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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 18-01-A
AGENDA ITEM
For meeting of January 11, 2018

January 4, 2018

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS by ERC*
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Acting Associate General Counsel

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Assistant General Counsel

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SUBJECT: Draft Notice of Proposed Rulemaking for REG 2014-02 (Independent Expenditures by Authorized Committees; Reporting Multistate Independent Expenditures and Electioneering Communications)

Attached is a draft Notice of Proposed Rulemaking (Independent Expenditures by Authorized Committees; Reporting Multistate Independent Expenditures and Electioneering Communications). We request that this draft be placed on the agenda for January 11, 2018.

Attachment

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FEDERAL ELECTION COMMISSION

11 CFR Parts 102, 104, and 109

[Notice 2018-XX]

Independent Expenditures by Authorized Committees; 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 102 and 104 concerning independent expenditures by candidates.

The Commission also 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 60 days after date of publication in the Federal Register]. The Commission may hold a public hearing on this Notice of Proposed Rulemaking. 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 of Hearing 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. 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

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1 Federal Election Commission, Attn.: Robert M. Knop, Assistant General Counsel. Comments
2 submitted before the Commission’s relocation on March 5, 2018 must be sent to 999 E Street,
3 NW, Washington, DC 20463; comments submitted after the Commission’s relocation must be
4 sent to 1050 First Street, NW, Washington, DC 20463. See Change of Address; Technical
5 Amendments, 82 FR 60852 (Dec. 26, 2017). Each commenter must provide, at a minimum, his
6 or her first name, last name, city, state, and zip code. All properly submitted comments,
7 including attachments, will become part of the public record, and the Commission will make
8 comments available for public viewing on the Commission’s website and in the Commission’s
9 Public Records room. Accordingly, commenters should not provide in their comments any
10 information that they do not wish to make public, such as a home street address, personal email
11 address, date of birth, phone number, social security number, or driver’s license number, or any
12 information that is restricted from disclosure, such as trade secrets or commercial or financial
13 information that is privileged or confidential.

14 **FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General
15 Counsel, Ms. Esther D. Gyory, or Ms. Joanna S. Waldstreicher, Attorneys, (202) 694-1650 or
16 (800) 424-9530.

17 **SUPPLEMENTARY INFORMATION:** The Commission is considering revising some of its
18 regulations concerning independent expenditures and electioneering communications, and it
19 seeks comment on the proposed changes.

20 The Commission is proposing revisions to its regulations concerning whether authorized
21 committees may make independent expenditures. The Federal Election Campaign Act, 52
22 U.S.C. 30101-46 (the “Act”) and Commission regulations state that no political committee that
23 “supports” more than one candidate may be designated as an authorized campaign committee.

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1 52 U.S.C. 30102(e)(3); 11 CFR 102.12(c), 102.13(c). The statute and regulations do not define
2 “support” for the purposes of these two provisions, except to state that the term “does not include
3 contributions by an authorized committee in amounts aggregating \$2,000 or less per election to
4 an authorized committee of any other candidate.” 52 U.S.C. 30102(e)(3)(B); 11 CFR
5 102.12(c)(2), 102.13(c)(2). The Commission is considering revising its regulations to
6 specifically state that for the purposes of these provisions, “support” includes making
7 independent expenditures, or, in the alternative, that “support,” in this context, does not include
8 independent expenditures. The Commission is seeking comment on the following proposed
9 revisions to its regulations, which would clarify the meaning of “support” as it is used in 11 CFR
10 102.12(c)(2) and 102.13(c)(2). In the event that the Commission promulgates final rules that
11 exclude independent expenditures from the definition of support, the Commission is also
12 proposing changes to its reporting regulations at 11 CFR 104.3 and 104.4 to provide for
13 authorized committees to report independent expenditures.

14 The Commission is also seeking comment on proposed revisions to its regulations
15 concerning independent expenditures and electioneering communications as they apply to
16 communications that relate to presidential primary elections and that are publicly distributed in
17 multiple states but that do not refer to any particular state’s primary election. The Act and
18 Commission regulations require persons who make independent expenditures and electioneering
19 communications to report certain information to the Commission within specified periods of
20 time. See 52 U.S.C. 30104(b)-(c), (g); 11 CFR 104.3, 104.4, 104.20, 109.10. The Commission
21 is considering revising its regulations to specifically address how these reporting requirements
22 apply to an independent expenditure or electioneering communication that relates to a
23 presidential primary election and is distributed in multiple states but does not refer to any

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

5 **I. Background**

6 The Act and Commission regulations require that political committees report all
7 disbursements. 52 U.S.C. 30104(b)(4); 11 CFR 104.3(b). Political committees must also
8 itemize their disbursements according to specific categories. 52 U.S.C. 30104(b)(4); 11 CFR
9 104.3(b)(1)-(2).

10 An “independent expenditure” is an expenditure that expressly advocates the election or
11 defeat of a clearly identified federal candidate and is not coordinated with such candidate (or his
12 or her opponent) or political party. 52 U.S.C. 30101(17); see also 11 CFR 100.16(a). Under
13 existing regulations, a political committee (other than an authorized committee) that makes
14 independent expenditures must itemize those expenditures on its regular periodic reports, stating,
15 among other things, the name of the candidate whom the expenditure supports or opposes and
16 the office sought by that candidate. 52 U.S.C. 30104(b)(4)(H)(iii), (6)(B)(iii); 11 CFR 104.4(a).
17 Any person other than a political committee that makes independent expenditures aggregating in
18 excess of \$250 during a calendar year must disclose the same information in a statement filed
19 with the Commission.¹ 52 U.S.C. 30104(c); 11 CFR 109.10(b).

20 In addition, any person that makes independent expenditures aggregating \$10,000 or
21 more for an election in any calendar year, up to and including the 20th day before an election,

¹ Further, Commission regulations provide that persons other than political committees “shall [also] file a report or statement for any quarterly period during which any such independent expenditures that aggregate in excess of \$250 are made and in any quarterly reporting period thereafter in which additional independent expenditures are made.” 11 CFR 109.19(b).

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1 must report the expenditures within 48 hours. 52 U.S.C. 30104(g)(2)(A); 11 CFR 104.4(b)(2),
2 109.10(c). Additional reports must be filed within 48 hours each time the person makes further
3 independent expenditures aggregating \$10,000 or more with respect to the same election. 52
4 U.S.C. 30104(g)(2)(B); 11 CFR 104.4(b)(2), 109.10(c).

5 Any person that makes independent expenditures aggregating \$1,000 or more less than
6 20 days, but more than 24 hours, before the date of an election must report the expenditures
7 within 24 hours. 52 U.S.C. 30104(g)(1)(A); 11 CFR 104.4(c), 109.10(d). Additional reports
8 must be filed within 24 hours each time the person makes further independent expenditures
9 aggregating \$1,000 or more with respect to the same election. 52 U.S.C. 30104(g)(1)(B); 11
10 CFR 104.4(c), 109.10(d).

