

# Proposed Rules

Federal Register

Vol. 62, No. 245

Monday, December 22, 1997

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 100 and 114

[Notice 1997-20]

#### Definition of "Member" of a Membership Association

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Commission is proposing revisions to its rules governing who qualifies as a "member" of a membership association to reflect the decision of the United States Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce of the United States v. Federal Election Commission*. A membership association can solicit contributions from its members to a separate segregated fund established by the association, and can include express electoral advocacy in communications to its members. The proposed rules would describe a range of financial and organizational attachments that would be sufficient to confer this status.

**DATES:** Comments must be received on or before January 21, 1998. If the Commission receives sufficient requests to testify, it will hold a hearing in early 1998. The precise date and time of the hearing will be announced in the **Federal Register**. Persons wishing to testify should so indicate in their comments.

**ADDRESSES:** All comments should be addressed to Susan E. Propper, Assistant General Counsel, and must be submitted in either written or electronic form. Written comments should be sent to the Federal Election Commission, 999 E Street, N.W., Washington, DC 20463. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up. Electronic mail comments should be sent to members@fec.gov. Commenters sending comments by electronic mail should include their full name and postal service address within the text of their comments. Comments that do not contain the full name, electronic mail

address and postal service address of the commenter will not be considered. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street N.W., Washington, D.C.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street N.W., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** Although the Federal Election Campaign Act of 1971 as amended ("FECA" or "Act"), 2 U.S.C. 431 *et seq.*, prohibits direct corporate contributions in connection with federal campaigns, 2 U.S.C. 441b(a), it permits corporations, including incorporated membership associations, to solicit contributions from their restricted class to a separate segregated fund ("SSF"). In the case of membership associations, the restricted class consists of the members of each association, their executive and administrative personnel, and their families. These contributions can be used for federal political purposes. The Act also allows membership associations to communicate with their members on any subject, including communications that include express electoral advocacy, 2 U.S.C. 441b(b)(2)(A), 441b(b)(4)(C). The Commission's implementing regulations defining who is a "member" of a membership association are found at 11 CFR 100.8(b)(4)(iv) and 11 CFR 114.1(e).

The Commission's original "member" rules, which had been adopted in 1977, were the subject of a 1982 United States Supreme Court decision, *FEC v. National Right to Work Committee* ("NRWC"), 459 U.S. 196 (1982). In 1993, following a series of advisory opinions in this area, the Commission revised the text of the rules to reflect that decision. 58 FR 45770 (Aug. 30, 1993), effective Nov. 10, 1993. 58 FR 59640. The revised rules were held to be unduly restrictive by the United States Court of Appeals for the District of Columbia Circuit in *Chamber of Commerce of the United States* ("Chamber") v. *FEC*, 69 F.3d 600 (D.C.Cir. 1995), *amended on denial of rehearing*, 76 F.3d 1234 (D.C. Cir. 1996).

On February 24, 1997, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the National Right to Life Committee, Inc. The Petition urged the Commission to revise its member rules

to reflect the *Chamber* decision. The Commission published a Notice of Availability ("NOA") in the **Federal Register** on March 29, 1997. 62 FR 13355. The Commission received two comments in response to the NOA.

On July 31, 1997, the Commission published in the **Federal Register** an Advance Notice of Proposed Rulemaking ("ANPRM") addressing these rules. 62 FR 40982. Because the *Chamber* decision, the petition for rulemaking, and the comments received in response to the NOA provided few specific suggestions as to how the rules should be amended to comport with the decision, the Commission did not propose specific amendments to the rules. Rather, it sought general guidance on the factors to be considered in determining the existence of this relationship.

The Commission received 14 comments in response to the ANPRM. Commenters included the American Association of Meat Processors ("AAMP"); the American Dental Association ("ADA"); the American Federation of State, County and Municipal Employees, AFL-CIO ("AFSCME"); the American Society of Association Executives ("ASAE"); the Chicago Board of Trade; the Chicago Mercantile Exchange; the Connecticut Veterinary Medical Association; the Metropolitan Kansas City Board of Realtors; the National Association of Realtors; the National Citizens Legal Network; the National Right to Life Committee, Inc.; Michael A. Schoenfield; the United States Chamber of Commerce; and the Wholesaler-Distributor Political Action Committee ("WDPAC"). After reviewing these comments, the Commission is now seeking further comment on the specific amendments to the member rules described below.

