



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrson
Staff Director

FROM: Lois G. Lemer
Acting General Counsel

N. Bradley Litchfield
Associate General Counsel

Rosemary C. Smith
Assistant General Counsel

Rita A. Reimer
Attorney

SUBJECT: New Rules on General Public Political Communications Coordinated with
Candidates and Party Committees, and Independent Expenditures;
Announcement of Effective Date

AGENDA ITEM
For Meeting of: 4-19-01

On January 4, 2001, the Commission transmitted to Congress revised rules at 11 CFR Parts 100, 109 and 110, governing general public political communications coordinated with candidates and party committees, and independent expenditures. These rules were approved by the Commission on November 30, 2000, and were published in the *Federal Register* on December 6, 2000. 65 *Fed. Reg.* 76138. They were not submitted to Congress for the 30 legislative day review period discussed below until after the start of the 107th Congress in January 2001, because it would have been impossible for this time to have run prior to the adjournment of the 106th Congress in December 2000.

Before final promulgation of any rules or regulations to carry out the provisions of Title 2 of the United States Code, the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty legislative day review period. 2 U.S.C. 438(d). These rules on coordinated and independent expenditures were transmitted to Congress on January 4, 2001. Thirty

legislative days expired in the Senate on March 12, 2001, and the House of Representatives on March 29, 2001.

This Office notes, however, that there are unusual circumstances involved with these rules that make the publication of an Effective Date Notice less straightforward than is usually the case. Section 214 of S. 27, the Bipartisan Campaign Reform Act of 2001, also known as the "McCain-Feingold bill," as passed by the Senate on April 2, 2001, would repeal these regulations and would direct the Commission to promulgate new coordination rules within 90 days to take the place of those which are the subject of this Notice. While the Commission would retain discretion in drafting some aspects of the new rules, they would almost certainly differ substantially from those that would become effective if this Notice was approved. See 147 CONG. REC. S3184-85 (daily ed. Mar. 30, 2001) (comments of Sens. McCain and Feingold).

An indication that one House of Congress disagrees with the Commission's approach could serve as the basis for a Commission decision not to publish an effective date notice for the coordination rules until after the current legislative debate had ended. On the other hand, both the text of the Senate-passed bill and the accompanying commentary, *supra*, indicate the Senate expects these new rules to take effect shortly.

Neither the Administrative Procedure Act ("APA") nor the FECA establishes a date certain by which rules must become effective. While the APA states that rules may not become effective until 30 days after their publication in the *Federal Register*, 5 U.S.C. § 553(d), agencies have wide discretion to set a more delayed effective date for good cause. *United Steelworkers of America v. Marshall*, 647 F.2d 1189 (D.C. Cir. 1980), *cert. denied*, 453 U.S. 913 (1981); *Industrial Union Department v. Hodgson*, 499 F.2d 467 (D.C. Cir. 1974).

This Office is accordingly following its standard practice of circulating for Commission consideration a proposed Notice for publication in the *Federal Register* to announce the effective date of these final rules. We request that this Notice be circulated on a 72-hour tally basis. A Commission vote is required to approve the attached document for publication in the *Federal Register*.

Attachment

FEDERAL ELECTION COMMISSION

[NOTICE 2001 - >]

11 CFR Parts 100, 109 and 110

**General Public Political Communications Coordinated with Candidates and Party
Committees; Independent Expenditures**

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On December 6, 2000, the Commission published the text of revised regulations governing general public political communications coordinated with candidates and party committees, and independent expenditures. 65 FR 76138. The Commission announces that these rules are effective as of [insert date of publication in the Federal Register].

**EFFECTIVE
DATE:** [insert date of publication in the Federal Register].

**FOR FURTHER
INFORMATION**

CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694-1650 or toll free (800) 424-9530.

SUPPLEMENTARY

INFORMATION: The Commission is announcing the effective date of revised regulations at 11 CFR Parts 100, 109 and 110, that address expenditures for coordinated communications that include clearly identified candidates, and that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The rules, which largely follow the United States District Court for the District of Columbia's decision in Federal Election Commission v. The Christian Coalition, 53 F.Supp.2d 45 (D.D.C. 1999), address expenditures for

communications made at the request or suggestion of a candidate, authorized committee or party committee; as well as those where any such person has exercised control or decision-making authority over the communication, or has engaged in substantial discussion or negotiation with those involved in creating, producing, distributing or paying for the communication. The rules also revise the definition of "independent expenditure" to conform with this new definition.

Before final promulgation of any rules or regulations to carry out the provisions of Title 2 of the United States Code, the Commission transmits the rules or regulations to the Speaker of the House of Representatives and the President of the Senate for a thirty legislative day review period. 2 U.S.C. 438(d). These rules on coordinated and independent expenditures were transmitted to Congress on January 4, 2001. Thirty legislative days expired in the Senate on March 12, 2001, and the House of Representatives on March 29, 2001.

Announcement of Effective Date: Revised 11 CFR 100.16; 109.1(a), (b)(4), and (d)(1); and 110.14(f)(2) and (f)(3); and new 11 CFR 100.23, as published at 65 FR 76138 (Dec. 6, 2000), are effective as of [insert date of publication in the Federal Register].

Danny L. McDonald
Chairman
Federal Election Commission

DATED: _____
BILLING CODE: 6715-01-P