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SUPPLEMENTARY INFORMATION: For additional information see the direct final rule published in the Rules and Regulations section of this **Federal Register**.

Procedural Background

This rule is limited to the changes contained in Amendment 5 to CoC No. 1025 and does not include other aspects of the NAC-MPC design. Because NRC considers this action noncontroversial and routine, the NRC is publishing this proposed rule concurrently as a direct final rule. Adequate protection of public health and safety continues to be ensured. The direct final rule will become effective on July 24, 2007. However, if the NRC receives significant adverse comments by June 11, 2007, then the NRC will publish a document that withdraws the direct final rule and will subsequently address the comments received in a final rule. The NRC will not initiate a second comment period on this action.

A significant adverse comment is a comment where the commenter explains why the rule would be inappropriate, including challenges to the rule's underlying premise or approach, or would be ineffective or unacceptable without a change. A comment is adverse and significant if:

(1) The comment opposes the rule and provides a reason sufficient to require a substantive response in a notice-and-comment process. For example, a substantive response is required when—

(a) The comment causes the NRC staff to reevaluate (or reconsider) its position or conduct additional analysis;

(b) The comment raises an issue serious enough to warrant a substantive response to clarify or complete the record; or

(c) The comment raises a relevant issue that was not previously addressed or considered by the NRC staff.

(2) The comment proposes a change or an addition to the rule, and it is apparent that the rule would be ineffective or unacceptable without incorporation of the change or addition.

(3) The comment causes the NRC staff to make a change (other than editorial) to the rule, CoC, or TS.

List of Subjects in 10 CFR Part 72

Administrative practice and procedure, Criminal penalties, Manpower training programs, Nuclear materials, Occupational safety and health, Penalties, Radiation protection, Reporting and recordkeeping requirements, Security measures, Spent fuel, Whistleblowing.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended; the Energy Reorganization Act of 1974, as amended; and 5 U.S.C. 553; the NRC is proposing to adopt the following amendments to 10 CFR part 72.

PART 72—LICENSING REQUIREMENTS FOR THE INDEPENDENT STORAGE OF SPENT NUCLEAR FUEL, HIGH-LEVEL RADIOACTIVE WASTE, AND REACTOR-RELATED GREATER THAN CLASS C WASTE

1. The authority citation for part 72 continues to read as follows:

Authority: Secs. 51, 53, 57, 62, 63, 65, 69, 81, 161, 182, 183, 184, 186, 187, 189, 68 Stat. 929, 930, 932, 933, 934, 935, 948, 953, 954, 955, as amended; sec. 234, 83 Stat. 444, as amended (42 U.S.C. 2071, 2073, 2077, 2092, 2093, 2095, 2099, 2111, 2201, 2232, 2233, 2234, 2236, 2237, 2238, 2282); sec. 274, Pub. L. 86-373, 73 Stat. 688, as amended (42 U.S.C. 2021); sec. 201, as amended, 202, 206, 88 Stat. 1242; as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846); Pub. L. 95-601, sec. 10, 92 Stat. 2951, as amended by Pub. L. 102-486, sec. 7902, 106 Stat. 3123 (42 U.S.C. 5851); sec. 102, Pub. L. 91-190, 83 Stat. 853 (42 U.S.C. 4332); secs. 131, 132, 133, 135, 137, 141, Pub. L. 97-425, 96 Stat. 2229, 2230, 2232, 2241; sec. 148, Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10151, 10152, 10153, 10155, 10157, 10161, 10168); sec. 1704, 112 Stat. 2750 (44 U.S.C. 3504 note); sec. 651(e), Pub. L. 109-58, 119 Stat. 806-10 (42 U.S.C. 2014, 2021, 2021b, 2111).

Section 72.44(g) also issued under secs. 142(b) and 148(c), (d), Pub. L. 100-203, 101 Stat. 1330-232, 1330-236 (42 U.S.C. 10162(b), 10168(c), (d)). Section 72.46 also issued under sec. 189, 68 Stat. 955 (42 U.S.C. 2239); sec. 134, Pub. L. 97-425, 96 Stat. 2230 (42 U.S.C. 10154). Section 72.96(d) also issued under sec. 145(g), Pub. L. 100-203, 101 Stat. 1330-235 (42 U.S.C. 10165(g)). Subpart J also issued under secs. 2(2), 2(15), 2(19), 117(a), 141(h), Pub. L. 97-425, 96 Stat. 2202, 2203, 2204, 2222, 2244 (42 U.S.C. 10101, 10137(a), 10161(h)). Subparts K and L are also issued under sec. 133, 98 Stat. 2230 (42 U.S.C. 10153) and sec. 218(a), 96 Stat. 2252 (42 U.S.C. 10198).

2. In § 72.214, Certificate of Compliance 1025 is revised to read as follows:

§ 72.214 List of approved spent fuel storage casks.

* * * * *

Certificate Number: 1025.

Initial Certificate Effective Date: April 10, 2000.

Amendment Number 1 Effective Date: November 13, 2001.

Amendment Number 2 Effective Date: May 29, 2002.

Amendment Number 3 Effective Date: October 1, 2003.

Amendment Number 4 Effective Date: October 27, 2004.

Amendment Number 5 Effective Date: July 24, 2007.

