or expected to be received or made, within the
18 calendar year.

19 J. Filing for the Calendar Year

20 The statutory amendment to the Act requires that persons who are required to file with the
21 Commission must "maintain and file a designation, statement or report for any calendar year in
22 electronic form accessible by computers if the person has, or has reason to expect to have,
23 aggregate contributions or expenditures in excess of a threshold amount determined by the

1 Commission . . .” 113 Stat. 476 (1999). The Commission seeks comments on whether the
2 threshold should be calculated on a “per election cycle basis” rather than on the proposed “per
3 calendar year” basis. If so, should an election cycle threshold be used for authorized committees
4 only or for all committees and other persons? Please note that for House candidates, the election
5 cycle will generally cover approximately two years, while it may extend to over four years for
6 Presidential candidates. See 11 CFR 100.3(b).

7 The proposed amendments to 11 CFR 104.18 would not require persons to electronically
8 refile any reports, statements or designations that were properly filed on paper earlier in the
9 calendar year or earlier in the election cycle. For example, if an authorized committee files its
10 April quarterly report on paper because it has not exceeded and does not expect to exceed the
11 appropriate threshold and, if in June it exceeds the \$50,000 threshold, the committee would have
12 to electronically file its July quarterly report, but would not be expected to go back and
13 electronically refile the April report.

14 In the current voluntary electronic filing regulations at 11 CFR 104.18(a), electronic filers are
15 required to continue filing electronically for the remainder of the calendar year unless the
16 Commission determines that an extraordinary and unforeseen circumstance makes electronic
17 filing impracticable. The Commission seeks comment on whether a similar provision allowing a
18 committee or other person to stop filing electronically within the calendar year due to
19 extraordinary and unforeseen circumstances should be included in the proposed rules for
20 mandatory electronic filers.

1 **Technical Issues**

2 A. Computerization of Data and FECFile Software

3 The Commission's computer systems are capable of receiving all reports that might be
4 required under the proposed regulations. However, the Commission's FECFile software, which
5 is available from the agency at no cost, does not currently generate all required forms. For
6 example, the FECFile software does not currently generate FEC Form 1 and 2 (Statement of
7 Organization and Statement of Candidacy, respectively), FEC Form 3P for Presidential
8 candidates, FEC Form 4 for Convention and Host Committees to report their receipts and
9 disbursements, FEC Form 5 for persons other than political committees reporting independent
10 expenditures, or FEC Form 7 for reporting corporate and labor organization communications to
11 their restricted classes. The Commission plans to update the FECFile software to generate FEC
12 Forms 1 and 2 by January 1, 2001, and anticipates that FECFile will generate FEC Forms 3P, 4,
13 5 and 7 in the near future.

14 The Commission seeks comments as to whether those committees filing comments on this
15 rulemaking currently use a computer to maintain records, prepare reports, and/or file reports. In
16 particular, would the filing threshold established by the proposed rules necessitate the purchase
17 of computer hardware?

18 B. Formatting and Standardization Requirements

19 The Commission proposes to maintain the standardization requirements that are present in
20 the current voluntary electronic filing system. When the voluntary electronic filing system was
21 designed, the Commission created "The Federal Election Commission's Electronic Filing
22 Specifications Requirements" (EFSR) document and invited comment on that document at that
23 time. The EFSR is available at no charge on the Commission's web site. The Commission is

1 currently updating the EFSR and intends to use specifications embodied in the updated EFSR for
2 this mandatory electronic filing program. The Commission again requests comment on the
3 EFSR from software vendors and other interested parties based on their experience with the
4 voluntary electronic filing system. Commenters should submit their comments on the EFSR in
5 the manner requested in the "Addresses" section of this notice. Technical comments on the
6 EFSR will be forwarded to the Data Systems Development Division.

7 Please note that the validation program that checks incoming reports is also being updated.
8 For example, upon completion of this update, the program will no longer accept forms on which
9 the figures disclosed within the report do not add up to the figures reported on the detailed
10 summary page and forms indicating the incorrect type of report.

11 **Additional Issues**

12 **A. Filing by Letter**

13 Proposed changes to the Commission's regulations would require that some statements
14 required by the Act that can currently be filed by letter must be electronically filed using the
15 proper FEC form when the threshold has been exceeded or is expected to be exceeded. The
16 statements that would be affected are: (1) The Statement of Candidacy, FEC Form 2 (11 CFR
17 101.1(a)); (2) Amendments to the Statement of Organization, FEC Form 1 (11 CFR 102.2(a)(2));
18 (3) Individuals reporting independent expenditures,³ FEC Form 5 (11 CFR 109.2); and (4)
19 Qualified Nonprofit Corporations reporting independent expenditures,⁴ FEC Form 5 (11 CFR

³ Note that, under 11 CFR 104.4(c) and 105.4, independent expenditures in favor or opposing candidates for the U.S. Senate must be filed with the Secretary of the Senate and, therefore, would not be subject to this proposed regulation.

