

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 300

[Notice 2004-17]

#### Political Party Committees Donating Funds to Certain Tax-Exempt Organizations and Political Organizations

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission requests comments on proposed amendments to its rules governing limitations on national, State, district, and local political party committees making or directing donations to certain tax-exempt organizations and political organizations. These proposed rules would conform to the decision of the U.S. Supreme Court in *McConnell v. FEC*, which included a narrowing construction of section 101 of the Bipartisan Campaign Reform Act of 2002. The Commission has not made any final decisions on the issues presented in this rulemaking. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

**DATES:** Comments must be received on or before January 10, 2005. If the Commission receives sufficient requests to testify, it may hold a hearing on these proposed rules. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

**ADDRESSES:** All comments should be addressed to Ms. Mai T. Dinh, Assistant General Counsel, and must be submitted in either electronic or written form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic mail comments should be sent to [partytaxexempts@fec.gov](mailto:partytaxexempts@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

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 the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. The Commission will post public comments on its Web site. If the Commission decides that a hearing is necessary, the hearing will be held in its ninth floor meeting room, 999 E Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mai T. Dinh, Assistant General Counsel, or Mr. Albert J. Kiss, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Bipartisan Campaign Reform Act of 2002, Public Law 107-155, 116 Stat. 81 (Mar. 27, 2002) ("BCRA"), contained extensive and detailed amendments to the Federal Election Campaign Act of 1971 ("FECA" or "the Act"), as amended, 2 U.S.C. 431 *et seq.* The Supreme Court upheld most of BCRA in *McConnell v. FEC*, 540 U.S. 93, 124 S. Ct. 619 (2003). Under BCRA section 101(a), a national, State, district or local political party committee must not solicit any funds for, or make or direct donations to, certain tax-exempt organizations. 2 U.S.C. 441i(d). Section 441i(d)'s restrictions apply to solicitations for, and making or directing donations to, two types of tax-exempt organizations ("certain tax-exempt organizations"). These consist of (1) organizations described in 26 U.S.C. 501(c) that are exempt from tax under 26 U.S.C. 501(a) (or that have submitted an application for determination of tax exempt status under section 501(a) and that make expenditures or disbursements in connection with an election for Federal office (including expenditures or disbursements for Federal election activity); and (2) political organizations described in 26 U.S.C. 527 (other than a political committee, a State, district or local committee of a political party, or the authorized campaign committee of a candidate for State or local office).

In 2002, the Commission promulgated rules at 11 CFR 300.11, 300.37, 300.50,

and 300.51 implementing 2 U.S.C. 441i(d). *Explanation and Justification for Rules on Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 FR 49,064, 49,089-49,091, and 49,105-49,106 (July 29, 2002). Except for the title of each, the final rule at 11 CFR 300.11 is identical to the final rule at 11 CFR 300.50, and the final rule at 11 CFR 300.37 is identical to the final rule at 11 CFR 300.51. *Id.* at 49,106.

Subsequently, the Supreme Court upheld 2 U.S.C. 441i(d)'s prohibitions on the solicitation of funds for certain tax-exempt organizations. In a separate analysis, however, the Supreme Court stated that 2 U.S.C. 441i(d) raises overbreadth concerns "if read to restrict donations from a party's federal account—*i.e.*, funds that have already been raised in compliance with FECA's source, amount and disclosure limitations." *McConnell*, 124 S. Ct. at 680-681. The Court found "no evidence that Congress was concerned about, much less that it intended to prohibit, donations of money already fully regulated by FECA \* \* \* [t]hus, political parties remain free to make or direct donations of money to any tax-exempt organization that has otherwise been raised in compliance with FECA." *Id.* at 681-682. Accordingly, the Commission now proposes to modify its regulations at 11 CFR 300.11, 300.37, 300.50 and 300.51 to provide that the prohibition on political party committees<sup>1</sup> making or directing donations to certain tax-exempt organizations is limited to donations of non-Federal funds and thus would not apply to donations of Federal funds to these organizations.

<sup>1</sup> These restrictions also apply to the national congressional campaign committees and to "an entity that is directly or indirectly established, financed, maintained, or controlled by any such national, State, district, or local committee or its agent, and an officer or agent acting on behalf of any such party committee or entity \* \* \*" and references to political party committees in this Notice of Proposed Rulemaking also include these entities, agents and officers. See 2 U.S.C. 441i(d); 11 CFR 300.11(b), 300.37(b), 300.50(b), and 300.51(b); see also Advisory Opinion 2004-25 (concluding that the chairman of a national congressional campaign committee, under the facts presented, was acting in his personal capacity and not as an officer or agent of a national congressional campaign committee when donating his personal funds to organizations engaged in voter registration activity).

### **I. Proposed 11 CFR 300.11— Prohibitions on Fundraising For And Donating To Certain Tax-Exempt Organizations**

The Commission proposes to revise 11 CFR 300.11 by modifying the prohibition in current section 300.11 on national party committees, making or directing any donations to certain tax-exempt organizations. As modified, section 300.11 would prohibit the making or directing of donations of non-Federal funds to these organizations. Section 300.2(k) defines “non-Federal funds” as funds that are not subject to the limitations and prohibitions of the Act. 11 CFR 300.2(k).

