

# 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.

## FEDERAL ELECTION COMMISSION

### 11 CFR Part 110

[Notice 2009–16]

#### Candidate Debates

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of Disposition of Petitions for Rulemaking.

**SUMMARY:** The Commission announces its disposition of two Petitions for Rulemaking regarding the Commission's candidate debate regulations. The first petition, filed on May 25, 1999 by Mary Clare Wohlford, William T. Wohlford, and Martin T. Mortimer ("Wohlford Petition"), urged the Commission to amend its rules so that the objective criteria for inclusion in Presidential and Vice Presidential debates would be established by the Commission itself, and not left to the discretion of debate staging organizations. The second petition, filed on April 10, 2002 by several major news organizations, urged the Commission to amend its rules to state explicitly that the sponsorship by a news organization (or a related trade association) of a debate among candidates does not constitute an illegal corporate campaign contribution or expenditure in violation of the Federal Election Campaign Act of 1971, as amended ("the Act") and that the Commission would have no jurisdiction over such sponsorship. The Commission has decided not to initiate a rulemaking in response to either of these petitions. The petitions are available for inspection in the Commission's Public Records Office, and on its Web site, <http://www.fec.gov>.

**DATES:** July 28, 2009.

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General Counsel, or Ms. Esther D. Heiden, Staff Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** On May 25, 1999, the Commission received a Petition for Rulemaking from Mary

Clare Wohlford, William T. Wohlford, and Martin T. Mortimer. On April 10, 2002, the Commission received a Petition for Rulemaking from CBS Broadcasting Inc.; American Broadcasting Companies Inc.; Belo Corp.; Cox Enterprises, Inc.; Gannett Co., Inc.; the National Association of Broadcasters; National Broadcasting Co., Inc.; News America Incorporated; The New York Times Company; Post-Newsweek Stations, Inc.; the Radio and Television News Directors Association; the Society of Professional Journalists; and Tribune Company ("News Media Petition"). Both petitions concern the Commission's candidate debate regulations at 11 CFR 110.13. Section 110.13(c) states, *inter alia*, that "[f]or all debates, staging organization(s) must use pre-established objective criteria to determine which candidates may participate in a debate."

The Wohlford Petition asserts that the objective criteria for inclusion in Presidential and Vice Presidential debates should be established by the Commission itself, and not left to the discretion of debate staging organizations. The petition urges the Commission to revise section 110.13(c) to set forth mandatory criteria for participation in Presidential and Vice Presidential debates. Specifically, the Wohlford Petition recommends that the debates be open to any candidate that: (1) Has the mathematical potential to win the election in that he or she is on the ballot in enough states to earn 270 Electoral College votes; and (2) has proven his or her viability by having spent at least \$500,000 on the campaign by the end of the month preceding the date of the first scheduled debate held on or after September 1 of the election year. In addition, the Wohlford Petition urges that candidates have equal access to debates held before September 1 without regard to the above requirements.

The News Media Petition asserts that 11 CFR 110.13(c) should be amended or repealed. Specifically, it asserts that any regulation of the sponsorship by a news organization (or a related trade association) is: (1) Contrary to the clear intent of Congress in adopting the Act; (2) irreconcilable with the Commission's own decisions that media entities do not violate the Act by providing free time to candidates; and (3) in conflict with long-established policies of the Federal

Communications Commission concerning the presentation of campaign debates by broadcasters. Finally, the News Media Petition asserts that 11 CFR 110.13(c) is unconstitutional because it does not advance the purpose of preventing corruption or the appearance of corruption in the political process, which the Supreme Court has held are 'the only legitimate and compelling government interests thus far identified for restricting [First Amendment rights in the regulation] of campaign finances.'" (quoting *FEC v. National Conservative Political Action Committee*, 470 U.S. 480, 96–97 (1985)). The News Media Petition urges the Commission to draft new regulations that explicitly declare that sponsorship of a candidate debate by a news organization or a related trade association is legal under the Act and to refrain from any further regulatory jurisdiction over such sponsorship.

The Commission published a Notice of Availability ("first NOA") on June 10, 1999, to seek comment on the Wohlford Petition, 64 FR 31159 (June 10, 1999), and subsequently extended the comment period on July 21, 1999, 64 FR 39095 (July 21, 1999). The Commission received approximately 1,000 comments in response to the first NOA. Most of the comments expressed support for the Wohlford Petition. Several comments, however, expressed opposition to the establishment of mandatory objective criteria by the Commission for participation in Presidential and Vice Presidential debates.

The Commission published a second Notice of Availability ("second NOA") on May 9, 2002 to seek comment on the News Media Petition. 67 FR 31164 (May 9, 2002). The Commission received one substantive comment in response to the second NOA, which generally supported the News Media Petition. The Commission also received a response from the IRS indicating it did not have substantive comments. Copies of comments on both NOAs are available on the Commission's Web site at <http://www.fec.gov> and in the Commission's Public Records Office.

