

RECEIVED

By Office of the Commission Secretary at 4:36 pm, Nov 28, 2022



FEDERAL ELECTION COMMISSION
1050 FIRST STREET, N.E.
WASHINGTON, D.C. 20463

AGENDA DOCUMENT NO. 22-55-A
AGENDA ITEM
For meeting of December 1, 2022
SUBMITTED LATE

MEMORANDUM

TO: The Commission
The Office of the Commission Secretary

FROM: Allen Dickerson *AD*
Chairman

DATE: November 28, 2022

RE: REG 2013-01 (Technological Modernization)

Attached is a Supplemental Notice of Proposed Rulemaking in REG 2013-01 (Technological Modernization). This document will be considered at the Commission's open meeting of December 1, 2022.

DRAFT

FEDERAL ELECTION COMMISSION

11 CFR Parts 1, 4, 5, 6, 100, 102, 103, 104, 105, 106, 108, 109, 110, 111, 112, 114, 116, 200, 201, 300, 9003, 9004, 9007, 9032, 9033, 9034, 9035, 9036, 9038, and 9039

[NOTICE 2022-XX]

Technological Modernization

AGENCY: Federal Election Commission.

ACTION: Supplemental Notice of Proposed Rulemaking.

SUMMARY: The Federal Election Commission is seeking additional public comment on previously proposed rules that would modernize the agency’s regulations in light of technological advances in communications, recordkeeping, and financial transactions, and that would eliminate and update references to outdated technologies and address similar technological issues. In particular, the Commission presently seeks comments on whether its definition of “public communication” should also include internet communications that are “promoted for a fee” on another person’s website, digital device, application, or advertising platform. The Commission also seeks to elicit comments concerning whether “internet public communications,” a new defined term proposed in an ongoing rulemaking (REG 2011-02: Internet Communication Disclaimers), should include public communications “promoted for a fee” on another person’s website, digital device, application, or advertising platform. No final decision has been made by the Commission on the issues presented in this rulemaking.

DATES: Comments must be submitted on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

1 **ADDRESSES:** All comments must be in writing. Commenters may submit comments
2 electronically via the Commission’s website at <http://sers.fec.gov/fosers/>, reference REG 2013-
3 01.

4 Each commenter must provide, at a minimum, his or her first name, last name, city, and
5 state. All properly submitted comments, including attachments, will become part of the public
6 record, and the Commission will make comments available for public viewing on the
7 Commission’s website and in the Commission’s Public Records Office. Accordingly,
8 commenters should not provide in their comments any information that they do not wish to make
9 public, such as a home street address, personal email address, date of birth, phone number, social
10 security number, or driver’s license number, or any information that is restricted from disclosure,
11 such as trade secrets or commercial or financial information that is privileged or confidential.

12 **FOR FURTHER INFORMATION CONTACT:** Ms. Amy L. Rothstein, Assistant General
13 Counsel, or Ms. Joanna S. Waldstreicher or Mr. Tony Buckley, Attorneys, Office of the General
14 Counsel, at techmod@fec.gov, or at (202) 694-1650 or (800) 424– 9530.

15 **SUPPLEMENTARY INFORMATION:**

16 The Commission published its original proposals in a Notice of Proposed Rulemaking
17 (“NPRM”) on November 2, 2016.¹ The Commission had previously issued an Advance Notice
18 of Proposed Rulemaking (“ANPRM”) on the subject.² The Commission received several public
19 comments in response to both the ANPRM and the NPRM, which are available on the
20 Commission’s website at <https://sers.fec.gov/fosers/search.htm> (reference REG 2013-01). On
21 September 8, 2022, the Commission requested additional comment about any technological

¹ Technological Modernization, 81 FR 76416 (Nov. 2, 2016).

² Technological Modernization, 78 FR 25635 (May 2, 2013).

1 developments relating to electronic payment processing, newer electronic payment technologies,
2 and contributions made via prepaid cards that may have occurred following publication of the
3 NPRM that would be relevant to the Commission’s consideration of its proposed rules.³ The
4 Commission received several public comments in response to its Request for Additional
5 Comment, which are available on the Commission’s website at
6 <https://sers.fec.gov/fosers/search.htm> (reference REG 2013-01).

