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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 19-37-A
AGENDA ITEM
For the meeting of August 22, 2019

August 6, 2019

MEMORANDUM

TO: The Commission

FROM: Lisa J. Stevenson *LJS*
Acting General Counsel

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert M. Knop *RMK*
Assistant General Counsel

Jennifer G. Waldman *JGW*
Attorney

SUBJECT: REG 2019-02 (Amend 11 C.F.R. § 104.5(c)) - Notification of Availability

On June 14, 2019, the Commission received a Petition for Rulemaking from the Campaign Legal Center. The petition asks the Commission to amend 11 C.F.R. § 104.5(c) to require any unauthorized committee that starts an election year as a quarterly filer to maintain that status through any primary elections in which the committee is involved.

The Office of the General Counsel has examined the petition and determined that it meets the requirements of 11 C.F.R. § 200.2(b). Therefore, we have drafted the attached Notification of Availability (“NOA”) seeking comment on whether the Commission should initiate a full rulemaking on the proposal in the petition. The NOA will be published in the *Federal Register* pursuant to 11 C.F.R. § 200.3(a)(1).

In keeping with the Commission’s usual procedure, the NOA does not address the merits of the petition. Instead, it states that consideration of the merits will be deferred until the close of the comment period.

The Office of the General Counsel requests that this draft be placed on the agenda for the Open Meeting on August 22, 2019.

Attachment

FEDERAL ELECTION COMMISSION

11 CFR Part 113

[NOTICE 2019-XX]

Rulemaking Petition: Amend 11 C.F.R. § 104.5(c)

AGENCY: Federal Election Commission

ACTION: Rulemaking Petition: Notification of Availability

SUMMARY: On June 14, 2019, the Federal Election Commission received a Petition for Rulemaking, which asks the Commission to amend its existing regulation that sets forth filing dates for unauthorized political committees. The proposed amendment would require any unauthorized committee that starts an election year as a quarterly filer to maintain that status through any primary elections in which the committee is involved. The Commission seeks comments on the petition.

DATES: Comments must be submitted on or before [insert date 60 days after the date of publication in the Federal Register].

ADDRESSES: All comments must be in writing. Commenters are encouraged to submit comments electronically via the Commission’s website at <http://www.fec.gov/fosers>, reference **REG 2019-02**. Alternatively, commenters may submit comments in paper form, addressed to the Federal Election Commission, Attn.: Mr. Robert M. Knop, Assistant General Counsel, 1050 First Street NE, Washington, DC 20463.

Each commenter must provide, at a minimum, his or her first name, last name, city, and state. All properly submitted comments, including attachments, will become part of the public record, and the Commission will make comments available for public viewing on the Commission’s website and in the Commission’s Public Records Office. Accordingly,

1 commenters should not provide in their comments any information that they do not wish to make
2 public, such as a home street address, personal email address, date of birth, phone number, social
3 security number, or driver’s license number, or any information that is restricted from disclosure,
4 such as trade secrets or commercial or financial information that is privileged or confidential.

5 **FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General
6 Counsel, or Ms. Jennifer G. Waldman, Attorney, Office of the General Counsel, 1050 First Street
7 NE, Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

8 **SUPPLEMENTARY INFORMATION:** On June 14, 2019, the Commission received a
9 Petition for Rulemaking (“Petition”) from the Campaign Legal Center asking the Commission to
10 amend 11 CFR § 104.5(c) — which sets forth the filing dates for unauthorized political
11 committees¹ — to require any unauthorized committee that starts an election year as a quarterly
12 filer to maintain that status through any primary elections in which the committee is involved.

13 The Federal Election Campaign Act, 52 U.S.C. §§ 30101-45 (the “Act”), provides
14 unauthorized political committees with two methods to report their receipts and disbursements to
15 the Commission. The first method allows unauthorized committees to file semi-annual reports in
16 non-election years and quarterly reports in election years. 52 U.S.C. § 30104(a)(4)(A).
17 Quarterly filers that make contributions or expenditures in a primary or general election must file
18 pre-election reports 12 days before the election and must report the committee’s election
19 activities up to 20 days before the election. 52 U.S.C. § 30104(a)(4)(A)(ii). All quarterly filers
20 also must file a post-general election report no later than 30 days after the general election and

¹ An unauthorized committee “is a political committee which has not been authorized in writing by a candidate to solicit or receive contributions or make expenditures on behalf of such a candidate, or which has been disavowed pursuant to [11 CFR 100.3(a)(3)].” 11 CFR 100.5(f)(2).

1 must report the committee’s election activities up to 20 days after the election. 52 U.S.C. §
2 30104(a)(4)(A)(iii).

3 The second method allows unauthorized committees to file on a monthly basis, except
4 that in election years, a monthly filer must file pre- and post-general election reports in lieu of
5 the monthly report for November and December and a year-end report no later than January 31
6 of the following calendar year. 52 U.S.C. § 30104(a)(4)(B). Monthly filers are not required to
7 file pre- or post-election reports for primary elections. *Id.*

8 Commission regulations allow an unauthorized committee to change the frequency of its
9 reporting once every calendar year. To do so, an unauthorized committee must notify the
10 Commission of its intent in writing at the time it files a required report under its current
11 frequency and then file its next required report on the new filing frequency. 11 CFR 104.5(c).

12 The Petition asks the Commission to open a rulemaking to amend section 104.5(c) “to
13 ensure that all unauthorized committees are required to file a pre-election report.” Petition at 4.
14 The Petition argues that “a well-timed switch from reporting on a quarterly cycle to a monthly
15 cycle just before a pre-election report is due can allow a political committee to take advantage of
16 the laxer quarterly filing deadline, then avoid disclosing receipts and disbursements from the last
17 few weeks of the campaign until after the election is over — when the information is of less
18 value to voters.” Petition at 2. The Petition suggests that the Commission revise section
19 104.5(c) to prohibit committees from switching their filing schedules during an election year;
20 prohibit committees from switching from quarterly to monthly filing in any quarter in which they
21 participate in a primary; or establish that committees that switch to monthly filers automatically
22 revert back to quarterly filers if they are involved in a primary in their first quarter after the
23 switch. *Id.*

1 The Commission seeks comments on the petition. The public may inspect the petition on
2 the Commission’s website at <http://www.fec.gov/fosers>, or in the Commission’s Public Records
3 Office, 1050 First Street NE, 12th Floor, Washington, DC 20463, Monday through Friday, from 9
4 a.m. to 5 p.m.

5 The Commission will not consider the petition’s merits until after the comment period
6 closes. If the Commission decides that the petition has merit, it may begin a rulemaking
7 proceeding. The Commission will announce any action that it takes in the Federal Register

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On behalf of the Commission,

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Ellen L. Weintraub,
Chair,
Federal Election Commission.

DATED: _____