fiscal period. This is approximately $4,203 above the anticipated expenses, which the Committee determined to be acceptable.

A review of historical information and preliminary information pertaining to the upcoming fiscal period indicates that the grower price for the 2002–03 fiscal period could range between $8.60 and $9.25 per 50-pound equivalent of onions. Therefore, the estimated assessment revenue for the 2002–03 fiscal periods as a percentage of total grower revenue could be about 1 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the South Texas onion industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the October 8, 2002, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit information on the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large South Texas onion handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/fv/moab.html*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30–day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2002–03 fiscal period began on August 1, 2002, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable onions handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is proposed to be amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.237 is revised to read as follows:

§ 959.237 Assessment rate.

On and after August 1, 2002, an assessment rate of $0.085 per 50-pound equivalent is established for South Texas onions.

Dated: December 19, 2002.

A.J. Yates,

Administrator, Agricultural Marketing Service.

[FR Doc. 02–32505 Filed 12–24–02; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 110

[Notice 2002–28]

Leadership PACS

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission is seeking comment on proposed rules to address leadership PACs, which are unauthorized committees that are associated with a Federal candidate or officeholder. 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 January 31, 2003. If there are sufficient requests to testify, the Commission may hold a hearing on these proposed rules on February 26, 2003, at 9:30 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Mr. J. Duane Pugh, Jr., Acting Special Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *LeadershipPAC@fec.gov* and 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 the 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 to ensure legibility. Written comments and printed copies of faxed comments should be sent to Federal Election Commission, 999 E Street, NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E. St. NW., Washington, DC

FOR FURTHER INFORMATION CONTACT: Ms. Mai T. Dinh, Acting Assistant General Counsel, Mr. J. Duane Pugh, Jr., Acting Special Assistant General Counsel, or Mr. Anthony T. Buckley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (March 27, 2002) (''BCRA''), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq*. This Notice of Proposed Rulemaking (NPRM) arises primarily from 2 U.S.C. 441i(e)(1), which prohibits Federal candidates and holders of Federal office, their agents, or any entity directly or indirectly established, financed, maintained, controlled by, or acting on behalf of, the candidate or officeholder, from soliciting, receiving, directing, transferring or spending funds that are not subject to the limitations, prohibitions, and reporting requirements of the Act in connection with Federal or non-Federal elections. In determining whether an entity is directly or indirectly established, financed, maintained, or controlled by a candidate or Federal officeholder, the

Commission has stated that it would look to the affiliation factors in 11 CFR 100.5(g). *See* Explanation and Justification for Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49063, 49084 (July 29, 2002). Thus, this rulemaking principally addresses when and under what circumstances so-called ''leadership PACs'' are affiliated with the authorized committees of Federal candidates or officeholders under BCRA and the ramifications of any such affiliation.

I. Background

Generally speaking, leadership PACs are formed by individuals who are Federal officeholders and/or Federal candidates. The monies these committees receive are given to other Federal candidates to gain support when the officeholder seeks a leadership position in Congress, or are used to subsidize the officeholder's travel when campaigning for other Federal candidates. The monies may also be used to make contributions to party committees, including State party committees in key states, or donated to candidates for State and local office.

FECA does not specifically define ''leadership PAC,'' but does define the terms ''political committee'' (2 U.S.C. 431(4)); ''principal campaign committee'' (2 U.S.C. 431(5)); and ''authorized committee'' (2 U.S.C. 431(6)). Effective January 1, 2003, principal campaign committees and authorized committees may receive contributions of up to $2000 per election from individuals and other persons who are not multicandidate committees. *See* 2 U.S.C. 441a(a)(1)(A); 11 CFR 110.1(b). They may make contributions of up to $1,000 to other Federal candidates under 2 U.S.C. 432(e)(3). Unauthorized committees—that is, political committees whose purpose is to support more than one Federal candidate—may receive up to $5000 per year from individuals, other persons, and multicandidate committees, and once they qualify as multicandidate committees, may contribute up to $5000 per candidate per election. *See* 2 U.S.C. 441a(a)(1)(C) and 441a(a)(2)(A); 11 CFR 110.1(d) and 110.2. Nothing in the Commission's regulations prohibits an unauthorized committee that is not a party committee from establishing a non-Federal account that accepts funds that are not subject to the prohibitions, limitations and reporting requirements of the Act.

In BCRA, Congress addressed organizations ''directly or indirectly established, financed, maintained, or controlled'' by other persons or organizations. The term appears in BCRA in the context of national party committees, (*see* 2 U.S.C. 441i(a)(2)), of State, district, and local political party committees (*see, e.g.*, 2 U.S.C. 441i(b)(2)(B)(iii)), and of Federal candidates and Federal officeholders (*see, e.g.*, 441i(e)(1)). In addressing Federal candidates and officeholders, Congress added the phrase ''acting on behalf of.'' BCRA places limits on the amounts and types of funds that may be solicited, received, directed, transferred, or spent by Federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of, any such candidate(s) or officeholder(s), in connection with either Federal or non-Federal elections, or both. *See* 2 U.S.C. 441i(e)(1); *see also* 11 CFR 300.60, 300.61.

