

1 For the reasons set out in the preamble, the Federal Election Commission  
2 proposes to amend Subchapter A of Chapter 1 of Title 11 of the Code of Federal  
3 Regulations as follows:

4 **PART 104 – REPORTS BY POLITICAL COMMITTEES AND OTHER PERSONS**  
5 **(2 U.S.C. 434)**

6 1. The authority citation for part 104 continues to read as follows:

7 **Authority:** 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), 439a,  
8 441a, and 36 U.S.C. 510.

9  
10 2. In section 104.20, paragraphs (c)(7) and (c)(8) are revised and paragraph  
11 (c)(9) is added to read as follows:

12 **§ 104.20 Reporting electioneering communications (2 U.S.C. 434(f)).**

13 \* \* \* \* \*

14 (c) \* \* \*

15 (7) (i) If the disbursements were paid exclusively from a segregated bank  
16 account established to pay for electioneering communications not  
17 permissible under 11 CFR 114.15, consisting of funds provided  
18 solely by individuals who are United States citizens, United States  
19 nationals, or who are lawfully admitted for permanent residence  
20 under 8 U.S.C. 1101(a)(20), the name and address of each donor  
21 who donated an amount aggregating \$1,000 or more to the  
22 segregated bank account, aggregating since the first day of the  
23 preceding calendar year; or

1 (ii) If the disbursements were paid exclusively from a segregated bank  
2 account established to pay for electioneering communications  
3 permissible under 11 CFR 114.15, the name and address of each  
4 donor who donated an amount aggregating \$1,000 or more to the  
5 segregated bank account, aggregating since the first day of the  
6 preceding calendar year.

7 (8) If the disbursements were not paid exclusively from a segregated bank  
8 account described in paragraph (c)(7) of this section and were not made by  
9 a corporation or labor organization pursuant to 11 CFR 114.15, the name  
10 and address of each donor who donated an amount aggregating \$1,000 or  
11 more to the person making the disbursement, aggregating since the first  
12 day of the preceding calendar year.

13 (9) If the disbursements were made by a corporation or labor organization  
14 pursuant to 11 CFR 114.15, the name and address of each person who  
15 made a donation aggregating \$1,000 or more to the corporation or labor  
16 organization, aggregating since the first day of the preceding calendar  
17 year, which was made for the purpose of furthering electioneering  
18 communications.

19 \* \* \* \* \*

20 **PART 114 – CORPORATE AND LABOR ORGANIZATION ACTIVITY**

21 3. The authority citation for part 114 continues to read as follows:

22 **Authority:** 2 U.S.C. 431(8), 431(9), 432, 434, 437d(a)(8), 438(a)(8), 441b.

1           4.       In section 114.2, the section heading and paragraph (b)(2) are revised and  
2 paragraph (b)(3) is added to read as follows:

3   **§ 114.2 Prohibitions on contributions, expenditures and electioneering**  
4   **communications.**

5   \*       \*       \*       \*       \*

6   (b)     \*       \*       \*

7           (2)    Except as provided at 11 CFR 114.10, corporations and labor  
8                organizations are prohibited from:

9                (i)     Making expenditures as defined in 11 CFR part 100, subpart D; or

10              (ii)    Making expenditures with respect to a Federal election (as defined

11                        in 11 CFR 114.1(a)), for communications to those outside the

12                        restricted class that expressly advocate the election or defeat of one

13                        or more clearly identified candidate(s) or the candidates of a

14                        clearly identified political party.

15           (3)    Corporations and labor organizations are prohibited from making  
16                payments for an electioneering communication to those outside the  
17                restricted class unless permissible under 11 CFR 114.10 or 114.15.

