# Proposed Rules

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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 1998—17]**

## Definition of ''Member'' of a Membership Association

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of Proposed Rulemaking.

**SUMMARY:** The Commission is seeking comments on further proposed revisions to its rules governing who qualifies as a ''member'' of a membership association. 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 revised proposal would largely address the internal characteristics of an association that, coupled with certain financial or organizational attachments, would be sufficient to confer this status.

**DATES:** Comments must be received on or before February 1, 1999.

**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, NW., 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. Electronic comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered.

**FOR FURTHER INFORMATION CONTACT:** Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street NW., 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). This rulemaking followed.

### History of the Rulemaking

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, and received two comments in response.

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.

On December 22, 1997, the Commission published a Notice of Proposed Rulemaking (''NPRM'') on this matter, 62 FR 66832, and received 22 comments in response. Comments were received from the Alliance for Justice; the American Federation of State, County and Municipal Employees (''AFSCME''); the American Federation of Labor and Congress of Industrial Organizations (''AFL–CIO''), the American Hospital Association and Political Action Committee (''AHAPAC''); the American Hotel and Motel Association (''AH&MA''); the American Society of Association Executives (''ASAE''); the Americans Back in Charge Foundation; Jan Witold Baran; The Chicago Mercantile Exchange; the College of American Pathologists (''CAP''); the Free Speech Coalition, Inc.; the James Madison Center for Free Speech; the National Lumber and Building Material Dealers Association; the National Citizens Legal Network; the National Rural Electric Cooperative Association; the National Right to Work Committee; the Opticians Association of America (''OAA''); Daniel M. Schember; Donald J. Seaman; the U.S. Chamber of Commerce; the Washington State Farm Bureau; and the Wholesaler-Distributor Political Action Committee.

On April 29, 1998, the Commission held a public hearing on this rulemaking at which 10 witnesses testified. The witnesses included representatives from AFSCME; the AFL–CIO; AH&MA; ASAE; Americans Back in Charge, Inc.; the Free Speech Coalition, Inc.; the James Madison Center for Free Speech; the National Citizens Legal Network; OAA; and Mr. Schember.

After further considering this matter, the Commission has now decided to reconsider the rules with a slightly different focus from that proposed in the original NPRM. Accordingly, the Commission is seeking comments on a second NPRM proposing further revisions to these rules. This new proposal primarily addresses the required characteristics of membership associations. The Commission is publishing this second NPRM because it did not propose any changes to these provisions in the original NPRM. *See* 62 FR 68834 (Dec. 22, 1997).

**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**

The current rules require an organization to meet three preliminary requirements before it can qualify as a membership association. These requirements are that it (1) expressly provide for ''members'' in its articles and by-laws; (2) expressly solicit members; and (3) 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). If these preliminary requirements are met, a person may qualify as a member either by having 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. 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 Chamber of Commerce Decision**

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. However, the Commission believes it is appropriate to include in the text of the rules additional guidance consistent with the *Chamber* decision.

**The December 1997 NPRM**

The 1997 NPRM sought comments on three alternative proposals, referenced as Alternatives A, B, and C. None of the alternatives proposed any changes to the three preliminary requirements, or to the provisions in the current rules that recognize as members persons who have a stronger financial interest in an association than the payment of annual dues, such as those who own or lease seats on stock exchanges or boards of trade. 11 CFR 100.8(b)(4)(iv)(B)(1), 114.1(e)(2)(i), AO 1997–5.

Under Alternative A, all persons who paid $50 in annual dues or met specified organizational attachments would be considered members. The NPRM suggested such attachments as

the voting rights contained in the current rules; the right to serve on policy-making boards of the association; eligibility to be elected to the governing positions in the association; and the possibility of disciplinary action against the member by the association. A lesser dues obligation coupled with weaker organizational attachments would also be sufficient for this purpose.

Alternative B distinguished between the types of organizations addressed by the *Chamber* decision, i.e., those formed to further business or economic interests or to implement a system of self-discipline or self-regulation within a line of commerce; and ideological, social welfare, and political organizations. Persons paying any amount of annual dues would be considered members of the first category of organizations, while annual dues of $200 or more would be required for membership in the second category, unless the purported members had the same voting rights required by the current rule.