#### Background

In its *NRWC* decision, the Supreme Court rejected an argument by a nonprofit, noncapital stock corporation, whose articles of incorporation stated that it had no members, that it should be able to treat as members individuals who had at one time responded, not necessarily financially, to an *NRWC* advertisement, mailing, or personal contact. The Supreme Court rejected this definition of "member," saying that to accept it "would virtually excise from

the statute the restriction of solicitation to 'members.''' *Id.* at 203. The Court determined that "members" of nonstock corporations should be defined, at least in part, by analogy to stockholders of business corporations and members of labor unions. Viewing the question from this perspective meant that "some relatively enduring and independently significant financial or organizational attachment is required to be a 'member'" for these purposes. *Id.* at 204. The NRWC's asserted members did not qualify under this standard because they played no part in the operation or administration of the corporation, elected no corporate officials, attended no membership meetings, and exercised no control over the expenditure of their contributions. *Id.* at 206. The 1993 revisions to the Commission's rules were intended to incorporate this standard.

The current rules provide that either a significant financial attachment to the membership association (not merely the payment of dues) or the right to vote directly for all members of the association's highest governing body is sufficient in and of itself to confer membership rights. However, in most instances a combination of regularly-assessed dues and the right to vote directly or indirectly for at least one member of the association's highest governing body is required. The term "membership association" includes membership organizations, trade associations, cooperatives, corporations without capital stock, and local, national and international labor organizations that meet the requirements set forth in these rules.

The United States District Court for the District of Columbia held that the current rules were not arbitrary, capricious or manifestly contrary to the statutory language, and therefore deferred to what the court found to be a valid exercise of the Commission's regulatory authority. *Chamber of Commerce of the United States v. FEC*, Civil Action No. 94-2184 (D.D.C. Oct. 28, 1994)(1994 WL 615786). However, the D.C. Circuit Court of Appeals reversed this ruling.

The case was jointly brought by the Chamber of Commerce and the American Medical Association ("AMA"), two associations that do not provide their asserted "members" with the voting rights necessary to confer this status under the current rules. The circuit court held that the ties between these members and the Chamber and the AMA are nonetheless sufficient to comply with the Supreme Court's *NRWC* criteria, and therefore concluded that the Commission's rules are invalid

because they define the term "member" in an unduly restrictive fashion. 69 F.3d at 604.

The Chamber is a nonprofit corporation whose members include 3,000 state and local chambers of commerce, 1,250 trade and professional groups, and 215,000 "direct business members." The members pay annual dues ranging from \$65 to \$100,000 and may participate on any of 59 policy committees that determine the Chamber's position on various issues. However, the Chamber's Board of Directors is self-perpetuating (that is, Board members elect their successors); so no member entities have either direct or indirect voting rights for any members of the Board.

The AMA challenged the exclusion from the definition of member 44,500 "direct" members, those who do not belong to a state medical association. Direct members pay annual dues ranging from \$20 to \$420; receive various AMA publications; and participate in professional programs put on by the AMA. They are also bound by and subject to discipline under the AMA's Principles of Medical Ethics. However, since state medical associations elect members of the AMA's House of Delegates, that organization's highest governing body, direct members do not satisfy the voting criteria set forth in the current rules.

The *Chamber* court, in an Addendum to the original decision, noted that the Commission "still has a good deal of latitude in interpreting" the term "member." 76 F.3d at 1235. However, in its original decision, the court held the rules to be arbitrary and capricious as applied to the Chamber, since under the current rules even those paying \$100,000 in annual dues cannot qualify as members. As for the AMA, the rule excludes members who pay up to \$420 in annual dues and, among other organizational attachments, are subject to sanctions under the Principles of Medical Ethics. The court explained that this latter attachment "might be thought, [] for a professional, [to be] the most significant organizational attachment." 69 F.3d at 605 (emphasis in original).

The current rules provide a "safe harbor" for membership associations, since those who meet the requirements set forth in these rules clearly enjoy "member" status. Associations can also seek advisory opinions pursuant to 2 U.S.C. 437f to determine how the rules, as interpreted in the *Chamber of Commerce* decision, apply to their particular situations. In addition, the Commission believes it is appropriate to include in the text of the rules more

guidance consistent with the *Chamber* decision. The effect of the proposed rules should be to expand the class of persons considered as "members."

