



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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**AGENDA ITEM**


**For Meeting of: 4-01-04**

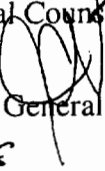
**MEMORANDUM**


**TO:** The Commission

**THROUGH:** James A. Pehrkon   
Staff Director

**FROM:** Lawrence H. Norton   
General Counsel

Rosemary C. Smith   
Associate General Counsel

John C. Vergelli   
Acting Assistant General Counsel

Esa L. Sferra   
Attorney

**SUBJECT:** Draft Notice of Proposed Rulemaking on Inaugural Committees.

Attached is a draft Notice of Proposed Rulemaking ("NPRM") addressing issues related to disclosure by such inaugural committees, and the ban on acceptance by inaugural committees of donations by foreign nationals.

**Recommendation:**

The Office of the General Counsel recommends that the Commission approve the attached NPRM for publication in the *Federal Register*.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 110**

3 **[NOTICE 2004 - >>]**

4 **Inaugural Committee Reporting and**  
5 **Prohibition on Accepting Foreign National Donations**

6 **AGENCY:** Federal Election Commission.

7 **ACTION:** Notice of Proposed Rulemaking.

8 **SUMMARY:** The Federal Election Commission seeks comments on proposed  
9 rules setting forth reporting requirements for Presidential inaugural  
10 committees and prohibiting Presidential inaugural committees from  
11 accepting donations from foreign nationals. These regulations  
12 would implement requirements of the Bipartisan Campaign Reform  
13 Act of 2002. The Commission has made no final decision on the  
14 issues presented in the rulemaking. Further information is provided  
15 in the supplementary information that follows.

16 **DATES:** Comments must be received on or before [insert date 30 days after  
17 the date of publication in the Federal Register]. If the Commission  
18 receives sufficient requests to testify, it may hold a hearing on these  
19 proposed rules. Commenters wishing to testify at the hearing must  
20 so indicate in their written or electronic comments.

21 **ADDRESSES:** All comments should be addressed to John C. Vergelli, Acting  
22 Assistant General Counsel, and must be submitted in either  
23 electronic or written form. Commenters are strongly encouraged to

1 submit comments electronically to ensure timely receipt and  
2 consideration. Electronic mail comments should be send to  
3 Inaugural04@fec.gov and must include the full name, electronic  
4 mail address, and postal service address of the commenter.  
5 Electronic mail comments that do not contain the full name,  
6 electronic mail address, and postal service address of the  
7 commenter will not be considered. If the electronic mail comments  
8 include an attachment, the attachment must be in the Adobe  
9 Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments  
10 should be sent to (202) 219-3923, with printed copy follow-up to  
11 ensure legibility. Written comments and printed copies of faxed  
12 comments should be sent to the Federal Election Commission, 999  
13 E Street, N.W., Washington, D.C. 20463. The Commission will  
14 post public comments on its web site. If the Commission decides  
15 that a public hearing is necessary, the hearing will be held in its  
16 ninth floor meeting room, 999 E. St., NW, Washington, D.C.

17 **FOR FURTHER**  
18 **INFORMATION**  
19 **CONTACT:**

John C. Vergelli, Acting Assistant General Counsel, or Esa L.  
Sferra, Attorney, 999 E Street, NW, Washington, D.C. 20463,  
(202) 694-1650 or (800) 424-9530.

22 **SUPPLEMENTARY**  
23 **INFORMATION:**

Section 308 of the Bipartisan Campaign Reform Act of 2002  
24 (“BCRA”), Pub. L. 107-155, 116 Stat. 81 (March 27, 2002), amended 36 U.S.C. 510 and the  
25 Federal Election Campaign Act of 1971, as amended (“FECA” or “the Act”), 2 U.S.C. 431 et

1 seq., by establishing new requirements for inaugural committees. These committees are  
2 appointed by the President-elect to be in charge of the Presidential inaugural ceremony and  
3 activities connected with the ceremony. Chapter 5 of Title 36 of the United States Code  
4 provides the inaugural committee with special privileges in the District of Columbia for the  
5 five days before and the four days after the inauguration ceremony. Under 36 U.S.C. 511,  
6 Congress may make appropriations for the District of Columbia to pay for the swearing-in  
7 ceremony, however, all other activities, including parades, galas, and balls, are paid for by  
8 the inaugural committee.

