

Proposed Rules

Federal Register

Vol. 72, No. 138

Thursday, July 19, 2007

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 733

RIN 3206-AL32

Political Activity—Federal Employees Residing in Designated Localities

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: OPM proposes to amend its regulations at 5 CFR part 733 by granting Federal employees residing in Fauquier County, Virginia, a partial exemption from the political activity restrictions specified in 5 U.S.C. 7323(a)(2) and (3), and adding Fauquier County to its regulatory list of designated localities in 5 CFR 733.107(c). The proposed amendment reflects OPM's determination that Fauquier County meets the criteria in 5 U.S.C. 7325 and 5 CFR 733.107(a) for a partial exemption to issue.

DATES: Written comments must be received on or before September 17, 2007.

ADDRESSES: Comments may be mailed to Kerry B. McTigue, General Counsel, Room 7355, United States Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Jo-Ann Chabot, Office of the General Counsel, United States Office of Personnel Management, (202) 606-1700.

SUPPLEMENTARY INFORMATION: The Hatch Act, at 5 U.S.C. 7321-7326, governs the political activity of Federal employees, and individuals employed with the United States Postal Service and the Government of the District of Columbia. Section 7323(a) generally permits Federal employees who are not employed in the Federal agencies or positions described in section 7323(b), as amended, to take an active part in partisan political campaigns. Employees employed in the Federal agencies or positions specified in 5 U.S.C. 7323(b), as amended, generally may participate

in nonpartisan political activities. According to 5 U.S.C. 7323(a)(2) and (3), Federal employees may not become candidates for partisan political office and may not solicit, accept, or receive political contributions. Section 7325, however, authorizes OPM to prescribe regulations exempting Federal employees from the prohibitions in section 7323(a)(2) and (3) to the extent OPM considers it to be in their domestic interest.

Under the authority of 5 U.S.C. 7325, OPM may issue such regulatory exemptions when two conditions exist in the municipality or political subdivision. One condition is met if the municipality or political subdivision is in Maryland or Virginia and is in the immediate vicinity of the District of Columbia, or if the majority of voters in the municipality are employed by the Government of the United States. The second condition is met if OPM determines that, because of special or unusual circumstances, the domestic interest of the employees is served by permitting their political participation in accordance with regulations prescribed by OPM.

In regulations at 5 CFR 733.107(c) OPM has designated municipalities and political subdivisions where Federal employees may participate in local elections. At 5 CFR 733.103-733.106, OPM has established limitations on political participation by most Federal employees residing in these designated municipalities and subdivisions. Under 5 CFR 733.103, most Federal employees who reside in a municipality or political subdivision designated by OPM may:

- (1) Run as independent candidates for election to partisan political office in elections for local office in the municipality or political subdivision;
- (2) Solicit, accept, or receive a political contribution as, or on behalf of, an independent candidate for partisan political office in elections for local office in the municipality or political subdivision;
- (3) Accept or receive a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;
- (4) Solicit, accept, or receive uncompensated volunteer services as an independent candidate, or on behalf of an independent candidate, for local partisan political office, in connection with the local elections of the municipality or subdivision; and
- (5) Solicit, accept, or receive uncompensated volunteer services on behalf

of an individual who is a candidate for local partisan political office and who represents a political party.

Under 5 CFR 733.104, however, these employees may not:

- (1) Run as the representative of a political party for local partisan political office;
- (2) Solicit a political contribution on behalf of an individual who is a candidate for local partisan political office and who represents a political party;
- (3) Knowingly solicit a political contribution from any Federal employee, except as permitted under 5 U.S.C. 7323(a)(2)(A)-(C).
- (4) Accept or receive a political contribution from a subordinate;
- (5) Solicit, accept, or receive uncompensated volunteer services from a subordinate for any political purpose;
- (6) Participate in political activities:
 - While they are on duty;
 - While they are wearing a uniform, badge, or insignia that identifies the employing agency or instrumentality or the position of the employee;
 - While they are in any room or building occupied in the discharge of official duties by an individual employed or holding office in the Government of the United States or any agency or instrumentality thereof; or
 - While using a Government-owned or leased vehicle or while using a privately owned vehicle in the discharge of official duties.

Moreover, candidacy for, and service in, a partisan political office shall not result in neglect of, or interference with, the performance of the duties of the employee or create a conflict, or apparent conflict, of interest.

Sections 733.103 and 733.104 of Title 5, Code of Federal Regulations, do not apply to individuals, such as career senior executives and employees of the Federal Bureau of Investigation, who are employed in the agencies or positions listed in 5 CFR 733.105(a). These individuals are subject to the more stringent limitations described in 5 CFR 733.105 and 733.106.

