

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 1999–27]

General Public Political Communications Coordinated With Candidates

AGENCY: Federal Election Commission.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: The Commission is proposing new rules to address coordinated communications made in support of or in opposition to clearly identified candidates, that are paid for by persons other than candidates, candidates' authorized committees, and party committees. Please note that the draft rules that follow do not represent a final decision by the Commission on the issues presented by this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before January 24, 2000. If the Commission receives requests to testify, it will hold a hearing on these proposed rules on February 16, 2000, at 10:00 a.m. Persons wishing to testify at the hearing should so indicate in their written or electronic comments.

ADDRESSES: All comments should be addressed to Rosemary C. Smith, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, NW, Washington, DC 20463. Faxed comments should be sent to (202) 219–3923, with printed copy follow-up to insure legibility. Electronic mail comments should be sent to coordnprm@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. The hearing will be held in the

Commission's ninth floor meeting room, 999 E Street, NW, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530 (toll free).

SUPPLEMENTARY INFORMATION: The Commission is seeking public comment on proposed rules that would address coordinated communications made in support of or in opposition to clearly identified candidates, that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The Commission is also seeking comment on whether these same rules, or a different standard, should apply to expenditures, including communications, made by party committees that are coordinated with the parties' candidates.

The Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* ("FECA" or the "Act") prohibits corporations and labor organizations from using general treasury funds to make contributions to a candidate for federal office. 2 U.S.C. 441b(a). It also imposes various limits on the amount of money or in-kind contributions other persons may contribute to federal campaigns. 2 U.S.C. 441a(a). While individuals and persons other than corporations and labor organizations can make independent expenditures in connection with federal campaigns, these expenditures must be made without cooperation or consultation with any candidate, or any authorized committee or agent of a candidate; and they shall not be made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate. 2 U.S.C. 431(17).

Expenditures that are coordinated with a candidate or campaign are considered in-kind contributions. As such, they are subject to the various limits and prohibitions set out in the Act. *Buckley v. Valeo*, 424 U.S. 1, 46–47 (1976) (footnote omitted) ("*Buckley*"); *Federal Election Commission v. The Christian Coalition*, 52 F.Supp.2d 45, 85 (D.D.C. 1999) ("*Christian Coalition*"). The Act defines "contribution" at 2 U.S.C. 431(8) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person

for the purpose of influencing any election for federal office.

The proposed rules, which define the term *coordinated general public political communication*, would be located in a new section of the Commission's rules, 11 CFR 100.23. They are intended to incorporate into the Commission's rules the standard articulated by the United States District Court for the District of Columbia in the *Christian Coalition* decision, *supra*. This is a supplemental Notice of Proposed Rulemaking ("NPRM") to a 1997 NPRM that addressed coordinated activities between candidates and political parties. 62 FR 24367 (May 5, 1997).

A. History of the Rulemaking

In 1997, the Commission published a Notice of Proposed Rulemaking ("NPRM") seeking comments on proposed revisions to 11 CFR 110.7, which implements the provisions of 2 U.S.C. 441a(d) regarding party committee coordinated expenditures and spending limits. 62 FR 24367 (May 5, 1997). Section 441a(d) of the FECA permits national, state, and local committees of political parties to make limited general election campaign expenditures on behalf of their candidates, which are in addition to the amounts they may contribute directly to those candidates. These section 441a(d) expenditures are commonly referred to as "coordinated party expenditures" because such expenditures can be made after extensive consultation with the candidates and their campaign staffs.

Former 11 CFR 110.7(b)(4) had presumed that party committees were incapable of making independent expenditures, because of the close relationship between candidates and their party. This regulation was implicated by the Supreme Court's plurality opinion in *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 518 U.S. 604 (1996) (*Colorado*). In that decision, the Court concluded that political parties are capable of making independent expenditures on behalf of their candidates for federal office, and that it would violate the First Amendment to subject such independent expenditures to the coordinated expenditure limits found in section 441a(d) of the FECA. *Id.* at 613–14.