The Commission first addressed ''leadership PACs'' in Advisory Opinion (''AO'') 1978–12. In this AO, the Commission concluded that a ''political action committee'' formed in part by a Congressman was not considered an authorized committee of the Congressman as long as the Congressman did not authorize it in writing. As a result, contributors to the leadership PAC were not regarded as making contributions with respect to the Congressman's campaign. The Commission further noted that, ''[a]ssuming the [c]ommittee is not affiliated with [the Congressman's] principal campaign committee, * * * persons may contribute up to $5000 per calendar year to the Committee although contributions from individuals would be counted against their $25,000 aggregate individual limit * * *.'' Several years after AO 1978–12 was issued, a complaint was filed with the Commission, alleging that the same committee and the same Congressman's principal campaign committee were affiliated, and that as a result of their affiliation they had made and received excessive contributions. The complainant cited several factors to conclude that the two committees were affiliated: (1) The unauthorized committee was identified with the officeholder; (2) some of the candidate's then-Congressional staffers received expense reimbursements for ''travel'' and ''consulting'' from both committees; (3) several persons performed services for both committees; and (4) parallel contributions to candidates were made by both committees on the same day. In that Matter Under Review (MUR 1870), the Commission found no reason to believe that violations stemming from an affiliated relationship had occurred.

In subsequent MURs involving similar issues, the Commission relied on its prior conclusions in AO 1978–12 and MUR 1870 to find certain leadership PACs were not affiliated with certain authorized committees. For example, in MUR 2897 the Commission declined to pursue a complaint that a Federal officeholder's authorized committee was affiliated with a leadership PAC, resulting in excessive contributions being made and received. The complainant argued that affiliation between the authorized committee and a certain leadership PAC should result from several facts: (1) The officeholder's spouse was the leadership PAC's treasurer; (2) one of the leadership PAC's disclosure reports was faxed from the officeholder's Congressional office; and (3) both committees made disbursements to one particular consulting firm. In addition, the officeholder was listed as chairman of the leadership PAC on its stationery, and responded on behalf of the leadership PAC to the complaint. Similarly, in MUR 3740, the Commission declined to pursue a complaint alleging violations as a result of an affiliated relationship. In that matter, the leadership PAC's checks were signed by the Federal officeholder.

In other AOs, the Commission has found two entities associated with an individual to be affiliated where the entities had a similar purpose. For example, in AO 1990–16, the Commission found that a committee organized under State law and devoted to supporting candidates for election to state and local office, that had previously been the campaign committee of the State's then-governor, was affiliated with a Federal political committee that had been organized by the governor and that had as its purpose supporting candidates for Federal office. Further, in AO 1991–12, the Commission found that the authorized committee of a Member of Congress was affiliated with another committee, when that other committee, which had originally been formed to test the waters for a Presidential run by the Member, changed its focus to support the Member's efforts to speak on national issues, and subsequently changed its focus again to support the Member's re-election activities.

In 1986, the Commission began a rulemaking to address affiliation in general, including leadership PACs. *See* Notice of Proposed Rulemaking; Contribution and Expenditure Limitations and Prohibitions, 51 FR 27183 (July 30, 1986). After the hearing

during this rulemaking, the Office of General Counsel drafted final rules that addressed ''affiliation between a candidate's authorized committees and other political committees closely associated with that candidate.'' FEC Agenda Document 88–1, Draft Revisions to the Affiliation and Earmarking Regulations (11 CFR 110.3–110.6) (Dec. 23, 1987), at 3. This document indicated that under the proposed revisions to the Commission rules, ''[p]roposed § 110.3(a)(4)(i) would provide that a candidate's authorized committees are affiliated with any other unauthorized committees established, financed, maintained or controlled by the same person or group of persons, including the candidate.'' *Id.* at 4.

After receiving public comments and holding a hearing, however, the Commission maintained its existing policy: committees formed or used by a candidate or officeholder to further his or her campaign are affiliated; those formed or used for other purposes are not. The Commission explained: ''Although the Commission considered including in the revised regulations language that would focus specifically on affiliation between authorized committees and candidate PACs or leadership committees, the Commission has decided instead to continue to rely on the factors set out at 11 CFR 110.3(a)(3)(ii). After evaluating the comments and testimony on this issue, as well as the situations presented in the previous advisory opinions and compliance matters, the Commission has concluded that this complex area is better addressed on a case-by-case basis. Thus, *in an appropriate case,* the Commission will examine the relationship between the authorized and unauthorized committees to determine whether they are commonly established, financed, maintained or controlled.'' Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions; Final Rule, 54 FR 34101 (Aug. 17, 1989) (emphasis added).

