revenue for the 2008–09 season as a percentage of total grower revenue could range between 0.3 and 0.5 percent.

This action would increase the assessment obligation imposed on handlers. While assessments impose some additional costs on handlers, the costs are minimal and uniform on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived by the operation of the marketing order. In addition, the Committee's meeting was widely publicized throughout the Florida tomato industry and all interested persons were invited to attend the meeting and participate in Committee deliberations on all issues. Like all Committee meetings, the August 14, 2008, meeting was a public meeting and all entities, both large and small, were able to express views on this issue. Finally, interested persons are invited to submit comments on this proposed rule, including the regulatory and informational impacts of this action on small businesses.

This proposed rule would impose no additional reporting or recordkeeping requirements on either small or large Florida tomato handlers. As with all Federal marketing order programs, reports and forms are periodically reviewed to reduce information requirements and duplication by industry and public sector agencies.

AMS is committed to complying with the E-Government Act, to promote the use of the Internet and other information technologies to provide increased opportunities for citizen access to Government information and services, and for other purposes.

USDA has not identified any relevant Federal rules that duplicate, overlap, or conflict with this rule.

A small business guide on complying with fruit, vegetable, and specialty crop marketing agreements and orders may be viewed at: *http://www.ams.usda.gov/AMSv1.0/ams.fetchTemplateData.do?template=TemplateN&page=MarketingOrdersSmallBusinessGuide*. Any questions about the compliance guide should be sent to Jay Guerber at the previously mentioned address in the **FOR FURTHER INFORMATION CONTACT** section.

A 30-day comment period is provided to allow interested persons to respond to this proposed rule. Thirty days is deemed appropriate because: (1) The 2008–09 fiscal period began on August 1, 2008, and the marketing order requires that the rate of assessment for each fiscal period apply to all assessable tomatoes handled during such fiscal period; (2) the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; and (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to other assessment rate actions issued in past years.

List of Subjects in 7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

For the reasons set forth in the preamble, 7 CFR part 966 is proposed to be amended as follows:

PART 966—TOMATOES GROWN IN FLORIDA

1. The authority citation for 7 CFR part 966 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 966.234 is revised to read as follows:

§ 966.234 Assessment rate.

On and after August 1, 2008, an assessment rate of $0.0375 per 25-pound carton is established for Florida tomatoes.

Dated: October 15, 2008.

Lloyd C. Day,

Administrator, Agricultural Marketing Service.

[FR Doc. E8–24919 Filed 10–17–08; 8:45 am]

BILLING CODE 3410–02–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

[Docket No. PRM–50–88; NRC–2007–0017]

Thomas E. Magette on Behalf of EnergySolutions, LLC; Notice of Denial of Petition for Rulemaking

AGENCY: Nuclear Regulatory Commission.

ACTION: Petition for rulemaking; Denial.

SUMMARY: The Nuclear Regulatory Commission (NRC) is denying a petition for rulemaking submitted by Mr. Thomas E. Magette on behalf of Energy*Solutions*, LLC. The petitioner requested that the NRC's regulations governing domestic licensing of production and utilization facilities be amended to provide a regulatory framework that would allow funds from licensees' decommissioning trust funds to be used for the cost of disposal of ''major radioactive components'' (MRCs) that have been removed from reactors before the permanent cessation of operations.

DATES: The docket for the petition for rulemaking, PRM–50–88, is closed on October 20, 2008.

ADDRESSES: You can access publicly available documents related to this petition for rulemaking using the following methods:

Federal e-Rulemaking Portal: Further NRC action on the issues raised by this petition will be accessible at the Federal rulemaking portal, *http://www.regulations.gov*, by searching on rulemaking docket ID: NRC–2007–0017. Address questions about NRC dockets to Carol Gallagher 301–415–5905; e-mail *Carol.Gallagher@nrc.gov*. The NRC also tracks all rulemaking actions in the ''NRC Regulatory Agenda: Semiannual Report (NUREG–0936).''

