

**AGENDA DOCUMENT NO. 15-50-A**



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

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September 29, 2015

**AGENDA ITEM**

**MEMORANDUM**

TO: The Commission

For Meeting of 10-1-15

FROM: Daniel A. Petalas *DAP*  
Acting General Counsel

**SUBMITTED LATE**

Adav Noti *AN*  
Acting Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

Joanna S. Waldstreicher *JSW by RMK*  
Attorney

SUBJECT: Draft Notice of Proposed Rulemaking for Reporting Multistate  
Independent Expenditures and Electioneering Communications

Attached is a draft Notice of Proposed Rulemaking for Reporting Multistate  
Independent Expenditures and Electioneering Communications. We request that this  
draft be placed on the agenda for October 1, 2015.

Attachment

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**FEDERAL ELECTION COMMISSION**

**11 CFR Parts 104 and 109**

**[Notice 2015-XX]**

**Reporting Multistate Independent Expenditures and Electioneering**

**Communications**

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Federal Election Commission requests comments on proposed changes to its regulations in 11 CFR Parts 104 and 109 to address reporting of independent expenditures and electioneering communications that relate to presidential primary elections and that are publicly distributed in multiple states but that do not refer to any particular state's primary election. The Commission has made no final decision on the issues and proposals presented in this rulemaking.

**DATES:** Comments must be received on or before [insert date 30 days after date of publication in the Federal Register]. The Commission may hold a public hearing on this Notice. Commenters wishing to testify at a hearing must so indicate in their comments. If a hearing is to be held, the Commission will publish a notice in the Federal Register announcing the date and time of the hearing.

**ADDRESSES:** All comments must be in writing. Comments may be submitted electronically via the Commission's website at <http://sers.fec.gov/fosers>, reference REG 2014-02 or by email to [address]@fec.gov. Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration. Alternatively, comments may be submitted in paper form. Paper comments must be sent to the Federal

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1 Election Commission, Attn.: Robert M. Knop, Assistant General Counsel, 999 E Street,  
2 NW., Washington, DC 20463. Each commenter must provide, at a minimum, his or her  
3 first name, last name, city, state, and zip code. All properly submitted comments,  
4 including attachments, will become part of the public record, and the Commission will  
5 make comments available for public viewing on the Commission's Web site and in the  
6 Commission's Public Records room. Accordingly, commenters should not provide in  
7 their comments any information that they do not wish to make public, such as a home  
8 street address, personal email address, date of birth, phone number, social security  
9 number, or driver's license number, or any information that is restricted from disclosure,  
10 such as trade secrets or commercial or financial information that is privileged or  
11 confidential.

12 **FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant  
13 General Counsel, or Ms. Joanna S. Waldstreicher, Attorney, 999 E Street NW.,  
14 Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

15 **SUPPLEMENTARY**  
16 **INFORMATION:**

17 The Federal Election Campaign Act, 52 U.S.C. 30101-45 (the "Act") and  
18 Commission regulations require persons who make independent expenditures and  
19 electioneering communications to report certain information to the Commission within  
20 specified periods of time. See 52 U.S.C. 30104(b)-(c), (g); 11 CFR 104.3, 104.4, 104.20,  
21 109.10. The Commission is considering revising its regulations to specifically address  
22 how these reporting requirements apply to an independent expenditure or electioneering  
23 communication that relates to a presidential primary election and is distributed in  
24 multiple states but does not refer to any particular state's primary election (a "multistate

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1 independent expenditure” or “multistate electioneering communication”). The  
2 Commission is seeking comment on the following proposed revisions to its regulations,  
3 which would clarify when and how multistate independent expenditures and multistate  
4 electioneering communications must be reported.

