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.

DEPARTMENT OF AGRICULTURE

Rural Utilities Service

7 CFR Part 1738

RIN 0572–AB81

Rural Broadband Access Loans and Loan Guarantees

AGENCY: Rural Utilities Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Utilities Service (RUS), an agency delivering the U. S. Department of Agriculture's Rural Development Utilities Programs, is amending its regulations to revise the definition for ''eligible rural community'' as it relates to the rural access broadband loans and loan guarantees program.

In the final rule section of this **Federal Register**, RUS is publishing this action as a direct final rule without prior proposal because RUS views this as a non-controversial action and anticipates no adverse comments. If no adverse comments are received in response to the direct final rule, no further action will be taken on this proposed rule and the action will become effective at the time specified in the direct final rule. If RUS receives adverse comments, a timely document will be published withdrawing the direct final rule and all public comments received will be addressed in a subsequent final rule based on this action.

DATES: Comments on this proposed action must be received by RUS via facsimile transmission or carry a postmark or equivalent no later than May 4, 2005.

ADDRESSES: You may submit comments by any of the following methods:

- Federal eRulemaking Portal: Go to *http://www.regulations.gov*. Follow the online instructions for submitting comments.
- Agency Web Site: *http://www.usda.gov/rus/index2/Comments.htm*. Follow the instructions for submitting comments.
- E-mail: *RUSComments@usda.gov*. Include in the subject line of the message ''Broadband Loans and Loan Guarantees''.
- Mail: Addressed to Richard Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1522, Washington, DC 20250–1522.
- Hand Delivery/Courier: Addressed to Richard Annan, Director, Program Development and Regulatory Analysis, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., Room 5168 South Building, Washington, DC 20250–1522.

Instructions: All submissions received must include that agency name and the subject heading ''Broadband Loans and Loan Guarantees''. All comments received must identify the name of the individual (and the name of the entity, if applicable) who is submitting the comment. All comments received will be posted without change to *http://www.usda.gov/rus/index2/Comments.htm*, including any personal information provided.

FOR FURTHER INFORMATION CONTACT: Jonathan Claffey, Acting Assistant Administrator, Telecommunications Program, Rural Utilities Service, U.S. Department of Agriculture, 1400 Independence Avenue, SW., STOP 1590, Room 4056, Washington, DC 20250–1590. Telephone number (202) 720–9554, Facsimile (202) 720–0810.

SUPPLEMENTARY INFORMATION: See the supplementary information provided in the direct final rule located in the Rules and Regulations direct final rule section of this **Federal Register** for the applicable supplementary information on this action.

Dated: March 28, 2005.

Curtis M. Anderson,

Acting Administrator, Rural Utilities Service.

[FR Doc. 05–6538 Filed 4–1–05; 8:45 am]

BILLING CODE 3410–15–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 110 and 114

[Notice 2005–10]

Internet Communications

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed changes to its rules that would include paid advertisements on the Internet in the definition of ''public communication.'' These changes to the Commission's rules would implement the recent decision of the U.S. District Court for the District of Columbia in *Shays* v. *Federal Election Commission*, which held that the current definition of ''public communication'' impermissibly excludes all Internet communications. Comment is also sought on the related definition of ''generic campaign activity'' and on proposed changes to the disclaimer regulations. Additionally, comment is sought on proposed new exceptions to the definitions of ''contribution'' and ''expenditure'' for certain Internet activities and communications that would qualify as individual volunteer activity or that would qualify for the ''press exemption.'' These proposals are intended to ensure that political committees properly finance and disclose their Internet communications, without impeding individual citizens from using the Internet to speak freely regarding candidates and elections. The Commission has made no final decision on the issues raised in this rulemaking. Further information appears in the supplementary information that follows.

DATES: Comments must be received on or before June 3, 2005. The Commission will hold a hearing on the proposed rules on June 28–29, 2005 at 9:30 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 Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either electronic, facsimile, or hard copy form. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. Electronic comments must be sent to either *internet@fec.gov* or submitted through the Federal eRegulations Portal at *http://www.regulations.gov*. Any commenters who submit electronic comments and wish to testify at the hearing on this rulemaking must also send a copy of their comments to *internettestify@fec.gov*. If the electronic

comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with hard copy follow-up. Hard copy comments and hard 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: Mr. Brad C. Deutsch, Assistant General Counsel, Ms. Amy L. Rothstein, Mr. Richard T. Ewell, or Ms. Esa L. Sferra, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Bipartisan Campaign Reform Act of 2002, Pub. L. 107–155, 116 Stat. 81 (March 27, 2002) (''BCRA''), amended the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* (the ''Act''), in many respects. Four of these amendments are germane to this rulemaking.

First, section 441i(b) of BCRA requires state, district, and local political party committees to use only Federal funds [1] for certain types of ''Federal election activity,'' including for any ''*public communication* that refers to a clearly identified candidate for Federal office * * * and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office[.]'' [2] 2 U.S.C. 431(20)(A)(iii) (emphasis added). BCRA defines a ''public communication'' as ''a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing, or telephone bank to the general public, *or any other form of general public political advertising.*'' 2 U.S.C. 431(22) (emphasis added).

Second, section 441i(b) of BCRA also restricts the funds that state, district, and local political party committees may use for certain ''generic campaign activity.'' 2 U.S.C. 431(20)(A)(ii); 11 CFR 100.24(2)(ii). BCRA defines ''generic campaign activity'' as ''campaign activity that promotes a political party and does not promote a [Federal] candidate or non-Federal candidate.'' 2 U.S.C. 431(21). ''Generic campaign activity'' by state, district, and local party committees conducted in connection with an election in which a candidate for Federal office appears on the ballot (regardless of whether a candidate for state or local office also appears on the ballot) must be paid for either entirely with Federal funds or with an allocated mix of Federal funds and Levin funds.[3] *See* 2 U.S.C. 441i(b)(2)(A); 11 CFR 300.32(b)(1)(ii), 300.32(c) and 300.33.

Third, BCRA expressly repealed the Commission's then-existing rules on ''coordinated general public political communication'' at former 11 CFR 100.23, Public Law 107–155, sec. 214(b) (March 27, 2002), and instructed the Commission to promulgate new regulations on ''coordinated communications paid for by persons other than candidates, authorized committees of candidates, and party committees.'' Public Law 107–155, sec. 214(c) (March 27, 2002).

Fourth, Congress revised the ''disclaimer'' requirements in 2 U.S.C. 441d, by requiring a disclaimer when a ''disbursement'' (rather than an ''expenditure'') is made for certain communications.

The Commission promulgated regulations in 2002 to implement BCRA's provisions regarding (1) ''public communication,'' (2) ''generic campaign activity,'' (3) coordination with candidates and political parties, and (4) disclaimers. *See* Final Rules on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR 49,064 (July 29, 2002) (''Soft Money Final Rules''); Coordinated and Independent Expenditures, 68 FR 421 (Jan. 3, 2003); Disclaimers, Fraudulent Solicitation, Civil Penalties, and Personal Use of Campaign Funds, 67 FR 76,962 (Dec. 13, 2002).

In *Shays* v. *Federal Election Commission*, 337 F.Supp.2d 28 (D.D.C.) *appeal filed*, No. 04–5352 (DC Cir. Sept. 28, 2004) (''Shays''), the United States District Court for the District of Columbia overturned some of these regulations. First, the district court held that excluding all Internet communications from the Commission's rule defining ''public communication'' in 11 CFR 100.26 was inconsistent with Congress's use of the phrase ''or any other form of general public political advertising'' in BCRA's definition of ''public communication.'' [4] *Shays* at 69. The district court concluded that ''[w]hile all Internet communications do not fall within [the scope of 'any other form of general public political advertising'], some clearly do.'' *Id.* at 67. The court left it to the Commission to determine ''what constitutes 'general public political advertising' in the world of the Internet,'' and thus should be treated as a ''public communication''. *Id.* at 70.

Second, the district court found the Commission's rule defining the term ''generic campaign activity'' to be ''an impermissible construction of the Act,'' to the extent it incorporated the regulatory definition of ''public communication,'' which excludes all forms of Internet communications. *Id.* at 112. Although the court specifically approved the definition of ''generic campaign activity'' as a ''public communication,'' the *Shays* court found that the 2002 Notice of Proposed Rulemaking for ''generic campaign activity'' did not provide adequate notice to the public that the Commission might define ''generic campaign activity'' as a ''public communication'' in the final rules. *Id.* at 112; *see also Notice* of Proposed Rulemaking on Prohibited and Excessive Contributions; Non-Federal Funds or Soft Money, 67 FR 35,654, 35,675 (May 20, 2002).

[1] ''Federal funds'' are funds subject to the limitations, prohibitions, and reporting requirements of the Act. *See* 11 CFR 300.2(g). ''Non-Federal funds'' are funds not subject to the limitations and prohibitions of the Act. *See* 11 CFR 300.2(k).