Under Alternative C, an organization that qualified as a membership association by meeting the three preliminary requirements could consider as members all persons who paid the amount of annual dues set by the association, regardless of amount.

The 1997 NPRM also proposed that direct membership in any level of a multitiered association be construed as membership in all tiers of the association for purposes of these rules. All three alternatives set out in that NPRM would adopt this approach, and the Commission is not now proposing further changes in this area.

As was the case with the ANPRM, the comments and testimony received in response to the NPRM expressed a wide range of views—there was no consensus on how best to address this situation. After further consideration, the Commission is now seeking comments on a slightly different approach, one that would address more fully the attributes of membership associations, in addition to members' required financial or organizational attachments.

**The New Proposal**

First, the Commission is proposing that the term ''membership association'' in 11 CFR 100.8(b)(4)(iv)(A) and 114.1(e)(1) be replaced by ''membership organization.'' The Commission believes it is appropriate to refer to the covered entities as ''membership organizations'' because that is the term used in the Act. *See*, 2 U.S.C. 431(9)(B)(iii) and 441b(b)(4)(C). ''Membership organization'' is also referred to in 11 CFR 100.8(b)(4), which describes the entities entitled to the ''internal communication'' exception to the Act's definition of expenditure.

The Commission is therefore proposing to replace the term ''membership association'' with ''membership organization'' in paragraphs 100.8(b)(4)(iv)(A) and 114.1(e)(1). The revised definitions would provide that, for purposes of these rules, *membership organization* means a trade association, cooperative, corporation without capital stock, or local, national or international labor organization.

The other newly-proposed revisions to the member rules primarily focus on attributes of membership organizations, the term used in current 11 CFR 100.8(b)(4). Since the purpose of the Act's ''membership communications'' exception is to allow bona fide membership organizations to engage in political communications with their members, the new rule would prevent individuals from establishing ''sham'' membership organizations in an effort to circumvent the Act's contribution and expenditure limits. The Commission believes it is appropriate to focus on the structure of the membership organization as well as on who qualifies as a member, and is therefore proposing the following amendments to 11 CFR 100.8(b)(4)(iv)(A) and 114.1(e)(1), the so-called ''preliminary requirements'' an entity must meet to qualify as a membership organization.

First, since it is axiomatic that membership organizations should be composed of members, the Commission is proposing to replace the language at 11 CFR 100.8(b)(4)(iv)(A)(*1*) and 114.1(e)(1)(i), stating that an organization must expressly provide for members in its articles and bylaws, with this more general requirement.

The second additional requirement would be that the organization be self-governing, that is, that the power and authority to direct and control the organization be vested in some or all members, pursuant to the organization's articles, bylaws, and other formal organizational documents. However, the organization would be able to delegate these responsibilities to smaller committees or other groups of members—the Commission is not proposing that all members be required to approve all organization actions. Membership associations with self-perpetuating boards would meet this requirement as long as all members of the board were themselves members of the organization, assuming that the organization had chosen this structure and that it met all other requirements of these regulations.

Further, as noted above, the Supreme Court's language in the *NRWC* decision, 459 U.S. at 204, pointed to the need for members to have ''relatively enduring and independently significant financial or organizational attachments.'' However, those attachments can hardly be meaningful if the members are unaware of their rights and obligations. Therefore, as a corollary to the proposal that only members constitute the organization, the Commission is proposing that membership organizations be required to inform members of their rights, qualifications and obligations under the organization's articles, bylaws and other formal organizational documents. In addition, organizations would be required to make their articles, bylaws and other formal organizational documents freely available to their members.

The Commission's rules currently list at 11 CFR 100.8(b)(4) the entities entitled to the expenditure exemption and the types of communications (i.e., express advocacy) that an exempted organization may engage in without those communications being classified as an expenditure. As this paragraph states, entities ''organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office'' are not entitled to the membership communications exemption.

The Commission is proposing that this paragraph be revised to delete the aforementioned language. In its place, this phrase would be re-inserted in new paragraphs 11 CFR 100.8(b)(4)(iv)(A)(*7*) and 114.1(e)(1)(vii), the provisions that explicitly define a ''membership organization.'' This would insure that an organization primarily organized to influence a Federal election could not, by definition, be classified as a membership organization under the Act.

