Copies of the transcript of the public workshop, public comments received, and this notice may be read at the DOE Freedom of Information Reading Room, U.S. DOE, Forrestal Building, Room 1E–190, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–3142, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Edward Pollock , U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Forrestal Building, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–5778.

Ms. Brenda Edwards-Jones, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, U.S. Department of Energy, Mail Station EE–43, 1000 Independence Avenue, SW, Washington, DC 20585–0121, (202) 586–2945.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel, Mail Station GC–72, Forrestal Building, 1000 Independence Avenue, SW, Washington, DC 20585–0103, (202) 586–9526.

SUPPLEMENTARY INFORMATION: In continuing the work on possible revisions to energy efficiency standards on central air conditioners, the Department is convening a workshop to present and receive public comments on the proposed analytical approach for evaluating the central air conditioner standards. At this workshop the following will be discussed:

Review of the Rulemaking Framework: The Department will seek comment on the draft analytical framework for the central air conditioner rulemaking. Copies of the draft framework document will be available beginning the week of May 25, 1998, on the Office of Codes and Standards web site. The web site address is as follows: http://www.eren.doe.gov/buildings/codes__standards/index.htm.

Identification of Analytical Methods and Tools: The Department seeks input into the selection of engineering and economic analytical tools to be used during the rulemaking:

Engineering Analysis/Data Collection: The Department plans to collect data for the engineering analysis using one or more of the following methods: the energy efficiency approach to derive a cost efficiency curve within a range, the design option approach, and the market price (or reverse engineering) approach. The Department will review the key issues surrounding: (1) The pros and cons of each approach, and (2) data collection and the reporting of costs for incorporation into the engineering analysis.

Price of Air Conditioners: The Department will lead a discussion on possible approaches to generating retail prices to be used in the consumer life-cycle-cost analysis.

Life-Cycle-Cost: The Department plans to demonstrate a new life-cycle-cost spreadsheet model which can account for variability of key criteria, such as utility rates and climate.

Electricity Price: The Department will lead a discussion on possible approaches for accounting for variations in electricity price, and the effects of these variations on different consumers.

Refrigerant: The refrigerant used in air conditioners will be banned by the Environmental Protection Agency in 2010. The Department will lead a discussion on the effects of this ban on the timing of the revision to central air conditioner standards.

Energy Savings Forecasts: The Department will present an example of energy savings forecasting results using a simple spreadsheet to show how the growth in efficiency can be accounted for over time.

Background on the approach to be followed in evaluating central air conditioner standards is found in Section 325 of the Energy Policy and Conservation Act, as amended, and appendix A of subpart C of 10 CFR part 430, 61 FR 36974 (July 15, 1996). Appendix A outlines the planning and prioritization process, data collection and analysis, and decision making criteria. Previously published information pertaining to this rulemaking includes the following: An Advance Notice of Proposed Rulemaking Regarding Energy Conservation Standards for Three Types of Consumer Products, published on September 8, 1993 (58 FR 47326), and comments thereon. Copies may be read at the DOE Freedom of Information Reading Room.

Please notify Brenda Edwards-Jones or Edward Pollock at the above listed address if you intend to attend the workshop, if you wish to receive material prepared for the workshop (including the draft analytical framework), or if you wish to be added to the DOE mailing list for receipt of future notices and information concerning central air conditioner matters relating to energy efficiency.

Issued in Washington, DC, on May 22, 1998.

Dan W. Reicher,

Assistant Secretary, Energy Efficiency and Renewable Energy.

[FR Doc. 98–14258 Filed 5–28–98; 8:45 am]

BILLING CODE 6450–01–P

FEDERAL ELECTION COMMISSION

[Notice 1998—10]

11 CFR Part 114

Qualified Nonprofit Corporations

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 November 17, 1997 by James Bopp, Jr., on behalf of the James Madison Center for Free Speech. The petition urges the Commission to revise its regulations regarding qualified nonprofit corporations to conform them to a decision of the United States Court of Appeals for the Eighth Circuit. The Commission has decided not to initiate a rulemaking in response to this petition.

