

apparent authority from the definition of agent?

Alternatively, rather than either excluding apparent authority altogether from the definitions of agent at 11 CFR 109.3 and 300.2(b) or simply adding the term "apparent authority" to these definitions, should the Commission instead provide a more narrowly tailored definition of agent? Before the Commission adopted the definition of agent in the soft money regulations in 2002, the Commission's former regulations contained a narrowly tailored definition of agent that included certain aspects of apparent authority. Specifically, former 11 CFR 109.1(b)(5) defined agent as including "any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures." Former 11 CFR 109.1(b)(5) appears to be narrower than the revision proposed in this NPRM because it does not include cases where apparent authority exists for persons other than those who hold a position "where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures." Under the proposed revision of the definitions of agent, which would add the term "apparent authority" and rely on the Restatement for the definition of the term, a principal potentially could invest a person with the authority of an agent also by making statements to, or engaging in conduct with respect to, a third party, regardless of the position the putative agent occupies within the principal's organization. Should the Commission re-adopt the definition of agent at former 11 CFR 109.1(b)(5)? Or would that definition be either too narrow or too broad to effectuate the purposes of BCRA's soft money and independent and coordinated expenditures provisions? Would former 11 CFR 109.1(b)(5) be more or less effective than the proposed revision in preventing circumvention of the Act and the appearance of corruption?

Alternatively, the Commission seeks comments on whether it should adopt an entirely new approach towards apparent authority, different from both the definition at former 11 CFR 109.1(b)(5) and the Restatement. Commenters who propose such a new approach should explain how their proposal would be more effective than both the revision proposed in this NPRM and former 11 CFR 109.1(b)(5) in implementing the purposes of BCRA's soft money and independent and coordinated expenditures provisions,

and how a wholly new approach would prevent circumvention of the Act and the appearance of corruption.

Finally, although the Commission proposes to have consistent definitions in both 11 CFR 109.3 and 300.2(b), the Commission also solicits comments on whether effective implementation of BCRA's purposes would be better served by defining agent in the soft money context differently from agent in the coordination context and, specifically, whether apparent authority should be included in one but not in the other definition.

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

The Commission certifies that the attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the national, State, and local party committees of the two major political parties, and other political committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. Further, individual citizens operating under these rules are not small entities. To the extent that any political party committees or other political committees may fall within the definition of "small entities," their number is not substantial.

#### **List of Subjects**

##### *11 CFR Part 109*

Elections, Reporting and recordkeeping requirements.

##### *11 CFR Part 300*

Campaign funds, Nonprofit organizations, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapters A and C of chapter I of title 11 of the *Code of Federal Regulations* as follows:

#### **PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a(a) AND (d), AND PUB. L. 107-55 SEC. 214(c))**

1. The authority citation for part 109 would continue to read as follows:

**Authority:** 2 U.S.C. 431(17), 434(c), 438(a)(8), 441a, 441d.; Sec. 214(c) of Pub. L. 107-55, 116 Stat. 81.

2. Section 109.3 would be amended by revising the introductory text of the section to read as follows:

#### **§ 109.3 Definitions.**

For the purposes of 11 CFR part 109 only, agent means any person who has actual authority, either express or implied, or apparent authority to engage in any of the following activities on behalf of the specified persons:

\* \* \* \* \*

#### **PART 300—NON-FEDERAL FUNDS**

3. The authority citation for part 300 would continue to read as follows:

**Authority:** 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

4. Section 300.2 would be amended by revising the introductory text of paragraph (b) to read as follows:

#### **§ 300.2 Definitions.**

\* \* \* \* \*

(b) *Agent.* For the purposes of part 300 of chapter I, agent means any person who has actual authority, either express or implied, or apparent authority to engage in any of the following activities on behalf of the specified persons:

\* \* \* \* \*

Dated: January 27, 2005.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

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**BILLING CODE 6715-01-P**

#### **FEDERAL ELECTION COMMISSION**

##### **11 CFR Part 300**

[Notice 2005-2]