⁴ Ibid.

1 109.2 and 114.10(e)). The Commission proposes adding language to clarify that only those
2 committees and other persons who are not required to file electronically under the proposed
3 regulations may file these statements by letter. Currently, FEC Forms 1, 2 and 5 are not
4 available on FECFile software. But see "Technical Issues," above. The Commission requests
5 comments on this proposed change.

6 B. Non-filers

7 The statute makes electronic filing mandatory for those persons who exceed or who expect to
8 exceed the threshold set by the Commission. Consequently, political committees and other
9 persons who are required to file electronically, but who fail to do so, may be subject to the
10 Commission's enforcement process for non-filers and may have their names published as non-
11 filers. This includes those who are required to file electronically but who file paper reports
12 instead. Additionally, in 1999, Congress amended 2 U.S.C. 437g(a)(4) and (6)(A) to authorize
13 the Commission to impose an administrative fine on late and non-filers pursuant to a fine
14 schedule. The Commission is in the process of developing a new program to implement the
15 amendment.

16 C. Comments from Other Federal, State and Local Jurisdictions

17 Finally, the Commission is interested in the experience of other Federal, state and local
18 jurisdictions that have implemented a financial threshold based mandatory electronic filing
19 program. What issues were considered in setting the threshold amounts? What were the
20 potential and real barriers to the committees affected?

21 D. Conclusion

22 The Commission welcomes comments on any other issues raised by the new statutory
23 requirements regarding mandatory electronic filing.

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

2 These proposed rules if promulgated, will not have a significant economic impact on a
3 substantial number of small entities. The basis of this certification is that the Commission's
4 proposed thresholds are set at a sufficiently high level that most, if not all, small political
5 committees would not be required to file electronically, although they could continue to do so
6 voluntarily. In the event any small committees do exceed the proposed threshold, the economic
7 impact would not be significant because the committees may obtain the FECFile software from
8 the Commission at no cost, and the Commission anticipates this software will generate all
9 required forms.

10 **List of Subjects**

11 **11 CFR Part 101**

12 Political candidates, Reporting and recordkeeping requirements.

13 **11 CFR Part 102**

14 Political committees and parties, Reporting and recordkeeping requirements.

15 **11 CFR Part 104**

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

18 **11 CFR Part 109**

19 Elections, Reporting and recordkeeping requirements.

20 **11 CFR Part 114**

21 Business and industry, Elections, Labor.

1 **11 CFR Part 9003**

2 Campaign funds, Reporting and recordkeeping requirements.

3 **11 CFR Part 9033**

4 Campaign funds, Reporting and recordkeeping requirements.

1 For the reasons set out in the preamble, subchapters A, E and F of chapter I of title 11 of the
2 Code of Federal Regulations would be amended as follows:

3 **PART 101 — CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))**

4 1. The authority citation for part 101 would be amended to read as follows:

5 Authority: 2 U.S.C. 432(e), 434(a)(11), 438(a)(f).

6 2. Section 101.1 would be amended by revising paragraph (a) to read as follows:

7 **§ 101.1 Candidate designations(2 U.S.C. 432(e)(1)).**

8 (a) Principal Campaign Committee. Within 15 days after becoming a candidate under 11
9 CFR 100.3, each candidate, other than a nominee for the office of Vice President, shall designate
10 in writing a principal campaign committee in accordance with 11 CFR 102.12. A candidate shall
11 designate his or her principal campaign committee by filing a Statement of Candidacy on FEC
12 Form 2, or, if the candidate is not required to file electronically under 11 CFR 104.18, by filing a
13 letter containing the same information (that is, the individual's name and address, party
14 affiliation and office sought, the District and State in which Federal office is sought, and the
15 name and address of his or her principal campaign committee) at the place of filing specified at
16 11 CFR part 105. Each principal campaign committee shall register, designate a depository and
17 report in accordance with 11 CFR 102, 103 and 104.