Individuals who require advice concerning specific political activities, and whether an activity is permitted or prohibited under 5 CFR 733.103-733.106, should contact the United States Office of Special Counsel at (800) 854-2824 or (202) 254-3650. Requests for Hatch Act advisory opinions may be made by e-mail to: hatchact@osc.gov.

In response to requests from a Federal employee who resides in Fauquier County, Virginia, OPM proposes to designate that county as one in which

Federal employees may run for local partisan political office, subject to the limitations established by OPM, and accept or receive political contributions in connection with elections for local public office. This proposal reflects OPM's determination that special or unusual circumstances exist so that it is in the domestic interest of Federal employees residing in Fauquier County to participate in these political activities. This determination is based on written material provided by the applicant, interviews with the applicant, and documentary material obtained through independent research. Principal factors leading to OPM's determination are the proximity of Fauquier County to the District of Columbia, the rapid growth of the county within the past few years, and significant public issues associated with this growth.

A copy of this notice will be published in two local newspapers serving Fauquier County.

If this proposed rule is adopted, OPM will amend 5 CFR 733.107(c) by adding Fauquier County to the list of designated Virginia municipalities and political subdivisions in which Federal Government employees may participate in elections for local partisan political office in accordance with the conditions specified in 5 CFR 733.103–733.106. The addition of Fauquier County will be listed after Falls Church, Virginia, and before Herndon, Virginia.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the changes will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 733

Government employees, Political activities.

U.S. Office of Personnel Management.

Linda M. Springer,
Director.

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 733 as follows:

PART 733—POLITICAL ACTIVITY— FEDERAL EMPLOYEES RESIDING IN DESIGNATED LOCALITIES

1. The authority citation for part 733 continues to read as follows:

Authority: 5 U.S.C. 7325; sec. 308 of Pub. L. 104–93, 109 Stat. 961, 966 (Jan. 6, 1996).

2. Section 733.107(c) is amended by adding Fauquier County, Virginia, alphabetically to the list of designated Virginia municipalities and political subdivisions as set forth below.

§ 733.107 Designated localities.

*	*	*	*	*
(c)				
*	*	*	*	*
In Virginia				
*	*	*	*	*
Fauquier County				
*	*	*	*	*

[FR Doc. E7–14003 Filed 7–18–07; 8:45 am]

BILLING CODE 6325–48–P

FEDERAL ELECTION COMMISSION

11 CFR Part 113

[Notice 2007–15]

Use of Campaign Funds for Donations to Non-Federal Candidates and Any Other Lawful Purpose Other Than Personal Use

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on a proposed revision to its rules regarding the use of campaign funds. The proposed revision would add to the current list of permissible uses of campaign funds in Commission regulations: donations to non-Federal candidates; and any other lawful purpose other than personal use. This change would conform the provision with those in the Federal Election Campaign Act, as amended (“the Act”). The Commission has made no final decision on the issues presented in this rulemaking. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before August 20, 2007.

ADDRESSES: All comments must be in writing, must be addressed to Ms. Amy L. Rothstein, Assistant General Counsel, and must be submitted in either e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail to ensure timely receipt and consideration. E-mail comments must be sent to 439aNPMM@fec.gov. If e-mail comments include an attachment, the attachment must be in either Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of

faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, or Ms. Stacey J. Shin, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 313 of the Federal Election Campaign Act of 1971, as amended (“the Act”), sets forth permissible uses of contributions accepted by candidates and donations received by individuals to support their activities as Federal officeholders. (This section is codified at 2 U.S.C. 439a and will be referred to hereafter as “Section 439a.”) Section 439a(a) provides that candidates may use contributions, and individuals holding Federal office may use donations, for: (1) Expenditures in connection with the candidate's or individual's campaign for Federal office; (2) ordinary and necessary expenses incurred in connection with duties of the individual as a Federal officeholder; (3) contributions to an organization described in section 170(c) of the Internal Revenue Code; (4) transfers, without limitation, to a national, State, or local committee of a political party; (5) donations to State and local candidates subject to the provisions of State law; and (6) any other lawful purpose, unless such purpose constitutes personal use of contributions or donations. *See* 2 U.S.C. 439a(a).

Part 113 of the Commission's regulations implements section 439a. Section 113.2 tracks the first four permissible uses of campaign funds and funds donated to a Federal officeholder as set out in the Act (to defray Federal campaign expenses; to pay ordinary and necessary expenses incurred in connection with the duties of a Federal officeholder; to make donations to organizations described in section 170(c) of the Internal Revenue Code; and to transfer such funds without limitation to any national, State, or local political party committee). *See* 11 CFR 113.2. The Commission is initiating this rulemaking to add to section 113.2 the last two permissible uses regarding donations to non-Federal candidates, and donations for any other lawful purpose other than personal use.

This difference between the Commission's regulations and the Act