5 **I. Background**

6 An “independent expenditure” is an expenditure that expressly advocates the  
7 election or defeat of a clearly identified federal candidate and is not coordinated with a  
8 candidate or political party. 52 U.S.C. 30101(17); 11 CFR 100.16(a). Under the Act and  
9 Commission regulations, a political committee that makes independent expenditures must  
10 disclose those expenditures on its regular periodic reports, stating, among other things,  
11 the name of the candidate whom the expenditure supports or opposes and the office  
12 sought by that candidate. 52 U.S.C. 30104(b)(4)(H)(iii), (6)(B)(iii); 11 CFR 104.4(a).  
13 Any person other than a political committee that makes independent expenditures  
14 aggregating in excess of \$250 during a calendar year must disclose the same information  
15 in a statement filed with the Commission. 52 U.S.C. 30104(c); 11 CFR 109.10(b).

16 In addition, a person that makes independent expenditures aggregating to at least  
17 \$10,000 during the calendar year up to the 20th day before a given election must report  
18 the expenditures within 48 hours. 52 U.S.C. 30104(g)(2)(A); 11 CFR 104.4(b)(2),  
19 109.10(c). Additional reports must be filed within 48 hours each time the person makes  
20 further independent expenditures aggregating to \$10,000 or more with respect to the  
21 same election as that to which the initial report relates. 52 U.S.C. 30104(g)(2)(B); 11  
22 CFR 104.4(b)(2), 109.10(c).

23 A person that makes independent expenditures aggregating to \$1,000 or more less  
24 than 20 days, but more than 24 hours, before the date of a given election must report the

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1 expenditures within 24 hours. 52 U.S.C. 30104(g)(1)(A); 11 CFR 104.4(c), 109.10(d).  
2 Additional reports must be filed within 24 hours each time the person makes further  
3 independent expenditures aggregating \$1,000 or more with respect to the same election  
4 as that to which the initial report relates. 52 U.S.C. 30104(g)(1)(B); 11 CFR 104.4(c),  
5 109.10(d).

6 The 48- and 24-hour filing requirements begin to run when the independent  
7 expenditures aggregating to at least \$10,000 or \$1,000, respectively, are “publicly  
8 distributed.” 11 CFR 104.4(b)(2), (c), (f), 109.10(c)-(d). For purposes of calculating  
9 these expenditures and determining if a communication is “publicly distributed” within  
10 an applicable 24-hour pre-election filing window, each state’s presidential primary  
11 election is considered a separate election. See Advisory Opinion 2003-40 (Navy  
12 Veterans) at 3-4 (noting that “publicly distributed” in section 104.4 has same meaning as  
13 term in 11 CFR 100.29(b)(3)(ii)(A), under which each state’s presidential primary  
14 election is a separate election) (citing Bipartisan Campaign Reform Act of 2002  
15 Reporting, 68 FR 404, 407 (Jan. 3, 2003); Electioneering Communications, 67 FR 65190,  
16 65194 (Oct. 23, 2002)).

17 An “electioneering communication,” in the context of a presidential election, is a  
18 broadcast, cable, or satellite communication that refers to a clearly identified candidate  
19 for President or Vice President and is “publicly distributed” within sixty days before a  
20 general election or thirty days before a primary election or nominating convention. 52  
21 U.S.C. 30104(f)(3)(A)(i); 11 CFR 100.29(a). If the candidate identified in the  
22 communication is seeking a party’s nomination for the presidential or vice presidential  
23 election, “publicly distributed” means the communication can be received by at least

1 50,000 people in a state where a primary election is being held within thirty days, or that  
2 it can be received by at least 50,000 people anywhere in the United States within the  
3 period between thirty days before the first day of the national nominating convention and  
4 the conclusion of the convention. 11 CFR 100.29(b)(3). A person who makes  
5 electioneering communications that aggregate in excess of \$10,000 in a calendar year  
6 must file a statement with the Commission disclosing certain information about the  
7 electioneering communication, including the election to which the electioneering  
8 communication pertains. 52 U.S.C. 30104(f); 11 CFR 104.20(b)-(c). As with  
9 independent expenditures, each state's presidential primary election is considered a  
10 separate election for purposes of determining whether an electioneering communication  
11 is "publicly distributed" within the pre-election reporting window. See Advisory Opinion  
12 2003-40 (Navy Veterans) at 3-4.

