

AGENDA DOCUMENT NO. 14-16



FEDERAL ELECTION COMMISSION
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February 28, 2014

MEMORANDUM

AGENDA ITEM

TO: The Commission

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For Meeting of 3-6-14

SUBMITTED LATE

SUBJECT: Draft Final Rules and Explanation and Justification: Technical Corrections to Title 11 of the Code of Federal Regulations

Attached are draft final rules and an explanation and justification for technical corrections to various provisions in Title 11 of the Code of Federal Regulation.

We have been asked to have this draft placed on the Open Session agenda for March 6, 2014.

Attachment

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FEDERAL ELECTION COMMISSION

11 CFR Parts 4, 100, 102, 104, 110, 111, and 114

[NOTICE 2014–xx]

Federal Election Campaign Act Rules; Corrections

AGENCY: Federal Election Commission.

ACTION: Correcting amendments.

SUMMARY: The Commission is making technical corrections to various sections of its regulations.

DATES: Effective [Insert date of publication in the FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, Ms. Joanna S. Waldstreicher, Attorney, or Mr. Eugene Lynch, Paralegal, 999 E Street, NW., Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION:

Background

The existing rules that are the subject of these corrections are part of the continuing series of regulations that the Commission has promulgated to implement the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 et seq. (“FECA”). The Commission is promulgating these corrections without advance notice or an opportunity for comment because they fall under the “good cause” exemption of the Administrative Procedure Act. 5 U.S.C. 553(b)(B). The Commission finds that notice and comment are unnecessary here because these corrections are merely typographical and technical; they effect no substantive changes to any rule. For the same reason, these corrections fall within the “good cause” exception to the delayed effective date provisions of the Administrative Procedure Act and the Congressional

1 Review Act. 5 U.S.C. 553(d)(3), 808(2). Accordingly, these corrections are effective upon
2 publication in the Federal Register. The Commission is not required to submit these corrections
3 for congressional review. See 2 U.S.C. 438(d)(1), (4).

4 **Corrections to FECA Rules in Chapter I of Title 11 of the Code of Federal Regulations**

5 A. Correction to 11 CFR 4.8

6 The Commission is correcting an erroneous citation in paragraph (a) of this section by
7 replacing the reference to 11 CFR 4.6(d) with 11 CFR 4.7(h). Paragraph (a) refers to notification
8 “pursuant to § 4.6(d)” that a request for inspection or a copy of a record has been denied, but
9 section 4.6 addresses the discretionary release of records by the Commission, not notification of
10 a denial of access to records. Moreover, section 4.6 does not contain a paragraph (d). Section
11 4.7(h) concerns the notification to a person who has been denied access to records.

12 B. Correction to 11 CFR 100.1

13 This section lists the statutes implemented by subchapter A of chapter I of the
14 Commission’s regulations. The list in this section is currently incomplete. To encompass all
15 relevant statutes, the Commission is revising this section to note that subchapter A implements
16 FECA, as amended, 2 U.S.C. 431 et seq.

17 C. Correction to 11 CFR 100.18

18 This section defines the term “the Act” as used in the Commission’s regulations to
19 include the Federal Election Campaign Act of 1971 and each subsequent amendment to it. The
20 list of amendments in this section is currently incomplete. To encompass all relevant statutes,
21 the Commission is revising this section to define “the Act” as FECA, as amended, 2 U.S.C. 431
22 et seq.

23 D. Correction to 11 CFR 100.29

1 The Commission is correcting a typographical error in paragraph (c) of this section by
2 italicizing the first instance of the word “electioneering,” so that the entire phrase “electioneering
3 communication” is italicized and not just the word “communication.”

4 E. Corrections to 11 CFR 100.52

5 The Commission is correcting typographical errors in two citations in paragraph (a) of
6 this section by replacing the references to 11 CFR 100.72 and 100.73 with 11 CFR 100.82 and
7 100.83, respectively. Section 100.52(a) excludes “a loan made in accordance with 11 CFR
8 100.72 and 100.73” from the definition of “contribution.” Sections 100.72 and 100.73, however,
9 concern the “testing the waters” and media exceptions to the definition of “contribution,” not
10 loans. The Commission is therefore replacing the references to sections 100.72 and 100.73 in 11
11 CFR 100.52(a) with references to sections 100.82 and 100.83, which concern bank loans and
12 brokerage loans and lines of credit.

