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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 19-16-A
AGENDA ITEM
For the meeting of April 25, 2019
SUBMITTED LATE

April 18, 2019

MEMORANDUM

TO: The Commission

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

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Attorney

SUBJECT: REG 2018-04 (Senate Filing) – Interim Final Rule (Draft A)

Attached is a draft of the Senate Filing Interim Final Rule. We ask that this be placed on the agenda of the April 25, 2019 Open Meeting.

Attachment

FEDERAL ELECTION COMMISSION

11 CFR PARTS 100, 101, 102, 104, 105, 108, 110, 114

[Notice 2019-XX]

Point of Entry for All Campaign Finance Reports

AGENCY: Federal Election Commission.

ACTION: Interim Final Rule.

SUMMARY: Congress amended the Federal Election Campaign Act (“FECA”) to require all reports, designations, and notices mandated by FECA to be filed with the Federal Election Commission. Previously, Senate candidates and certain political committees were required to file such reports, designations, and notices with the Secretary of the Senate. The Commission is amending its regulations to implement this new statutory requirement. The Commission is accepting comments on this revision to its regulations and comments received may be addressed in a subsequent rulemaking document.

DATES: Effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

Comments must be received on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Esther D. Gyory, Acting Assistant General Counsel, or Ms. Cheryl A. Hemsley, Attorney, (202) 694-1650 or (800) 424-9530.

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 2018-04. Commenters are encouraged to submit comments electronically to ensure timely receipt and consideration.

Alternatively, comments may be submitted in paper form. Paper comments must be sent to the Federal Election Commission, Attn.: Esther D. Gyory, Acting Assistant General Counsel, 1050

First Street, NE, Washington, DC 20463. Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission’s website and in the Commission’s Public Records Office. Accordingly, commenters should not provide in their comments any information that they do not wish to make public, such as a home street address, personal email address, date of birth, phone number, social security number, or driver’s license number, or any information that is restricted from disclosure, such as trade secrets or commercial or financial information that is privileged or confidential.

SUPPLEMENTARY INFORMATION:

A. Background

The Legislative Branch Appropriations Act, 2019, Pub. L. 115-244, sec. 102, 132 Stat. 2897, 2926 (2018) (“Appropriations Act”) amended the Federal Election Campaign Act, 52 U.S.C. 30101–30145 (“FECA”) to require that all reports, designations, and statements required to be filed under FECA must be filed with the Commission. 52 U.S.C. 30102(g). Previously, candidates for the United States Senate, their principal campaign committees, and the Republican and Democratic Senatorial Campaign Committees (collectively “Senate filers”) were required to file on paper with the Secretary of the Senate. 52 U.S.C. 30102(g)(1) (2015) (*amended* 2018). All other filers were required to submit their reports, designations, and statements with the Commission. *See* 52 U.S.C. 30102(g)(3) (2015) (*amended* 2018); *see also* 11 CFR part 105. To implement the change in the point of entry for reports, designations, and statements filed under FECA, the Commission is amending several regulations that state or refer to the point of entry for reports, designations, or notices.

Additionally, Senate filers are now subject to the electronic filing requirements of FECA and Commission regulations. Under these requirements, persons who are required to file with the Commission and have made expenditures or received contributions (or expect to make expenditures or receive contributions) aggregating over \$50,000 in a calendar year must file electronically. 52 U.S.C. 30104(a)(11)(A)(i); 11 CFR 104.18(a). The Commission accordingly is amending its regulations to clarify that these electronic filing requirements apply to all filers, including Senate filers.

B. Revisions to 11 CFR part 105 — Document Filing

Currently, 11 CFR part 105 contains four separate regulations setting forth the place of filing for different types of filers. *See* 11 CFR 105.1 (House candidates and their authorized committees), 105.2 (Senate candidates, their authorized committees, and committees supporting only Senate candidates), 105.3 (Presidential candidates and their authorized committees), and 105.4 (other political committees and persons). Because all filers must now file with the Commission, the Commission is replacing 11 CFR 105.1 through 105.4 with new section 105.1 stating that all reports, designations, or statements required by FECA must be filed with the Commission.