11 A. Independent Expenditures by Authorized Committees

12 The Act requires that every candidate for federal office (other than the nominee for Vice
13 President) designate a political committee “to serve as the principal campaign committee” for
14 that candidate. 52 U.S.C. 30102(e)(1); 11 CFR 102.12(a). The principal campaign committee of
15 a candidate is “authorized” by the candidate to receive contributions or to make expenditures on
16 behalf of that candidate. See 11 CFR 102.13(a)(1); 52 U.S.C. 30102(e)(1), (3). A candidate may
17 also designate additional political committees to serve as authorized committees of that
18 candidate. 52 U.S.C. 30102(e)(1); 11 C.F.R. 102.13(a)(1). The Act and Commission regulations
19 state that no political committee that “supports” more than one candidate may be designated as
20 an authorized committee. 52 U.S.C. 30102(e)(3); 11 CFR 102.12(c), 102.13(c). The Act and
21 regulations further state that for the purposes of these provisions, “the term support does not
22 include contributions by an authorized committee in amounts aggregating \$2,000 or less per

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1 election to an authorized committee of any other candidate,” but the term is not otherwise
2 defined. 11 CFR 102.12(c)(2), 102.13(c)(2); 52 U.S.C. 30102(e)(3)(B).²

3 Until recently, the Commission had not definitively addressed whether the term “support”
4 in section 30102(e)(3) includes independent expenditures.³ In Matter Under Review (“MUR”)
5 6405 (Friends of John McCain Inc., et al.), the Commission dismissed an allegation that an
6 authorized committee violated 52 U.S.C. 30102(e)(3) by running ads that expressly advocated
7 the election of another candidate. Factual and Legal Analysis at 2-3, MUR 6405 (Friends of
8 John McCain Inc., et al.) (Feb. 25, 2015), <http://eqs.fec.gov/eqsdocsMUR/15044371159.pdf>
9 (“McCain”). In its analysis, the Commission cited the Supreme Court’s decisions in Buckley v.
10 Valeo, 424 U.S. 1 (1976) (striking down limits on independent expenditures for most individuals
11 and groups), Colorado Republican Federal Campaign Committee v. FEC, 518 U.S. 604 (1996)

² “Support” appears in other places in the regulations but is not defined in most of those other instances. See, e.g., 11 CFR 100.24(b)(3) (defining “federal election activity” as public communication that refers to clearly identified candidate for federal office and that “promotes or supports, or attacks or opposes any candidate for Federal office”), 104.5(d) (requiring treasurer of political committee “supporting” candidate for Vice President to file reports on same basis as principal campaign committee of presidential candidate), 110.1(h) (addressing circumstances in which person may contribute to more than one committee “supporting” the same candidate), 114.4(d)(1) (stating that corporation or labor organization may “support or conduct” voter registration and get-out-the-vote drives), 114.4(d)(2) (specifying that voter registration and get-out-the-vote drives are not expenditures when they meet certain criteria, including that individuals conducting drive are not paid on basis of number of individuals registered or transported “who support one or more particular candidates”), 300.2(m) (stating that definition of “solicitation” does not include “mere statements of political support”), 300.37 (excluding from prohibition on fundraising for certain tax-exempt organizations a “political committee under State law, that “supports” only state or local candidates). Section 100.6, which defines “connected organization,” states that, for the purposes of that provision, the term “financially supports” does not include contributions to a political committee, but does include payments of establishment, administration, and solicitation costs of a political committee.

³ In Matter Under Review 2841 (Jenkins), the Commission stated that 2 U.S.C. 432(e) (now 52 U.S.C. 30102(e)) precluded a principal campaign committee from “making expenditures on behalf of another candidate, thus supporting more than one candidate,” but ultimately decided the matter on other grounds. See Conciliation Agreement ¶ IV.13 (Dec. 11, 1992), http://www.fec.gov/disclosure_data/mur/2841.pdf. In a subsequent MUR, the Office of the General Counsel, relying on the Commission’s reasoning in MUR 2841, recommended finding reason to believe that an authorized committee violated 2 U.S.C. 432(e). See First General Counsel’s Report at 11, MUR 3676 (Stupak) (Jan. 11, 1995), all documents for MUR 3676 available at http://www.fec.gov/disclosure_data/mur/3676.pdf. The Commission rejected OGC’s recommendation, though the four Commissioners did not agree on the reasoning for that decision. See Thomas Statement of Reasons; Aikens et al. Statement of Reasons, MUR 3676 (Stupak).

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1 (striking down limit on independent expenditures by political party committees on grounds that
2 independent expenditures do not pose a risk of corruption or the appearance of corruption), and
3 Citizens United v. FEC, 558 U.S. 310 (2010) (striking down prohibition on independent
4 expenditures by corporations). McCain at 9-10. The Commission concluded that “it is unlikely
5 that independent spending by authorized committees would be deemed more potentially
6 corrupting than independent expenditures by individuals, political parties, or corporations, each
7 of which has been found [by the Supreme Court] to have a constitutional right to make unlimited
8 independent expenditures.” McCain at 10.

9 Currently, neither the regulations nor the Commission’s reporting forms provide a
10 mechanism for authorized committees to report independent expenditures. Paragraph
11 104.3(b)(2), which covers reporting by authorized committees, does not include independent
12 expenditures made by the reporting committee among the categories of disbursements that must
13 be itemized. Similarly, paragraph 104.3(b)(4) sets out the categories of information that
14 authorized committees must report about itemized disbursements and does not contain a
15 provision for independent expenditures. Finally, section 104.4 specifies that political committees
16 that make independent expenditures must report them on Schedule E of FEC Form 3X, but
17 authorized committees file Form 3 (for House and Senate candidates) or Form 3P (for
18 presidential candidates), neither of which contains Schedule E.

19 B. Multistate Independent Expenditures and Electioneering Communications

20 As described above, the Act and Commission regulations require any person who makes
21 independent expenditures aggregating certain amounts and within certain periods prior to an
22 election to report those independent expenditures within 48 or 24 hours of the independent
23 expenditure. 52 U.S.C. 30104(g)(1)(A), (2)(A); 11 CFR 104.4(b)(2), (c), 109.10(c)-(d). The 48-

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1 and 24-hour filing requirements begin to run when the independent expenditures aggregating at
2 least \$10,000 or \$1,000, respectively, are “publicly distributed or otherwise publicly
3 disseminated” 11 CFR 104.4(b)(2), (c), (f), 109.10(c)-(d). For purposes of calculating these
4 expenditures and determining if a communication is “publicly distributed” within an applicable
5 24-hour pre-election filing window, each state’s presidential primary election is considered a
6 separate election. See Advisory Opinion 2003-40 (U.S. Navy Veterans’ Good Government
7 Fund) at 3-4 (noting that “publicly distributed” in section 104.4 has same meaning as the term in
8 11 CFR 100.29(b)(3)(ii)(A), under which each state’s presidential primary election is a separate
9 election) (citing Bipartisan Campaign Reform Act of 2002 Reporting, 68 FR 404, 407 (Jan. 3,
10 2003); Electioneering Communications, 67 FR 65190, 65194 (Oct. 23, 2002)).

