

AGENDA DOCUMENT NO. 16-12-A



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM

March 10, 2016

For Meeting of 3-16-16

MEMORANDUM

TO: The Commission

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SUBJECT: REG 2015-06 (Technical Amendments to 2015 CFR) Draft A

Attached is a draft final rule that makes technical and conforming changes to the 2015 CFR. We request that this be placed on the open session agenda for the March 16, 2016 meeting.

Attachments

SUBMITTED LATE

FEDERAL ELECTION COMMISSION

11 CFR Parts 4, 100, 104, 106, 109, 110, 113, 114, 9004, and 9034

[NOTICE 2016–xx]

Technical Amendments and Corrections

AGENCY: Federal Election Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is making technical corrections to various sections of its regulations.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Lynch, Paralegal, 999 E Street, NW., Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Background

The existing rules that are the subject of these corrections are part of the continuing series of regulations that the Commission has promulgated to implement the Presidential Election Campaign Fund Act, 26 U.S.C. 9001-13, and the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031-42 (collectively, the “Funding Acts”), and the Federal Election Campaign Act, 52 U.S.C. 30101-46 (“FECA”). The Commission is promulgating these corrections without advance notice or an opportunity for comment because they fall under the “good cause” exemption of the Administrative Procedure Act. 5 U.S.C. 553(b)(B). The Commission finds that notice and comment are unnecessary here because these corrections are merely typographical and technical; they effect no substantive changes to any rule. For the same reason, these corrections fall within the “good cause” exception to the delayed effective date

1 provisions of the Administrative Procedure Act and the Congressional Review Act. 5 U.S.C.
2 553(d)(3), 808(2).

3 Moreover, because these corrections are exempt from the notice and comment procedure
4 of the Administrative Procedure Act under 5 U.S.C. 553(b), the Commission is not required to
5 conduct a regulatory flexibility analysis under 5 U.S.C. 603 or 604. See 5 U.S.C. 601(2), 604(a).
6 Nor is the Commission required to submit these revisions for congressional review under FECA
7 or the Funding Acts. See 52 U.S.C. 30111(d)(1), (4) (providing for congressional review when
8 Commission “prescribe[s]” a “rule of law”); 26 U.S.C. 9009(c)(1), (4), 9039(c)(1), (4) (same).
9 Accordingly, these corrections are effective upon publication in the Federal Register.

10 **Corrections to FECA and Funding Act Rules in Chapter I of Title 11 of the Code of**
11 **Federal Regulations**

12 A. Correction to 11 CFR 4.8

13 The Commission is updating paragraph (a) of this section regarding when a person may
14 appeal the Commission’s failure to respond to a document inspection or production request filed
15 under the Freedom of Information Act (“FOIA”), 5 U.S.C. 552. Paragraph (a) currently provides
16 that a person may appeal the Commission’s failure to respond if the person has received no
17 response within ten working days after the Commission received the FOIA request. When
18 originally promulgated, this ten-day time period accurately reflected the time the Commission
19 had to respond to a FOIA request. See 5 U.S.C. 552(a)(6)(A)(i) (1979); Public Records and
20 Freedom of Information Act, 44 FR 33368 (June 8, 1979) (promulgating section 4.7(c), giving
21 Commission ten working days to respond to FOIA request, and section 4.8(a), allowing FOIA
22 requestors who did not receive response within ten working days to file appeals). Subsequently,
23 however, Congress amended FOIA to allow agencies 20 days in which to respond to FOIA

1 requests, and the Commission revised its own response period in 11 CFR 4.7(c) accordingly.
2 See Electronic Freedom of Information Act Amendments, 65 FR 9201 (Feb. 24, 2000). The
3 Commission did not, however, make the necessary corresponding change to the regulation
4 governing the time for filing an appeal. Accordingly, to conform the time period for appealing
5 the Commission’s failure to respond with the time that the Commission has to respond, the
6 Commission is revising paragraph (a) by removing the word “ten” and replacing it with
7 “twenty.”

8 B. Correction to 11 CFR 100.54

9 The Commission is correcting two erroneous citations in the introductory paragraph of
10 this section. This paragraph erroneously refers to 11 CFR 100.74 and 100.75 in discussing the
11 exemption of certain legal and accounting services from the definition of “contribution.” That
12 exemption is set forth in sections 100.85 and 100.86, not in sections 100.74 and 100.75 (which
13 address volunteer services and the use of a volunteer’s real or personal property). Accordingly,
14 the Commission is removing the citations to 11 CFR 100.74 and 100.75 and replacing them with
15 11 CFR 100.85 and 100.86, respectively.