9 Prior to BCRA's enactment, inaugural committees had no disclosure responsibilities  
10 and could accept donations from foreign nationals. Under section 308 of BCRA, in order for  
11 a committee to be considered the inaugural committee, it must agree to disclose all donations  
12 it receives aggregating \$200 or more, and it must not accept a donation from any foreign  
13 national.

14 The Commission proposes to add new 11 CFR 104.21 to the reporting rules in 11  
15 CFR Part 104 to set forth inaugural committee reporting requirements. These proposed  
16 requirements are minimal compared to the Act's reporting requirements for political  
17 committees. The Commission's rules on foreign national contributions and expenditures are  
18 found at 11 CFR 110.20. A new paragraph would be added to this section to ban the  
19 acceptance of foreign national donations by inaugural committees.

20 I. Proposed 11 CFR 104.21. Reporting by inaugural committees.

21 Paragraph (a)(1) of proposed 11 CFR 104.21, Definitions, would define "inaugural  
22 committee." The definition proposed is identical to that in 36 U.S.C. 501(1) and in the

1 municipal regulations of the District of Columbia (see D.C. Mun. Regs., tit. 24, section 899).<sup>1</sup>  
2 The proposed definition states that an “inaugural committee” is the committee appointed by  
3 the President-elect to be in charge of the Presidential inaugural ceremony and functions and  
4 activities connected with the ceremony. This proposed definition would presume that only  
5 one committee may be named.

6 Paragraph (a)(2) of proposed 11 CFR 104.21 would define “donation.” The proposed  
7 definition would be based on that at 11 CFR 300.2(e), stating that a donation means a  
8 payment, gift, subscription, loan, advance, deposit, or anything of value given to an inaugural  
9 committee. This proposed definition would be similar to the definition of “contribution,”  
10 except that contributions are made for purpose of influencing a Federal election. See 11 CFR  
11 100.51 through 100.56 and 114.1(a)(1). Monies and other things of value given to an  
12 inaugural committee would be “donations” because the inaugural committee is not a political  
13 committee and things of value given to it are not for the purpose of influencing a Federal  
14 election. See also, 11 CFR 300.2(e). The Commission seeks comment on this definition of  
15 “donation.”

16 Proposed 11 CFR 104.21(b) would set forth the steps necessary for a committee  
17 appointed by the President-elect to be considered the inaugural committee under these  
18 regulations. BCRA section 308 expressly provides that a committee must “agree to” abide  
19 by certain requirements to be considered the inaugural committee. 36 U.S.C. 510(a). The  
20 Commission interprets this statutory language to require an affirmative action on the part of

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<sup>1</sup> The District Columbia has statutory authority to regulate many aspects of the activities of the Inaugural Committee, such as the inaugural parade route, public safety at inaugural events, and concession sales permits at inaugural events. See e.g., 36 U.S.C. 502.

1 the inaugural committee. The proposed rule would implement this requirement by requiring  
2 the inaugural committee to file a letter with the Commission within 15 days of being  
3 appointed. The letter would have to contain the name and address of the inaugural  
4 committee, the name of its chairperson or other officer who will serve as the point of contact  
5 for the Commission, and a statement indicating that the inaugural committee will comply  
6 with the disclosure requirements in proposed 11 CFR 104.21(c) and the ban on accepting  
7 foreign national donations in proposed 11 CFR 110.20(j).

8 The Commission seeks comment on whether such a filing requirement would be  
9 necessary. Alternatively, the Commission seeks comment on whether a new FEC form  
10 would be preferable to a letter-filing. Finally, the Commission seeks comment on whether  
11 the inaugural committee should be free to designate a person other than the chairperson or  
12 other officer as the point of contact with the Commission.