[2] There are four types of ''Federal election activity'': Type 1—Voter registration activity during the period that begins on the date that is 120 days before a regularly scheduled Federal election is held and ends on the date of the election; Type 2—Voter identification, get-out-the-vote activity, or generic campaign activity conducted in connection with an election in which a candidate for Federal office appears on the ballot; Type 3—A public communication that promotes, supports, attacks or opposes a clearly identified candidate for Federal office; and Type 4—Services provided during any month by an employee of a state, district, or local committee of a political party who spends more than 25 percent of that individual's compensated time during that month on activities in connection with a Federal election. *See* 2 U.S.C. 431(20) and 11 CFR 100.24.

[3] Levin funds are a type of non-Federal funds created by BCRA that may be raised and spent by state, district, and local party committees and organizations to pay for the allocable portion of Types 1 and 2 Federal election activity. *See* 2 U.S.C. 441i(b)(2)(A) and (B); 11 CFR 300.2(i), 300.32(b). These funds may include donations from some sources ordinarily prohibited by Federal law (*e.g.*, corporations, labor organizations and Federal contractors) to the extent permitted by state law, but are limited to $10,000 per calendar year from any source or to the limits set by State law—whichever limit is lower. *See* 11 CFR 300.31.

[4] The court found that this rule did not satisfy step one of the test set out by the Supreme Court in *Chevron, U.S.A., Inc.* v. *National Res. Def. Council,* 467 U.S. 837 (1984) (''*Chevron*''). The *Shays* court stated that, in the alternative, the regulatory definition of ''public communication'' as applied to the ''content prong'' of the coordinated communication regulations in 11 CFR 109.21(c) is inconsistent with the Act and, therefore, provides an independent basis for invalidation under step two of the *Chevron* test. *See Shays* at 70–71.

Third, the district court invalidated the ''content prong'' of the Commission's coordinated communications rule at 11 CFR 109.21(c), which incorporates the definition of ''public communication'' at 11 CFR 100.26. The *Shays* court found that expenditures for communications that have been coordinated with a candidate, a candidate's authorized committee, or a political party committee have value for, and therefore are in-kind contributions to, that candidate or committee, regardless of the content, timing, or geographic reach of the communications. *Shays* at 63–64. Accordingly, the court held that certain regulatory exclusions contained in the ''content prong'' ''undercut [the Act's] statutory purpose of regulating campaign finance and preventing circumvention of the campaign finance rules.'' *Id.* at 63.

The district court remanded each of these rules to the Commission for further action consistent with its opinion. Accordingly, the Commission is issuing this Notice of Proposed Rulemaking (''NPRM''), which addresses several topics. First, the proposed rules in 11 CFR 100.26 would identify the types of Internet communications that are forms of ''general public political advertising'' and that therefore would qualify as public communications. Specifically, the Commission proposes to retain a general exclusion of Internet communications from the definition of ''public communication,'' except for those advertisements where another person or entity has been paid to carry the advertisement on its Web site, because these communications would constitute ''general public political advertising.'' This proposed change addresses the *Shays* court's concern about the wholesale exclusion of all Internet communications from the definition of ''public communication.'' Because only Internet communications that constitute ''general public political advertising,'' as defined by the regulation, would be included in the proposed definition of ''public communication'' in section 100.26, the Commission anticipates that the proposed definition would have an extremely limited impact, if any, on the use of the Internet by individuals as a means of communicating their political views, obtaining information regarding candidates and elections, and participating in political campaigns.

Second, this NPRM republishes and invites comment on the current definition of ''generic campaign activity'' in section 100.25, which includes the term ''public communication.'' The Commission notes that any changes to the underlying definition of ''public communication'' pertaining to the Internet would automatically apply to ''generic campaign activity.''

Third, the Commission proposes to modify somewhat its rules at 11 CFR 110.11(a) as to which Internet communications require disclaimers. Political committee Web sites would continue to need disclaimers. Individuals and entities other than political committees, however, would need to place disclaimers only on paid Internet advertisements (*i.e.*, Internet communications that constitute ''general public political advertising'' under the proposed definition of ''public communication'') if the advertisements either solicit contributions or expressly advocate the election or defeat of a clearly identified candidate for Federal office. The Commission also proposes to clarify the current requirement that disclaimers be included in ''unsolicited electronic mail of more than 500 substantially similar communications'' by defining ''unsolicited'' as ''those e-mails that are sent to electronic mail addresses purchased from a third party.'' The goal of this proposed change would be to continue to require disclaimers on political ''spam,'' without interfering with individuals who participate in large on-line communities.

In addition, the Commission is proposing to add new rules specifically excepting certain volunteer activity on the Internet from the definitions of ''contribution'' and ''expenditure,'' and by clarifying that the rules in section 114.9 regarding the use of corporate or labor organization facilities apply to the use of computers, software, and other Internet equipment and services. Lastly, the proposed rules seek to establish an Internet exception from the definitions of ''contribution'' and ''expenditure'' for certain media activity.

The Commission has announced plans to initiate a separate rulemaking on certain non-Internet aspects of the coordinated communication rules at 11 CFR 109.21(c) in the coming months. For purposes of this rulemaking, the coordinated communication rules are referenced only to provide notice that the proposed changes to the definition of ''public communication'' in 11 CFR 100.26 would have an impact on the scope of the coordinated communication rules.

II. 11 CFR 100.26—Definition of ''Public Communication''

BCRA defines a ''public communication'' as ''a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising.'' 2 U.S.C. 431(22). The Commission's current rules at 11 CFR 100.26 track the statutory definition, except that the definition in the rules explicitly excludes all communications over the Internet.

As a consequence, Internet communications are excluded from other rules governing the funding of a ''public communication.'' For example, State, district, and local political party committees and organizations must use only Federal funds for any ''public communication'' that promotes, supports, attacks or opposes (''PASOs'') a Federal candidate. *See* 2 U.S.C. 431(20)(A)(iii) and 441i(b); 11 CFR 100.24(b)(3) and (c)(1), 300.32(a)(1) and (2). In addition, these party committees must use all Federal funds or an allocable mix of Federal funds and Levin funds for any ''public communication'' that constitutes ''generic campaign activity'' in connection with an election in which a candidate for Federal office appears on the ballot. *See* 11 CFR 100.25; 11 CFR 300.33(a)(2).

The term ''public communication'' is also used to determine whether a disclaimer is needed on certain communications under 11 CFR 110.11. Moreover, the ''public communication'' definition is one key element in determining what qualifies as a coordinated communication under 11 CFR 109.21 and a party coordinated communication under 11 CFR 109.37. ''Public communication'' may also be used to determine whether a person is an agent of a candidate for State or local office in 11 CFR 300.2(b)(4), and whether certain expenses must be allocated between Federal and non-Federal accounts by separate segregated funds (''SSFs'') and nonconnected committees under 11 CFR 106.6(b) and (f).

In light of the *Shays* decision, the Commission is reconsidering which Internet communications would qualify as ''general public political advertising,'' and thus would be a ''public communication.'' The Commission's proposed rule attempts to strike a balance between provisions of the Act that regulate ''general public political advertising'' and significant public policy considerations that encourage the Internet as a forum for free or low-cost speech and open information exchange.

A. The Internet and the 2004 Elections

The Internet has unique characteristics that distinguish it from traditional media.[5] Unlike traditional media, ''the Internet can hardly be considered a 'scarce' expressive commodity. It provides relatively unlimited, low-cost capacity for communication of all kinds.'' *Reno* v. *ACLU*, 521 U.S. 844, 870 (1997) (''*Reno*''). Additionally, because an Internet communication is not limited in format and is not necessarily limited in duration, unlike television and radio programming, the Internet provides a means to communicate with a large and geographically widespread audience, often at little cost.[6]

The Internet also differs from traditional media because individuals must generally be proactive in order to access information over the Internet, unlike users of traditional media. The Supreme Court has found that communications over the Internet are not as ''invasive'' as communications through traditional media. *Reno* at 870. In further contrast to passive, one-way traditional media, the Internet can provide interactive, real-time, two-way communications.

The Internet's accessibility, low-cost, and interactive features make it a popular choice for sending and receiving information. In 2004, an estimated 201 million people in the United States used the Internet.[7] At the end of 2004, an estimated 63 percent of the adult American population, and 81 percent of American teenagers, used the Internet; on average, some 70 million American adults logged onto the Internet daily.[8]

A growing segment of the American population uses the Internet as a supplement to, or as a replacement for, more traditional sources of information and entertainment, such as newspapers, magazines, television, and radio. In mid-2004, 92 million Americans reported obtaining news from the Internet.[9]

As the public has turned increasingly to the Internet for information and entertainment, advertisers have embraced the Internet and its new marketing opportunities. Internet advertising revenue increased by 21 percent between 2002 and 2003 and reached $4.6 billion in the first six months of 2004.[10]

The 2004 election cycle marked a dramatic shift in the scope and manner in which citizens used Web sites, blogs,[11] listservs,[12] and other Internet communications to obtain information on a wide range of issues and candidates.[13] The number of Americans who used the Internet as a source of campaign news more than doubled between 2000 and 2004, from 30 million to 63 million.[14] An estimated 11 million people relied on politically oriented blogs as a primary source of information during the 2004 presidential campaign,[15] and a full 18 percent of all Americans cited the Internet as their leading source of news about the 2004 presidential election.[16]

B. Internet Communications—Proposed 11 CFR 100.26

Because the Internet is a unique form of communication, the Commission proposes to preserve the general exclusion of Internet communications from the definition of ''public communication'' in 11 CFR 100.26.

