

AGENDA DOCUMENT NO. 15-52-A



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

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AGENDA ITEM

For Meeting of 10-29-15

MEMORANDUM

TO: The Commission

THROUGH: D. Alec Palmer *DWP/AP*
Staff Director

FROM: Lisa J. Stevenson
Deputy General Counsel, Law *LJS*

Lawrence L. Calvert *LLC*
Special Counsel to the General Counsel

RE: Proposed Amendment to Directive 52 –
Technical and Conforming Authority

The Office of General Counsel recommends that the Commission adopt the attached proposed amendment to Directive 52 to provide originating offices with authority to make technical and conforming changes to documents approved by the Commission. The proposed amendment would also give the Secretary authority when certifying Commission votes to make technical and conforming changes, in consultation with the originating office or the appropriate Commissioner's office, to adopted recommendations or motions.

It is not uncommon for staff to have to make technical and conforming changes to a document after the Commission votes to approve a draft. Technical and conforming changes may be necessary to conform documents to *Federal Register* requirements, to account for changes adopted by the Commission at the table, or to correct formatting or typographical errors (particularly where drafts have been hurriedly edited and exchanged in the hours before a meeting). Historically, OGC Policy attorneys have included requests for authority to make such technical and conforming changes in their presentations of drafts at Commission meetings. But this case-by-case method sometimes does not work, either because the attorney presenting the draft fails to request the authority, or because the Commissioner moving the draft for a vote fails to include the grant of authority in the motion for approval. Moreover, the practice of requesting authority for technical and conforming changes has been less common, but no less useful, when the Commission considers documents proposed by other divisions within OGC or other offices within the agency. Omission of authority to make technical and conforming changes becomes problematic when staff identifies a technical flaw in the document after its approval.

Moreover, the difficulty caused by lack of technical and conforming authority is even greater when the technical flaw is in a recommendation or motion approved by the Commission. Currently, the Secretary certifies actions taken by the Commission by stating verbatim in the certification the language in the originating office's recommendation or the language of a Commissioner's motion made orally at the table. If the recommendation or the motion contains a technical flaw not noticed until after Commission action, the flaw must sometimes be corrected by the office handling the matter recommending in a memo, and the Commission formally voting, to rescind its previous action and take the correct action. For small errors where there was no doubt as to the Commission's actual intent, such as an incorrect or incorrectly formatted citation, this is an inefficient use of Commissioner and staff time.

Accordingly, we seek to replace the current ad hoc processes with an amendment to Directive 52 that would grant standing authority -- authority that the Commission may revoke in the context of any given document -- to make technical and conforming changes to documents, recommendations, and motions requiring such changes after they are approved. The proposal includes a definition of "technical and conforming change" that is based on how the Commission and other agencies have used "technical and conforming" authority in the past. The definition is narrowly drawn to ensure that the authority will only be used in situations in which the actual intent of the Commission in adopting the document, recommendation or motion is clear.

RECOMMENDATION

Approve the attached proposed amendment to Directive 52.

Attachment

PROPOSED AMENDMENT TO DIRECTIVE 52

Amend Commission Directive 52 as follows:

Insert a new Section V at the end of the directive to read as follows:

V. TECHNICAL AND CONFORMING CHANGES

A. Grant of Authority to Originating Office. Whenever the Commission approves a document by majority vote (such as a factual and legal analysis in an enforcement matter, an advisory opinion, a submission to the *Federal Register*, a Final Audit Report of the Commission, etc.) the office handling the matter shall have authority to make technical and conforming changes to the document subsequent to Commission approval, without additional Commission action, before publishing or transmitting the document in its final form.

B. Grant of Authority to Commission Secretary. Whenever the Commission approves recommendations made by an originating office, or approves a motion in a Commission meeting, the Commission Secretary (in consultation with the office making the recommendations or the office of the Commissioner who makes the motion) shall, when certifying the Commission's vote, have authority to make technical and conforming changes to the language of the recommendations or the motion without additional Commission action.

C. Definition. A 'technical and conforming change' means a change to the document, recommendation, or motion which –

1. corrects an unambiguous error of spelling, punctuation or grammar;
2. corrects an unambiguous typographical error or omission;
3. corrects an error in an arithmetic operation described in the document or motion itself, or in an accompanying document (*e.g.*, a General Counsel's report describes a civil penalty calculation as 25% of a \$250,000 amount in violation, but then recommends a conciliation agreement with a civil penalty of \$72,500 instead of \$62,500, and the Commission approves the recommendation without further discussion);
4. corrects an unambiguously erroneous or obsolete citation or other reference to authority;
5. conforms the document, recommendation or motion to correct formatting or citation style, including, in the case of documents to be submitted for publication in the *Federal Register*, conformation to *Federal Register* formatting and style rules;
6. corrects words inadvertently omitted or repeated, or makes corrections such as changing 'foreign nation prohibition' to 'foreign national prohibition' when the context and other language in the document make unambiguously clear that 'national' was intended;

7. in documents to be submitted for publication in the *Federal Register*, updates the contact information, dates, and similar information required for publication.”

“D. Scope. This section shall apply both to documents or recommendations approved on tally vote pursuant to the provisions of this directive and to documents, recommendations, or motions approved in a Commission meeting.

“E. Withholding of Authority. The Commission may, in any particular matter, withhold the authority granted by this section by an affirmative vote of four members.

“F. Interpretation. Any interpretation of this section that cannot be resolved by an originating office (or, in the case of a motion made in a Commission meeting, the Commissioner who made the motion), the Secretary, and the Office of General Counsel shall be brought to the personal attention of the Staff Director and General Counsel for resolution, except that if

1. the question concerns a motion made in a Commission meeting, or
2. the Staff Director and the General Counsel still cannot resolve the question of interpretation,

the question shall be brought to the Chair and Vice Chair for resolution.”