13 The Commission is also correcting an erroneous citation in paragraph (b)(5) of this
14 section by replacing the reference to 11 CFR 110.4(a) with a reference to 11 CFR 110.20.
15 Section 100.52(b)(5) states that payments of interest on loans to a political committee “shall be
16 made from funds subject to the prohibitions of section 110.4(a).” Section 110.4(a) previously
17 prohibited foreign nationals from making contributions or expenditures, but that provision was
18 moved to section 110.20 in 2003, and section 110.4(a) was reserved. The Commission is
19 therefore replacing the reference to 11 CFR 110.4(a) with a reference to section 110.20, which
20 also conforms this citation to the citation in a corresponding provision in the same paragraph.

21 F. Correction to 11 CFR 100.82

22 The Commission is correcting a typographical error in a citation in paragraph (f) of this
23 section by replacing the reference to 11 CFR 100.73 with 11 CFR 100.83. Section 100.82(f)

1 states that “this section shall not apply to loans described in 11 CFR 100.73.” Section 100.73
2 concerns the media exception, however, not loans. The Commission is thus replacing the
3 citation to section 100.73 with a citation to section 100.83, which concerns brokerage loans and
4 lines of credit.

5 G. Correction to 11 CFR 100.134

6 The Commission is correcting a typographical error in a citation in paragraph (d)(2)(iv)
7 of this section by replacing the reference to 26 CFR 1.3402(a)-(1) with a reference to 26 CFR
8 31.3402(a)-(1). Paragraph (d)(2)(iv) defines “executive or administrative personnel” of a
9 corporation to include individuals who may be paid by the corporation but who are not
10 employees for tax purposes “under 26 CFR 1.3402(a)-(1).” The reference to section 1.3402(a)-
11 (1) should be to section 31.3401(a)-(1); 26 CFR 31.3402(a)-(1) sets forth requirements and
12 methods for tax collection, while there is no section 1.3402(a)-(1) in Title 26.

13 H. Corrections to 11 CFR 102.9

14 The Commission is correcting typographical errors in two citations in paragraph (f) of
15 this section by replacing the references to 11 CFR 110.1(1) and 11 CFR 110.1(1)(5) with
16 references to 11 CFR 110.1(l) and 11 CFR 110.1(l)(5), respectively. Paragraph (f) concerns a
17 treasurer’s obligation to maintain documentation regarding the designation, redesignation, and
18 reattribution of contributions under section 110.1. As currently written, the citations to section
19 110.1 refer to paragraph one of that section, but there is no paragraph one in section 110.1;
20 rather, it is paragraph (l) (lowercase letter L) of section 110.1 that pertains to maintaining
21 documentation. Thus, each reference to paragraph one of section 110.1 is being replaced with a
22 reference to paragraph (l).

23 I. Corrections to 11 CFR 104.5

1 The Commission is correcting two citations in paragraph (c)(3)(ii) of this section by
2 replacing the references to 11 CFR 104.5(a)(1)(ii) and 11 CFR 104.5(a)(1)(iii) with 11 CFR
3 104.5(a)(2)(i) and 11 CFR 104.5(a)(2)(ii), respectively. Section 104.5(c)(3)(ii) provides that pre-
4 election reports “shall be filed as prescribed at 11 CFR 104.5(a)(1)(ii),” and post-general election
5 reports “shall be filed as prescribed in 11 CFR 104.5(a)(1)(iii).” The cited provisions, however,
6 do not concern pre-election or post-general election reports. Instead, they concern the filing of
7 quarterly reports. Section 104.5(a) was reorganized in 2003; as revised, the filing of pre-election
8 reports is addressed in 11 CFR 104.5(a)(2)(i), and post-general election reports are addressed in
9 11 CFR 104.5(a)(2)(ii). See Bipartisan Campaign Reform Act of 2002 Reporting; Coordinated
10 and Independent Expenditures, 68 FR 404, 408 (Jan. 3, 2003). The Commission is thus making
11 conforming amendments to 11 CFR 104.5(c)(3)(ii) by replacing the reference to 11 CFR
12 104.5(a)(1)(ii) with 11 CFR 104.5(a)(2)(i), and by replacing the reference to 11 CFR
13 104.5(a)(1)(iii) with 11 CFR 104.5(a)(2)(ii).

14 J. Corrections to 11 CFR 104.6

15 The Commission is correcting two citations in paragraph (b) of this section by replacing
16 the references to 11 CFR 104.5(a)(1)(iii) and 11 CFR 104.5(a)(1)(i) with 11 CFR 104.5(a)(1) and
17 11 CFR 104.5(a)(2)(i), respectively. Section 104.6(b) provides that certain reports “shall be filed
18 quarterly in accordance with 11 CFR 104.5(a)(1)(iii) and, with respect to any general election, in
19 accordance with 11 CFR 104.5(a)(1)(i).” When section 104.6(b) was promulgated, section
20 104.5(a)(1)(iii) concerned the filing of quarterly reports, and section 104.5(a)(1)(i) concerned the
21 filing of pre-election reports. See Amendments to Federal Election Campaign Act of 1971, 45
22 FR 15080, 15086 (Mar. 7, 1980); 11 CFR 104.5(a) (1980). As noted above, however, section
23 104.5(a) was reorganized in 2003; as reorganized, quarterly reporting requirements appear in