Consistent with these changes, the Commission is also proposing to amend 11 CFR 100.8(b)(4) to clarify that the membership communications exception established by that section applies only to those communications made at the direction and control of the membership organization, and not of any other person.

As for the definition of ''member,'' the Commission believes that the *NRWC* requirement that members of membership organizations have a ''relatively enduring and independently significant financial or organizational'' attachment, *supra*, mandates that members have a continuous, long term bond with the organization itself. As Alternatives A and B in the 1997 NPRM suggest, ''relatively enduring'' attachments can be interpreted to mean

that an individual renews membership annually by meeting the organization's dues requirement, so long as he or she continues to satisfy the organization's provisions for membership. Similarly, the Commission proposes that this requirement could be satisfied where a member affirmatively and voluntarily renews his or her membership in writing on an annual basis. In the Commission's view, the annual payment of dues or voluntary annual reaffirmation of membership would satisfy the ''relatively enduring'' aspect of the *NRWC* Court's test. The proposal does not contain any threshold dues requirement, as the Commission believes this decision is best made by the individual membership organizations.

In reformulating the organizational attachments prong of this test, the Commission is mindful of the broader implications of the *Chamber* decision and the Supreme Court's decision in *FEC* v. *Akins*, 118 S.Ct. 1777, 1778 (1998). These decisions indicate that overly restrictive definitions are less likely to survive judicial scrutiny.

Further, the comments and testimony received up to this point on the rulemaking indicate that models of governance within membership organizations are nearly as numerous as the number of organizations themselves. Taking this organizational diversity into account, and in the wake of the *Akins* and *Chamber* decisions, the Commission believes it should avoid prescribing an extensive list of permissible organizational attachments. For this reason the Commission is proposing that, while certain types of activities included in Alternatives A and B of the 1997 NPRM be included in the rules as instructive examples, the new rule simply provides that members be given the right to play a significant, non-advisory role in the organization's governance. Under this approach, 11 CFR 100.8(b)(4)(iv)(B)(*3*) and 114.1(e)(2)(iii) would be amended to require ''direct and enforceable participatory and governing rights'' in the organization. The Commission notes that such rights would be required only in the situation where members did not pay a specific, predetermined amount of annual dues to the organization.

Alternatives A and B would both provide that students and lifetime members of certain entities could qualify as ''members'' of a membership organization upon payment of lesser annual dues, and without reference to voting rights. 62 FR 66837. The Commission is now proposing to revise 11 CFR 100.8(b)(iv)(D) and 114.1(e)(5) to expressly provide the same treatment to retired union members who have paid dues as active members for at least ten years (in satisfaction of the requirement of a significant financial attachment) but who are no longer required to do so. The Commission believes that, upon retirement, union members maintain a significant ''organizational attachment'' to their unions by virtue of insurance policies and other retirement benefits.

Finally, in those cases where state law does not allow certain organizations to have ''members'' for policy reasons unrelated to the FECA, the revised NPRM would add language to clarify that those organizations still could be recognized as ''membership organizations'' for FECA purposes. The Commission is seeking specific comments on the implications of this proposal and the relationship between state and Federal law in this area.

In addition, the Commission is proposing that the definition of ''membership organization,'' for purposes of section 100.8(b)(4) only, also include unincorporated associations. The term ''unincorporated association'' would cover those entities that are not trade associations, cooperatives, corporations without capital stock, or labor organizations, that nevertheless met the requirements set forth in these rules. This change would address the situation under the current rules in which, if an unincorporated membership group wishes to support one of its member's campaign for Congress with a mailing to the organization's members, the costs of that mailing would constitute a contribution to that candidate, subject to the limit established at 2 U.S.C. 441a(a)(1)(A).