Additionally, 11 CFR 105.5 requires the Secretary of the Senate to transfer all reports it receives pursuant to section 105.2 to the Commission. Because this provision is no longer necessary, the Commission is deleting it.

C. Revisions to 11 CFR 104.4 — Independent expenditures by political committees

Current section 104.4(e) instructs filers to file their independent expenditure reports based on the office sought by the candidate identified in the communication. For independent expenditures in support of, or in opposition to, Senate candidates, regularly scheduled reports

must be filed with the Secretary of the Senate and the Secretary of State in the state in which the candidate is seeking election, while 24- and 48-hour reports must be filed with the Commission and the Secretary of State in the state in which the candidate is seeking election. 11 CFR 104.4(e)(2). The Commission is removing this paragraph. The Commission also is renumbering current paragraph (e)(3) (currently applicable to independent expenditures referencing House of Representatives candidates) as paragraph (e)(2) and revising the new paragraph to require that reports of independent expenditures referencing House candidates, Senate candidates, or both, are filed with the Commission and the Secretary of the State in the state in which the candidate is seeking election; renumbering current paragraph (e)(4) as paragraph (e)(3); and making conforming edits to the cross-references to current paragraphs (e)(2) and (e)(3).

D. Revisions to 11 CFR 104.18 — Electronic filing of reports

The Commission is revising 11 CFR 104.18(a) and (b) to make clear that all persons — including Senate filers — required by FECA to file reports and who meet certain qualifications must do so electronically with the Commission. In paragraph (a), for sake of completeness, the Commission is adding a cross-reference to parts 101, 102, 104, and 109, which also require persons to file reports. In paragraph (b), the Commission is removing the reference to part 105 because it is no longer necessary.

D. References to the Secretary of the Senate and 11 CFR part 105

The Commission also is making conforming revisions to a number of regulations that refer either to the Secretary of the Senate as a place of filing or to the current place of filing provisions in 11 CFR part 105.

1. Removal of references to the Secretary of the Senate

The Commission is removing the words “the Secretary of the Senate,” “file with the Commission” and, in one instance, the Secretary of the Senate’s address, in the following provisions: 11 CFR 100.5(e)(3) (definition of “political committee”), 100.19 (“File, filed, or filing”), 104.3(e)(5) (“Contents of reports”), 104.5(f) (“Filing dates”), 104.14(c) (“Formal requirements regarding reports and statements”), 104.22(d) (“Disclosure of bundling by Lobbyists/Registrants and Lobbyist/Registrant PACs”), 108.8 (“Exemption for the District of Columbia”), 110.6(c)(1)(i) and (ii) (“Earmarked contributions”), and 114.6(d)(3) and (5) (“Twice yearly solicitations”).

2. *Removal of cross-references to 11 CFR part 105*

The Commission also is removing cross-references to 11 CFR part 105 and, where appropriate, inserting the words “with the Commission” in the following provisions: 11 CFR 101.1(a) and (b) (“Candidate designations”), 102.1(a) and (d) (“Registration of political committees”), 102.2(a)(1) (“Statement of organization: Forms and committee identification number”), 102.3(a)(1) (“Termination of registration”), 104.22(d) (“Disclosure of bundling by Lobbyists/Registrants and Lobbyist/Registrant PACs”), and 110.6(c)(1)(i) (“Earmarked contributions”).

The Commission is taking this action without advance notice and comment because it falls under the “good cause” exception of the Administrative Procedure Act (“APA”), 5 U.S.C. 553(b)(B). The revisions are necessary to conform the Commission’s regulations to FECA as amended by the Appropriations Act. Because this action does not involve any Commission discretion or policy judgments, notice and comment are unnecessary. 5 U.S.C. 553(b)(B), (d)(3).

For the same reasons, these revisions fall within the “good cause” exception to the APA’s delayed effective date provision and the requirements of the Congressional Review Act. 5

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U.S.C. 553(d)(3), 808(2). Moreover, because this interim final rule is exempt from the APA's notice and comment procedure under 5 U.S.C. 553(b), the Commission is not required to conduct a regulatory flexibility analysis under 55 U.S.C. 603 or 604. *See* 5 U.S.C. 601(2), 604(a). Nor is the Commission required to submit these revisions for Congressional review under FECA. *See* 52 U.S.C 30111(d)(1), (4) (providing for congressional review when the Commission "prescribe[s]" a "rule of law"). Accordingly, these revisions are effective upon publication in the Federal Register.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 101

Political candidates, Reporting and recordkeeping requirements.

