regulations governing the interstate movement of cattle because of brucellosis by changing the classification of the State of Minnesota from Class A to Class Free. This rule is necessary because it has been determined that this State meets the standards for Class Free status. The rule relieves restrictions on the interstate movement of cattle from the State of Minnesota.

EFFECTIVE DATE: March 13, 1985.

FOR FURTHER INFORMATION CONTACT: Dr. Thomas J. Holt, Cattle Diseases Staff, VS, APHIS, USDA, Room 817, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–8711.

SUPPLEMENTARY INFORMATION:

Background

A document published in the Federal Register on November 29, 1984 (49 FR 46871–46872), amended the brucellosis regulations in 9 CFR Part 78 by changing the classification of the State of Minnesota from Class A to Class Free. The amendment, which was made effective November 29, 1984, relieves certain restrictions on the interstate movement of cattle from Minnesota.

Comments were solicited for 60 days after publication of the amendment. No comments were received. The factual situation which was set forth in the document of November 29, 1984, still provides a basis for the amendment.

Executive Order 12291 and Regulatory Flexibility Act

This rule has been reviewed in accordance with Executive Order 12291 and has been determined to be not a major rule. Based on information compiled by the Department, it has been determined that this rule will not have a significant effect on the economy; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this rulemaking action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Changing the status of the State of Minnesota reduces testing requirements on the interstate movement of certain cattle. Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Testing requirements for cattle moved interstate for immediate slaughter, or to quarantined feedlots are not affected by the changes in status. Also, cattle from Certified Brucellosis-Free Herds moving interstate are not affected by these changes in status. It has been determined that the changes in brucellosis status made by this rule will not affect marketing patterns and will not have a significant economic impact on those persons affected by this document.

Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle Hogs, Quarantine, Transportation.

PART 78—[AMENDED]

Accordingly, the interim rule amending 9 CFR Part 78 which was published at 49 FR 46871–46872 on November 29, 1984, is adopted as a final rule without change.

Authority: Secs. 4, 5, 6, 23 Stat. 32, as amended; secs. 1 and 2, 32 Stat. 791–792, as amended; sec. 3, 33 Stat. 1265, as amended; sec. 2, 65 Stat. 693; and secs. 3 and 11, 76 Stat. 130, 132; 21 U.S.C. 111–113, 114a–1, 115, 120, 121, 125, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

Done at Washington, D.C., this 7th day of March 1985.

K.R. Hook,

Acting Deputy Administrator, Veterinary Services.

[FR Doc. 85–5944 Filed 3–12–85; 8:45 am]

BILLING CODE 3410–34–M

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 101

Payments Received for Testing the Waters Activities; Transmittal to Congress

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal to Congress.

SUMMARY: The Commission's regulations governing "testing the waters" activities at 11 CFR 100.7(b)(1), 100.8(b)(1) and 101.3 have been revised and transmitted to Congress pursuant to 2 U.S.C. 438(d). These regulations permit an individual to receive and expend funds to test the feasibility of a campaign for Federal office without becoming a candidate under the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* ("the Act"). The revised rules amend §§ 100.7(b)(1) and 100.8(b)(1) to clarify that the "testing the waters" exemptions do not apply to campaign activities undertaken once an individual decides to become a candidate. The regulations also revise §§ 100.7(b)(1), 100.8(b)(1), and 101.3 to prohibit the use of funds in excess of the contribution limits or from prohibited sources under the Act for "testing the waters" activities. Finally, the new rules make minor clarifying amendments to §§ 100.7(b)(1) and 100.8(b)(1) in two areas. Further information on the revisions is provided in the supplementary information which follows.

EFFECTIVE DATE: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street, NW, Washington, D.C. 20463, (202) 523–4143 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revised rules to govern "testing the waters" activities at 11 CFR 100.7(b)(1), 100.8(b)(1), and 101.3. On July 31, 1984, the Commission issued a Notice of Proposed Rulemaking seeking comments on proposed revisions to these regulations. 49 FR 30509. One comment was received in response to the Notice from the National Republican Congressional Committee ("NRCC"). The Commission has also considered comments filed by the National Education Association ("NEA") and Wayne Lela, an independent Presidential candidate, on the issues raised in its Advance Notice of Proposed Rulemaking (49 FR 1995) issued on February 17, 1984.