### Proposed Revisions

#### General Considerations

One commenter argued that, since the *NRWC* decision involved an entity whose by-laws specifically stated that it had no members, the Supreme Court's reasoning in that decision applies only to similar entities. That commenter urged the Commission to reinstate its original definition of "member," which included "all persons who are currently satisfying the requirements for membership in a membership organization."

However, the Court's discussion makes clear that the *NRWC*'s failure to provide for members in its by-laws was not the main focus of its reasoning. It was not until *after* the Court noted that the *NRWC*'s asserted "members" had no governance rights or significant other attachments to the organization, *supra*, that it reiterated an earlier statement that the "NRWC's own articles of incorporation and other publicly filed documents explicitly disclaimed the existence of members." 459 U.S. at 558-59. The Commission believes that the lack of financial or organizational attachments, as well as the failure to provide for members in its bylaws, led to the Court's conclusion that the asserted members did not so qualify.

One commenter, noting that it is possible to buy a single share of stock over the telephone, and sell it later that same day, argued that the analogy to stock ownership did not necessarily imply a strong bond. However, ownership of even a single share of stock permits the owner to attend stockholder meetings and thereby participate in the governance of the corporation during whatever time period the stock is held.

Some commenters argued that the Commission should look to the laws of the individual states where membership associations are incorporated to determine who qualifies as their members. The *NRWC* Court assumed, "since there is no body of federal law of corporations, [] Congress intended at least some reference to the laws of the various states dealing with nonprofit corporations." *Id.* at 558 (citation omitted). However, that statement was in response to the argument that the Commission should have acted without reference to state law. The Court explained that, "[g]iven the wide variety of treatment of the subject of membership in state incorporation laws,

and the focus of the Commission's regulation on the corporation's own standards, we think it was entirely permissible for the Commission in this case to look to NRWC's corporate charter under the laws of Virginia and the bylaws adopted in accordance with that charter." *Id.* Far from requiring the Commission to take that action, the Court merely said this was a permissible option under the former "member" definition.

The Commission is now proposing to revise this definition, to provide greater guidance to the regulated community in light of the NRWC decision. While under that decision the Commission may choose to examine state law in connection with a particular situation, it does not believe this is an appropriate standard to include in the regulatory language.

#### Overview

The current rules set out three preliminary requirements that an entity must meet before it qualifies as a "membership association" for purposes of these rules: It must expressly provide for "members" in its articles and by-laws; it must expressly solicit members; and it must expressly acknowledge the acceptance of membership, such as by sending a membership card or including the member on a membership newsletter list. 11 CFR 100.8(b)(4)(iv)(A), 114.1(e)(1). These three requirements were not challenged in the litigation and the Commission is not proposing any changes to this language.

The current rules also recognize as members those who have a stronger financial interest in an association than paying dues (for example, the ownership of a stock exchange seat). 11 CFR 100.8(b)(4)(iv)(B)(1), 114.1(e)(2)(i). The Commission is not proposing that these rules be changed. However, it is proposing three alternatives (*Alternatives A, B, and C*) to the other requirements contained in the current rules.

#### Preliminary Requirements

The Chamber of Commerce and some of the commenters argued that the three general requirements should in and of themselves be sufficient to confer membership status. However, the Commission questions whether these attachments, standing alone, are sufficient to meet the "relatively enduring and independently significant financial or organizational attachment" standard articulated by the NRWC Court. While that Court did not discuss what it considered to be a significant financial attachment, these three

requirements contain *no* financial attachment. With reference to organizational attachments, the Court cited such attachments as the right to play some part in the operation or administration of the corporation; the right to elect corporate officers; and the right of members to exercise control over the expenditure of their contributions. 459 U.S. at 558. The three requirements fall far short of any such attachments. For this reason none of the alternatives would provide that these three requirements, standing alone, be sufficient to confer membership status.

#### Financial Attachments

All three alternatives would also retain the current rule recognizing as members persons who have a stronger financial interest in an association than the payment of annual dues, such as those owning seats on stock exchanges or boards of trade. 11 CFR 100.8(b)(4)(iv)(B)(1); 114.1(e)(2)(i). While in most instances such persons would qualify under the other proposed requirements, the Commission believes it is appropriate to retain this separate category.