At the same time, however, the Commission recognizes that Internet communications may, in some circumstances, constitute ''general public political advertising'' within the definition of ''public communication'' in 11 CFR 100.26.

Accordingly, the Commission proposes to amend 11 CFR 100.26 to include ''general public political advertising'' in the form of paid Internet advertisements placed on another person's or entity's Web site. Such advertisements could take the form, for example, of streaming video that appears in banner advertisements[17] or ''pop-up'' advertisements.[18]

The Commission invites comment on whether announcements placed for a fee on another entity's Web site should be considered ''general public political advertising,'' and therefore, a ''public communication'' under 11 CFR 100.26. Is this approach consistent with BCRA's definition of ''public communication'' to include broadcast, cable or satellite communications, newspaper, magazines and outdoor advertising facilities, all of which typically charge fees to those who run political advertisements?

If a mode of communication does not cost any money, can it be ''general public political advertising'' and therefore a ''public communication'' within the meaning of the statute? For

[5] *See* Enrique Armijo, *Public Airwaves, Private Mergers: Analyzing the FCC's Faulty Justification for the 2003 Media Ownership Rule Change*, N.C. L. Rev. 1482, 1494 (May 2004) (discussing broadcast media and the Internet as ''imperfect substitutes''); *see also* Ryan Z. Watts, *Independent Expenditures on the Internet: Federal Election Law and Political Speech on the World Wide Web*, 8 CommLaw Conspectus 149, 160 (Winter 2000) (discussing *Reno* v. *ACLU*, 521 U.S. 844 (1997) and the Internet's differences from traditional media).

[6] *See* Edward L. Carter, Esq., *Outlaw Speech on the Internet: Examining the Link Between Unique Characteristics of Online Media and Criminal Libel Prosecutions*, 21 Santa Clara Computer & High Tech. L.J. 289, 316–17 (January 2005) (''Internet is unlike traditional print or broadcast media in that messages can have a long shelf life—an Internet message can circulate via e-mail or remain posted somewhere even long after the message's creator has tried to retract it.'').

[7] *See* Internet World Stats *available at http://www.internetworldstats.com/stats2.htm* (last visited 3/7/2005).

[8] *See* Pew Internet & American Life Project, Trends 2005, Chapter 4, Internet: The Mainstreaming of Online Life, p. 58 (2005) *available at http://www.pewinternet.org/pdfs/Internet_Status_2005.pdf* (last visited 3/7/2005).

[9] *See* Pew Internet & American Life Project and the University of Michigan School of Information, The Internet and the Democratic Debate, p. 2 (October 27, 2004) *available at http://www.pewinternet.org/pdfs/PIP_Political_Info_Report.pdf* (last visited 3/7/2005).

[10] See PriceWatherhouseCoopers and Interactive Advertising Bureau, IAB Internet Advertising Revenue Report (April 2004 and September 2004), available at http://www.iab.net/recources/ad_revenue.asp (last visited 3/7/2005).

[11] The word ''blog'' derives from the term ''Web log'' and is defined as ''a Web site that contains an online personal journal with reflections, comments and often hyperlinks provided by the writer.'' *http://www.merriam-webster.com* (last visited 3/7/2005). People who maintain blogs are known as ''bloggers.''

[12] A ''listserv'' is a software program that automatically sends electronic mail messages to multiple e-mail addresses on an electronic mailing list. See, *e.g., http://www.lsoft.com/products/listserv.asp* (last visited 3/7/2005). The term ''listserv'' is commonly used, however, to denote the electronic mailing list itself or the automated forwarding to all addresses on the mailing list of an e-mail sent only to the listserv's e-mail address.

[13] *See* Pew Internet & American Life Project, The Internet and Campaign 2004, *available at http://www.pewinternet.org/pdfs/PIP_2004_Campaign.pdf* (last visited 3/17/2005).

[14] *See* note 9, above, The Internet and Democratic Debate, p. 2. During the same time period, the number of people reporting television as their primary source of campaign information declined. *Id.*

[15] *See* Jessica Mintz, *When Bloggers Make News—As Their Count Increases, Web Diarists Are Asking: Just What Are the Rules?* Wall St. J., Jan. 21, 2005 at B1.

[16] *See* note 8, above, The Mainstreaming of Online Life, p. 2.

[17] ''Banner advertisements'' are advertisements on a Web page that convey messages in text, animated graphics, and sound. They traditionally appear in rectangular shape, but may take any shape. Typically, banner advertisements are linked to the advertiser's Web site, which enables a viewer to ''click through'' the advertisement to view the advertiser's Web site for further information on the product or service advertised. *See http://www.netlingo.com/lookup.cfm?term=ad+banner* (last visited 3/7/2005).

[18] ''Pop-up'' advertisements usually appear in a separate browser window from the one being viewed. The advertisements are superimposed over the window being viewed, and require the viewer to take some action, such as closing the window in which the pop-up advertisement appears, to continue viewing the underlying browser window. *See http://www.netlingo.com/lookup.cfm?term=pop%2Dup%20ad* (last visited 3/7/2005). Although pop-up advertisements technically are not part of the underlying Web site or account, the Commission seeks comment on whether they should be considered to be ''placed on'' the Web site for purposes of this rulemaking.

example, a person might appear in a public square and give a campaign speech before 500 or more people. If such a public speech does not cost any money to undertake, is it outside the scope of ''general public political advertising'' under the statute and therefore not a ''public communication''? Likewise, is such a public speech outside the scope of an ''expenditure'' or ''contribution'' under the statute? Also, should ''general public political advertising'' include Internet advertisements where the advertising space is provided in exchange for something of value other than a monetary payment, for example through an exchange of comparable advertising? Although the Commission's proposed rule would exclude Internet activity that is not placed for a fee, should the Commission amend its regulation to explicitly state that it is not including ''bloggers'' in the definition of ''public communication''?

The Act and Commission regulations recognize that corporations and labor organizations can communicate with their restricted class, but not with the general public, on ''any subject,'' and that membership organizations may similarly communicate with their members. *See* 2 U.S.C. 431(9)(B)(iii) and 441b(b)(2)(A); 11 CFR 100.134(a) and 114.3(c)(3); *see also* AO 1997–16. Should the Commission consider excluding from the definition of ''general public political advertising'' paid advertisements appearing on corporate and labor organization Web sites if access to those sites is restricted to the restricted class of a corporation or labor organization, or to only the members of a membership organization?

C. Effect of Proposed Definition of ''Public Communication'' on Federal Election Activity by State, District, and Local Party Committees Under 11 CFR 100.24(b) and (c)

BCRA defines ''Federal election activity'' to include ''a public communication that refers to a clearly identified candidate for Federal office * * * and that promotes or supports a candidate for that office, or attacks or opposes a candidate for that office[.]'' 2 U.S.C. 431(20)(A)(iii); *see also* 11 CFR 100.24(b)(3). State, district, and local political party committees and organizations, State and local officeholders and candidates, and their agents, are prohibited from using non-Federal funds to pay for this type of Federal election activity. *See* 2 U.S.C. 441i(b) and (f); 11 CFR 100.24(b)(3) and (c)(1), 300.32(a)(1) and (2), and 300.71.

The Commission notes that the original definition of ''public communication'' in 11 CFR 100.26 was promulgated to permit state, district, and local committees to make references to their Federal candidates on the committees' official Web sites without automatically federalizing the year-round costs of maintaining such a site. It should be noted that this effect of the Internet exclusion was not rejected by the *Shays* court. The proposed rule would continue to allow this exclusion for these Web sites, while requiring that state, district, and local party committees use exclusively Federal dollars to place advertisements that PASO a Federal candidate on another individual's or entity's Web site. State, district, and local committee Web sites would still have to maintain disclaimers as required under 11 CFR 110.11(a)(1). The Commission invites comment on this approach and on whether the Commission should consider further changing its definition of ''public communication.''

The Commission also seeks comment on the consequences of alternative approaches. For example, if a mere PASO reference to a Federal candidate on a State, district, or local committee's Web site were to constitute a public communication, does that require that the entire Web site be paid for with hard dollars? If not, the Commission seeks comment on how to allocate that portion of the Web site that must be paid for with hard dollars—for example, based on the time and space of the Web site that contains PASO communications as compared to the site overall, or should another allocation method be required? In addition, what costs should be included in the allocation calculations—all of the costs associated with establishing and maintaining the Web site, or only the marginal costs of creating and maintaining the PASO communication, or some other formulation?