2 U.S.C. 438(d) requires that any rule or regulation prescribed by the Commission to carry out the provisions of Title 2, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. These regulations were transmitted to Congress on March 8, 1985.

Explanation and Justification

Under 2 U.S.C. 431(2), an individual is deemed to be a "candidate" for purposes of the Act if he or she receives contributions or makes expenditures in excess of $5,000 or gives consent to another person to receive contributions or make expenditures on his or her

behalf aggregating in excess of $5,000. The Act thus establishes automatic dollar thresholds for attaining candidate status which trigger its registration and reporting requirements.

Through its regulations, the Commission has established limited exceptions to these automatic thresholds which permit an individual to test the feasibility of a campaign for Federal office without becoming a candidate under the Act. Commonly referred to as the "testing the waters" exceptions, 11 CFR 100.7(b)(1) and 100.8(b)(1) exclude funds received and payments made to determine whether an individual should become a candidate from the definitions of "contribution" and "expenditure" respectively. An individual who undertakes "testing the waters" activities must nevertheless keep records of all funds received and payments made in connection with these activities. The Commission's regulations provide that if the person subsequently becomes a candidate, those receipts and disbursements become contributions and expenditures under the Act. Thus, under §§ 100.7(b)(1), 100.8(b)(1), and 101.3, such funds received and payments made must be reported in the first report filed by the candidate's principal campaign committee.

The revised rules amend §§ 100.7(b)(1), 100.8(b)(1), and 101.3 in three respects. First, §§ 100.7(b)(1) and 100.8(b)(1) have been amended to further clarify that the "testing the waters" exemptions do not apply to campaign activities undertaken once an individual has decided to become a candidate. A second set of revisions to §§ 100.7(b)(1), 100.8(b)(1), and 101.3 prohibit the use of funds in excess of the contribution limits or from prohibited sources for "testing the waters" activities. Finally, minor clarifying amendments have been made in §§ 100.7(b)(1) and 100.8(b)(1).

A. Scope of Permissible Activities Under the "Testing the Waters" Exemptions

The current "testing the waters" regulations are explicitly limited "solely" to activities designed to evaluate a potential candidacy. Examples of permissible activities included in the present regulations are expenses for conducting a poll, telephone calls, and travel, to determine whether an individual should become a candidate. Currently, §§ 100.7(b)(1) and 100.8(b)(1) expressly prohibit receipts and disbursements for general public political advertising, such as television or newspaper advertisements, or efforts to raise funds for use after the individual becomes a candidate. The Commission has distinguished such activities as amounting to the establishment of a campaign organization. *See* Advisory Opinions ("AO") 1979–26, 1981–32, 1982–3, and 1982–19.

Despite its attempts to limit the scope of the "testing the waters" exceptions, the Commission has concluded that the present rules could be interpreted to include activities beyond those they were originally intended to encompass. The Commission has, therefore, amended the rules to ensure that the "testing the waters" exemptions will not be extended beyond their original purpose. Specifically, these provisions are intended to be limited exemptions from the reporting requirements of the Act to permit individuals to conduct certain activities while deciding whether to become a candidate for Federal office, without making their activities immediately public.

