

FEDERAL ELECTION COMMISSION

11 CFR Part 200

[Notice 1992-12]

Administrative Regulations

AGENCY: Federal Election Commission.

ACTION: Final Rule.

SUMMARY: The Commission is creating a new subchapter B in chapter I of 11 CFR titled "Administrative Regulations." This subchapter will contain Commission regulations concerning administrative practice and procedure. The Commission is also publishing final rules on petitions for Rulemaking, the first part in subchapter B, to be found in 11 CFR part 200. These regulations provide the public with easy access to the procedures for filing rulemaking petitions with the Commission. In addition, the regulations delineate the process and agency considerations used for the disposition of petitions filed with the Commission. Finally, the regulations define what constitutes the agency record for the petition process. Further information is provided in the supplementary information which follows.

EFFECTIVE DATE: September 4, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: Section 553(e) of the Administrative Procedure Act ("APA") provides: "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule." 5 U.S.C. 553(e). Although the APA does not prescribe procedures for petitions made pursuant to section 553(e), the Attorney General's Manual on the APA states that every agency with rulemaking powers "should establish . . . procedural rules governing the receipt, consideration, and disposition of petitions filed." U.S. Department of Justice, Attorney General's Manual on the Administrative Procedure Act at 38 (1947).

The Commission endorsed a procedure for consideration of rulemaking petitions in April 1980 upon receipt of its first petition. In response to that petition, the Commission adopted internal guidelines to govern the petition process. See, Democratic National Committee and Democratic Senatorial Campaign Committee Petition for Rulemaking (Commission Memorandum No. 845 (4/9/80)).

Since the adoption of its procedures for the receipt and consideration of petitions, the Commission has received periodic requests for a description of those procedures. In an effort to make information on the petition process more readily available to the regulated public, the Commission on May 13, 1992, published a Notice of Proposed Rulemaking ("NPRM"), seeking comments on a proposal that these procedures be codified as part of title 11 of the Code of Federal Regulations, 57 FR 20430. No comments were received in response to this Notice.

The Commission's main purpose in adopting these rules is to aid the public by advising prospective petitioners what is necessary to activate Commission consideration of a petition for rulemaking and what the process will be upon receipt. By prescribing uniform format guidelines for the submission of petitions, the new rules will also help ensure that the Commission obtains from the outset the type of information needed for an informed decision on a rulemaking petition.

Statement of Basis and Purpose

Section 200.1. Purpose and Scope

This section summarizes the contents of this new part.

Section 200.2. Procedural Requirements

This section contains format and content requirements for the submission of petitions to the Commission pursuant to any of the Commission's governing statutes. It also allows the Commission to consider suggestions for rulemaking contained in an advisory opinion request or complaint without following the procedures of this part. The section offers petitioners the opportunity to submit proposals in draft regulatory form, but does not require this.

Section 200.3. Processing of Petitions

This section sets forth the procedures for consideration of rulemaking petitions.

Upon receipt of a petition, the Commission, upon recommendation of the Office of General Counsel, will publish a Notice of Availability in the Federal Register. The Notice of Availability will state that a petition has been filed with the Commission, that it is available for public inspection, and that comments are being solicited. The Notice of Availability will not take any position on the merits of the petition—the merits will not be considered until at least the expiration of the comment period on the Notice of Availability.

Depending upon the nature of the petition, the Commission has in the past

determined that additional procedures may contribute to its decision on whether to commence a rulemaking proceeding. These regulations retain the practice of initiating a Notice of Inquiry, an Advance Notice of Proposed Rulemaking, a public hearing or other procedures should the Commission deem this appropriate in connection with a particular rulemaking. The flexibility of these additional procedures permits the Commission to receive comments and additional information on other issues related to or raised by the petition.

Section 200.4. Disposition of Petitions

This section describes the Commission's actions after a decision whether to initiate a rulemaking has been made. If the Commission decides to initiate a rulemaking based on the petition, it will publish a Notice of Inquiry, an Advance Notice of Proposed Rulemaking ("ANPRM") or a Notice of Proposed Rulemaking, as appropriate, in the Federal Register. If the Commission decides not to initiate a rulemaking, it will publish a Notice of Disposition, include in that Notice a brief statement of the basis for the decision not to proceed, and notify the petitioner of this action.

The proposed rule would have provided for publication of a Notice of Disposition regardless of whether the Commission decided to initiate a rulemaking based on the petition. The NPRM requested comments on whether this should be necessary when the Commission has decided to proceed with a rulemaking. The Commission has decided that a Notice of Disposition need not be published unless it declines to act on a petition.

If the Commission denies a rulemaking petition, the Notice of Disposition provides the only opportunity to publicly state the reasons for the denial. If the Commission decides to open a rulemaking, its reasoning will be explained in other rulemaking documents. Publishing a separate Notice of Disposition is unnecessary under these circumstances.

This section also authorizes the Commission to reconsider a petition for rulemaking it has previously denied, if the petitioner submits a written request for reconsideration within 30 calendar days after the date of the denial and if, upon the motion of a Commissioner who voted with the majority that originally denied the petition, the Commission adopts the motion to reconsider by the affirmative vote of four members. This procedure is similar to that currently used for reconsideration of advisory opinions. See, 11 CFR 112.6.

Section 200.5. Agency Considerations

This section lists several factors that the Commission will consider in making its decision whether to initiate a rulemaking proceeding. These factors include the Commission's statutory authority; policy considerations; the desirability of proceeding on a case-by-case basis; and available agency resources. The list is not exhaustive, but suggests factors that can be taken into account in particular cases.

Section 200.6. Administrative Record

This section defines the exclusive agency record upon which the Commission bases its decision on the petition. Its purpose is to explain to the public what constitutes the official agency file on a rulemaking petition, as well as to help to identify the documents upon which the Commission relied in reaching its decision on the petition, for purposes of judicial review.

The NPRM requested comments on a proposal to include in the administrative record only comments received within the prescribed comment period. Under this proposal, anyone wishing to submit comments after the comment period had ended would have had to request an extension for good cause from the Commission. If granted, the comment period would have been formally extended for all prospective commenters, and a notice to that effect published in the Federal Register. However, the Commission has decided to follow its usual practice in dealing with comments received after the due date: While it is not obligated to consider them, it will do so at its discretion.