#### **De Minimis Exemption for Disbursement of Levin Funds by State, District, and Local Party Committees**

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Election Commission requests comments on proposed revisions to the Commission's regulations that establish a *de minimis* exemption allowing State, district, and local committees of a political party to pay for certain Federal election activity aggregating \$5,000 or less in a calendar year entirely with Levin funds. In *Shays v. FEC*, the District Court held that the Commission's *de minimis* exemption was inconsistent with the statutory intent of the Bipartisan Campaign Reform Act and remanded the regulation to the Commission for further action consistent with the court's opinion. The Commission is appealing

this ruling to the D.C. Circuit. In the interim, the Commission is initiating this rulemaking. No final decision has been made by the Commission on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

**DATES:** Comments must be received on or before March 4, 2005. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

**ADDRESSES:** All comments should be addressed to Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be sent to [deminimis@fec.gov](mailto:deminimis@fec.gov) and may also be submitted through the Federal eRegulations Portal at <http://www.regulations.gov>. All electronic comments must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Commission will post public comments on its Web site. If the Commission decides a hearing is necessary, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brad C. Deutsch, Assistant General Counsel, or Ms. Cheryl A.F. Hemsley, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (March 27, 2002), contained extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended (the "Act"). 2 U.S.C. 431 *et seq.* As amended by BCRA, subsection 441i(b)(1) of the Act, 2 U.S.C. 441i(b)(1), provides that State, district, and local political party committees

must generally use Federal funds<sup>1</sup> to pay for Federal election activity ("FEA").<sup>2</sup> However, subsection 441i(b)(2) provides an exception for certain activities covered by Types 1 and 2 FEA, for which State, district, and local political party committees may allocate disbursements between Federal funds and Levin funds in accordance with allocation ratios as determined by the Commission.<sup>3</sup> 2 U.S.C. 441i(b)(2); *see also* 11 CFR 300.2(i), 300.32, and 300.33.

On July 29, 2002, the Commission promulgated regulations at 11 CFR Part 300 implementing BCRA's provisions concerning disbursements by State, district, and local party committees for FEA. *See Final Rules and Explanation on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money*, 67 FR 49064 (July 29, 2002) ("Soft Money E&J"). The regulations at 11 CFR 300.32(c)(4) require any State, district, or local committee of a political party that disburses more than \$5,000 on allocable Type 1&2 FEA in a calendar year either to pay for such allocable FEA entirely with Federal funds or to allocate disbursements between Federal funds and Levin funds. The Commission also created a *de minimis* exemption for any State, district, or local party committee whose disbursements for allocable Type 1&2 FEA aggregate \$5,000 or less in a calendar year (the "\$5,000 Exemption"), permitting such committees to pay for

<sup>1</sup> "Federal funds" are funds that comply with the limitations, prohibitions, and reporting requirements of the Act. *See* 11 CFR 300.2(g).

<sup>2</sup> The four types of FEA are: Type 1—Voter registration activity during the period that begins on the date that is 120 days before a regularly scheduled Federal election is held and ends on the date of the election; Type 2—Voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot; Type 3—A public communication that refers to a clearly identified candidate for Federal office; and Type 4—Services provided during any month by an employee of a State, district, or local committee of a political party who spends more than 25 percent of his or her compensated time during that month on activities in connection with a Federal election. *See* 2 U.S.C. 431(20) and 11 CFR 100.24.

<sup>3</sup> Levin funds are a type of non-Federal funds raised only by State, district, and local political party committees. Levin funds are limited to donations of \$10,000 per source per calendar year and are generally solicitable from sources otherwise prohibited by the Act (except from foreign nationals). Donations of Levin Funds, however, must be lawful under the laws of the State in which a committee is organized. *See* 2 U.S.C. 441i(b)(2)(B); *see also* 11 CFR 300.31 and 300.32(c). Types 1 and 2 FEA listed in note 2, above, are allocable between Federal and Levin funds, so long as the activities do not refer to a clearly identified Federal candidate ("allocable Type 1&2 FEA"). *See* 2 U.S.C. 441i(b)(2)(B)(i) and 11 CFR 300.32.

these types of FEA entirely with Levin funds.

