



FEDERAL ELECTION COMMISSION
Washington, DC 20463

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July 10, 2009

AGENDA ITEM
For Meeting of: 07-16-09

SUBMITTED LATE

MEMORANDUM

TO: The Commission

FROM: Thomasenia P. Duncan *pch*
General Counsel *for*

Rosemary C. Smith *RCS*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Joshua S. Blume *JSB*
Attorney

SUBJECT: Draft Final Rule on Reorganization of National Voter Registration Act Regulations

Attached is a draft Final Rule and Explanation and Justification that would transfer responsibility for administering the National Voter Registration Act regulations (11 CFR part 8) from the Commission to the Election Assistance Commission, pursuant to section 802 of the Help America Vote Act of 2002.

We request that this draft be placed on the agenda for July 16, 2009.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Part 8**

3 [Notice 2009 - __]

4 **ELECTION ASSISTANCE COMMISSION**

5 **11 CFR Part 9428**

6 **Reorganization of National Voter Registration Act Regulations**

7
8 **AGENCIES:** Federal Election Commission; Election Assistance Commission

9 **ACTION:** Final Rule.

10 **SUMMARY:** The Federal Election Commission (FEC) and the Election Assistance
11 Commission (EAC) are jointly taking action to transfer regulations
12 implementing the National Voter Registration Act of 1993 (NVRA) from
13 the FEC to the EAC. The Help America Vote Act of 2002 transferred
14 the FEC's former statutory authority regarding the NVRA regulations to
15 the EAC. Further information is provided in the supplementary
16 information that follows.

17 **DATES:** This rule is effective [INSERT DATE 30 DAYS FROM DATE OF
18 PUBLICATION IN THE FEDERAL REGISTER].

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1 **FOR FURTHER**
2 **INFORMATION**

3 **CONTACT:** Ms. Tamar Nedzar, Attorney, Election Assistance Commission, 1225
4 New York Avenue, NW., Suite 1100, Washington, D.C. 20005, (202)
5 566-3100 or (866) 747-1471; or Mr. Robert M. Knop, Assistant General
6 Counsel, or Mr. Joshua S. Blume, Attorney, Federal Election
7 Commission, 999 E Street NW., Washington, D.C. 20463, (202) 694-
8 1650 or (800) 424-9530.

9 **SUPPLEMENTARY**
10 **INFORMATION:**

11 **Background**

12 The National Voter Registration Act of 1993 (“NVRA”)¹ required the Federal Election
13 Commission, in consultation with the chief election officers of the States, to develop a mail
14 voter registration application form for elections to Federal office, and to submit to Congress no
15 later than June 30 of each odd-numbered year (beginning June 30, 1995) a report that assesses
16 the impact of the NVRA and recommends improvements in Federal and State procedures,
17 forms, and other matters affected by the NVRA. 42 U.S.C. 1973gg-7(a)(2), (a)(3) (1993). The
18 NVRA also assigned to the FEC the responsibility of prescribing, in consultation with the chief
19 election officers of the States, such regulations as are necessary to carry out the aforementioned
20 functions. 42 U.S.C. 1973gg-7(a)(1) (1993). The FEC issued regulations implementing these
21 NVRA requirements on June 23, 1994.² These regulations are all currently codified in Part 8 of
22 title 11, Chapter 1 of the Code of Federal Regulations (“11 CFR Part 8”).

¹ Pub. L. 103-31, 107 Stat. 77, 42 U.S.C. 1973gg-1 *et seq* (1993).

² 59 FR 32323 (June 23, 1994).

1 Section 802 of the Help America Vote Act of 2002 (“HAVA”)³ transferred the FEC’s
 2 responsibilities under the NVRA to the EAC – an independent Federal agency created by
 3 HAVA⁴ with responsibilities related to various aspects of Federal election administration.
 4 42 U.S.C. 15532.⁵ Accordingly, in order to facilitate the EAC’s exercise of its statutory
 5 authority, the FEC is transferring the regulations implementing Section 9(a) (42 U.S.C.
 6 1973gg-7(a)) of the NVRA to the EAC.

7 **Transfer and Redesignation of Part 8**

8 The FEC and the EAC, through this joint final rule, are removing the regulations in
 9 11 CFR Part 8 and simultaneously recodifying them in Chapter II of Title 11, which houses
 10 regulations created and administered by the EAC. Part 8 is simultaneously redesignated as Part
 11 9428. Accordingly, 11 CFR 8.1 through 8.7 are redesignated as new 11 CFR 9428.1 through
 12 9428.7. This is illustrated in a table below.

Part 8	Heading	New Part 9428
	Subpart A – General Provisions	
§ 8.1	Purpose & scope.	§ 9428.1
§ 8.2	Definitions.	§ 9428.2
	Subpart B – National Mail Voter Registration Form	
§ 8.3	General information.	§ 9428.3
§ 8.4	Contents.	§ 9428.4
§ 8.5	Format.	§ 9428.5
§ 8.6	Chief state election official.	§ 9428.6
	Subpart C – Recordkeeping and Reporting	

³ Pub. L. 107-252, 116 Stat. 1726, 42 U.S.C. 15532 (2002).

⁴ 42 U.S.C. 15321.

