

AGENDA ITEM

For Meeting of: 10-31-02

SUBMITTED LATE

MEMORANDUM TO THE COMMISSION

FROM: CHAIRMAN DAVID M. MASON *DM*
RE: PROPOSED AMENDMENTS TO AGENDA DOC. NO. 02-76
DATE: OCTOBER 31, 2002

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Page 14, line 15, delete "The Commission" and all that follows through the end of line 19.

Page 15, delete line 12 and all that follows through the end of line 4 on page 17, and insert:

The Commission's experience in audit and enforcement matters indicates that the vast majority of contributors who make excessive contributions of no more than twice the per-election limit are aware of the separate primary and general election limits and intend to make contributions for both elections, but simply fail to provide the written designation required in the Commission's current regulations.

The Commission has determined that notifying contributors is not necessary when authorized committees redesignate excessive contributions that were initially considered primary contributions by operation of 11 CFR 110.1(b)(2)(ii) to be general election contributions. The Commission has therefore adopted Alternative 1-A as proposed in the NPRM. See NPRM, 67 FR at 54,371 and 54,376. The Commission notes that an undesignated contribution is treated as a contribution to the next election initially through a regulatory presumption. In the circumstances discussed, the Commission believes it is reasonable to infer that the contributor of an

otherwise excessive primary contribution intends to support the recipient candidate within the legal limits on contributions. The contributor's check establishes the contributor's intent to contribute the funds to the candidate's authorized committee. The contribution limits in FECA prohibit the excessive contributions at issue, so the presumption permits the authorized committee to honor the contributor's intent in a manner that avoids a violation of law by both the recipient committee and the contributor. Because this treatment merely alters the existing regulatory presumption by additionally presuming that contributors who make contributions within the combined primary and general election limits intend to comply with the law, no notice to the contributor is required. Because recipient committees are required to monitor contributions on an aggregate basis (See 11 CFR 103.3(b)) there is little chance that this presumption will result in inadvertent excessive contributions to the general election campaign.

Page 18, line 13, strike out "The conditions" and all that follows through "respectively" on line 15 and insert:

The conditions in 11 CFR 110.1(b)(5)(ii)(C)(3) and (4) are similar or identical to the conditions set forth in 11 CFR 110.1(b)(5)(ii)(B)(3) and (4), respectively