11 An “electioneering communication,” in the context of a presidential election, is a
12 broadcast, cable, or satellite communication that refers to a clearly identified candidate for
13 President or Vice President and is “publicly distributed” within sixty days before a general
14 election or thirty days before a primary election or nominating convention. 52 U.S.C.
15 30104(f)(3)(A)(i); 11 CFR 100.29(a). If the candidate identified in the communication is
16 seeking a party’s nomination for the presidential or vice presidential election, “publicly
17 distributed” means the communication can be received by at least 50,000 people in a state where
18 a primary election is being held within thirty days, or that it can be received by at least 50,000
19 people anywhere in the United States within the period between thirty days before the first day of
20 the national nominating convention and the conclusion of the convention. 11 CFR 100.29(b)(3).
21 A person who makes electioneering communications that aggregate in excess of \$10,000 in a
22 calendar year must file a statement with the Commission disclosing certain information about the
23 electioneering communication, including the election to which the electioneering communication

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1 pertains. 52 U.S.C. 30104(f); 11 CFR 104.20(b)-(c). As with independent expenditures, each
2 state’s presidential primary election is considered a separate election for purposes of determining
3 whether an electioneering communication is “publicly distributed” within the pre-election
4 reporting window. See Advisory Opinion 2003-40 (U.S. Navy Veterans’ Good Government
5 Fund) at 3-4.

6 The Commission’s current regulations do not specifically address how the public
7 distribution criteria and other reporting requirements apply to independent expenditures or
8 electioneering communications that are made in the context of a presidential primary election
9 and that are distributed in multiple states. In particular, the regulations do not specify which
10 state’s primary election date is relevant for determining whether the communication falls within
11 the 24-hour reporting window (for independent expenditures) or the 30-day definitional window
12 (for electioneering communications).

13 In a 2011 advisory opinion, the Commission considered how the independent expenditure
14 reporting requirements applied to independent expenditures that supported or opposed a
15 presidential primary candidate and were distributed nationwide without referring to any specific
16 state’s primary election. See Advisory Opinion 2011-28 (Western Representation PAC). In that
17 advisory opinion, the Commission concluded that a political committee making such an
18 independent expenditure should divide the cost of the independent expenditure by the number of
19 states that had not yet held their primary elections, and should use the resulting amounts to
20 determine whether the committee must file 24- and 48-hour reports and for which states. Id.

21 In 2014, the Commission made available for public comment three alternative draft
22 interpretive rules on this topic. Draft Notices of Interpretive Rule Regarding Reporting
23 Nationwide Independent Expenditures in Presidential Primary Elections (Jan. 17, 2014) (“Draft

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1 Interpretive Rules”),
2 www.fec.gov/law/policy/nationwideiereporting/draftnationwideiereporting.pdf.⁴ Draft A would
3 have followed the approach set forth in Advisory Opinion 2011-28 (Western Representation
4 PAC), instructing persons making a nationwide independent expenditure to divide the cost of the
5 nationwide independent expenditure by the number of states with upcoming presidential primary
6 elections. Draft B would have instructed persons making a nationwide independent expenditure
7 to report it as a single expenditure without indicating a state where the expenditure was made,
8 instead using memo text⁵ to indicate that the independent expenditure was made nationwide.
9 Draft B also would have instructed filers to use the first day of the candidate’s national
10 nominating convention as the election date for determining whether they must file 24- and 48-
11 hour reports. Finally, Draft C would have provided the same reporting guidance as Draft B,
12 except that Draft C would have instructed filers to use the date of the next presidential primary
13 election (rather than the beginning of the national nominating convention) as the election date.

14 The Commission received two comments on the Draft Interpretive Rules.⁶ Both
15 comments generally supported Draft B. Both comments also argued that the approach in Draft A
16 was unnecessarily complex and would not provide clear information to the public about the
17 reported independent expenditures.

⁴ 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.

⁵ Memo text is a means of including additional information or explanation about a receipt or disbursement on a Commission form. See FEC, Campaign Guide for Nonconnected Committees (2008), <https://www.fec.gov/resources/cms-content/documents/nongui.pdf>.

⁶ These comments are available on the Commission’s website at <http://www.fec.gov/law/policy.shtml>.

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

6 **II. Proposed Revisions to 11 CFR parts 102 and 104 – Independent Expenditures by**
7 **Authorized Committees of a Candidate**

8 As set forth below, the Commission proposes revisions to section 102.12, concerning
9 principal campaign committees, and section 102.13, concerning authorized committees. The
10 Commission also proposes revisions to sections 104.3 and 104.4 regarding authorized
11 committees’ reporting of independent expenditures. The Commission seeks comment on these
12 revisions, which are intended to clarify the type of activity that an authorized committee may
13 engage in without “supporting” another candidate, as well as to require disclosure of independent
14 expenditures by authorized committees if such expenditures are determined to be permissible.

15 A. Proposed New 11 CFR 102.12(c)(2)(i) and 102.13(c)(2)(i) – Definition of
16 “Support”

17 In both sections 102.12 and 102.13, the Commission is proposing to redesignate current
18 paragraph (c)(2) as paragraph (c)(2)(ii) and to add new paragraph (c)(2)(i), which would clarify
19 the term “support.” The Commission is proposing two alternative provisions for new paragraphs
20 11 CFR 102.12(c)(2)(i) and 102.13(c)(2)(i) and seeks comment on whether either alternative is
21 preferable.

22 Under either alternative, the regulations would continue to exclude from the definition of
23 support contributions by an authorized committee in amounts aggregating \$2,000 or less per
24 election to an authorized committee of any other candidate. Under both alternatives, current

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1 paragraphs 102.12(c)(2) and 102.13(c)(2) would be redesignated as 102.12(c)(2)(ii) and
2 102.13(c)(2)(ii), respectively.

3 Under Alternative A, new paragraphs 102.12(c)(2)(i) and 102.13(c)(2)(i) would state that
4 for the purposes of the regulation, the term “support” includes an independent expenditure by an
5 authorized committee. (The proposed regulations would clarify that this does not affect the
6 ability of a national committee of a political party that has been designated as the principal
7 campaign committee of that party’s presidential candidate to make independent expenditures
8 supporting or opposing other candidates. See 11 CFR 109.36.⁷) Under Alternative B, new
9 paragraphs 102.12(c)(2)(i) and 102.13(c)(2)(i) would state that for the purposes of the regulation,
10 the term “support” does not include independent expenditures by an authorized committee.

