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FEDERAL ELECTION COMMISSION
Washington, DC 20463

AGENDA DOCUMENT NO. 22-11-A
AGENDA ITEM
For the meeting of March 24, 2022

March 1, 2022

MEMORANDUM

TO: The Commission

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

Neven F. Stipanovic *NFS*
Associate General Counsel

Robert Knop *RMK*
Assistant General Counsel

Joseph Wenzinger *JPW*
Attorney

Subject: REG 2014-09 (Federal Contractors) - Draft Notice of Disposition

Attached is a proposed draft Notice of Disposition for the subject matter. We request that this draft be placed on a 48-hour tally vote ending on March 4, 2022 at 4:00 pm.

Attachment

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FEDERAL ELECTION COMMISSION

11 CFR Part 115

[NOTICE 2022-XX]

Federal Contractors

AGENCY: Federal Election Commission.

ACTION: Notice of Disposition of Petition for Rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on November 18, 2014, by Public Citizen. The petitioner asked that the Commission amend its regulations regarding federal contractors to include certain factors for determining whether entities of the same corporate family are distinct business entities for purposes of the prohibition on contributions by federal contractors. Because there were not four affirmative votes in support of the petition, the Commission is not initiating a rulemaking.

DATE: [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Knop, Assistant General Counsel, or Mr. Joseph P. Wenzinger, Attorney, Office of General Counsel, (202) 694-1650 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: Part 115 of the Commission’s regulations prohibits federal contractors from making contributions or expenditures to any political party, political committee, or federal candidate, or to any person for any political purpose or use. 11 CFR 115.2(a); *see also* 52 U.S.C. 30119(a)(1). Part 115 further prohibits any person from knowingly soliciting a contribution from any federal contractor. 11 CFR 115.2(c); *see also* 52 U.S.C. 30119(a)(2). On November 18, 2014, the Commission

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1 received a Petition for Rulemaking from Public Citizen asking the Commission to amend
2 11 CFR Part 115 to include certain factors for determining whether entities of the same
3 corporate family are distinct business entities for purposes of these prohibitions.

4 The Commission published a Notice of Availability (“NOA”) on March 30, 2015
5 to ask for public comment on the petition. 80 FR 16595 (Mar. 30, 2015). The
6 Commission received approximately 19,750 comments on the NOA.

7 After considering the comments received, the Commission voted on a motion to
8 initiate a rulemaking to adopt the regulations proposed by the petition. Three
9 Commissioners voted to initiate a rulemaking based on the petition, and three
10 Commissioners voted against initiating a rulemaking. Certification, Motion to Open a
11 Rulemaking on REG 2014-09 in Response to Public Comment, Agenda Document 15-
12 60-A (Nov. 13, 2015) at 2, <https://sers.fec.gov/fosers/showpdf.htm?docid=346292>.

13 Commissioners voting to initiate a rulemaking explained that new rules may be
14 necessary to prevent federal contractors from creating “nominal subsidiaries” to make
15 political contributions. *See* Audio Recording of Discussion on REG 2014-09
16 Amendment of 11 C.F.R. 115 (Nov. 10, 2015) (“Audio Recording”) at 1:51-4:10,
17 <https://www.fec.gov/resources/audio/2015/2015111004.mp3> (statement of Commissioner
18 Ellen L. Weintraub) (stating that Act’s restrictions “are at risk of being rendered
19 unenforceable if corporations can skirt the law by creating nominal subsidiaries to make
20 political contributions”); Statement of Commissioner Ann M. Ravel on REG 2014-09
21 (Amendment of 11 C.F.R. Part 115) at 2, [https://sers.fec.gov/fosers/showpdf.htm?docid=](https://sers.fec.gov/fosers/showpdf.htm?docid=347074)
22 [347074](https://sers.fec.gov/fosers/showpdf.htm?docid=347074) (stating that Act’s restrictions could be “easily evaded by technical legal
23 maneuvering that leaves the intent of the law completely thwarted”). On the other hand,

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1 a Commissioner voting against initiating a rulemaking explained that he was “persuaded
2 by comments” arguing that Congress passed the federal-contractor ban “against a
3 background of common-law corporate principles” that the Commission should not disrupt
4 in the absence of direction by Congress. Audio Recording at 4:13-8:43 (statement of
5 Vice Chairman Matthew S. Petersen) (stating that Commission has not “been instructed
6 by Congress to disrupt that background understanding, though they’ve amended the law
7 on a number of different occasions” in the “nearly four decades” the Commission has
8 been applying the federal-contractor ban).

9 The Act requires an affirmative vote of at least four Commissioners to take any
10 action to amend a regulation. *See* 52 U.S.C. 30106(c) and 30107(a)(8). Accordingly, the
11 Commission is not initiating a rulemaking. *See also* Definition of “Express Advocacy,”
12 Notice of Disposition of Petition for Rulemaking, 64 FR 27478 (May 20, 1999) (denying
13 a petition to initiate a rulemaking because it did not garner the affirmative vote of four
14 Commissioners).

15 Copies of the comments, the NOA, the Petition for Rulemaking, and related
16 documents are available on the Commission’s website, <http://www.fec.gov/fosers/>
17 (reference REG 2014-09 Amendment of 11 CFR 115)).

18 Dated: March XX, 2022.

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20 On behalf of the Commission,

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23 **Allen J. Dickerson,**

24 *Chairman,*

25 *Federal Election Commission.*

26 BILLING CODE: 6715-01-P