DATES: May 21, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Paul Sanford, Staff Attorney, 999 E Street, NW, Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On November 17, 1997, the Commission received a Petition for Rulemaking from the James Madison Center for Free Speech requesting that the Commission institute a rulemaking proceeding to conform its regulations at 11 CFR 114.10 to the decision of the United States Court of Appeals for the Eighth Circuit in *Minnesota Citizens Concerned for Life* v. *Federal Election Commission,* 113 F.3d 129 (8th Cir. 1997) [''*Minnesota*'']. In that decision, the court of appeals held that section 114.10 is unconstitutional because it infringes upon the First Amendment rights of certain nonprofit corporations. The petition urges the Commission to revise its regulations in accordance with this decision. For the reasons set out below, the Commission has decided not to revise its regulations, and is therefore denying the petition.

Section 441b of the Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* [''FECA'' or ''the Act''], broadly prohibits corporations from making independent expenditures. However,

the United States Supreme Court created a narrow exception to this prohibition in *FEC* v. *Massachusetts Citizens for Life,* 479 U.S. 238 (1986) [''*MCFL*'']. The Court held that the prohibition on corporate independent expenditures could not constitutionally be applied to nonprofit organizations like Massachusetts Citizens For Life [''Massachusetts Citizens''] that have certain ''essential'' features: (1) they are formed for the express purpose of promoting political ideas and cannot engage in business activities; (2) they have no shareholders or other persons affiliated so as to have a claim on their assets or earnings; and (3) they were not established by a business corporation or labor union and have a policy against accepting contributions from these entities. *Id.* at 263–64.

In 1995, after an extended rulemaking proceeding, the Commission promulgated new regulations to implement the *MCFL* decision. Section 114.10 of the regulations describes those corporations that are exempt from the prohibition on independent expenditures, and refers to them as qualified nonprofit corporations. Under section 114.10(c), a qualified nonprofit corporation is a corporation (1) whose only express purpose is the promotion of political ideas; (2) that cannot engage in business activities; (3) that (a) has no shareholders or other persons (other than employees and creditors) affiliated in a way that could allow them to make a claim on the corporation's assets or earnings; and (b) offers no benefits that are a disincentive to disassociate with the corporation on the basis of a political issue; (4) that was not established by a business corporation or labor organization, and does not accept donations from such entities; and (5) that is described in 26 U.S.C. 501(c)(4) of the Internal Revenue Code. These rules went into effect on October 5, 1995. *Express Advocacy; Independent Expenditures; Corporate and Labor Organization Expenditures; Final Rule,* 60 FR 52069 (Oct. 5, 1995).

The petition submitted by the Madison Center urges the Commission to revise these regulations to conform to the *Minnesota* decision. In *Minnesota,* the plaintiffs, a nonprofit organization called Minnesota Citizens Concerned for Life [''Minnesota Citizens''], argued that the Commission's regulations violate the First Amendment and the Administrative Procedure Act, 5 U.S.C. 551 *et seq.* Minnesota Citizens relied on a prior decision of the Eighth Circuit, *Day* v. *Holohan,* 34 F.3d 1356 (8th Cir. 1994), *cert. denied,* 513 U.S. 1127 (1995) [''*Day*''], in which the Eighth Circuit considered the constitutionality of a state statutory scheme that was similar to section 114.10. In *Day,* the Eighth Circuit concluded that the state statute was unconstitutional for two reasons. First, the court held that a nonprofit organization could engage in ''insignificant'' business activity and still be exempt from the prohibition on corporate independent expenditures. Second, the court concluded that a nonprofit organization could accept an insignificant amount of contributions from corporations and still qualify for an exemption from the independent expenditure prohibition. *See also Federal Election Commission* v. *Survival Education Fund,* 65 F.3d 285 (2d Cir. 1995).

When faced with a challenge to section 114.10 of the Commission's regulations, the district court in *Minnesota* concluded that the *Day* decision was controlling, and invalidated the regulation. The Eighth Circuit affirmed the district court's decision. 113 F.3d 129, 133 (8th Cir. 1997). The Madison Center now asks the Commission to revise its regulations in accordance with the Eighth Circuit's decisions.

Pursuant to its usual procedures, the Commission published a Notice of Availability in the December 10, 1997 edition of the **Federal Register** announcing that it had received the petition and inviting the public to submit comments on it. 62 FR 65040 (Dec. 10, 1997). The comment period closed on January 23, 1998. The Commission received three comments in response to the Notice of Availability. One of the comments was endorsed by nine organizations. All three comments supported the petition.

After reviewing the petition, comments, and court decisions, the Commission has decided not to revise its regulations. Under the rule of *stare decisis,* a decision by a circuit court of appeals is only binding within the circuit in which it is issued. Section 114.10 reflects the Commission's interpretation of the *MCFL* opinion, a Supreme Court decision that is binding nationwide. Thus, if the Commission's interpretation of *MCFL* is correct, section 114.10 is controlling law outside the Eighth Circuit, and the Commission is entitled to implement it throughout the rest of the country.

Since government agencies typically operate nationwide, it is not unusual for an agency to find that different courts have interpreted its statutes or rules in different ways. The Supreme Court has recognized that, when confronted with this situation, an agency is free to adhere to its preferred interpretation in all circuits that have not rejected that interpretation. It is collaterally estopped only from raising the same claim against the same party in any location, or from continuing to pursue the issue against any party in a circuit that has already rejected the agency's interpretation. *United States* v. *Mendoza,* 464 U.S. 154 (1984). Indeed, the *Mendoza* Court encouraged agencies to seek reviews in other circuits if they disagree with one circuit's view of the law, since to allow ''only one final adjudication would deprive this Court of the benefit it receives from permitting several courts of appeals to explore a difficult question before this Court grants *certiorari.*'' *Id.* at 160 (citations omitted).

The Commission intends to follow the *MCFL* decision for the additional reason that it believes that the Eighth Circuit erroneously interpreted that decision in *Day* and *Minnesota.* In the Eighth Circuit's view, the *MCFL* decision allows corporations to make independent expenditures, even if they engage in business activities and accept donations from business corporations. However, the *MCFL* Court said that when a corporation engages in both business activity and political activity, it creates ''the potential for unfair deployment of wealth for political purposes.'' 479 U.S. at 259 (footnote omitted). Similarly, the Court said that groups that accept donations from business corporations ''serv[e] as conduits for the type of direct spending that creates a threat to the political marketplace.'' *Id.* at 264. This threat of corruption of the political marketplace justifies the application of the independent expenditure prohibition in section 441b.

In contrast, groups like Massachusetts Citizens that ''cannot engage in business activities'' and ''[were] not established by a business corporation or labor union, and [have a] policy not to accept contributions from such entities,'' *id.,* ''do not pose that danger of corruption.'' *Id.* at 259. Thus, there is no justification for the application of the independent expenditure prohibition in section 441b to these corporations. The Court emphasized that these characteristics were ''essential to [its] holding that [Massachusetts Citizens] may not constitutionally be bound by § 441b's restriction on independent spending.'' *Id.* 263–64. Consequently, the Commission believes it has ample justification for subjecting groups that do not possess these characteristics to the full requirements of section 441b.

It is also difficult to reconcile the Eighth Circuit's conclusion with the Supreme Court's decision in *Austin* v. *Michigan Chamber of Commerce,* 494 U.S. 652 (1990). In *Austin,* the Court

reviewed the application of a state statute that was similar to section 441b to a nonprofit state chamber of commerce. The chamber did not itself engage in traditional business activities. However, its bylaws set forth ''varied purposes * * * several of which [were] not inherently political.'' 494 U.S. at 662. For example, it distributed information related to social, civic and economic conditions, trained and educated its members, and promoted ethical business practices. The Court noted that ''[m]any of its seminars, conventions, and publications [were] politically neutral and focus[ed] on business and economic issues,'' that were ''not expressly tied to political goals.'' *Id.* Thus, even though it was not engaged in a business for profit, ''[t]he Chamber's nonpolitical activities * * * suffice[d] to distinguish it from [Massachusetts Citizens] in the context of this characteristic.'' *Id.* at 663.

With regard to the acceptance of corporate contributions, the Court was even more emphatic, saying that ''[o]n this score, the Chamber differs most greatly from [Massachusetts Citizens].'' *Id.* at 664. The Court said that, under *MCFL,* nonprofit organizations that accept contributions from business corporations are not entitled to any exemption from section 441b, and pointed out that if the rule were otherwise, ''[b]usiness corporations * * * could circumvent the Act's restriction by funneling money through [a nonprofit organization's] general treasury.'' *Id.* The Court concluded that, under this standard, the Chamber was not entitled to any exemption from the state's version of section 441b. ''Because the Chamber accepts money from for-profit corporations, it could, absent application of [the state corporate expenditure prohibition], serve as a conduit for corporate political spending.'' *Id.*