SAR Submitted by: NAC International, Inc.

SAR Title: Final Safety Analysis Report for the NAC Multi-Purpose Canister System (NAC-MPC System).

Docket Number: 72-1025.

Certificate Expiration Date: April 10, 2020.

Model Number: NAC-MPC.

* * * * *

Dated at Rockville, Maryland, this 24th day of April, 2007.

For the Nuclear Regulatory Commission.

Martin J. Virgilio,

Acting Executive Director for Operations.

[FR Doc. E7-9007 Filed 5-9-07; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Part 106

[Notice 2007-10]

Hybrid Communications

AGENCY: Federal Election Commission.

ACTION: Notice of Proposed Rulemaking.

SUMMARY: The Federal Election Commission requests comments on a proposed rule to attribute the disbursements for a public communication made by a political party that refers to a clearly identified Federal candidate and that also generically refers to other candidates of a political party without clearly identifying them. Several alternatives are presented, including an alternative to include public communications that refer to multiple Federal candidates. The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before June 11, 2007. The Commission will hold a hearing on the proposed rules on July 11, 2007 at 10 a.m. Anyone wishing to testify at the

hearing must file written comments by the due date and must include a request to testify in the written comments.

ADDRESSES: All comments must be in writing, must be addressed to Ms. Amy L. Rothstein, Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail to ensure timely receipt and consideration. E-mail comments must be sent to hybridads@fec.gov. If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219-3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends. The hearing will be held in the Commission's ninth-floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, Ms. Esa L. Sferra, Attorney, or Mr. Robert M. Knop, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: Through this rulemaking, the Commission seeks to establish how political party committees attribute disbursements for "hybrid communications"—communications that refer both to one or more clearly identified Federal candidates and generically to candidates of a political party ("generic party reference").

The Federal Election Campaign Act of 1971, as amended ("the Act"), and current Commission regulations do not explicitly provide for the attribution of disbursements for hybrid communications, except for those communications distributed by means of a telephone bank. See 11 CFR 106.8 (requiring disbursements to be attributed equally between the Federal candidate clearly identified in the communication and the political party committee making the communication). Recently, the Commission considered the attribution of disbursements for hybrid communications made by a political party committee through two other types of public communication: Hybrid communications by means of mass mailings and hybrid communications by means of broadcast

television and radio. See Advisory Opinion 2006-11 (Washington Democratic State Central Committee) (mass mailings);¹ Report of the Audit Division on Bush-Cheney '04, Inc. and the Bush-Cheney '04 Compliance Committee, Inc. (approved March 22, 2007) ("Final Audit Report") (television and radio advertisements).² The proposed rule discussed below presents alternative methods for attributing the disbursements for various forms of hybrid communications made by political party committees, and would supersede and replace current 11 CFR 106.8.

I. Background

The general rule for attributing disbursements for a communication made on behalf of more than one Federal candidate clearly identified in the communication is based on the "benefit reasonably expected to be derived" by the candidates. See 11 CFR 106.1(a). Under § 106.1(a), that benefit is determined by the proportion of space or time, or number of questions or statements, devoted to each clearly identified Federal candidate as compared to the total space or time, or number of questions or statements, devoted to all clearly identified Federal candidates. The percentage reflecting the relative proportion of space or time devoted to a clearly identified Federal candidate is the percentage of the disbursements for the communication attributed to that candidate ("space or time attribution"). The terms of this rule are limited to communications that refer to two or more clearly identified Federal candidates, and do not provide a method for a political party to attribute a portion of the communication to itself, through a generic party reference.

Current section 106.8 does permit attribution of the benefit reasonably expected to be derived from a generic party reference in hybrid communications made by a political party, but only when the communication is made by means of a telephone bank. See 11 CFR 106.8; Final Rules and Explanation and Justification for Party Committee Telephone Banks, 68 FR 64517 (Nov. 14, 2003) ("Telephone Bank Final Rules"). Currently, section 106.8 requires disbursements for the communication to be attributed equally to the clearly identified Federal candidate and the political party making the communication.

Recently, the Commission was asked to address the attribution of disbursements for a hybrid communication by means of a mass mailing paid for by a State committee of a political party. In Advisory Opinion 2006-11 (Washington Democratic State Central Committee), the Commission noted that "[n]either the Act nor Commission regulations definitively address the appropriate allocation of payments for" a mass mailing that referred to one clearly identified Federal candidate and contained a generic party reference. Advisory Opinion 2006-11. "Section 106.1(a) provides the general rule that expenditures made on behalf of *more than one* clearly identified candidate 'shall be attributed to each such candidate according to the benefit reasonably expected to be derived.'" *Id.* "Commission regulations at 11 CFR 106.8 (which apply only to *phone banks* conducted by a party committee) do address the attribution required for a communication that possesses the same attributes as the mass mailings described in [the] request (*i.e.*, reference to only one clearly identified Federal candidate along with a generic reference to other party candidates; and no solicitation of funds)." *Id.* The Commission nonetheless concluded that at least 50 percent of the disbursements should be attributed to the clearly identified Federal candidate. If the space devoted to that Federal candidate exceeds the amount of space devoted to the generic party reference, the disbursement must be attributed to the Federal candidate based on an analysis of the space or time devoted to the Federal candidate, as compared to the space or time devoted to the generic party reference, pursuant to guidance in 11 CFR 106.1(a).

