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2000 APR 21 A 11:43

FEDERAL ELECTION COMMISSION
Washington, DC 20463

APR 20 2000

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkonig *JAP*
Staff DirectorFROM: Lawrence M. Noble *L*
General CounselN. Bradley Litchfield *NBL*
Associate General CounselRosemary C. Smith *ACS*
Assistant General CounselCheryl A. Fowle *CAF*
AttorneySUBJECT: Notice of Proposed Rulemaking on Election Cycle Reporting
(11 C.F.R. §§104.3, 104.8 and 104.9)

The Office of General Counsel has drafted proposed rules on election cycle reporting by authorized committees and prepared an accompanying narrative. Public L. 106-58 requires that the Commission have final rules in effect on January 1, 2001. Due to the time pressure on this project, we recommend that no hearing be held. This Office worked with the Data Systems Development Division, the Reports Analysis Division, the Information Division, the Press Office, and the Public Disclosure Division in drafting the NPRM. We have also conferred with the Regulations Committee.

The proposed regulations maintain the definition of election cycle at current 11 CFR 100.3(b). In addition, we have included two alternative approaches beginning on page 6 of the narrative. One alternative is to use January 1 of the odd numbered year through December 31 of the even numbered year as the election cycle for authorized committees for reporting purposes. The second alternative is to use the close of the post-general election reporting period (20 days after the general election) as the end of the election cycle for both reporting and contribution aggregation. We note that the 1999 legislative history for the amendment to 2 U.S.C. 434(b) neither requires nor precludes

AGENDA ITEM
For Meeting of: 4-27-00**SUBMITTED LATE**

these changes in the definition of election cycle and the attribution of undesignated contributions to certain elections.

Recommendation

The Office of General Counsel recommends that the Commission approve the attached Notice of Proposed Rulemaking for publication in the *Federal Register*.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 [NOTICE 2000->]

3 11 CFR Part 104

4 **ELECTION CYCLE REPORTING BY AUTHORIZED COMMITTEES**

5 **AGENCY:** Federal Election Commission

6 **ACTION:** Notice of Proposed Rulemaking

7 **SUMMARY:** The Federal Election Commission is seeking comment on proposed
8 rules to require authorized committees of Federal candidates to
9 aggregate, itemize and report all receipts and disbursements on an
10 election-cycle basis rather than on the current calendar-year-to-date
11 basis. This requirement reflects recent changes in the Federal
12 Election Campaign Act of 1971. The intent of these proposed rules is
13 to simplify recordkeeping and reporting requirements for authorized
14 committees of Federal candidates and to better disclose receipts and
15 disbursements that occur during an election cycle. Please note that the
16 draft rules that follow do not represent a final decision by the
17 Commission on the issues presented by this rulemaking. Further
18 information is provided in the supplementary information that
19 follows.

20 **DATES:** Comments must be received on or before [insert date 30 days after
21 date of publication in the Federal Register].

22 **ADDRESSES:** All comments should be addressed to Rosemary C. Smith, Assistant
23 General Counsel, and must be submitted in either written or electronic

1 form. Written comments should be sent to the Federal Election
2 Commission, 999 E Street, NW, Washington, DC 20463. Faxed
3 comments should be sent to (202) 219-3923, with printed copy
4 follow-up to insure legibility. Electronic mail comments should be
5 sent to ecyclereport@fec.gov. Commenters sending comments by
6 electronic mail must include their full name, electronic mail address
7 and postal service address within the text of their comments.

8 Comments that do not contain the full name, electronic mail address
9 and postal service address of the commenter will not be considered.

10 The Commission will make every effort to have public comments
11 posted on its web site within ten business days of the close of the
12 comment period.

13 **FOR FURTHER**
14 **INFORMATION**
15 **CONTACT:**

Ms. Rosemary Smith, Assistant General Counsel, or Cheryl Fowle,
16 Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694-
17 1650 or (800) 424-9530.