Following the *Colorado* Supreme Court decision, and in response to a

rulemaking petition, the Commission promulgated a Final Rule on August 7, 1996 that repealed paragraph (b)(4) of section 110.7 to the extent that this paragraph prohibited national and state committees of political parties from making independent expenditures for congressional candidates. 61 FR 40961 (Aug. 7, 1996). On the same date, the Commission published a Notice of Availability seeking comment on other significant issues arising from the *Colorado* decision. 61 FR 41036 (Aug. 7, 1996). These included possible amendments to 11 CFR Part 109, the Commission's rules addressing independent expenditures by any person, and 11 CFR 110.7 to provide standards for determining when party committee expenditures qualify as "independent" or are considered "coordinated" with federal candidates. Another issue raised was whether to modify or repeal the rule barring national party committees from making independent expenditures on behalf of Presidential candidates in the general election. See 11 CFR 110.7(a)(5). No statements supporting or opposing the petition were received by the close of the comment period.

On May 5, 1997 the Commission issued an NPRM in which it sought comments on proposed revisions to these regulations. 62 FR 24367 (May 5, 1997). Ten comments were received in response to this NPRM. On June 18, 1997, the Commission held a public hearing on this rulemaking, at which six witnesses testified.

The Commission subsequently decided to hold the 1997 rulemaking in abeyance until it received further direction from the courts. The coordinated spending limits were invalidated on Constitutional grounds by the district court in *Colorado Republican Federal Campaign Committee v. Federal Election Commission*, 41 F.Supp.2d 1197 (D. Colo. 1999), on remand from the *Colorado* Supreme Court decision. This case is currently on appeal to the Court of Appeals for the Tenth Circuit, with oral argument scheduled for early next year.

On December 16, 1998, the Commission published a new NPRM putting forth proposed amendments to its rules governing publicly financed Presidential primary and general election candidates. 63 FR 69524 (Dec. 16, 1998). Issues concerning coordination between party committees and their Presidential candidates, which had been raised in the earlier NPRM, were addressed in the public funding rulemaking. For example, the 1998 NPRM put forward narrative proposals

regarding a content-based standard for coordinated communications made to the general public. It also sought comment on coordination between the national committees of political parties and their Presidential candidates with respect to poll results, media production, consultants, and employees whose services are intended to benefit the parties' eventual Presidential nominees.

The Commission received seven written comments on coordinated expenditures in response to the 1998 NPRM. The Commission subsequently reopened the comment period and held a public hearing on March 24, 1999, at which four witnesses presented testimony on coordination issues.

On November 3, 1999, the Commission promulgated new paragraph (d) of section 110.7, addressing pre-nomination coordinated expenditures. 64 FR 59606 (Nov. 3, 1999). The new paragraph states that party committees may make coordinated expenditures in connection with the general election campaign before their candidates have been nominated. It further states that all pre-nomination coordinated expenditures shall be subject to the section 441a(d) coordinated expenditure limitations, whether or not the candidate with whom they are coordinated receives the party's nomination. Please note that new paragraph 110.7(d) applies to all federal elections. For additional information, see *Explanation and Justification to Section 110.7, Party Committee Coordinated Expenditures and Spending Limits* (2 U.S.C. 441a(d)), 64 FR 42579, 42580-81 (Aug. 5, 1999).

At this point, the Commission is continuing to evaluate possible amendments to 11 CFR 110.7 and 109.1 regarding the definitions of "coordinated" and "independent" expenditures, the standards applicable to party committee advertisements directed to the general public, and the possible repeal or modification of 11 CFR 110.7(a)(5), which currently bars national party committees from making independent expenditures in connection with Presidential general election campaigns. Consequently, revised proposals on these topics may be put out for additional public comment in the future. In addition, the Commission may consider amending 11 CFR 109.1(b)(4) to refer to the coordination standard in 11 CFR 100.23 applicable to general public political communications. However, in addition to the specific proposals discussed below that address other types of coordinated communications, comments are sought as to whether it

would be advisable to continue to await further judicial resolution of the Constitutional question involving the limits on coordinated party expenditures before issuing new rules on such spending.