The Commission seeks comment on whether any payment by a State, district, or local party to an outside vendor for content that PASOs a Federal candidate that is exclusively placed on the party's Web site should constitute ''general public political advertising'' and be deemed a ''public communication,'' thus requiring regulation under 2 U.S.C. 441i(b)(1).

III. 11 CFR 100.25—Definition of ''Generic Campaign Activity''

''Federal election activity'' includes ''generic campaign activity'' conducted in connection with an election in which a candidate for Federal office appears on the ballot. 2 U.S.C. 431(20)(A) and 11 CFR 100.24. BCRA defines ''generic campaign activity'' to mean ''campaign activity that promotes a political party and does not promote a candidate or non-Federal candidate.'' 2 U.S.C. 431(21). The Commission's regulations construe this statutory term to mean ''a *public communication* that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate.'' 11 CFR 100.25 (emphasis added).

As noted above, the *Shays* court rejected the Commission's definition of ''generic campaign activity'' on two grounds: first, that it improperly excluded all Internet communications and, second, for lack of notice to the public that it would be limited to ''public communications'' as defined in 11 CFR 100.26. The Commission proposes to address the district court's first concern by revising the definition of ''public communication'' to remove the wholesale exclusion of all Internet communications and to replace it with a more limited exclusion, as explained above. The Commission is addressing the court's second concern by providing the public with notice and an opportunity to comment at this time on whether the Commission should continue to define the term ''generic campaign activity'' as ''a public communication,'' which, as proposed, would include some types of Internet advertisements. Given that *Shays* specifically approved the existing definition of ''generic campaign activity,'' except for the exclusion of Internet communications and the notice issue, the Commission is not proposing to revise the definition of ''generic campaign activity'' at this time. The Commission invites comments on this approach.

IV. 11 CFR 110.11—Communications; Advertising; Disclaimers (2 U.S.C. 441d)

With its relatively low cost, wide availability, and ease of access, the Internet is used by millions of individuals daily to share information and air their views on a variety of subjects. The Commission recognizes that significant policy reasons support the continued exclusion of most Internet communications from the disclaimer requirements.

As the Commission has stated previously, the Internet ''is a medium that allows almost limitless, inexpensive communication across the broadest possible cross-section of the American population. Unlike media such as television and radio, where the constraints of the medium make access financially prohibitive for the general population, the Internet is by definition

a bastion of free political speech, where any individual has access to almost limitless political expression with minimal cost.'' Soft Money Final Rules, 67 FR at 49,072. To this extent, the Internet can be the modern equivalent of a soapbox in a public square. *See Reno,* 521 U.S. at 870 (''Through the use of chat rooms, any person with a phone line can become a town crier with a voice that resonates farther than it could from any soapbox. Through the use of Web pages, mail exploders, and newsgroups, the same individual can become a pamphleteer.'')

The Commission notes that with respect to most Internet Web sites and blogs, the burden of complying with a disclaimer requirement, and the resources needed for the Commission to monitor such a requirement, could outweigh the value of disclosure. This is particularly true given that the identity of the sponsor of an Internet communication is often already apparent from the face of the communication. The Commission seeks comment on these policy rationales and alternative approaches to the disclaimer requirement.

The Act and the Commission's rules require certain communications to include clear and conspicuous statements to the public regarding the sources of their funding. *See* 2 U.S.C. 441d; 11 CFR 110.11. This disclaimer notice must identify the payor and disclose either the name of the candidate's committee that authorized the communication or the fact that no candidate or candidate's committee authorized the communication. *See* 2 U.S.C. 441d(a); 11 CFR 110.11(b). If the disclaimer notice states that the communication was not authorized by a candidate or candidate's committee, the notice must disclose the payor's full name and street address, telephone number, or World Wide Web address. *See* 2 U.S.C. 441d(a)(3); 11 CFR 110.11(b)(3). Political committees must include a disclaimer on any ''public communication'' for which they make disbursements. *See* 11 CFR 110.11(a)(1). For all other persons, a disclaimer is required for any ''public communication'' that expressly advocates the election or defeat of a clearly identified candidate for Federal office or that solicits contributions. *See* 11 CFR 110.11(a)(2) and (3).[19] The Commission notes that the lack of an affirmative disclaimer requirement for most Internet activities does not alleviate a duty to comply with 2 U.S.C. 441h prohibitions against fraudulent misrepresentation. The Commission originally promulgated these regulations to focus on what is commonly referred to as ''spam'' e-mail.

A. Scope of Disclaimer Requirements—Proposed 11 CFR 110.11(a)

In the existing disclaimer regulations in section 110.11(a), the term ''public communication'' differs slightly from the term ''public communication'' as defined in 11 CFR 100.26. Specifically, ''public communication'' as defined in current 11 CFR 100.26 expressly excludes Internet communications, whereas ''public communication'' as defined in the current disclaimer regulations includes ''unsolicited electronic mail of more than 500 substantially similar communications and Internet Web sites of political committees available to the general public.'' 11 CFR 110.11(a). Thus, political committees must include disclaimers on their Web sites available to the general public, and in unsolicited e-mail of more than 500 substantially similar communications. Other persons must also provide disclaimers in unsolicited e-mail of more than 500 substantially similar communications that expressly advocate the election or defeat of a clearly identified Federal candidate or solicit a contribution.

The Commission is concerned that the current regulation emphasizes the number of e-mail communications sent, rather than focusing on whether an expenditure was made that would justify governmental regulation. The Commission notes that the statute generally seems to be predicated on an ''expenditure'' or ''disbursement'' being made. The Commission is not interested in requiring disclaimers on the personal communications of private citizens. The Commission is concerned that the lack of definition for the term ''unsolicited,'' could have the effect of discouraging individuals from engaging in discussion and advocacy that is core political speech protected by the First Amendment and that is virtually cost-free.

Therefore, the Commission is proposing to change the disclaimer requirement in 11 CFR 110.11(a) to focus on those e-mail communications for which the e-mail addresses of the recipients were acquired through a commercial transaction. Such a disclaimer requirement is intended to strike a balance between the disclosure purposes of the Act and regulation of expenditures, and the protection of individual free speech and robust communication. The Commission seeks comment on this approach. Should the Commission continue to include a 500-e-mail threshold? Given the ease of sending large numbers of e-mail, would a larger numerical threshold be appropriate? The Commission also seeks comment on whether a minimum cost should be included in this disclaimer requirement, such as the $250 threshold contained in the statute for independent expenditures. *See* 2 U.S.C. 434(c)(1). Should a dollar threshold be included in concert with or in lieu of the 500-piece requirement? Is there a more appropriate definition of ''unsolicited'' e-mail in this context? Should ''unsolicited'' e-mail include e-mail where the recipients'' e-mail addresses were acquired from a third party in a non-cash transaction, either through an e-mail list ''swap,'' or other multi-party transactions where list of e-mail addresses is acquired at no cost? The Commission, alternatively, seeks comments on whether the disclaimer requirement for e-mail should be removed entirely from the regulation.

The proposed revisions to the disclaimer provisions in 11 CFR 110.11(a) would still require disclaimers for any ''public communication'' as defined at 11 CFR 100.26 made by a political committee, and for any ''public communication'' by any person that expressly advocates the election or defeat of a clearly identified Federal candidate or that solicits a contribution. *See* 11 CFR 110.11(a). The proposed definition of ''public communication'' in section 100.26 would have the effect of expanding the scope of the disclaimer requirements in section 110.11 to any advertisement placed for a fee on another party's Web site that expressly advocates the election or defeat of a clearly identified Federal candidate or solicits a contribution. In addition, political committees would continue to be required to post disclaimers on their Web sites provided that they are ''available to the general public.''

The Commission seeks comments on these proposed revisions to 11 CFR 110.11(a).

B. Bloggers Paid by Candidates

News reports indicate that in the 2004 elections some individual bloggers received significant fees from the campaign committees of at least one presidential candidate and one Senate candidate to promote the candidates' campaigns on their blogs.[20] For example, the operator of the ninth most ''linked'' blog on the Internet, which

[19] Electioneering communications also require a disclaimer. *See* 11 CFR 110.11(a)(4).

[20] *See, e.g.,* William M. Bulkely and James Bandler, *Dean Campaign Made Payments to Two Bloggers*, Wall St. J., Jan. 14, 2005 at B2; Charles Babington and Brian Faler, *A Committee Post and a Pledge Drive—-Bloggers on the Payroll*, Wash. Post, Dec. 17, 2004, at A16.

received as many as one million visits daily, reportedly received $12,000 over a four-month period from one presidential candidate.[21] The news reports further indicate that not all of the bloggers disclosed the payments to the blogs' readers.