Accordingly, the Commission has amended §§ 100.7(b)(1) and 100.8(b)(1) to set forth an expanded list of examples of activities that, dependent upon the circumstances, may be considered to indicate that an individual has decided to become a candidate and is no longer "testing the waters." The Commission believes the inclusion of examples of activities in the text of the regulations will provide greater assistance in determining when someone is undertaking permissible "testing the waters" activities than possibly vague general factors. First, the Commission has amended these sections to include as examples the activities that are specifically prohibited under the current "testing the waters" provisions. The revised rules retain use of public political advertising to publicize the individual's campaign as an example of an activity not permissible as "testing the waters" in §§ 100.7(b)(1)(ii)(A) and 100.8(b)(1)(ii)(A). Moreover, based on similar provisions in the current regulations, §§ 100.7(b)(1)(ii)(B) and 100.8(b)(1)(ii)(B) include as an example raising funds in excess of what could reasonably be expected to be used for exploratory activities or undertaking activities designed to amass campaign funds that would be spent after the individual becomes a candidate. These revisions are in accord with the Commission's determination in AOs 1979–26 and 1981–32 that to stay within the exemption, funds must be raised only for the purpose of financing the exempt activity.

Secondly, the revised rules set forth three additional examples of other activities indicating that an individual is no longer "testing the waters" that were not previously enumerated in the regulations. The Commission has concluded, on the basis of its experience and the comments received on the Notice of Proposed Rulemaking, that these examples further illustrate the line drawn between "testing the waters" activities and campaigning after an individual has decided to become a candidate.

Thus, paragraph (b)(1)(ii)(C) in §§ 100.7 and 100.8 concerns whether the individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office. *See* AO 1981–32. Furthermore, if an individual conducts activities in close proximity to the election or over a protracted period of time, the Commission may consider such activity an indication that the individual has decided to become a candidate under §§ 100.7(b)(1)(ii)(D) and 100.8(b)(1)(ii)(D). Sections 100.7(b)(1)(ii)(E) and 100.8(b)(1)(ii)(E) contain as a final example taking action to qualify for the ballot under State law. This example utilizes NRCC's suggestion that the State filing deadline is an appropriate time for determining whether an individual has become a candidate, but does not make it the exclusive factor.

The Commission also considered including an illustrative list of factors that could be used in determining whether particular activities are permissible under the "testing the waters" exemptions. A proposed list of determinative factors was contained in the Notice of Proposed Rulemaking in recognition of the fact that activities, such as polling and travel, may be legitimate "testing the waters" activities or campaigning depending upon the surrounding circumstances. Upon further consideration, however, the Commission decided not to include these factors in the final rules. The Commission concluded that the inclusion of general, possibly vague factors would not aid in clarifying the narrow scope of the "testing the waters" provisions. This is particularly so since the determination of whether an individual has crossed the line from "testing the waters" to campaigning must be made on a case-by-case basis.

B. Applicability of Contribution Limitations and Prohibitions to "Testing the Waters" Activities

The Commission has also revised the rules to prohibit the use of funds in excess of the contribution limits or from sources prohibited under the Act to be used for "testing the waters" activities.

Sections 100.7(b)(1), 100.8(b)(1), and 101.3 currently provide that funds received or expended for "testing the waters" become reportable contributions and expenditures if the individual becomes a candidate. Section 101.3 also currently provides that any excessive or prohibited contributions received during the "testing the waters" period must be refunded within 10 days after the individual becomes a candidate.

The Commission has reached the conclusion that the present regulations permit individuals to accept funds in excess of the contribution limits of 2 U.S.C. 441a(a) and funds from prohibited sources, such as corporations and labor organizations, for "testing the waters" activities. *See* AOs 1982–19 and 1983–9. In AO 1982–19, the Commission concluded that the prohibitions, limitations, and reporting requirements of the Act become applicable only when an individual becomes a candidate. However, pursuant to § 101.3, the Commission required that the individual repay or refund any excessive or prohibited contributions received during the "testing the waters" period within 10 days after becoming a candidate. Similarly, the Commission determined in AO 1983–9 that an individual could make loans from his personal funds to an exploratory committee in excess of the expenditure limitations of the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 *et seq.* and still be eligible to receive primary matching funds. The Commission required pursuant to § 101.3 that funds in excess of the $50,000 expenditure limitation imposed by 26 U.S.C. § 9035(b) be repaid to him within 10 days after he declared his candidacy.