A significant period of time has passed since the petitions were filed. During that time many Presidential and Vice Presidential debates have taken place. Additionally, with the advent of new ways to communicate, including

the Internet and the new methods of communication it affords, there are now many new ways that issues are debated among candidates. The factors that precipitated the filing of the petitions may now be viewed much differently by some or all of the petitioners. Further, the many comments that were received from the public may no longer, in the view of those commenters, accurately represent positions they would now advocate to the Commission on the issues. Moreover, no formal requests have been made by the petitioners in recent times to activate the petitions or to invoke the jurisdiction of the Commission to consider the petitions.

In view of the passage of time, the events which have transpired, as well as other factors discussed above, the Commission believes that any consideration of the issues raised in the Wohlford Petition and the News Media Petition should be based on newly filed petitions. Accordingly, the Commission declines to open a new rulemaking and will not issue a Notice of Proposed Rulemaking in response to either of the petitions. The Commission emphasizes that its decision not to initiate a rulemaking at this time does not foreclose the Commission from considering future petitions seeking the same or similar relief.

On behalf of the Commission.

Dated: July 22, 2009.

**Steven T. Walther,**

*Chairman, Federal Election Commission.*

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## DEPARTMENT OF THE INTERIOR

### National Indian Gaming Commission

#### 25 CFR Part 515

RIN 3141-AA21

#### Privacy Act Procedures

**AGENCY:** National Indian Gaming Commission, Department of the Interior.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The purpose of this document is to propose to amend the procedures followed by the National Indian Gaming Commission (Commission) when processing a request under the Privacy Act of 1974. The proposed amendments make the following changes to the current regulations. Section 515.3 changes the address of the Commission, provides a list of items to include in requests to the Commission, and provides the necessary requirements for third party requests. Section 515.4

includes the Commission policy for dealing with other agencies and designates an individual responsible for making initial Privacy Act determinations. Section 515.5 explains what constitutes an adverse determination. Section 515.6 changes the time for appeals of adverse determinations from 180 days to 30 days. Section 515.8 details when the Commission is required to provide an accounting of the records it discloses. Finally, Section 515.12 updates the list of records that are exempt from disclosure under the Privacy Act.

**DATES:** Written comments on this proposed rule must be received on or before September 11, 2009.

**ADDRESSES:** Comments may be mailed to the National Indian Gaming Commission, FOIA/PA Officer, 1441 L Street, NW., Suite 9100, Washington, DC 20005, delivered to that address between 8:30 a.m. and 5:30 p.m., Monday through Friday, or faxed to (202) 632-7066 (this is not a toll free number). Comments may be inspected between 9 a.m. and noon and between 2 p.m. and 5 p.m., Monday through Friday, at the above address. Comments may also be submitted electronically at <http://www.regulations.gov> or e-mailed to [pacomments@nigc.gov](mailto:pacomment@nigc.gov).

**FOR FURTHER INFORMATION CONTACT:**

Jeannie McCoy at (202) 632-7003 or by fax (202) 632-7066 (these numbers are not toll free).

**SUPPLEMENTARY INFORMATION:** The Indian Gaming Regulatory Act (IGRA), enacted on October 17, 1988, established the National Indian Gaming Commission. Congress enacted the Privacy Act, Public Law 93-579, 5 U.S.C. 552a, in 1974. The Commission originally adopted Privacy Act procedures on January 22, 1993. Now, the Commission has decided that the procedures need to be updated.

*Regulatory Flexibility Act:* The Commission certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The factual basis for this certification is as follows: This rule is procedural in nature and will not impose substantive requirements that would be considered impacts within the scope of the Act. For this reason, the Commission has concluded that the proposed rule will not have a significant impact on those small entities subject to the rule.

*Unfunded Mandates Reform Act:* The Commission is an independent regulatory agency, and, as such, is not

subject to the Unfunded Mandates Reform Act, 2 U.S.C. 1501 *et seq.*

*Small Business Regulatory Enforcement Fairness Act:* The proposed rule is not a major rule under 5 U.S.C. 804(2), the Small Business Regulatory Enforcement Fairness Act. The proposed rule will not result in an annual effect on the economy of more than \$100 million per year; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S. based enterprises.

*Paperwork Reduction Act:* The proposed rule does not contain any information collection requirements for which the Office of Management and Budget approval under the Paperwork Reduction Act (44 U.S.C. 3501-3520) would be required.

*National Environmental Policy Act:* The Commission has determined that the proposed rule does not constitute a major Federal Action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environmental Policy Act of 1969.

#### List of Subjects in 25 CFR Part 515

Administrative practice and procedure, Privacy, Reporting and recordkeeping.

Accordingly for the reasons set forth above, the Commission is proposing to revise Part 515 of Title 25 to read as follows:

#### PART 515—PRIVACY ACT PROCEDURES

Sec.

- 515.1 Purpose and scope.
- 515.2 Definitions.
- 515.3 Request for access to records.
- 515.4 Responsibility for responding to requests.
- 515.5 Responses to requests for access to records.
- 515.6 Appealing denials of access.
- 515.7 Request for amendment or correction of records.
- 515.8 Requests for an accounting of record disclosure.
- 515.9 Fees.
- 515.10 Penalties.
- 515.11 General exemptions [Reserved]
- 515.12 Specific exemptions.

**Authority:** 5 U.S.C. 552a.

#### § 515.1 Purpose and scope.

This part contains the regulations the National Indian Gaming Commission (Commission) follows in implementing the Privacy Act of 1974. These