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FEDERAL ELECTION COMMISSION  
Washington, DC 20463

AGENDA DOCUMENT NO. 22-09-A  
AGENDA ITEM  
For the meeting of March 24, 2022

March 1, 2022

**MEMORANDUM**

TO: The Commission

FROM: Lisa J. Stevenson *NFS for LJS*  
Acting General Counsel

Neven F. Stipanovic *NFS*  
Associate General Counsel

Robert Knop *RMK*  
Assistant General Counsel

Cheryl A. Hemsley *CAFH*  
Attorney

Subject: REG 2012-01 (Electioneering Communications Reporting) -  
Draft Notice of Disposition

Attached is a proposed draft Notice of Disposition for the subject matter. We request that this draft be placed on a 48-hour tally vote ending on March 4, 2022 at 4:00 pm.

Attachment

**FEDERAL ELECTION COMMISSION****11 CFR Part 104****[NOTICE 2022-XX]****Electioneering Communications Reporting**

**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 October 5, 2012, by the Center for Individual Freedom. The petition asks that the Commission revise two regulations on the reporting of electioneering communications. The Commission has decided not to initiate a rulemaking in response to the petition because the regulatory changes it sought have already been implemented in a separate rulemaking. The petition and other documents relating to this matter are available on the Commission's website, <http://www.fec.gov/fosers/> (REG 2012-01 Electioneering Communications Reporting).

**DATES:** [INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**FOR FURTHER INFORMATION CONTACT:** Mr. Robert M. Knop, Assistant General Counsel, or Ms. Cheryl A. Hemsley, Attorney, 1050 First Street NE, Washington, D.C. 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** On October 5, 2012, the Commission received a petition for rulemaking from the Center for Individual Freedom. The petitioner asked that the Commission revise 11 CFR 104.20(c)(8) and (9) "by deleting the phrase 'pursuant to 11 CFR 114.15,' thereby explicitly applying the electioneering communication disclosure obligations of corporations and labor unions to any form of electioneering communication." Center for Individual Freedom, Petition for Rulemaking (Oct. 5, 2012), REG 2012-01,

1 <https://sers.fec.gov/fosers/showpdf.htm?docid=122723>. For the reasons explained below, the  
2 Commission has decided not to initiate a rulemaking in response to the petition.

3         The Federal Election Campaign Act, 52 U.S.C. 30101-45, requires persons who pay for  
4 “electioneering communications” to satisfy certain reporting requirements. An electioneering  
5 communication is a broadcast, cable, or satellite communication that refers to a clearly identified  
6 candidate for federal office, is publicly distributed within 60 days before a general election or 30  
7 days before a primary election and is targeted to the relevant electorate. 52 U.S.C.  
8 30104(f)(3)(A)(i); 11 CFR 100.29(a). Every person who makes disbursements for the direct  
9 costs of producing and airing electioneering communications in an aggregate amount that  
10 exceeds \$10,000 in a calendar year, must file a report with the Commission. 52 U.S.C.  
11 30104(f)(1), (2); 11 CFR 104.20.

12         Commission regulation 11 CFR 104.20(c) specifies the information that must be included  
13 in electioneering communications reports. When the instant petition was filed, paragraph (c)(8)  
14 provided that, “[i]f the disbursements [for the electioneering communications] were not paid  
15 exclusively from a segregated bank account . . . and were not made by a corporation or labor  
16 organization pursuant to 11 CFR 114.15,” the reports must include “the name and address of  
17 each donor who donated an amount aggregating \$1,000 or more to the person making the  
18 disbursement, aggregating since the first day of the preceding calendar year.” 11 CFR  
19 104.20(c)(8) (2012). Similarly paragraph (c)(9) provided that, “[i]f the disbursements [for the  
20 electioneering communications] were made by a corporation or labor organization pursuant to 11  
21 CFR 114.15,” the electioneering communications reports must include “the name and address of  
22 each person who made a donation aggregating \$1,000 or more to the corporation or labor  
23 organization, aggregating since the first day of the preceding calendar year, which was made for

1 the purpose of furthering electioneering communications.” 11 CFR 104.20(c)(9) (2012).  
2 Section 11 CFR 114.15, in turn, established certain criteria for electioneering communications  
3 that corporations and labor organizations were permitted to finance with their general treasury  
4 funds.

5 The Commission published a Notice of Availability on October 26, 2012, to ask for  
6 public comment on the petition. 77 FR 65332 (Oct. 26, 2012). The Commission received two  
7 substantive comments: One from the petitioner endorsing its own petition, and one arguing  
8 generally that corporations should be subject to disclosure requirements.

9 The Commission considered the petition and the comments at its open meeting on  
10 March 7, 2013, but did not approve the initiation of a rulemaking by the affirmative vote of four  
11 or more Commissioners. See Certification of Commission Vote, Agenda Document 13-10 (Mar.  
12 7, 2013), REG 2012-01, <https://sers.fec.gov/fosers/showpdf.htm?docid=296278>; see also 52  
13 U.S.C. 30106(c) and 30107(a)(8) (requiring an affirmative vote of at least four Commissioners to  
14 take any action to amend a regulation). Accordingly, the Commission directed the Office of  
15 General Counsel to draft a notice of disposition that included a summary of the statements  
16 expressed by Commissioners regarding the petition.

17 The Commission has not made public or deliberated on a draft notice of disposition  
18 addressing the merits of the petition. Instead, pursuant to 11 CFR 200.4(b), the Commission is  
19 now issuing this notice of disposition to explain that the Commission is not initiating a  
20 rulemaking in response to the petition because the regulatory changes it sought have already  
21 been implemented in a separate rulemaking. Specifically, on October 21, 2014, the Commission  
22 published changes to its rules governing independent expenditures and electioneering  
23 communications by corporations and labor organizations. Independent Expenditures and

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1 Electioneering Communications by Corporations and Labor Organizations, 79 FR 62797, 62816  
2 (Oct. 21, 2014); *see also* Independent Expenditures and Electioneering Communications by  
3 Corporations and Labor Organizations, 80 FR 12079 (Mar. 6, 2015) (noting that amendments  
4 became effective on January 27, 2015). Among other changes, these amendments deleted  
5 section 114.15 in its entirety and removed the references to it from 11 CFR 104.20(c)(8) and (9).  
6 79 FR at 62817, 62819.

7           Accordingly, the Commission declines to initiate a rulemaking in response to the petition  
8 because all of the changes it sought have already been made.

9

10 Dated: March XX, 2022.

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12 On behalf of the Commission,

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16 **Allen J. Dickerson,**

17 *Chairman,*

18 *Federal Election Commission.*

19

20 BILLING CODE: 6715-01-P