18 **SUPPLEMENTARY**

19 **INFORMATION:** On September 29, 1999, Public Law 106-58 amended section 434(b) of the
20 Federal Election Campaign Act of 1971 ("the Act" or "FECA") to require, inter alia, that the
21 Commission draft rules requiring the authorized committees of Federal candidates to aggregate

1 and report their receipts and disbursements¹ on an election-cycle-to-date basis, rather than a
2 calendar-year-to-date basis, as is currently required. The new law requires these rules to be
3 effective for reports covering periods after December 31, 2000.

4 The new law also requires the Commission to amend its regulations to add a system of
5 administrative fines for violations of the reporting requirements, and to require persons to file
6 electronically if their aggregate contributions or expenditures within a calendar year are, or are
7 expected to be, above a certain threshold amount. These two topics are being addressed in two
8 separate rulemakings. See Notice of Proposed Rulemaking, 65 F.R. 16534 (March 29, 2000)
9 and Notice of Proposed Rulemaking, 65 F.R. 19339 (April 11, 2000).

10 The Commission is seeking public comment on proposed amendments to 11 CFR
11 104.3, 104.8 and 104.9 to implement the new statutory requirements regarding election-cycle
12 reporting. Current Commission regulations at 11 CFR 104.3 and 104.8 require authorized
13 committees of Federal candidates to aggregate contributions from each contributor on a per-
14 election basis for purposes of the contribution limits, but to report them on a calendar-year-to-
15 date basis. Other receipts are both aggregated and reported on a calendar-year-to-date basis.
16 Under 11 CFR 104.3 and 104.9, disbursements are both aggregated and reported on a calendar-

¹ While the amendment requires all disbursements including operating expenditures to be aggregated and reported on an election-cycle basis, it does not require that operating expenditures be itemized on an election-cycle basis. Thus, the effect of the amendment is that operating expenditures would be reported on the summary pages on an election-cycle basis and itemized on Schedule B on a calendar-year basis. On March 10, 2000, the Commission submitted to Congress a legislative recommendation that Congress amend the FECA by requiring operating expenditures to be itemized on an election cycle basis rather than on a per calendar year basis. The proposed rules proceed on the assumption that Congress will pass an amendment to the Act to correct this inconsistency prior to the January 1, 2001, effective date required by Public Law 106-58.

1 year-to-date basis. The goals of the amendment to the FECA and the proposed rules are to
2 simplify recordkeeping and reporting for authorized committees by itemizing contributions,
3 other receipts, and disbursements on the same election-cycle-to-date basis, and to provide the
4 public with more relevant information for the current election cycle. 145 Cong. Rec. E1896-02,
5 September 17, 1999 (statement of Hon. William M. Thomas).

6 Please note that this amendment to the FECA does not affect unauthorized committees
7 and the Commission does not anticipate issuing new rules modifying the calendar year
8 reporting system they currently use, or changing the forms they file.²

9 **Definition of Election Cycle**

10 Under current 11 CFR 100.3(b), an election cycle begins on the day after the general
11 election for the office or seat that the candidate seeks and ends on the day of the next general
12 election for that seat or office.³ For example, for many candidates for the House of
13 Representatives, the 2004 election cycle begins the day after the general election in 2002 and
14 will end on the day of the general election in 2004. Please note that the length of the election
15 cycle varies depending on the office sought. The election cycle is two years for candidates for
16 the House of Representatives, six years for Senate candidates and four years for Presidential
17 candidates.

² On March 10, 2000, the Commission sent a legislative recommendation to Congress recommending a clarifying amendment that would remove the election cycle language from 2 U.S.C. §434(b)(6)(B)(iii) and (v) because 2 U.S.C. §434(b)(6)(B) applies solely to unauthorized committees.

³ Please note that in the case of a runoff election after the general election, the election cycle would end on the day of the runoff election. Advisory Opinions 1993-2 and 1983-16.