13 The Commission's regulations do not specifically address how the public  
14 distribution criteria and other reporting requirements apply to independent expenditures  
15 or electioneering communications that are made in the context of a presidential primary  
16 election and that are distributed in multiple states. In particular, the regulations do not  
17 specify which state's primary election date is relevant for determining whether the  
18 communication falls within the 24-hour reporting window (for independent expenditures)  
19 or the 30-day definitional window (for electioneering communications).

20 In a 2011 advisory opinion, the Commission considered how the independent  
21 expenditure reporting requirements applied to independent expenditures that supported or  
22 opposed a presidential primary candidate and were distributed nationwide without  
23 referring to any specific state's primary election. See Advisory Opinion 2011-28

1 (Western Representation PAC). In that advisory opinion, the Commission concluded that  
2 a political committee making such an independent expenditure should divide the cost of  
3 the independent expenditure by the number of states that had not yet held their primary  
4 elections, and should use the resulting amounts to determine whether the committee must  
5 file 24- and 48-hour reports and for which states. Id.

6 Last year, the Commission made available for public comment three alternative  
7 draft interpretive rules on this topic. Draft Notices of Interpretive Rule Regarding  
8 Reporting Nationwide Independent Expenditures in Presidential Primary Elections (Jan.  
9 17, 2014) (“Draft Interpretive Rules”).<sup>1</sup> Draft A would have followed the approach set  
10 forth in Advisory Opinion 2011-28 (Western Representation PAC), instructing persons  
11 making a nationwide independent expenditure to divide the cost of the nationwide  
12 independent expenditure by the number of states with upcoming presidential primary  
13 elections. Draft B would have instructed persons making a nationwide independent  
14 expenditure to report it as a single expenditure without indicating a state where the  
15 expenditure was made, instead using memo text<sup>2</sup> to indicate that the independent  
16 expenditure was made nationwide. Draft B also would have instructed filers to use the  
17 first day of the candidate’s national nominating convention as the date for determining

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<sup>1</sup> <http://www.fec.gov/law/policy/nationwideiereporting/draftnationwideiereporting.pdf>. The Draft Interpretive Rules referred to the type of independent expenditures that are the subject of this proposed rulemaking as “nationwide independent expenditures.” As discussed below, however, the Commission has not yet determined the number of states in which an independent expenditure or electioneering communication must be distributed to fall under the proposed rules. Accordingly, such communications are referred to in this Notice as “multistate” — rather than “nationwide” — independent expenditures and electioneering communications.

<sup>2</sup> Memo text is a means of including additional information or explanation about a receipt or disbursement on a Commission form when filing electronically. See FEC, Campaign Guide for Nonconnected Committees 66 (2008), available at <http://www.fec.gov/pdf/nongui.pdf>; FEC, FECFile User Manual, [http://efilingapps.fec.gov/fecfiledoc/module\\_7\\_5.html](http://efilingapps.fec.gov/fecfiledoc/module_7_5.html) (version 8.0.6). Paper filers may insert such information manually.

1 whether the expenditure was publicly distributed within the reporting period for 24-hour  
2 reports. Finally, Draft C would have provided the same reporting guidance as Draft B,  
3 except that Draft C would have instructed filers to use the date of the next presidential  
4 primary election (rather than the beginning of the national nominating convention) to  
5 determine whether the expenditure was publicly distributed within the 24-hour reporting  
6 window.

7 The Commission received two comments on the Draft Interpretive Rules.<sup>3</sup> Both  
8 comments generally supported Draft B. Both comments also argued that the approach in  
9 Draft A was unnecessarily complex and would not provide clear information to the public  
10 about the reported independent expenditures.

11 After reviewing the comments and engaging in further deliberation, the  
12 Commission has determined that this issue would be better addressed through regulatory  
13 amendments than through an interpretive rule. Accordingly, the Commission is now  
14 seeking comment on proposed revisions to its regulations regarding reporting of  
15 independent expenditures and electioneering communications.