18                However, this paragraph (b)(3) shall not apply to State party committees  
19                and State candidate committees that incorporate under 26 U.S.C.  
20                527(e)(1), provided that:

21                (i)     The committee is not a political committee as defined in 11 CFR  
22                        100.5;

23                (ii)    The committee incorporated for liability purposes only;

1 (iii) The committee does not use any funds donated by corporations or  
2 labor organizations to make electioneering communications; and

3 (iv) The committee complies with the reporting requirements for  
4 electioneering communications at 11 CFR part 104.

5 \* \* \* \* \*

6 5. In section 114.4, paragraph (c)(1) is amended by adding the phrase “and  
7 (c)(8)” after “(c)(5),” and paragraph (c)(8) is added as follows:

8 **§ 114.4 Disbursements for communications beyond the restricted class in**  
9 **connection with a Federal election.**

10 \* \* \* \* \*

11 (c) \* \* \*

12 (8) Electioneering communications. Any corporation or labor organization  
13 may make electioneering communications to the general public that are  
14 permissible under 11 CFR 114.15. Qualified nonprofit corporations, as  
15 defined in 11 CFR 114.10(c), may make electioneering communications in  
16 accordance with 11 CFR 114.10(d).

17 \* \* \* \* \*

18 6. In section 114.14, paragraphs (a), (b) and (d) are revised to read as  
19 follows:

20 **§114.14 Further restrictions on the use of corporate and labor organization funds**  
21 **for electioneering communications.**

22 (a) (1) Corporations and labor organizations shall not give, disburse, donate or  
23 otherwise provide funds, the purpose of which is to pay for an

1 electioneering communication that is not permissible under 11 CFR  
2 114.15, to any other person.

3 (2) A corporation or labor organization shall be deemed to have given,  
4 disbursed, donated, or otherwise provided funds under paragraph (a)(1) of  
5 this section if the corporation or labor organization knows, has reason to  
6 know, or willfully blinds itself to the fact, that the person to whom the  
7 funds are given, disbursed, donated, or otherwise provided, intended to use  
8 them to pay for such an electioneering communication.

9 (b) Persons who accept funds given, disbursed, donated or otherwise provided by a  
10 corporation or labor organization shall not:

11 (1) Use those funds to pay for any electioneering communication that is not  
12 permissible under 11 CFR 114.15; or

13 (2) Provide any portion of those funds to any person, for the purpose of  
14 defraying any of the costs of an electioneering communication that is not  
15 permissible under 11 CFR 114.15.

16 \* \* \* \* \*

17 (d) (1) Persons other than corporations and labor organizations who receive funds  
18 from a corporation or a labor organization that do not meet the exceptions  
19 of paragraph (c) of this section, must be able to demonstrate through a  
20 reasonable accounting method that no such funds were used to pay any  
21 portion of any electioneering communication that is not permissible under  
22 11 CFR 114.15.

- 1 (2) (i) Any person other than a corporation or labor organization who  
2 wishes to pay for electioneering communications permissible  
3 under 11 CFR 114.15 may, but is not required to, establish a  
4 segregated bank account into which it deposits only funds donated  
5 or otherwise provided for the purpose of paying for such  
6 electioneering communications as described in 11 CFR part 104.  
7 Persons who use funds exclusively from such a segregated bank  
8 account to pay for any electioneering communication permissible  
9 under 11 CFR 114.15 shall be required to only report the names  
10 and addresses of those persons who donated or otherwise provided  
11 an amount aggregating \$1,000 or more to the segregated bank  
12 account, aggregating since the first day of the preceding calendar  
13 year.
- 14 (ii) Any person, other than corporations and labor organizations, who  
15 wishes to pay for electioneering communications not permissible  
16 under 11 CFR 114.15 may, but is not required to, establish a  
17 segregated bank account into which it deposits only funds donated  
18 or otherwise provided by individuals as described in 11 CFR part  
19 104. Persons who use funds exclusively from such a segregated  
20 bank account to pay for any electioneering communication shall  
21 satisfy paragraph (d)(1) of this section. Persons who use funds  
22 exclusively from such a segregated bank account to pay for any  
23 electioneering communication shall be required to only report the

1 names and addresses of those persons who donated or otherwise  
2 provided an amount aggregating \$1,000 or more to the segregated  
3 bank account, aggregating since the first day of the preceding  
4 calendar year.