B. Post-Colorado Judicial Opinions

1. The Christian Coalition Decision

The *Christian Coalition* case arose out of an FEC enforcement action alleging coordination between the Christian Coalition and various federal campaigns in connection with the 1990, 1992, and 1994 elections, resulting in disbursements from the general corporate treasury for voter guides, "get out the vote" activities, direct mailings and payments to speakers. The Christian Coalition characterized these activities as independent corporate speech, and the FEC alleged that because of the varying degrees of interaction between the Christian Coalition and those candidates and their campaigns, the activities should be treated as in-kind contributions that violated the Act's contribution limits and/or prohibitions.

In setting out a working definition of "coordination" to address this situation, the *Christian Coalition* court explained that "the standard for coordination must be restrictive, limiting the universe of cases triggering potential enforcement actions to those situations in which the coordination is extensive enough to make the potential for corruption through legislative quid pro quo palpable without chilling protected contact between candidates and corporations and unions." 52 F.Supp.2d at 88-89. The court continued that "First Amendment clarity demands a definition of 'coordination' that provides the clearest possible guidance to candidates and constituents, while balancing the Government's compelling interest in preventing corruption of the electoral process with fundamental First Amendment rights to engage in political speech and political association." *Id.* at 91. In its opinion the district court referred to "expressive expenditures," as opposed to expenditures for other types of campaign support, and defined a "coordinated expressive expenditure" as "one for a communication made for the purpose of influencing a federal election in which the spender is responsible for a substantial portion of the speech and for which the spender's choice of speech has been arrived at after coordination with the campaign." *Id.* at 85, n. 45.

The court went on to explain that "an expressive expenditure becomes 'coordinated,' where the candidate or her agents can exercise control over, or

where there has been substantial discussion or negotiation between the campaign and the spender over a communication's: (1) contents; (2) timing; (3) location, mode, or intended audience (e.g., choice between newspaper or radio advertisement); or (4) 'volume' (e.g., number of copies of printed materials or frequency of media spots). 'Substantial discussion or negotiation' is such that the candidate and spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender need not be equal partners." *Id.* at 92. The court acknowledged that "a standard that requires 'substantial' anything leaves room for factual dispute," but reasoned that the standard reflects a reasonable balance between possibly chilling some protected speech and the need to protect against the "real dangers to the integrity of the electoral process" expressive expenditures may present. *Id.*

The district court proceeded to apply this standard to the challenged campaign activities. In most instances the court did not find coordination. For example, the court found no coordination between the Christian Coalition and the Bush-Quayle campaign in the preparation of voter guides in connection with the 1992 Presidential campaign, explaining that, while the campaign was generally aware President Bush would compare favorably in the eyes of the target audience with the other candidates profiled in the guides, the campaign staff did not seek to discuss the issues that would be profiled or how they would be worded. Nor did they seek to influence the Coalition's decisions as to how many guides would be produced, and when and where they would be distributed. *Id.* at 93-95. Similarly, the fact that a Coalition official served as a volunteer in a 1994 House campaign and also made decisions as to where the Coalition's voter guides would be distributed in connection with the House campaign did not amount to coordination where the official did not make his decisions based on any discussions or negotiations with the campaign for which he volunteered. *Id.* at 95-96. In contrast, the court found coordination where the Coalition provided a Senate campaign consultant with a commercially valuable mailing list. *Id.* at 96. The Commission subsequently decided not to appeal the district court's decision.

2. The Clifton and Public Citizen Decisions

In *Clifton v. Federal Election Commission*, 114 F.3d 1309 (1st Cir. 1997), *cert. denied*, 118 S.Ct. 1036

