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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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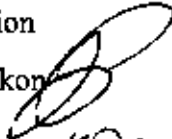
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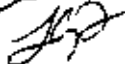
AGENDA ITEM


For Meeting of: 5-03-01

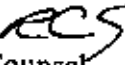
MEMORANDUM

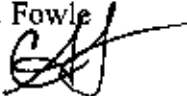
TO: The Commission

THROUGH: James A. Pehrkonig 
Staff Director

FROM: Lois G. Lerner 
Acting General Counsel

N. Bradley Litchfield 
Associate General Counsel

Rosemary C. Smith 
Assistant General Counsel

Cheryl A. Fowle 
Attorney

SUBJECT: Revised Notice of Proposed Rulemaking on Independent Expenditure Reporting

In accordance with the Commission's direction on March 29, 2001, the Office of General Counsel, with guidance from the Regulations Committee on April 5, 2001, has revised the proposed independent expenditure reporting rules and the accompanying narrative. The changes to the narrative portion of the NPRM are in bold. All proposed changes from the current regulations are double underlined. The revisions include: 1) a proposed definition of when an independent expenditure is made and accompanying narrative; 2) a request for comments in the narrative regarding the certification as to the independence of the distribution of campaign materials prepared by the candidate's committee; 3) a statement in §104.4(b) that reports verified under the new procedures are subject to the penalties of perjury; 4) new paragraphs (d) and (e) in §100.19 clarifying that fax and e-mail are additional means of filing 24-hour reports, and that faxes and the Commission's on-line program are additional means of filing 48-hour reports.

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 Parts 100, 104, and 109**

3 **[NOTICE 2001->]**

4 **INDEPENDENT EXPENDITURE REPORTING**

5
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 statutory changes to the procedures for filing certain
10 reports of independent expenditures. The proposed rules would require
11 that reports of last minute independent expenditures ("24-hour reports")
12 be received by the Commission or the Secretary of the Senate's office
13 within 24 hours of the time the expenditure was made. To assist filers
14 in meeting this new filing deadline, the proposed rules would allow
15 reports of last minute independent expenditures to be filed by facsimile
16 machine or electronic mail, unless the filer participates in the
17 Commission's electronic filing program. In addition to faxing or e-
18 mailing 24-hour reports, persons other than political committees (who
19 are not part of the electronic filing program) would be allowed to fax or
20 e-mail any reports of independent expenditures filed under the regular
21 reporting schedules. However, electronic filers must continue to file all
22 reports of independent expenditures (24-hour reports as well as
23 regularly scheduled reports) using the Commission's electronic filing

1 system. Please note that the draft rules that follow do not represent a
2 final decision by the Commission on the issues presented by this
3 rulemaking. Further information is provided in the supplementary
4 information that follows.

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

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

20 **FOR FURTHER**
21 **INFORMATION**
22 **CONTACT:**

Ms. Rosemary Smith, Assistant General Counsel, or Ms. Cheryl Fowle,
23 Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694-
24 1650 or (800) 424-9530.

1 **SUPPLEMENTARY**

2 **INFORMATION:** On October 23, 2000, Public Law 106-346 (Department of Transportation
3 and Related Agencies Appropriations Act, 2001, 114 Stat. 1356 (2000)) amended the Federal
4 Election Campaign Act of 1971, 2 U.S.C. 431 et seq., ("the Act" or "FECA") regarding the filing
5 of independent expenditure reports under 2 U.S.C. 434(b) and (c). Paragraphs (b) and (c) of
6 2 U.S.C. 434 require political committees and other persons making independent expenditures to
7 file reports or statements if their independent expenditures exceed a certain amount of money. In
8 addition, if independent expenditures of \$1,000 or more are made less than twenty (20) days but
9 more than twenty-four (24) hours before the day of an election, an additional statement must be
10 filed within 24 hours. Public Law 106-346 requires, inter alia, that the Commission issue rules
11 requiring that reports of independent expenditures made less than twenty (20) days but more than
12 twenty-four (24) hours before an election ("24-hour reports") must be received by the
13 Commission or the Secretary of the Senate, as appropriate,¹ within 24 hours of the time the
14 independent expenditure was made. The statutory change permits all 24-hour reports to be filed
15 using facsimile machines or electronic mail, unless the filer is part of the Commission's
16 electronic filing program (see 11 CFR 104.18). In addition to their 24-hour reports, persons
17 other than political committees may file by fax or e-mail other reports of independent
18 expenditures in accordance with the regular filing schedule (see 11 CFR 104.5). The statutory
19 amendment also requires the Commission to provide methods of verification of documents (other
20 than requiring a signature on the document) for all purposes, including penalties of perjury. The

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 new law requires this system to be in place for elections occurring after January 1, 2001, subject
2 to regulations to be promulgated by the Commission.