NRC's Public Document Room (PDR): The public may examine, and have copied for a fee, publicly available documents at the NRC's PDR, Public File Area O–1 F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland.

NRC's Agencywide Document Access and Management System (ADAMS): Publicly available documents created or received at the NRC are available electronically at the NRC's Electronic Reading Room at *http://www.nrc.gov/reading-rm/adams.html*. From this page, the public can gain entry into ADAMS, which provides text and image files of NRC's public documents. If you do not have access to ADAMS or if there are any problems in accessing the documents located in ADAMS, contact the NRC PDR reference staff at 1–800–387–4209 or 301–415–4737, or by e-mail to *PDR.resource@nrc.gov*.

FOR FURTHER INFORMATION CONTACT: Harry S. Tovmassian, Office of Nuclear Reactor Regulation, NRC, Washington, DC 20555–0001, telephone 301–415–3092, e-mail *harry.tovmassian@nrc.gov*, or Steven R. Hom, Office of Nuclear Reactor Regulation, NRC, Washington, DC 20555–0001, telephone 301–415–1537, e-mail *steven.hom@nrc.gov*.

SUPPLEMENTARY INFORMATION:

The Petition

On May 29, 2007, the NRC received a petition for rulemaking filed by Mr. Thomas E. Magette on behalf of Energy*Solutions*, LLC. The petitioner requested that the NRC amend its regulations to provide a regulatory framework that would allow funds from licensees' decommissioning trust funds to be used for the cost of disposal of MRCs that have been removed from reactors before the permanent cessation of operations. On August 21, 2007 [72 FR 46569], the NRC published a notice of receipt of the petition for rulemaking

and requested public comment. The petitioner stated that this rulemaking is needed because current regulations define decommissioning in 10 CFR 50.2 as not beginning until the site or facility ceases operation, and 10 CFR 50.82(a)(8) only allows withdrawals from decommissioning trust funds for decommissioning expenses. The petitioner asserted that he believes that such a regulatory framework is in the public interest.

Background

On February 3, 1994 [59 FR 5216], the NRC published in the **Federal Register** a draft policy statement containing, among other things, criteria the NRC proposed to follow to respond to requests by licensees with permanently shut down plants to withdraw decommissioning trust funds before approval of a decommissioning plan submitted under 10 CFR 50.82. On July 20, 1995 [60 FR 37374], the NRC published proposed amendments to the regulations that address decommissioning and license termination, incorporating the criteria from the draft policy statement. The NRC addressed comments that were received on the draft policy statement and proposed rules in the statement of considerations for the final rule [61 FR 39293; July 29, 1996]. One of the comments (by the Nuclear Energy Institute, joined by two licensees) was that the NRC should develop a policy for operating plants on withdrawing decommissioning funds, and ''should allow licensees to withdraw decommissioning trust funds to dispose of structures and equipment no longer being used for operating plants.'' The NRC responded as follows: ''The NRC has concluded that allowing decommissioning trust fund withdrawals for disposals by nuclear power plants that continue to operate is not warranted. These activities are more appropriately considered operating activities and should be financed in that way.''

On May 30, 2001 [66 FR 29244], the NRC published proposed amendments to 10 CFR 50.75 relating to increased oversight by the NRC of decommissioning trusts before decommissioning. One of the proposed changes to the rule required that trust agreements must contain a provision that disbursements from a trust are restricted to ordinary administrative expenses, decommissioning expenses, or transfer to another decommissioning funding assurance method until final decommissioning has been completed. Because these changes would not meet the definition of decommissioning in 10 CFR 50.2, under this provision disbursements from a trust could not be used before the start of decommissioning to dispose of large components that had been replaced at an operating plant. The amendments to the regulation became final at the end of 2002.

Discussion

The Energy*Solutions* petition raises the following issue: Should the NRC undertake a rulemaking that is inconsistent with current Commission policies and regulations on the use of decommissioning trust funds before decommissioning?