1 For purposes of the contribution limits of 2 U.S.C. 441a and 11 CFR 110.1 and 110.2,
2 contributions are aggregated on per election basis. See FEC v. Haley, 852 F.2d 1111, (1988)
3 ("Haley"). Contribution aggregation regulations at 11 CFR 110.1 and 110.2 state that post-
4 election contributions can only be made to the extent the recipient committee has net debts
5 outstanding, and these contributions must be properly designated for the previous election. 11
6 CFR 110.1(b)(3)(i) and 110.2(b)(3)(i). Those regulations further require that any undesignated
7 post-election contributions be applied to the donor's contribution limit for the next election in
8 which the recipient will be a candidate. In Haley, the Ninth Circuit Court of Appeals upheld
9 the Commission's aggregation regulations at 11 CFR 110.1, ruling that post-election loan
10 guarantees for a loan used to retire general-election debt were contributions subject to the limits
11 and aggregation rules in Part 110 of 11 CFR.⁴

12 **Changes to FEC Forms 3 and 3P**

13 The Commission recognizes that the amendment to the FECA and the proposed
14 regulations will necessitate several changes to both the paper and electronic FEC Form 3 (used
15 by House and Senate candidates' authorized committees to report receipts and disbursements)
16 and FEC Form 3P (used by Presidential candidates' committees to report receipts and
17 disbursements). While most of the changes to the forms would consist of renaming headings
18 and redrafting certain instructions, Forms 3 and 3P for the post-general election report would

⁴ At the time of the Haley loan guarantees in 1983, 11 CFR 110.1 stated that properly designated post-primary contributions were allowed only to the extent that the recipient committee had net debts outstanding. AO 1977-24 interpreted these rules to apply also to post-general election contributions. The regulations were clarified in a 1987 rulemaking. See Explanation and Justification for Rules on Contributions by persons other than multicandidate committees, 52 FR 761, (January 9, 1987).

1 have to be substantively changed. Section 434(a)(2)(A)(ii) of the Act and 11 CFR 104.5
2 require that committees file post-general election reports covering the period from the 19th day
3 before the general election to the twentieth day after the general election. Thus, the post-
4 general election covers two election cycles. Similarly, two election cycles will be covered in
5 the year-end report for candidates who did not participate in the most recent general election
6 (and therefore did not file a post-general election report). Comments are sought as to the
7 simplest and easiest way for committees to report separately the financial activity for each
8 cycle, given that the activity occurred within the time period covered by the post-general
9 election report or year-end report.

10 **Two Alternatives Regarding Election Cycles**

11 The Commission is seeking comments on two alternatives, neither of which has been
12 included in the proposed rules set out below.

13 Alternative 1. The first alternative would be to add a new paragraph (c) to 11 CFR
14 104.1 stating that for reporting purposes only, authorized committees shall begin the "election
15 cycle" on January 1 of the year following the general election for a seat or office and shall end
16 the election cycle on December 31 of the calendar year in which the next general election for
17 that seat or office is held (e.g., January 1, 2003, to December 31, 2004, for House candidates).
18 This approach has the advantage of causing less change to current reporting practices and
19 avoiding the need to include election-cycle-to-date figures for two different election cycles in
20 post-general election reports (or year-end reports where no post-general report is filed). Under
21 this alternative, post-general-election contributions received after the general election but
22 before January 1 of the following year would be reported in the election cycle to date totals
23 corresponding to the election cycle in which the general election was held, even though these

1 contributions might count toward the limits for a different election. This approach would
2 introduce a definition of election cycle into the regulations that is different than the one in
3 current 11 CFR 100.3(b) which relates to determining whether an individual is a candidate. To
4 avoid any confusion, a new cross-reference sentence would be added to paragraph 100.3(b) to
5 explain that for reporting purposes, the term election cycle is defined at paragraph 104.1(c).