The Commission continues to believe that section 114.10 accurately interprets these two Supreme Court cases, and the decisions of several other courts support this conclusion. In *Clifton* v. *FEC,* 114 F.3d 1309 (lst Cir. 1997), *cert. denied,* 118 S. Ct. 1306 (1998), the First Circuit said the *MCFL* Court ''stressed as 'essential' the fact that the anti-abortion group there involved did not accept contributions from business corporations or unions * * *. This was important to the Court because it had previously sustained the right of Congress to limit the election influence of massed economic power in corporate or union form.'' *Id.* at 1312. Since the nonprofit corporation involved in that case accepted contributions from other corporations, the Court concluded that it was not entitled to the *MCFL* exemption, saying that it fell ''somewhere between the entity protected in [*MCFL*] and that held unprotected in *Austin.*'' *Id.* at 1312–13. The First Circuit also said a *de minimis* rule regarding the acceptance of corporate contributions would be inconsistent with the *Austin* decision. *Id.* at 1313.

In dictum, the D.C. Circuit has also expressed support for the Commission's interpretation of this aspect of the *MCFL* decision. ''[T]he *MCFL* constitutional exemption * * * requires that the organization * * * not accept contributions from labor unions or corporations.'' *Akins* v. *FEC,* 101 F.3d 731, 742 n.10 (D.C. Cir. 1996) (*en banc*) (dictum), *cert. granted,* 117 S. Ct. 2451 (1997).

Two district courts have also supported the Commission's interpretation. In *FEC* v. *NRA Political Victory Fund,* 778 F. Supp. 62 (D.D.C. 1991), *rev'd on other grounds,* 6 F.3d 821 (D.C. Cir.), *cert. dismissed for want of jurisdiction,* 513 U.S. 88 (1994), the court concluded that unless a corporation can show that it does not in fact accept contributions from business corporations or unions or has a policy ''equivalent to that of MCFL'' of not accepting such contributions, it does ''not fit in the group of organizations affected by the *MCFL* holding, a group which the Court acknowledged * * * would be ''small,''' 778 F. Supp. at 64 (quoting *MCFL,* 479 U.S. at 264).

The district court in *Faucher* v. *FEC,* 743 F. Supp. 64 (D. Me. 1990), *aff'd,* 928 F.2d 468 (1st Cir.), *cert. denied,* 502 U.S. 820 (1991), reached a similar conclusion.

> In [*MCFL*], the Supreme Court made clear that one of the ''essential'' factors for its holding was that the nonprofit corporation there did not receive, *and had a policy of not receiving,* any corporate funds. * * * [A]lthough the amounts received by [the plaintiff nonprofit organization] from corporations have been comparatively modest, they are obviously not subject to any control. Without an explicit policy against contributions from corporations, the risk remains that an organization like [the plaintiff] could ''serv[e] as [a conduit] for the type of direct spending that creates a threat to the political marketplace.'' * * * It is this potential for influence that supports the restrictions on corporate funding.

743 F. Supp. at 69–70 (emphasis in original; quoting *MCFL,* 479 U.S. at 264).

In sum, both because it is well settled that a decision by one circuit court of appeals is not binding in other circuits, and because the Commission believes the challenged regulation reflects a correct reading of controlling Supreme Court precedent and is therefore constitutional, the Commission has decided not to open a rulemaking in response to this Petition.

Therefore, at its open meeting of May 21, 1998, the Commission voted not to initiate a rulemaking to revise its regulations regarding qualified nonprofit corporations, found at 11 CFR 114.10. Copies of the General Counsel's recommendation on which the Commission's decision is based are available for public inspection and copying in the Commission's Public Records Office, 999 E Street, NW, Washington, DC 20463, (202) 694–1120 or toll-free (800) 424–9530. Interested persons may also obtain a copy by dialing the Commission's FAXLINE service at (202) 501–3413 and following its instructions. Request document #233.

Dated: May 22, 1998.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–14193 Filed 5–28–98; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 98–CE–30–AD]

RIN 2120–AA64

Airworthiness Directives; Pilatus Aircraft Ltd. Model PC–7 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Pilatus Aircraft Ltd. Model PC–7 airplanes. The proposed AD would require replacing the seal unit on both main landing gear (MLG) legs and the nose landing gear (NLG) leg. The proposed AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for Switzerland. The actions specified by the proposed AD are intended to prevent MLG or NLG failure caused by deterioration of a MLG or NLG leg seal unit, which could result in damage to the airplane or airplane controllability problems during takeoff, landing, or taxi operations.

DATES: Comments must be received on or before July 3, 1998.

ADDRESSES: Submit comments in triplicate to the Federal Aviation