16 **II. Proposed Revisions to 11 CFR 104.3 and 104.4 – Reporting Multistate**  
17 **Independent Expenditures by Political Committees**

18 As set forth below, the Commission proposes revisions to section 104.3,  
19 concerning the content of independent expenditure reports by political committees, and  
20 section 104.4, concerning the timing of independent expenditure reports by political  
21 committees. The Commission seeks comment on these revisions, which are intended to  
22 clarify the reporting obligations of a political committee when it makes a multistate  
23 independent expenditure.

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<sup>3</sup> These comments are available on the Commission's website at <http://www.fec.gov/law/policy.shtml>.

1            A. Proposed New 11 CFR 104.3(b)(3)(vii)(C) – Content of Reports

2            In section 104.3, the Commission proposes adding new paragraph (b)(3)(vii)(C),  
3            which would require that when a political committee makes an independent expenditure  
4            in support of or in opposition to a candidate in a presidential primary election, and the  
5            communication is publicly distributed or otherwise disseminated in more than a specified  
6            number of states but does not refer to any particular state, the political committee must  
7            report the independent expenditure as a single expenditure and use memo text to indicate  
8            the states where the communication is distributed. The Commission would also  
9            redesignate current paragraph (b)(3)(vii)(C) as paragraph (b)(3)(vii)(D).

10           The Commission seeks comment on the proposed new provision. Would the  
11           proposed paragraph provide sufficient guidance to political committees reporting  
12           multistate independent expenditures? Is the proposed provision necessary or desirable to  
13           provide full, accurate, and timely disclosure to the public regarding multistate  
14           independent expenditures that are made by political committees?

15           The Commission also seeks comment on the number of states that would be the  
16           threshold for a communication to fall within the new paragraph. Requiring an  
17           independent expenditure to be “nationwide” — i.e., disseminated in all fifty states plus  
18           the District of Columbia (and possibly Puerto Rico, Guam, and American Samoa) —  
19           would exclude some independent expenditures that are distributed in a large number of  
20           states (e.g., the entire continental United States). This would significantly limit the  
21           benefits and application of the proposed reporting rule. Alternatively, applying the new  
22           provision to independent expenditures that are disseminated in only a handful of states  
23           might result in independent expenditures that are targeted to a specific state’s primary —  
24           but partially distributed in neighboring states that share its media markets — being

1 misleadingly reported as “multistate” communications. In how many states should an  
2 independent expenditure have to be distributed to fall within the proposed new reporting  
3 rule? Should the rule specify a particular number of states, or are there other ways to  
4 effectively delineate the communications that would be reported as multistate  
5 independent expenditures?

6         The proposed new paragraph would represent a change from the Commission’s  
7 previous guidance on this issue. In Advisory Opinion 2011-28 (Western Representation  
8 PAC), the Commission instructed political committees to allocate the cost of a multistate  
9 independent expenditure among all the states where the communication was distributed.  
10 None of the persons who commented on the Draft Interpretive Rules supported retaining  
11 that approach, and the Commission is not proposing it here. Nonetheless, are there  
12 advantages to that approach that the Commission should consider in crafting the new  
13 rule?

14         If the proposed new paragraph is adopted, the Commission recognizes that  
15 implementing it would likely require modifying the instructions for the Commission’s  
16 Schedule E form. The Commission anticipates that these modified instructions would  
17 provide political committees flexibility on how to report the states where the multistate  
18 independent expenditure is distributed. For example, the instructions would permit the  
19 memo text for a multistate independent expenditure to indicate that the independent  
20 expenditure was distributed “nationwide,” in “all fifty states,” in “IN, OH, WI, MI, MN,  
21 IL, PA, MO,” or in “all states except Alaska and Hawaii,” etc. Would such instructions  
22 provide sufficient guidance and flexibility to filers? Should the Commission provide  
23 more specific guidelines on how political committees should indicate the states where

1 multistate independent expenditures are distributed? Should the proposed new regulation  
2 address this issue specifically? If so, how?

3 B. Proposed New 11 CFR 104.4(f)(2) – Timing of Reports

4 In section 104.4, the Commission is proposing to redesignate current paragraph  
5 (f) as paragraph (f)(1) and add new paragraph (f)(2), concerning when a political  
6 committee must file a 24- or 48-hour report for a multistate independent expenditure.  
7 The Commission is proposing two alternative provisions for this paragraph and seeks  
8 comment on which alternative is preferable.