Most recently, in the Explanation and Justification for the new Soft Money regulations, the Commission noted that new 11 CFR 300.61 and 300.62 permit ''Federal candidates and officeholders to solicit, receive, direct, transfer, spend, or disburse funds in connection with Federal and non-Federal elections only from sources permitted under the Act and only when the combined amounts solicited and received from any particular person or entity do not exceed the amounts permitted under the Act's contribution limits and are not from prohibited sources. In other words, a Leadership PAC that comes within the definition of 11 CFR 300.2(c) can raise up to a *total* of $5,000 from any particular person or entity, regardless of whether the funds are contributed to the PAC's Federal account, donated to its non-Federal account, or allocated between the two.'' Explanation and Justification for Final Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money, 67 FR 49063, 49107 (July 29, 2002). The Commission also concluded, in promulgating 11 CFR 300.2(c), that ''the affiliation factors laid out in 11 CFR 100.5(g) properly define 'directly or indirectly established, financed, maintained, or controlled' for purposes of BCRA.'' *Id.* at 49,084. Thus, the Commission has already acknowledged that BCRA's limitations on the sources and amounts of funds that Federal candidates and officeholders can raise applies to leadership PACs. ''Although candidate PACs and leadership PACs are not specifically mentioned, the legislative history indicates that 2 U.S.C. 441i(e)(1) is intended to prohibit Federal officeholders and candidates from soliciting any funds for these committees that do not comply with FECA's source and amount limitations.'' *Id.* at 49,107.

The Commission now seeks comment on whether it needs to clarify its approach and whether BCRA's inclusion of the phrases ''directly or indirectly'' and ''acting on behalf of'' in 2 U.S.C. 441i(e)(1) requires the Commission to consider, or permits the Commission to disregard, the authorized or unauthorized status of political committees in determining whether they are affiliated. *See* 2 U.S.C. 432(e)(1) (candidate shall designate in writing a principal campaign committee and may designate additional authorized committees); 2 U.S.C. 432(e)(3) (no political committee that supports more than one candidate may be an authorized committee); 2 U.S.C. 441a(a)(5) (FECA affiliation provisions). The Commission seeks comment as to whether its current approach regarding leadership PACs, including the limitations imposed by BCRA already implemented by the Commission in other regulations, adequately addresses the real or perceived potential for abuse regarding them, and whether BCRA requires or permits the Commission to change the way it has proceeded in this area. Specifically, the Commission seeks comment on whether there are circumstances in which an unauthorized committee should be considered affiliated *per se* with a candidate's authorized committee. If so, should those committees share a contribution limit, as to both contributions received and made, and should that contribution limit be that of an authorized committee or an unauthorized committee?

Alternatively, the Commission seeks comment on whether there should be a rebuttable presumption that such committees are affiliated under such circumstances, and, if so, what factors could be used to rebut the presumption. The Commission also seeks comment on what criteria should be used in determining affiliation between leadership PACs and authorized committees; the affiliation criteria listed at 11 CFR 100.5(g)(4) and 110.3(a), or some other or additional criteria. The Commission also seeks comment as to how it should treat organizations that do not participate in election campaigns but work closely with authorized committees, federal officeholders or candidates. *See* Advisory Opinion 1977–54 (approving candidate involvement in state-wide petition drive absent express advocacy or solicitation for officeholder's campaign by unauthorized committee sponsoring petition drive).

II. Proposed Rules

1. Definition of ''Leadership PAC''

Although the proposed rules do not include a definition of leadership PAC, the Commission seeks comment on whether a definition of ''leadership PAC'' is appropriate. If so, the Commission welcomes suggestions on appropriate definitions. Additionally, the Commission seeks comment on whether the definition should be an independent definition, or should be tied to affiliation.

2. Affiliation

The proposed rules include three alternative amendments to current 11 CFR 100.5(g) that would specifically address affiliation of leadership PACs. Alternatives A and B focus on the relationships between the committees involved and the candidate or officeholder with whom the committees are closely associated. If the factors establishing a certain close association are met, then a candidate's authorized committees and unauthorized committees (such as leadership PACs) would be affiliated, and would then have to conform themselves to the strictures of affiliated committees.

Alternative C focuses on the actions of the committees involved to determine whether an unauthorized committee is in fact an authorized committee of the Federal candidate or officeholder with whom it is associated. To the extent the

activities of an unauthorized committee mirror or supplement the activities of an authorized committee, *i.e.* to the extent the unauthorized committee undertakes certain activities to assist in the election efforts of the candidate with whom it is associated, the committee would be considered an authorized committee of the candidate. Thus, Alternative C frames the issue in terms of whether a leadership PAC is an authorized committee of the candidate or officeholder rather than whether it is affiliated with that person's authorized committee.

The Commission currently has set out, at 11 CFR 100.5(g)(4), factors to be considered in determining whether certain committees are affiliated. It would be the Commission's intention, under Alternatives A and B, that any proposed rules that it adopts at 11 CFR 100.5(g)(5) would be solely applicable to committees associated with candidates, and that the factors at 11 CFR 100.5(g)(4) would not apply. The Commission seeks comment on whether such an approach is appropriate.

The Commission seeks comment on which alternative, if any, is preferable and on the additional issues described below.