11 CFR Part 102

Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 104

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

11 CFR Part 105

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

11 CFR Part 108

Elections, Reporting and recordkeeping requirements.

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11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 114

Business and industry, Elections, Labor.

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

Part 100—SCOPE AND DEFINITIONS (52 U.S.C. 30101)

1. Authority: 52 U.S.C. 30101, 30104, 30102(g), 30111(a)(8), and 30114(c).
2. Amend § 100.5 by revising paragraph (e)(3) to read as follows:

§ 100.5 Political committee (52 U.S.C. 30101(4), (5), and (6))

* * * * *
(e) * * *

(3) *Multi-candidate committee.* *Multi-candidate committee* means a political committee which (i) has been registered with the Commission for at least 6 months; (ii) has received contributions for Federal elections from more than 50 persons; and (iii) (except for any State political party organization) has made contributions to 5 or more Federal candidates.

* * * * *

3. Amend § 100.19 by revising the introductory text and paragraph (a) to read as follows:

§ 100.19 File, filed, or filing (52 U.S.C. 30102(g), 30104(a))

With respect to documents required to be filed under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109, and any modifications or amendments thereto, the terms *file*, *filed*, and *filing* mean one of the actions set forth in paragraphs (a) through (f) of this section. For purposes of this section, document means any report, statement, notice, or designation required by the Act to be filed with the Commission.

(a) *Where to deliver reports.* Except for documents electronically filed under paragraph (c) of this section, a document is timely filed upon delivery to the Federal Election Commission, at the

street address identified in the definition of “Commission” in § 1.2, by the close of business on the prescribed filing date.

* * *

(e) *48-hour statements of last-minute contributions.* In addition to other permissible means of filing, authorized committees that are not required to file electronically may file 48-hour notices of contributions using facsimile machines. All authorized committees, including electronic reporting entities, may use the Commission’s website’s on-line program to file 48-hour notifications of contributions. *See* 11 CFR 104.5(f).

* * * * *

PART 101—CANDIDATE STATUS AND DESIGNATIONS (52 U.S.C. 30102(e))

4. Authority: 52 U.S.C. 30102(e), (g), 30104(a)(11), and 30111(a)(8).

5. Revise § 101.1 to read as follows:

§ 101.1 Candidate designations (52 U.S.C. 30102(e)(1), (g)).

(a) *Principal Campaign Committee.* Within 15 days after becoming a candidate under 11 CFR 100.3, each candidate, other than a nominee for the office of Vice President, shall designate in writing, a principal campaign committee in accordance with 11 CFR 102.12. A candidate shall designate his or her principal campaign committee by filing a Statement of Candidacy on FEC Form 2, or, if the candidate is not required to file electronically under 11 CFR 104.18, by filing a letter with the Commission containing the same information (that is, the individual’s name and address, party affiliation, and office sought, the District and State in which Federal office is sought, and the name and address of his or her principal campaign committee). Each principal campaign committee shall register, designate a depository, and report in accordance with 11 CFR parts 102, 103, and 104.

(b) *Authorized committees.* A candidate may designate additional political committees in accordance with 11 CFR 102.13 to serve as committees which will be authorized to accept contributions or make expenditures on behalf of the candidate. For each such authorized committee, other than a principal campaign committee, the candidate shall file a written designation with his or her principal campaign committee. The principal campaign committee shall file such designations with the Commission.

**PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY
POLITICAL COMMITTEES (52 U.S.C. 30103)**

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

7. Amend § 102.1 by revising paragraphs (a) and (d) to read as follows:

§ 102.1 Registration of political committees (52 U.S.C. 30102(g), 30103(a)).