6 Alternative 2. Under the second alternative approach, which has not been included in
7 the proposed rules set out below, for both reporting and contribution limit purposes, authorized
8 committees would begin the election cycle on the twenty-first day after the general election for
9 the seat or office the candidate is seeking (the day after the end of the post-general election
10 reporting period) and end the election cycle on the twentieth day after the next general election
11 for the seat or office the candidate is seeking (the day the post-general reporting period ends for
12 that election). Under this alternative, both 11 CFR 100.3(b) (election cycle definition) and 11
13 CFR 104.3 (reporting) would be amended. In addition, the contribution aggregation regulations
14 at 11 CFR 110.1 and 110.2 would be changed to modify the attribution date of undesignated
15 contributions for a general election from election day to the twentieth day after the election.
16 For example, an undesignated contribution made on or before the twentieth day after the
17 election would be considered as aggregating to the contributor's contribution limit for the
18 general election that was just held. Undesignated contributions made after the twentieth day
19 would count toward the contributor's limit for the next election in which the recipient is a
20 candidate.

21 This alternative would obviate the issue of the post-general election report covering
22 two election cycles. Nevertheless, for candidates who did not participate in the general election
23 (and therefore who do not file a post-general election report), the year-end report would cover

1 activity occurring both before the twentieth day after the election and after the twentieth day,
2 and thus, would cover two election cycles. If the Commission adopts this alternative, it will
3 need to consider which advisory opinions, if any need to be modified or superseded. Another
4 consideration may be whether this change is advisable in light of the Haley decision, absent a
5 change in the FECA.

6 **Aggregation of Past Financial Activity**

7 The amendment to the Act requires that the new rules be in effect for reporting
8 periods beginning after December 31, 2000. Consequently, receipts and disbursements made
9 between November 8, 2000 (the day after the general election) and December 31, 2000 will be
10 reported in the year-to-date totals for 2000 in the post-general election report and the year-end
11 report. However, under proposed paragraph (k) of 11 CFR 104.3, these amounts must also be
12 included in the election-cycle-to-date aggregation totals that are reported beginning in 2001.
13 Similarly, some candidates for U.S. Senate in 2002 and 2004 and possibly some Presidential
14 candidates for the 2004 election may have two, three, four or more years of previously reported
15 receipts and disbursements. These amounts must also be included in the election-cycle-to-date
16 figures reported on the first report covering financial activity occurring in 2001.

17 On the Detailed Summary Page of each report filed for the first election cycle during
18 which these rules take effect, election-cycle-to-date totals should be reported for each category
19 of receipts (except itemized and unitemized contributions from individuals) and each category
20 of disbursements. Please note that the Commission is creating a one-time worksheet to assist
21 authorized committees in aggregating election-cycle-to-date data because this might require
22 some committees to aggregate several years of previously reported receipts and disbursements.
23 However, the Commission does not anticipate making any changes to either the detailed

1 summary page, or schedules of contributions or expenditures, that would necessitate the filing
2 of amendments to reports covering pre-2001 financial activity. The Commission is also
3 considering possible changes to its databases to reflect the election-cycle totals. The
4 Commission welcomes comments on the proposed approach as well as on other alternatives to
5 address these issues.

6 The Commission seeks comments on the proposed revisions to 11 CFR 104.3, 104.8
7 and 104.9, on the alternatives discussed above, and on any other issues raised by the new
8 statutory requirements regarding election cycle reporting.

9 **List of Subjects in 11 CFR Part 104**

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

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

13 These proposed rules, if promulgated, will not have a significant economic impact on a
14 substantial number of small entities. The only small entities subject to these proposed
15 regulations are candidates for Federal office and their authorized committees. The proposed
16 rules implement statutory reporting requirements that Congress enacted to reduce inadvertent
17 violations of the contribution limits. Therefore, there would be no significant economic impact
18 on a substantial number of small entities.

1 For the reasons set out in the preamble, subchapter A, chapter I of title 11 of the Code of
2 Federal Regulations is amended as follows:

3 **PART 104 – REPORTS BY POLITICAL COMMITTEES**

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

5 Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8), 438(b), 439a.

