

**AGENDA DOCUMENT NO. 13-48**

RECEIVED  
FEDERAL ELECTION  
COMMISSION  
SECRETARIAT



FEDERAL ELECTION COMMISSION  
Washington, DC 20463

2013 NOV 20 PM 1:49

November 20, 2013

**AGENDA ITEM**

**MEMORANDUM**

TO: The Commission

For Meeting of 11-21-13

FROM: Lisa J. Stevenson  
Deputy General Counsel

*LJS*

**SUBMITTED LATE**

Adav Noti *AN*  
Acting Associate General Counsel

Robert M. Knop *RMK*  
Assistant General Counsel

Cheryl Hemsley *CAFH by RMK*  
Attorney

SUBJECT: Draft Interpretive Rule Regarding Date of Political Party Nominations of  
Candidates for Special Primary Elections in New York

Attached is a draft Notice of Interpretive Rule Regarding Date of Political Party  
Nominations of Candidates for Special Primary Elections in New York. We request that  
this draft be placed on the agenda for November 21, 2013.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **[Notice 2013-XX]**

3 **Date of Political Party Nominations of Candidates for Special Primary Elections in**  
4 **New York**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notice of interpretive rule.

7 **SUMMARY:** The Federal Election Commission is clarifying its interpretation of its  
8 rules for determining the date of a special primary election as those rules apply to  
9 nominations conducted under New York statutes that provide for a candidate to be  
10 nominated for a special election by a vote of a state or county party committee.

11 **DATES:** [Insert date of publication in FEDERAL REGISTER]

12 **FOR FURTHER**  
13 **INFORMATION**

14 **CONTACT:** Robert M. Knop, Assistant General Counsel, or Cheryl A.F. Hemsley,  
15 Attorney, 999 E Street NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

16 **SUPPLEMENTARY**  
17 **INFORMATION:**

18  
19 This Notice clarifies that, for purposes of the Federal Election Campaign Act of  
20 1971, as amended (the “Act”), and Commission regulations, the date of a special primary  
21 election under New York law is the date on which the political party committee votes to  
22 nominate the party’s candidate for the special general election, not the date on which the  
23 certification of that vote is filed. Because the Act and Commission regulations provide  
24 for separate contribution limits for each “election,”<sup>1</sup> the Commission issues this  
25 clarification to assist candidates and their authorized committees in distinguishing

---

<sup>1</sup> See 2 U.S.C. 441a(a)(1)(A); 11 CFR 110.1(b)(1), 110.2(b)(1).

1 contributions for special primary elections in New York from contributions for special  
2 general elections.

3         The Act provides that an “election” includes “a general, special, primary, or  
4 runoff election . . . [or] a convention or caucus of a political party which has authority to  
5 nominate a candidate.” 2 U.S.C. 431(1)(A), (B). Commission regulations define a  
6 “primary election” as an “election which is held prior to a general election, as a direct  
7 result of which candidates are nominated, in accordance with applicable State law, for  
8 election to Federal office in a subsequent election.” 11 CFR 100.2(c)(1).<sup>2</sup> A “special  
9 election” is an election to fill a vacancy in a Federal office and may be a primary,  
10 general, or runoff election. 11 CFR 100.2(f). Under the Act and Commission regulations,  
11 therefore, a special primary election is an election, convention, or caucus with the  
12 authority to nominate candidates in accordance with applicable state law for a subsequent  
13 general election that is held to fill a vacancy in a Federal office.

14         New York election law generally provides that “[p]arty nominations for an office  
15 to be filled at a special election shall be made in the manner prescribed by the rules of the  
16 party.” N.Y. Elec. Law 6-114. New York Democratic and Republican State party  
17 committee rules provide that the county committees within a vacant congressional district  
18 nominate candidates for a special election to the U.S. House of Representatives, and that  
19 the state committees nominate candidates for a special election to the U.S. Senate. *See*  
20 Party Rules New York State Democratic Committee, Art. VI, Sec. 2 (2012); Rules of the  
21 New York Republican State Committee, Art. VII, Rule 1 (June 9, 2011). Similarly, when

---

<sup>2</sup> Because the date of a special primary election for an independent or minor-party candidate is governed by different regulatory criteria, *see* 11 CFR 100.2(c)(4), this Notice encompasses only nominations by a major political party, which is a party whose candidate for President received at least 25 percent of the popular vote in the preceding presidential election. 26 USC 9002(6).

1 a vacancy in an elected office occurs too late for candidates to participate in a regularly  
2 scheduled primary, New York election law requires a party to nominate its candidate by a  
3 vote of the appropriate state or county party committee. See N.Y. Elec. Law 6-116.  
4 After a party committee votes to nominate a candidate, a “certificate of nomination shall  
5 be filed” with the appropriate election board certifying the committee’s vote. Id.; see also  
6 id. 6-144, 6-156. Failure to file this certification is “a fatal defect” in the nomination. Id.  
7 1-106.

8           Sections 6-114 and 6-116 vest special election nominating authority in the party  
9 committees, either directly or by operation of state party rules. Under these provisions,  
10 therefore, candidates are placed on the general election ballot “in accordance with  
11 applicable state law” as “a direct result” of the relevant party committee vote. See 11  
12 CFR 100.2(c)(1). Accordingly, the party committee vote is a “primary election” within  
13 the meaning of the Act and Commission regulations. See Advisory Opinion 2004-20  
14 (Farrell for Congress) (determining that party convention constituted primary election  
15 where convention’s endorsement of only one candidate caused candidate to be placed  
16 directly on general election ballot); Advisory Opinion 1992-25 (Owens for Senate  
17 Committee) (concluding that party convention constituted primary election where  
18 candidate would be placed directly on general election ballot if candidate received at least  
19 70% of votes at convention). The subsequent filing of a certification formalizes the  
20 nomination, but such a filing is not the primary election itself. See FEC v. Citizens for  
21 Senator Wofford, No. 1:CV-94-2057, slip op. at 8-10 (M.D. Pa. Sept. 27, 1995) (holding  
22 that state party convention constituted “primary election” under Act and Commission

1 regulations even though state law required party to file subsequent certificate of  
2 nomination with state).

3 For the foregoing reasons, the Commission issues this interpretive rule to clarify  
4 that the date of a special primary election held pursuant to N.Y. Elec. Law 6-114 or 6-116  
5 is the date of the party committee's nomination vote. To the extent that other states'  
6 nominating procedures for special elections are materially indistinguishable from those of  
7 New York, the Commission anticipates that this interpretation would apply to such other  
8 states as well.

9 This interpretive rule clarifies the Commission's interpretation of existing  
10 statutory and regulatory provisions and therefore does not constitute an agency action  
11 subject to notice and comment requirements or a delayed effective date under the  
12 Administrative Procedure Act. See 5 U.S.C. 553. The provisions of the Regulatory  
13 Flexibility Act, which apply when notice and comment are required by the  
14 Administrative Procedure Act or another statute, do not apply. See 5 U.S.C. 603(a). The  
15 Commission is not required to submit this interpretive rule for congressional review. See  
16 2 U.S.C. 438(d)(1), (4).

17 On behalf of the Commission,

18  
19  
20  
21  
22  
23  
24  
25

\_\_\_\_\_  
Ellen L. Weintraub  
Chair  
Federal Election Commission

DATED: \_\_\_\_\_  
BILLING CODE: 6715-01-P