1 section 104.5(a)(1), and pre-election reporting requirements appear in section 104.5(a)(2)(i).
2 The Commission is thus making conforming amendments to 11 CFR 104.6(b) by replacing the
3 reference to 11 CFR 104.5(a)(1)(iii) with 11 CFR 104.5(a)(1), and by replacing the reference to
4 11 CFR 104.5(a)(1)(i) with 11 CFR 104.5(a)(2)(i).

5 K. Corrections to 11 CFR 104.9

6 The Commission is correcting two citations in paragraph (f) of this section by replacing
7 the references to 11 CFR 100.7(b)(22) and 11 CFR 100.8(b)(24) with references to 11 CFR
8 100.83 and 11 CFR 100.143, respectively. Paragraph (f) requires a candidate's principal
9 campaign committee to report its repayment of any bank loan obtained by the candidate or "loan
10 of money derived from an advance on a candidate's brokerage account, credit card, home equity
11 line of credit, or other lines of credit described in 11 CFR 100.7(b)(22) and 100.8(b)(24)." The
12 cited paragraphs do not, however, describe loans of money derived from advances on candidate
13 brokerage accounts, credit cards, home equity lines of credit, or other lines of credit; instead,
14 they are reserved. In 2002, the Commission moved the relevant provisions from section
15 100.7(b)(22) to section 100.83 and reserved section 100.7(b)(22), and moved the relevant
16 provisions from section 100.8(b)(24) to section 100.143 and reserved section 100.8(b)(24). See
17 Reorganization of Regulations on "Contribution" and "Expenditure," 67 FR 50582, 50584-85
18 (Aug. 5, 2002). The references to 11 CFR 100.7(b)(22) and 11 CFR 100.8(b)(24) in section
19 104.9(f) were not updated to reflect these changes. The Commission is thus making conforming
20 amendments to section 104.9(f) by replacing the reference to 11 CFR 100.7(b)(22) with 11 CFR
21 100.83, and by replacing the reference to 11 CFR 100.8(b)(24) with 11 CFR 100.143.

1 L. Correction to 11 CFR 104.14

2 The Commission is correcting a citation in paragraph (a)(1) of this section by replacing
3 the reference to 11 CFR 109.2 with a reference to 11 CFR 109.10. Paragraph (a)(1) refers to
4 “reports or statements of independent expenditures filed by facsimile machine or electronic mail
5 under 11 CFR 104.4(b) or 11 CFR 109.2.” Section 109.2 does not, however, refer to the filing of
6 reports; instead, it is reserved. In 2003, the Commission moved the reporting requirements for
7 persons other than political committees who make independent expenditures from section 109.2
8 to section 109.10. See Bipartisan Campaign Reform Act of 2002 Reporting; Coordinated and
9 Independent Expenditures, 68 FR 404, 415 (Jan, 3, 2003). The reference to 11 CFR 109.2 in
10 section 104.14 was not updated to reflect the change. The Commission is thus making a
11 conforming amendment to section 104.14 by replacing the reference to 11 CFR 109.2 with a
12 reference to 11 CFR 109.10.

13 M. Correction to 11 CFR 110.1

14 The Commission is correcting a typographical error in a citation in paragraph (a) of this
15 section by replacing the reference to 11 CFR 100.1 with 11 CFR 100.10. Paragraph (a) provides
16 that this section applies to all contributions made by any “person as defined in 11 CFR 100.1.”
17 Section 100.1 does not define “person” for purposes of Commission regulations, however;
18 section 100.10 does.

19 N. Correction to 11 CFR 111.51

20 The Commission is correcting the erroneous designation of paragraph (c) of this section
21 by redesignating it as paragraph (b).

22 O. Correction to 11 CFR 114.12

1 The Commission is correcting a typographical error in paragraph (c)(1) of this section by
2 replacing “corporation of labor organization” in the first sentence with “corporation or labor
3 organization.”

4 **List of Subjects in**

5 **11 CFR Part 4**

6 Freedom of information.

7 **11 CFR Part 100**

8 Elections.

9 **11 CFR Part 102**

10 Political committees and parties, Reporting and recordkeeping requirements.

11 **11 CFR Part 104**

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

14 **11 CFR Part 110**

15 Campaign funds, Political committees and parties.

16 **11 CFR Part 111**

17 Administrative practice and procedure, Elections, Law enforcement, Penalties.

18 **11 CFR Part 114**

19 Business and industry, Elections, Labor.

20

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

3 **PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT**

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

5 Authority: 5 U.S.C. 552, as amended.

6 2. In paragraph (a) of §4.8, remove “§4.6(d)” and add, in its place, “§4.7(h).”