On May 16, 1997, the Commission determined in Advisory Opinion ("AO") 1997-5 that, based on the facts presented, both owners and lessees of seats on the Chicago Mercantile Exchange could be considered "members" of the CME for purposes of these rules. The member-owners, by virtue of their ownership stake, qualify as members under 11 CFR 100.8(b)(4)(iv)(B)(1) and 114.1(e)(2)(i). In addition, the Commission found, member-lessees have sufficient rights and obligations to also qualify as members. These attachments include substantial financial obligations to the CME, the right to serve on policy-formulating committees, and the possibility of sanctions by the CME that would impact on their professional status. AO 1997-5 overruled AO 1988-39 and 1987-31 (in part), which had concluded that, because only one seat was involved, only one membership in the Exchange existed with respect to each leased membership.

The Commission sought comments in the ANPRM on whether to include the holding of AO 1997-5 in the regulatory text. While both the Chicago Board of Trade and the Chicago Mercantile Exchange urged the Commission to do this, the Commission has determined that this is unnecessary, since the proposed rules would so clearly cover both owned and leased memberships. Further, AO 1997-5 remains in effect, should the regulated community require additional guidance on this point.

Therefore, the Commission has not included language to this effect in the text of the proposed rules.

#### Dues

The ANPRM suggested that a certain level of annual dues might be considered in and of itself sufficient to establish membership. Those who paid this amount would be considered members regardless of whether they had any organizational attachments to the association. The ANPRM suggested that any amount of annual dues set by an association might be a sufficient financial attachment, regardless of amount; or, alternatively, that \$200 per year might be an appropriate cut-off point, since \$200 is the amount that Congress has decided is such a significant attachment to a political committee that itemized disclosure is required for contributions to a political committee.

Some commenters supported the proposal that any amount of dues set by an association would be sufficient to confer membership; while others suggested that a nominal amount, such as \$5 per year, should be sufficient. No commenter who addressed this part of the ANPRM agreed with the proposed \$200 per year figure.

The Chamber of Commerce stated that a \$200 cut-off would exclude approximately 58% of its members, who pay annual dues ranging from \$65 through tens of thousands of dollars. ASAE pointed out that an association may charge an initial rate for the first person who joins from an organization, and a reduced rate for subsequent joiners. AAMP noted that membership associations sometimes offer a reduced rate for the first year of membership, in hopes of attracting members who will continue their membership notwithstanding the higher dues for subsequent years.

The three alternatives take different approaches to this question. *Alternative A* would set this level at \$50 per year; *Alternative B* would retain the \$200 level proposed in the ANPRM for those entities not formed to further business or economic interests; while under *Alternative C* any amount of annual dues set by the association would be sufficient.

*Alternative A*, which proposes that \$50 in annual dues be sufficient to confer membership status, if no organizational attachments exist other than the three preliminary requirements, reflects the Supreme Court's language in the NRWC decision making it clear that more than a token commitment is required to qualify as a significant financial attachment. The

Commission notes that it is also likely that many persons with lesser dues obligations would qualify as members through the organizational attachments discussed below.

*Alternative B* would distinguish between the types of organizations addressed by the Chamber of Commerce decision and ideological, social welfare, and political organizations. The first category would include organizations formed to further business or economic interests or to implement a system of self-discipline or self-regulation within a line of commerce, such as business leagues, trade associations, labor organizations, and self-regulating professional associations. These types of organizations clearly provide, as enunciated by the Supreme Court in the *NRWC* case, "some relatively enduring and independently significant financial or organizational attachment." 459 U.S. at 204. Persons paying regular dues of any amount could be treated as members of these organizations without doing violence to the intent of the statute. Such persons join to foster their business or economic interests and, thus, create an attachment that is independent of any political attachment. This is in contrast to persons who join ideological, social welfare, or political organizations. In the latter case, there is a far greater risk that "dues" are nothing more than political support indistinguishable from such support from the general public. In other words, there is a far greater risk that the Commission would "open the door to all but unlimited corporate solicitation and thereby render meaningless the statutory limitation to members." *NRWC*, 459 U.S. at 204.

For organizations that do not fall in the categories of "business leagues, trade associations, labor organizations, or self-regulating professional associations," this alternative would provide that a dues payment obligation by itself would suffice as an indication of "relatively enduring and independently significant financial or organizational attachment" if it exceeds \$200 per year. This is the amount Congress chose as the associational level of significance for donor disclosure. Also, although this "\$200 dues alone" provision for organizations other than business leagues, trade associations, labor organizations, and self-regulating professional associations would be more restrictive than *Alternative A*, it still would be more forgiving than the current rule whereunder there is no allowance for "member" status based solely on a dues obligation.

*Alternative C* would provide that an organization that qualified as a

membership association could consider as "members" all persons who paid the amount of annual dues set by the association, regardless of amount. This alternative would not distinguish between economic and ideological associations, reasoning that, for example, an emotional commitment to an organization such as Mothers Against Drunk Driving ("MADD") is as significant to their members as the economic attachments discussed with regard to *Alternative B, supra*. Also, a number of organizations that clearly qualify as membership associations, including the American Association of Retired Persons ("AARP"), have annual dues of less than \$50 and provide none of the organizational attachments discussed below.

#### *Organizational Attachments*

The ANPRM proposed that, for a lesser dues obligation than that which would automatically confer membership, the rules might specify other factors the Commission would consider *per se* sufficient to provide the required organizational attachment, provided that some level of dues was also required. Suggested factors included such attachments as the voting rights contained in the current rule; the right to serve on policy-making boards and/or vote on policy issues; eligibility to be elected to governing positions in the organization; and whether the member could be subject to disciplinary action by the association. The right to vote directly for all members of the highest governing body, contained in current 11 CFR 100.8(b)(4)(A)(3) and 114(e)(1)(iii), was not included in this listing because the other proposed attachments would cover this situation. No commenter suggested additional attachments for inclusion in this list.

*Alternative A* proposes that, consistent with the *NRWC* decision, certain organizational attachments be considered *per se* sufficient for membership, even where the association charges no dues. Of the above listing, this alternative would provide that the right to vote on policy matters, taken alone, does not provide the significant attachment envisioned by the *NRWC* Court. However, each of the other organizational attachments would be sufficient to confer membership status even where no dues are required. As noted, under this alternative, payment of less than \$50 per year in predetermined annual dues, coupled with a lesser organizational attachment, such as the right to vote on policy issues of interest to the membership association, also would be sufficient to confer membership status.

Under *Alternative B*, persons affiliated with ideological, social welfare, or political organizations who paid less than \$200 per year in annual dues would be considered members for purposes of these rules if they had some right to participate in the governance of the organization. Such rights would include a right to vote for at least one individual on the highest governing body or for the officers of the organization; a right to vote on policy questions where the highest governing body is obligated to abide by the results (a binding referendum, for example, rather than a mere informational survey) or to approve or disapprove the results (a resolution that must be acted upon, for example); a right to join (not just the opportunity to be selected for) a committee, board, or section within the organization that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or (if the opportunity to be selected for such a committee, board, or section is involved) the right to participate on such committee, board or section because of being selected. To round out the rules, this alternative would provide that even without any dues obligation, persons could be considered "members" if they have the right to vote for at least a majority of the individuals on the highest governing body.

These "dues plus governance rights" provisions, although not as loose as *Alternative A*, would be more forgiving than the current rule because several options other than voting for at least one member of the highest governing body would suffice. The "vote for a majority alone" rule would be more forgiving than the current rule because voting for all persons on the highest governing body would not be required.

The standards proposed in *Alternative B* would permit virtually all the organizations represented by the commenters to treat those they consider members as "members" under federal election law. At the same time, they would screen out ideological/social welfare/political organizations that are not willing to provide for a dues requirement and minimal governance rights. These organizations must be held to a standard that clearly demonstrates that members have a "relatively enduring and independently significant financial or organizational attachment."

*Alternative C* does not address the situation where persons pay no dues but have significant organizational attachments to an association.

*Case by Case Determinations*

The current rules at 11 CFR 100.8(b)(4)(iv)(C) and 114.1(e)(3) provide that persons who do not meet the precise membership requirements set out elsewhere in the rules may nevertheless be considered members on a case by case basis. The examples given include student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation. However, the current rules require that such persons may qualify as members only if they retain voting rights in the association. Consistent with the *Chamber* decision, the Commission is proposing that this voting requirement be dropped. The language would also be modified to refer to an organizational or financial attachment, rather than an organizational and financial attachment. This approach is included only in *Alternatives A and B*, as it would not be needed if *Alternative C* were adopted.