When the NRC articulated its policy against the use of decommissioning trust funds for the disposal of MRCs during operations, it did not suggest that MRCs should not, or could not be disposed of during operations using other sources of funding. In fact, the NRC considered this possibility, and stated that these disposals are considered operating activities and should be financed as such.

The Energy*Solutions* petition claims that a change in the NRC's policy and regulations would yield the following benefits: (1) The radioactive source term associated with the contaminated components at reactor sites will be reduced; (2) Site workers will be exposed to less radiation; (3) Costs to store the MRCs and to provide protection to workers can be avoided; (4) The overall costs to decommission will be reduced (because the disposal of at least some MRCs will have already been completed); and (5) More funds will be available to decommission upon permanent cessation of operations.

While the first four benefits asserted by the petitioner may result from the disposal of MRCs, these benefits do not depend upon the origin of the funds used to pay for such disposal (and the petition makes no such assertion). In other words, the same benefits could be achieved if licensees disposed of MRCs using operating revenues, special public utility commission collections from ratepayers, or any other sources of funds other than decommissioning trust funds. The petition does not contain evidence that a reversal of NRC policy and regulations, designed to protect decommissioning trust funds so that they will be available to complete decommissioning, would ensure that all MRCs will in fact be immediately disposed of offsite by all plants, thus eliminating the petition's stated concerns. On the contrary, a reversal could be expected to increase the likelihood that a shortage of decommissioning funds may occur at the time of license expiration, or if a plant unexpectedly shuts down early and generates no further operating revenues.

With regard to the fifth asserted benefit, the petitioner essentially argues that more funds would be available to decommission the reactor upon permanent shutdown because investment returns on a trust fund will be less than the inflation of disposal costs; thus, licensees should spend funds now. This argument conflicts with the basis of the NRC's regulations at 10 CFR 50.75 that permit licensees to assume a 2 percent real rate of return earnings credit on decommissioning trust fund balances, which about 75 percent of plants use to meet minimum decommissioning funding assurance requirements. Allowing licensees to assume a 2 percent real rate of return presumes that over time, trust fund earnings after taxes will exceed the inflation of decommissioning costs, which include disposal costs, by a net 2 percent. To accept the petition's argument would require the NRC to accept the argument's premise that investment returns would not keep up with inflation. If this were the case, the NRC would need to rescind or at least scale back the regulatory earnings credit (lacking the original basis), for which there is no basis at this time.

The petitioner raised several other observations in support of the proposed rulemaking. First, the petition states that a ''blanket prohibition on the use of decommissioning trust funds to dispose of [MRCs] is unnecessary to achieve the underlying purpose of the rule.'' The NRC has never issued a blanket prohibition against seeking an exemption from the provisions of 10 CFR 50.75 or 50.82. However, the NRC views decommissioning funding assurance policies and rules as of the utmost importance in ensuring that there will be sufficient funds to decommission a reactor upon permanent cessation of operations. Accordingly, the NRC expects that there would have to be extraordinary circumstances before any exemption request to withdraw funds early would be granted, particularly if there is no demonstration that there are no other sources of funds available to licensees to dispose of MRCs while a plant is operating.

Second, the petitioner states that granting the petition would avoid a conflict with the NRC's ''philosophy'' underlying other rules governing materials sites to remove source terms from unused portions of operating materials sites. Thus, the NRC should not ''create economic barriers'' to

prevent reactor licensees from disposing of MRCs during operations. While the petition's assertion that ''experience with non-reactor decommissioning sites indicates that clean-up costs can escalate significantly when unmanaged contamination is left on-site for long periods of time'' may be valid, the petition deals with reactor sites and MRCs that are of a different nature than many materials that may be able to migrate into the ground if ''unmanaged.'' The petition acknowledges that current Commission regulations and policy allow the SAFSTOR option for reactors (*i.e.*, the facility is maintained and monitored to allow decay of radioactivity, after which it is decommissioned), and that ''reactor licensees are not subject to'' the same rules governing materials licensees. Thus, any ''conflict'' with a so-called philosophy that may apply to a different category of licensees because they have characteristics distinguishable from reactor licensees warrants limited consideration here, particularly when licensees are free to use non-decommissioning trust funds to dispose of MRCs.