The Commission has reconsidered this issue and determined that permitting prohibited funds to be used for "testing the waters" activities extended the exemptions beyond the narrow range of activities they were originally intended to encompass. Thus, §§ 100.7(b)(1), 100.8(b)(1), and 101.3, as amended, now require that all funds received for "testing the waters" must be subject to the Act's limitations and prohibitions. The revised rules thus overrule the Commission's decisions on this question in AOs 1982–19 and 1983–9. The Commission views the amended regulations as reducing the potential for circumvention of the prohibitions and limitations of the Act. These revisions also ensure consistent application of the Act's contribution limitations and prohibitions.

Two commentors objected to the proposed rules to the extent they prohibited the use of excessive contributions and funds from prohibited sources for "testing the waters" activities. The Commission has considered these comments, but decided not to follow them in adopting the final rules. The Commission believes that the revised rules will remedy the situation that results under the present regulations when funds that are permissible when donated subsequently become illegal and must be refunded when the individual becomes a candidate. Moreover, the revised rules are intended to clear up any misconceptions that the "testing the waters" provisions may be used to raise "seed money" for prospective candidates. The current regulations are clear in prohibiting the use of the "testing the waters" exemptions to raise money for a future campaign. The Commission has reinforced its prohibition of this practice by reiterating the policy of the present regulations in its list of examples.

C. Miscellaneous Amendments

Finally, two minor amendments have been made to §§ 100.7(b)(1) and 100.8(b)(1). The regulations revise these sections to include a cross-reference to the recordkeeping the reporting requirements of § 101.3. In addition, the revisions clarify that each of these sections provides an exemption solely to the definition of either "contribution" or "expenditure" by limiting the section to either "funds received" or "payments made."

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 101

Political candidates, reporting and recordkeeping requirements, elections.

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. 11 CFR Part 100 is amended by revising §§ 100.7(b)(1) and 100.8(b)(1) to read as follows:

§ 100.7 Contribution (2 U.S.C. 431(8)).

* * * * *

(b) * * *

(1) (i) Funds received solely for the purpose of determining whether an individual should become a candidate are not contributions. Examples of activities permissible under this exemption if they are conducted to determine whether an individual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such funds received. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the funds received are contributions subject to the reporting requirements of the Act. Such contributions must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received.

(ii) This exemption does not apply to funds received for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(A) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(B) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(C) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(D) The individual conducts activities in close proximity to the election or over a protracted period of time.

(E) The individual has taken action to qualify for the ballot under State law.

* * * * *

§ 100.8 Expenditure (2 U.S.C. 431(9).

* * * * *

(b) * * *

(1) (i) Payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures. Examples of activities permissible under this exemption if they are conducted to determine whether an indivdual should become a candidate include, but are not limited to, conducting a poll, telephone calls, and travel. Only funds permissible under the Act may be used for such activities. The individual shall keep records of all such payments. See 11 CFR 101.3. If the individual subsequently becomes a candidate, the payments made are subject to the reporting requirements of the Act. Such expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the payments were made.

(ii) This exemption does not apply to payments made for activities indicating that an individual has decided to become a candidate for a particular office or for activities relevant to conducting a campaign. Examples of activities that indicate that an individual has decided to become a candidate include, but are not limited to:

(A) The individual uses general public political advertising to publicize his or her intention to campaign for Federal office.

(B) The individual raises funds in excess of what could reasonably be expected to be used for exploratory activities or undertakes activities designed to amass campaign funds that would be spent after he or she becomes a candidate.

(C) The individual makes or authorizes written or oral statements that refer to him or her as a candidate for a particular office.

(D) The individual conducts activities in close proximity to the election or over a protracted period of time.

(E) The individual has taken action to quality for the ballot under State law.

* * * * *

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

2. 11 CFR Part 101 is amended by revising § 101.3 to read as follows:

§ 101.3 Funds received or expended prior to becoming a candidate (2 U.S.C. 432(e)(2)).