As revised, section 300.11 would be consistent with 2 U.S.C. 441i(a)(1) and 11 CFR 300.10, under which national party committees may not solicit, receive, or direct to another person a contribution, donation or transfer of funds or any other thing of value, or spend any funds, not subject to the amount limitations, source prohibitions and reporting requirements of the Act, because national party committees are barred from accepting non-Federal funds.

Although only national party committees are the subject of the prohibitions in section 300.11, current paragraph 300.11(b)(3) erroneously expands the scope of these restrictions to include “an agent of a national, *State, district, or local party committee* of a political party” [emphasis added]. Accordingly, the Commission also proposes to make a technical correction to paragraph 300.11(b)(3) which would strike the reference to a State, district, or local party committee.

### **II. Proposed 11 CFR 300.37— Prohibitions on Fundraising For And Donating To Certain Tax-Exempt Organizations**

The Commission proposes revisions to 11 CFR 300.37, which applies to State, district and local party committees, that are similar to the proposed revisions to 11 CFR 300.11 discussed above. Under the draft amendments, a State, district, or local committee of a political party would be prohibited from soliciting any funds for, or making or directing any donations of non-Federal funds to, certain tax-exempt organizations.

The Commission invites comment on whether the Supreme Court’s rationale for limiting section 441i(d)’s prohibition on directing or donating non-Federal funds applies to Levin funds. See *McConnell*, 124 S. Ct. at 680–682. Levin funds are funds that a State, district or local party committee of a political

party raises itself pursuant to State law, and are limited to \$10,000 per calendar year from any person other than foreign nationals and those prohibited from making a donation under State law. 2 U.S.C. 441i(b)(2)(A)(ii); 11 CFR 300.2(h) and (i). A State, district or local committee of a political party may spend Levin funds on “[a]ny use that is lawful under the laws of the State in which the committee is organized” other than two types of Federal election activities: (1) Public communications that promote, support, attack or oppose a Federal candidate and (2) services provided by certain party committee employees. 11 CFR 300.32(b)(2). The donation of Levin funds is subject to amount limitations, certain source prohibitions, and reporting requirements under the FECA, even though these amount limitations, source prohibitions and reporting requirements are different than those applicable to Federal funds. See, e.g., 11 CFR 300.31(c) and (d) and 300.36(b). Thus, Levin funds may fall within the Supreme Court’s description of funds “already fully regulated by FECA,” and “otherwise \* \* \* raised in compliance with FECA” that are outside the Court’s narrow construction of the prohibition in 2 U.S.C. 441i(d). However, the Commission has stated that Levin funds are a “new type of non-Federal funds” and are “unlike Federal funds, which are fully subject to the Act’s requirements, and unlike ordinary non-Federal funds because they are subject to certain additional requirements under BCRA.” *Explanation and Justification to Final Rules; Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money*, 67 FR 49,064, 49,065, and 49,085 (July 29, 2002). The Commission invites comments on whether State, district and local political party committees should be allowed to make or direct donations of Levin funds to certain tax-exempt organizations to the extent permitted by State law.

### **III. Proposed 11 CFR 300.50— Prohibited Fundraising by National Party Committees**

For the reasons addressed above in the discussion of proposed section 300.11, the Commission proposes to revise 11 CFR 300.50 by modifying the prohibition in current section 300.50 on national party committees making or directing any donations to certain tax-exempt organizations. As modified, section 300.50 would prohibit national party committees from soliciting any funds for, or making or directing donations of non-Federal funds to, certain tax-exempt organizations.

The Commission also proposes to make a technical correction to 11 CFR 300.50(b)(3) that is similar to the proposed technical change to 11 CFR 300.11(b)(3) discussed above.

### **IV. Proposed 11 CFR 300.51— Prohibited Fundraising by State, District, or Local Party Committees**

For the reasons addressed above in the discussion of proposed sections 300.11 and 300.37, the Commission proposes to revise 11 CFR 300.51 to provide a State, district, or local committee of a political party is prohibited from soliciting any funds for, or making or directing any donations of non-Federal funds to, certain tax-exempt organizations.

For the reasons addressed in the discussion of proposed section 300.37, the Commission invites comment on whether or not Levin funds should be subject to the section 300.51 prohibition.

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

The Commission certifies that the attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the national, State, district and local party committees of the two major political parties are not small entities under 5 U.S.C. 601, and the number of other small entities to which the rules would apply is not substantial. Moreover, the proposed rules narrow the scope of certain restrictions applicable to the affected political party committees, and thus would not have a significant economic impact on the affected entities.