Most recently, the Commission was presented with the issue of attributing disbursements for hybrid communications by means of broadcast television and radio paid for in part by a publicly funded presidential candidate and in part by a national committee of a political party. See *Final Audit Report*. The national committee attributed 50 percent of the disbursements for the hybrid communications to its publicly funded presidential candidate clearly identified in the communications, and 50 percent to the political party committee. In the *Final Audit Report*, the Commission considered the extent to which, if any, 11 CFR 106.1 and 106.8 provided guidance for attributing the

¹ Available at www.fec.gov/law/law.shtml.

² Available at www.fec.gov/audits/audit_reports_pres.shtml.

disbursements for the communications, but did not make a finding.³ *Id.*

The Commission is proposing to amend current 11 CFR 106.8 to address the attribution of disbursements for hybrid communications made through all types of “public communication” as defined in 11 CFR 100.26. Proposed section 106.8 would be divided into paragraph (a) setting out the scope of the proposed rule, paragraph (b) setting out the attribution formulas, and paragraph (c) describing the reporting of disbursements attributed under the proposed rule. The discussion below explains each paragraph separately and also seeks comment on the proposed rule.

II. Proposed 11 CFR 106.8(a)—Scope

Proposed 11 CFR 106.8 would apply to any “public communication,” as defined in 11 CFR 100.26, which includes broadcast, cable, and satellite communications; newspapers and magazines; outdoor advertising facilities; mass mailings; telephone banks; and Internet communications placed for a fee on another person’s Web site. *See* 2 U.S.C. 431(22); 11 CFR 100.26. Proposed 11 CFR 106.8 would address the attribution of disbursements for a public communication made by any national, State, district, or local party committee, including national congressional campaign committees and convention committees, *see* 11 CFR 9008.3(a)(2), that contains a generic party reference and also refers to only one clearly identified Federal candidate, such as “Show your support for Senator X and our other great Democratic candidates.” As discussed below, proposed 11 CFR 106.8 would also address the attribution of disbursements for a public communication that refers to two or more clearly identified Federal candidates, provided that those candidates are running for the same Federal office.⁴ An additional proposed alternative would further address the attribution of disbursements for a public communication that refers to two or more clearly identified Federal candidates running for different Federal offices. Neither the proposed rule nor any of the alternatives presented would apply to disbursements for public communications that are independent expenditures.

The Commission seeks comment on all aspects of the scope of proposed 11 CFR 106.8. Should the Commission apply a uniform attribution rule to all types of public communication? In 2003, the Commission “decided to limit the scope of new section 106.8 to phone banks * * * because each type of communication presents different issues that need to be considered in further detail before establishing new rules.” *Telephone Bank Final Rules*, 68 FR at 64518. Are there communication-specific considerations that counsel against adoption of a uniform approach?

A. Proposed 11 CFR 106.8(a)(1)(i) and (ii)—Reference to a Clearly Identified Federal Candidate

1. Proposed 11 CFR 106.8(a)(1)(i)(A) and (B)

The proposed rule would extend to two types of public communications. The first type refers to only one clearly identified Federal candidate and does not refer to any other clearly identified Federal or non-Federal candidate. The clearly identified Federal candidate could be either a candidate of the political party making the communication, or an opposing candidate. The Commission requests comment on this approach.

The second type of public communication covered by the proposed rule refers to two or more clearly identified Federal candidates running for the same Federal office, only one of whom is a candidate of the political party making the public communication, provided the communication does not clearly identify any other Federal or non-Federal candidate. This portion of the proposed rule is intended to reach communications that compare or contrast the political party’s own clearly identified Federal candidate with other clearly identified candidates not supported by the political party. The Commission requests comment on this approach.

For purposes of the proposed rule, a Federal candidate of a political party would include both a Federal candidate seeking the nomination of that political party and a candidate who has already obtained that political party’s nomination.

2. Proposed Alternative 11 CFR 106.8(a)(1)(i)(C)—Multiple Federal Candidate Reference

Proposed 11 CFR 106.8(a)(1)(i)(C) would extend the rule to a third type of public communication, namely a public communication that refers to multiple clearly identified Federal candidates of

the same political party who are seeking different Federal offices. This portion of the proposed rule is intended to reach communications that promote a “slate” of a political party’s candidates, along with the party itself. For example, proposed 11 CFR 106.8(a)(1)(i)(C) would permit attribution of a public communication that refers to a political party’s candidates for both U.S. Senate and U.S. House of Representatives.

The Commission seeks comment on this approach. Are such communications quantitatively different from communications clearly identifying Federal candidates for the same Federal office only? Is the value of the generic party reference in a hybrid communication diluted by the inclusion of more clearly identified candidates? The Commission seeks comments on such an approach and possible methods for attributing disbursements for a communication clearly identifying multiple Federal candidates of the same political party seeking different Federal offices between those candidates and the political party making the communication. If the Commission were to adopt this approach, should it exclude public communications that include a reference to a clearly identified non-Federal candidate? What would be the consequences of including such a reference?

