

DEC -7 2000



FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA ITEM
For Meeting of: 12-14-00

MEMORANDUM

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence M. Noble
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SUBJECT: Regulations Priorities

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COMMISSION

At the direction of the Regulations Committee, the Office of General Counsel has prepared the following list of priorities regarding the Commission's ongoing rulemakings. We have divided these projects into several groups: 1) those that the Commission previously considered to be the highest priority; 2) those that need to be completed when the top priority rulemakings permit; 3) those that are being held in abeyance pending litigation or more pressing matters; 4) those that should be discontinued; 5) new projects that merit consideration as other rulemakings are completed and as resources permit; and 6) new rulemakings to be held in abeyance.

Rulemaking priorities were last considered by the Commission on July 13, 2000. See Agenda Doc. # 00-66. Since that time, the following rulemakings have been completed and therefore have been removed from the list:

- Mandatory Electronic Filing of Reports
- Election Cycle Reporting for Authorized Committees
- PAC Reporting -- Petition for Rulemaking filed by the Project on Government Oversight

In addition to the projects listed below, the Regulations staff will need to devote a certain amount of time in the next few weeks and months to the following—

- Legal Review FECA assignments
- Case Management System and PC Docs
- Issues arising under the new administrative fine program
- Announcement of Effective Date for the coordination rules after transmittal to Congress and expiration of legislative days

Top Priority Rulemaking Projects

1. Lines of Credit for Loans to Candidates; Independent Expenditure Reporting (11 C.F.R. § 100.7 and 104.5) [staff assignment pending]

Public Law 106-346, as enacted on October 23, 2000, included amendments to 2 U.S.C. § 431(8)(B) to exclude from the definition of "contribution" loans that candidates receive from brokerage accounts, lines of credit, or other credit instruments as long as the loans were made under commercially reasonable terms and were from a source that provides such loans in the normal course of the person's business. Public Law 106-346 also included two amendments to 2 U.S.C. § 434: (1) it revised paragraph (c)(2) to make clear that certain independent expenditure statements made near to an election must be filed within 24 hours; and (2) it added new paragraph (d) to allow committees making independent expenditures but not filing electronically to submit their reports by fax or email. These statutory changes take effect for elections after January, 2001. OGC recommends that a rulemaking be begun to implement these statutory amendments and be given top priority.¹

2. Soft Money -- Petition for Rulemaking (11 C.F.R. Parts 100, 102, 104, 106, 110 and 114) [Paul Sanford]

This Office recommends that the Commission schedule the alternative versions of the draft final rules, which were previously circulated, for consideration as soon as is feasible after the beginning of the year.

3. Political Organizations (11 C.F.R. § 100.5) [Rita Reimer]

This Office circulated a draft Advance Notice of Proposed Rulemaking to all Commissioners on November 29, which was discussed by the Regulations Committee on December 1. OGC recommends that this project continue to be a high priority.

¹ Note that a rulemaking regarding loans to political committees by brokerage firms is currently being held in abeyance. That rulemaking should be rolled into this high priority project.

4. The Internet and Federal Election Campaigns [Paul Sanford]

OGC is preparing a list of issues and preliminary recommendations so that we may obtain input from the Regulations Committee as to the proposals to be included in the Notice of Proposed Rulemaking. We recommend this rulemaking remain a top priority.

Second Priority Projects

5. Disgorgement of Illegal Contributions (11 C.F.R. Part 103) [Mai Dinh]

This Office recommends that the NPRM on the disgorgement of illegal contributions remain a secondary priority project.

6. Voting Records and Voter Guides – Petition for Rulemaking (11 C.F.R. § 114.4(c)(4) and (c)(5)) [Rita Reimer]

OGC recommends that this rulemaking remain a secondary priority project. We also recommend that it be broadened to cover not only the petition for rulemaking on voting records and voter guides, but also other portions of 11 C.F.R. Part 114 that are affected by the final rules on expenditures for coordinated general public political communications and independent expenditures.

7. Party Committee Filing of 12 Day Pre-General Election Reports (2 U.S.C. § 434(b)) [staff assignment pending]

This Office recommends that work on this rulemaking commence once resources devoted to higher priority projects become available.

Rulemaking Projects To Be Held in Abeyance

8. Coordinated and Independent Expenditures- Part 2 (11 C.F.R. § 110.7) [Rita Reimer]

This Office recommends that the Commission hold in abeyance the portion of the coordinated expenditure rulemaking addressing expenditures by party committees that are coordinated with their candidates, pending resolution by the Supreme Court of *Colorado Republicans II*.

9. Candidate Debates -- Petition for Rulemaking (11 C.F.R. § 110.13) [Paul Sanford]

OGC recommends that this rulemaking continue to be held in abeyance pending resolution of ongoing litigation.

10. Allocation of Travel Expenses (11 C.F.R. § 106.3) [Rita Reimer]

This Office recommends that the rulemaking on the allocation of travel expenses continue to be held in abeyance. This project could also be expanded somewhat to consider whether to add a new exception to the definition of "contribution" in 11 C.F.R. § 100.7(b) for candidate travel on aircraft owned by individuals or other entities, which would be similar to the 11 C.F.R. § 114.9(e) exemption for corporations and labor organizations.