11 The Commission seeks comment on the two alternatives. Is either alternative preferable
12 as a matter of statutory interpretation, taking into account the applicable case law? If both
13 alternatives are statutorily permissible, is either alternative preferable as a matter of policy?

⁷ Currently, both sections 102.12 and 102.13 state that the national party committee of a political party that has been designated as the principal campaign committee of that party’s presidential candidate may contribute to another candidate in accordance with certain regulations. Section 102.13 states that such contributions must be made in accordance with 11 CFR part 109, subpart D (coordinated party expenditures) and part 110 (contribution limits and prohibitions); section 102.12, however, states only that such contributions must be made in accordance with 11 CFR part 110. Under both alternatives A and B, proposed paragraph 102.12(c)(2) would be revised to include a reference to 11 CFR part 109, subpart D, tracking the existing language in 11 CFR 102.13(c)(2).

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1 For the purposes of sections 102.12 and 102.13, the term “support” does not include
2 contributions aggregating \$2,000 or less. Thus, Alternative A would prohibit authorized
3 committees from making independent expenditures in any amount, while not prohibiting those
4 committees from making contributions (including coordinated expenditures and coordinated
5 communications, see 52 U.S.C. 30116(a)(7)(B)(i); 11 CFR 109.20) of up to \$2,000 to other
6 candidates. If the Commission adopts Alternative A, should the Commission also exclude
7 independent expenditures aggregating \$2,000 or less per election from the definition of support?

8 B. Proposed Revisions to 11 CFR 104.3 – Contents of reports and 11 CFR 104.4 –
9 Independent expenditures by political committees

10 Currently, all political committees — including authorized committees — must report the
11 name and address of any person who has received any disbursement in an aggregate amount
12 exceeding \$200 within a certain period, along with the date, amount, and purpose of such
13 disbursement. 52 U.S.C. 30104(b)(5), (6); 11 CFR 104.3(b)(3), (4). Additionally, political
14 committees — other than authorized committees — must provide for each reported disbursement
15 in connection with an independent expenditure the date, amount, and purpose of the independent
16 expenditure, a statement indicating whether the independent expenditure was in support of, or in
17 opposition to, a candidate, the name and office sought by that candidate, and a certification that
18 the expenditure was, in fact, independent. 52 U.S.C. 30104(b)(6)(B); 11 CFR 104.3(b)(3)(vii).

19 If the Commission adopts Alternative B above, the Commission also proposes to revise
20 11 CFR sections 104.3 and 104.4 to provide a mechanism for authorized committees to report
21 independent expenditures. Specifically, the Commission proposes revising paragraph
22 104.3(b)(2) to add independent expenditures to the categories of itemized disbursements for
23 authorized committees, and adding new paragraph 104.3(b)(4)(iv) to require authorized

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1 committees to report the same information about independent expenditures that other political
2 committees must report. Proposed paragraph 104.3(b)(4)(iv) would bring authorized and non-
3 authorized committees into parity by requiring that authorized committees report the same
4 information about independent expenditures that non-authorized committees are required to
5 report, using the same form (Schedule E).⁸

6 The Commission seeks comment on these proposed changes to paragraphs 104.3(b)(2)
7 and (4), which are intended to require authorized committees that make independent
8 expenditures to report the same information, in the same manner, as all other political
9 committees. If authorized committees make independent expenditures, should they report more
10 or less detailed information about those disbursements than other political committees? Is there
11 another method that the Commission should use to allow for authorized committees to report
12 independent expenditures?

13 The Commission also proposes revisions to 11 CFR 104.4 to refer to the new paragraphs
14 that it proposes to add to section 104.3, described above. In paragraphs 104.4(a), (b), (c), and
15 (d), the Commission proposes adding cross-references to 11 CFR 104.3(b)(4)(iv) to reflect the
16 independent expenditure reporting requirements for authorized committees, described above.
17 The Commission also proposes revising paragraphs 104.4(b)(1) and (b)(2) to omit the specific
18 references to FEC Form 3X because, as discussed above, authorized committees do not file that
19 form. These proposed regulatory changes would be in conjunction with changes to Schedule E
20 and to Forms 3 and 3P. The Commission seeks comment on these proposed changes.

⁸ Because Schedule E is not currently included in the forms used by authorized committees, the Commission would add that Schedule to Form 3 (for House and Senate candidates) and Form 3P (for presidential candidates).

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1 **III. Proposed Revisions to 11 CFR 104.3 and 104.4 – Reporting Multistate Independent**
2 **Expenditures by Political Committees**

3 As set forth below, the Commission proposes revisions to section 104.3, concerning the
4 content of independent expenditure reports by political committees, and section 104.4,
5 concerning the timing of independent expenditure reports by political committees. The
6 Commission seeks comment on these revisions, which are intended to clarify the reporting
7 obligations of a political committee when it makes a multistate independent expenditure. The
8 Commission is considering three alternative proposals and seeks comment on which alternative
9 would be preferable.

10 A. Alternative A

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

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

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1 The Commission seeks comment on the proposed new provision. Would the proposed
2 paragraph provide sufficient guidance to political committees reporting multistate independent
3 expenditures? Is the proposed provision necessary or desirable to provide full, accurate, and
4 timely disclosure to the public regarding multistate independent expenditures that are made by
5 political committees?

6 If the Commission amends section 104.3(b)(4) to account for independent expenditures
7 by authorized committees as described above in Section II.B, the Commission would propose to
8 include regulatory text in revised section 104.3(b)(4) providing that the reporting requirements
9 for authorized committees that make independent expenditures would mirror the reporting
10 requirements for all other political committees that make independent expenditures. The
11 Commission seeks comment on whether these proposed requirements should apply to multistate
12 independent expenditures made by authorized committees.

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

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1 reporting rule? Should the rule specify a particular number of states, or are there other ways to
2 effectively delineate the communications that would be reported as multistate independent
3 expenditures?

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

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

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

2 In section 104.4, the Commission is proposing to redesignate current paragraph (f) as
3 paragraph (f)(1) and add new paragraph (f)(2), concerning when a political committee must file a
4 24- or 48-hour report for a multistate independent expenditure.

5 Following the approach proposed in Draft Interpretive Rule B, a political committee that
6 makes a multistate independent expenditure would report it as a single expenditure, as discussed
7 above, and the political committee would use the date of the national nominating convention for
8 the clearly identified candidate’s party as the date of the election to determine whether the
9 independent expenditure is within the 20 days before the election and is therefore subject to the
10 24-hour reporting requirement under 52 U.S.C. 30104(g)(1).

