

FEDERAL ELECTION COMMISSION

11 CFR Chapter I

[Notice 1993-27]

Federal Elections

AGENCY: Federal Election Commission.

ACTION: Ratification of regulations.

SUMMARY: The Commission is ratifying its regulations at 11 CFR Chapter I. These regulations implement the Federal Election Campaign Act of 1971, as amended (the Act or FECA), the Presidential Election Campaign Fund Act, the Presidential Primary Matching Payment Account Act, and other statutes pertaining to the Commission's proceedings. This action is in response to an opinion in the court case, *FEC v. NRA Political Victory Fund, et al.*

DATES: The ratification of 11 CFR Chapter I relates back to the effective dates previously announced for each of the rules in 11 CFR Chapter I. This action is effective November 4, 1993.

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: On October 22, 1993, the Court of Appeals for the DC Circuit issued an opinion in *FEC v. NRA Political Victory Fund, et al.*, No. 91-5360, slip op. at 2 (D.C. Cir. Oct. 22, 1993), in which it held that the composition of the Commission, which included the Clerk of the House of Representatives and the Secretary of the Senate as *ex officio* members, violates the Constitution's requirement of separation of powers. On October 26, 1993, the Commission reconstituted itself as a body of six voting members subject to further judicial action.

In light of these events, the Commission is issuing this notice to alert the regulated community that the Commission is expressly ratifying its regulations and forms. The NRA decision concerned an enforcement action, and did not specifically address previous rulemakings or forms. Thus, ratification of 11 CFR Chapter I may not

be legally required or necessary. Nevertheless, the Commission is ratifying the current regulations to notify candidates, political committees and the general public that they should expect to operate under the same regulations that were in effect before the NRA decision was issued. Similarly, an explicit ratification of the forms will let those who have reporting obligations under the FECA know that they should continue to use the same forms and follow the same procedures and time frames for filing reports.

Ratification does not change any of the provisions of the regulations or the forms. Instead, it adopts and confirms the Commission's previous decisions promulgating the forms and regulations, and relates back to the time when those previous decisions became effective. Please note, however, that the rulemakings in progress will continue. Several rules implementing the Sunshine Act, the Freedom of Information Act, and the FECA disclosure provisions contain references to the *ex officio* members of the Commission. During such time as there are no *ex officio* members, those references have no effect.

The Commission's ratification of its regulations and forms is consistent with the procedural requirements set forth in the FECA, the Administrative Procedure Act (the APA), 5 U.S.C. 552 *et seq.*, and the Regulatory Flexibility Act, 5 U.S.C. 605(b). Section 438(d) of title 2, United States Code, and 26 U.S.C. 9009(c) and 9039(c) require that any rule or regulation prescribed by the Commission to carry out the provisions of titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated, together with a detailed explanation and justification. Similarly, 2 U.S.C. 438(d) requires the Commission to transmit forms and a detailed explanation and justification of them to Congress for 10 legislative days prior to prescribing them. Inasmuch as the title 2 and title 26 rules and FEC forms that the Commission would ratify have already undergone the requisite legislative periods, it is not necessary for them to be retransmitted to Congress for another 30 or 10 legislative days, respectively.

Similarly, ratification of 11 CFR chapter I is consistent with the APA provisions regarding notice and comment, and a delay in the effective date. The Commission has already followed these procedural requirements when the rules were initially promulgated. In addition, this is a

situation which qualifies for the good cause exemption to these requirements, given that these procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). Ratification of the Commission's regulations falls within the APA's good cause exception for several reasons. Notice, comment, and a delayed effective date are impracticable and contrary to the public interest as these procedures would inevitably result in a lengthy period of uncertainty during which time candidates, political committees, contributors and others would have insufficient guidance, and many of the FEC's programs would be significantly disrupted. Thus, there is a need to clarify the status of the regulations as promptly as possible. It is certainly true that such ratification responds to a circumstance beyond the Commission's control, namely the NRA decision. The effect of ratification may be limited in duration to the time necessary to resolve the NRA decision. Moreover, notice, comment and a delayed effective date are unnecessary because the Commission has already provided notice, received public comment and published identical final rules in the Federal Register and the Code of Federal Regulations. Given that there would be no changes in the Commission's rules or forms at this point, affected parties do not need time to get ready to operate under the ratified rules.

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to consider the potential impact of regulations on small businesses and small entities. It requires either the preparation of initial and final regulatory flexibility analyses or a certification of no significant economic impact on a substantial number of small entities. *Id.* The Commission has complied with these requirements in promulgating its regulations. Accordingly, nothing further is required if 11 CFR Chapter I is ratified.

Additional information regarding the ratification of 11 CFR Chapter I may be found in Agenda Document #93-94.

Dated: November 5, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

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