(1998) ("*Clifton*"), a three-judge panel of the United States Court of Appeals for the First Circuit ruled in a split decision that coordination in the context of voter guides "imply[s] some measure of collaboration beyond a mere inquiry as to the position taken by a candidate on an issue." 114 F.3d at 1311, citing *Buckley*, 424 U.S. at 46-47 and n. 53 (1976). Over a strong dissent, the panel invalidated those portions of the Commission's voter guide regulations at 11 CFR 114.4(c)(5)(i), (ii)(C) that limit any contact with candidates to written inquiries and replies, and generally require all candidates for the same office to receive equal space and prominence in the guide. *Id.* at 1317. The court also invalidated the Commission's voting record rules at 11 CFR 114.4(c)(4) to the extent they limit contact with candidates to written inquiries on candidates' positions. *Id.* In *Federal Election Commission v. Public Citizen, Inc.*, 1999 WL 731056 (N.D. Ga. 1999), a federal district court followed the *Clifton* "collaboration" language in holding that contacts between a public interest group and a candidate made in connection with an advertising campaign to defeat a candidate for the House of Representatives were not coordinated for purposes of the FECA. The Commission did not appeal that portion of the *Public Citizen* decision that addresses the coordination standard.

C. Proposed Rules

The Commission is proposing to add a new section 11 CFR 100.23 to its rules, to address coordinated communications made in connection with federal campaigns that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The Commission believes it is appropriate to place this language in a separate section of the rules to properly alert the regulated community of this standard.

The proposed new section, which would be entitled *Coordinated General Public Political Communications*, would largely follow the language of the *Christian Coalition* decision, discussed above. The Commission is, however, proposing to use the phrase "general public political communication" in place of "expressive expenditure," the term used by the *Christian Coalition* court, because that term may not give the regulated community adequate notice of the types of communications that would be covered by these rules.

The Commission is proposing to define the term "general public political communications" to include those made through a broadcasting station,

including a cable television operator; newspaper; magazine; outdoor advertising facility; mailing or any electronic medium, including over the Internet or on a web site. It would be limited to those communications having an intended audience of over one hundred people. See proposed 11 CFR 100.23(e)(1). Including cable television broadcasts is consistent with the Commission's candidate debate regulations at 11 CFR 100.13(a)(2), while including communications made over the Internet reflects the expanding role of that medium in federal campaigns. The exclusion of communications with an intended audience of one hundred people or fewer mirrors the Commission's disclaimer rules at 11 CFR 110.11(a)(3), which exempt from the disclaimer requirements direct mailings of one hundred pieces or less.

Please note that the term "general public political communication" is similar to the term "general public political advertising," which appears in three places in the Act and in several sections of the regulations. The term has similar and generally consistent meanings in the Act and the Commission's rules. For example, the definitions of "contribution" and "expenditure" at 2 U.S.C. 431(8)(B)(v) and 431(9)(B)(iv) respectively refer to "broadcasting stations, newspapers, magazines, or similar types of general public political advertising." Section 441d(a) of the Act, which addresses communications that require a disclaimer, includes the same list and adds outdoor advertising facilities and direct mailings. The corresponding rules are found at 11 CFR 100.7(b)(9) (definition of "contribution"), 100.8(b)(10) (definition of "expenditure"), and 110.11(a)(1) (communications requiring disclaimers). Consequently, the Commission believes the term "general public political communications" describes the types of communications the court had in mind in *Christian Coalition* in a manner consistent with sections 431(8) and (9) and 441d(a) of the Act.

The proposed rules in 11 CFR 100.23 would also be limited to communications that include a "clearly identified candidate." The term "clearly identified candidate" would have the same meaning as that in 11 CFR 100.17 and 2 U.S.C. 431(17). Thus, it would include instances where the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as "the President," "your Congressman," or "the incumbent," or through an

unambiguous reference to his or her status as a candidate such as "the Democratic Presidential nominee" or "the Republican candidate for Senate in the State of Georgia."

Proposed paragraph 11 CFR 100.23(c) contains the text of the coordination standard. The Commission is seeking comments on alternative language at two places in this paragraph. The first would appear in the introductory portion of the paragraph. Under Alternative 1-A, a communication would be considered to be coordinated if the communication was paid for by persons other than the candidate, the candidate's authorized committee, or a party committee, and was created, produced or distributed as discussed below.

