



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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February 9, 2006

**MEMORANDUM**

**TO:** The Commission

**THROUGH:** Robert J. Costa *RC*  
Acting Staff Director

**FROM:** Lawrence H. Norton *LH*  
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**SUBJECT:** Draft Interim Final Rule Modifying the Definition of "In Connection with an Election in which a Candidate for Federal Office Appears on the Ballot" (11 CFR 100.24(a)(1)(iii)).

**AGENDA ITEM**  
For Meeting of: 02-09-06

**SUBMITTED LATE**

Attached is a draft of an interim final rule that would add an exception to the definition of "in connection with an election in which a candidate for Federal office appears on the ballot" at 11 CFR 100.24(a)(1)(iii). The Office of General Counsel requests that this draft be placed on the agenda for the February 9, 2006 open meeting.

If the Commission adopts the draft interim final rule, it should also amend the draft Final Rules on the Definition of Federal Election Activity to delete the three paragraphs that follow "2. Other Proposed Changes to Type II FEA Time Period." In their place, the following discussion should be inserted.

The NPRM also sought comment on limited exceptions to the type II FEA time period in 11 CFR 100.24(a)(1). NPRM, 70 FR at 23071 and 23072. The

Commission received several comments on the issues raised in the NPRM. The Commission is promulgating an Interim Final Rule in a separate rulemaking to address these issues.

Finally, the Commission should direct OGC to prepare a draft Explanation and Justification for the interim final rule, which will also seek public comment on it.

Attachment

1 For the reasons set out in the preamble, Subchapter A of Chapter 1 of title 11 of  
2 the Code of Federal Regulations is amended as follows:

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

4 1. The authority citation for 11 CFR part 100 continues to read as follows:

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

6 2. In section 100.24, paragraph (a)(1)(iii) is added to read as follows:

7 **§ 100.24 Federal Election Activity (2 U.S.C. 431(20)).**

8 (a) \* \* \*

9 (1) \* \* \*

10 (iii) Exception. Notwithstanding paragraphs (a)(1)(i) and (ii) of this  
11 section, in connection with an election in which a candidate for  
12 Federal office appears on the ballot does not include any activity or  
13 communication that is in connection with a non-Federal election  
14 that is held on a date separate from a date of any Federal election  
15 and that refers exclusively to:

16 (A) Non-Federal candidates participating in the non-Federal  
17 election;

18 (B) Ballot referenda or initiatives scheduled for the date of the  
19 non-Federal election; or

20 (C) The date, polling hours and locations of the non-Federal  
21 election.

22 \* \* \* \* \*