The Commission notes that its current rules require a political committee to disclose this type of disbursement on its publicly available reports filed with the Commission. The Commission does not therefore propose to change the disclaimer regulation in 11 CFR 110.11(a) to require bloggers to disclose payments from a candidate, a campaign, or a political committee. The Commission seeks comment on this approach. Could or should bloggers be required to disclose such payments? Could or should a blogger be required to disclose payments only if the blogger expressly advocates the election or defeat of a clearly identified candidate or solicits a contribution? Would a payment by a political committee to a blogger for promotional content on the blog constitute ''general public political advertising'' within the meaning of section 100.26?

V. 11 CFR 109.21 and 109.37—Coordinated Communications

A. Content Standards for Coordinated Communications—11 CFR 109.21(c)

Payments for certain communications that are coordinated with a candidate, a candidate's authorized committee, a political party committee, or any of their agents, are treated as in-kind contributions to the candidate, the candidate's authorized committee, or the political party committee. *See* 2 U.S.C. 441a(a)(7); 11 CFR 109.21. The Commission's regulations set out a three-pronged test for determining whether a communication has been ''coordinated.'' *See* 11 CFR 109.21. The three-pronged test looks, in part, at whether the communication satisfies the ''content prong'' of 11 CFR 109.21(c).[22] To satisfy the ''content prong'' of the coordinated communication test, a communication must: (1) Be an electioneering communication, as defined in 11 CFR 100.29; (2) be a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a Federal candidate, the candidate's authorized committee, or their agents; (3) be a public communication that expressly advocates the election or defeat of a clearly identified candidate for Federal office; or (4) be a public communication that refers to a political party or a clearly identified candidate for Federal office, is publicly distributed or disseminated within 120 days of an election for Federal office, and is directed to voters within the jurisdiction of the clearly identified candidate or to voters in a jurisdiction in which one or more candidates of the political party appear on the ballot. *See* 11 CFR 109.21(c)(1)–(c)(4).

In *Shays*, the court struck down the ''content prong'' of the coordinated communication test. The Commission announced its intention to propose changes regarding the non-Internet aspects of the coordinated communication regulations in a separate rulemaking to take place later this year, with final rules pending the outcome of the Commission's appeal of certain aspects of the *Shays* decision.

Because of the pending appeal and the upcoming rulemaking on coordinated communications, the Commission is not proposing to revise 11 CFR 109.21 in this rulemaking. The Commission notes, however, that revising the definition of ''public communication'' to include certain Internet communications would render such Internet communications subject to the current coordinated communication provisions of section 109.21.[23] The Commission invites comments on this approach.

The Commission's rule would exempt from the coordinated communication rules advertisements that require payments to outside vendors to create, but that are placed only on the payor's own Web site. This could include a corporation or other prohibited source. The Commission seeks comment on whether this approach is appropriate, and on whether any other parts of the Commission's regulations, *e.g.* those provisions at 11 CFR 114.4 that deal with corporate and labor communications beyond the restricted class, can be interpreted to nonetheless place restrictions on such activity. The Commission's rule would also exempt from the coordinated communication rules advertisements that are placed on a prohibited source's Web site for free, even though a fee would normally be charged. Is this an appropriate course? Do any of the Commission's other rules already regulate this so that such activity would be prohibited?

B. Dissemination, Distribution, or Republication on the Internet—11 CFR 109.21

Under the current Commission regulations, a person makes a contribution by financing a public communication that disseminates, distributes, or republishes, in whole or in part, campaign materials prepared by a candidate, the candidate's authorized committee, or an agent of any of the foregoing,'' unless certain exceptions apply. 11 CFR 109.21(c)(2). A candidate's principal campaign committee need not report the dissemination, distribution, or republication of its campaign materials as an in-kind contribution, however, unless such activity is a ''coordinated communication'' under 11 CFR 109.21. *See* 11 CFR 109.23(a).

The Commission notes that the proposed changes to the definition of ''public communication'' would expand the reach of this regulation to individuals or entities that place announcements for a fee on another individual's or entity's Web site, when the advertisement content otherwise constitutes a republication regulated under 11 CFR. 109.21(d)(6).

The Commission notes that the proposed change to the definition of ''public communication'' would not affect content placed by an individual on his or her own Web site, blog, or e-mail. Because republishing campaign materials on one's own Web site, blog, or e-mail would not be a public communication, it would not be a contribution to the candidate under 11 CFR 109.21. The Commission notes that Senator Russ Feingold, one of BCRA's sponsors, stated recently that ''linking campaign Web sites, quoting from, or republishing campaign materials and even providing a link for donations to a candidate, if done without compensation, should not cause a blogger to be deemed to have made a contribution to a campaign or trigger reporting requirements.''[24] Should the Commission amend 11 CFR 109.21(c)(2) to exempt all dissemination, distribution, or republication of campaign materials on the Internet generally, or keep the reference in the regulation to ''public communication''?

[21] *See* William M. Bulkely and James Bandler, *Dean Campaign Made Payments to Two Bloggers*, Wall St. J., Jan. 14, 2005 at B2.

[22] The other two prongs of the coordinated communication test are (1) whether someone other than the candidate, the candidate's authorized committee, a political party committee, or any of their agents paid for the communication in question; and (2) whether the communication satisfies the ''conduct prong'' of 11 CFR 109.21(d).

[23] In addition to its use in connection with the ''content prong,'' the term ''public communication'' is used in connection with the ''conduct prong'' of the coordinated communication regulations involving the use of a ''common vendor.'' *See* 11 CFR 109.21(d)(4)(ii)(E) and (F).

[24] Senator Russ Feingold, ''Blogs Don't Need Big Government'' *available at http://mydd.com/story/2005/3/10/112323/534* (last visited 3/17/2005).

C. Political Party Coordinated Communications—11 CFR 109.37

The ''party coordinated communication'' rule at 11 CFR 109.37(a) sets out a three-pronged test for determining whether payments by a political party committee for communications are ''coordinated'' with a candidate for Federal office, a candidate's authorized committee, or an agent of either of the foregoing. This test parallels the three-pronged test in the ''coordinated communication'' regulations in 11 CFR 109.21. Therefore, as with the coordinated communication regulation, the proposed change to the definition of ''public communication'' in 11 CFR 100.26 would expand the scope of communications covered by the party coordinated communication regulation to include certain communications over the Internet. The Commission seeks comment on this result.

VI. Other Uses of the Term ''Public Communication'' in the Commission's Regulations

The term ''public communication'' is also used in 11 CFR 106.6 and 300.2. Thus, any changes to the definition of ''public communication'' or ''general public political advertising'' in proposed 11 CFR 100.26 to include certain Internet advertisements would affect the application of these two sections.

A. Allocation of Expenses Between Federal and Non-Federal Activities by Separate Segregated Funds and Nonconnected Political Committees—11 CFR 106.6

The Commission recently promulgated revisions to its rules on the allocation of certain expenses by SSFs and nonconnected committees. *See 11* CFR 106.6(b)(1), (b)(2), and (f) (2005); Final Rules on Political Committee Status, Definition of Contribution, and Allocation for Separate Segregated Funds and Nonconnected Committees, 69 FR 68,056 (Nov. 23, 2004). These revised regulations require SSFs and nonconnected committees to allocate between their Federal and non-Federal accounts the costs of certain public communications, such as those that refer to a political party and clearly identified Federal and non-Federal candidates. In addition, the new regulations set forth requirements as to which public communications these committees may pay for using non-Federal funds.

The effect of the proposed revisions to the definition of ''public communication'' in 11 CFR 100.26 would require SSFs and nonconnected committees to use Federal funds to pay for some public communications over the Internet. The Commission invites comment on this result.

B. Definition of ''Agent''—11 CFR 300.2

BCRA prohibits candidates for state and local offices, and their agents, from using non-Federal funds to pay for any ''public communication'' that PASOs a candidate for Federal office. *See* 2 U.S.C. 441i(f). Under the Commission's regulations, an ''agent'' includes any person who is authorized by a candidate for state or local office to ''spend funds for a public communication,'' as defined in 11 CFR 100.26. 11 CFR 300.2(b)(4). Thus, as a result of the proposed change to the definition of ''public communication,'' a person would be an agent of a state or local candidate if he or she is authorized by that non-Federal candidate to pay for any Internet communication that is a ''public communication'' under proposed 11 CFR 100.26. The Commission invites comments on this result and whether it should consider further changing its proposed definition of ''general public political advertising'' or ''public communication'' in 11 CFR 100.26 in light of this result.