Alternative 1-B would add the additional qualification that the communication be distributed primarily in the geographic area in which the candidate was running in order to be considered coordinated with a candidate or party committee. Alternative 1-B is intended to address the concern that the costs of national legislative campaigns that refer to clearly-identified candidates, and may be endorsed by or designed by one or more of the named candidates, not be considered expenditures on behalf of those candidates' campaigns. For example, expenditures made in connection with a national campaign to support the so-called "Shays-Meehan" campaign finance legislation would not be considered contributions to Rep. Shays or Rep. Meehan, even if the group distributing the advertisement had consulted with them to design the national advertising campaign in support of their legislation and referred to it as the "Shays-Meehan bill" in the advertising.

One potential concern with the geographic limitation language proposed in Alternative 1-B is that in many parts of the country the media market may cover several adjacent states. Thus, political advertisements broadcast from a station in these areas arguably may not be "distributed primarily in the geographic area in which [a] candidate [is] running." For example, much television and radio advertising made in connection with New Hampshire elections is aired over Boston broadcast media, because there is no other major city from which to air these broadcasts. Many broadcasts aimed at New Jersey elections are aired over New York City media because a large number of New Jersey voters receive these broadcasts.

Alternative 1-B would also exclude from the definition of coordination

communications in which a candidate in one state solicits funds on behalf of a candidate in another, as long as contributors were asked to send their contributions directly to the candidate on whose behalf they were made. Similarly, Alternative 1-B would not cover an outside organization's solicitations on behalf of a candidate, if these were made primarily outside the geographic area in which the candidate was running, and if the outside organization does not collect and forward the contributions to the candidate.

The Commission welcomes comments on alternative ways to accomplish the desired result of Alternative 1-B through means other than the proposed geographic limitation language.

The Commission is also seeking comment on two alternatives of a provision to be located in 11 CFR 100.23(c)(1) that addresses communications made at the request or suggestion of the candidate or campaign. Alternative 2-A would state that coordination occurs when a communication is created, produced or distributed at the request or suggestion of, or when authorized by, a candidate, candidate's authorized committee, a party committee, or the agent of any of the foregoing. Alternative 2-B would limit such coordination to those instances where the parties also discuss the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement.

Alternative 2-A reflects the following language in the *Christian Coalition* decision, in which the court stated, "The fact that the candidate has requested or suggested that a spender engage in certain speech indicates that the speech is valuable to the candidate, giving such expenditures sufficient contribution-like qualities to fall within the Act's prohibition on contributions." 52 F.Supp.2d at 91. Alternative 2-B would further restrict coordinated communications to those instances in which discussion of these additional topics takes place.

Proposed 11 CFR 100.23(c)(2) would treat communications as coordinated after the candidate or the candidate's agent, or a party committee or its agent, has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication.

Under proposed 11 CFR 100.23(c)(3), a communication would be considered coordinated if it was made after

substantial discussion or negotiation between the creator, producer or distributor of the communication, or person paying for the communication, and a candidate, candidate's authorized committee or a party committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement. It would further provide that substantial discussion or negotiation could be evidenced by one or more meetings, conversations or conferences regarding the value or importance of that communication for a particular election.

The Commission recognizes, as did the *Christian Coalition* court, that use of the term "substantial" means that enforcement matters involving this standard will likely be fact-specific. 52 F.Supp.2d at 92. However, it may be possible to clarify the application of this standard to specific facts and circumstances by use of the Commission's advisory opinion process. See 2 U.S.C. 437f.

Consistent with the *Buckley*, *Christian Coalition* and *Clifton* decisions, the proposed rules would provide at 11 CFR 100.23(d) that a candidate's or political party's response to an inquiry regarding the candidate's or the party's position on legislative or public policy issues does not alone make the communication coordinated.

As discussed above, although money spent on these communications is referred to as a coordinated *expenditure*, the expenditure is treated under the FECA as an in-kind *contribution*. Thus, the proposed rules state at 11 CFR 100.23(b) that any general public political communication that includes a clearly identified candidate and is coordinated with that candidate, an opposing candidate, or a party committee supporting or opposing that candidate is both an expenditure under 11 CFR 100.8(a) and an in-kind contribution under 11 CFR 100.7(a)(1)(iii). As such, it is subject to the contribution limits of 2 U.S.C. 441a and must be reported as a contribution and an expenditure as required at 2 U.S.C. 434.