16 C. Corrections to 11 CFR 104.4

17 The Commission is revising paragraphs (b)(1) and (b)(2) of this section to remove an
18 ambiguity regarding the reporting requirements for political committees making independent
19 expenditures in a calendar year. These paragraphs require political committees to report all
20 independent expenditures aggregating less than \$10,000 (paragraph (b)(1)) or \$10,000 or more
21 (paragraph (b)(2)) with respect to a given election made “at any time during the calendar year up
22 to and including the 20th day before an election.” Some reporting entities have expressed
23 uncertainty as to whether this language signifies that reporting is not required in a calendar year

1 other than an election year. As the Commission noted in promulgating this section, the reporting
2 requirement applies to independent expenditures made by a political committee “at any time”
3 and “at any point in the campaign,” up to and including 20 days before an election. 52 U.S.C.
4 30104(g)(2); Bipartisan Campaign Reform Act of 2002 Reporting, 68 FR 404, 406 (Jan. 3,
5 2003). To clarify that a political committee must report independent expenditures aggregating
6 less than \$10,000, or \$10,000 or more, with respect to a given election made in any calendar
7 year, the Commission is replacing the references to “the calendar year” with “a calendar year.”

8 D. Corrections to 11 CFR 104.18

9 The Commission is revising paragraphs (b) and (g) of this section to reflect the
10 availability and use of internet-based forms to file reports electronically with the Commission.
11 The Commission has made a number of these forms available for use by filers on its website, at
12 www.fec.gov. Paragraph (b) provides that a political committee or other person not required to
13 file reports electronically with the Commission may nonetheless choose to file reports in an
14 electronic format that meets the requirements of this section, and a person who chooses to file
15 reports electronically is generally required to continue to file electronically for the rest of that
16 calendar year. The Commission is adding a reference to internet-based forms to paragraph (b),
17 as an example of an electronic format that meets the requirements of this section.

18 Paragraph (g) requires the treasurer of a political committee and other persons
19 responsible for filing reports with the Commission to verify the reports in specific ways. The
20 Commission is revising paragraph (g) to clarify that a signed certification on a Commission
21 internet form meets the verification requirement.

22 The Commission is also correcting a typographical error in paragraph (a)(3)(i)(A) of this
23 section by replacing the phrase “nets debts” with the phrase “net debts.”

1 E. Correction to 11 CFR 106.6

2 The Commission is correcting an erroneous citation in paragraph (d)(1) of this section.
3 Paragraph (d)(1) requires a political committee that collects both federal and nonfederal funds
4 through a joint activity to allocate its direct costs of fundraising “as described in paragraph (a)(2)
5 of this section” in a certain manner. Paragraph (a)(2) of this section, however, does not exist.
6 Instead, the direct costs of fundraising are described in paragraph (b)(1) of this section. Thus,
7 the Commission is replacing the reference to paragraph (a)(2) in paragraph (d)(1) with a
8 reference to paragraph (b)(1).

9 F. Correction to 11 CFR 106.7

10 The Commission is correcting an erroneous citation in paragraph (d)(1)(ii) of this section.
11 Paragraph (d)(1)(ii) requires state, district, and local party committees to use only federal funds
12 to pay the salaries, wages, and fringe benefits of employees who spend more than 25% of their
13 compensated time on federal election activities or activities in connection with a federal election,
14 and cites to 11 CFR 300.33(d)(1). Paragraph (d)(1) of section 300.33, however, concerns
15 employees who spend 25% or less of their compensated time on federal election activities or
16 activities in connection with a federal election. Paragraph (d)(2) of section 300.33, on the other
17 hand, relates to the payment of employees spending more than 25% of their compensated time on
18 such activities. Accordingly, the Commission is replacing the reference to 11 CFR 300.33(d)(1)
19 in paragraph (d)(1)(ii) with 11 CFR 300.33(d)(2).

20 G. Correction to 11 CFR 109.10

21 The Commission is revising paragraph (c) of this section to remove an ambiguity
22 regarding the reporting requirements for persons who are not political committees and make
23 \$10,000 or more in independent expenditures in a calendar year. For the reasons explained

1 above regarding the amendments to section 104.4, the Commission is replacing the reference to
2 “the calendar year” with “a calendar year.”

3 H. Correction to 11 CFR 110.1

4 The Commission is correcting a typographical error in paragraph (b)(6) of this section.
5 This Commission is replacing the reference to 11 CFR 110.1(1)(4) with a reference to 11 CFR
6 110.1(l)(4) (lowercase letter L).

7 I. Correction to 11 CFR 110.2

8 The Commission is correcting a typographical error in paragraph (b)(6) of this section.
9 The Commission is replacing the reference to 11 CFR 110.1(1)(4) with a reference to 11 CFR
10 110.1(l)(4) (lowercase letter L).

11 J. Correction to 11 CFR 113.1

12 The Commission is correcting an erroneous citation in paragraph (g)(1)(i)(I) of this
13 section. The last sentence of paragraph (g)(1)(i)(I) prohibits “[a] Federal officeholder, as defined
14 in 11 CFR 100.5(f)(1),” from receiving salary payments from campaign funds as a candidate.
15 Paragraph (f)(1) of section 100.5, however, defines “authorized committee,” not “Federal
16 officeholder.” Paragraph (c) of section 113.1, on the other hand, defines “Federal officeholder.”
17 As such, in the last sentence of paragraph (g)(1)(i)(I), the Commission is replacing “11 CFR
18 100.5(f)(1)” with “paragraph (c) of this section.”

19 K. Corrections to 11 CFR 114.2

20 The Commission is making a conforming change to the note to paragraph (b) of this
21 section. In the note, the word “non-connected” appears twice. The Commission is replacing
22 both references to “non-connected” with “nonconnected” to conform the word to how it appears
23 in the rest of 11 CFR chapter 1.

1 L. Corrections to 11 CFR 114.10

2 For the reasons noted above regarding the correction to section 114.2, the Commission is
3 replacing both references to “non-connected” in the note to section 114.10(a) with
4 “nonconnected.”

5 M. Correction to 11 CFR 9004.6

6 The Commission is correcting a typographical error in paragraph (c) of this section. The
7 Commission is removing the misspelled word “Deduction” and replacing it with the word
8 “Deduction.”

9 N. Correction to 11 CFR 9034.2

10 The Commission is correcting an erroneous citation in paragraph (c)(1)(iii) of this
11 section. This paragraph addresses the reattribution of contributions among joint tenants of a
12 checking account, and requires the documentation “described in 11 CFR 110.1(1), (3), (5), and
13 (6)” to accompany the reattributed contribution. The citation to 11 CFR 110.1(1), (3), (5), and
14 (6) is incorrect, however, because those paragraphs do not exist. Instead, the documentation
15 requirements for reattributed contributions appear in paragraph (l) (lowercase letter L) of section
16 110.1. Accordingly, the Commission is replacing the reference to 11 CFR 110.1(1), (3), (5), and
17 (6) in section 9034.2 with 11 CFR 110.1(l)(3), (5), and (6).

18 **List of Subjects**

19 11 CFR Part 4

20 Freedom of information.

21 11 CFR Part 100

22 Elections.

23 11 CFR Part 104

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

3 11 CFR Part 106

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

6 11 CFR 109

7 Coordinated and independent expenditures.

8 11 CFR 110

9 Campaign funds, Political committees and parties.

10 11 CFR Part 113

11 Campaign funds, Political candidates.

12 11 CFR Part 114

13 Business and industry, Elections, Labor.

14 11 CFR Part 9004

15 Campaign funds.

16 11 CFR Part 9034

17 Campaign funds, Reporting and recordkeeping requirements.

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1 For the reasons set out in the preamble, the Federal Election Commission amends 11
2 CFR chapter I, as follows:

3 **Part 4 – Public records and the Freedom of Information Act**

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

5 Authority: 5 U.S.C. 552, as amended.

6 **§ 4.8 [Amended]**

7 2. Amend paragraph (a) of § 4.8 to remove “ten” and add, in its place, “twenty”.

8 **Part 100 – Scope and definitions (52 U.S.C. 30101)**

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

10 Authority: 52 U.S.C. 30101, 30104, 30111(a)(8), and 30114(c).

11 **§ 100.54 [Amended]**

12 4. Amend the introductory paragraph of §100.54 to remove “11 CFR 100.74 and 100.75”
13 and add, in its place, “11 CFR 100.85 and 100.86”.

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

15 5. The authority citation for part 104 continues to read as follows:

16 Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(i), 30104, 30111(a)(8) and (b),
17 30114, 30116, 36 U.S.C. 510.

18 **§ 104.4 [Amended]**

19 6. In § 104.4:

20 a. Amend paragraph (b)(1) to remove “the” before “calendar year” and add, in its
21 place, “a”.

22 b. Amend paragraph (b)(2) to remove “the” before “calendar year” and add, in its
23 place, “a”.