6 2. Section 104.3 would be amended by revising paragraph (a) introductory language,
7 paragraph (a)(3) introductory language, paragraph (a)(4) introductory language, paragraphs
8 (a)(4)(i), (v) and (vi), paragraph (b) introductory language, paragraphs (b)(4)(i) and (vi),
9 paragraph (c) introductory language, and paragraph (i), and by adding paragraph (k) to read
10 as follows:

11 **§104.3 Contents of reports (2 U.S.C. 434(b), 439a).**

12
13 (a) Reporting of Receipts. ~~Except for reports filed in accordance with 11 CFR 104.17, e~~Each
14 report filed under ~~11 CFR 104.1~~ §104.1 shall disclose the total amount of receipts for the
15 reporting period and for the calendar year (or for the election cycle, in the case of an authorized
16 committee) and shall disclose the information set forth at ~~11 CFR 104.3(a)(1) through (4)~~
17 paragraphs (a)(1) through (a)(4) of this section. The first report filed by a committee shall also
18 include all amounts received prior to becoming a political committee under ~~11 CFR~~
19 100.5 §100.5, even if such amounts were not received during the current reporting period.

20 * * * * *

21 (3) Categories of receipts for authorized committees. An authorized committee of a
22 candidate for Federal office shall report the total amount of receipts received
23 during the reporting period and, except for itemized and unitemized breakdowns,
24 during the calendar year election cycle in each of the following categories:

1 *****

2 (4) Itemization of receipts for all committees including authorized and unauthorized
3 committees. The identification (as defined at 44-CFR-100.12§100.12) of each
4 contributor and the aggregate year-to-date (or aggregate election-cycle-to-date,
5 in the case of an authorized committee) total for such contributor in each of the
6 following categories shall be reported.

7 (i) Each person, other than any committee, who makes a contribution to the
8 reporting committee during the reporting period, whose contribution or
9 contributions aggregate in excess of \$200 per calendar year (or per
10 election cycle in the case of an authorized committee), together with the
11 date of receipt and amount of any such contributions, except that the
12 reporting committee may elect to report such information for contributors
13 of lesser amount(s) on a separate schedule;

14 *****

15 (v) Each person who provides a rebate, refund or other offset to operating
16 expenditures to the reporting committee in an aggregate amount or value
17 in excess of \$200 within the calendar year (or within the election cycle,
18 in the case of an authorized committee), together with the date and
19 amount of any such receipt; and

20 (vi) Each person who provides any dividend, interest, or other receipt to the
21 reporting committee in an aggregate value or amount in excess of \$200
22 within the calendar year (or within the election cycle, in the case of an

1 authorized committee), together with the date and amount of any such
2 receipt.

3 (b) Reporting of Disbursements. ~~Except for reports filed in accordance with 11 CFR~~
4 ~~104.17, e~~Each report filed under 11 CFR ~~104.1~~§104.1 shall disclose the total amount of all
5 disbursements for the reporting period and for the calendar year (or for the election cycle, in the
6 case of an authorized) and shall disclose the information set forth at 11 CFR ~~104.3(b)(1)~~
7 ~~through (4) paragraphs (b)(1) through (b)(4) of this section.~~ The first report filed by a
8 committee shall also include all amounts disbursed prior to becoming a political committee
9 under ~~11 CFR 100.5~~§100.5, even if such amounts were not disbursed during the current
10 reporting period.

11 * * * * *

12 (2) Categories of disbursements for authorized committees. An authorized
13 committee of a candidate for Federal office shall report the total amount of
14 disbursements made during the reporting period and, except for itemized and
15 unitemized breakdowns, during the ~~calendar year~~election cycle in each of the
16 following categories:

17 * * * * *

18 (4) * * *

19 (i) Each person to whom an expenditure in an aggregate amount or value in
20 excess of \$200 within the ~~calendar year~~election cycle is made by the
21 reporting committee to meet the committee's operating expenses,
22 together with the date, amount and purpose of each expenditure.