### **List of Subjects in 11 CFR Part 300**

Campaign funds, Nonprofit organizations, Political committees and parties.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapter C of chapter I of title 11 of the *Code of Federal Regulations* as follows:

### **PART 300—NON-FEDERAL FUNDS**

■ 1. The authority citation for Part 300 would continue to read as follows:

**Authority:** 2 U.S.C. 434(e), 438(a)(8), 441a(a), 441i, 453.

2. In § 300.11, the introductory text of paragraph (a) and paragraph (b)(3) would be revised to read as follows:

**§ 300.11 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i(d)).**

(a) *Prohibitions.* A national committee of a political party, including a national congressional campaign committee, must not solicit any funds for, or make or direct any donations of non-Federal funds to, the following organizations:

\* \* \* \* \*

(b) \* \* \*

(3) An entity that is directly or indirectly established, financed, maintained or controlled by an agent of a national committee of a political party, including a national congressional campaign committee.

\* \* \* \* \*

3. In § 300.37, the introductory text of paragraph (a) would be revised to read as follows:

**§ 300.37 Prohibitions on fundraising for and donating to certain tax-exempt organizations (2 U.S.C. 441i(d)).**

(a) *Prohibitions.* A State, district or local committee of a political party must not solicit any funds for, or make or direct any donations of non-Federal funds to:

\* \* \* \* \*

4. In § 300.50, the introductory text of paragraph (a) and paragraph (b)(3) would be revised to read as follows:

**§ 300.50 Prohibited fundraising by national party committees (2 U.S.C. 441i(d)).**

(a) *Prohibitions on fundraising and donations.* A national committee of a political party, including a national congressional campaign committee, must not solicit any funds for, or make or direct donations of non-Federal funds to the following organizations:

\* \* \* \* \*

(b) \* \* \*

(3) An entity that is directly or indirectly established, financed, maintained or controlled by an agent of a national committee of a political party, including a national congressional campaign committee.

\* \* \* \* \*

5. In § 300.51, the introductory text of paragraph (a) would be revised to read as follows:

**§ 300.51 Prohibited fundraising by State, district, or local party committees (2 U.S.C. 441i(d)).**

(a) *Prohibitions.* A State, district or local committee of a political party must not solicit any funds for, or make or direct any donations of non-Federal funds to:

\* \* \* \* \*

Dated: December 3, 2004.

**Ellen L. Weintraub,**

*Vice-Chair, Federal Election Commission.*

[FR Doc. 04-27025 Filed 12-8-04; 8:45 am]

BILLING CODE 6715-01-P

**ENVIRONMENTAL PROTECTION AGENCY**

**40 CFR Part 52**

[R05-OAR-2004-MN-0002; FRL-7846-8]

**Approval and Promulgation of Implementation Plans: Minnesota: Minneapolis-St. Paul Carbon Monoxide Maintenance Plan Update**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Proposed rule.

**SUMMARY:** EPA is proposing to approve a revision to the Minnesota State Implementation Plan (SIP) for the maintenance of the Carbon Monoxide (CO) ambient air quality standard (NAAQS) submitted on November 10, 2004. Specifically, EPA is proposing approval of Minnesota's revised 2009 emissions inventories and 2009 Motor Vehicle Emissions Budgets (MVEB) recalculated using MOBILE6 for the Minneapolis-St. Paul CO maintenance area.

In the final rules section of this **Federal Register**, EPA is approving the SIP revision as a direct final rule without prior proposal, because EPA views this as a noncontroversial revision and anticipate no adverse comments. A detailed rationale for the approval is set forth in the direct final rule. If no adverse comments are received in response to this proposed rule, no further activity is contemplated in relation to this proposed rule. If EPA receives adverse comments, the direct final rule will be withdrawn and all public comments received will be addressed in a subsequent final rule based on this proposed rule. EPA will not institute a second comment period on this action. Any parties interested in commenting on this action should do so at this time.

**DATES:** Written comments must be received on or before January 10, 2005.

**ADDRESSES:** Submit comments, identified by Regional Material in EDocket (RME) ID No. R05-OAR-2004-MN-0002 by one of the following methods:

*Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the on-line instructions for submitting comments.

*Agency Web site:* <http://docket.epa.gov/rmepub/index.jsp>.

Regional Material in EDocket (RME), EPA's electronic public docket and comment system, is EPA's preferred method for receiving comments. Once in the system, select "quick search," then key in the appropriate RME Docket identification number. Follow the on-line instructions for submitting comments.

*E-mail:* [bortzer.jay@epa.gov](mailto:bortzer.jay@epa.gov).

*Fax:* (312) 886-5824.

*Mail:* You may send written comments to: J. Elmer Bortzer, Chief, Air Programs Branch, (AR-18J), U.S. Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

*Hand delivery:* Deliver your comments to: J. Elmer Bortzer, Chief, Air Programs Branch (AR-18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, 18th floor, Chicago, Illinois 60604.

Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 a.m. to 4:30 p.m. excluding Federal holidays.

*Instructions:* Direct your comments to Regional Material in EDocket (RME) ID No. R05-OAR-2004-MN-0002. EPA's policy is that all comments received will be included in the public docket without change, including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through Regional Material in EDocket (RME), [regulations.gov](http://regulations.gov), or e-mail. The EPA Regional Material in EDocket (RME) Web site and the federal [regulations.gov](http://regulations.gov) Web site are "anonymous access" systems, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an e-mail comment directly to EPA without going through RME or [regulations.gov](http://regulations.gov), your e-mail address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters, any form of