A. Alternative A

Alternative A would set out individual factors in proposed section 100.5(g)(5)(i), the presence of any one of which would result in affiliation. The factors are: (1) The candidate or officeholder, or their agent has signature authority on the unauthorized committee's checks; (2) funds contributed or disbursed by the unauthorized committee are authorized or approved by the candidate or officeholder or their agent; (3) the candidate or officeholder is clearly identified as described in 11 CFR 100.17 on either the stationery or letterhead of the unauthorized committee; (4) the candidate, officeholder or his campaign staff, office staff, or immediate family members, or any other agent, has the authority to approve, alter or veto the unauthorized committee's solicitations, contributions, donations, disbursements or contracts to make disbursements; and (5) the unauthorized committee pays for travel by the candidate, his campaign staff or office staff in excess of $10,000 per calendar year. The second criterion applies whether or not all disbursements are authorized or approved by the officeholder or candidate or agent or whether only some disbursements are so authorized or approved. The Commission also seeks comment on an individual factor not presented in the proposed rules where an unauthorized committee's communications and promotional materials frequently or predominantly identify the candidate or individual holding Federal office, as described in 11 CFR 100.17. Should such a focus by an unauthorized committee on a single candidate have any bearing on its affiliation with the candidate's authorized committee?

Alternative A would also include a transition period provision in proposed section 100.5(g)(5)(ii) to allow unauthorized committees that would otherwise be affiliated to come into compliance with the Commission's new regulations by severing their connection to the candidate or officeholder, by disgorging any funds that would make them affiliated, or by taking any other necessary actions by the proposed date. Section 100.5(g)(5)(iii) would also allow entities to seek an advisory opinion from the Commission regarding their status.

B. Alternative B

Alternative B would provide two separate tests under which affiliation would be found. Under proposed section 100.5(g)(5)(i)(A), affiliation would exist if any one of the following factors are present: (1) The candidate or officeholder has signature authority on the entity's checks; (2) the candidate or officeholder must authorize or approve disbursements over a certain minimum amount; (3) the candidate or officeholder signs solicitation letters and other correspondence on behalf of the entity; (4) the candidate or officeholder has the authority to approve, alter or veto the entity's solicitations; (5) the candidate or officeholder has the authority to approve, alter, or veto the entity's contributions, donations, or disbursements; or (6) the candidate or officeholder has the authority to approve the entity's contracts. Under this alternative, any one of these factors would indicate that the candidate or officeholder has substantial influence and control over the entity, and that the entity should be considered to be established, financed, maintained, or controlled by, or acting on behalf of, the candidate or officeholder.

If none of the above factors are present, affiliation could still be found under proposed section 100.5(g)(5)(i)(B) if any three of the following factors are present: (1) The campaign staff or immediate family members of the candidate or officeholder have the authority to approve, alter or veto the entity's solicitations; (2) the campaign staff or immediate family members of the candidate or officeholder have the authority to approve, alter, or veto the entity's contributions, donations, or disbursements; (3) the campaign staff or immediate family members of the candidate or officeholder have the authority to approve the entity's contracts; (4) the entity and the candidate or officeholder's authorized committees share, exchange, or sell contributor lists, voter lists, or other mailing lists directly to one another, or indirectly through the candidate or officeholder to one another; (5) the entity pays for the candidate or officeholder's travel anywhere except to or from the candidate or officeholder's home State or district; (6) the entity and the candidate or officeholder's authorized committees share office space, staff, a post office box, or equipment; (7) the candidate or officeholder's authorized committee(s) and the entity share common vendors; and (8) the name or nickname of the candidate or the officeholder, or other unambiguous reference to the candidate or officeholder appears on either the entity's stationery or letterhead. Under this approach, these factors, each taken individually, do not provide sufficient evidence of the candidate or officeholder's control and influence over the entity for that entity to be considered to be established, financed, maintained, or controlled by, or acting on behalf of, the candidate or officeholder. However, the existence of three or more of these factors would meet that standard.

The Commission seeks comment on whether any specific factors in section 100.5(g)(4) that are not repeated in some form in the proposed alternatives below, should be repeated in any new leadership PAC affiliation rule, such as current paragraph (g)(4)(ii)(B) (authority or ability to participate in the governance of the organization); current paragraph (g)(4)(ii)(C) (authority or ability to hire or fire officers or decisionmakers); current paragraph (g)(4)(ii)(E) (current common or overlapping officers or employees); current paragraph (g)(4)(ii)(F) (officers or employees who previously worked for the other committee); current paragraph (g)(4)(ii)(G) (provision of funds in a significant amount from one committee to the other); current paragraph (g)(4)(ii)(H) (one committee causing or arranging for the other committee to receive funds in a significant amount); and especially current paragraph (g)(4)(ii)(J) (whether the committees have similar patterns of contributions or contributors).

With respect to the *per se* factor regarding approval or authorization of disbursements (proposed paragraph

110.5(g)(5)(i)(A)(*2*)), the Commission seeks comment as to whether the minimum amount to be approved should be stated in the rule and, if so, what that amount should be. Should the Commission look to other factors, such as the entity's established policy, to determine the amount on a case-by-case basis?

Unlike Alternative A, Alternative B does not include a transition period provision. Rather, if the Commission decides to adopt Alternative B as its final rule, proposed section 100.5(g)(5) would be effective thirty days after the final rules are published in the **Federal Register**. Thus, the Commission would examine the relationship between an authorized committee with a leadership PAC from that day forward in applying the affiliation factors in proposed section 100.5(g)(5).