3 These new filing methods are intended to speed up disclosure and to provide political
4 committees and other filers with more flexibility in choosing methods of compliance.

5 In addition to the amendments regarding independent expenditures, the new law also requires
6 the Commission to amend its regulations to exclude from the definition of "contribution" loans
7 that candidates receive from brokerage accounts, lines of credit, or other credit instruments as
8 long as the loans were made under commercially reasonable terms and were from a source that
9 provides such loans in the normal course of business. That topic is being addressed in a separate
10 rulemaking.

11 A. Reports of Independent Expenditures Filed by Facsimile Machine or Electronic Mail
12 (11 CFR 104.4 and 109.2)

13 Currently, 24-hour reports are filed by political committees using Schedule E and by persons
14 other than political committees using either FEC Form 5, or a signed statement containing the
15 information specified in 11 CFR 109.2(a)(1). Currently, most reports of independent
16 expenditures are filed on paper. Note that those participating in the Commission's electronic
17 filing program are required to send a paper copy or to submit a digitized file in addition to their
18 electronic filing because the reports must be notarized. Under the new law and the proposed
19 revisions to the regulations at 11 CFR 100.19(d), 104.4(b) and 109.2(a), all filers who are not
20 part of the Commission's electronic filing program would be able to fax or electronically mail
21 their 24-hour reports. Note that the new law and proposed revisions to section 109.2(a) also
22 allow persons other than political committees (unless they submit reports under the
23 Commission's electronic filing program - see infra) to file any other reports of independent

1 expenditures (in accordance with the reporting schedule in 11 CFR 104.5) using a fax machine or
2 e-mail.

3 Under current sections 104.4(b) and 109.2(a)(1)(v), Schedule E, Form 5, and the signed
4 statement must contain a notarized certification under penalty of perjury as to whether the
5 expenditures were "coordinated" with any candidate, authorized committee or agent thereof, and,
6 if the independent expenditures were made by a corporation, that the maker is a qualified
7 nonprofit corporation (see 11 CFR 114.10). **The Commission is considering adding new**
8 **paragraph (a)(1)(vi) to section 109.2 to require those who file a statement instead of FEC**
9 **Form 5 to certify that the expenditure was not made to finance, disseminate, distribute or**
10 **republish campaign materials prepared by a candidate or a candidate's agent or**
11 **authorized committee. Current paragraph (a)(1)(vi) would be renumbered (a)(1)(vii). New**
12 **paragraph (a)(1)(vi) is consistent with the certification signed by those who file FEC Form**
13 **5 or Schedule E. The certification stems from the legislative history of the 1976 FECA.**
14 **The Conference Report to the 1976 FECA explained that "any expenditure to finance**
15 **publication of any campaign broadcast or any other campaign materials prepared by a**
16 **candidate shall be considered to be a contribution to that candidate." H.R. Rep. No. 94-**
17 **1057 at 55 (1976). Thus, the Commission's forms have required makers of independent**
18 **expenditures to affirmatively state that the expenditure was not made to disseminate the**
19 **campaign's own materials. On the other hand, however, the statutory certifications**
20 **required by 2 U.S.C. 434(b)(6)(B)(iii) and (c)(2)(A) do not address distribution of**
21 **candidate-prepared materials. Consequently, the Commission requests comments on not**
22 **adding the certification statement to paragraph (a)(1)(vi) and removing that part of the**
23 **certification from FEC Form 5 and Schedule E.**

1 The Department of Transportation and Related Agencies Appropriations Act, 2001 requires
2 the Commission to create methods of verifying the independent expenditure statement filed,
3 other than by requiring a signature on the document, for all purposes (including penalties of
4 perjury). The Commission is proposing to allow self-certification by the filer to verify the filed
5 report. This means that notarization would no longer be required for Schedule E, Form 5, or
6 signed statements. Instead, the filer would be required to simply self-certify the document using
7 either a handwritten signature on a paper document or by typing his or her name on electronic
8 documents. Note that no other campaign finance reports filed with the Commission or the
9 Secretary of the Senate need to be notarized.

10 To implement the self-certification verification, the proposed amendments to
11 11 CFR 109.2(a)(1)(v) would require that a prescribed statement of certification as to the
12 independence of the expenditure continue to be included in any statement filed by persons other
13 than political committees. Conforming amendments to FEC Form 5 and Schedule E would be
14 made at a later point, which would include self-certification and would remove notarization.

15 Proposed new paragraph (c) of 11 CFR 109.2 and proposed paragraphs (b)(1) and (2) of
16 11 CFR 104.4 set forth two methods for verifying reports of independent expenditures. Reports
17 filed in paper form (e.g., by hand delivery or fax machine), would be verified by the filer's
18 signature under the certification language. For reports filed by electronic mail, the Commission
19 proposes certification by requiring the filer to type his or her name under the certification
20 language.

21 As an alternative to self-certification, the Commission seeks comments on retaining the
22 current notarization requirement for faxed reports and requiring electronic notarizations for e-
23 mailed reports. Given that only a handful of states have electronic notary statutes, is this feasible

1 for filers from other states and territories? The Commission is concerned that differing standards
2 for electronic notarizations among the many states may require the Commission to accept dozens
3 of different electronic notaries, a process which could be cumbersome and expensive.

4 The Commission is also considering whether to require standard paper notarization for faxed
5 reports and digital signatures that are verified by a "Trusted Third Party" for e-mailed reports.
6 Such digital signatures are the basis for transactions in electronic commerce. Digital signatures
7 utilize a Public Key Infrastructure. That structure uses Public and Private Keys to encode a
8 message and to provide a method of positively identifying the sender.

9 The Commission requests comments on the proposed self-certification method of verification
10 of the filed documents and also on any other methods of verification, whether mentioned above
11 or not.

12 B. Reports of Independent Expenditures Filed by Registered or Certified Mail
13 (11 CFR 100.19)

14 Current Commission regulations at 11 CFR 100.19(b) state that a document is timely filed
15 when it is received by the close of the prescribed filing date or, in the case of documents filed by
16 certified or registered mail, when it is deposited in an established U.S. Post Office and is
17 postmarked no later than the prescribed filing date (with the exception of pre-election reports).
18 Hence, 24-hour reports are currently considered timely filed if they are deposited at a Post Office
19 and are postmarked for certified or registered mail within 24 hours of the time the independent
20 expenditure was made.

21 Under P.L. 106-346 and proposed regulations at **paragraph (b) and new paragraph (d)** of
22 **11 CFR 100.19**, 24-hour reports would be considered timely filed only upon their receipt by the
23 Commission or Secretary of the Senate within 24 hours of making the independent expenditure.

1 Thus, while a filer could use registered or certified mail for their 24-hour report, the report would
2 no longer be timely filed when postmarked. Moreover, it is unlikely that reports filed by certified
3 or registered mail would be received by the Commission within 24 hours of the making of the
4 expenditure. Since it appears that **some of the** current filing methods will not satisfy the new
5 filing deadlines, proposed revisions to paragraph (b) of section 100.19 would make it clear that
6 24-hour reports are not included in those reports that are considered timely filed when
7 postmarked **for** registered or certified mail. Proposed paragraph (d) of 11 CFR 100.19 would
8 state that 24-hour reports of independent expenditures are considered timely filed upon receipt by
9 the Commission or the Secretary, as appropriate, in accordance with 11 CFR 104.4(c).

10 **A conforming amendment would be added to 11 CFR 100.19(a) to note that documents**
11 **filed using the Commission's electronic filing program would be timely filed in accordance**
12 **with paragraph (c) of that section. Additionally, the Commission proposes revising**
13 **paragraph (a) to say "close of business on the prescribed filing date" to conform with**
14 **paragraph (b) as to when, on the filing date, the documents are due. Currently, paragraph**
15 **(a) states that documents are timely filed by the "close of the prescribed filing date," while**
16 **paragraph (b) states that documents mailed by first class mail shall be timely filed at the**
17 **"close of business of the prescribed filing date."**

18 **In addition, conforming amendments to 11 CFR 104.4(b), 104.5(g) and 109.2(b) would also**
19 **clarify that 24-hour reports must be received by the appropriate filing authority within 24 hours**
20 **after the independent expenditure is made. Further, the Commission is proposing conforming**
21 **amendments to 11 CFR 104.14(a) regarding the new verification requirements for faxed or e-**
22 **mailed reports of independent expenditures and to reference the signature requirements for the**
23 **electronic filing program in 11 CFR 114.18(g).**

1 **C. When Is An Independent Expenditure “Made”? (11 CFR 109.1)**

2 The statutory amendment and the proposed regulations require 24-hour reports to be
3 received by the Commission or the Secretary of the Senate within 24 hours of the time the
4 independent expenditure is made. The Commission is proposing that new paragraph (f) be
5 added to 11 CFR 109.1 to clarify when an independent expenditure is “made”. This new
6 definition would state that an independent expenditure is made at the earliest of three
7 possible events: The first would be when a written contract, promise or agreement to make
8 an independent expenditure is executed; for example, when a contract to run a newspaper
9 ad is signed. The second possible occurrence would be the first date on which the
10 communication is disseminated to the public; for example, the first time a radio ad is
11 broadcast. The third event triggering the making of an independent expenditure would be
12 when the person making the expenditure pays for it; for example, when a check is delivered
13 to a media firm for production costs or to a television station for an ad to be run later. The
14 Commission seeks comments on this new definition. Is it necessary? Does it accurately
15 reflect the possible times when an independent expenditure would be deemed “made”?

16 **D. Proposed Changes to the Commission’s Electronic Filing Program (11 CFR 104.18)**

17 Under current regulations at 11 CFR 104.18(h), those participating in the Commission’s
18 electronic filing program (either mandatory or voluntary) must file FEC Form 5 or Schedule E
19 electronically accompanied by a paper copy in order to file a notarized document. The new law
20 exempts such electronic filers from filing their reports of independent expenditures by fax or
21 electronic mail. In order to afford all electronic filers the ability to comply with the new
22 requirement that 24-hour reports be received by the Commission within 24 hours, the
23 Commission proposes revising 11 CFR 104.18(h) to drop Schedule E and FEC Form 5 from the

1 list of reports for which a paper copy follow-up is required. The Commission proposes requiring
2 those in the electronic filing program to verify all reports of independent expenditures using the
3 same process as they would in filing any other report.

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

10 **The Commission is proposing to reorganize paragraph (h) of section 104.18 for clarity**
11 **and to add to the list Form C-P-1, Loans and Lines of Credit from Lending Institutions,**
12 **used by Presidential candidates.**

13 **E. Reports Available on the Internet Within 24 Hours**

14 Section 502(a) of Public Law 106-346 requires that "the Commission shall make a document
15 which is filed electronically with the Commission pursuant to this paragraph accessible on the
16 Internet not later than 24 hours after the document is received by the Commission."

17 While the Commission believes that "electronically" means filed by electronic mail only, the
18 Commission nevertheless proposes making available on the Commission's Web site
19 (www.fec.gov) within 24 hours of receipt all reports of independent expenditures filed with the
20 FEC using facsimile machine, electronic mail, or the FEC's electronic filing system. Note that
21 reports of independent expenditures that support or oppose only Senate candidates must be filed
22 with the Secretary of the Senate. Therefore, because they are not filed with the Commission,
23 reports faxed or e-mailed to the Secretary may not be available on the Commission's Web site

1 within 24 hours of receipt by the Secretary of the Senate. The Commission will, however, make
2 every effort to get reports of independent expenditures filed with the Secretary on the FEC's Web
3 site as soon as possible after the Commission receives the report from the Secretary.

4 **F. Reports of Last Minute Contributions (11 CFR 100.19 and 104.5)**

5 The Commission also proposes revising its regulations at 11 CFR 104.5(f) and adding
6 paragraph (e) to 11 CFR 100.19 regarding reports by authorized committees receiving
7 contributions of \$1,000 or more made less than 20 days but more than 48 hours before the day of
8 an election. These proposed changes do not stem from P.L. 106-346. The Commission has for
9 some time allowed authorized committees to file these reports by facsimile machine **in addition**
10 **to other permissible filing methods.** See Advisory Opinion 1988-32. In the fall of 2000, the
11 Commission began allowing 48-hour reports filed with the Commission to be filed on-line
12 through its Web site **as an additional means of filing those reports.** Note that 48-hour reports
13 filed with the Secretary of the Senate cannot be filed using the on-line program at the
14 Commission's Web site. They can, however, be filed by fax to the Secretary of the Senate. The
15 proposed revisions to 11 CFR 100.19 and 104.5(f) would recognize those filing methods in the
16 regulations.

17 Finally, the Commission welcomes comments on any other issues raised by the new statutory
18 requirements regarding independent expenditure reporting.

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

2 These proposed rules if promulgated, would not have a significant economic impact on
3 a substantial number of small entities. The basis of this certification is that the Commission is
4 providing most filers with less than \$50,000 of activity with additional means of complying
5 with the law, thereby increasing the filers' flexibility by allowing them to choose the most
6 convenient and cost effective filing method. These additional filing methods will likely result in
7 a decrease in costs from present.

8 **List of Subjects**

9 **11 CFR Part 100**

10 Elections.

11 **11 CFR Part 104**

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

14 **11 CFR Part 109**

15 Elections, Reporting and recordkeeping requirements.

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

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

4 1. The authority citation for part 100 would be 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 would be amended to read as follows:

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

8
9 (a) Except for documents electronically filed under paragraph (c) of this section, a document is
10 timely filed upon delivery to the Federal Election Commission, 999 E Street, NW., Washington,
11 DC 20463; or the Secretary of the United States Senate, Office of Public Records, 119 D Street
12 NE., Washington, DC 20510 as required by 11 CFR part 105, by the close of business of the
13 prescribed filing date.

14 (b) A document other than a 24-hour report of an independent expenditure under 11 CFR
15 104.4(b) or 109.2(c) is timely filed upon deposit as registered or certified mail in an established
16 U.S. Post Office and postmarked no later than midnight of the day of the filing date, except that
17 pre-election reports so mailed must be postmarked no later than midnight of the fifteenth day
18 before the date of the election. Documents sent by first class mail must be received by the close
19 of business of the prescribed filing date to be timely filed.

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

23 (d) A 24-hour report of independent expenditures under 11 CFR 104.4(b) or 109.2(c) is
24 timely filed when it is received by the appropriate filing officer as listed in 11 CFR 104.4(c)
25 within 24 hours of the time the independent expenditure was made. In addition to other

1 permissible means of filing, a 24-hour report may be filed using a facsimile machine or by
2 electronic mail if the filer is not required to file electronically in accordance with 11 CFR 104.18.

3 (e) In addition to other permissible means of filing, authorized committees may file 48-hour
4 notifications of contributions using facsimile machines or, if the notifications are being filed with
5 the Commission, using the Commission Web site's on line program.

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

7 3. The authority citation for part 104 would continue to read as follows:

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

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

10 **§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(c)).**

11 * * * * *

12 (b) 24-hour reports. Reports of aAny independent expenditures aggregating \$1,000 or more
13 made after the 20th day, but more than 24 hours, before 12:01 a.m. of the day of the election,
14 ~~shall~~must be reported~~received by the appropriate officers listed in paragraph (c) of this section~~
15 within 24 hours after such independent expenditure is made. Such report ~~shall be filed with the~~
16 ~~appropriate officers listed in 11 CFR 104.4(e) and shall contain the information required by~~
17 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or
18 in opposition to, the candidate involved. In addition to other permissible means of filing, a 24
19 hour report may be filed using a facsimile machine or electronic mail if the filer is not required to
20 file electronically in accordance with 11 CFR 104.18. Such report must be verified by one of the
21 methods stated in paragraph (b)(1) or (b)(2) of this paragraph. Any report verified under either of
22 these methods shall be treated for all purposes (including penalties for perjury) in the same
23 manner as a document verified by signature.

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

6 (2) For reports filed by electronic mail, the certification required by 11 CFR
7 104.3(b)(3)(vii) must be immediately followed by the typewritten name of the
8 treasurer of the political committee that made the independent expenditure and
9 who certifies, under penalty of perjury, its independence.

10 * * * * *

11 5. Section 104.5 would be amended by revising paragraphs (f) and (g) to read as follows:

12 **§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).**

13 * * * * *

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

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

8 * * * * *

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

10 **§ 104.14 Formal requirements regarding reports and statements.**

11 (a) Each individual having the responsibility to file a designation, report or statement
12 required under this subchapter shall sign the original designation, report or statement. ~~except that~~

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

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

18 * * * * *

19 7. Section 104.18 would be amended by revising paragraph (h) to read as follows:

20 **§ 104.18 Electronic filing of reports (2 U.S.C. 432(d) and 434(a)(11)).**

21 * * * * *

22 (h) Schedules and forms with special requirements. The following list of schedules,
23 materials, and forms have special signature and other requirements: Schedules C-1 and C-P-1

1 (Loans and Lines of Credit From Lending Institutions), including copies of loan agreements
2 required to be filed with the Schedules (see 11 CFR 104.3(d) and Form 8 (Debt Settlement Plan)
3 (see 11 CFR 116.7(e)), and r-Reports containing these documents shall include, in addition to
4 providing the required data within the electronic report, either a paper copy submitted with the
5 political committee's or other person's electronic report or a digitized version submitted as a
6 separate file in the electronic submission. ~~Schedule C 1 (Loans and Lines of Credit From~~
7 ~~Lending Institutions), including copies of loan agreements required to be filed with the Schedule,~~
8 ~~Schedule E (Itemized Independent Expenditures), Form 5 (Report of Independent Expenditures~~
9 ~~Made and Contributions Received), and Form 8 (Debt Settlement Plan).~~ The political committee
10 or other person shall submit any paper materials together with the electronic media containing the
11 report.

12 * * * * *

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

14 8. The authority for part 109 would continue to read as follows:

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

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

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

18 * * *

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

20 (1) The date on which a written contract, including a media contract, promise or
21 agreement to make an independent expenditure is executed;

22 (2) The first date on which the communication is printed, broadcast or otherwise
23 publicly disseminated; or

1 (3) The date on which the person making the independent expenditure pays for it.

2 10. Section 109.2 would be amended by revising the introductory language in paragraphs (a),
3 (a)(1), and (b), by revising paragraph (a)(1)(v) and (a)(2), by redesignating paragraph
4 (a)(1)(vi) as paragraph (a)(1)(vii) and adding new paragraphs (a)(1)(vi) and (c) to read as
5 follows:

6 **§ 109.2 Reporting of independent expenditures by persons other than a political committee**

7 (2 U.S.C. 434(c)),

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

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

13 * * * * *

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

18 (vi) A verified certification under penalty of perjury as to whether the
19 expenditure involved the financing, dissemination, distribution or
20 republication of any campaign materials prepared by a candidate or a
21 candidate's agent or authorized committee; and

22 (vi)(vii) * * *

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

6 (b) Reports of independent expenditures aggregating \$1,000 or more made by any person
7 after the twentieth day, but more than 24 hours before 12:01 a.m of the day of an election
8 shall must be received by the appropriate officers as listed in paragraph (c) of this section reported
9 within 24 hours after such independent expenditure is made. Such report or statement shall
10 contain the information required by paragraph (a) of this section indicating whether the
11 independent expenditure is made in support of, or in opposition to, a particular candidate. and
12 shall be filed with the appropriate officers in accordance with 11 CFR 104.4(e).

13 (c) Verification of independent expenditure statements and reports: For reports filed on
14 paper (e.g., by hand delivery, U.S. Mail or facsimile machine), the certification required by
15 paragraphs (a)(1)(v) and (a)(1)(vi) of this section must be immediately followed by the
16 handwritten signature of the person who made the independent expenditure and who certifies,
17 under penalty of perjury, its independence. For reports filed by electronic mail, the certification

1 required by paragraphs (a)(1)(v) and (1)(1)(vi) of this section must be immediately followed by
2 the typewritten name of the person who made the independent expenditure and who certifies,
3 under penalty of perjury, its independence.

4
5
6
7 _____
8 Danny L. McDonald
9 Chairman
10 Federal Election Commission

11
12 DATED: _____
13 BILLING CODE: 6715-01-P