9 Under either alternative, a political committee that makes a multistate  
10 independent expenditure would report it as a single expenditure, as discussed above.  
11 Under Alternative A, which follows the approach proposed in Draft Interpretive Rule B,  
12 the political committee would use the date of the national nominating convention for the  
13 clearly identified candidate’s party as the date of the election to determine whether the  
14 independent expenditure is within the 20 days before the election and is therefore subject  
15 to the 24-hour reporting requirement under 52 U.S.C. 30104(g)(1). Under Alternative B,  
16 which follows the approach proposed in Draft Interpretive Rule C, the political  
17 committee would make this determination by using as the date of the election the date of  
18 the next upcoming presidential primary among the presidential primaries to be held in the  
19 states in which the independent expenditure is distributed or disseminated.

20 The Commission seeks comment on these two alternatives. Do they provide  
21 sufficient guidance to political committees as to how to determine whether they must file  
22 24-hour or 48-hour reports for multistate independent expenditures? Are the two  
23 alternatives preferable to the Commission’s existing guidance under Advisory Opinion  
24 2011-28 (Western Representation PAC)? Would the alternatives enhance the public’s

1 access to full, accurate, and timely information about multistate independent  
2 expenditures?

3 With regard to determining the date of the relevant election, the Commission  
4 seeks comment on which alternative is preferable with respect to (a) the burden on the  
5 political committees that must report their multistate independent expenditures, or (b) the  
6 usefulness of the information disclosed to the public. Are there other approaches that  
7 might be preferable to either proposed alternative?

8 **III. Proposed Revision to 11 CFR 109.10 – Reporting Multistate Independent**  
9 **Expenditures by Persons Other Than Political Committees**

10 The Commission proposes to incorporate by reference into 11 CFR 109.10(e) —  
11 which addresses the content of independent expenditure reports filed by persons other  
12 than political committees — the requirements for reporting multistate independent  
13 expenditures that the Commission proposes to add to section 104.3(b)(3)(vii)(C).  
14 Specifically, revised section 109.10(e)(1)(iv) would provide that when a person other  
15 than a political committee makes an expenditure meeting the criteria set forth in section  
16 104.3(b)(3)(vii)(C) (*i.e.*, an independent expenditure that supports or opposes a  
17 presidential primary candidate and that is distributed in more than the specified number  
18 of states but does not refer to any particular state), the person must report the expenditure  
19 pursuant to the provisions of section 104.3(b)(3)(vii)(C).

20 The Commission requests comments on this proposed revision to 11 CFR 109.10.  
21 Should the reporting requirements for multistate independent expenditures made by  
22 persons other than political committees parallel the reporting requirements for multistate  
23 independent expenditures made by political committees? Although Advisory Opinion  
24 2011-28 (Western Representation PAC) and the Draft Interpretive Rules did not address

1 how persons other than political committees should report multistate independent  
2 expenditures, is there any legal or policy reason that the reporting requirements for  
3 political committees and for other persons should differ in the context of multistate  
4 independent expenditures? Does the proposed revision to section 109.10 clarify the  
5 reporting obligations of persons who make multistate independent expenditures? Is the  
6 proposed revision to section 109.10 necessary or desirable to provide full, accurate, and  
7 timely disclosure to the public regarding multistate independent expenditures made by  
8 persons other than political committees? Would the proposed revision reduce or increase  
9 the administrative burden on such persons? If the proposed revision does increase the  
10 administrative burden on such persons, is that burden outweighed by the usefulness of the  
11 information disclosed to the public?