*Multi-tiered Associations*

The current rules at 11 CFR 100.8(b)(4)(iv)(B) and 114.1(e)(2) that require both a financial and an organizational attachment for members of most membership associations clearly include two-tiered associations, such as those in which members vote for delegates to a convention, and those delegates elect those who serve on the association's highest governing body. At the time of the 1993 amendment, the Commission explained that multi-tiered associations could solicit across all tiers, as long as the various tiers met the same criteria that govern solicitations by two-tiered associations. *Explanation and Justification for Regulations on the Definition of "Member" of a Membership Association*, 58 FR 45770 (1993). In addition, the Commission authorized farm cooperatives as defined in the Agricultural Marketing Act of 1929 (12 U.S.C. 1141j) and those entities eligible for assistance under the Rural Electrical Act of 1936 as amended (7 U.S.C. 901-950aa-1) to solicit across all tiers even though the precise attachments set forth at 11 CFR 100.8(b)(4)(iv)(B) and 114.1(e)(2) might not always be present. 11 CFR 114.7(k)(1). Federations of trade associations had earlier been given this same right, 11 CFR 114.8(g), as had labor organizations, 11 CFR 114.1(e)(4). The *Chamber of Commerce* court, in discussing the AMA's organizational attachments, cited these exceptions as another basis for its ruling that the AMA should be able to cross-solicit across

multiple tiers even where no voting rights were present. 69 F.3d at 606.

If the Commission expands the membership definition, many multi-tiered associations that do not presently qualify for cross-tier solicitation would likely be able to do so. In addition, all three alternatives would provide that direct membership in any level of a multi-tiered association be construed as membership in all tiers of the association for purposes of these rules. ASAE, in recommending this approach, noted that a person who joins one tier of a multi-tiered association clearly demonstrates an intention to associate with the entire organization. This approach would also make enforcement easier and prevent what could otherwise be a large number of requests for advisory opinions from multi-tiered associations.

The Commission is therefore proposing that new general language for this purpose replace that currently found at 11 CFR 100.8(b)(4)(iv)(D) and 114.1(e)(4). Current 11 CFR 114.7(k) and 114.8(g) would be repealed. However, *Alternative B* would in addition retain the Commission's long-standing regulations regarding federations of labor organizations. See 11 CFR 100.8(b)(4)(iv)(D) and 114.1(e)(4). Those rules relate to a situation where the federation is not affiliated with the member organizations (i.e., according to explicit legislative history, the PACs of the federation do not have to share contribution limits with the PACs of the member unions, just as the PACs of a business league or trade association do not have to share limits with the PACs of member corporations, yet the federation is allowed to solicit the members of the member organizations). See, e.g., H.R. Rep. 917, 94th Cong., 2d Sess. 8 (1976); *FEC v. Sailors' Union of the Pacific Political Fund*, 624 F.Supp. 492, 495 (N.D. Cal. 1986), *aff'd* 828 F.2d 502 (9th Cir. 1987). This rule for labor federations is needed to preserve a balance with trade associations which are given explicit allowances to solicit persons associated with member corporations.

AO 1991-24 addressed the efforts of the Credit Union National Association, Inc. ("CUNA") and the Wisconsin Credit Union League to make partisan communications across multiple tiers of the organization. While the Commission approved the proposed procedures, these draft rules would increase the options available to these and comparably-situated multi-tiered organizations. In AO 1993-24, the Commission determined that certain persons were not members of the National Rifle Association for purposes

of the current rules because they did not have the required voting rights. The draft rules, if approved, would supersede that portion of the AO that requires voting rights to establish membership.

The Commission also welcomes comments on any related topic.

**Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)**

These proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that the rules would broaden the current definition of who qualifies as a member of a membership association, thus expanding the opportunity for such associations to send electoral advocacy communications and solicit contributions to their separate segregated funds, but do not require any expenditure of funds. Therefore, no significant impact would result for purposes of this requirement.

**List of Subjects**

11 CFR Part 100

Elections.

11 CFR Part 114

Business and industry, Elections, Labor.

For the reasons set out in the preamble, it is proposed to amend Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations as follows:

**PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)**

1. The authority citation for Part 100 would continue to read as follows:

**Authority:** 2 U.S.C. 431, 438(a)(8).

2. Section 100.8 would be amended by revising paragraph (b)(4)(iv) to read as follows:

**§ 100.8 Expenditure (2 U.S.C. 431(9))**

\* \* \* \* \*

(b) \* \* \*  
(4) \* \* \*

(iv) (A) For purposes of paragraph (b)(4) of this section *membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

- (1) Expressly provides for "members" in its articles and by-laws;
- (2) Expressly solicits members; and
- (3) Expressly acknowledges the acceptance of membership, such as by

sending a membership card or inclusion on a membership newsletter list.