11. Recordkeeping and Reporting (11 C.F.R. Parts 102 and 104) [Rita Reimer]

OGC recommends that this rulemaking continue to be held in abeyance to permit time to assess what further changes may be needed in light of several new programs, including election cycle reporting, mandatory electronic filing, and the introduction of new forms.

Rulemaking Projects To Be Terminated

12. Records of Payroll Deduction Authorization (11 C.F.R. Parts 102 and 104) [staff assignment pending]

OGC recommends that this rulemaking, which is currently a secondary priority project, be terminated.

13. Compliance Procedures (11 C.F.R. Part 111) [Cheryl Fowle]

On July 13, 2000, the Commission voted to direct this Office to prepare a Notice of Disposition to close the rulemaking on compliance procedures. OGC recommends no change to this status. As resources permit, a smaller project could be initiated to draft a new FEC Directive covering the following topics:

- admonishment letters
- pre-probable cause conciliation
- prohibition against deponents taping their depositions
- statute of limitations tolled by an extension of time

14. Contributions by U.S. Subsidiaries of Foreign Corporations in Federal, State, and Local Elections (11 C.F.R. § 110.4(a)) [Brad Litchfield]

OGC recommends that this rulemaking, which is currently being held in abeyance, be terminated.

15. Legibility of Filed Reports (11 C.F.R. Part 104) [staff assignment pending]

OGC recommends that this rulemaking, which is currently being held in abeyance, be terminated.

16. Definition of Personal Funds for Contributors (11 C.F.R. § 110.10) [Paul Sanford]

OGC recommends that this rulemaking, which is currently being held in abeyance, be terminated.

Additional Regulations Projects That Could Be Initiated

In consultation with the Regulations Committee, OGC has identified the following topics for which there appears to be sufficient interest on the part of the Commission to begin new rulemakings as resources permit.

17. Substantive and Procedural Changes to the Public Financing Rules (11 C.F.R. Part 9001 - 9039)

OGC recommends that, given the magnitude and complexity of this rulemaking, work begin this Summer or Fall on revisions to these regulations. Topics identified to date include:

- Initial and final determinations for minor party pre-election funding when there is a dispute as to which candidate qualifies for public funding (11 C.F.R. § 9005.1(b))
- Restoration of paragraph (a)(4)(iii) to 11 C.F.R. § 9004.4 regarding GELAC payment of salary and overhead expenses after the end of the expenditure report period
- Establishment of GELACs by new and minor party nominees
- New procedures for handling complaints that urge the Commission to deny public funding to candidates
- Permissible purposes for donations to host committees (11 C.F.R. § 9008.52(c))

Additional topics will undoubtedly arise during the audits, repayments, and enforcement actions for the 2000 elections.

18. Joint Fundraising (11 C.F.R. § 102.17(c))

A revision could be made to the joint fundraising rules to replace the reporting of the total amount of prohibited contributions with the itemization of these amounts.

19. Aiding and Abetting Other Violations (11 C.F.R. Part 110)

A new section could be added to 11 C.F.R. Part 110 to address the aiding and abetting of other violations.

20. Disclaimers (11 C.F.R. § 110.11)

The disclaimer rules could be amended to require a disclaimer for phone banks where more than one hundred people receive substantially similar solicitations or communications containing express advocacy.

21. Permissible Sources of Civil Penalties (11 C.F.R. § 111.24)

A provision could be added to the compliance procedure rules specifying permissible sources for payment of civil penalties and the reporting of these sources.

22. Use of Corporate and Labor Organization Facilities (11 C.F.R. § 114.9(d))

This regulation could be amended to replace the after-the-fact reimbursement with advance payment. It could also be clarified as to whether "person" includes the SSF.

23. Ethics Rules (11 C.F.R. Part 7)

A rulemaking could be initiated to update the FEC's ethics rules in light of the Office of Government Ethics' regulations on standards of conduct for Executive Branch employees, and to eliminate the overlap between the FEC's rules and OGE's rules.

24. Qualification As a State Party Committee

A new provision could establish a method for qualifying as a state committee of a political party, either through the AO process or through procedures administered by RAD, or by some other method.

25. Touhy Regulations

New rules could be issued to allow the Commission to quash subpoenas ordering Commission staff to appear as witnesses in civil cases.

Additional Regulations Projects to be Held in Abeyance

26. "MCFL Corporations" Rules (11 C.F.R. § 114.10)

The rules governing qualified nonprofit corporations could be amended to permit a small amount of corporate contributions. OGC recommends postponing a decision on beginning a new rulemaking until the resolution of the current litigation.

27. Express Advocacy Definition (11 C.F.R. § 100.22(b))

It has been suggested that the Commission repeal part of the definition of "express advocacy" located at 11 C.F.R. 100.22(b). This Office recommends that a decision be deferred pending the outcome of ongoing litigation.

28. Alternative Dispute Resolution (11 C.F.R. Part 111)

OGC recommends that the Commission wait until the new alternative dispute resolution program has been in place for at least a year before assessing the need to add a new subpart C to 11 C.F.R. Part 111 to set forth procedures on alternative dispute resolution.

Recommendation

The Office of General Counsel recommends that the Commission approve the above listing of rulemaking priorities.

