

# Proposed Rules

Federal Register

Vol. 71, No. 50

Wednesday, March 15, 2006

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

---

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 109

[Notice 2006–5]

#### Coordinated Communications

**AGENCY:** Federal Election Commission.

**ACTION:** Supplemental notice of proposed rulemaking; re-opening of comment period.

**SUMMARY:** The Federal Election Commission is making public data related to its ongoing rulemaking regarding coordinated communications and is re-opening the public comment period for the Notice of Proposed Rulemaking (“NPRM”) published on December 14, 2005. The Commission requests additional comments on alternatives presented in the NPRM in light of data regarding the timing of campaign advertising in recent elections. No final decision has been made by the Commission on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

**DATES:** Comments must be received on or before March 22, 2006.

**ADDRESSES:** All comments must be in writing, must be addressed to Mr. Brad C. Deutsch, Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail or fax to ensure timely receipt and consideration. E-mail comments must be sent to either [coordination@fec.gov](mailto:coordination@fec.gov) or submitted through the Federal eRegulations Portal at <http://www.regulations.gov>. If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal

service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brad C. Deutsch, Assistant General Counsel, Mr. Ron B. Katwan or Ms. Esa L. Sferra, Attorneys, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** On December 14, 2005, the Commission published a Notice of Proposed Rulemaking (“NPRM”) proposing to amend its current rules at 11 CFR 109.21 that set forth a three-prong test for determining whether a communication is a coordinated communication, and therefore an in-kind contribution to a candidate, a candidate’s authorized committee, or a political party committee. 70 FR 73946 (Dec. 14, 2005). The NPRM proposed seven different alternatives for revising the content prong of the coordinated communications test in response to the decisions in *Shays v. FEC*, 337 F. Supp. 2d 28 (D.D.C. 2004) (“*Shays District*”), *aff’d*, *Shays v. FEC*, 414 F.3d 76 (D.C. Cir. 2005) (“*Shays Appeal*”) (pet. for reh’g en banc denied Oct. 21, 2005) (No. 04–5352). In *Shays Appeal*, the Court of Appeals invalidated one aspect of the content prong—the 120-day time frame—because the court believed that the Commission had not provided an adequate explanation and justification under the Administrative Procedure Act. *Shays Appeal* at 100. The Court of Appeals emphasized that justifying the 120-day time frame (or any other time frame) requires the Commission to undertake a factual inquiry to determine the appropriate time frame regarding “election-related advocacy.” *Id.* at 102.

The Court of Appeals ordered the Commission to consider carefully certain questions in promulgating new rules, including: “Do candidates in fact limit campaign-related advocacy to the four months surrounding elections, or does substantial election-related communication occur outside that window? Do congressional, senatorial, and presidential races—all covered by this rule—occur on the same cycle, or should different rules apply to each?” *Shays Appeal*, 414 F.3d at 102.

In the NPRM, the Commission specifically requested that commenters submit empirical data showing the time period before an election during which

campaign communications generally occur. NPRM at 73949. None of the commenters on this rulemaking provided empirical data in response to the Commission’s request. One joint comment did provide, however, a compilation of selected campaign advertisements run before certain elections that took place during several recent election cycles.

The Commission held a public hearing on this rulemaking on January 25–26, 2006, at which eighteen commenters testified. At the close of the hearings, the Commission still had not received any empirical data regarding the timing of campaign advertisements.

Therefore, the Commission is issuing this Supplemental Notice of Proposed Rulemaking (“SNPRM”) to invite comment on data that the Commission has now licensed from TNS Media Intelligence/CMAG. These data, which can be accessed from the Commission’s Web site at [http://www.fec.gov/law/law\\_rulemakings.shtml#coordinated](http://www.fec.gov/law/law_rulemakings.shtml#coordinated), provide information regarding television advertising spots run by Presidential, Senate, and House candidates during the 2004 election cycle. The Commission has also provided graphical representations of these data, which are also available at this Web site address.

This SNPRM also re-opens the comment period for this rulemaking. The Commission seeks additional comment, in light of the information presented by these data, on the issues and questions raised in the NPRM regarding the content prong time frame. See NPRM at 73948–52. Comments are due on or before March 22, 2006.

Dated: March 8, 2006.

**Michael E. Toner,**

*Chairman, Federal Election Commission.*

[FR Doc. 06–2551 Filed 3–14–06; 8:45 am]

**BILLING CODE 6715–01–P**

---

## FEDERAL HOUSING FINANCE BOARD

### 12 CFR Parts 900, 917, 925, 930, 931 and 934

[No. 2006–03]

RIN 3069–AB30

#### Excess Stock Restrictions and Retained Earnings Requirements for the Federal Home Loan Banks

**AGENCY:** Federal Housing Finance Board.