Third, the petitioner states that the proposed amendment to 10 CFR 50.82 does not depend on the adequacy of the minimum formula amount calculated under 10 CFR 50.75. The petition states that the NRC's Inspector General and the Government Accountability Office have raised questions concerning the sufficiency of formula decommissioning cost estimates and funding assurance based on them. These questions, according to the petition, should not affect consideration of the proposed amendment because the proposal would require site-specific, rather than formula, cost estimates for the staff's analysis of a withdrawal request. However, even site-specific estimates become inherently more unreliable the further they are done from permanent shutdown. (The earliest a licensee must perform any type of site-specific decommissioning cost estimate under current NRC regulations is five years from permanent shutdown.) Therefore, cost estimate reliability issues are not rendered moot simply because the proposal would require an analysis based on a site-specific cost estimate versus a formula cost estimate.

Fourth, the petition states that granting the petition would prevent unnecessary regulatory burdens. The petition blames the current policy restricting the use of decommissioning trust funds for causing some licensees to spend funds to build storage structures to house MRCs, maintain them, and monitor releases. Also, these structures purportedly take up limited space. The petition notes that ''in many cases licensees commingle'' radiological decommissioning funds with other funds, and states that preventing the use of the funds ''solely because they are commingled creates an unnecessary regulatory burden as it does not have a corresponding safety benefit if the licensee has sufficient funds in its decommissioning trust funds to meet the provisions of'' 10 CFR 50.82(a)(8)(i)(B) and (C). As discussed earlier, determining whether a licensee has sufficient funds to meet those provisions of 10 CFR 50.82, which are proposed by the petition to be the criteria to judge whether decommissioning funds should be released, becomes much more speculative the further from permanent shutdown a plant is. Whatever test might be used to gauge whether disbursements from a decommissioning trust should be allowed, the issue would not be before the NRC if licensees who desired to withdraw funds for MRC disposal had sub-accounts or established specific accounting that certain funds were earmarked for such purpose and were not relied upon to meet decommissioning funding assurance regulations. In connection with the 2002 final rule amending 10 CFR 50.75 regarding decommissioning trust provisions (which, among other things, confirmed the limitations on the use of decommissioning trust funds), the Commission stated that commingling of trust funds is not objectionable ''as long as the licensees are able to provide a separate accounting showing the amount of funds earmarked'' for other uses not subsumed under the NRC's definition of decommissioning, [See 67 FR 78339; December 24, 2002]. The notion of licensees establishing sub-accounts ''that clearly delineate the purpose of the sub-account'' was discussed as early as 1996 in an advance notice of proposed rulemaking [See 61 FR 15427, footnote 2; April 8, 1996]. If minimum required amounts are maintained for radiological decommissioning, sub-accounts for other activities are not prohibited by the NRC, [See 61 FR 39285; July 29, 1996]. Thus, licensees have had full notice that sub-accounts for the disposal of MRCs during operations could be established as long as decommissioning funding assurance requirements are met. In view of the foregoing, the NRC believes that licensees have had alternatives to address funding the disposal of MRCs during operations, and that the argument that current policy poses ''unnecessary regulatory burdens'' is not compelling.

Notwithstanding the arguments contained in the petition, the NRC believes that existing policy and rules continue to be sound. However, the NRC takes this opportunity to note that it has been and will continue to entertain very limited exceptions, as appropriate. Under 10 CFR 50.12, a licensee can request an exemption from 10 CFR 50.82(a)(8) to use decommissioning trust funds to dispose of MRCs before decommissioning, which the NRC will review on a case-by-case basis in extraordinary circumstances.

The NRC believes there would be no practical difference between the showings necessary under an exemption request and those showings that would be necessary under the petition's proposed rule. Exemptions are decided on a case-by-case basis. Under the rule proposed by the petition, the NRC would also have to make decisions whether to approve withdrawals on a case-by-case basis. In both situations, the NRC would have to factor in, among other things, site specific costs, individual trust balances and the prospect of future contributions, market and cost fluctuations, years left to operate, and any other considerations that might bear on the likelihood of a licensee being able to make up shortfalls in assured decommissioning funds, such as operational issues that could affect anticipated revenues. Because the NRC does not believe there would be significant processing distinctions between the existing exemption regime and the petition's, there is no processing advantage weighing in favor of the rulemaking proposed by the petition.

Public Comments

The notice of receipt of the petition for rulemaking invited interested persons to submit their comments. Six public comments were filed in response to the petition within the public comment period. Licensees submitted four comments, the Nuclear Energy Institute submitted one comment, and Talisman International, LLC, which employs one or more individuals who represent Energy*Solutions*, submitted one comment. All of the comments were supportive of the petition. On June 20, 2008, a seventh public comment was received from Mr. Barry T. Smitherman, Chairman, Public Utility Commission of Texas, commenting on his own behalf. Although this comment was received after the close of the public comment period, the NRC reviewed the letter and finds that it raises no issues that have not been previously considered by the

Commission and that no further resolution is called for.

1. *Comment:* One commenter stated that the proposed rule change would provide ''reactor licensees the needed flexibility'' to use decommissioning trust funds to dispose of MRCs. Another commenter stated that the needed flexibility would provide a framework ''that would allow the NRC on a case-by-case basis to authorize the use of [decommissioning trust funds] for the disposal of MRCs prior to the cessation of reactor operations * * *.''

NRC Response: The NRC already has a framework in place at 10 CFR 50.12 to permit, on a case-by-case basis, some limited flexibility regarding the use of decommissioning trust funds to dispose of MRCs during operations.

2. *Comment:* A commenter opined that the current rule [10 CFR 50.82] poses an unreasonable burden not accompanied by any benefit. The financial burden to construct and maintain storage facilities to house MRCs until the cessation of operations could be avoided according to a commenter.

NRC Response: There is a significant benefit to restricting the use of decommissioning trust funds for MRC disposals, namely to ensure that there are enough funds to decommission a reactor shut down permanently either at the end of its licensed life or any time before that date for reasons unforeseen today. Furthermore, there are sources of funds other than decommissioning trust funds to dispose of MRCs. Any burdens from constructing and maintaining storage facilities can be avoided at the licensee's option by using operating funds to dispose of MRCs, or for regulated licensees by using assessments properly accounted for from rate regulators who approve the use of ratepayer funds to dispose of MRCs.

3. *Comment:* One commenter stated that granting the petitioner's proposal would facilitate the disposal of MRCs.

NRC Response: Nothing in the NRC's regulations prohibits licensees from disposing of MRC's before the cessation of operations using non-decommissioning funds. These non-decommissioning funds would facilitate the disposal of MRCs similar to the use of decommissioning trust funds, but without creating the additional risk that reduced decommissioning trust funds will be insufficient.

4. *Comment:* One commenter stated that the removal of MRCs before decommissioning is cost-effective, delaying the use of decommissioning funds or delaying disposal could result in higher costs and less funds available at decommissioning.

NRC Response: As discussed before, the NRC's rules are based on an assumption that investment earnings from decommissioning trust funds left intact will surpass the inflation of decommissioning costs in the long run. Licensees may use other funds to dispose of MRCs if they believe current disposal costs warrant and there will be insufficient decommissioning funds available at decommissioning.

5. *Comment:* One commenter stated that one of the reasons that disposing of these components is in the interest of his ''Company, its customers, and the public'' is that the source term for the site would be reduced.

NRC Response: Any reduction in the source term due to the removal of MRC's would not depend upon the origin of the funds used to accomplish the removal. This argument does not support the petition's proposal for NRC to amend its regulations.

6. *Comment:* One commenter stated that licensees take all measures necessary to protect public health and safety and the environment and will continue to do so, notwithstanding leaving MRCs onsite.

NRC Response: This comment was made in response to the petition's assertion that leaving MRCs onsite ''can give rise to adverse environmental impacts if not properly managed.'' The NRC has not found that storing MRCs onsite creates a health and safety issue that can only be resolved by the immediate removal of MRCs. If it does create a health and safety issue, the Commission will address this issue directly, rather than by reversing financial policy that may or may not result in the actual disposal of MRCs.

7. *Comment:* Some commenters cited the burden placed on licensees to develop and submit exemption requests, and on the NRC staff to process them as problematic. They believe that the proposal provides a standardized approach which presumably would be less burdensome.

NRC Response: The NRC would not anticipate any reduction in burden on licensees or the staff under the petitioner's proposal. Any request to withdraw funds, whether under 10 CFR 50.12 or 10 CFR 50.82 as proposed to be amended, would have to be submitted and decided on a case-by-case basis and would not be susceptible to generic processing.

8. *Comment:* A commenter stated that the petition, if granted, would provide an opportunity to obtain rate regulator views.

NRC Response: The requirement that licensees provide copies of withdrawal requests to rate regulators would be of value if these regulators actually provided their views, particularly because they, and not the NRC, are principally responsible for economic matters affecting licensees.

9. *Comment:* A commenter stated that current regulations do not consider that MRCs would need to be replaced during operations and do not address the significant burden on licensees to store MRCs until decommissioning.

NRC Response: The 1996 statement of considerations [61 FR 39293; July 29, 1996], discussing a comment that the NRC ''should allow licensees to withdraw decommissioning trust funds to dispose of structures and equipment no longer being used for operating plants,'' cited by the petition itself, clearly demonstrates that the Commission was aware that some MRCs would need to be replaced during operations. Whether current regulations address the purported ''significant burden on licensees to store MRCs'' is of no bearing, because regulations do not require such storage, and licensees have never asserted that they are financially incapable of disposing of MRCs during operations without withdrawing decommissioning trust funds.

10. *Comment:* One commenter stated that licensees with at least 20 years remaining on their licenses should be able to use decommissioning trust funds for the disposal of MRCs before decommissioning (without specific NRC approval) upon providing notice to the NRC with a copy to the rate regulator and providing an estimate of the costs for the disposal. The commenter asserted that there will be ample time to accumulate funds and early disposal will allow more funds to be available in the future.

NRC Response: This ''comment'' is actually a proposal that goes beyond the proposal made by the petition. The key feature is that no NRC approval would be required. A major necessary assumption underlying the comment is that any plant with at least 20 years left to operate would continue to do so notwithstanding the possibility of a crippling accident or adverse economic conditions, and continue to be able to accumulate funds. This comment is outside the scope of the petition's proposal, and therefore is accorded no further consideration.

Reason for Denial

The NRC concludes that the arguments made by the petitioner and the commenters are not sufficiently

persuasive to support the proposed rulemaking. The NRC's policy on not using decommissioning trust funds for the early disposal of MRCs during operations is prudent and necessary generically to preserve and protect such funds. Other sources of funds can be used to dispose of MRCs during operations. Furthermore, under 10 CFR 50.12, licensees may request an exemption to permit withdrawal of decommissioning trust funds to dispose of MRC's, which will be reviewed on a case-by-case basis in extraordinary circumstances. Therefore, the Commission denies PRM–50–88 filed by Energy*Solutions*.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland, this 3rd day of October, 2008.

Bruce S. Mallett,

Acting Executive Director for Operations.