18 * * * * *

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

21 3. The authority citation for part 102 would be amended to read as follows:

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

1 4. Section 102.2 would be amended by revising paragraphs (a)(1)(vi) and (a)(2), and adding
2 (a)(1)(vii) to read as follows:

3 **§102.2 Statement of organization: Forms and committee identification number (2 U.S.C.**
4 **433(b), (c)).**

5 (a) (1) * * *

6 (vi) A listing of all banks, safe deposit boxes, or other depositories used by the
7 committee;

8 (vii) The Internet address of the committee's official web site, if such a web site
9 exists. If the committee is required to file electronically under 11 CFR
10 104.18, its electronic mail address, if such an address exists.

11 (2) Any change or correction in the information previously filed in the Statement of
12 Organization shall be reported no later than 10 days following the date of the
13 change or correction by filing an amended Statement of Organization or, if the
14 political committee is not required to file electronically under 11 CFR 104.18, by
15 filing a letter noting the change(s). The amendment need list only the name of the
16 political committee and the change or correction.

17 * * * * *

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

19 5. The authority citation for part 104 would be amended to read as follows:

20 Authority: 2 U.S.C. 431, 434, 438(a)(8) and (b) and 439a.

21 6. Section 104.18 would be revised to read as follows:

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

2 (a) Mandatory.

3 (1) Political committees and other persons required to file reports with the
4 Commission, as provided in 11 CFR Parts 105 and 107, must file reports in an
5 electronic format that meets the requirements of this section if —

6 (i) The political committee or other person has received contributions or has
7 reason to expect to receive contributions aggregating in excess of \$50,000
8 in any calendar year; or

9 (ii) The political committee or other person has made expenditures or has
10 reason to expect to make expenditures aggregating in excess of \$50,000 in
11 any calendar year.

12 (2) Once any political committee or other person described in paragraph (a)(1) of this
13 section exceeds or has reason to expect to exceed the appropriate threshold, the
14 political committee or person must file electronically all subsequent reports
15 covering financial activity for the remainder of the calendar year. All
16 electronically filed reports must pass the Commission's validation program in
17 accordance with paragraph (e) of this section.

18 (3) A political committee or other person has reason to expect to receive aggregate
19 contributions or to make aggregate expenditures over the threshold amount in
20 paragraph (a)(1) of this section if its aggregate contributions or aggregate
21 expenditures exceeded the threshold in the comparable year in the previous

1 election cycle, or its aggregate contributions or aggregate expenditures exceeded
2 the threshold in the previous calendar year.

3 (ab) General Voluntary. A political committee or other person who~~that~~ files reports with the
4 Commission, as provided in 11 CFR Part 105, and who is not required to file electronically under
5 paragraph (a) of this section, may choose to file its reports in an electronic format that meets the
6 requirements of this section. If a political committee or other person chooses to file its reports
7 electronically, ~~and its first electronic report~~ all electronically filed reports must pass the
8 Commission's validation program in accordance with paragraph ~~(e)~~(e) of this section. ~~¶~~The
9 committee or other person must continue to file in an electronic format all reports covering
10 financial activity for that calendar year, unless the Commission determines that extraordinary and
11 unforeseeable circumstances have made it impracticable for the political committee or other
12 person to continue filing electronically.

13 (c) Definition. For purposes of this section, report means any statement, designation or
14 report filed with the Commission.

15 (bd) Format specifications. Reports filed electronically shall conform to the technical
16 specifications described in the Federal Election Commission's Electronic Filing Specifications
17 Requirements. The data contained in the computerized magnetic media provided to the
18 Commission shall be organized in the order specified by the Electronic Filing Specifications
19 Requirements.

20 (ee) Acceptance of reports filed in electronic format; validation program.

21 (1) Each political committee or other person who~~that~~ submits an electronic report
22 shall check the report against the Commission's validation program before it is
23 submitted, to ensure that the files submitted meet the Commission's format

1 specifications and can be read by the Commission's computer system. Each
2 report submitted in an electronic format under this section shall also be checked
3 upon receipt against the Commission's validation program. The Commission's
4 validation program and the Electronic Filing Specification Requirement ~~is~~ are
5 available on request and at no charge.

- 6 (2) A report that does not pass the validation program will not be accepted by the
7 Commission and will not be considered filed. If a political committee or other
8 person submits a report that does not pass the validation program, the
9 Commission will notify the political committee or other person that the report has
10 not been accepted.

11 (df) Amended reports. If a political committee or other person files an amendment to a report
12 that was filed electronically, the political committee or other person shall also submit the
13 amendment in an electronic format. The political committee or other person shall submit a
14 complete version of the report as amended, rather than just those portions of the report that are
15 being amended. In addition, the amended report shall contain electronic flags or markings that
16 point to the portions of the report that are being amended.