VII. 11 CFR 100.73 and 100.132—Exception for News Story, Commentary, or Editorial by the Media

The Commission is also considering whether expressly to extend the protections of the exception for news stories, commentaries and editorials to media activities that occur on the Internet. In the Act, Congress exempted from the definition of ''expenditure'' ''any news story, commentary, or editorial distributed through the facilities of any broadcasting station, newspaper, magazine, or other periodical publication, unless such facilities are owned or controlled by any political party, political committee, or candidate.'' 2 U.S.C. 431(9)(B)(i). In enacting the statutory exemption for the media, Congress intended to assure ''the unfettered right of the newspapers, television networks, *and other media* to cover and comment on political campaigns.'' H.R. Rep. No. 93–1239, 93d Congress, 2d Session at 4 (1974) (emphasis added). The Commission has implemented this statutory exemption in its regulations. *See* 11 CFR 100.73 and 100.132.

Many aspects of the contemporary media did not exist, or were not as prevalent, when Congress enacted the statutory exemption in the Act in the 1970s. In the past, however, the Commission has made clear that the statutory exemption applies to new and emerging forms of mass media, even if they did not exist or were not widespread when Congress passed the Act. For example, recognizing that cable programming utilized the same aspects of speech and communication of ideas as broadcast stations, the Commission modified its regulations to make clear that the Act's statutory exemption applied to cable programming. The Commission noted that ''although the cable television industry was much less developed when Congress expressed this intent, it is reasonable to conclude that cable operators, programmers and producers, when operating in their capacity as news producers and distributors, would be precisely the type of 'other media' appropriately included within this exemption.'' Final Rules on Candidate Debates and News Stories, 61 FR 18,050 (Apr. 24, 1996). Accordingly, cable programming is included in the Commission's current regulations implementing the statutory exemption. See 11 CFR 100.73 and 100.132. *See also Turner Broadcasting System*, v. *FCC*, 512 U.S. 622 (1994); *Medlock* v. *Leathers*, 499 U.S. 439, 444 (1991) (stating that cable television provides news, information, and entertainment and is, in much of its operation, part of the press).

The Commission is now considering whether to amend its regulations to make clear that the statutory exemption also applies to media activities on the Internet. Specifically, the Commission is proposing to amend sections 100.73 and 100.132 of its regulations to indicate that any media activities that otherwise would be entitled to the statutory exemption are likewise exempt when they are transmitted over the Internet. In so doing, the Commission recognizes that media operations increasingly take place on the Internet. The proposed revision would allow for the application of the media exemption to all forms of media activities on the Internet, whether it be through a Web site, e-mail, or some other form of Internet communication.

The Commission seeks comment on the proposed revisions to its regulatory media exemption for news stories, commentaries, and editorials. The Commission also seeks comment on whether the proposed revisions are consistent with or required by the statutory language of the Act. The Commission further seeks comment on the appropriate breadth of the exemption to media activities over the Internet. Should the exemption be limited to entities who are media entities and who are covering or carrying a news story, commentary, or editorial? Should the exemption be

limited only to the Internet activities of media entities that also have off-line media operations? The Commission notes that the proposed regulation expressly rejects a policy that only a *bona fide* press entity with an off-line component is entitled to protection in their on-line news stories, commentaries, and editorials.

The proposed revision would extend the media exemption to media entities whose activities exist solely on-line, without a print or broadcast component, as well as to media entities who have a broadcast or print component as well as an on-line presence. For example, Salon.com, Slate.com, and Drudgereport.com do not publish off-line. Such on-line sites provide direct access to political news and events and offer commentary on current affairs. The Commission recognizes that on-line sites are as accessible as printed periodicals or news programs and therefore proposes to clarify that the media exemption extends to those entities who may solely have an on-line presence as well as to those entities who have an on-line component in addition to their broadcast or print activities. The Commission seeks comment on this approach. The Commission notes that it has applied the media exemption on a case-by-case basis in a wide variety of contexts. *See* AOs 2004–7, 2003–34, 2000–13, 1996–48, 1996–41, 1996–16, 1992–26, 1988–22, 1987–08, 1982–44, 1982–58, 1980–90, 1980–109, and 1978–76.

The Commission also seeks comment on whether bloggers, whether acting as individuals or through incorporated or unincorporated entities, are entitled to the statutory exemption. Can on-line blogs be treated as ''periodical publications'' within the meaning of the exemption? *See* 2 U.S.C. 431(9)(B)(i). If not, why not? Is the media exemption to be limited to traditional business models, meaning entities that finance operations with subscriptions or advertising revenue? The Commission also seeks comment on whether on-line forums qualify for the exemption.

The Commission further seeks comment on whether it makes any difference under the Act if a blogger receives compensation or any other form of payment from any candidate, political party, or political committee for his or her editorial content. Would any such payments mean that the blogger is ''controlled'' by a candidate or political party within the meaning of 2 U.S.C. 431(9)(B)(i), and therefore is not entitled to the exemption? The Commission has previously determined that ''commentary was intended to allow third persons access to the media to discuss issues.'' *See* AO 1982–44. Should bloggers' activity be considered commentary or editorializing, or news story activity?

Lastly, the Commission seeks comment on any other issue pertinent to the Commission's consideration of whether to extend the protections of this statutory exemption to media activities on the Internet.

VIII. Proposed 11 CFR 100.94 and 100.155—Exceptions to the Definitions of ''Contribution'' and ''Expenditure'' for Individual or Volunteer Activity on the Internet

Although the Internet is generally a free or low-cost medium for communication, the Act's definitions of ''contribution'' and ''expenditure'' are broad enough to apply to some Internet activity. For example, section 431(8) of the Act states that the term ''contribution'' includes ''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.'' 2 U.S.C. 431(8)(A)(i). Similarly, section 431(9) of the Act states that the term ''expenditure'' includes ''any purchase, payment, distribution, loan, advance, deposit, gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office.'' 2 U.S.C. 431(9)(A). These definitions have been incorporated into subparts B and D of 11 CFR part 100.

Similarly, the Act's definition of ''independent expenditure'' is broad enough to apply to some Internet activity. Section 431(17) of the Act states that ''the term 'independent expenditure' means an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.'' 2 U.S.C. 431(17); *see also* 11 CFR 100.16.

However, the definition of ''contribution'' in the Act and Commission regulations does not include ''the value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee.'' 2 U.S.C. 431(8)(B)(i); 11 CFR 100.74. Furthermore, the definition of a ''contribution'' does not include:

> the use of real or personal property, including a church or community room used on a regular basis by members of a community for noncommercial purposes, * * * voluntarily provided by an individual to any candidate or any political committee of a political party in rendering voluntary personal services on the individual's residential premises or in the church or community room for candidate-related or political party-related activities * * *.

2 U.S.C. 431(8)(B)(ii). *See also* 11 CFR 100.75 and 100.76. The Commission's regulations contain a parallel exception to the definition of ''expenditure'':

> [n]o expenditure results where an individual, in the course of volunteering personal services on his or her residential premises to any candidate or political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a political party for party-related activity.

11 CFR 100.135. *See also* 11 CFR 100.136.

The Commission is proposing new rules to address the treatment of uncompensated individual or volunteer campaign activity on the Internet. Specifically, the Commission proposes the addition of two new sections to 11 CFR part 100 to provide new exceptions from the definition of contribution'' and ''expenditure.'' Proposed 11 CFR 100.94 would create an exception to the definition of ''contribution'' for certain uncompensated individual or volunteer Internet activity, while proposed 11 CFR 100.155 would create a parallel exception to the definition of ''expenditure'' for the same activity.

Under proposed 11 CFR 100.94 and 100.155, an uncompensated individual acting independently or as a volunteer would not make a contribution or expenditure simply by using computer equipment and services to engage in Internet activities for the purpose of influencing an election for Federal office. The Commission notes that the proposed rule would only apply to computer and other facilities to which the individual would otherwise have access. The proposed rule would not permit the purchase of equipment by an individual or entity solely for the purposes of allowing another individual to participate in Internet activity. The Commission seeks comment on this approach.

In AO 1998–22, the Commission concluded that even if an individual acting independently incurs no additional costs in creating a Web site that contains express advocacy of a clearly identified candidate, at least some portion of the underlying costs of creating and maintaining that Web site is an expenditure under the Act and must be reported if it exceeds $250 in a calendar year. In contrast, in AO

1999–17, the Commission concluded that costs incurred by a campaign volunteer in preparing a Web site on behalf of a candidate on the volunteer's home computer are exempt from the definition of ''contribution'' under the volunteer exception contained in section 100.75 of the regulations (formerly section 100.7(b)(4)). The Commission stated that the volunteer exception applies to ''individuals known to the campaign who, with the campaign's permission (at some level) engage in volunteer activity.'' *Id.* The Commission also determined that the costs of e-mail messages sent by a campaign volunteer using his or her own computer equipment would be covered by the volunteer exception, and thus would not result in a contribution to the campaign. *Id.*

The proposed rules in new sections 100.94 and 100.155 would supersede AO 1998–22 to the extent that it treats an individual's independent use of computer equipment and services for Internet activity as an expenditure. The proposed rules would also extend beyond the specific guidance provided in AO 1999–17 to clarify that these exceptions would apply to an uncompensated individual acting independently or as a volunteer without regard to whether the individual or another person owns the computer being used or where the Internet activity is taking place. For example, the proposed rule would permit an individual or a volunteer to use computer equipment and services provided at a public facility, such as a library or school, or provided by a friend, without such Internet activity being a contribution or expenditure. The Commission, however, would continue to view the purchase of mailing lists (including e-mail lists) for the purposes of forwarding candidate and political committee communications as expenditures or contributions. The Commission seeks comment on this approach. If the computer equipment and service is provided by a corporation or labor organization, the rules at 11 CFR 114.9 would apply. The proposed rules would thereby avoid disparate treatment of individuals or volunteers who may not be able to afford the purchase or maintenance of their own computers or Web sites. The Commission invites comments on this approach. The Commission also seeks comments on whether this exception should be extended to volunteers who receive some form of payment or reimbursement from a candidate or a political committee, such as transportation, subsistence, or supplies. Additionally, the Commission seeks comments on whether the entirety of AOs 1998–22 and 1999–17, or any additional AOs, should be superseded or whether there is any aspect of those AOs that should remain valid.