1 *****

2 (vi) Each person who has received any disbursement(s) not otherwise
3 disclosed under ~~11 CFR 104.3(b)(4)~~ paragraph (b)(4) of this section to
4 whom the aggregate amount or value of such disbursements exceeds
5 \$200 within the ~~calendar year~~ election cycle, together with the date,
6 amount, and purpose of any such disbursement.

7 (c) Summary of contributions and operating expenditures. Each report filed pursuant to
8 §104.1 ~~11 CFR 104.1~~ shall disclose for both the reporting period and the calendar year (or the
9 election cycle, in the case of the authorized committee):

10 *****

11 (i) Cumulative reports. The reports required to be filed under ~~11 CFR 104.5~~ §104.5 shall be
12 cumulative for the calendar year (or for the election cycle, in the case of an authorized
13 committee) to which they relate, but if there has been no change in a category reported in a
14 previous report during that year (or during that election cycle, in the case of an authorized
15 committee), only the amount thereof need be carried forward.

16 *****

17 ~~(k)~~ Reporting Election Cycle Activity Occurring Prior to January 1, 2001. The aggregate of
18 each category of receipt listed in §104.3(a)(3), except those in §104.3(a)(3)(i)(A) and (B), and
19 for each category of disbursement listed in §104.3(b)(2) shall include amounts received or
20 disbursed on or after the day after the last general election for the seat or office for which the
21 candidate is running through December 31, 2000.

22 3. Section 104.8 would be amended by revising paragraph (a) and the first sentence of
23 paragraph (b) to read as follows:

1 **§104.8 Uniform reporting of receipts.**

2 (a) A reporting committee shall disclose the identification of each individual who
3 contributes an amount in excess of \$200 to the committee's federal account(s). This
4 identification shall include the individual's name, mailing address, occupation, the name of his
5 or her employer, if any, and the date of receipt and amount of any such contribution. If an
6 individual contributor's name is known to have changed since an earlier contribution reported
7 during the calendar year (or during the election cycle, in the case of an authorized committee),
8 the exact name or address previously used shall be noted with the first reported contribution
9 from that contributor subsequent to the name change.

10 (b) In each case where a contribution received from an individual in a reporting period is
11 added to previously unitemized contributions from the same individual and the aggregate
12 exceeds \$200 in a calendar year (or in an election cycle, in the case of an authorized committee)
13 the reporting committee shall disclose the identification of such individual along with the date
14 of receipt and amount of any such contribution. * * *

15 * * * * *

16 4. Section 104.9 would be amended by revising paragraphs (a) and (b) as follows:

17 **§104.9 Uniform reporting of disbursements.**

18 (a) Political committees shall report the full name and mailing address of each person to
19 whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar
20 year (or within the election cycle, in the case of an authorized committee) is made from the
21 reporting committee's federal account(s), together with the date, amount and purpose of such
22 expenditure, in accordance with ~~11 CFR 104.9~~ paragraph (b) of this section. As used in ~~11 CFR~~

1 ~~104.9~~this section, purpose means a brief statement or description as to the reasons for the
2 expenditure. See 11 CFR 104.3(b)(3)(i)(A).

3 (b) In each case when an expenditure made to a recipient in a reporting period is added to
4 previously unitemized expenditures to the same recipient and the total exceeds \$200 for the
5 calendar year ~~(or for the election cycle, in the case of an authorized committee)~~, the reporting
6 committee shall disclose the recipient's full name and mailing address on the prescribed
7 reporting forms, together with the date, amount and purpose of such expenditure. As used in ~~11~~
8 ~~CFR 104.9~~this section, purpose means a brief statement or description as to the reason for the
9 disbursement as defined at 11 CFR 104.3(b)(3)(i)(A).

10 * * * * *

11
12
13 _____
14 Darryl R. Wold
15 Chairman
16 Federal Election Commission

17 DATED: _____
18 BILLING CODE: 6715-01-U

