

FEDERAL ELECTION COMMISSION**11 CFR Chapter I**

[Notice 1998—4]

Composition of the Commission**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 December 4, 1997, by John J. Wheeling, Treasurer of the National Reform Party Organizing Committee. The petition asked the Commission to amend its rules to require either that two members of the current six-member Commission be affiliated with minor political parties, or to expand the Commission from six to nine members, with the three new members required to be affiliated with minor political parties. Further information is provided in the supplementary information that follows.

DATES: March 2, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On December 4, 1997, the Commission received a Petition for Rulemaking from John J. Wheeling, Treasurer of the National Reform Party Organizing Committee. The Petition asked the Commission to amend its rules to require either that two members of the current six-member Commission be affiliated with minor political parties; or to expand the Commission from six to nine members, with the three new members required to be affiliated with minor political parties. The Petition states that this action is necessary to protect the rights of minor political parties which, it argues, are infringed by what it claims is a statutory requirement at 2 U.S.C. 437c(a)(1) that the six-member Commission be composed of three Commissioners affiliated with the Democratic Party, and three affiliated with the Republican Party.

The Petition does not identify the specific section(s) of the regulations to be affected by these changes, as required by the Commission's rules governing rulemaking petitions at 11 CFR 200.2(b)(3), because the Commission's rules do not address this situation. Nor could they, because the requested actions are outside the scope of the Commission's rulemaking authority. For this reason the Commission did not

publish a Notice of Availability in the **Federal Register** seeking comments on the Petition's merits, which action is normally taken pursuant to 11 CFR 200.3(a)(1) for petitions that meet the requirements of paragraph 200.2(b).

The Constitution at Art. II, section 2, cl. 2 provides that the President "shall nominate, and by and with the Advice and Consent of the Senate, shall appoint * * * [all] Officers of the United States, whose Appointments are not herein otherwise provided for, and which shall be established by Law." Congress has by law established a six-member Federal Election Commission, 2 U.S.C. 437c(a)(1); and Congress, not the Commission, has the sole authority to alter its size, either by adding three additional Commissioners or in any other way.

Under the Appointments Clause, the President is entitled to choose the individuals to nominate as Commissioners. However, it has been long recognized that "it is entirely proper for Congress to specify the qualifications for an office that it has created." *Bowsher v. Synar*, 478 U.S. 714, 740 (1986) (Stevens, J., concurring). The provision in section 437c(a)(1) that "no more than 3 [of the six] members of the Commission" appointed by the President "may be affiliated with the same political party" simply sets the necessary qualifications for the members of the Commission. Again, it is for Congress, and not the Commission, to determine how, if at all, these qualifications should be changed.

The Commission notes that there is nothing in the text of the law to require that the Commission be made up of three Democrats and three Republicans. The President can comply with this provision by choosing from among millions of persons affiliated with political parties, and millions more not affiliated with any party. The fact that Presidents to date have appointed only Democrats and Republicans as Commissioners does not mean that this will continue in the future, when they may choose to appoint a member of another political party, or an independent affiliated with no political party.

Moreover, contrary to the petitioner's claim, the statutory requirement that no more than three Commissioners be affiliated with the same political party does not discriminate against minor parties. In fact, the reverse is true: By ensuring that no more than three Commissioners be affiliated with the same political party, and at the same time requiring an absolute majority of four votes for the Commission to take formal action, 2 U.S.C. 437c(c), Congress

has acted to insure that no political party will be able to single-handedly dictate Commission action. These considerations, however, are secondary to the Constitutional and statutory provisions, discussed above, under which the Commission is powerless to take the requested action.

The Commission's rules governing rulemaking petitions state 11 CFR 200.5 (a) and (d) that the Commission's decision on whether to initiate a rulemaking in response to a rulemaking petition may include, *inter alia*, consideration of the Commission's statutory authority and the necessity of statutory revision to accomplish the requested result. The Commission believe these factors are controlling and, therefore, at its open meeting of January 22, 1998, voted not to initiate a rulemaking to reconstitute the Commission as requested in this Petition.

Dated: January 23, 1998.

Joan D. Aikens,*Chairman, Federal Election Commission.*

[FR Doc. 98-2098 Filed 1-28-98; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 39**

[Docket No. 97-NM-163-AD]

RIN 2120-AA64

Airworthiness Directives; British Aerospace Model BAe 146-100A, -200A, and -300A and Model Avro 146-RJ Series Airplanes**AGENCY:** Federal Aviation Administration, DOT.**ACTION:** Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146-100A, -200A, and -300A and Model Avro 146-RJ series airplanes. This proposal would require repetitive inspections of the attachment brackets between the horizontal and vertical stabilizers to detect intergranular corrosion, and follow-on actions. This proposal is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by the proposed AD are intended to detect and correct reduced structural integrity of the stabilizer brackets due to corrosion, which could