D. Hypotheticals

In order to properly evaluate the practical effect of the proposed coordination regulations, certain Commissioners seek comment on the following hypotheticals. In particular, the Commissioners would like comments on whether (1) the activities described in the hypotheticals constitute coordination under the draft language contained in the Notice of

Proposed Rulemaking; and (2) whether the communications described in the hypotheticals are subject to the Commission's jurisdiction.

I. Candidate Smith is slightly behind in the polls, low on money, and needs help. It is the week before the election and he knows that a wealthy contributor is planning to run an independent expenditure advertisement to assist the Smith campaign. Smith contacts the contributor and complains that nobody has focused on an important matter in the campaign: various problems in the personal life of his opponent, Congressman Jones. Because of this oversight, candidate Smith believes that Congressman Jones is viewed in a better light by the electorate. Candidate Smith, however, does not want to run such an advertisement himself for fear of being accused of negative advertising.

During his meeting with candidate Smith, the wealthy supporter says, "That's a great idea! Thanks for the information." After the meeting, the wealthy supporter changes the advertisement to say: "Congressman Jones is a liar, tax cheat, wife-beater, and absentee legislator—keep that in mind on Tuesday." The advertisement runs on the weekend before the election. Is this a coordinated expenditure? Would it make a difference if the wealthy supporter said nothing during his meeting with the candidate?

II. The Texas Savings and Loan League would like to reinforce the public's confidence in the safety of deposits in federally insured Texas Savings and Loan institutions. To this end, it runs a public service announcement featuring the State's senior United States Senator who is also a candidate for re-election. The advertisement, which runs in January of the election year, opens with a live picture of the Senator against a background with the Texas Savings and Loan Association and logo:

ANNOUNCER: "Senator William Moore."

SENATOR MOORE: "For fifty-four years now, savings and loan deposits have been guaranteed by the United States government. Throughout all of that time, not one penny of insured deposits has been lost in Texas, or anywhere else in the country. Your deposit of up to \$100,000 is as good as gold in a federally insured Texas savings and loan. As safe as Fort Knox."

BILLBOARD: "This message brought to you as a public service by your local Savings and Loan Association."

Since the candidate appeared in the advertisement, it would appear to have been "coordinated" or made in cooperation with the candidate. As

such, should the advertisement be viewed as an in-kind contribution to the Moore campaign? Or, does content and timing matter? What if the advertisement ran the week before the election and concluded with the words, "Please support Senator William Moore!"? Before deciding whether to apply the Commission's coordination regulations, should the Commission decide whether the content of the advertisement is "in connection with" or "for the purpose of influencing" an election? If so, should the Commission provide guidance to the regulated community and define those terms in the coordination rulemaking?

E. Coordinated Party Expenditures

As explained above, the Commission has an ongoing rulemaking addressing coordinated party expenditures, i.e., political party expenditures that are coordinated with particular candidates. The details of those proposals, which included several alternatives, can be found in the NPRM published on May 5, 1997. 62 FR 24367 (May 5, 1997). That rulemaking had been held in abeyance because the issues are involved in ongoing litigation. However, the Commission welcomes comments on whether the standard for coordination proposed in this supplemental NPRM on coordination should be applied to political party expenditures for general public political communications that are coordinated with particular candidates. If not, (1) why should a different standard be applied to coordination in that context? (2) What should that different standard be?

The Commission also welcomes comments on any related issue.

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

These proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that the rules would conform to court decisions that expand the definition of certain coordinated communications made in support of or in opposition to clearly identified candidates. Therefore, no significant economic impact would result.

List of Subjects in 11 CFR Part 100

Elections.

For the reasons set out in the preamble, it is proposed to amend Subchapter A, Chapter I of title 11 of the *Code of Federal Regulations* as follows:

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

1. The authority citation for Part 100 would continue to read as follows:

Authority: 2 U.S.C. 431, 438(a)(8).