13 Proposed 11 CFR 104.21(c) would set forth the disclosure requirements for inaugural  
14 committees. Proposed paragraph (c)(1) would require the chairperson or other officer  
15 identified in the letter-filing required by proposed paragraph (b) of this section to be  
16 responsible for signing and filing the report. Although BCRA section 308 does not explicitly  
17 require a signature on the report, the Commission's reporting regulations provide generally  
18 that "[e]ach individual having the responsibility to file a designation, report or statement ...  
19 shall sign the original designation, report or statement," unless it is electronically filed. 11  
20 CFR 104.14(a). The Commission seeks comments on this proposed requirement for a  
21 signature on the report required by BCRA section 308.

22 The proposed rules do not address the scope of the Commission's authority to enforce  
23 these proposed provisions, or to audit inaugural committees. In this regard, the Commission

1 notes that 36 U.S.C. 508 provides that the “Mayor of the District of Columbia, or other  
2 official having jurisdiction in the premises, shall enforce” the chapter of Title 36 in which  
3 BCRA section 308 is codified. The Commission seeks comment on whether it has authority  
4 to enforce the rules proposed in this rulemaking, including authority to audit inaugural  
5 committees, or whether its authority is limited to receiving and publicizing the reports called  
6 for by BCRA section 308 (36 U.S.C. 510).

7 Proposed paragraph (c)(2), When to file, would implement the statutory requirement  
8 that the inaugural committee must file its report with the Commission no later than 90 days  
9 after the date of the inaugural ceremony. In keeping with other reporting deadlines in  
10 Commission regulations, the proposed rule would require the reports be received by the  
11 Commission by 11:59 p.m. Eastern Standard/Daylight Time on the 90th day after the date of  
12 the inaugural ceremony. See generally, 11 CFR 100.19(b).

13 Proposed paragraph (c)(3), Where to file, would state that all letters, statements, and  
14 reports filed by inaugural committees must be filed with the Federal Election Commission.

15 Proposed paragraph (c)(4), How to file, would set forth the methods of filing an  
16 inaugural committee could use to file the 90-day report. The proposed rules would permit  
17 inaugural committees to file on paper or, alternatively, would permit, but not require, the use  
18 of the Commission’s electronic filing system. 2 U.S.C. 434(a)(11)(i), (ii). The Commission  
19 has tentatively concluded that an inaugural committee will not be subject to the mandatory  
20 electronic filing requirements. The mandatory electronic filing requirement applies if a  
21 person receives or makes, or has reason to expect to receive or make, in excess of \$50,000 in  
22 contributions or expenditures in a calendar year. 11 CFR 104.18(a)(1). The funds received  
23 and spent by the inaugural committee will presumably be donations and disbursements of

1 non-Federal funds, not contributions and expenditures of Federal funds. Thus, the proposed  
2 rules would not make inaugural committees subject to the Commission's mandatory  
3 electronic filing regulations at 11 CFR 104.18; such filing would be at the election of the  
4 inaugural committee. The Commission requests comments on whether inaugural committees  
5 should be required to file electronically.

6 Proposed paragraph (c)(5) would require an inaugural committee to file the 90-day  
7 report on new FEC Form 13, which the Commission would create.

8 Proposed paragraph (c)(6), Contents of Reports, would set forth the information  
9 inaugural committees would be required to disclose in their reports. The proposed rules at 11  
10 CFR 104.21(c)(6)(i), (ii), and (iii), would track 36 U.S.C. 510(b) by requiring disclosure of  
11 the name and address of each person making donations aggregating equal to, or in excess of,  
12 \$200, the amount of each such donation, and the date that each such donation was received.  
13 Inaugural committees would be required to report all donations made by a person whose total  
14 donations aggregate \$200 or more. This is similar to Commission regulations at 11 CFR  
15 104.3(a)(4)(i) requiring political committees to itemize all contributions from a person once  
16 that person's contributions exceed \$200 in the aggregate.