12 **IV. Proposed Revision to 11 CFR 104.20 – Electioneering Communications**

13 In section 104.20(c), which concerns the content of reports regarding  
14 electioneering communications, the Commission proposes to add a new paragraph (c)(6)  
15 and redesignate current paragraphs (c)(6)-(9) as paragraphs (c)(7)-(10). Proposed new  
16 paragraph (c)(6) would apply when the relevant election (which the reporting person is  
17 required to disclose pursuant to paragraph (c)(5)) is a presidential primary election and  
18 the electioneering communication is distributed in more than a specified number of states  
19 but does not refer to any particular state’s primary election. In such situations, this new  
20 paragraph would provide that the reporting person must report the electioneering  
21 communication as a single communication and use memo text to indicate the states in  
22 which the communication constitutes an electioneering communication (as defined in 11

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1 CFR 100.29(a)). The proposed revision would thus treat multistate electioneering  
2 communications similarly to multistate independent expenditures, as discussed above.

3 The Commission seeks comment on the proposed revision to section 104.20.  
4 Should multistate electioneering communications be treated similarly to multistate  
5 independent expenditures, or are there differences between the two types of  
6 communications or the persons that make them that would call for different reporting  
7 requirements? Should the same number of states constitute the threshold for multistate  
8 independent expenditures and multistate electioneering communications? Would the  
9 proposed new paragraph increase or decrease the administrative burden on persons  
10 reporting electioneering communications? If the proposed revision does increase the  
11 administrative burden on such persons, is that burden outweighed by the usefulness of the  
12 information disclosed to the public? Would the proposed revision provide sufficient  
13 information on how persons making multistate electioneering communications should  
14 disclose them? Is the proposed revision necessary or desirable to provide full, accurate,  
15 and timely disclosure of information about multistate electioneering communications to  
16 the public?

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

18 The Commission certifies that the attached proposed rules, if adopted, would not  
19 have a significant economic impact on a substantial number of small entities. The  
20 proposed rules would provide for consolidated reporting of certain independent  
21 expenditures and electioneering communications that the Commission's current reporting  
22 guidance indicates should be allocated among elections in multiple states. The  
23 Commission anticipates that the proposed consolidation of these reports would generally

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1 result in a modest reduction of the administrative burdens on reporting entities, and it  
2 would not impose any new reporting obligations. Thus, to the extent that any entities  
3 affected by these proposed rules might fall within the definition of “small businesses” or  
4 “small organizations,” the economic impact of complying with these rules would not be  
5 significant.

6

7 **List of Subjects**

8 11 CFR Part 104

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

11 11 CFR Part 109

12 Elections, Reporting and recordkeeping requirements.

13

14

1 For the reasons set out in the preamble, the Federal Election Commission  
2 proposes to amend 11 CFR chapter 1, as follows:

3 **Part 104 – Reports by political committees and other persons (52 U.S.C. 30104)**

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

5 Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(i), 30104, 30111(a)(8) and  
6 (b), 30114, 30116, 36 U.S.C. 510.

7 2. In section 104.3, new paragraph 104.3(b)(3)(vii)(C) would be added and  
8 paragraph (C) would be redesignated as paragraph (D) to read as follows:

9 **§ 104.3 Contents of Reports**

10 \* \* \* \* \*

11 (b) \* \* \*

12 (3) \* \* \*

13 (vii) \* \* \*

14 (C) For an independent expenditure that is made in support of  
15 or opposition to a presidential primary candidate and is  
16 publicly distributed or otherwise publicly disseminated in  
17 more than \_\_\_ states but does not refer to any particular  
18 state, the political committee must report the independent  
19 expenditure as a single expenditure — i.e., without  
20 allocating it among states — and must use memo text to  
21 indicate the states in which the communication is  
22 distributed.

1 (D) The information required by 11 CFR 104.3(b)(3)(vii)(A)-  
2 (C) shall be reported on Schedule E as part of a report  
3 covering the reporting period in which the aggregate  
4 disbursements for any independent expenditure to any  
5 person exceed \$200 per calendar year. Schedule E shall  
6 also include the total of all such expenditures of \$200 or  
7 less made during the reporting period.