17 (eg) Signature requirements. The political committee's treasurer, or any other person having
18 the responsibility to file a designation, report or statement under this subchapter, shall verify the
19 report in one of the following ways: by submitting a signed certification on paper that is
20 submitted with the computerized media; or by submitting a digitized copy of the signed
21 certification as a separate file in the electronic submission. Each verification submitted under
22 this section shall certify that the ~~person~~ treasurer or other signatory has examined the report or
23 statement and, to the best of the signatory's knowledge and belief, it is true, correct and

1 complete. Any verification under this section shall be treated for all purposes (including
2 penalties for perjury) in the same manner as a verification by signature on a report submitted in a
3 paper format.

4 ~~(f)~~ Schedules and forms with special requirements. The following list of schedules,
5 materials, and forms have special signature and other requirements and reports containing these
6 documents shall include, in addition to providing the required data within the electronic report,
7 either a paper copy submitted with the political committee's or other person's electronic report or
8 a digitized version submitted as a separate file in the electronic submission: Schedule C-1 (Loans
9 and Lines of Credit From Lending Institutions), including copies of loan agreements required to
10 be filed with that Schedule, Schedule E (Itemized Independent Expenditures), Form 5 (Report of
11 Independent Expenditures Made and Contributions Received), and Form 8 (Debt Settlement
12 Plan). The political committee or other person shall submit any paper materials together with the
13 electronic media containing the ~~committee's~~ report.

14 ~~(g)~~ Preservation of reports. For any report filed in electronic format under this section, the
15 treasurer or other person required to file any report under the Act shall retain a machine-readable
16 copy of the report as the copy preserved under 11 CFR 104.14(b)(2). In addition, the treasurer or
17 other person required to file any report under the Act shall retain the original signed version of
18 any documents submitted in a digitized format under paragraphs ~~(e)~~(g) and ~~(f)~~(h) of this section.

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

20 7. The authority for part 109 would be amended to read as follows:

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

1 8. Section 109.2 would be amended by revising the introductory text of paragraph (a) to
2 read as follows:

3 **§109.2 Reporting of independent expenditures by persons other than a political committee**
4 **U.S.C. 434(c).**

5 (a) Every person other than a political committee, who makes independent expenditures
6 aggregating in excess of \$250 during a calendar year shall file a report on FEC Form 5 or, if the
7 person is not required to file electronically under 11 CFR 104.18, a signed statement with the
8 Commission or Secretary of the Senate in accordance with 11 CFR 104.4(c).

9 * * * * *

10 **PART 114 — CORPORATE AND LABOR ORGANIZATION ACTIVITY**

11 9. The authority citation for part 114 would be amended to read as follows:

12 Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434(a)(11), 437d(a)(8), 438(a)(8) and
13 441b.

14 10. Section 114.10 would be amended by revising paragraph (e)(11) to read as follows:

15 **§114.10 — Nonprofit corporations exempt from the prohibition on independent**
16 **expenditures.**

17 * * * * *

18 (e) * * *

19 (11) This certification may be made either as part of filing FEC Form 5 (independent
20 expenditure form) or, if the corporation is not required to file electronically under
21 11 CFR 104.18, by submitting a letter in lieu of the form. The letter shall contain
22 the name and address of the corporation and the signature and printed name of the

1 individual filing the qualifying statement. The letter shall also certify that the
2 corporation has the characteristics set forth in paragraphs (c)(1) through (c)(5) of
3 this section.

4 **PART 9003 — ELIGIBILITY FOR PAYMENTS**

5 11. The authority citation for part 9003 would continue to read as follows:

6 Authority: 26 U.S.C. 9003 and 9009(b).

7 12. Section 9003.1 would be amended by deleting paragraph (b)(11):

8 **§ 9003.1 — Candidate and committee agreements.**

9 * * * * *

10 (b) * * *

11 ~~(11) Agree that they and their authorized committee(s) shall file all reports with the~~
12 ~~Commission in an electronic format that meets the requirements of 11 CFR~~
13 ~~104.18 if the candidate or the candidate's authorized committee(s) maintain or use~~
14 ~~computerized information containing any of the information described in 11 CFR~~
15 ~~104.3.~~

16 **PART 9033 -- ELIGIBILITY FOR PAYMENTS**

17 13. The authority citation for part 9033 would continue to read as follows:

18 Authority: 26 U.S.C. 9033 and 9039(b).

19 14. Section 9033.1 would be amended by deleting paragraph (b)(13):

20 **§ 9033.1 Candidate and committee agreements.**

21 * * * * *

22 (b) * * *