In the Soft Money E&J, the Commission stated three reasons for promulgating the \$5,000 Exemption at 11 CFR 300.32(c)(4). First, the Commission noted that although BCRA requires State, district, and local political party committees to report all receipts and disbursements for FEA, the statute provides an exception for committees whose FEA receipts and disbursements aggregate less than \$5,000 in a calendar year. *See* 2 U.S.C. 434(e)(2)(A). The Commission reasoned that the reporting exception suggests that Congress did not take a rigid approach to low levels of FEA. Second, the Commission explained that it was particularly sensitive to the grassroots nature of allocable Type 1&2 FEA, stating that there is a far weaker nexus between Federal candidates and this category of FEA than the other types of FEA for which use of Levin funds is prohibited. Finally, the Commission noted that \$5,000 is only half of what any single donor may donate to each and every State, district, and local political party committee under BCRA, so there is no danger that allowing a committee to use entirely Levin funds for allocable Type 1&2 FEA aggregating \$5,000 or less in a calendar year would lead to circumvention of the \$10,000 Levin fund donation limit in BCRA. *See* Soft Money E&J at 49097.

In *Shays v. FEC*, 337 F.Supp.2d 28, 114-117 (D.D.C. 2004), *appeal filed*, No. 04-5352 (D.C. Cir. Sept. 28, 2004) ("*Shays*"), the district court held that the \$5,000 Exemption in 11 CFR 300.32(c)(4) was inconsistent with Congress's clear intent, as expressed in BCRA, to allow State, district, and local party committees to pay for allocable Type 1&2 FEA either solely with Federal funds or with funds allocated between Federal and Levin funds.<sup>4</sup> The court concluded that the \$5,000 Exemption was not permissible, finding that "Congress clearly expressed its intent in BCRA's statutory language that all [FEA] pursued by state, local and district political party committees is to be paid for using federal funds, except for certain circumstances where such committees may use an 'allocated' ratio

<sup>4</sup> "Under the *Chevron* analysis, a court first asks "whether Congress has directly spoken to the precise question at issue. If the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress.'" *Shays* at 51 (quoting *Chevron, U.S.A., Inc. v. Natural Res. Def. Council*, 467 U.S. 837, 842-43 (1984)).

of federal and Levin funds.” *Shays* at 116–17.

The court stated that for a regulatory *de minimis* exemption to stand, an agency has the burden of demonstrating that following the precise language of the statute would lead to “absurd or futile results,” or that the failure to create a *de minimis* exemption would be “contrary to the primary legislative goal.” *Shays* at 117 (quoting *Environmental Defense Fund v. EPA*, 82 F.3d 451, 466 (D.C. Cir. 1996) quoting, in turn, *State of Ohio v. EPA*, 997 F.2d 1520, 1535 (D.C. Cir. 1993)). The court addressed each of the Commission’s reasons for adopting the \$5,000 Exemption and found that the Commission had not met the burden of demonstrating that following the precise statutory language would lead to absurd or futile results and had not shown that the \$5,000 Exemption comported with BCRA’s purposes.<sup>5</sup> *Shays* at 117. The court then remanded the regulations to the Commission for further action consistent with its opinion. *Shays* at 130.