(a) *Principal campaign committees.* Each principal campaign committee shall file a Statement of Organization in accordance with 11 CFR 102.2 no later than 10 days after designation pursuant to 11 CFR 101.1. In addition, each principal campaign committee shall file all designations, statements and reports which are filed with such committee with the Commission.

* * * * *

(d) *Other political committees.* All other committees shall file a Statement of Organization no later than 10 days after becoming a political committee within the meaning of 11 CFR 100.5. Such statement(s) shall be filed with the Commission.

8. Amend § 102.2 by revising paragraph (a) to read as follows:

§ 102.2 Statement of organization: Forms and committee identification number (52 U.S.C. 30302(g), 30103(b), (c)).

(a) *Forms.* (1) The Statement of Organization shall be filed with the Commission on Federal Election Commission Form 1.

* * *
* * * * *

9. Amend § 102.3 by revising paragraph (a)(1) to read as follows:

§ 102.3 Termination of registration (52 U.S.C. 30102(g), 30103(d)(1)).

(a)(1) A political committee (other than a principal campaign committee) may terminate only upon filing a termination report on the appropriate FEC Form or upon filing a written statement containing the same information with the Commission. Except as provided in 11 CFR 102.4(c), only a committee which will no longer receive any contributions or make any disbursements that would otherwise qualify it as a political committee may terminate, provided that such committee has no outstanding debts and obligations. In addition to the Notice, the committee shall also provide a final report of receipts and disbursements, which report shall include a statement as to the purpose for which such residual funds will be used, including a statement as to whether such residual funds will be used to defray expenses incurred in connection with an individual's duties as a holder of federal office.

PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS (52 U.S.C. 30104)

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

11. Amend § 104.3 by revising paragraph (e)(5) as follows:

§104.3 Contents of Reports (52 U.S.C. 30102(g), 30104(b), 30114).

* * * * *

(e) * * *

(5) A committee using pseudonyms shall send a list of such pseudonyms under separate cover directly to the Reports Analysis Division, Federal Election Commission, at the street address identified in the definition of “Commission” in §1.2, on or before the date on which any report containing such pseudonyms is filed with the Commission. The Commission shall maintain the list, but shall exclude it from the public record. A committee shall not send any list of pseudonyms to any Secretary of State or equivalent state officer.

* * * * *

12. Amend § 104.4 by removing paragraph (e)(2), revising and redesignating paragraph (e)(3) as paragraph (e)(2), and revising and redesignating paragraph (e)(4) as paragraph (e)(3), to read as follows:

§ 104.4 Independent expenditures by political committees (52 U.S.C. 30102(g), 30104(b), (d), and (g)).

* * * * *

(e) * * *

(2) For independent expenditures in support of, or in opposition to, a candidate for the U.S. Senate or the House of Representatives: with the Commission and the Secretary of State for the State in which the candidate is seeking election.

(3) Notwithstanding the requirements of paragraphs (e)(1) and (2) of this section, political committees and other persons shall not be required to file reports of independent expenditures with the Secretary of State if that State has obtained a waiver under 11 CFR 108.1(b).

* * * * *

13. Amend § 104.5 by revising paragraph (f) to read as follows:

§ 104.5 Filing dates (52 U.S.C. 30102(g), 30104(a)(2)).

* * * * *

(f) *48-hour notification of contributions.* If any contribution of \$1,000 or more is received by any authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01 a.m. of the day of the election, the principal campaign committee of that candidate shall notify the Commission and the Secretary of State, as appropriate, within 48 hours of receipt of the contribution. The notification shall be in writing and shall include the name of the candidate and office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be filed in accordance with 11 CFR 100.19. The notification shall be in addition to the reporting of these contributions on the post-election report.

* * * * *

14. Amend § 104.14 by revising paragraph (c) to read as follows:

§ 104.14 Formal requirements regarding reports and statements.

* * * * *

(c) Acknowledgements by the Commission of the receipt of Statements of Organization, reports or other statements filed under 11 CFR parts 101, 102 and 104 are intended solely to inform the person filing the report of its receipt and neither the acknowledgement nor the acceptance of a report or statement shall constitute express or implied approval, or in any manner indicate that the contents of any report or statement fulfill the filing or other requirements of the Act or of these regulations.

