

# FEC Bans Certain Candidate Public Service Announcements

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By virtue of amendments to its regulations, the Federal Election Commission (FEC) has outlawed certain Public Service Announcements (PSAs) that mention or feature a federal candidate and air within 30 days of a primary or within 60 days of a general election, even if the PSA is distributed for free by a television or radio station, cable company or satellite provider.

After January 20, 2006, a broadcaster, cable company or satellite provider, may not, within 30 days of a primary election or within 60 days of a general election, air on the radio or on television any PSA that:

- Features the likeness of, or mentions the name of, a candidate for federal office.
- Can be received by 50,000 or more persons in the candidate's congressional district or state, as applicable (for Presidential elections, it is nationwide).

In order to avoid this situation, the FEC urges 501(c)(3) charities that produce PSAs to include expiration dates on all PSAs that mention or feature federal candidates so that the PSAs are not aired within the prohibited time periods.

Failing to perform proper due diligence and observe such expiration dates could create liability for a broadcaster, cable operator or satellite system, even if the individual on a PSA was not a candidate when the PSA was created or first distributed. According to the FEC, "[I]f an incorporated broadcaster provides free airtime for a PSA that satisfies the definition of 'electioneering communication,' then the broadcaster *may be responsible* for making an electioneering

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communication," although the 501(c)(3) charity will generally escape liability if it has included a proper expiration date.

The prior FEC regulations had exempted not only communications paid for by 501(c)(3) charities (which was also done away with in the new regulations), but also communications otherwise covered by the law if they were distributed for free. A federal court struck down these regulations, and the new regulations are an attempt by the FEC to comply with the court decisions.

The final rules, as published in the Federal Register on December 21, 2005, can be found at [www.fec.gov/law/cfr/ej\\_compilation/2005/notice\\_2005-29.pdf](http://www.fec.gov/law/cfr/ej_compilation/2005/notice_2005-29.pdf).