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AGENDA ITEM

For Meeting of: 10-31-02

MEMORANDUM

SUBMITTED LATE

DATE: October 30, 2002

TO: The Commission

FROM: Commissioner Michael E. Toner *MT*

RE: Proposed Amendments to Agenda Document 02-76 Draft Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions

Attached please find amendments that I am considering offering on October 31, 2002 to amend Agenda Document 02-76 Draft Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions.

Page 16, line 23 change "thirty days" to "sixty days"

Page 17, line 3 change "thirty" to "sixty"

Page 21, line 16 change "whom" to "which"

Page 24 lines 12-21 strike sentences so that paragraph begins with sentence "The final rules do not affect..."

Page 25, lines 2-5 strike sentence that begins "The final rules differ..."

Page 25 lines 14 and 15 change "thirty" to "sixty"

Page 25, line 18 insert comma after "written method" and insert the phrase "including e-mail"

Page 30 line 18 strike "or by email" and insert the phrase "including by email" in parenthesis after "writing"

Page 36, line 11 remove underline from phrase "another, but not"

Page 41, line 6 strike "the" before the phrase "calendar year basis"

Page 47, lines 10-11 strike sentence beginning with "The final rules include..."

Page 68, line 5 change "is governed" to "are governed"

Page 76, lines 19-22 edit sentence so that it reads:

It has determined that a rule that prohibits persons from knowingly providing substantial assistance to foreign nationals to circumvent the FECA is necessary to effectuate one of the key purposes of BCRA, that is, to prevent foreign national funds from influencing elections.

Page 86, line 5 change "thirty" to "sixty"

Page 87, line 11 change "thirty" to "sixty"

Page 90, line 10 insert space between "not" and "cause"

Page 99, line 19 strike "or" and insert "of"

Page 64, line 6 insert the following sentence after the period:

The Commission is creating a safe harbor, applicable in certain circumstances, within which a person will be deemed to have conducted a reasonable inquiry. See discussion of 11 CFR 110.20(g) below.

Page 74, line 22 insert "often" between "are" and "fact-intensive"

Page 75, line 2 insert the phrase "in all circumstances" in between "possible" and "to"

Page 75, line 4 strike the sentence beginning "Consequently, the final..."

Page 75, line 4 insert the following:

However, the Commission is adopting one narrowly tailored safe harbor. Under 11 CFR 103.3(b)(1), with respect to contributions that present "genuine questions" that they may come from a foreign source, political committee treasurers have an affirmative duty to investigate the contributions and use best efforts to determine the legality of the contribution. If, despite such due diligence, the treasurer is unable to determine the legality of the contribution within 30 days, the treasurer is required to refund the contribution to the contributor. Id. During the last several years, many political committees and other organizations, out of an abundance of caution, have adopted a policy of requesting and keeping on file copies of U.S. passport papers from all their contributors who reside outside the United States, or who list a foreign address, or who make a contribution through a foreign bank. The Commission believes such prudent practices are appropriate and satisfy a political committee's affirmative duty to investigate such questionable contributions. Accordingly, the Commission is creating a safe harbor at 11 CFR 110.20(a)(6) whereby any person shall be deemed to have conducted a reasonable inquiry under 11 CFR 110.20(a)(4)(iii) if he or she seeks and obtains copies of current and valid U.S. passport papers for U.S. citizens who are contributors or donors who (i) use a foreign passport or passport number for identification purposes, (ii) provide a foreign address, (iii) make a contribution or donation by means of a check or other written instrument drawn on a foreign bank or by a wire transfer from a foreign bank, or (iv) reside abroad. See 11 CFR 110.20(a)(5)(i) – (iv). Under those circumstances, the political committee shall also be deemed to have satisfied its affirmative duty to investigate such contributions under 11 CFR 103.3(b)(1).

Page 102, line 6 insert the following:

- (6) Safe Harbor. For purposes of paragraph (a)(4) of this section, a person shall be deemed to have conducted a reasonable inquiry if he or she seeks and obtains copies of current and valid U.S. passport papers for U.S. citizens who

are contributors or donors described in paragraphs (a)(5) (i) – (iv) of this section. No person may rely on this safe harbor if he or she has actual knowledge that the source of the funds solicited, accepted or received is a foreign national.