* * * * *

15. Amend § 104.18 by revising paragraphs (a)(1), (b), and (c) to read as follows:

§ 104.18 Electronic filing of reports (52 U.S.C. 30102(d) and 30104(a)(11)).

(a) *Mandatory.* (1) Political committees and other persons required by the Act to file reports with the Commission, as provided in 11 CFR Parts 101, 102, 104, 105, 107, and 109, must do so in an electronic format that meets the requirements of this section if—

* * *

(b) *Voluntary.* A political committee or other person who files reports with the Commission and who is not required to file electronically under paragraph (a) of this section, may choose to file its reports in an electronic format that meets the requirements of this section (internet forms included). If a political committee or other person chooses to file its reports electronically, all electronically filed reports must pass the Commission’s validation program in accordance with paragraph (e) of this section. The committee or other person must continue to file in an electronic format all reports covering financial activity for that calendar year, unless the Commission determines that extraordinary and unforeseeable circumstances have made it impracticable for the political committee or other person to continue filing electronically.

* * * * *

16. Amend § 104.22 by revising paragraph (d) to read as follows:

§ 104.22 Disclosure of bundling by Lobbyist/Registrants and Lobbyist/Registrant PACs (52 U.S.C. 30102(g), 30104(i)).

* * * * *

(d) *Where to file.* Reporting committees shall file with the Federal Election Commission.

* * * * *

PART 105—DOCUMENT FILING (52 U.S.C. 30102(g))

17. Authority: 52 U.S.C. 30102(g), 30104, 30111(a)(8).

18. Revise § 105.1 to read as follows:

§ 105.1 Place of filing (52 U.S.C. 30102(g), 30104(g)).

All designations, statements, reports, and notices, as well as any modification(s) or amendment(s) thereto, required to be filed under the Act shall be filed in original form with, and received by, the Commission as defined in § 1.2.

19. Remove and reserve §§ 105.2, 105.3, 105.4, and 105.5.

PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (52 U.S.C. 30113)

20. Authority: 52 U.S.C. 30102(g), 30104(a)(2), 30111(a)(8), 30113, 30143.

21. Revise § 108.8 to read as follows:

§ 108.8 Exemption for the District of Columbia (52 U.S.C. 30102(g))

Any copy of a report required to be filed with the equivalent officer in the District of Columbia shall be deemed to be filed if the original has been filed with the Commission.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

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

23. Amend § 110.6 by revising paragraphs (c)(1)(i) and (ii) to read as follows:

§ 110.6 Earmarked contributions (52 U.S.C. 30102(g), 30116(a)(8)).

* * * * *

(c) *Reporting of earmarked contributions—(1) Reports by conduits and intermediaries.* (i) The intermediary or conduit of the earmarked contribution shall report the original source and the

recipient candidate or authorized committee to the Commission and to the recipient candidate or authorized committee.

(ii) The report to the Commission shall be included in the conduit's or intermediary's report for the reporting period in which the earmarked contribution was received, or, if the conduit or intermediary is not required to report under 11 CFR part 104, by letter to the Commission within thirty days after forwarding the earmarked contribution.

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

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

25. Amend § 114.6 by revising paragraphs (d)(3)(i) and (d)(5) to read as follows:

§ 114.6 Twice yearly solicitations.

* * * * *

(d) * * *

(3) The custodian shall not—

(i) Make the records of persons making a single contribution of \$50 or less, or multiple contributions aggregating \$200 or less, in a calendar year, available to any person other than representatives of the Federal Election Commission and law enforcement officials or judicial bodies.

* * *

(5) Notwithstanding the prohibitions of paragraph (d)(1) of this section, the custodian may be employed by the separate segregated fund as its treasurer and may handle all of its contributions, provided that the custodian preserves the anonymity of the contributors as required by this section. The custodian shall file the required reports with the Federal Election Commission. A

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custodian who serves as treasurer is subject to all of the duties, responsibilities, and liabilities of a treasurer under the Act, and may not participate in the decision making process whereby the separate segregated fund makes contributions and expenditures.

* * * * *

On behalf of the Commission,

Ellen L. Weintraub,

Chair,

Federal Election Commission.

DATED: