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SUPPLEMENTARY INFORMATION: These final rules address four different issues. First, the Commission confirms that political committees automatically become multicandidate committees once certain statutory requirements are met. Second, the Commission updates the annual limit on contributions from persons other than multicandidate committees to national party committees to conform to the change made by Congress in the Bipartisan Campaign Reform Act of 2002 ("BCRA"). Third, the Commission implements a separate conforming change to the limits on contributions to candidates running for more than one Federal office. Finally, the Commission corrects its rules governing the biennial limit on aggregate individual contributions in light of BCRA. These final rules implement the provisions of the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"), 2 U.S.C. 431 *et seq.*

The Notice of Proposed Rulemaking ("NPRM"), on which these final rules are based, was published in the **Federal Register** on August 21, 2003. 68 FR 50,488 (August 21, 2003). The comment period was originally set to close on September 19, 2003, but the Commission extended the comment period until September 29, 2003. The Commission received seven comments on the proposed rules.¹ The Commission held a public hearing on this and three other rulemakings on October 1, 2003. Seven witnesses testified during the hearing. Transcripts of the hearing are available at <http://www.fec.gov/register.htm>. Please note that, for purposes of this document, the terms "commenter" and "comment" apply to both written comments and oral testimony at the public hearing.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on November 7, 2003.

Explanation and Justification

11 CFR 102.2 Statement of Organization; Forms and Committee Identification Number

Section 441a(a)(4) of the FECA provides that, "the term 'multicandidate political committee' means a political committee which has been registered with [the Commission or Secretary of the Senate] for a period of not less than six months, which has received contributions from more than 50 persons, and except for any State political party organization, has made contributions to 5 or more candidates for Federal office." 2 U.S.C. 441a(a)(4). On the basis of this statutory provision, the Commission's rules at 11 CFR 100.5(e)(3) define a "multicandidate committee" as a political committee meeting these three requirements.

To monitor compliance with the contribution limits for multicandidate political committees set out at 11 CFR 110.2, the Commission has required such committees to file FEC Form 1M to certify that they satisfied the criteria for becoming multicandidate political committees. *See* discussion below regarding revisions to 11 CFR 110.2. Specifically, 11 CFR 102.2(a)(3) formerly required that this certification be filed before a political committee may avail itself of the multicandidate committee contribution limits.

In the NPRM, the Commission proposed amending 11 CFR 102.2(a)(3) to eliminate the requirement that a political committee file Form 1M with the Commission before making any contributions under the increased contribution limits with respect to candidates in 11 CFR 110.2(b). The only comment on this issue indicated that the Commission's approach would be consistent with a determination that multicandidate status is mandatory rather than elective, but would not be consistent with a general rule permitting political committees to choose their status.

For the reasons stated in the Explanation and Justification for 11 CFR 110.2, the Commission views multicandidate committee status as automatic once all three necessary criteria are satisfied. Therefore, the Commission is revising 102.2(a)(3) to specify that a political committee must certify its status as a multicandidate committee within ten days of satisfying the requirements of 11 CFR 100.5(e)(3). This certification provides clear notice of the political committee's status to recipients of contributions from the committee, and to the Commission. The ten-day requirement was selected because it corresponds to the analogous

time requirement for a political committee to report any changes to its Statement of Organization. *See* 11 CFR 102.2(a)(2).

The Commission specifically sought comment on how it should address a situation where a political committee qualifies for multicandidate status, yet does not certify its status within ten days, and, once so qualified, makes a contribution exceeding \$2,000 to a candidate for Federal office. None of the commenters addressed this issue. Because the previous rule at 11 CFR 102.2(a)(3) required a committee to certify its multicandidate status prior to making a contribution in excess of the limit for non-multicandidate committees, failure to comply with the previous rule resulted in both a reporting violation and an excessive contribution. Given the removal of the ban on making contributions of (in the previous rule) more than \$1,000 without filing the certification, the Commission concludes that failure to comply with the new rule is a violation of the reporting requirements of 2 U.S.C. 433, but not an excessive contribution so long as the amount is within the contribution limits prescribed for political committees with multicandidate committee status.

11 CFR 110.1 Contributions by Persons Other Than Multicandidate Political Committees

A. 11 CFR 110.1(c) Contributions by Persons Other Than Multicandidate Committees to National Party Committees

In section 307(a)(2) of BCRA, Congress raised the annual aggregate limit on contributions by persons other than multicandidate political committees to national political party committees from \$20,000 to \$25,000. 2 U.S.C. 441a(a)(1)(B). The Commission proposed revising the corresponding regulation in 11 CFR 110.1(c)(3) to reflect this statutory change. 68 FR 50,490. The Commission received no comments on this proposal. The Commission is therefore revising 11 CFR 110.1(c)(3) as proposed in the NPRM to reflect accurately the new annual aggregate limit.

B. 11 CFR 110.1(f) Contributions to Candidates for More Than One Federal Office

In BCRA, Congress raised the per election limit on contributions to candidates from persons other than multicandidate committees from \$1,000 to \$2,000. 2 U.S.C. 441a(a)(1)(A). The Commission is accordingly revising 11 CFR 110.1(f) to conform its regulations

¹ The Commission received written comments from: Perkins, Coie LLP; The Campaign Legal Center, National Republican Senatorial Committee, Republican National Committee; Sandler, Reiff & Young, P.C.; attorneys Lyn Utrecht, Eric Kleinfeld, Pat Fiori, and James Lamb of Ryan, Phillips, Utrecht & MacKinnon; and the Internal Revenue Service.