Alternative B is similar to Alternative A in another respect. Proposed section 100.5(g)(5)(ii) would allow, but not require, committees to seek an advisory opinion to determine whether affiliation exists. *See* proposed section 100.5(g)(5)(iii) in Alternative A.

C. Alternative C

As noted above, Alternative C would largely continue the Commission's current treatment of leadership PACs by not treating a leadership PAC as affiliated with a candidate or officeholder's authorized committees unless the leadership PAC undertook activities that would indicate its primary purpose is to influence the nomination or election of the candidate or officeholder involved. This approach is similar to the approach contemplated by the earlier 1986–1987 rulemaking but the final rules did not include provisions directly addressing leadership PACs. *See* Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions; Final Rule, 54 FR 34101 (Aug. 17, 1989).

At one point during this earlier rulemaking process, the Commission considered a staff draft providing that an unauthorized committee established, financed, maintained or controlled by a candidate would not be deemed affiliated with the candidate's authorized committee if it could demonstrate that: ''(A) A substantial proportion of the unauthorized committee's disbursements are contributions to or expenditures on behalf of other federal candidates; (B) The unauthorized committee has not solicited contributions for the candidate's campaign for Federal office and has not solicited funds that would become contributions under 11 CFR 101.3 once the individual becomes a candidate; and (C) The unauthorized committee has not made expenditures for communications, or engaged in other activities, for the purpose of influencing the candidate's or future candidate's nomination or election to Federal office.'' FEC Agenda Document 88–1, pp. 3, 4 and pp. 5, 6 of draft regulation. In 1989, however, the Commission decided not to adopt specific final rules concerning this issue. See above for discussion of the Commission's statement about leadership PACs in the Explanation to the Affiliated Committees, Transfers, Prohibited Contributions, Annual Contribution Limitations and Earmarked Contributions Final Rule.

At this point, under Alternative C, 11 CFR 100.5(g) would be revised to add new paragraph (g)(5) indicating that an unauthorized committee established, financed, maintained or controlled by, or acting on behalf of, a candidate or officeholder, would be deemed an authorized committee, unless it could meet four conditions. Any committee that could not meet all four conditions would be automatically subject to the contribution limits of 2 U.S.C. 441a(a)(1)(A) and (2)(A).

Paragraph (g)(5)(i) would require the committee to only make outlays to raise funds for party committees or to influence the nomination or election of persons other than the candidate or officeholder involved.

Paragraph (g)(5)(ii) would require that any solicitations, communications or other materials of the unauthorized committee would have to avoid references to the candidacy or potential candidacy of the sponsoring candidate or officeholder.

At paragraph (g)(5)(iii) the Commission would require that at speeches or appearances by the candidate or officeholder no reference be made to such person's candidacy or potential candidacy. The only exception would be a brief reference made in response to a question where there was no pre-planning or control by the candidate or officeholder.

Finally, to address the problems encountered by the Commission in dealing with leadership PACs defraying expenses that appear to be in preparation for a possible presidential run, paragraph (g)(5)(iv) would require that specified expenses would have to be reimbursed by a presidential campaign committee if the candidate or officeholder does become a presidential candidate. This requirement would apply to expenses to assist persons seeking to become delegates in the presidential caucus or convention process and expenses to set up staffed operations in states that hold primaries or caucuses in the first three months of a presidential election year. The reimbursement to the unauthorized committee would have to be made by the 60th day after the expense involved, or by the 60th day after the person becomes a presidential candidate, if later.

Because similar regulatory language regarding affiliation appears at section 110.3 of the regulations, identical text would be placed there at new paragraph 110.3(a)(4).

With respect to Alternative C, the Commission seeks comment on any aspect of the proposed rule that should be considered before its adoption. The Commission particularly would like comment on the policy ramifications of permitting candidates or officeholders to establish, finance, maintain, or control separate committees that do not have to share the same contribution limits that would apply to an authorized committee of such candidate or officeholder. Further, the Commission would like comment on the actual practices of leadership PACs. Are they undertaking activities that the Commission should consider in drawing lines between those that should be treated as authorized committees and those that should not?

Unlike the BCRA provisions at 2 U.S.C. 441i(e) that only deal with entities sponsored by Federal officeholders, the proposed rule in Alternative C would cover leadership PACs created by any officeholder. Is this a proper approach? Is there a need for further explanation of how this would apply?

This proposed rule uses terms of art contained in the current law, such as ''authorized committee'' (defined at 2 U.S.C. 431(6) and 11 CFR 100.5(f)(1)) and ''unauthorized committee'' (defined at 11 CFR 100.5(f)(2)). Since these terms themselves use the term of art ''political committee,'' is there a problem with using them? Is there a need to address in this rulemaking what is meant by the latter term? Note that at one point the Commission had a pending rulemaking regarding the definition of ''political committee,'' but it has been held in abeyance pending completion of other projects. Should the Commission use even broader terms in the area of leadership PACs to try to address ''entities,'' as used in BCRA's language at 2 U.S.C. 441i(e)?

Finally, Alternative C would include a conforming amendment to 11 CFR 110.3(a) to address the issue of contribution limits of leadership PACs

that are deemed to be authorized committees. Under Alternative C, such committees would be subject to the provisions of current 11 CFR 110.3(a)(1)(i) by operation of proposed section 110.3(a)(4) with the factors listed in proposed section 100.5(g)(5) of Alternative C.

D. Additional Issues

In addition to the alternative amendments to 11 CFR 100.5(g), the Commission seeks comment on the following issues. First, should the factors in Alternatives A and B establish a rebuttable presumption of affiliation rather than *per se* affiliation? If so, how should the presumption be rebutted? Secondly, does the Commission's position in the Soft Money Explanation and Justification, as reiterated in the Contribution Prohibitions and Limitations Explanation and Justification, have any bearing on its analysis concerning affiliation between leadership PACs and authorized committees? Assuming that the Commission wishes to address leadership PACs in some fashion, would it be less confusing if the Commission were to create a new section solely addressing issues regarding leadership PACs, rather then amending the affiliation rules? Do the proposed factors at 11 CFR 100.5(g)(5) in Alternatives A and B cover all of the necessary activities that should be considered in an affiliation analysis? If not, what else needs to be addressed? Alternative A references actions by an ''agent'' acting on behalf of a candidate or officeholder to be sufficient for affiliation to be found. The Commission seeks comment as to whether this is appropriate. If so, should the Commission rely on the definition of agent at 11 CFR 300.2(b), or some other definition, or should it create a new definition for this purpose? The Commission welcomes comments on any of the questions listed above.

3. Ramifications of Finding Affiliation

A. Federal Funds (''Hard Money'')

Under the Commission's regulations, committees that are affiliated, that is, committees that are established, financed, maintained, or controlled by the same corporation, labor organization, person or group of persons, *et al.*, share a single limitation on the dollar amount they may receive from any one contributor. *See* 11 CFR 100.5(g)(3). Political committees of all types may participate in joint fundraising efforts, however, which are not intended to be affected by these proposed rules. *See* 2 U.S.C. 432(e)(3)(A)(i) and 441a(a)(5)(A); 11 CFR 102.17 and 9034.8. Under FECA and the Commission's regulations, the Commission has treated leadership PACs as unauthorized political committees, and thus it has not treated them as affiliated with authorized committees, with the result that the unauthorized committee would not share a contribution limit with the authorized committees. *See* 11 CFR 100.5(g), 110.3(a)(1), 110.3(a)(3)(ii). The Commission seeks comment on what limit should apply to leadership PACs and authorized committees that are deemed to be affiliated under Alternatives A and B. Should these committees be required to share a contribution limit just as other affiliated committees, and if so, what should the shared contribution limitation be between an authorized committee and an affiliated leadership PAC? Should that contribution limit be that of an authorized committee or an unauthorized committee? Can the Commission permit authorized and unauthorized committees to operate within separately applicable contribution limits notwithstanding common control by the same candidate? If so, should it? Does the fact of affiliation mean that minors are barred from making contributions to leadership PACs? *See* 2 U.S.C. 441k (which, *inter alia,* prohibits individuals who are 17 years old and younger from making contributions to candidates). The Commission also seeks comment on whether the contribution limits promulgated at 11 CFR 300.62 would need to be harmonized with the proposed rules, if adopted.

The above discussion addresses contributions received by the leadership PAC. Another question the Commission seeks comment on is whether the leadership PAC and the authorized committee share a common limit as to contributions made to other candidates. If so, does this limit have to be the limit at 2 U.S.C. 432(e)?

As noted above, Alternative C would address this issue by finding certain committees to be authorized committees subject to the limitations appropriate to authorized committees.

B. Non-Federal Funds (''Soft Money'')

The final rules promulgated pursuant to BCRA already prohibit Federal candidates and officeholders, their agents, and entities directly or indirectly established, financed, maintained, or controlled by, or acting on behalf of them, from accepting funds in connection with any election, Federal or non-Federal, if such funds do not comply with the limits, prohibitions, and, with respect to funds in connection with any Federal election only, the reporting requirements, of FECA. *See* 2 U.S.C. 441i(e)(1)(A) and (B); *see also* 11 CFR 300.61 and 300.62. Thus, leadership PACs that support Federal and non-Federal candidates would be similarly banned from soliciting, receiving, directing, transferring, or spending funds that do not comply with FECA (*i.e.*, non-Federal funds). Would such a restriction also exist for an organization created to support efforts to discuss national issues, where the organization provides no direct support to Federal candidates or political committees, makes no independent expenditures, and does not engage in what would be Federal election activity if done by a party committee? If so, what would be the legal basis for such a restriction?

C. Transfers

If affiliation is found under Alternative A or B, then pursuant to 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(c)(1) the affiliated leadership PAC would be able to make unlimited transfers to a candidate or officeholder's authorized committees, consistent with the limitations of the Act. *See also* 11 CFR 102.6. The proposed rules do not include any amendments that would change these rules. Is it appropriate for the Commission to continue this policy on transfers?

D. Reporting

Under 11 CFR 104.3(f), affiliated entities are required to consolidate their disclosure reports. Accordingly, should the leadership PAC be required to consolidate disclosure reports with the principal campaign committee of the candidate with whom they are affiliated? Or should reporting be handled in a different manner and, if so, how?