Under the proposed rules, individuals acting independently or as volunteers would come within this exception when using any ''computer equipment and services'' to engage in ''Internet activities.'' Specific examples of ''computer equipment and services'' would be listed in paragraph (c) of each section and would include, but would not be limited to, computers, software, Internet domain names, and Internet Service Provider(''ISP'') services (*e.g.*, connecting to the Internet). ''Internet activities'' would be defined in paragraph (b) of each section to include, but not be limited to, creating and sending e-mail or producing and maintaining a Web site or a blog. Furthermore, because many individuals who use the Internet cannot, or do not, maintain their own Web sites, or simply wish to post a blog in a place where it is more likely to be seen by others, there are a number of blog ''hosts'' that provide space on a Web site for other individuals to post their own blogs or other commentary. Individuals acting independently or as volunteers posting blogs or other content on the Web sites of these hosts would be entitled to the exception just as if the content were posted on their own Web site. However, the exceptions would not apply to paid advertising or other payments for the use of another person's Web site, other than a nominal fee. *See* current 11 CFR 100.75 and 100.135 (a volunteer's payment of a nominal fee in the course of providing personal services does not constitute a contribution or expenditure).

Thus, an individual or volunteer producing or maintaining a Web site or blog, or conducting other grassroots campaign activity on the Internet, from that individual's own home or elsewhere, would not make a contribution or expenditure and would not incur any reporting responsibilities as the result of that activity. For example, if an individual downloaded materials from a candidate or party Web site, such as campaign packets, yard signs, and other items, the downloading of such items would not constitute republication of campaign materials. In addition, even when the Internet activity is made in cooperation, consultation, or concert with a candidate or a political party committee, no contribution or expenditure would result and neither the candidate nor the political party committee would incur any reporting responsibilities. Furthermore, if an individual forwarded an e-mail received from a political committee, the forwarding of that e-mail would not constitute republication of campaign materials or be an in-kind contribution. The Commission invites comments on this approach.

The Commission notes that existing Commission regulations regarding volunteer activity use the concept of volunteer in the context of an individual volunteering personal services to a candidate, political committee, or political party. The proposed regulations would apply regardless of whether the individual's activities were known to a candidate, political party, or political committee. The Commission seeks comment on whether it has authority to do this and whether the word ''individual'' or ''volunteer'' more accurately conveys the concept of when an individual, whether known or unbeknownst to the campaign, engages in Internet activity.

IX. 11 CFR 114.9—Use of Corporate or Labor Organization Facilities and Means of Transportation

The Commission's rules at 11 CFR 114.9 permit employees and stockholders of a corporation, as well as officials, members, and employees of a labor organization, to use corporate or labor organization ''facilities'' for individual volunteer activities in connection with a Federal election, so long as that use is ''occasional, isolated, or incidental.'' 11 CFR 114.9(a)(1) and (b)(1).[25] In order to clarify that corporate and labor organization ''facilities'' include computer equipment and Internet services that could be used to exchange e-mail, produce or maintain Web sites, or engage in other activities over the Internet, the Commission proposes to amend 11 CFR 114.9(a)(1) and (b)(1) to expressly include ''computers, software, and other Internet equipment and services,'' within the meaning of ''facilities.'' The Commission invites comments on this proposed revision.

In addition, the Commission notes that many corporations and labor

[25] The use of equipment or services is ''occasional, isolated, or incidental'' during the workday if it does not prevent the individual from carrying out her normal duties or interfere with the corporation or labor organization carrying out its normal activities. *See* 11 CFR 114.9(a)(1) (i) and (ii) and (b)(1) (i) and (ii) The Commission has established a safe harbor such that an individual's activity during or outside working hours is considered ''occasional, isolated, or incidental'' if it does not exceed one hour per week or four hours per month. 11 CFR 114.9(a)(1)(ii) and (b)(1)(iii). The examples of ''occasional, isolated, or incidental'' use are not exhaustive, and other uses may also qualify.

organizations now permit individuals to take laptops home and to use computers and other Internet services for non-work purposes. The Commission notes that a volunteer's use of a corporate or labor organization computer or Internet service for campaign activity over the Internet at home, or at locations outside of work, is still subject to the ''occasional, isolated, or incidental'' use restriction.

The Commission further notes that corporations and labor organizations are prohibited from ''[u]sing coercion, such as the threat of a detrimental job action, the threat of any other financial reprisal, or the threat of force, to urge any individual to make a *contribution* or engage in fundraising activities on behalf of a candidate or political committee.'' 11 CFR 114.2(f)(2)(iv) (emphasis added); *see also* 2 U.S.C. 441b(b)(3). Because the proposed revisions to 11 CFR 114.9(a) and (b) would expressly except the occasional, isolated, or incidental use of corporate or labor organization computers, software, and other Internet equipment and services from the definition of ''contribution,'' the Commission seeks comment on whether additional rules are necessary to ensure that corporations and labor organizations do not ''coerce'' their employees or others into engaging in Internet activities on behalf of a candidate or political committee. Should such an exemption be avoided in that it could lead to inherently coercive situations? Should it be premised on the corporation or labor organization not directing the individual to engage in activity on behalf of a certain candidate or political committee?

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

The Commission certifies that the attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the individuals and not-for-profit entities affected by these proposed rules 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).

State, district, and local party committees affected by these proposed rules are not-for-profit committees that do not meet the definition of ''small organization.'' State political party committees are not independently owned and operated because they are not financed and controlled by a small identifiable group of individuals, and they are affiliated with the larger national political party organizations. In addition, the State political party committees representing the Democratic and Republican parties have a major controlling influence within the political arena of their State and are thus dominant in their field. District and local party committees are generally considered affiliated with the State committees and need not be considered separately.

Separate segregated funds affected by these proposed rules are not-for-profit political committees that do not meet the definition of ''small organization'' because they are financed by a combination of individual contributions and financial support for certain expenses from corporations, labor organizations, membership organizations, or trade associations, and therefore are not independently owned and operated.

Most other political committees affected by these rules are not-for-profit committees that do not meet the definition of ''small organization.'' Most political committees are not independently owned and operated because they are not financed by a small identifiable group of individuals. Most political committees rely on contributions from a large number of individuals to fund the committees operations and actives.

To the extent that any State party committees representing minor political parties or any other political committees might be considered ''small organizations,'' the number affected by this proposed rule is not substantial. Additionally, because the proposed rule preserves the Commission's general exclusion of Internet communications from the scope of regulation, any economic impact of complying with these rules will not be significant. Accordingly, to the extent that any other entities may fall within the definition of ''small entities,'' any economic impact of complying with these rules will not be significant.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapter A of chapter 1 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, 434, and 438(a)(8).

2. Section 100.25 would be republished to read as follows:

§ 100.25 Generic campaign activity (2 U.S.C. 431(21)).

Generic campaign activity means a public communication that promotes or opposes a political party and does not promote or oppose a clearly identified Federal candidate or a non-Federal candidate.

3. Section 100.26 would be revised to read as follows:

§ 100.26 Public communication (2 U.S.C. 431(22)).

Public communication means a communication by means of any broadcast, cable, or satellite communication, newspaper, magazine, outdoor advertising facility, mass mailing or telephone bank to the general public, or any other form of general public political advertising. The term *general public political advertising* shall not include communications over the Internet, except for announcements placed for a fee on another person's or entity's Web site.

4. In §100.73, the introductory text would be revised to read as follows:

§ 100.73 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication, whether the news story, commentary, or editorial appears in print or over the Internet, is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the costs for a news story:

* * * * *

5. Section 100.94 would be added to subpart C of part 100 to read as follows:

§ 100.94 Uncompensated individual or volunteer activity that is not a contribution.

(a) *Contribution.* (1) No contribution results where an individual, acting independently or as a volunteer, without receiving compensation,

performs Internet activities using computer equipment and services that he or she personally owns for the purpose of influencing any Federal election, whether or not the individual's activities are known to or coordinated with any candidate, authorized committee or party committee.