17 Proposed paragraph (d) would require the inaugural committee to maintain records in  
18 accordance with the requirements of 11 CFR 104.14. The Commission requests comments  
19 on whether inaugural committees should be required to comply with the Commission's  
20 established recordkeeping regulations for political committees. See 11 CFR 104.14(b).  
21 Alternatively, should the Commission set forth recordkeeping rules specifically for inaugural  
22 committees? Should there be any recordkeeping requirements?



1 II. Proposed 11 CFR 110.20(j). Donations by foreign nationals to inaugural committees.

2 Current 11 CFR 110.20 prohibits contributions, donations, expenditures, independent  
3 expenditures, and disbursements by foreign nationals in connection with any election.

4 Section 110.20 implements 2 U.S.C. 441e, which was amended by BCRA. See generally  
5 Final Rule and Explanation and Justification, “Contribution Limits and Prohibitions,” 67 Fed.  
6 Reg. 69928, 69940 (November 19, 2002).

7 In addition to these prohibitions codified at 2 U.S.C. 441e, BCRA also prohibits an  
8 inaugural committee from accepting a donation from a foreign national. 36 U.S.C. 510(c).  
9 Proposed new paragraph (j) of 11 CFR 110.20 would implement BCRA section 308 by  
10 prohibiting foreign nationals from directly or indirectly donating to an inaugural committee.  
11 Proposed paragraph (j) would also prohibit any person from knowingly soliciting, accepting  
12 or receiving donations to an inaugural committee from a foreign national. In both of these  
13 respects, proposed paragraph (j) generally follows the structure of the current provisions of  
14 section 110.20.

15 BCRA section 308 does not explicitly forbid donations by a foreign national to an  
16 inaugural committee. On its face, section 308 merely forbids acceptance of such a donation  
17 by an inaugural committee. The Commission seeks comment on whether the proposed rule’s  
18 explicit prohibition on donations by a foreign national would be a permissible interpretation  
19 of BCRA section 308; e.g., as a necessary implication of the ban on acceptance.

20 Although BCRA section 308 does not expressly establish a knowledge standard with  
21 regard to its prohibition on acceptance of foreign national donations, proposed paragraph (j)  
22 would prohibit only the knowing solicitation, acceptance, or receipt of a donation from a  
23 foreign national. In proposed paragraph (j), “knowingly” would have the same meaning as is

1 set out in current paragraph (a)(4) of section 110.20. The Commission has read a  
2 “knowingly” standard into its rules banning the acceptance of foreign national contributions  
3 and donations by other persons. See 11 CFR 100.20(g) and the Final Rule and Explanation  
4 and Justification, “Contribution Limits and Prohibitions,” 67 Fed. Reg. 69928, 69940  
5 (November 19, 2002).

6 “Donation,” as used in proposed paragraph (j) would have the same meaning as in 11  
7 CFR 110.20(a)(2), which uses the definition of “donation” at 11 CFR 300.2(e). “Foreign  
8 national” would have the same meaning as in 2 U.S.C. 441e(b) and 11 CFR 110.20(a)(3).  
9 Proposed paragraph (j) would include a reference to proposed 11 CFR 104.21(a)(1) for the  
10 definition of “inaugural committee.”

11

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

2           The attached proposed rules, if promulgated, would not have a significant economic  
3 impact on a substantial number of small entities. The basis of this certification is that this  
4 proposed rule affects only Presidentially appointed inaugural committees, of which there will  
5 be only one every four years. The inaugural committee does not appear to be a small entity  
6 within the meaning of 5 U.S.C. 601(3)-(6). Even if the inaugural committee is deemed a  
7 small entity, the new reporting requirements would require the filing of only one letter and  
8 one report. There would be no ongoing reporting requirement. Therefore, any increase in  
9 the cost of compliance would not impose a significant economic burden on a substantial  
10 number of these entities.