#### I. Proposed 11 CFR 300.32(c)(4)—Conditions and Restrictions on Spending Levin Funds

Because the court found the \$5,000 Exemption to be inconsistent with the statutory intent of 2 U.S.C 441i(b) and that the standards for upholding a *de minimis* exemption had not been met, the Commission proposes to delete the \$5,000 Exemption from 11 CFR 300.32(c)(4). Paragraph (c)(4) of the proposed rule would require State, local, and district political party committees to pay for all allocable FEA either entirely with Federal funds or with an allocation of Federal and Levin funds pursuant to 11 CFR 300.33. The Commission solicits comments on the proposed regulation. The Commission also invites comments on whether following the precise language of BCRA would lead to “absurd or futile results,” absent promulgation of a *de minimis* exemption for disbursement of Levin funds by State, district, and local political party committees.

#### II. Alternative Proposal for 11 CFR 300.32(c)(4)

Although not reflected in the attached proposed rules, the Commission also seeks comments on whether 11 CFR

300.32(c)(4) should be revised to apply only to State, district, and local party committees with combined receipts and disbursements for FEA (whether allocable or not) that together aggregate to less than \$5,000 in a calendar year. See 2 U.S.C. 434(e)(2)(A). If a *de minimis* exemption allowing for the exclusive use of Levin funds for allocable Type 1&2 FEA were to apply only to State, district, and local party committees with FEA receipts and disbursements aggregating less than \$5,000 in a calendar year, the exemption would then apply only to those committees that are already statutorily exempt from having to report FEA under the exception contained in 2 U.S.C. 434(e)(2)(A). The Commission invites comment on whether adoption of this alternative proposal would comport with the statutory intent of 2 U.S.C 441i(b).

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

The Commission certifies that the attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the State, district, and local party committees of the two major political parties are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. To the extent that other political party committees may fall within the definition of “small entities,” their number is not substantial.

#### List of Subjects in 11 CFR Part 300

Campaign funds, Nonprofit organizations, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapter C of chapter I of title 11 of the *Code of Federal Regulations* as follows:

#### PART 300—NON-FEDERAL FUNDS

1. The authority citation for part 300 would continue to read as follows:

**Authority:** 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

2. Section 300.32 would be amended by revising paragraph (c)(4) to read as follows:

#### § 300.32 Expenditures and disbursements

\* \* \* \* \*  
(c) \* \* \*

(4) The disbursements for allocable Federal election activity may be paid for entirely with Federal funds or may be allocated between Federal funds and Levin funds according to 11 CFR 300.33.

\* \* \* \* \*  
Dated: January 27, 2005.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

[FR Doc. 05–1891 Filed 2–1–05; 8:45 am]

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## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA–2005–20251; Directorate Identifier 2004–NM–164–AD]

RIN 2120–AA64

#### Airworthiness Directives; Raytheon Model Hawker 800XP Airplanes

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The FAA proposes to adopt a new airworthiness directive (AD) for certain Raytheon Model Hawker 800XP airplanes. This proposed AD would require inspecting to detect damage of certain wiring in the flight compartment, performing corrective actions if necessary, modifying certain wiring connections, and revising the airplane flight manual. This proposed AD is prompted by reports of miswiring in the power distribution system. We are proposing this AD to ensure that the flightcrew is aware of the source of battery power for certain equipment, and to prevent damage to wiring and surrounding equipment that could result in smoke or fire on the airplane.

**DATES:** We must receive comments on this proposed AD by March 21, 2005.

**ADDRESSES:** Use one of the following addresses to submit comments on this proposed AD.

- DOT Docket Web site: Go to <http://dms.dot.gov> and follow the instructions for sending your comments electronically.

- Government-wide rulemaking Web site: Go to <http://www.regulations.gov> and follow the instructions for sending your comments electronically.

- Mail: Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, Room PL–401, Washington, DC 20590.

- By fax: (202) 493–2251.

<sup>5</sup> The Commission has filed an appeal with the U.S. Court of Appeals for the D.C. Circuit of certain aspects of the *Shays* decision, including the court’s conclusion that the \$5,000 Exemption is inconsistent with the statutory intent of 2 U.S.C 441i(b). The appeal is currently pending. In the event the Commission prevails on appeal, the Commission may terminate this rulemaking proceeding prior to adoption of final rules.