(2) No contribution results where an individual, acting independently or as a volunteer, without receiving compensation, performs Internet activities using computer equipment and services available at any public facility for the purpose of influencing any Federal election, whether or not the individual's activities are known to or coordinated with any candidate, authorized committee or party committee. The term ''public facility'' within the meaning of this section shall include, but is not limited to, public libraries, public schools, community centers, and Internet cafes.

(3) No contribution results where an individual, acting independently or as a volunteer, without receiving compensation, performs Internet activities using computer equipment and services in his or her residential premises for the purpose of influencing any Federal election, whether or not the individual's activities are known to or coordinated with any candidate, authorized committee or party committee.

(b) *Internet activities.* ''Internet activities'' within the meaning of this section shall include, but are not limited to: e-mailing, including forwarding; linking, including providing a link or hyperlink to a candidate's, authorized committee's or party committee's Web site; distributing banner messages; blogging; and hosting an Internet site.

(c) *Computer equipment and services.* ''Computer equipment and services'' within the meaning of this section shall include, but are not limited to, computers, software, Internet domain names, and Internet Service Provider (ISP) services.

6. In §100.132, the introductory text would be revised to read as follows:

§ 100.132 News story, commentary, or editorial by the media.

Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station (including a cable television operator, programmer or producer), newspaper, magazine, or other periodical publication, whether the news story, commentary, or editorial appears in print or over the Internet, is not an expenditure unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the cost for a news story:

* * * * *

7. Section 100.155 would be added to subpart E of part 100 to read as follows:

§ 100.155 Uncompensated individual or volunteer activity that is not an expenditure.

(a) *Expenditure.* (1) No expenditure results where an individual, acting independently or as a volunteer, without receiving compensation, performs Internet activities using computer equipment and services that he or she personally owns for the purpose of influencing any Federal election, whether or not the individual's activities are known to or coordinated with any candidate, authorized committee or party committee.

(2) No expenditure results where an individual, acting independently or as a volunteer, without receiving compensation, performs Internet activities using computer equipment and services available at any public facility for the purpose of influencing any Federal election, whether or not the individual's activities are known to or coordinated with any candidate, authorized committee or party committee. The term ''public facility'' within the meaning of this section shall include, but is not limited to, public libraries, public schools, community centers, and Internet cafes.

(3) No expenditure results where an individual acting independently or as a volunteer, without receiving compensation, performs Internet activities using computer equipment and services in his or her residential premises for the purpose of influencing any Federal election, whether or not the individual's activities are known to or coordinated with any candidate, authorized committee or party committee.

(b) *Internet activities.* ''Internet activities'' within the meaning of this section shall include, but are not limited to: e-mailing, including forwarding; linking, including providing a link or hyperlink to a candidate's, authorized committee's or party committee's Web site; distributing banner messages; blogging; and hosting an Internet site.

(c) *Computer equipment and services.* ''Computer equipment and services'' within the meaning of this section shall include, but are not limited to, computers, software, Internet domain names, and Internet Service Provider (ISP) services.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

8. The authority citation for part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 36 U.S.C. 510.

9. Section 110.11 would be amended by revising the introductory text in paragraph (a) to read as follows:

§ 110.11 Communications; advertising; disclaimers (2 U.S.C. 441d).

(a) *Scope.* Public communications are those defined by 11 CFR 100.26. For the purposes of this section, public communications will also include more than 500 unsolicited substantially similar electronic communications; Internet Web sites of political committees available to the general public; and electioneering communications as defined in 11 CFR 100.29. *Unsolicited e-mail* shall be defined as those e-mail that are sent to electronic mail addresses purchased from a third party. The following types of such communications must include disclaimers, as specified in this section:

* * * * *

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

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

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

11. In §114.9, the introductory text of paragraphs (a)(1) and (b)(1) would be revised to read as follows:

§ 114.9 Use of corporate or labor organization facilities and means of transportation.

(a) *Use of corporate facilities for individual volunteer activity by stockholders and employees.*

(1) Stockholders and employees of the corporation may, subject to the rules and practices of the corporation, make occasional, isolated, or incidental use of the facilities of a corporation for individual volunteer activities in connection with a Federal election and will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased. The facilities of a corporation within the meaning of this paragraph include computers, software, and other Internet equipment and services. As used in this paragraph, *occasional, isolated, or incidental* use generally means—

* * * * *

(b) *Use of labor organization facilities for individual volunteer activity by officials, members, and employees.*

(1) The officials, members, and employees of a labor organization may, subject to the rules and practices of the labor organization, make occasional, isolated, or incidental use of the facilities of a labor organization for individual volunteer activities in connection with a Federal election and will be required to reimburse the labor organization only to the extent that the overhead or operating costs of the organization are increased. The facilities of a labor organization within the meaning of this paragraph include computers, software, and other Internet equipment and services. As used in this paragraph, *occasional, isolated, or incidental use* generally means—

* * * * *

Dated: March 29, 2005.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 05–6521 Filed 4–1–05; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA–2005–20799; Directorate Identifier 2004–NM–264–AD]

RIN 2120–AA64

Airworthiness Directives; Boeing Model 727 Airplanes

AGENCY: Federal Aviation Administration (FAA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FAA proposes to adopt a new airworthiness directive (AD) for all Boeing Model 727 airplanes. This proposed AD would require determining whether any float switches are installed in the fuel tanks, and corrective actions if necessary. This proposed AD is prompted by reports of contamination of the fueling float switch by moisture or fuel, and chafing of the float switch wiring against the fuel tank conduit. We are proposing this AD to prevent such contamination and chafing, which could present an ignition source inside the fuel tank that could cause a fire or explosion.

DATES: We must receive comments on this proposed AD by May 19, 2005.

ADDRESSES: Use one of the following addresses to submit comments on this proposed AD.

- *DOT Docket Web site:* Go to *http://dms.dot.gov* and follow the instructions for sending your comments electronically.
- *Government-wide rulemaking Web site:* Go to *http://www.regulations.gov* and follow the instructions for sending your comments electronically.
- *Mail:* Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., Nassif Building, room PL–401, Washington, DC 20590.
- *By fax:* (202) 493–2251.
- *Hand Delivery:* Room PL–401 on the plaza level of the Nassif Building, 400 Seventh Street SW., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

For service information identified in this proposed AD, contact Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124–2207.

You can examine the contents of this AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street SW., room PL–401, on the plaza level of the Nassif Building, Washington, DC. This docket number is FAA–2005–20799; the directorate identifier for this docket is 2004–NM–264–AD.

FOR FURTHER INFORMATION CONTACT: Sulmo Mariano, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 917–6501; fax (425) 917–6590.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to submit any relevant written data, views, or arguments regarding this proposed AD. Send your comments to an address listed under **ADDRESSES**. Include ''Docket No. FAA–2005–20799; Directorate Identifier 2004–NM–264–AD'' in the subject line of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of the proposed AD. We will consider all comments submitted by the closing date and may amend the proposed AD in light of those comments.

We will post all comments we receive, without change, to *http://dms.dot.gov,* including any personal information you provide. We will also post a report summarizing each substantive verbal contact with FAA personnel concerning this proposed AD. Using the search function of that Web site, anyone can find and read the comments in any of our dockets, including the name of the individual who sent the comment (or signed the comment on behalf of an association, business, labor union, etc.). You can review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (65 FR 19477–78), or you can visit *http://dms.dot.gov.*

Examining the Docket

You can examine the AD docket on the Internet at *http://dms.dot.gov,* or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647–5227) is located on the plaza level of the Nassif Building at the DOT street address stated in the **ADDRESSES** section. Comments will be available in the AD docket shortly after the DMS receives them.

Discussion

Boeing has performed a quality analysis on float switches removed from Model 737–200 series airplanes. Investigation revealed cracked potting material, which permitted moisture and fuel to enter the switch cavity. Fuel and moisture contamination inside the float switch reed cavity could provide an electrical path between the switch and the airplane structure that could result in electrical arcing that could lead to a fuel tank explosion. Also, Boeing reported worn float switch wiring insulation in the center fuel tank due to chafing of the wires against the walls of the conduit housing the wires. Wire chafing against the conduit could present an ignition source inside the fuel tank that could cause a fire or explosion.

The float switch wiring installation is similar on Model 727 and 737–200 series airplanes. Therefore, the unsafe condition could exist on Model 727 airplanes equipped with the same float switch model found on the 737–200 series airplanes.

Relevant Service Information

We have reviewed Boeing Alert Service Bulletin 727–28A0127, dated August 26, 2004. The service bulletin describes procedures for replacing Ametek Model F8300–146 float switches with new switches and installing a liner system inside the electrical cable conduit in the main and auxiliary fuel tanks.

FAA's Determination and Requirements of the Proposed AD

We have evaluated all pertinent information and identified an unsafe condition that is likely to exist or