1 **§ 104.18 [Amended]**

2 7. In § 104.18:

3 a. Amend paragraph (a)(3)(i)(A) to remove “nets debts” and add, in its place, “net
4 debts”.

5 b. Amend paragraph (b) to add “(internet forms included)” after “the requirements
6 of this section”.

7 c. Amend paragraph (g) to add “; or by submitting a signed certification on a
8 Commission internet form” after “in the electronic submission”.

9 **Part 106 – Allocations of candidate and committee activities**

10 8. The authority citation for part 106 continues to read as follows:

11 Authority: 52 U.S.C. 30111(a)(8), 30116(b), 30116(g).

12 **§ 106.6 [Amended]**

13 9. Amend the first sentence of paragraph (d)(1) of § 106.6 to remove “as described in
14 paragraph (a)(2) of this section” and add, in its place, “as described in paragraph (b)(1) of this
15 section”.

16 **§ 106.7 [Amended]**

17 10. Amend paragraph (d)(1)(ii) of § 106.7 to remove “11 CFR 300.33(d)(1)” and add, in its
18 place, “11 CFR 300.33(d)(2)”.

19 **Part 109 – Coordinated and independent expenditures (52 U.S.C. 30101(17), 30116(a) and
20 (d), and Pub. L. 107-155 Sec. 214(C))**

21 11. The authority citation for part 109 continues to read as follows:

22 Authority: 52 U.S.C. 30101(17), 30104(c), 30111(a)(8), 30116, 30120; Sec. 214(c), Pub. L. 107-
23 155, 116 Stat. 81.

1 **§ 109.10 [Amended]**

2 12. Amend paragraph (c) of § 109.10 to remove “the” before “calendar year” and add, in its
3 place, “a”.

4 **Part 110 – Contribution and expenditure limitations and prohibitions**

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

6 Authority: 52 U.S.C. 30101(8), 30101(9), 30102(c)(2), 30104(i)(3), 30111(a)(8), 30116, 30118,
7 30120, 30121, 30122, 30123, 30124, and 36 U.S.C. 510.

8 **§ 110.1 [Amended]**

9 14. Amend paragraph (b)(6) to remove “11 CFR 110.1(1)(4)” and add, in its place, “11 CFR
10 110.1(l)(4)”.

11 **§ 110.2 [Amended]**

12 15. Amend paragraph (b)(6) to remove “11 CFR 110.1(1)(4)” and add, in its place, “11 CFR
13 110.1(l)(4)”.

14 **Part 113 – Permitted and prohibited uses of campaign accounts**

15 16. The authority citation for part 113 continues to read as follows:

16 Authority: 52 U.S.C. 30102(h), 30111(a)(8), 30114, and 30116.

17 **§ 113.1 [Amended]**

18 17. Amend the last sentence of paragraph (g)(1)(i)(I) of § 104.4 to remove “11 CFR
19 100.5(f)(1)” and add, in its place, “paragraph (c) of this section”.

20 **Part 114—Corporate and labor organization activity**

21 18. The authority citation for part 114 continues to read as follows:

22 Authority: 52 U.S.C. 30101(8), 30101(9), 30102, 30104, 30107(a)(8), 30111(a)(8), 30118.

23 **§ 114.2 [Amended]**

1 19. Amend the note to paragraph (b) of § 114.2 to remove all references to “non-connected”
2 and add, in their place, “nonconnected”.

3 **§ 114.10 [Amended]**

4 20. Amend the note to paragraph (a) of § 114.10 to remove all references to “non-connected”
5 and add, in their place, “nonconnected”.

6 **Part 9004—Entitlement of eligible candidates to payments; use of payments**

7 21. The authority citation for part 9004 continues to read as follows:

8 Authority: 26 U.S.C. 9004 and 9009(b).

9 **§ 9004.6 [Amended]**

10 22. Amend paragraph (c) of § 9004.6 to remove “Deduction” and add, in its place,
11 “Deduction”.

12 **Part 9034—Entitlements**

13 23. The authority citation for part 9034 continues to read as follows:

14 Authority: 26 U.S.C. 9034 and 9039(b).

15 **§ 9034.2 [Amended]**

16 24. Amend paragraph (c)(1)(iii) of § 9034.2 to remove “11 CFR 110.1(1), (3), (5), and (6)”
17 and add, in its place, “11 CFR 110.1(l)(3), (5), and (6)”.

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On behalf of the Commission,

Matthew S. Petersen
Chairman
Federal Election Commission.

DATED: _____
BILLING CODE: 6715-01-P