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

8 3. The authority citation for part 100 continues to read as follows:

9 Authority: 2 U.S.C. 431, 434, 438(a)(8), and 439a(c).

10 4. Revise §100.1 to read as follows:

11 This subchapter is issued by the Federal Election Commission to implement the Federal
12 Election Campaign Act of 1971, as amended, 2 U.S.C. 431 et seq.

13 5. Revise §100.18 to read as follows:

14 Act means the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 et seq.

15 6. In paragraph (c) of §100.29, correct the first instance of the word “electioneering” to read
16 as follows: “electioneering.”

17 7. In paragraph (a) of §100.52, remove “11 CFR 100.72 and 100.73” and add, in its place,
18 “11 CFR 100.82 and 100.83.”

19 8. In paragraph (b)(5) of §100.52, remove “11 CFR 110.4(a)” and add, in its place, “11 CFR
20 110.20.”

21 9. In paragraph (f) of §100.82, remove “11 CFR 100.73” and add, in its place, “11 CFR
22 100.83.”

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1 10. In paragraph (d)(2)(iv) of §100.134, remove “26 CFR 1.3402(a)-(1)” and add, in its
2 place, “26 CFR 31.3402(a)-(1).”

3 **PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY**
4 **POLITICAL COMMITTEES (2 U.S.C. 433)**

5 11. The authority citation for part 102 continues to read as follows:

6 Authority: 2 U.S.C. 432, 433, 434(a)(11), 438(a)(8), and 441(d).

7 12. In paragraph (f) of §102.9, remove “11 CFR 110.1(1)” and add, in its place, “11 CFR
8 110.1(l).”

9 13. In paragraph (f) of §102.9, remove “11 CFR 110.1(1)(5)” and add, in its place, “11 CFR
10 110.1(l)(5).”

11 **PART 104—REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS**
12 **(2 U.S.C. 434)**

13 14. The authority citation for part 104 continues to read as follows:

14 Authority: 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a, 441a, and 36
15 U.S.C. 510.

16 15. In paragraph (c)(3)(ii) of §104.5, remove “11 CFR 104.5(a)(1)(ii)” and add, in its place,
17 “11 CFR 104.5(a)(2)(i).”

18 16. In paragraph (c)(3)(ii) of §104.5, remove “11 CFR 104.5(a)(1)(iii)” and add, in its place,
19 “11 CFR 104.5(a)(2)(ii).”

20 17. In paragraph (b) of §104.6, remove “11 CFR 104.5(a)(1)(iii)” and add, in its place, “11
21 CFR 104.5(a)(1).”

22 18. In paragraph (b) of §104.6, remove “11 CFR 104.5(a)(1)(i)” and add, in its place, “11
23 CFR 104.5(a)(2)(i).”

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1 19. In paragraph (f) of §104.9, remove “11 CFR 100.7(b)(22) and 100.8(b)(24)” and add, in
2 its place, “11 CFR 100.83 and 100.143.”

3 20. In paragraph (a)(1) of §104.14, remove “11 CFR 109.2” and add, in its place, “11 CFR
4 109.10.”

5 **PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND**
6 **PROHIBITIONS**

7 21. The authority citation for part 110 continues to read as follows:

8 Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 434(i)(3), 438(a)(8), 441a, 441b, 441d, 441e,
9 441f, 441g, 441h, and 36 U.S.C. 510.

10 22. In paragraph (a) of §110.1, remove “11 CFR 100.1” and add, in its place, “11 CFR
11 100.10.”

12 **PART 111—COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))**

13 23. The authority citation for part 111 continues to read as follows:

14 Authority: 2 U.S.C. 432(i), 437g, 437d(a), 438(a)(8); 28 U.S.C. 2461 nt; 31 U.S.C. 3701, 3711,
15 3716-3719, and 3720A, as amended; 31 CFR parts 285 and 900-904.

16 24. Redesignate section 111.51(c) as 111.51(b).

17 **PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY**

18 25. The authority citation for part 114 continues to read as follows:

19 Authority: 2 U.S.C. 431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), and 441b.

20 26. In the first sentence of paragraph (c)(1) of §114.12, remove “corporation of labor
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1 organization” and add, in its place, “corporation or labor organization.”

2

3

On behalf of the Commission,

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5

6

Lee E. Goodman,

7

Chairman,

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Federal Election Commission

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10 DATED: _____

11 BILLING CODE: 6715-01-P