8 \* \* \* \* \*

9 3. In section 104.4, paragraph (f) would be redesignated as new paragraph (f)(1),  
10 and new paragraph (f)(2) would be added to read as follows:

11 **§ 104.4 Independent expenditures by political committees**

12 \* \* \* \* \*

13 (f) Aggregating independent expenditures for reporting purposes

14 (1) For purposes of determining whether 24-hour and 48-hour reports  
15 must be filed in accordance with paragraphs (b) and (c) of this  
16 section and 11 CFR 109.10(c) and (d), aggregations of independent  
17 expenditures must be calculated as of the first date on which a  
18 communication that constitutes an independent expenditure is  
19 publicly distributed or otherwise publicly disseminated, and as of  
20 the date that any such communication with respect to the same  
21 election is subsequently publicly distributed or otherwise publicly  
22 disseminated. Every person must include in the aggregate total all  
23 disbursements during the calendar year for independent

1 expenditures, and all enforceable contracts, either oral or written,  
2 obligating funds for disbursements during the calendar year for  
3 independent expenditures, where those independent expenditures  
4 are made with respect to the same election for Federal office.

5 Alternative A

6 (2) For purposes of determining whether 24-hour or 48-hour reports  
7 must be filed in accordance with paragraphs (b) and (c) of this  
8 section and 11 CFR 109.10(c) and (d), if the independent  
9 expenditure is made in support of or opposition to a candidate in a  
10 presidential primary election and is publicly distributed or  
11 otherwise publicly disseminated in more than \_\_\_ states but does  
12 not refer to any particular state, the date of the election is the first  
13 day of the national nominating convention of the party whose  
14 nomination the candidate is seeking.

15 Alternative B

16 (2) For purposes of determining whether 24-hour or 48-hour reports  
17 must be filed in accordance with paragraphs (b) and (c) of this  
18 section and 11 CFR 109.10(c) and (d), if the independent  
19 expenditure is made in support of or opposition to a candidate in a  
20 presidential primary election and is publicly distributed or  
21 otherwise publicly disseminated in more than \_\_\_ states but does  
22 not refer to any particular state, the date of the election is the date  
23 of the next upcoming presidential primary election among the

1 presidential primary elections to be held in the states in which the  
2 independent expenditure is publicly distributed or disseminated.

3 4. In section 104.20, the heading would be revised, new paragraph (c)(6) would be  
4 added, and (c)(6)-(c)(9) would be redesignated as paragraphs (c)(7)-(c)(10) to read as  
5 follows:

6 **§ 104.20 Reporting electioneering communications (52 U.S.C. 30104(f)).**

7 \* \* \* \* \*

8 (c) \* \* \*

9 (6) If the election identified pursuant to paragraph (c)(5) is a presidential  
10 primary election and the electioneering communication is publicly distributed or  
11 otherwise disseminated in more than \_\_\_ states but does not refer to any particular state,  
12 the electioneering communication shall be reported as a single communication, and the  
13 states in which it constitutes an electioneering communication (as defined in 11 CFR  
14 100.29(a)) shall be indicated in memo text.

15 **Part 109 – Coordinated and Independent Expenditures (52 U.S.C. 30101(17),**  
16 **30116(a) and (d), and Pub. L. 107-155 Sec. 214(c))**

17 5. The authority citation for part 109 would continue to read as follows:  
18 Authority: 52 U.S.C. 30101(17), 30104(c), 30111(a)(8), 30116, 30120; Sec. 214(c), Pub.  
19 L. 107-155, 116 Stat. 81.

20 6. In section 109.10, paragraph (e)(1)(iv) would be revised as follows:

21 **§ 109.10 How do political committees and other persons report independent**  
22 **expenditures?**

23 \* \* \* \* \*

24 (e) Content of verified reports and statements and verification of reports and

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1 statements.

2 (1) \* \* \*

3 (iv) A statement that indicates whether such expenditure was in support  
4 of, or in opposition to a candidate, together with the candidate's name and office sought;  
5 if the expenditure meets the criteria set forth in section 104.3(b)(3)(vii)(C), memo text  
6 must be used to indicate the states in which the communication is distributed, as  
7 prescribed in that section;

8 \* \* \* \* \*

9

10 On behalf of the Commission,

11

12 Ann M. Ravel,  
13 Chair,  
14 Federal Election Commission.  
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17 DATED: \_\_\_\_\_  
18 BILLING CODE: 6715-01-P

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