The application of the membership organization ''internal communication'' exception to an unincorporated association is a potentially significant change from current Commission policy, on which the Commission welcomes comment. One possible ramification of this proposal concerns the manner in which the costs of these communications are reported. If a membership communication was made independently of any candidate's campaign, section 431(9) only requires that the costs be reported if they exceed $2000 per election and the communication is not part of a publication that is primarily devoted to topics other than express advocacy of a candidate's election or defeat. 11 CFR 100.8(b)(4). Moreover, only the costs, and not the sources of the funds expended, must be reported. 11 CFR 104.6(c). In contrast, section 434(c) of the Act requires a person (other than a political committee) to report independent expenditures once the costs exceed $250.

A second possible effect concerns internal communications that are coordinated with a candidate. The Commission's current rules allow corporations and labor organizations that wish to make internal communications to their restricted class to coordinate the communication with a candidate, although such coordination could compromise the independence of later activity by that entity or its SSF. *See* 11 CFR 114.2(c). An unincorporated association, unlike corporations and labor organizations, is permitted to make contributions from its treasury funds to candidates. If these unincorporated associations are permitted to coordinate express advocacy communications to their ''members'', the amount they could spend on such communications would be unlimited rather than subject to the Act's contribution limits under section 441a.

An argument can be made that the proposed addition of unincorporated associations to the internal communications exception is in conflict with the balancing approach adopted by Congress in crafting the current statutory scheme. Under this approach, Congress gave the corporations and unions who were subject to section 441b certain rights in return for other obligations and restrictions, which are balanced by other rights and restrictions in the law for individuals and unincorporated entities.

Please note, however, that the Commission does not intend by this proposed change to signal that unincorporated associations could begin establishing, and paying the unlimited costs of, a separate segregated fund. See 2 USC 441b(b)(2)(C). *Cf. California Medical Association* v. *FEC*, 453 U.S. 182 (1981). For this reason, the proposal to add unincorporated associations would only be made in section 100.8(b)(4) of the regulations. To avoid any confusion, the Commission will make conforming changes to Part 114 in the final rules to clarify that membership organizations referred to in that part are limited to ''incorporated'' entities, if the proposal to add unincorporated groups is approved by the Commission at the final rule stage.

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 would 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 paragraphs (b)(4) introductory text and (b)(4)(iv) to read as follows:

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

* * * * *

(b) * * *

(4) Any cost incurred for any communications by a membership organization, including a labor organization, to its members, or by a corporation to its stockholders or executive or administrative personnel, is not an expenditure, as long as the communication is subject to the direction and control of that entity and not any other person, except that the costs directly attributable to such a communication that expressly advocates the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed $2,000 per election, be reported to the Commission on FEC Form 7 in accordance with 11 CFR 104.6.

* * * * *

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

(*1*) Is composed of members;

(*2*) Expressly states the rights, qualifications, obligations and requirements for membership in its articles, bylaws and other formal organizational documents;

(*3*) Is self-governing, such that the power and authority to direct, and control the association is vested in some or all members, pursuant to its articles, by laws and other formal organizational documents;

(*4*) Makes its articles, bylaws and other formal organizational documents freely available to its members;

(*5*) Expressly solicits members;

(*6*) Expressly acknowledges the acceptance of membership, such as by sending a membership card or inclusion on a membership newsletter list; and

(*7*) Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual for Federal office.

(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 organization, affirmatively accept the membership organization's invitation to become a member, affirm their membership on at least an annual basis and either:

(*1*) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake;

(*2*) Are required to pay on a regular basis a specific amount of annual dues of an amount predetermined by the organization; or

(*3*) Have a significant organizational attachment to the membership organization which includes direct and enforceable participatory and governing rights. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote directly for organization officers; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; or the right to participate directly in similar aspects of the organization's governance.

(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 organization for purposes of this section have a significant organizational or financial attachment to the organization 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.

(D) Notwithstanding the requirements of paragraphs (b)(4)(iv)(B)(*1*) through (*3*) of this section, retired members of a local union who have paid dues for a period of at least ten years are considered members of the union; and 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.

(E) In the case of a membership organization 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 paragraph (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.

(F) The status of a membership organization, and of members, for purposes of paragraph (b)(4) of this section, shall be determined pursuant to paragraph (b)(4)(iv) of this section and not by provisions of state law governing unincorporated associations, trade associations, cooperatives, corporations without capital stock, or labor organizations.