11 The Commission seeks comment on this proposal. Does it provide sufficient guidance to
12 political committees as to how to determine whether they must file 24-hour or 48-hour reports
13 for multistate independent expenditures? Is this proposal preferable to the Commission’s
14 existing guidance under Advisory Opinion 2011-28 (Western Representation PAC)? Would this
15 proposal enhance the public’s access to full, accurate, and timely information about multistate
16 independent expenditures?

17 B. Alternative B

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

19 In section 104.3, the Commission proposes making the same changes as described above
20 under Alternative A, adding new paragraph (b)(3)(vii)(C) and redesignating current paragraph
21 (b)(3)(vii)(C) as paragraph (b)(3)(vii)(D).

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

23 Similar to Alternative A, in section 104.4, the Commission is proposing to redesignate
24 current paragraph (f) as paragraph (f)(1) and add new paragraph (f)(2), concerning when a

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1 political committee must file a 24- or 48-hour report for a multistate independent expenditure.
2 However, under Alternative B, which follows the approach proposed in Draft Interpretive Rule
3 C, the political committee would determine whether the independent expenditure is within the 20
4 days before the election and is therefore subject to the 24-hour reporting requirement under 52
5 U.S.C. 30104(g)(1) by using as the date of the election the date of the next upcoming presidential
6 primary among the presidential primaries to be held in the states in which the independent
7 expenditure is distributed or disseminated.

8 The Commission seeks comment on this proposal. Does it provide sufficient guidance to
9 political committees as to how to determine whether they must file 24-hour or 48-hour reports
10 for multistate independent expenditures? Is this proposal preferable to the Commission's
11 existing guidance under Advisory Opinion 2011-28 (Western Representation PAC)? Would this
12 proposal enhance the public's access to full, accurate, and timely information about multistate
13 independent expenditures?

14

15 C. Alternative C

16 1. Proposed New 11 CFR 104.3(b)(3)(vii)(C) – Multistate Independent
17 Expenditures

18 As with Alternatives A and B, for Alternative C the Commission proposes to amend
19 section 104.3 by adding new paragraph (b)(3)(vii)(C). For Alternative C, however, the new
20 paragraph would provide that for any independent expenditure in support of or in opposition to a
21 candidate in a presidential primary election, where the communication is publicly distributed or
22 otherwise disseminated in more than a specified number of states but does not refer to any
23 particular state, the political committee must report the independent expenditure according to

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1 new section 104.4(f)(2), discussed below . The Commission would also redesignate current
2 paragraph (b)(3)(vii)(C) as paragraph (b)(3)(vii)(D).

3 2. Proposed New 11 C.F.R. § 104.4(f)(2) – Reporting Multistate Independent
4 Expenditures

5 As with Alternatives A and B, for Alternative C the Commission proposes to amend
6 section 104.4 by redesignating current paragraph (f) as paragraph (f)(1) and adding new
7 paragraph (f)(2). Under Alternative C, the new paragraph (f)(2) would bring together all of the
8 aggregation and reporting requirements for multistate independent expenditures in one
9 paragraph. The new section 104.4(f)(2) would set forth the requirements for determining
10 whether and when a 24- or 48-hour report is required, along with the specific information to be
11 included in such a report.

12 In contrast to Alternatives A and B, which would require a political committee to
13 determine whether a 24-hour report is required based on the total amount of the independent
14 expenditure, Alternative C would require political committees to allocate the amount of the
15 expenditure among the states where it is distributed whose primary elections have yet to occur.
16 Political committees who file electronically would be able to rely on the new electronic filing
17 system that the Commission expects to introduce before the 2020 election cycle or third-party
18 electronic filing software to do this calculation. If this alternative is adopted, the Commission
19 also proposes to make a calculator available on its website to aid political committees that do not
20 file electronically in making the necessary allocations.

21 Under Alternative C, a political committee would disregard any states where the
22 communication was distributed but where the presidential primary election has already occurred,
23 and would allocate the total amount of the independent expenditure among the remaining states,

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1 according to a ratio based on the number of U.S. House of Representatives districts apportioned
2 to each state.

3 For purposes of determining whether the independent expenditure is within the 20 days
4 before the election and is therefore subject to the 24-hour reporting requirement under 52 U.S.C.
5 30104(g)(1), the political committee would use the date of the next upcoming primary election
6 among the states where the independent expenditure was distributed. If that date is more than 20
7 days away from the date of the expenditure and the amount allocated to that state causes the
8 political committee's aggregate spending in that state to exceed \$10,000, the committee would
9 be required to file a 48-hour report. If that date is between 1 and 20 days away and the amount
10 allocated to that state causes the political committee's aggregate spending in that state to exceed
11 \$1,000, the committee would be required to file a 24-hour report.

12 Information about the dates of the major-party presidential primary elections and the
13 number of House districts apportioned to each state would be incorporated into the
14 Commission's electronic filing system, so a political committee that filed electronically would be
15 able to enter the date and amount of the independent expenditure and the states where it was
16 distributed, and the software would do the calculation to determine whether any reports were
17 required. The same information would be provided on the Commission's website for the benefit
18 of any political committees that do not file electronically, in the form of a calculator that would
19 perform the allocation calculation when a political committee enters the amount and date of a
20 communication and the states in which it is publicly distributed.

21 Example: A political committee spent \$40,000 on an independent expenditure broadcast
22 in Texas, Arizona, New Mexico, and Oklahoma on March 15, where the next upcoming primary
23 election was going to be in Oklahoma on March 20. There are a total of 53 House districts in

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1 those four states: 9 in Arizona, 3 in New Mexico, 5 in Oklahoma, and 36 in Texas. On the date
2 the communication was distributed, all four states where it was distributed had yet to hold their
3 presidential primary elections. Therefore the political committee would allocate the \$40,000
4 according to each state's proportion of House districts out of the 53 total: \$6,792 for Arizona
5 ($40,000 \times (9/53)$), \$2,264 for New Mexico ($40,000 \times (3/53)$), \$3,773 for Oklahoma ($40,000 \times$
6 ($5/53$)), and \$27,169 for Texas ($40,000 \times (36/53)$). Because the next upcoming primary election
7 where the communication was distributed would be within 20 days, in Oklahoma, and the
8 political committee would have spent more than \$1,000 in that state, a 24-hour report would be
9 required. The Commission acknowledges that the proposed allocation calculation may seem
10 complex, but notes that this proposal would allow political committees to take advantage of
11 advancing technology to relieve them of the burden of determining whether and when to report
12 multistate independent expenditures. A political committee would need only to enter the date
13 and total amount of an independent expenditure and the states in which it was publicly
14 distributed, and the electronic filing system or calculator would determine whether a 24- or 48-
15 hour report was required and what amount to allocate to each state. The Commission would not
16 implement Alternative C until the new electronic filing system and calculator were in place so as
17 to avoid requiring any political committee to perform the allocation manually.

18 Would Alternative C satisfy the Act's provisions for reporting independent expenditures?
19 Would this approach enhance the public's access to full, accurate, and timely information about
20 multistate independent expenditures? Would this proposal provide sufficient guidance to
21 political committees as to how to determine whether they must file 24-hour or 48-hour reports
22 for multistate independent expenditures and what information to include in such reports? Is this
23 proposal preferable to the Commission's existing guidance under Advisory Opinion 2011-28

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1 (Western Representation PAC)? Does the feasibility of this proposal depend on whether a
2 political committee files electronically, and if so, is the number of political committees that make
3 multistate independent expenditures but do not file electronically significant?

4 The Commission seeks comment on whether it is appropriate or desirable to use House
5 representation, which is based on population, as a basis for allocation. Does the use of House
6 districts assume that the entire population of a state receives the communication, and does that
7 question make a difference in how independent expenditures should be reported? Does this
8 proposed use of House districts to determine whether and when independent expenditures must
9 be reported differ materially from proposed Alternatives A and B?

10 The Commission also seeks overall comment on which of the three alternatives (A, B or
11 C) is preferable with respect to (1) the burden on the political committees that must report their
12 multistate independent expenditures, and (2) the usefulness of the information disclosed to the
13 public. Are there other approaches that might be preferable to any of these proposed
14 alternatives?

15 **IV. Proposed Revision to 11 CFR 109.10 – Reporting Multistate Independent**
16 **Expenditures by Persons Other Than Political Committees**

17 The Commission proposes to incorporate by reference into 11 CFR 109.10(e) — which
18 addresses the content of independent expenditure reports filed by persons other than political
19 committees — the requirements for reporting multistate independent expenditures that the
20 Commission proposes to add to section 104.3(b)(3)(vii)(C) or in new section 104.4(f)(2).
21 Specifically, revised section 109.10(e)(1)(iv) would provide that when a person other than a
22 political committee makes an expenditure meeting the criteria set forth in section
23 104.3(b)(3)(vii)(C) (i.e., an independent expenditure that supports or opposes a presidential
24 primary candidate and that is distributed in more than the specified number of states but does not

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1 refer to any particular state), the person must report the expenditure pursuant to the provisions of
2 section 104.3(b)(3)(vii)(C) or section 104.4(f)(2).

3 The Commission requests comments on this proposed revision to 11 CFR 109.10.

4 Should the reporting requirements for multistate independent expenditures made by persons
5 other than political committees parallel the reporting requirements for multistate independent
6 expenditures made by political committees? Although Advisory Opinion 2011-28 (Western
7 Representation PAC) and the Draft Interpretive Rules did not address how persons other than
8 political committees should report multistate independent expenditures, is there any legal or
9 policy reason that the reporting requirements for political committees and for other persons
10 should differ in the context of multistate independent expenditures? Does the proposed revision
11 to section 109.10 clarify the reporting obligations of persons who make multistate independent
12 expenditures? Is the proposed revision to section 109.10 necessary or desirable to provide full,
13 accurate, and timely disclosure to the public regarding multistate independent expenditures made
14 by persons other than political committees? Would the proposed revision reduce or increase the
15 administrative burden on such persons? If the proposed revision does increase the administrative
16 burden on such persons, is that burden outweighed by the usefulness of the information disclosed
17 to the public?

18 **V. Proposed Revision to 11 CFR 104.20 – Electioneering Communications**

19 In section 104.20(c), which concerns the content of reports regarding electioneering
20 communications, the Commission proposes to add a new paragraph (c)(6) and redesignate
21 current paragraphs (c)(6)-(9) as paragraphs (c)(7)-(10). Proposed new paragraph (c)(6) would
22 apply when the relevant election (which the reporting person is required to disclose pursuant to
23 paragraph (c)(5)) is a presidential primary election and the electioneering communication is

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1 distributed in more than a specified number of states but does not refer to any particular state's
2 primary election.

3 In such situations, this new paragraph would parallel the new reporting requirements for
4 multistate independent expenditures as discussed above, either the new section
5 104.3(b)(3)(vii)(C) if Alternative A or B is adopted, or the new section 104.4(f)(2) if Alternative
6 C is adopted. If Alternative A or B is adopted, the new paragraph (c)(6) would provide that the
7 reporting person must report the electioneering communication as a single communication and
8 use memo text to indicate the states in which the communication constitutes an electioneering
9 communication (as defined in 11 CFR 100.29(a)).

10 If Alternative C is adopted, the new paragraph (c)(6) would provide that the reporting
11 person must allocate the cost of the communication among the states where it is publicly
12 distributed and whose presidential primary elections have not yet occurred as set forth in the new
13 section 104.4(f)(2). The proposed revision would thus treat multistate electioneering
14 communications similarly to multistate independent expenditures, as discussed above.

15 The Commission seeks comment on the proposed revision to section 104.20. Should
16 multistate electioneering communications be treated similarly to multistate independent
17 expenditures, or are there differences between the two types of communications or the persons
18 that make them that would call for different reporting requirements? Should the same number of
19 states constitute the threshold for multistate independent expenditures and multistate
20 electioneering communications? Should the cost of an electioneering communication be
21 allocated among the states where the communication is publicly distributed for reporting
22 purposes?

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1 Would the proposed new paragraph increase or decrease the administrative burden on
2 persons reporting electioneering communications? If the proposed revision does increase the
3 administrative burden on such persons, is that burden outweighed by the usefulness of the
4 information disclosed to the public? Would the proposed revision provide sufficient information
5 on how persons making multistate electioneering communications should disclose them? Is the
6 proposed revision necessary or desirable to provide full, accurate, and timely disclosure of
7 information about multistate electioneering communications to the public?