5 \* \* \* \* \*

6 7. Section 114.15 is added to read as follows:

7 **§ 114.15 Permissible use of corporate and labor organization funds for certain**  
8 **electioneering communications.**

9 (a) Permissible electioneering communications. Corporations and labor organizations  
10 may make an electioneering communication, as defined in 11 CFR 100.29, to  
11 those outside the restricted class unless the communication is susceptible of no  
12 reasonable interpretation other than as an appeal to vote for or against a clearly  
13 identified Federal candidate.

14 (b) Safe harbor. An electioneering communication is permissible under paragraph (a)  
15 of this section if it:

16 (1) Does not mention any election, candidacy, political party, opposing  
17 candidate, or voting by the general public;

18 (2) Does not take a position on any candidate's or officeholder's character,  
19 qualifications, or fitness for office; and

20 (3) Either:

21 (i) Focuses on a legislative, executive or judicial matter or issue; and

22 (A) Urges a candidate to take a particular position or action  
23 with respect to the matter or issue, or

- 1 (B) Urges the public to adopt a particular position and to  
2 contact the candidate with respect to the matter or issue; or
- 3 (ii) Proposes a commercial transaction, such as purchase of a book,  
4 video, or other product or service, or such as attendance (for a fee)  
5 at a film exhibition or other event.
- 6 (c) Rules of interpretation. If a communication does not qualify for the safe harbor in  
7 paragraph (b), the Commission will consider whether the communication includes  
8 any indicia of express advocacy and whether the communication has an  
9 interpretation other than as an appeal to vote for or against a clearly identified  
10 Federal candidate in order to determine whether, on balance, the communication  
11 is susceptible of no reasonable interpretation other than as an appeal to vote for or  
12 against a clearly identified Federal candidate.
- 13 (1) A communication includes indicia of express advocacy if it:
- 14 (i) Mentions any election, candidacy, political party, opposing  
15 candidate, or voting by the general public; or
- 16 (ii) Takes a position on any candidate's or officeholder's character,  
17 qualifications, or fitness for office.
- 18 (2) Content that would support a determination that a communication has an  
19 interpretation other than as an appeal to vote for or against a clearly  
20 identified Federal candidate includes content that:
- 21 (i) Focuses on a public policy issue and either urges a candidate to  
22 take a position on the issue or urges the public to contact the  
23 candidate about the issue; or



- 1 (ii) Proposes a commercial transaction, such as purchase of a book,  
 2 video or other product or service, or such as attendance (for a fee)  
 3 at a film exhibition or other event; or
- 4 (iii) Includes a call to action or other appeal that interpreted in  
 5 conjunction with the rest of the communication urges an action  
 6 other than voting for or against or contributing to a clearly  
 7 identified Federal candidate or political party.
- 8 (3) In interpreting a communication under paragraph (a), any doubt will be  
 9 resolved in favor of permitting the communication.
- 10 (d) Information permissibly considered. In evaluating a communication under this  
 11 section, the Commission may consider only the communication itself and basic  
 12 background information that may be necessary to put the communication in  
 13 context and which can be established with minimal, if any, discovery. Such  
 14 information may include, for example, whether a named individual is a candidate  
 15 for office or whether a communication describes a public policy issue.
- 16 (e) Examples of communications. A list of examples derived from prior Commission  
 17 or judicial actions of communications that have been determined to be permissible  
 18 and of communications that have been determined not to be permissible under  
 19 paragraph (a) is available on the Commission's Web site, <http://www.fec.gov>.
- 20 (f) Reporting requirement. Corporations and labor organizations that make  
 21 electioneering communications under paragraph (a) aggregating in excess of  
 22 \$10,000 in a calendar year shall file statements as required by 11 CFR 104.20.