

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 100, 104, and 109

[Notice 2001-6]

#### Independent Expenditure Reporting

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission is seeking comment on proposed rules to implement statutory changes to the procedures for filing certain reports of independent expenditures. The proposed rules would require that reports of last minute independent expenditures ("24-hour reports") be received by the Commission or the Secretary of the Senate's office within 24 hours of the time the expenditure was made. To assist filers in meeting this new filing deadline, the proposed rules would allow reports of last minute independent expenditures to be filed by facsimile machine or electronic mail, unless the filer participates in the Commission's electronic filing program. In addition to faxing or e-mailing 24-hour reports, persons other than political committees (who are not part of the electronic filing program) would be allowed to fax or e-mail any reports of independent expenditures filed under the regular reporting schedules. However, electronic filers must continue to file all reports of independent expenditures (24-hour reports as well as regularly scheduled reports) using the Commission's electronic filing system. Please note that the draft rules that follow do not represent a final decision by the Commission on the issues presented by this rulemaking. Further information is provided in the supplementary information that follows.

**DATES:** Comments must be received on or before June 8, 2001.

**ADDRESSES:** All comments should be addressed to Ms. 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 [IndyExpRep@fec.gov](mailto:IndyExpRep@fec.gov) Commenters sending comments by electronic mail must 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 Ms. Cheryl Fowle, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** On October 23, 2000, Public Law 106-346 (Department of Transportation and Related Agencies Appropriations Act, 2001, 114 Stat. 1356 (2000)) amended the Federal Election Campaign Act of 1971, 2 U.S.C. 431 *et seq.*, ("the Act" or "FECA") regarding the filing of independent expenditure reports under 2 U.S.C. 434(b) and (c). Paragraphs (b) and (c) of 2 U.S.C. 434 require political committees and other persons making independent expenditures to file reports or statements if their independent expenditures exceed a certain amount of money. In addition, if independent expenditures of \$1,000 or more are made less than twenty (20) days but more than twenty-four (24) hours before the day of an election, an additional statement must be filed within 24 hours. Public Law 106-346 requires, *inter alia*, that the Commission issue rules requiring that reports of independent expenditures made less than twenty (20) days but more than twenty-four (24) hours before an election ("24-hour reports") must be received by the Commission or the Secretary of the Senate, as appropriate,<sup>1</sup> within 24 hours of the time the independent expenditure

was made. The statutory change permits all 24-hour reports to be filed using facsimile machines or electronic mail, unless the filer is part of the Commission's electronic filing program (*see* 11 CFR 104.18). In addition to their 24-hour reports, persons other than political committees may file by fax or e-mail other reports of independent expenditures in accordance with the regular filing schedule (*see* 11 CFR 104.5). The statutory amendment also requires the Commission to provide methods of verification of documents (other than requiring a signature on the document) for all purposes, including penalties of perjury. The new law requires this system to be in place for elections occurring after January 1, 2001, subject to regulations to be promulgated by the Commission.

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

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

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

Currently, 24-hour reports are filed by political committees using Schedule E and by persons other than political committees using either FEC Form 5, or a signed statement containing the information specified in 11 CFR 109.2(a)(1). Currently, most reports of independent expenditures are filed on paper. Note that those participating in the Commission's electronic filing program are required to send a paper copy or to submit a digitized file in addition to their electronic filing because the reports must be notarized. Under the new law and the proposed revisions to the regulations at 11 CFR 100.19(d), 104.4(b) and 109.2(a), all

<sup>1</sup> 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).

filers who are not part of the Commission's electronic filing program would be able to fax or electronically mail their 24-hour reports. Note that the new law and proposed revisions to section 109.2(a) also allow persons other than political committees (unless they submit reports under the Commission's electronic filing program—see *infra*) to file any other reports of independent expenditures (in accordance with the reporting schedule in 11 CFR 104.5) using a fax machine or e-mail.

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

The Department of Transportation and Related Agencies Appropriations Act, 2001 requires the Commission to create methods of verifying the independent expenditure statement filed, other than by requiring a signature

on the document, for all purposes (including penalties of perjury). The Commission is proposing to allow self-certification by the filer to verify the filed report. This means that notarization would no longer be required for Schedule E, Form 5, or signed statements. Instead, the filer would be required to simply self-certify the document using either a handwritten signature on a paper document or by typing his or her name on electronic documents. Note that no other campaign finance reports filed with the Commission or the Secretary of the Senate need to be notarized.

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

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

As an alternative to self-certification, the Commission seeks comments on retaining the current notarization requirement for faxed reports and requiring electronic notarizations for e-mailed reports. Given that only a handful of states have electronic notary statutes, is this feasible for filers from other states and territories? The Commission is concerned that differing standards for electronic notarizations among the many states may require the Commission to accept dozens of different electronic notaries, a process which could be cumbersome and expensive.

The Commission is also considering whether to require standard paper notarization for faxed reports and digital signatures that are verified by a “Trusted Third Party” for e-mailed reports. Such digital signatures are the basis for transactions in electronic commerce. Digital signatures utilize a Public Key Infrastructure. That structure uses Public and Private Keys to encode

a message and to provide a method of positively identifying the sender.

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

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

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

Under Pub. L. 106-346 and proposed regulations at paragraph (b) and new paragraph (d) of 11 CFR 100.19, 24-hour reports would be considered timely filed only upon their receipt by the Commission or Secretary of the Senate within 24 hours of making the independent expenditure. Thus, while a filer could use registered or certified mail for their 24-hour report, the report would no longer be timely filed when postmarked. Moreover, it is unlikely that reports filed by certified or registered mail would be received by the Commission within 24 hours of the making of the expenditure. Since it appears that some of the current filing methods will not satisfy the new filing deadlines, proposed revisions to paragraph (b) of section 100.19 would make it clear that 24-hour reports are not included in those reports that are considered timely filed when postmarked for registered or certified mail. Proposed paragraph (d) of 11 CFR 100.19 would state that 24-hour reports of independent expenditures are considered timely filed upon receipt by the Commission or the Secretary, as appropriate, in accordance with 11 CFR 104.4(c).

A conforming amendment would be added to 11 CFR 100.19(a) to note that documents filed using the Commission's electronic filing program would be timely filed in accordance with paragraph (c) of that section. Additionally, the Commission proposes revising paragraph (a) to say “close of business on the prescribed filing date” to conform with paragraph (b) as to

when, on the filing date, the documents are due. Currently, paragraph (a) states that documents are timely filed by the "close of the prescribed filing date," while paragraph (b) states that documents mailed by first class mail shall be timely filed at the "close of business of the prescribed filing date."

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

#### **C. When Is an Independent Expenditure "Made"? (11 CFR 109.1)**

The statutory amendment and the proposed regulations require 24-hour reports to be received by the Commission or the Secretary of the Senate within 24 hours of the time the independent expenditure is made. The Commission is proposing that new paragraph (f) be added to 11 CFR 109.1 to clarify when an independent expenditure is "made". This new definition would state that an independent expenditure is made at the earliest of three possible events: The first would be when a written contract, promise or agreement to make an independent expenditure is executed; for example, when a contract to run a newspaper ad is signed. The second possible occurrence would be the first date on which the communication is disseminated to the public; for example, the first time a radio ad is broadcast. The third event triggering the making of an independent expenditure would be when the person making the expenditure pays for it; for example, when a check is delivered to a media firm for production costs or to a television station for an ad to be run later. The Commission seeks comments on this new definition. Is it necessary? Does it accurately reflect the possible times when an independent expenditure would be deemed "made"? Should the Commission attempt to further explain which types of written contracts, promises, or agreements would or would not constitute the making of the independent expenditure? For example, should only those covering the dissemination of a communication be included (e.g., airtime TV buys or newspaper space purchases)?