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

9 The Commission certifies that the attached proposed rules, if adopted, would not have a
10 significant economic impact on a substantial number of small entities. The proposed rules would
11 clarify whether authorized committees may make independent expenditures and provide a
12 mechanism for authorized committees to report independent expenditures. The proposed
13 reporting requirements would only affect authorized committees that choose to make
14 independent expenditures. Moreover, authorized committees are already required to report all
15 disbursements, as well as the name and address of any person who has received any
16 disbursement in an aggregate amount exceeding \$200 within a certain period, along with the
17 date, amount, and purpose of such disbursement. Thus, the proposed rules would not materially
18 change the amount of information reported, but rather would change how disbursements for
19 independent expenditures are identified on reports. The proposed rules would also provide for
20 consolidated reporting of certain independent expenditures and electioneering communications
21 that the Commission's current reporting guidance indicates should be allocated among elections
22 in multiple states. The Commission anticipates that the proposed consolidation of these reports
23 would generally result in a modest reduction of the administrative burdens on reporting entities,

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

4 **List of Subjects**

5 11 CFR Part 102

6 Political committees and parties, Reporting and recordkeeping requirements.

7 11 CFR Part 104

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

10 11 CFR Part 109

11 Elections, Reporting and recordkeeping requirements.

12

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

15 **Part 102 – Registration, organization, and recordkeeping by political committees (52 U.S.C.**
16 **30103)**

17 1. The authority citation for part 102 continues to read as follows:

18 Authority: 52 U.S.C. 30102, 30103, 30104(a)(11), 30111(a)(8), and 30120.

19 2. Revise paragraph (c)(2) of §102.12 to read as follows:

20 **§ 102.12 Designation of principal campaign committee (52 U.S.C. 30102(e)(1) and (3))**

21 * * * * *

22 (c) * * *

23 **Alternative A**

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1 (2)(i) For purposes of 11 CFR 102.12(c), the term support includes an independent
2 expenditure by an authorized committee.

3 (ii) For purposes of 11 CFR 102.12(c), the term support does not include
4 contributions by an authorized committee in amounts aggregating \$2,000 or less per election to
5 an authorized committee of any other candidate.

6 (iii) Nothing in this paragraph (c)(2) affects the ability of a national committee of a
7 political party that has been designated as the principal campaign committee of that party's
8 presidential candidate to contribute to or make independent expenditures in support of another
9 candidate in accordance with 11 CFR part 109, subpart D and 11 CFR part 110.

10 **Alternative B**

11 (2) For purposes of 11 CFR 102.12(c), the term support does not include:

- 12 (i) Independent expenditures by an authorized committee in any amount; or
13 (ii) Contributions by an authorized committee in amounts aggregating \$2,000
14 or less per election to an authorized committee of any other candidate,
15 except that the national committee of a political party which has been
16 designated as the principal campaign committee of that party's
17 presidential candidate may contribute to another candidate in accordance
18 with 11 CFR part 109, subpart D and part 110.

19 3. Revise paragraph (c)(2) of § 102.13 to read as follows:

20 **§ 102.13 Authorization of political committees (52 U.S.C. 30102(e)(1) and (3))**

21 * * * * *

22 (c) * * *

23 **Alternative A**

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1 (2)(i) For purposes of 11 CFR 102.13(c), the term support includes an independent
2 expenditure by an authorized committee.

3 (ii) For purposes of 11 CFR 102.13(c), the term support does not include
4 contributions by an authorized committee in amounts aggregating \$2,000 or less per election to
5 an authorized committee of any other candidate.

6 (iii) Nothing in this paragraph (c)(2) affects the ability of a national committee of a
7 political party that has been designated as the principal campaign committee of that party's
8 presidential candidate to contribute to or make independent expenditures in support of another
9 candidate in accordance with 11 CFR part 109, subpart D and 11 CFR part 110.

10 **Alternative B**

11 (2) For purposes of 11 CFR 102.13(c), the term support does not include:

12 (i) Independent expenditures by an authorized committee in any amount; or

13 (ii) Contributions by an authorized committee in amounts aggregating \$2,000
14 or less per election to an authorized committee of any other candidate,
15 except that the national committee of a political party which has been
16 designated as the principal campaign committee of that party's
17 presidential candidate may contribute to another candidate in accordance
18 with 11 CFR part 109, subpart D and 11 CFR part 110.

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

20 4. The authority citation for part 104 continues to read as follows:

21 Authority: 52 U.S.C. 30101(1), 30101(8), 30101(9), 30102(i), 30104, 30111(a)(8) and (b),
22 30114, 30116, 36 U.S.C. 510.

23 **§ 104.3 [Amended]**

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1 5. Redesignate paragraphs (b)(2)(vi) and (b)(2)(vii) as (b)(2)(vii) and (b)(2)(viii).

2 6. Add paragraph (b)(2)(vi) and revise paragraphs (b)(3) and (b)(4) to read as follows:

3 **§ 104.3 Contents of Reports**

4 Alternatives A and B

5 * * * * *

6 (b) * * *

7 (2) * * *

8 (vi) Independent expenditures made by the reporting committee;

9 * * * * *

10 (3) * * *

11 (vii) * * *

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

20 (D) The information required by 11 CFR 104.3(b)(3)(vii)(A)-(C) shall
21 be reported on Schedule E as part of a report covering the reporting
22 period in which the aggregate disbursements for any independent
23 expenditure to any person exceed \$200 per calendar year.

1 Schedule E shall also include the total of all such expenditures of
2 \$200 or less made during the reporting period.

3 (4) * * *

4 (iv) (A) Each person who receives any disbursement during the reporting
5 period in an aggregate amount or value in excess of \$200 within the
6 calendar year in connection with an independent expenditure by the
7 reporting committee, together with the date, amount, and purpose of
8 any such independent expenditure(s);

9 (B) For each independent expenditure reported, the committee must
10 also provide a statement which indicates whether such independent
11 expenditure is in support of, or in opposition to a particular
12 candidate, as well as the name of the candidate and office sought
13 by such candidate (including State and Congressional district,
14 when applicable), and a certification, under penalty of perjury, as
15 to whether such independent expenditure is made in cooperation,
16 consultation or concert with, or at the request or suggestion of, any
17 other candidate or any other authorized committee or agent of such
18 committee;

19 (C) For an independent expenditure that is made in support of or
20 opposition to a presidential primary candidate and is publicly
21 distributed or otherwise publicly disseminated in more than
22 states but does not refer to any particular state, the political
23 committee must report the independent expenditure as a single

1 expenditure — i.e., without allocating it among states — and must
2 use memo text to indicate the states in which the communication is
3 distributed.

4 (D) The information required by 11 CFR 104.3(b)(4)(iv)(A)- (C) shall
5 be reported on Schedule E as part of a report covering the reporting
6 period in which the aggregate disbursements for any independent
7 expenditure to any person exceed \$200 per calendar year.
8 Schedule E shall also include the total of all such expenditures of
9 \$200 or less made during the reporting period.

10 * * * * *

11 Alternative C

12 * * * * *

13 (b) * * *

14 (2) * * *

15 (vi) Independent expenditures made by the reporting committee;

16 * * * * *

17 (3) * * *

18 (vii) * * *

19 (C) For an independent expenditure that is made in support of or
20 opposition to a presidential primary candidate and is publicly
21 distributed or otherwise publicly disseminated in more than ____
22 states but does not refer to any particular state, the political

1 committee must report the independent expenditure according to
2 11 CFR 104.4(f)(2).

