



THE FEDERAL ELECTION COMMISSION
Washington, DC 20463

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AGENDA ITEM

For Meeting of: 11-20-07

SUBMITTED LATE

MEMORANDUM FOR THE COMMISSION

FROM: DAVID M. MASON
VICE CHAIRMAN 

SUBJECT: DRAFT FINAL RULE ON ELECTIONEERING COMMUNICATIONS

DATE: NOVEMBER 20, 2007

Attached is an amendment to Agenda Document No. 07-76. It replaces language beginning on at Line 4 on Page 10 through Page 11.

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

2 **§ 114.15 Permissible use of corporate and labor organization funds for certain**
3 **electioneering communications.**

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

9 (b) Safe Harbor. An electioneering communication is permissible under paragraph
10 (a) of this section if it meets the following requirements:

11 (1) It does not mention any election, candidacy, political party,
12 opposing candidate, or voting by the general public; and

13 (2) It does not take a position on any candidate's or
14 officeholder's character, qualifications, or fitness for office.

15 (c) Rules of Interpretation. A communication has a reasonable interpretation
16 other than as an appeal to vote for or against a clearly identified Federal
17 candidate if it:

18 (1) Focuses on a public policy issue and either urges a candidate to
19 take a position on the issue or urges the public to contact the candidate
20 about the issue; or

21 (2) Proposes a commercial transaction, such as purchase of a book,
22 video or other product or service, or such as attendance (for a fee) at a film
23 exhibition or other event; or

1 (3) Includes a call to action or other appeal reasonably interpreted in
2 conjunction with the rest of the communication as urging action other than
3 voting for or against or contributing to a clearly identified Federal
4 candidate or political party.

5 (4) In interpreting a communication under paragraph (a), any doubt
6 will be resolved in favor of permitting the communication.

7 (d) Information Permissibly Considered. In evaluating a communication under this
8 section, the Commission may consider only the communication itself and basic
9 background information that may be necessary to put the communication in
10 context and which can be established with minimal, if any, discovery. Such
11 information may include, for example, whether a named individual is a candidate
12 for office or whether a communication describes a public policy issue.

13 (e) Examples of Communications. A list of examples derived from prior
14 Commission or judicial actions of communications that have been determined to
15 be permissible and of communications that have been determined not to be
16 permissible under paragraph (a) is available on the Commission's Web site,
17 <http://www.fec.gov>.

18 (f) Reporting requirement. Corporations and labor organizations that make
19 electioneering communications under paragraph (a) aggregating in excess of
20 \$10,000 in a calendar year shall file statements as required by 11 CFR 104.20.