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## 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 114.1(e) to read as follows:

### § 114.1 Definitions.

* * * * *

(e)(1) For purposes of paragraph (e) of this section *membership organization* means a trade association, cooperative, corporation without capital stock, or a local, national, or international labor organization that:

(i) Is composed of members;

(ii) Expressly states the rights, qualifications, obligations and

requirements for membership in its articles, bylaws and other formal organizational documents;

(iii) Is self-governing, such that the power and authority to direct, and control the association is vested in some or all members, pursuant to its articles, by laws and other formal organizational documents;

(iv) Makes its articles, bylaws and other formal organizational documents freely available to its members;

(v) Expressly solicits members;

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

(vii) Is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office.

(2) For purposes of paragraph (e) of this section, the term *members* includes all persons who are currently satisfying the requirements for membership in a membership organization, affirmatively accept the membership organization's invitation to become a member, affirm their membership on at least an annual basis and either:

(i) Have some significant financial attachment to the membership organization, such as a significant investment or ownership stake;

(ii) Are required to pay on a regular basis a specific amount of annual dues of an amount predetermined by the organization; or

(iii) Have a significant organizational attachment to the membership organization which includes direct and enforceable participatory and governing rights. For example, such rights could include the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote directly for organization officers; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; or the right to participate directly in similar aspects of the organization's governance.

(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 organization for purposes of this section have a significant organizational or financial attachment to the organization 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.

(4) Notwithstanding the requirements of paragraphs (e)(2) (i) through (iii) of this section, retired members of a local union who have paid dues for a period of at least ten years are considered members of the union; and 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.

(5) In the case of a membership organization 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 paragraph (e)(2) (i), (ii), (iii) or (iv) of this section shall also 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.

(6) The status of a membership organization, and of members, for purposes of this part, shall be determined pursuant to paragraph (e)(1) of this section and not by provisions of state law governing trade associations, cooperatives, corporations without capital stock, or labor organizations.

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**§ 114.7 [Amended]**

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

**§ 114.8 [Amended]**

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

Dated: December 11, 1998.

**Scott E. Thomas,**

*Acting Chairman, Federal Election Commission.*

[FR Doc. 98–33317 Filed 12–15–98; 8:45 am]

BILLING CODE 6715–01–P

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## FARM CREDIT ADMINISTRATION

## 12 CFR Parts 611, 614, and 618

**RIN 3052–AB87**

## Organization; Loan Policies and Operations; General Provisions; Chartered Territories

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule; comment period extension.

**SUMMARY:** The Farm Credit Administration (FCA) Board extends the comment period on the proposed rule that would allow Farm Credit System (FCS) customers to do business with the FCS association of their choice. The FCA Board extends the comment period on the proposed rule for 90 more days so interested parties have additional time to provide comments.

**DATES:** Please send your comments to us on or before May 10, 1999.

**ADDRESSES:** You may mail or deliver comments to Patricia W. DiMuzio, Director, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090 or send them by facsimile transmission to (703) 734–5784. You may also submit comments via electronic mail to ''reg-comm@fca.gov'' or through the Pending Regulations section of the FCA's interactive website at ''www.fca.gov.'' Copies of all communications received will be available for review by interested parties in the Office of Policy and Analysis, Farm Credit Administration.

**FOR FURTHER INFORMATION CONTACT:**

S. Robert Coleman, Senior Policy Analyst, Regulation and Policy Division, Office of Policy and Analysis, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

Richard A. Katz, Senior Attorney, Regulatory Enforcement Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

**SUPPLEMENTARY INFORMATION:** On November 9, 1998, we published a proposed rule in the **Federal Register** to amend regulations in parts 611, 614, and 618 so farmers, ranchers, and other eligible customers could seek financing and related services from any FCS lender operating under title I or II of the Farm Credit Act of 1971, as amended. The rule proposes to eliminate geographic barriers that often prevent a Farm Credit System lender from serving customers beyond its designated territory. At the same time, the rule continues to ensure that every eligible customer will have access to FCS credit and related services. The comment period will expire on February 8, 1999. *See* 63 FR 60219, November 9, 1998. In response to several requests, we now extend the comment period until May 10, 1999, so you will have more time to respond.