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

7 Schedule E shall also include the total of all such expenditures of
8 \$200 or less made during the reporting period.

9 (4) * * *

10 (iv) (A) Each person who receives any disbursement during the reporting
11 period in an aggregate amount or value in excess of \$200 within the
12 calendar year in connection with an independent expenditure by the
13 reporting committee, together with the date, amount, and purpose of
14 any such independent expenditure(s);

15 (B) For each independent expenditure reported, the committee must
16 also provide a statement which indicates whether such independent
17 expenditure is in support of, or in opposition to a particular
18 candidate, as well as the name of the candidate and office sought
19 by such candidate (including State and Congressional district,
20 when applicable), and a certification, under penalty of perjury, as
21 to whether such independent expenditure is made in cooperation,
22 consultation or concert with, or at the request or suggestion of, any

1 other candidate or any other authorized committee or agent of such
2 committee;

3 (C) For an independent expenditure that is made in support of or
4 opposition to a presidential primary candidate and is publicly
5 distributed or otherwise publicly disseminated in more than
6 states but does not refer to any particular state, the political
7 committee must report the independent expenditure according to
8 11 CFR 104.4(f)(2).

9 (D) The information required by 11 CFR 104.3(b)(4)(iv)(A)- (C) shall
10 be reported on Schedule E as part of a report covering the reporting
11 period in which the aggregate disbursements for any independent
12 expenditure to any person exceed \$200 per calendar year.
13 Schedule E shall also include the total of all such expenditures of
14 \$200 or less made during the reporting period.

15 * * * * *

16 **§ 104.4 [Amended]**

17 6. In § 104.4:

18 a. In paragraphs (a), (b), (c), and (d), add “and 104.3(b)(4)(vi)” after “11 CFR
19 104.3(b)(3)(iv)”;

20 b. In paragraph (b) remove “FEC Form 3X” and add, in its place, the words “the
21 applicable FEC Form”;

22 b. Revise paragraph (f) as to read as follows:

23 **§ 104.4 Independent expenditures by political committees**

1 * * * * *

2 (f) Aggregating independent expenditures for reporting purposes

3 (1) For purposes of determining whether 24-hour and 48-hour reports must be
4 filed in accordance with paragraphs (b) and (c) of this section and 11 CFR
5 109.10(c) and (d), aggregations of independent expenditures must be
6 calculated as of the first date on which a communication that constitutes
7 an independent expenditure is publicly distributed or otherwise publicly
8 disseminated, and as of the date that any such communication with respect
9 to the same election is subsequently publicly distributed or otherwise
10 publicly disseminated. Every person must include in the aggregate total
11 all disbursements during the calendar year for independent expenditures,
12 and all enforceable contracts, either oral or written, obligating funds for
13 disbursements during the calendar year for independent expenditures,
14 where those independent expenditures are made with respect to the same
15 election for Federal office.

16 Alternative A

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

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1 of the national nominating convention of the party whose nomination the
2 candidate is seeking.

3 Alternative B

4 (2) For purposes of determining whether 24-hour or 48-hour reports must be
5 filed in accordance with paragraphs (b) and (c) of this section and 11 CFR
6 109.10(c) and (d), if the independent expenditure is made in support of or
7 opposition to a candidate in a presidential primary election and is publicly
8 distributed or otherwise publicly disseminated in more than ___ states but
9 does not refer to any particular state, the date of the election is the date of
10 the next upcoming presidential primary election among the presidential
11 primary elections to be held in the states in which the independent
12 expenditure is publicly distributed or disseminated.

13 Alternative C

14 (2) Multistate independent expenditures
15 (A) If an independent expenditure is made in support of or opposition
16 to a candidate in a presidential primary election and is publicly distributed
17 or otherwise publicly disseminated in more than ___ states but does not
18 refer to any particular state, the political committee must allocate the total
19 amount of the expenditure among each of the states where it is publicly
20 distributed or disseminated and where the presidential primary election
21 has yet to occur, according to the number of Congressional districts
22 apportioned to each such state relative to the total number of
23 Congressional districts in all such states.

1 (B) If the communication is publicly distributed or otherwise publicly
2 disseminated up to and including the 20th day before the next upcoming
3 presidential primary election in any of the states, and the amount
4 calculated in paragraph (A) aggregates to \$10,000 or more with respect to
5 any of the states in that calendar year, the political committee must file a
6 48-hour report in accordance with paragraph (b)(2).

7 (C) If the communication is publicly distributed or otherwise publicly
8 disseminated after the 20th day but more than 24 hours before 12:01 a.m.
9 of the day of the next upcoming presidential primary election in any of the
10 states, and the amount calculated in paragraph (A) aggregates to \$1,000 or
11 more with respect to any of the states, the political committee must file a
12 24-hour report in accordance with paragraph (c).

13 (D) For any report of an independent expenditure included on a political
14 committee's regular report under paragraph (b)(1), or any 48- or 24-hour
15 report of an independent expenditure, the political committee must
16 indicate the date and amount of the expenditure, and list the states in
17 which the communication is publicly disseminated or otherwise publicly
18 distributed.

19 **§ 104.20 [Amended]**

20 7. In § 104.20:

21 a. Redesignate paragraphs (c)(6)-(c)(9) as paragraphs (c)(7)-(c)(10).

22 b. Revise the heading and add paragraph (c)(6) to read as follows:

23 **§ 104.20 Reporting electioneering communications (52 U.S.C. 30104(f)).**

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1 * * * * *

2 (c) * * *

3 Alternatives A and B

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

10 Alternative C

11 (6) If the election identified pursuant to paragraph (c)(5) is a presidential primary
12 election and the electioneering communication is publicly distributed or otherwise disseminated
13 in more than ___ states but does not refer to any particular state, the cost of the electioneering
14 communication shall be allocated among the states where it is publicly distributed or otherwise
15 disseminated in accordance with section 104.4(f)(2)(A).

16 * * * * *

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

19 8. The authority citation for part 109 continues to read as follows:

20 Authority: 52 U.S.C. 30101(17), 30104(c), 30111(a)(8), 30116, 30120; Sec. 214(c), Pub. L. 107-
21 155, 116 Stat. 81.

22 9. Revise paragraph (e)(1)(iv) of § 109.10 as follows:

23 **§ 109.10 How do political committees and other persons report independent expenditures?**

24 * * * * *

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1 (e) Content of verified reports and statements and verification of reports and
2 statements.

3 (1) * * *

4 Alternatives A and B

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

9 Alternative C

10 (iv) A statement that indicates whether such expenditure was in support of, or
11 in opposition to a candidate, together with the candidate's name and office sought; if the
12 expenditure meets the criteria set forth in section 104.3(b)(3)(vii)(C), the communication must be
13 reported in accordance with section 104.4(f)(2);

14 * * * * *

15

16 On behalf of the Commission,

17

18
19 Caroline C. Hunter,
20 Chair,
21 Federal Election Commission.
22

23 DATED: _____
24 BILLING CODE: 6715-01-P