2. Part 100 would be amended by adding new section 100.23 to read as follows:

§ 100.23 Coordinated General Public Political Communications.

(a) *Scope.* This section applies to general public political communications paid for by persons other than candidates, authorized committees, and party committees.

(b) *Treatment as expenditures and contributions.* Any general public political communication that includes a clearly identified candidate and is coordinated with that candidate, an opposing candidate or a party committee supporting or opposing that candidate is both an expenditure under 11 CFR 100.8(a) and an in-kind contribution under 11 CFR 100.7(a)(1)(iii).

Alternative 1-A for Paragraph (c) Introductory Text

(c) *Coordination with candidates and party committees.* A general public political communication is considered to be coordinated if the communication is paid for by any person other than the candidate, the candidate's authorized committee, or a party committee, and is created, produced or distributed—

Alternative 1-B for Paragraph (c) Introductory Text

(c) *Coordination with candidates and party committees.* A general public political communication is considered to be coordinated if the communication is distributed primarily in the geographic area in which a candidate is running, is paid for by any person other than that candidate, the candidate's authorized committee, or a party committee, and is created, produced or distributed—

Alternative 2-A for Paragraph (c)(1)

(1) At the request or suggestion of, or authorized by, the candidate, the candidate's authorized committee, a party committee, or the agent of any of the foregoing;

Alternative 2-B for Paragraph (c)(1)

(1) At the request or suggestion of, or authorized by, the candidate, the candidate's authorized committee, a party committee, or the agent of any of the foregoing regarding the content, timing, location, mode, intended audience, volume of distribution or

frequency of placement of that communication, the result of which is collaboration or agreement;

(2) After the candidate or the candidate's agent, or a party committee or its agent, has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of that communication; or

(3) After substantial discussion or negotiation between the creator, producer or distributor of the communication, or the person paying for the communication, and the candidate, the candidate's authorized committee or a party committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement. Substantial discussion or negotiation may be evidenced by one or more meetings, conversations or conferences regarding the value or importance of that communication for a particular election.

(d) *Exception.* A candidate's or political party's response to an inquiry regarding the candidate's or party's position on legislative or public policy issues does not alone make the communication coordinated.

(e) *Definitions.* For purposes of this section:

(1) *General public political communications* include those made through a broadcasting station (including a cable television operator), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet or on a web site, with an intended audience of over one hundred people.

(2) *Clearly identified* has the same meaning as set forth in 11 CFR 100.17.

Dated: December 3, 1999.

Scott E. Thomas,
Chairman, Federal Election Committee.
[FR Doc. 99-31825 Filed 12-8-99; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98-NM-174-AD]

RIN 2120-AA64

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the superseding of an existing airworthiness directive (AD), applicable to all British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, that currently requires installation of a placard prescribing special procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch ON; modification of the air brake auto-retract function; a revision to the Airplane Flight Manual (AFM) relative to altitude and operating limitations associated with flight in icing conditions above 26,000 feet. That AD was prompted by reports of uncommanded engine thrust reductions (rollback) when operating in certain icing conditions that exist in the vicinity of thunderstorms. This action would add a requirement for the installation/replacement of new placards. This proposal also would provide for an optional terminating modification for the AFM revision and installation/replacement of placards. The actions specified by the proposed AD are intended to prevent engine power rollback during flight in icing conditions, a condition that could result in insufficient power to sustain flight.

DATES: Comments must be received by January 10, 2000.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-174-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the FAA, Transport Airplane Directorate,

1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT:

Norman B. Martenson, Manager, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (425) 227-2110; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 98-NM-174-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-114, Attention: Rules Docket No. 98-NM-174-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On July 10, 1996, the FAA issued AD 96-14-09, amendment 39-9694 (61 FR 37199, July 17, 1996), applicable to all British Aerospace Model BAe 146-100A, -200A, and -300A series airplanes, to require installation of a placard prescribing special procedures to be followed when operating at certain flight levels with the engine and airframe anti-ice switch ON; modification of the air brake auto-retract function; and a revision to the Airplane