11    **List of Subjects**

12    11 CFR 104

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

15    11 CFR 110

16    Campaign funds, Political committees and parties

17

18

1 For the reasons set forth in the preamble, the Federal Election Commission proposes  
2 to amend Subchapter A of Chapter I of Title 11 of the Code of Federal Regulations as  
3 follows:

4 1. The title of Part 104 would be revised to read as follows:

5 **PART 104 -- REPORTS BY POLITICAL COMMITTEES, PERSONS MAKING**  
6 **ELECTIONEERING COMMUNICATIONS AND INAUGURAL COMMITTEES (2**  
7 **U.S.C. 434, 36 U.S.C. 510)**

8 2. The authority citation for part 104 would be revised to read as follows:

9 Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a, and 36  
10 U.S.C. 510.

11 3. New section 104.21 would be added to read as follows:

12 **§ 104.21 Reporting by inaugural committees.**

13 **(a) Definitions.**

14 **(1) Inaugural committee. Inaugural committee means the committee appointed**  
15 **by the President-elect to be in charge of the Presidential inaugural ceremony**  
16 **and functions and activities connected with the inaugural ceremony.**

17 **(2) Donation. For purposes of this section, donation means a payment, gift,**  
18 **subscription, loan, advance, deposit, or anything of value given to an**  
19 **inaugural committee.**

20 **(b) Filing by inaugural committees. In order to be considered the inaugural committee**  
21 **under 35 U.S.C. Chapter 5, within 15 days of appointment by the President-elect, the**  
22 **appointed committee must file a letter with the Commission containing the following:**

23 (1) **The name and address of the inaugural committee;**

1 (2) The name of the chairperson, or the name and title of another officer who will  
2 serve as the point of contact; and

3 (3) A statement agreeing to comply with paragraph (c) of this section and 11 CFR  
4 110.20(j).

5 (c) Reporting requirements of inaugural committees.

6 (1) Who must report. The chairperson or other officer identified in the filing  
7 required by paragraph (b) of this section shall sign and file a report in  
8 accordance with this paragraph (c) of this section.

9 (2) When to file. The inaugural committee must file a report with the  
10 Commission not later than the 90th day following the date on which the  
11 Presidential inaugural ceremony is held. This report must be timely filed in  
12 accordance with 11 CFR 100.19.

13 (3) Where to file. All letters, statements, and reports required under this section,  
14 as well as any amendment(s) thereto, shall be filed with the Federal Election  
15 Commission, 999 E Street, N.W., Washington, DC 20463.

16 (4) How to file. An inaugural committee must file its letters, statements, and  
17 reports in original form, however, an inaugural committee may choose to file  
18 its reports in an electronic format that meets the requirements of 11 CFR  
19 104.18.

20 (5) Form. An inaugural committees must file the report required by this  
21 paragraph on FEC Form 13.

22 (6) Contents of reports. Each report filed with the Commission under this section  
23 must contain:

- 1 (i) The name and address of the person making each donation of money  
2 or of anything of value aggregating \$200 or more;  
3 (ii) The amount of each such donation; and  
4 (iii) The date each such donation is received by the inaugural committee.

5 (d) Recordkeeping. All inaugural committees that file statements and reports under this  
6 section must maintain records in accordance with 11 CFR 104.14.

7 **PART 110-CONTRIBUTION AND EXPENDITURE LIMITATIONS AND**  
8 **PROHIBITIONS**

9 4. The authority citation for Part 110 would be revised to read as follows:

10 Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e,  
11 441f, 441g, 441h, and 441k, and 36 U.S.C. 510.

12 5. The title to section 110.20 would be amended to read as follows:

13 **§ 110.20 Prohibition on contributions, donations, expenditures, independent**  
14 **expenditures, and disbursements by foreign nationals (2 U.S.C. 441e, 36 U.S.C. 510).**

15 6. In section 110.20, new paragraph (j) would be added to read as follows:

16 \* \* \* \* \*

17 (j) Donations by foreign nationals to inaugural committees. A foreign national shall not,  
18 directly or indirectly, make a donation to an inaugural committee, as defined in 11 CFR

19

1 104.21(a)(1). No person shall knowingly solicit, accept or receive from a foreign national  
2 any donation to an inaugural committee.

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\_\_\_\_\_  
Bradley A. Smith  
Chairman  
Federal Election Commission

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DATED: \_\_\_\_\_

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BILLING CODE: 6715-01-U

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