When an individual becomes a candidate, all funds received or payments made in connection with activities conducted under 11 CFR 100.7(b)(1) and 11 CFR 100.8(b)(1) or his or her campaign prior to becoming a candidate shall be considered contributions or expenditures under the Act and shall be reported in accordance with 11 CFR 104.3 in the first report filed by such candidate's principal campaign committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received (see 11 CFR 102.9(a)), and all expenditures made (see 11 CFR 102.9(b)) in connection with activities conducted under 11 CFR 100.7(b)(1) and 11 CFR 100.8(b)(1) or the individual's campaign prior to becoming a candidate.

Authority: 2 U.S.C. 431(8), 431(9), 432(e)(2), and 437d(8).

Dated: March 8, 1985.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 85-6020 Filed 3-12-85; 8:45 am]

BILLING CODE 6715-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Engineering Services

AGENCY: Small Business Administration.

ACTION: Result of size standard study; decision not the change rule.

SUMMARY: SBA has reviewed, in depth, the size standard for engineering services (except for military and aerospace equipment and weapons) and decided to retain the current size standard of $7.5 million in average annual receipts which was established in 1975.

In its Final Rule of February 9, 1984 (49 FR 5023), SBA was specifically committed to make this study as well as review several other industries where there was controversy over the appropriate size standard. The study of the engineering services size standard included an examination of the industry structure, the nature and distribution of Federal contracts among engineering firms, the impact of changes to alternative size standards and the comments received from firms, associations, and Federal agencies. SBA found no persuasive reason to make any change.

FOR FURTHER INFORMATION CONTACT: Andrew A. Canellas, Director, Size Standards Staff, Small Business Administration, 1441 L Street NW., Room 500, Washington, D.C. 20416, (202) 653-6373.

SUPPLEMENTARY INFORMATION:

Background

On February 9, 1984, the Small Business Administration published a Final Rule in the **Federal Register** (49 FR 5023) in which its size standards were comprehensively revised. Almost all dollar size standards were given an 81 percent increase to adjust for inflation since they were last established in 1975. One industry in which its size standard was maintained, however, was engineering services, with the exception that an increase was implemented for engineering specifically for military and aerospace equipment and weapons. The need for further study of the engineering services (except for military and aerospace equipment and weapons) size standard became obvious when almost all comments were opposed to SBA's May 6, 1983, proposal to lower the size standard to $3.5 million. Those commenting took widely diverse positions, a majority wanting the size standard much lower than the proposed $3.5 million while almost all others wished to retain the standard at $7.5 million.

Two advance notices and one notice of proposal to revise SBA size standards were published in the **Federal Register**, 45 FR 15442, March 10, 1980; 47 FR 18992, May 3, 1982, and 48 FR 20560, May 6, 1983, and in response to each of these proposals more comments were received concerning the size standard for engineering services than for any other industry, indicating the interest in this size standard.

Industry Structure

Engineering services consists of a number of types of engineering. Approximately 84 percent of the dollar receipts of engineering service firms is for engineering design services used in construction. The engineering service industry is not highly sensitive to Federal procurements; less than 6 percent of its receipts come from Federal contracts.

There are slightly over 15,000 engineering service firms with at least one employee of which 250 firms exceed SBA's current size standard of $7.5 million. These 250 large engineering firms account for approximately 50 percent of the industry's receipts.

There is a clearly established trend for the large firms in this industry to grow in size, mostly through acquisitions and mergers with other large or intermediate size engineering firms. There was a recent increase in the number of very small firms, mostly with one or two engineers. Data showing these trends are presented in Table 1 that follows:

TABLE 1.—CONSULTING ENGINEER'S CENSUS OF FIRMS COMPARATIVE DATA—1978-1980-1982

(Encompasses firms primarily in the civil engineering field)

		Employment Size of Firm			
		1-25	26-100	Over 100	Total
Number of firms	1978	8,428	1,333	487	10,248
	1980	8,450	1,813	628	10,891
	1982	11,022	1,730	603	13,355
Percent increase	1978-1980	+0.2	+36.0	+29.0	+6.3
	1980-1982	+30.4	−4.6	−4.0	+22.6
Engineers per firm	1980	2.4	9.5	61.6	7.0
	1982	2.2	9.3	92.9	7.2