[FR Doc. E8–24897 Filed 10–17–08; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 101, 102, 104, 110, 113, 400, 9001, 9003, 9031, and 9033

[Notice 2008–11]

Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-financed Candidates

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission (''Commission'') requests comments on the proposed deletion of its rules regarding increased contribution limits and coordinated party expenditure limits for Senate and House of Representatives candidates facing self-financed opponents. These rules were promulgated to implement sections 304 and 319 of the Bipartisan Campaign Reform Act of 2002, known as the ''Millionaires' Amendment.'' In *Davis* v. *Federal Election Commission,* the Supreme Court held that sections 319(a) and (b), regarding House of Representatives elections, were unconstitutional. The Court's holding also applies to the contribution and spending limits in section 304 regarding Senate elections. The Commission, therefore, proposes to remove its current rules that implement the Millionaires' Amendment. In addition, the Commission proposes to retain certain other rules that generally are applicable throughout the Federal Election Campaign Act of 1971, as amended (the ''Act'' or ''FECA''). The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before November 21, 2008.

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

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Neven F. Stipanovic, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission seeks to revise its current regulations to reflect the Supreme Court's decision in *Davis* v. *Federal Election Commission,* 554 U.S.___, 128 S. Ct. 2759 (2008) that invalidated the Millionaires' Amendment. The Commission proposes to delete its current rules at 11 CFR 100.19(g), 104.19, 110.5(b)(2), and Part 400. It proposes to retain and revise its current rules at 11 CFR 100.33, 100.153, 101.1, 102.2(a)(1)(viii), 113.1(g)(6)(ii), 9001.1, 9003.1(b)(8), 9031.1, and 9033.1(b)(10). It proposes to retain unchanged its current rules at 11 CFR 110.1(b)(3)(ii)(C), 116.11, 116.12, and 9035.2(c).

I. Background

The Millionaires' Amendment [1] of the Bipartisan Campaign Reform Act of 2002, Public Law 107–155, (March 27, 2002) (''BCRA''), increased certain contribution limits and coordinated party expenditure limits for Senate and House of Representatives candidates facing opponents who spent significant amounts of personal funds. When a self-financed opponent spent personal funds above a certain threshold amount, the Millionaires' Amendment permitted a candidate to accept individual contributions under increased contribution limits. 2 U.S.C. 441a(i) and 441a–1(a). When certain other threshold amounts were reached, the Millionaires' Amendment also allowed national and state political party committees to make unlimited coordinated party expenditures on behalf of the candidate in the general election. *Id.*

On December 19, 2002, the Commission approved interim final rules to implement the Millionaires' Amendment. *See Interim Final Rules on Increased Contribution and Coordinated Party Expenditure Limits for Candidates Opposing Self-Financed Candidates,* 68 FR 3970 (Jan. 27, 2003) (''Interim Final Rules''). The Commission sought public comments on the Interim Final Rules, as well as on specific issues discussed in the Explanation and Justification. No comments were received. These Interim Final Rules were in effect during the 2004 and 2006 election cycles, and the beginning of the 2008 election cycle.

On June 26, 2008, the Supreme Court invalidated the Millionaires' Amendment. In *Davis*, the Supreme Court reviewed a challenge by a self-financed candidate who triggered the Millionaires' Amendment in the 2004 and 2006 elections for the House of Representatives. The Supreme Court held that the House of Representatives provision of the Millionaires' Amendment was unconstitutional because it violated the plaintiff's First Amendment rights. 128 S.Ct. at 2775. The Supreme Court invalidated the entire BCRA section 319 relating to House elections, including the increased contribution limits in 319(a) and its companion disclosure requirements in 319(b). The Court reasoned that the Millionaires' Amendment imposed a substantial burden on the plaintiff's exercise of his First Amendment right to use personal funds for campaign speech, and that the burden was not justified by any governmental interest in eliminating corruption or the perception of corruption. 128 S.Ct. at 2772–73.

On July 25, 2008, the Commission issued a Public Statement that, in light of the *Davis* decision, it would no longer enforce the Millionaires' Amendment. *See* Press Release, Public Statement on the Supreme Court's Decision in *Davis* v. *FEC,* July 25, 2008, *available at*

[1] Section 304 of BCRA added a new paragraph (i) to 2 U.S.C. 441a, which addressed Senate elections. Section 319 of BCRA added a new section 441a–1 to the Act, which addressed elections for the House Representatives. The Senate provisions also added new notification and reporting requirements in 2 U.S.C. 434.