7 The Federal Election Commission presently seeks public comment with respect to one of
8 its proposals to modernize campaign finance regulations in light of technological advances. In a
9 separate rulemaking, the Commission is considering changes to the definition of “public
10 communication” at section 100.26 and is proposing the adoption of a new defined term—
11 “internet public communication”—which would appear at new section 110.11(c)(5)(i). *See*
12 *generally* REG 2011-02: Draft Final Rule and Explanation and Justification for Internet
13 Communications Disclaimers (“Internet Communications Rule”). If promulgated, the revised
14 definition of “public communication” at section 100.26 would include those communications
15 that are “placed for a fee on another person’s website, digital device, application, or advertising
16 platform.” Internet Communications Rule at 16. The new defined term “internet public
17 communication” at new section 110.11(c)(5)(i) would parallel the proposed revised definition of
18 “public communication” at section 100.26 by defining “internet public communication” as “any
19 public communication over the internet that is placed for a fee on another person’s website,
20 digital device, application, or advertising platform.” Internet Communications Rule at 26.

21 In light of the proposed changes in the Internet Communications Rule, as well as
22 developments in advertising practices on the internet, the Commission seeks comments on

³ Technological Modernization, 87 FR 54915 (Sept. 8, 2022).

1 whether the proposed revised definition of “public communication” at section 100.26, and the
2 proposed new term “internet public communication” at section 110.11(c)(5)(i), should also
3 include communications that are “promoted for a fee” on another person’s website, digital
4 device, application, or advertising platform, and whether such communications that are
5 “promoted for a fee” should be subject to the Commission’s disclaimer requirements.

6 The Commission also seeks comments on how general public political advertising on the
7 internet would be affected by the inclusion of the phrase “promoted for a fee” on another
8 person’s website, digital device, application, or advertising platform in sections 100.26 and
9 110.11(c)(5)(i), and whether the wide and rapidly expanding array of options available in the
10 internet advertising market bring to bear any particular considerations or concerns of which the
11 Commission should be mindful or that warrant a particular approach.

12 To this end, the Commission seeks comments about whether, both for purposes of the
13 term “internet public communication” and the Commission’s disclaimer requirements, a
14 distinction should be made between communications over the internet where (1) a person is paid
15 to republish content containing express advocacy or soliciting a contribution on a third party’s
16 website, digital device, application, or advertising platform in order to increase the circulation or
17 prominence of that content; (2) a website, digital device, application, or advertising platform is
18 paid directly to “boost” or expand the scope of viewership of content containing express
19 advocacy or soliciting a contribution in order to increase the circulation or prominence of that
20 content; and (3) a person is paid to create or generate content containing express advocacy or
21 soliciting a contribution, which then appears on a third party’s website, digital device,
22 application, or advertising platform.

1 Finally, the Commission is soliciting comments concerning whether and how these
2 proposed changes to the definitions of “public communication” and “internet public
3 communication” will affect regulated entities broadly, including in contexts unrelated to the
4 required disclaimers for a given communication.

5 *Conclusion*

6 As explained above, the Commission is soliciting comments concerning the addition of
7 certain communications “promoted for a fee” to its definition of “public communication” and
8 proposed definition of “internet public communication.” The details of those proposals can be
9 found on the Commission’s website at <https://sers.fec.gov/fosers/search.htm> (reference REG
10 2011-02). The Commission’s goal in this rulemaking is to promulgate final rules that are
11 flexible enough to encompass both non-electronic and electronic forms of payments,
12 communications, and internet advertising, and that remain relevant as new forms of information
13 storage, communication, payment, and advertising methods and media emerge and develop in
14 the future. Accordingly, the Commission welcomes comments on the issues and questions
15 addressed by this rulemaking, and on any related issues.

16

17

On behalf of the Commission,

18

19

Allen J. Dickerson,
Chairman, Federal Election Commission

20

21

22

23

DATED: _____

24

BILLING CODE 6715-01-P