(B) For purposes of paragraph (b)(4) of this section, the term *members* includes all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(1) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but not merely the payment of dues);

*Alternative A* for paragraphs (b)(4)(iv)(B)(2)–(4).

(2) Are required to pay on a regular basis a specific amount of dues of at least \$50 per year that are predetermined by the association;

(3) Have a significant organizational attachment to the membership association. Such attachments include the right to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those who select at least one member of those on the highest governing body of the membership association; the right to serve on policy-making boards of the membership association; eligibility to be elected to governing positions in the membership association; and the possibility of disciplinary action against the member by the membership association; or

(4) Are required to pay on a regular basis a specific amount of dues of less than \$50 per year that are predetermined by the association and who have a lesser organizational attachment to the membership association than those set forth in paragraph (b)(iv)(B)(3) of this section, such as the right to vote on policy issues of interest to the association.

*Alternative B* for paragraphs (b)(4)(iv)(B)(2)–(4).

(2) Are required to pay on a regular basis a specific amount of dues of at least \$200 per year that are predetermined by the membership association;

(3) Are required to pay on a regular basis a specific amount of dues less than \$200 per year that are predetermined by the membership association and either the association is a business league, trade association, labor organization, or self-regulating professional association or such persons also have:

(a) A right to vote for at least one individual on the highest governing body of, or for the officers of, the membership association;

(b) A right to vote on policy questions where the highest governing body of the membership association is obligated to abide by the results (a binding referendum, for example, rather than a mere informational survey) or to approve or disapprove the results (a resolution that must be acted upon, for example);

(c) A right to join (not just the opportunity to be selected for) a committee, board, or section within the membership association that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or

(d) A right to participate by virtue of being selected to serve on a committee, board, or section within the membership association that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or

(4) Have the right to vote for at least a majority of the individuals on the highest governing body.

*Alternative C* for paragraph (b)(4)(iv)(B)(2).

(2) Are required to pay on a regular basis a specific amount of annual dues that are predetermined by the association.

*Alternatives A and B* for paragraph (b)(4)(iv)(C).

(C) Notwithstanding the requirements of paragraph (b)(4)(iv)(B) of this section, the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have a significant organizational or financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule. For example, student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation may be considered members.

*Alternatives A, B and C* for paragraph (b)(4)(iv)(D).

(D) In the case of a membership association which has a national federation structure or has several levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraphs (b)(4)(iv)(B)(1), (2), (3) or (4) of this section shall also qualify as a member of all affiliates for purposes of paragraph (b)(4)(iv) of this section. The factors set forth at 11 CFR 100.5(g)(4) shall be used

to determine whether entities are affiliated for purposes of this paragraph.

\* \* \* \* \*

*Alternative B* for paragraph (b)(4)(iv)(E).

(E) Notwithstanding the requirements of paragraphs (b)(4)(iv)(B)(1) through (4) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated.

\* \* \* \* \*

## PART 114—CORPORATE AND LABOR UNION ACTIVITY

3. The authority citation for Part 114 would continue to read as follows:

**Authority:** 2 U.S.C. 431(8)(B), 431(9)(B), 432, 437d(a)(8), 438(a)(8), and 441b.

4. Section 114.1 would be amended by revising paragraph 114.7(e) to read as follows:

### § 114.1 Definitions.

\* \* \* \* \*

(e) (1) *Membership association* means a membership organization, trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(i) Expressly provides for “members” in its articles and by-laws;

(ii) Expressly solicits members; and

(iii) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list.

(2) The term *members* includes all persons who are currently satisfying the requirements for membership in a membership association, affirmatively accept the membership association's invitation to become a member, and either:

(i) Have some significant financial attachment to the membership association, such as a significant investment or ownership stake (but not merely the payment of dues);

*Alternative A* for paragraphs (e)(2)(ii)–(iv).

(ii) Are required to pay on a regular basis a specific amount of dues of at least \$50 per year that are predetermined by the association;

(iii) Have a significant organizational attachment to the membership association. Such attachments include the right to vote directly either for at least one member who has full participatory and voting rights on the highest governing body of the membership association, or for those

who select at least one member of those on the highest governing body of the membership association; the right to serve on policy-making boards or vote on policy issues of interest to the membership association; eligibility to be elected to governing positions in the membership association; and the possibility of disciplinary action against the member by the membership association; or

(iv) Are required to pay on a regular basis a specific amount of dues of less than \$50 per year that are predetermined by the association and who have a lesser organizational attachment to the membership association than those set forth in paragraph (e)(2)(iii) of this section, such as the right to vote on policy issues of interest to the association.

Alternative B for paragraphs (e)(2)(ii)-(iv).

(ii) Are required to pay on a regular basis a specific amount of dues of at least \$200 per year that are predetermined by the membership association;

(iii) Are required to pay on a regular basis a specific amount of dues less than \$200 per year that are predetermined by the membership association and either the association is a business league, trade association, labor organization, or self-regulating professional association or such persons also have:

(A) A right to vote for at least one individual on the highest governing body of, or for the officers of, the membership association;

(B) A right to vote on policy questions where the highest governing body of the membership association is obligated to abide by the results (a binding referendum, for example, rather than a mere informational survey) or to approve or disapprove the results (a resolution that must be acted upon, for example);

(C) A right to join (not just the opportunity to be selected for) a committee, board, or section within the membership association that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or

(D) A right to participate by virtue of being selected to serve on a committee, board, or section within the membership association that can make policy recommendations which the highest governing body must approve or disapprove (a resolution that must be acted upon, for example); or

(iv) Have the right to vote for at least a majority of the members on the highest governing body.

Alternatives A and B for paragraph (e)(3).

(3) Notwithstanding the requirements of paragraph (e)(2) of this section, the Commission may determine, on a case by case basis, that persons seeking to be considered members of a membership association for purposes of this section have a significant organizational or financial attachment to the association under circumstances that do not precisely meet the requirements of the general rule. For example, student members who pay a lower amount of dues while in school or long term dues paying members who qualify for lifetime membership status with little or no dues obligation may be considered members.

Alternatives A, B and C for paragraph (e)(4).

(4) In the case of a membership association which has a national federation structure or has several affiliated levels, including, for example, national, state, regional and/or local affiliates, a person who qualifies as a member of any entity within the federation or of any affiliate by meeting the requirements of paragraphs (e)(2)(i), (ii), (iii) or (iv) of this section shall qualify as a member of all affiliates for purposes of paragraph (e)(1) of this section. The factors set forth at 11 CFR 100.5(g)(4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

\* \* \* \* \*

Alternative B for paragraph (e)(5).

(5) Notwithstanding the requirements of paragraphs (e)(2)(i) through (iv) of this section, members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national or international union is affiliated.

\* \* \* \* \*

§ 114.7 [Amended]

5. In Section 114.7, paragraph (k) would be removed.

§ 114.8 [Amended]

6. In section 114.8, paragraph (g) would be removed and reserved.

Dated: December 17, 1997.

John Warren McGarry,

Chairman, Federal Election Commission.

[FR Doc. 97-33305 Filed 12-19-97; 8:45 am]

BILLING CODE 6715-01-U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 97-AGL-61]

Proposed Modification of Class D Airspace; Minot AFB, ND; and Class E Airspace; Minot, ND

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class D airspace at Minot Air Force Base (AFB), ND, and Class E airspace at Minot, ND. A review of the Instrument Landing System (ILS) 1 or Tactical Air Navigation (TACAN) Runway 29 Standard Instrument Approach Procedure (SIAP), the Instrument Landing System/Distance Measuring Equipment (ILS/DME) 2 Runway 29 SIAP, the ILS/DME Runway 11 SIAP, and the TACAN Runway 11 SIAP for Minot AFB necessitates these modifications. Controlled airspace extending upward from the surface, controlled airspace extending upward from 700 feet above ground level (AGL), and controlled airspace extending upward from 1,200 feet AGL is needed to contain aircraft executing these approaches. This proposal would increase the radius and remove the extensions to the Class D airspace for Minot AFB, ND, and would increase the radius and add a northwest extension to that portion of the Minot, ND, Class E airspace associated with Minot AFB, ND.

DATES: Comments must be received on or before January 26, 1998.

ADDRESSES: Comments: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 97-AGL-61, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

Docket: The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, Operations Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Michelle M. Behm, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (847) 294-7568.