⁵ “There are transferred to the Election Assistance Commission established under section 201 all functions which the Federal Election Commission exercised under section 9(a) of the National Voter Registration Act of 1993 before the date of the enactment of this Act.” HAVA was enacted on October 29, 2002.

§ 8.7	Contents of reports from the states.	§ 9428.7
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The FEC and EAC are also making conforming changes to the rules to replace references to rules in Part 8 with references to corresponding rules in Part 9428, and to replace references to the “Federal Election Commission” with references to the “Election Assistance Commission.” The rule does not make any substantive changes to the new Part 9428 regulations. The EAC may exercise its rulemaking authority to make substantive and technical changes to these rules in the future.

Administrative Procedure Act

The FEC and the EAC find that good cause exists for adopting this rule as a final rule and without public notice and comment under 5 U.S.C. 553(b) because this rule simply relocates and redesignates the regulations in 11 CFR Part 8, while making only minor conforming technical changes and no substantive changes to those regulations. The rule reflects the transfer of functions contemplated by the Help America Vote Act of 2002. Accordingly, public notice and comment is unnecessary. 5 U.S.C. 553(b)(B).⁶ Further, because the transfer of the regulations is vital to the EAC’s ability to function in an area of core responsibility assigned by Congress, the additional delay that would be incurred by resorting to notice and comment procedures would be contrary to the public interest. 5 U.S.C. 553(b)(B). See, e.g. National Nutritional Foods Assoc. v. Kennedy, 572 F.2d 377, 384-85 (2nd Cir. 1978), quoting Senate Report, No. 752, 79th Cong. 1st Sess. (1945).

⁶ Should the EAC propose substantive changes to these regulations on future occasions, it will provide notice and an opportunity to comment pursuant to the Administrative Procedure Act.

1 **Transmittal of Final Rule to Congress**

2 Under the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1),
3 agencies must submit final rules to the Speaker of the House of Representatives and the
4 President of the Senate before they take effect. The final rule that follows was transmitted to
5 Congress on [DATE].

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

7 Because no notice of proposed rulemaking is required for this rule under the
8 Administrative Procedure Act (5 U.S.C. 553), the provisions of the Regulatory Flexibility Act
9 (5 U.S.C. 601 et seq.) do not apply. See 5 U.S.C. 604(a).

10 **Paperwork Reduction Act**

11 The provisions of the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13, 44
12 U.S.C. chapter 35, and its implementing regulations at 5 C.F.R. part 1320, require that an
13 agency subject to PRA submit to OMB for approval information collection and recordkeeping
14 requirements associated with agency actions. The FEC is statutorily exempted from the
15 provisions of the PRA while the EAC is not. Consequently, the regulations currently at 11
16 C.F.R. part 8 do not have an associated OMB control number; whereas the transferred
17 regulations at 11 C.F.R. part 9428 are required to have an associated OMB control number.
18 Accordingly, concurrent with this joint rulemaking activity, the EAC will independently
19 publish a separate PRA notice seeking emergency clearance.

20 **List of Subjects**

21 11 CFR Part 8 and 11 CFR Part 9428
22 Elections, reporting and recordkeeping requirements.

1 For the reasons discussed in the preamble, the Federal Election Commission and the
2 Election Assistance Commission amend chapters I and II of title 11 of the Code of Federal
3 Regulations as follows:

4 **TITLE 11 – FEDERAL ELECTIONS**

5 **CHAPTER 1 – FEDERAL ELECTION COMMISSION**

6 **PART 8 – [REDESIGNATED AS PART 9428]**

7 1. Transfer 11 CFR Part 8 from Chapter I to Chapter II and redesignate as 11 CFR Part
8 9428.

9 **CHAPTER II – ELECTION ASSISTANCE COMMISSION**

10 **PART 9428 – NATIONAL VOTER REGISTRATION ACT (42 U.S.C. 1973gg-1 et seq.)**

11 2. The authority citation for the newly redesignated 11 CFR part 9428 is revised to read
12 as follows:

13 **Authority:** 42 U.S.C. 1973gg-1 et seq., 15532

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3. Amend the newly redesignated Part 9428 as follows:

<u>Amend</u>	<u>By removing the reference to</u>	<u>And adding in its place</u>
§ 9428.3(a)	11 CFR 8.4	11 CFR 9428.4
§ 9428.4(a)(6)(ii)	11 CFR 8.6(c)	11 CFR 9428.6(c)
§ 9428.5(a)	“Federal Election Commission’s”	“Commission’s”
§ 9428.5(b)	11 CFR 8.4(c)	11 CFR 9428.4(c)
§ 9428.5(f)(2)	11 CFR 8.4(b)(1), (6), and (7)	11 CFR 9428.4(b)(1), (6), and (7)
§ 9428.5(f)(2)	11 CFR 8.4(b)(2)	11 CFR 9428.4(b)(2)
§ 9428.6(b)	11 CFR 8.4(a)(2)	11 CFR 9428.4(a)(2)
§ 9428.7(a)	“Federal Election Commission, 999 E Street, NW., Washington, DC 20463.”	“Election Assistance Commission, 1225 New York Avenue, NW., Washington, DC 20005.”

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3 On behalf of the Commission,

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6 _____
7 Steven T. Walther
8 Chairman
9 Federal Election Commission

Gineen B. Beach
Chair
Election Assistance Commission

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11 DATED _____
12 BILLING CODE: 6820-KF