B. Proposed 11 CFR 106.8(a)(1)(iii)—Generic Party Reference

Proposed 11 CFR 106.8(a)(1)(iii) would define a generic party reference in a public communication as a reference to other Federal or non-Federal candidates that does not clearly identify those candidates.

The proposed rule presents two alternative descriptions of a generic party reference. The first alternative would require the generic party reference to refer to the other candidates as candidates of a political party by using the name or nickname of the political party, such as “our wonderful Democratic team,” or “the great Republican ticket.” The Commission seeks comment on this proposed alternative. Under this approach, the generic reference must refer to candidates of a political party, rather than simply refer to a political party. For example, in the statement “Candidate Y and the Republican Party,” the reference to the Republican Party would not be a generic reference to other Republican candidates and, therefore, would not be a hybrid communication. Should general references to party members without reference to their status as candidates, such as “the Democratic leaders” or

³ Statements of Reasons issued by Commissioners on the *Final Audit Report* are available at <http://www.fec.gov>.

⁴ For purposes of this section, the Commission would consider a reference to a clearly identified presidential and vice presidential candidate of the same political party as a reference to one clearly identified candidate.

“Republicans in Congress,” be treated as generic party references under this alternative? Should an unambiguous reference to a political party that does not use the political party’s formal name also be a generic party reference?

The second proposed alternative for 11 CFR 106.8(a)(1)(iii) would retain the language of current 11 CFR 106.8, which requires a generic reference to candidates without clearly identifying them, but does not require the candidates to be identified as candidates of a political party, or that the political party be clearly identified. The Commission seeks comment on this second alternative. For example, should a reference to “Liberals in Congress” or “Leaders in Congress” be treated as a generic party reference under this alternative?

C. Proposed 11 CFR 106.8(a)(1)(iv) and (v)—Other Requirements

Proposed 11 CFR 106.8, like current 11 CFR 106.8, would not apply to hybrid communications that solicit contributions, donations, or other funds. The Commission seeks comment on whether proposed section 106.8(a)(1)(iv), containing the solicitation exemption, is necessary. Should the proposed rule apply to hybrid communications regardless of whether they contain a solicitation?

Proposed 11 CFR 106.8 would not apply to any hybrid communications where the costs are otherwise exempt from the definitions of “contribution” and “expenditure” under 11 CFR part 100, subpart C or E. Disbursements that do not constitute “contributions” or “expenditures” under 11 CFR part 100 need not be attributed to any candidate in order to determine the permissibility of contributions or to report expenditures. The Commission seeks comment on this approach.

D. Proposed 11 CFR 106.8(a)(2)—Exclusion of Certain Multiple Candidate Hybrid Communications

Proposed 11 CFR 106.8(a)(2) would exclude from the proposed rule any hybrid communication made by a political party that refers to two or more clearly identified Federal candidates, other than candidates running for the same Federal office. For example, a communication that states “Vote for Senate Candidate X, House Candidate Y, and the rest of the great Party ticket” would not be covered by the proposed rule. The proposed rule would also exclude hybrid communications that refer to one or more clearly identified non-Federal candidates. These communication would remain subject to attribution solely between the

candidates who are clearly identified in the public communication under 11 CFR 106.1(a). The Commission seeks comment on this approach.

A proposed alternative version of 11 CFR 106.8(a)(2) would exclude from the proposed rule hybrid communications that refer to multiple clearly identified Federal candidates who are seeking different Federal offices, but are not candidates of the political party making the communication. The proposed alternative version would also exclude hybrid communications that refer to one or more clearly identified non-Federal candidates. These communications would remain subject to attribution solely between the candidates who are clearly identified in the public communication under 11 CFR 106.1(a). The Commission seeks comment on this approach.

Under either approach, is attribution of excluded public communications pursuant to 106.1(a) appropriate? Should the Commission conclude that a generic party reference benefits a political party committee in only certain prescribed circumstances?

E. Proposed 11 CFR 106.8(a)(3)—Exclusion of Independent Expenditures

Proposed 11 CFR 106.8(a)(3) would exclude from the proposed rule any disbursement that is an independent expenditure under 11 CFR 100.16, even if such a communication contains a generic party reference. Under 11 CFR 104.4 and 104.3(b)(3)(vii), the entire amount of such independent expenditures must be reported as either in support of, or in opposition to, a particular candidate, without regard to any generic reference to other candidates. Independent expenditures are not contributions to any candidate. Under 11 CFR part 300, such independent expenditures must be made entirely with Federal funds.

III. Proposed 11 CFR 106.8(b)—Attribution

Although current 11 CFR 106.8 attributes a fixed 50 percent of the disbursements for a hybrid communication through a telephone bank to the Federal candidate clearly identified in the communication, the Commission is revisiting both the attribution method and the attribution percentage appropriate for all hybrid communications covered by the proposed rule.

Consistent with the general rule that disbursements for a communication should be attributed to a candidate based on the benefit reasonably expected to be derived by that candidate, proposed 11 CFR 106.8(b)

would attribute a disbursement for a hybrid communication between the political party making the hybrid communication and the political party’s own Federal candidate.

Proposed 11 CFR 106.8(b) would attribute disbursements for hybrid communications as follows:

- If the candidate of the political party making the communication is the only clearly identified Federal candidate in the hybrid communication, then the proposed rule would attribute the disbursements for the communication between the clearly identified Federal candidate and the political party making the communication.

- If the only clearly identified Federal candidate in the hybrid communication is the opponent of the candidate of the political party making the communication, then the proposed rule would attribute the disbursements for the communication between the political party making the communication and the candidate of that political party who is running for the same Federal office as the clearly identified Federal candidate.

- If the hybrid communication clearly identifies at least two Federal candidates running for the same Federal office, only one of whom is a candidate of the political party making the communication, then the proposed rule would attribute the disbursements for the communication between the political party making the communication and the clearly identified Federal candidate of that political party.

Additionally, under the proposed multiple Federal candidate reference alternative:

- If the hybrid communication clearly identifies at least two Federal candidates of the same political party running for different Federal offices, the proposed rule would attribute the disbursements for the communication among the political party making the communication and the clearly identified Federal candidates of that political party.

The Commission seeks comment on this approach. Are there data or other evidence that support a down-ticket benefit from ads that reference a clearly identified candidate and also contain a generic reference?

Hybrid communications that are made prior to a primary election and clearly identify a candidate of a political party other than the party making the communication present an additional issue, because the political party making the communication could have several of its own candidates seeking

nomination for the same Federal office as the Federal candidate clearly identified in the communication. The Commission seeks comment on how the proposed rule should attribute disbursements between the political party making the communication and its various candidates seeking the political party's nomination for the same Federal office as the candidate clearly identified in the communication.

Proposed 11 CFR 106.8(b) presents three alternative attribution formulas: (1) A fixed percentage (proposed at 25 percent, 50 percent, or 75 percent); (2) a fixed percentage of 100 percent, requiring the entire amount of each disbursement for the communication to be attributed to the Federal candidate of the political party making the communication; and (3) the greater of either a fixed percentage (proposed at 25 percent, 50 percent, or 75 percent), or a percentage based on space or time attribution. The Commission seeks comment on these three alternative attribution formulas and whether a single formula should apply to all hybrid communications, regardless of the office sought by the Federal candidate who is clearly identified in the communication. Additionally, if the Commission were to adopt the proposed multiple Federal candidate reference alternative at proposed 11 CFR 106.8(a)(1)(i)(C), what attribution formula or method would be most appropriate?

The Commission also invites comment on whether there are other factors that the Commission should consider to be relevant to determining the relative benefit reasonably expected to be derived from the hybrid communication by a Federal candidate and by the political party making the communication. Must the hybrid communication be disseminated or distributed in the jurisdiction in which the clearly identified Federal candidate is running? Should different attribution percentages apply to House, Senate or Presidential candidates? Should a different attribution formula apply for publicly funded presidential candidates? Should a different fixed percentage apply if the clearly identified Federal candidate is in a highly contested race? Should a different fixed percentage apply for a presidential candidate if the hybrid communication is disseminated or distributed in a battleground state? Lastly, should the percentage attributed to the clearly identified Federal candidate change based on timing, *i.e.*, the proximity to the election of the hybrid communication's dissemination or distribution?

A. Attribution Alternative 1—Fixed Percentage (Proposed at 25% or 50% or 75%)

Attribution Alternative 1 would require a fixed percentage of the disbursements for a public communication to be attributed to the Federal candidate of the political party making the communication. This candidate would be either clearly identified in the public communication, or (in the case of negative advertisements) a candidate for the same Federal office as the only Federal candidate clearly identified in the public communication. The remaining percentage of the disbursements would not be attributable to any other Federal or non-Federal candidate and could be treated as political party committee operating expenses.

Attribution Alternative 1 is based on current 11 CFR 106.8, which requires 50 percent of the disbursements for hybrid communications made via telephone banks to be attributed to the clearly identified Federal candidate and prohibits the remaining 50 percent of the disbursements from being attributed to any other Federal or non-Federal candidate. Attribution Alternative 1 proposes three alternative percentages: (1) 25 percent, (2) 50 percent, and (3) 75 percent, as discussed below.

The Commission seeks comment on Attribution Alternative 1, including which, if any, of the three alternative percentages should be adopted, or whether a different fixed percentage should be adopted. The Commission seeks comment on whether the percentage should be fixed or a minimum. The Commission also seeks comment on whether the attribution percentages should differ depending on the type of public communication or on other factors. In addition to opinion and suggestion, the Commission invites the submission of empirical evidence and other analysis that would justify the use of a particular percentage method.

1. 25 Percent

The first alternative would require that 25 percent of the disbursements for a public communication be attributed to the Federal candidate of the political party making the public communication, with the remaining 75 percent of the disbursements not attributed to any other Federal or non-Federal candidate. This alternative is based on the proposition that the Federal candidate of the political party making the public communication could reasonably expect to derive significantly less benefit from the communication than the political party

making the communication. The Commission seeks comment on this alternative.

2. 50 Percent

The second alternative, like current 11 CFR 106.8, would require 50 percent of the disbursements for a public communication to be attributed to the Federal candidate of the political party making the communication, with the remaining 50 percent of the disbursements not attributed to any other Federal or non-Federal candidate. This alternative is based on the proposition that the Federal candidate of the political party making the public communication could reasonably expect to derive roughly the same benefit from the communication as the political party making the communication. The Commission seeks comment on this alternative.

3. 75 Percent

Under the third alternative, 75 percent of the disbursements for a public communication would be attributed to the Federal candidate of the political party making the communication, and the remaining 25 percent of the disbursements would not be attributable to any other Federal or non-Federal candidate. This alternative is based on the proposition that the Federal candidate of the political party making the communication could reasonably expect to derive the most benefit from a public communication, while recognizing that a generic party reference does provide some benefit to the political party making the communication. The Commission seeks comment on this alternative.

B. Attribution Alternative 2—Fixed Percentage (100%)

Under Attribution Alternative 2, all of the disbursements for a public communication would be attributed to the Federal candidate of the political party making the communication. This candidate would be either clearly identified in the public communication, or a candidate for the same Federal office as the only Federal candidate clearly identified in the public communication. This alternative would be similar to the allocation rules for separate segregated funds and nonconnected committees in 11 CFR 106.6(f).⁵ This alternative is based on

⁵ Under § 106.6(f), the disbursements for a public communication are allocated between Federal and non-Federal accounts based solely on the candidates clearly identified in the communication, without regard to any generic party reference. See also Final Rules and Explanation and Justification

the proposition that a generic party reference could be reasonably expected to provide at most an insignificant benefit to the political party making the public communication, and that the Federal candidate of the political party making the communication could reasonably expect to derive all of the benefit from the communication. The Commission seeks comment on Attribution Alternative 2. In 2003, the Commission did not adopt a 100% candidate attribution alternative for phone bank communications. Does evidence or experience indicate that the Commission should reconsider this conclusion?

C. Attribution Alternative 3—The Greater of a Fixed Percentage (Proposed at 25% or 50% or 75%) or a Space or Time Attribution

Attribution Alternative 3 would require the disbursements for a public communication to be attributed to the Federal candidate of the political party making the communication who is either clearly identified in the public communication or a candidate for the same Federal office as the only Federal candidate clearly identified in the public communication, based on either a given attribution percentage, or based on a space or time attribution percentage, whichever is greater. The space or time attribution percentage would be calculated as a ratio of the public communication's space or time devoted to all clearly identified Federal candidates compared to the communication's space or time devoted to all clearly identified Federal candidates and all generic party references. The disbursements not attributed to the Federal candidate of the political party paying for the communication would not be attributed to any other Federal or non-Federal candidate.

Attribution Alternative 3 is based on the attribution formula in Advisory Opinion 2006–11 (Washington Democratic State Central Committee). In Advisory Opinion 2006–11, the Commission concluded that at least 50 percent of the disbursements for the mass mailing must be attributed to the clearly identified Federal candidate, even if the space attributable to that candidate is less than the space attributable to the generically referenced candidates. However, the Commission concluded that if the amount of space in the mailing devoted to the clearly

identified Federal candidate exceeds the space devoted to the generically referenced candidates, then the disbursements attributed to the clearly identified Federal candidate must exceed 50 percent and “reflect at least the relative proportion of the space devoted to that candidate,” similar to the space or time attribution under 11 CFR 106.1(a). Although the Commission determined that 50 percent was the minimum percentage to be attributed to the clearly identified Federal candidate under the facts of Advisory Opinion 2006–11, Attribution Alternative 3 presents three alternative minimum percentages: (1) 25 percent, (2) 50 percent, and (3) 75 percent.

The Commission seeks comment on Attribution Alternative 3, including which, if any, of the alternative minimum percentages should apply to all types of “public communication,” or whether the minimum percentage should depend on the specific type of public communication. The Commission invites comment on whether a space or time attribution, or some other method of attribution, is appropriate for all types of public communication. The Commission also seeks comment on whether the space or time devoted to a clearly identified Federal candidate in any general or “stand by your ad” disclaimer required by the Act and Commission regulations should be considered when calculating a space or time analysis under Attribution Alternative 3. *See* 2 U.S.C. 441d(a) and 11 CFR 110.11(a)(1), (b)(1) and (2) (general disclaimer requirement); *see also* 2 U.S.C. 441d(d) and 11 CFR 110.11(c)(3) (the “stand-by-your-ad” provisions).

IV. Proposed 11 CFR 106.8(c)—Treatment

Proposed 11 CFR 106.8(c) would permit a political party making a hybrid communication to treat disbursements attributed to a Federal candidate under proposed 11 CFR 106.8(b) as an in-kind contribution to that candidate subject to the limitations of 11 CFR 110.1 and 110.2 or a party coordinated expenditure on behalf of that candidate under 11 CFR part 109, subpart D. Proposed 11 CFR 106.8(c) would also allow the Federal candidate or the candidate's authorized committee to reimburse the political party for the costs attributed to the candidate. The Commission notes that such a reimbursement would have to be made within a reasonable time. *See, e.g.,* Advisory Opinion 2004–37 (Waters) (reimbursement by Federal candidates' authorized committees for disbursements for a printed

communication would not constitute a contribution to another Federal candidate's authorized committee if the reimbursements were made within a “reasonable time”). The Commission invites comment on whether the proposed rule should require prepayment of shared hybrid communication costs, or whether it should include a time limit for reimbursement, such as 30 or 60 days, or some other time period.

The Commission notes that the proposed rule would permit a hybrid communication that is coordinated with a Federal candidate to be treated as a combination of an in-kind contribution, a party coordinated expenditure, and/or a reimbursement. The Commission seeks comment on this approach and the general treatment of these disbursements under the proposed rule.

V. Alternative Proposal—Amend 11 CFR 106.1

As an alternative to adopting proposed 11 CFR 106.8, should the Commission instead amend 11 CFR 106.1 to also include expenditures that contain generic party references, and require that such expenditures be attributed (1) to each clearly identified Federal candidate and political party according to the benefit each may reasonably expect to derive, or (2) according to a ratio based on the number of candidates referenced, including the generic party reference? For example, under the latter alternative, a communication encouraging viewers to support “Senator Smith, Representative Jones, and all the great candidates of the Democratic Party” would be attributed equally between the three references (i.e., one-third to Smith, one-third to Jones, and one-third to the political party making the communication). The Commission seeks comment on all aspects of this alternative.

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

The Commission certifies that the attached proposed rule would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that any individuals and not-for-profit entities that would be affected by the proposed rule are not “small entities” under 5 U.S.C. 601. The definition of “small entity” does not include individuals, but classifies a not-for-profit enterprise as a “small organization” if it is independently owned and operated and not dominant in its field. 5 U.S.C. 601(4). The

for Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees, 69 FR 68056, 68063 (Nov. 23, 2004).

proposed rule would affect political party committees, including national, State, district, and local party committees, and other organizations of a political party, which are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals. Political party committees are financed by contributions from a large number of individuals and are controlled by the political party officials and political party employees and volunteers. In addition, the political party committees and organizations representing the Democratic and Republican parties have a major controlling influence within the national, State, and local political arenas and are thus dominant in their field. District and local party committees, and other organizations of a political party that are considered affiliated with the State committees need not be considered separately. To the extent that any political party committees might be considered "small organizations," the number that would be affected by this proposed rule is not substantial. Therefore, the attached proposed rule, if promulgated, would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 11 CFR Part 106

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

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

For the reasons set out in the preamble, the Federal Election Commission proposes to amend Subchapter A of Chapter I of Title 11 of the *Code of Federal Regulations* as follows:

1. The authority citation for part 106 would continue to read as follows:

Authority: 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

2. Section 106.8 would be revised to read as follows:

§ 106.8 Attribution of expenses for political party committee hybrid communications.

(a) *Scope and definition.* (1) This section applies to any public communication, as defined in 11 CFR 100.26, made by a national, State, district, or local committee or organization of a political party, that—

Paragraph (a)(1)(i) and (ii)—Alternative 1 (Candidate References)

- (i) Refers to either:
 - (A) Only one clearly identified Federal candidate; or
 - (B) Two or more clearly identified Federal candidates for the same Federal office, only one of whom is the candidate of the political party making the public communication;
- (ii) Does not refer to any other clearly identified Federal or non-Federal candidate;

Paragraph (a)(1)(i) and (ii)—Alternative 2 (Multiple Federal Candidate Reference)

- (i) Refers to either:
 - (A) Only one clearly identified Federal candidate;
 - (B) Two or more clearly identified Federal candidates for the same Federal office, only one of whom is the candidate of the political party making the public communication; or
 - (C) Two or more clearly identified Federal candidates for different Federal offices, all of whom are candidates of the political party making the public communication.
- (ii) Does not refer to any other clearly identified Federal or non-Federal candidate;

Paragraph (a)(1)(iii)—Alternative 1 (Generic Party Reference)

- (iii) Generically refers to other Federal or non-Federal candidates of a political party by using the name or nickname of the political party, but without clearly identifying the candidates;

Paragraph (a)(1)(iii)—Alternative 2 (Generic Party Reference)

- (iii) Generically refers to other Federal or non-Federal candidates without clearly identifying the candidates;
- (iv) Does not solicit a contribution, donation, or any other funds from any person; and
- (v) Is not exempt from the definition of *contribution* or *expenditure* under 11 CFR part 100, subpart C or E.

Paragraph (a)(2)—Alternative 1 (Certain Hybrid Communications Excluded)

- (2) This section does not apply to a public communication that refers to two or more clearly identified Federal candidates for different Federal offices, or one or more clearly identified non-Federal candidates, and generically refers to other Federal or non-Federal candidates as described in paragraph (a)(1)(iii) of this section. Disbursements for such public communications must be attributed solely to the clearly

identified candidates under 11 CFR 106.1(a).

Paragraph (a)(2)—Alternative 2 (Certain Hybrid Communications Excluded)

(2) This section does not apply to a public communication that refers to two or more clearly identified Federal candidates for different Federal offices who are not candidates of the political party making the communication, or to one or more clearly identified non-Federal candidates, and generically refers to other Federal or non-Federal candidates as described in paragraph (a)(1)(iii) of this section. Disbursements for such public communications must be attributed solely to the clearly identified candidates under 11 CFR 106.1(a).

(3) This section does not apply to independent expenditures, as defined in 11 CFR 100.16, for a public communication described in paragraph (a)(1) of this section. Under 11 CFR 104.4 and 104.3(b)(3)(vii), the entire amount of such independent expenditures must be reported as either in support of, or in opposition to, a particular candidate, without regard to the generic reference to other candidates. Under 11 CFR part 300, such independent expenditures must be made entirely with Federal funds.

Paragraph (b)—Alternative 1 (Fixed Percentage (25% or 50% or 75%) Attribution)

(b) *Attribution.* Each disbursement for a public communication described in paragraph (a) of this section must be made entirely with Federal funds and must be attributed as follows:

(1) 25 or 50 or 75 percent of the disbursement is attributed to the Federal candidate of the political party making the public communication who is either:

- (i) Clearly identified in the public communication; or
- (ii) A candidate for the same Federal office as the only Federal candidate clearly identified in the public communication.

(2) The portion of each disbursement not attributed to the Federal candidate described in paragraph (b)(1) of this section is not attributable to any other Federal or non-Federal candidate.

Paragraph (b)—Alternative 2 (Fixed Percentage (100%) Attribution)

(b) *Attribution.* The entire amount of each disbursement for a public communication described in paragraph (a) of this section must be attributed to the Federal candidate of the political party making the public communication

who is either clearly identified in the public communication or a candidate for the same Federal office as the only Federal candidate clearly identified in the public communication, and must be made entirely with Federal funds.

Paragraph (b)—Alternative 3 (The Greater of a Fixed Percentage or a Space or Time Attribution)

(b) *Attribution.* Each disbursement for a public communication described in paragraph (a) of this section must be made entirely with Federal funds and must be attributed as follows:

(1) Each disbursement must be attributed to the Federal candidate of the political party making the public communication who is either clearly identified in the public communication or a candidate for the same Federal office as the only Federal candidate clearly identified in the public communication, based on the proportion of the space or time, or number of questions or statements, devoted to all clearly identified Federal candidates as compared to the total space or time, or number of questions or statements, devoted to all clearly identified Federal candidates and all generic references to other candidates, but at least 25 or 50 or 75 percent of each disbursement must be attributed to the Federal candidate of the political party making the public communication; and

(2) The portion of each disbursement not attributed to the Federal candidate described in paragraph (b)(1) of this section is not attributable to any other Federal or non-Federal candidate.

(c) *Treatment of disbursements.* The disbursement described in paragraph (b)(1) of this section may be one or a combination of the following:

(1) An in-kind contribution, subject to the limitations of 11 CFR 110.1 or 110.2;

(2) A party coordinated expenditure, subject to the limitations, restrictions, and requirements of 11 CFR part 109, subpart D; or

(3) Reimbursed by the Federal candidate described in paragraph (b)(1) of this section or the authorized committee of such candidate.

Dated: May 3, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.
[FR Doc. E7-8956 Filed 5-9-07; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-156779-06]

RIN 1545-BG27

Determining the Amount of Taxes Paid for Purposes of Section 901; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to notice of proposed rulemaking.

SUMMARY: This document contains a correction to notice of proposed rulemaking that was published in the **Federal Register** on Friday, March 30, 2007 (71 FR 15081) providing guidance relating to the determination of the amount of taxes paid for purposes of section 901.

FOR FURTHER INFORMATION CONTACT: Bethany A. Ingwolson, (202) 622-3850 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The notice of proposed rulemaking (REG-156779-06) that is the subject of this correction is under section 901 of the Internal Revenue Code.

Need for Correction

As published, this notice of proposed rulemaking (REG-156779-06) contains an error that may prove to be misleading and is in need of clarification.

Correction of Publication

Accordingly, the notice of proposed rulemaking (REG-156779-06), that was the subject of FR Doc. E7-5862, is corrected as follows:

On page 15085, column 3, in the preamble, first full paragraph of the column, under the paragraph heading “3. *Comments and Proposed Regulations*”, lines 1 and 2, the language “The fifth condition is that the counterparty is a person (other than the” is corrected to read “The fifth condition is that the arrangement involves a counterparty. A counterparty is a person (other than the”.

LaNita Van Dyke,

Branch Chief, Publications and Regulations Branch, Legal Processing Division, Office of Associate Chief Counsel (Procedure and Administration).

[FR Doc. E7-8942 Filed 5-9-07; 8:45 am]

BILLING CODE 4830-01-P

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 571

[Docket No. USA-2007-0017]

RIN 0702-AA57

Recruiting and Enlistments

AGENCY: Department of the Army, DoD.

ACTION: Proposed rule; request for comments.

SUMMARY: The Department of the Army has revised its regulation that prescribes policies and procedures concerning recruiting and enlistment into the Regular Army and Reserve Components.

DATES: Consideration will be given to all comments received by July 9, 2007.

ADDRESSES: You may submit comments, identified by 32 CFR Part 571, Docket No. USA-2007-0017 and or RIN 0702-AA57, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Mail:* Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://www.regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Charles Tench, (703) 695-7520.

SUPPLEMENTARY INFORMATION:

A. Background

The Administrative Procedure Act, as amended by the Freedom of Information Act, requires publication of certain policies and procedures and other information concerning the Department of the Army in the **Federal Register**. The policies and procedures covered by this part fall into that category. The Army has changed the publications and policies, thus requiring the rules in the **Federal Register** to be updated.

B. Regulatory Flexibility Act

The Department of the Army has determined that the Regulatory Flexibility Act does not apply because the proposed rule does not have a significant economic impact on a