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 these rules only limit the sources and amounts of contributions that certain political committees can accept, and that these rules do not impose any additional costs on the contributors or the committees. Further, the primary purpose of the proposed revisions is to clarify the Commission's rules regarding affiliation; directly or indirectly establish, finance, maintain or control; and limits on contributions. This does not impose a significant economic burden because entities affected are

already required to comply with the Act's requirements in these areas.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, the Federal Election Commission is proposing to amend subchapter A, of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 100—SCOPE AND DEFINITIONS

1. The authority citation for part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434, 438(a)(8).

2. In § 100.5, paragraph (g)(5) is added to read as follows:

§ 100.5 Political Committee (2 U.S.C. 431(4), (5), (6)).

* * * * *

(g) * * *

Alternative A

(5) Notwithstanding paragraph (g)(4) of this section, the Commission may examine the relationship between an entity associated with an individual holding Federal office or a candidate for Federal office and the authorized committees of that candidate or individual holding Federal office in accordance with the provisions of this paragraph (g)(5).

(i) An unauthorized committee(s) shall be deemed to be directly or indirectly established, financed, maintained, or controlled by a candidate or individual holding Federal office if any of the following are applicable:

(A) The candidate or individual holding Federal office, or an agent of either, has signature authority on the unauthorized committee's checks;

(B) Funds contributed or disbursed by the unauthorized committee are authorized or approved by the candidate or individual holding Federal office, or an agent of either;

(C) The candidate or individual holding Federal office is clearly identified as described in 11 CFR 100.17 on either the stationery or letterhead of the unauthorized committee;

(D) The candidate, individual holding Federal office or his campaign staff, office staff, or immediate family members, or any other agent of either, has the authority to approve, alter or veto the unauthorized committee's solicitations, contributions, donations, disbursements or contracts to make disbursements; or

(E) The unauthorized committee pays for travel by the candidate, his campaign staff or office staff, or any other agent of the candidate, in excess of $10,000 per calendar year.

(ii) *Transition period.* On or after [90 days after publication of the final rule in the **Federal Register**], an unauthorized committee shall not be deemed to be affiliated with an authorized committee unless, based on actions taken by those committees solely after [90 days after publication of the final rule in the **Federal Register**], they satisfy the requirements of paragraph (g)(5)(i). If an entity receives funds from another entity prior to [90 days after publication of the final rule in the **Federal Register**], and the recipient entity disposes of the funds prior to date [90 days after publication of the final rule in the **Federal Register**], the receipt of such funds prior to [90 days after publication of the final rule in the **Federal Register**], shall have no bearing on determining whether the recipient entity is financed by the contributing entity within the meaning of this section. Actions taken by a Federal candidate or individual holding Federal office, or an agent of either, before [90 days after publication of the final rule in the **Federal Register**], shall have no bearing on whether affiliation exists.

(iii) *Determinations by the Commission.*

(A) An entity may request an advisory opinion of the Commission to determine whether it is affiliated with the authorized committees of any Federal candidate or individual holding Federal office. The request for such an advisory opinion must meet the requirements of 11 CFR part 112 and must demonstrate that the entity is not directly or indirectly financed, maintained or controlled by the sponsor.

(B) Nothing in this section shall require entities that are unaffiliated as of [the effective date of these rules] to obtain an advisory opinion to confirm that they are not affiliated.

Alternative B

(5) Notwithstanding paragraph (g)(4) of this section, the Commission may examine the relationship between an entity associated with an individual holding Federal office or a candidate for Federal office and the authorized committees of that candidate or individual holding Federal office in accordance with the provisions of this paragraph (g)(5).

(i) An entity associated with an individual holding Federal office or a candidate for Federal office is affiliated with the authorized committees of that candidate or individual holding Federal office if the conditions set forth in either paragraph (g)(5)(i)(A) or (g)(5)(i)(B) of this section are satisfied.

(A) Any one of the following statements is true:

(*1*) The candidate or individual holding Federal office, or an agent of the candidate or individual holding Federal office, has signature authority on the entity's checks;

(*2*) The candidate or individual holding Federal office, or an agent of the candidate or individual holding Federal office, must approve or authorize disbursements over a certain minimum amount;

(*3*) The candidate or the individual holding Federal office signs solicitation letters or other correspondence on behalf of the entity;

(*4*) The candidate or individual holding Federal office has the authority to approve, alter or veto the entity's solicitations;

(*5*) The candidate or individual holding Federal office has the authority to approve, alter or veto the entity's contributions, donations, or disbursements; or

(*6*) The candidate or individual holding Federal office has the authority to approve the entity's contracts;

(B) Any three of the following statements are true:

(*1*) The campaign staff or immediate family members of the candidate or individual holding Federal office, or any other agent of the candidate or individual holding Federal office, has the authority to approve, alter or veto the entity's solicitations;

(*2*) The campaign staff or immediate family members of the candidate or individual holding Federal office, or any other agent of the candidate or individual holding Federal office, has the authority to approve, alter or veto the entity's contributions, donations, or disbursements;

(*3*) The campaign staff or immediate family members of the candidate or individual holding Federal office, or any other agent of the candidate or individual holding Federal office, has the authority to approve the entity's contracts;