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

Under current regulations at 11 CFR 104.18(h), those participating in the Commission's electronic filing program (either mandatory or voluntary) must file FEC Form 5 or Schedule E electronically accompanied by a paper copy in order to file a notarized document. The new law exempts such electronic filers from filing their reports of independent expenditures by fax or electronic mail. In order to afford all electronic filers the ability to comply with the new requirement that 24-hour reports be received by the Commission within 24 hours, the Commission proposes revising 11 CFR 104.18(h) to drop Schedule E and FEC Form 5 from the list of reports for which a paper copy follow-up is required. The Commission proposes requiring those in the electronic filing program to verify all reports of independent expenditures using the same process as they would in filing any other report.

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

The Commission is proposing to reorganize paragraph (h) of section 104.18 to clarify what paper documents must accompany electronically filed reports, and when those paper copies must be filed. The Commission also proposes removing FEC Form 5 and Schedule E from the list of documents with special signature requirements. Additionally, the Commission proposes adding FEC Schedule C-P-1 to the list of documents requiring special signatures. Schedule C-P-1 is used by Presidential candidates to report loans and lines of credit from lending institutions, and, like Schedule C-1 (used by non-Presidential committees) requires the lending institution agent's signature.

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

Section 502(a) of Public Law 106-346 requires that "the Commission shall make a document which is filed electronically with the Commission pursuant to this paragraph accessible to

the public on the Internet not later than 24 hours after the document is received by the Commission."

While the Commission believes that "electronically" means filed by electronic mail only, the Commission nevertheless proposes making available on the Commission's Web site ([www.fec.gov](http://www.fec.gov)) within 24 hours of receipt all reports of independent expenditures filed with the FEC using facsimile machine, electronic mail, or the FEC's electronic filing system. Note that reports of independent expenditures that support or oppose only Senate candidates must be filed with the Secretary of the Senate. Therefore, because they are not filed with the Commission, reports faxed or e-mailed to the Secretary may not be available on the Commission's Web site within 24 hours of receipt by the Secretary of the Senate. The Commission will, however, make every effort to get reports of independent expenditures filed with the Secretary on the FEC's Web site as soon as possible after the Commission receives the report from the Secretary.

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

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

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

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

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

#### List of Subjects

##### 11 CFR Part 100

Elections.

##### 11 CFR Part 104

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

##### 11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

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

### PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

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

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

2. Section 100.19 would be revised to read as follows:

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

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

(b) A document other than a 24-hour report of an independent expenditure under 11 CFR 104.4(b) or 109.2(c) is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than midnight of the day of the filing date, except that pre-election reports so mailed must be postmarked no later than midnight of the fifteenth day before

the date of the election. Documents sent by first class mail must be received by the close of business of the prescribed filing date to be timely filed.

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

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

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

### PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)

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

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

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

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

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

penalties for perjury) in the same manner as a document verified by signature.

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

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

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

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

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

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

\* \* \* \* \*

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

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

\* \* \* \* \*

(h) *Schedules and forms with special requirements.* (1) The following are schedules and forms that require the filing of additional documents and that have special signature requirements:

(i) Schedules C-1 and C-P-1, Loans and Lines of Credit From Lending Institutions (see 11 CFR 104.3(d)); and  
(ii) Form 8, Debt Settlement Plan (see 11 CFR 116.7(e)).

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

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

\* \* \* \* \*

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

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

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

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

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

\* \* \* \* \*

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

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

\* \* \* \* \*

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

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

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

Dated: May 3, 2001.

**Danny L. McDonald,**

*Chairman, Federal Election Commission.*

[FR Doc. 01-11587 Filed 5-8-01; 8:45 am]

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 39**

[Docket No. 2001-SW-03-AD]

RIN 2120-AA64

**Airworthiness Directives; Eurocopter France Model AS-365N3 Helicopters**

**AGENCY:** Federal Aviation Administration, DOT.

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

**SUMMARY:** This document proposes adopting a new airworthiness directive (AD) for Eurocopter France Model AS-365N3 helicopters. This proposal would require modifying the Full Authority Digital Engine Control (FADEC) software within 90 days after the effective date of this AD. This proposal is prompted by a design problem in the FADEC "power loss printed circuit board" software found during laboratory