(*4*) The entity and the authorized committees of the candidate or of the individual holding Federal office, share, exchange or sell contributor lists, voter lists, or other mailing lists directly to or with each other, or indirectly through the candidate or individual holding Federal office to or with each other;

(*5*) The entity pays for the travel of the candidate or of the individual holding

Federal office anywhere except to or from the State or district of the candidate or individual holding Federal office;

(*6*) The entity and the authorized committees of the candidate or of the individual holding Federal office's share office space, staff, a post office box, or equipment;

(*7*) The entity and the authorized committees of the candidate or of the individual holding Federal office share common vendors; or

(*8*) The name or nickname of the candidate or of the individual holding Federal office, or other unambiguous reference to the candidate or individual holding Federal office, appears on either the entity's stationery or letterhead;

(ii) *Determinations by the Commission.*

(A) An entity may request an advisory opinion of the Commission to determine whether it is affiliated with the authorized committees of any Federal candidate or individual holding Federal office. The request for such an advisory opinion must meet the requirements of 11 CFR part 112 and must demonstrate that the entity is not directly or indirectly established, financed, maintained, controlled by, or acting on behalf of, the sponsor.

(B) Nothing in this section shall require entities that are unaffiliated to obtain an advisory opinion to confirm that they are not affiliated.

Alternative C

(5) An unauthorized committee established, financed, maintained, or controlled by, or acting on behalf of, a candidate or individual holding Federal office will be deemed to be an authorized committee of such candidate or individual holding Federal office unless it can demonstrate:

(i) It only has made contributions, expenditures, donations, or other disbursements for the direct purpose of funding party committees or influencing the nomination or election of persons other than the candidate or individual holding Federal office;

(ii) It has not made reference to the candidacy or potential candidacy of the candidate or individual holding Federal office in solicitations, communications, or other materials;

(iii) In any speeches or public appearances by the candidate or individual holding Federal office which have been financed by the unauthorized committee, no reference is made to the candidacy or potential candidacy of the candidate or individual holding Federal office, unless such reference is brief, not planned or controlled by the candidate or individual holding Federal office, and in response to a question from an attendee; and

(iv) If such candidate or individual holding Federal office becomes a presidential candidate, any disbursements the unauthorized committee has made for the purpose of paying expenses of particular persons seeking to become caucus or convention delegates in the presidential nomination process or for the purpose of establishing staffed operations in states holding presidential primaries or caucuses in the first three months of the presidential election year are reimbursed by the presidential authorized committee of the candidate or individual holding Federal office within 60 days of being made, or within 60 days of such person becoming a candidate, if later.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, 441k.

4. In § 110.3, paragraph (a)(4) is added to read as follows:

§ 110.3 Contribution limitations for affiliated committees and political party committees; Transfers (2 U.S.C. 441a(a)(5), 441a(a)(4)).

(a) * * *

(4) For purposes of paragraph (a)(1)(i) of this section, an unauthorized committee established, financed, maintained, or controlled by, or acting on behalf of, a candidate or individual holding Federal office will be deemed to be an authorized committee of such candidate or individual holding Federal office unless it can demonstrate:

(i) It only has made contributions, expenditures, donations, electioneering communications, or other disbursements for the direct purpose of funding party committees or influencing the nomination or election of persons other than the candidate or individual holding Federal office;

(ii) It has not made reference to the candidacy or potential candidacy of the candidate or individual holding Federal office in solicitations, communications, or other materials;

(iii) In any speeches or public appearances by the candidate or individual holding Federal office which have been financed by the unauthorized committee, no reference is made to the candidacy or potential candidacy of the candidate or individual holding Federal office, unless such reference is brief, not planned or controlled by the candidate or individual holding Federal office, and in response to a question from an attendee; and

(iv) If such candidate or individual holding Federal office becomes a presidential candidate, any disbursements the unauthorized committee has made for the purpose of paying expenses of particular persons seeking to become caucus or convention delegates in the presidential nomination process or for the purpose of establishing staffed operations in states holding presidential primaries or caucuses in the first three months of the presidential election year are reimbursed by the presidential authorized committee of the candidate or individual holding Federal office within 60 days of being made, or within 60 days of such person becoming a candidate, if later.

* * * * *

Dated: December 19, 2002.

David M. Mason,

Chairman, Federal Election Commission.

[FR Doc. 02–32451 Filed 12–24–02; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 1020

[Docket No. 01N–0275]

Electronic Products; Performance Standard for Diagnostic X-Ray Systems and Their Major Components; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule; correction.

SUMMARY: The Food and Drug Administration is correcting a proposed rule that appeared in the **Federal Register** of December 10, 2002 (67 FR 76056). The document proposed to amend the performance standard for diagnostic x-ray systems and their major components. The document was published with some inadvertent errors. This document corrects those errors.

FOR FURTHER INFORMATION CONTACT: Joyce Strong, Office of Policy (HF–27), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–827–7010.

SUPPLEMENTARY INFORMATION: In FR Doc. 02–30550, appearing on page 76056 in the **Federal Register** of Tuesday, December 10, 2002, the following corrections are made: