

regulations and to find less burdensome ways to achieve regulatory goals.

#### List of Subjects in 9 CFR Part 72

Animal diseases, Cattle, Incorporation by reference, Quarantine, Transportation.

Accordingly, we are amending 9 CFR part 72 as follows:

#### PART 72—TEXAS (SPLENETIC) FEVER IN CATTLE

1. The authority citation for part 72 continues to read as follows:

**Authority:** 21 U.S.C. 111–113, 115, 117, 120, 121, 123–126, 134b, and 134f; 7 CFR 2.22, 2.80, and 371.2(d).

2. Section 72.5 is revised to read as follows:

##### § 72.5 Area quarantined in Texas.

The area quarantined in Texas is the permanent quarantined area described in the regulations of the Texas Animal Health Commission (TAHC) contained in § 41.2 of title 4, part II, of the Texas Administrative Code (4 TAC 41.2), effective July 22, 1994, which is incorporated by reference. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of 4 TAC 41.2 may be obtained from the TAHC at 2105 Kramer Lane, Austin, TX 78758, and from area offices of the TAHC, which are listed in local Texas telephone directories. The TAHC also maintains a copy of its regulations on its Internet homepage at <http://www.tahc.state.tx.us/>. Copies may be inspected at the Animal and Plant Health Inspection Service, Veterinary Services, Emergency Programs, Suite 3B08, 4700 River Road, Riverdale, MD, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

Done in Washington, DC, this 23rd day of July 1999.

**Alfonso Torres,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99–19421 Filed 7–29–99; 8:45 am]

BILLING CODE 3410–34–P

#### DEPARTMENT OF AGRICULTURE

##### Animal and Plant Health Inspection Service

#### 9 CFR Part 91

[Docket No. 98–078–2]

#### Ports Designated for Exportation of Horses; New Jersey and New York

**AGENCY:** Animal and Plant Health Inspection Service, USDA.

**ACTION:** Direct final rule; confirmation of effective date.

**SUMMARY:** On June 4, 1999, the Animal and Plant Health Inspection Service published a direct final rule. (See 64 FR 29947–29949, Docket No. 98–078–1.) The direct final rule notified the public of our intention to amend the “Inspection and Handling of Livestock for Exportation” regulations by changing the lists of approved ports of embarkation and export inspection facilities for horses in New Jersey and New York. In New Jersey, we are removing Deep Hollow Farm in Woodstown, NJ, as the export inspection facility for horses exported from the ocean port of Salem, NJ, and adding Mannington Meadows Farm in Woodstown, NJ, in its place. We are adding Elizabeth and Newark International Airport, NJ, as ports of embarkation, and Tolleshunt Horse Farm in Whitehouse, NJ, and the U.S. Equestrian Team’s headquarters in Gladstone, NJ, as export inspection facilities for horses for those ports. We are also adding Tolleshunt Horse Farm and the U.S. Equestrian Team’s headquarters as export inspection facilities for horses for the currently approved port of New York, NY. These actions update the regulations by adding two ports of embarkation and three export inspection facilities through which horses may be processed for export. We did not receive any written adverse comments or written notice of intent to submit adverse comments in response to the direct final rule.

**EFFECTIVE DATE:** The effective date of the direct final rule is confirmed as: August 3, 1999.

**FOR FURTHER INFORMATION CONTACT:** Dr. Michael David, Senior Staff Veterinarian, Animals Program, National Center for Import and Export, VS, APHIS, 4700 River Road, Unit 39, Riverdale, MD 20737–1231; (301) 734–8354.

**Authority:** 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 136, 136a, 612, 613, 614, and 618; 46 U.S.C. 466a and 466b; 49 U.S.C. 1509(d); 7 CFR 2.22, 2.80, and 371.2(d).

Done in Washington, DC, this 26th day of July 1999.

**Bobby R. Acord,**

*Acting Administrator, Animal and Plant Health Inspection Service.*

[FR Doc. 99–19563 Filed 7–29–99; 8:45 am]

BILLING CODE 3410–34–P

#### FEDERAL ELECTION COMMISSION

#### 11 CFR Parts 100 and 114

[Notice 1999–12]

#### Definition of “Member” of a Membership Organization

**AGENCY:** Federal Election Commission.

**ACTION:** Final rules and transmittal of regulations to Congress.

**SUMMARY:** The Commission has revised its rules governing who qualifies as a “member” of a membership organization. An incorporated membership organization or labor organization can solicit contributions from its members to a separate segregated fund (“SSF”) established by the organization, and can include express electoral advocacy in communications to its members. Unincorporated membership organizations can similarly make internal communications to their members but cannot establish SSF’s. The revisions largely address the internal characteristics of an organization that, when coupled with certain financial or organizational attachments, are sufficient to confer membership status.

**DATES:** Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d).

**FOR FURTHER INFORMATION CONTACT:** Ms. Rosemary C. Smith, Acting Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street N.W., Washington, DC 20463, (202) 694–1650 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 organizations, to solicit contributions from their restricted class to a separate segregated fund. In the case of incorporated membership organizations, 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 organizations 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 organization 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 F.R. 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. On April 29, 1998, the Commission held a public hearing on this rulemaking at which 10 witnesses testified.

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 organization 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 organization; eligibility to be elected to the governing positions in the organization; and the possibility of disciplinary action against the member by the organization. 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 organization by meeting the three preliminary requirements could consider as members all persons who paid the amount of annual dues set by the organization, regardless of amount.

The 1997 NPRM also proposed that direct membership in any level of a multi-tiered organization be construed as membership in all tiers of the organization for purposes of these rules.

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 sought comments on a slightly different approach, one that would address more fully the attributes of membership organizations, in addition to members' required financial or organizational attachments. The Commission accordingly published a second NPRM that focused primarily on characteristics of membership organizations. 63 F.R. 69224 (Dec. 16, 1998).

The Commission received 25 comments in response to the second NPRM. Commenters included the Alliance for Justice; the American Federation of Labor and Congress of Industrial Organizations ("AFL-CIO"); the American Federation of State, County and Municipal Employees ("AFSCME"); the American Hotel and Motel Association ("AH&MA"); the American Medical Association; the Americans Back in Charge Foundation; the American Society of Association Executives ("ASAE"); Peter A. Bagatelos; Camille Bradford; the Hon. Thomas M. Davis; the Free Speech Coalition; Harmon, Curran, Spielberg & Eisenberg; the Internal Revenue Service; the James Madison Center for Free Speech; the National Association of Business Political Action Committees ("NABPAC"); the National Association of Realtors; the National Citizens Legal Network ("NCLN"); the National Education Association ("NEA"); the National Lumber and Building Material Dealers Association ("NLBMDA"); the National Right to Work Committee; the National Rural Electric Cooperative Association; the National Telephone Cooperative Association; Vigo G. Nielsen, Jr.; Daniel M. Schember; and the United States Chamber of Commerce.

The Commission held a hearing on this NPRM on March 17, 1999, at which 13 witnesses testified. Witnesses included representatives of the Alliance for Justice; the AFL-CIO; AFSCME; AH&MA; the Americans Back in Charge Foundation; ASAE; the Free Speech Coalition; the James Madison Center for Free Speech; NABPAC; NCLN; NEA; Ms. Bradford; and Mr. Schember.

### Explanation and Justification

#### 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.'" 459 U.S. 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 organization. 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 C.F.R. 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 organization (not merely the payment of dues), or the right to vote directly for all members of the organization'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 organization's highest governing body is required. The term "membership organization" includes membership organizations, trade organizations, 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 Court of Appeals for the D.C. Circuit reversed this ruling.

The case was jointly brought by the Chamber of Commerce and the American Medical Association ("AMA"), two organizations that do not provide their asserted "members" with the voting rights necessary to confer this status under the current rules. The appellate 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).

#### *Section 100.8(b)(4) Membership Organizations*

First, the Commission has replaced the term "membership association" wherever it appears in this section with the term "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 NPRM proposed adding unincorporated associations to the definition of membership organizations, for purposes of 11 CFR 100.8 only. The comments on this proposal were mixed. Some supported the idea, while others argued against it, saying that it might exceed the Commission's authority by blurring the statutory distinction between corporations and other entities contained in the FECA.

The Commission is expanding the definition of membership organization to include unincorporated associations because it believes this is consistent with congressional intent. It is clear from the placement of the exception at 2 U.S.C. 431(9)(B)(iii), i.e., in the Act's "definition" section, that Congress intended to allow noncorporate and non-labor union organizations to avail themselves of the internal membership communication exception. By including the internal communications exception in the definition of "expenditure," the statute allows noncorporate and non-union membership organizations to communicate with their members without subjecting them to the normal prohibitions and reporting requirements.

Paragraph (b)(4) lists the types of 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. It currently states that 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 has decided to move this language to new paragraph 11 CFR 100.8(b)(4)(iv)(A)(6), the provision in 11 CFR 100.8 that explicitly defines a "membership organization." This change insures that organizations primarily organized to influence a Federal election cannot, by definition, be classified as membership organizations under the Act.

The NPRM proposed further revising this section to include only communications "subject to the direction and control of [the membership organization] and not any other person." Several commenters expressed concern that this provision could infringe on constitutionally protected free speech rights, and lead to unwarranted Commission intrusion into an organization's internal workings. The Commission is not including this language in the final rule because it has determined that the current language, which encompasses "[a]ny cost incurred for any communication by a membership organization to its members," sufficiently addresses its concern that an organization not be used as a conduit by a candidate or other outside entity seeking to influence unlawfully a Federal election.

#### *Section 100.8(b)(4)(iv)(A) Attributes of Membership Organizations*

Paragraph (b)(4)(iv)(A) of this section addresses the attributes of membership organizations. 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, these rules are intended to prevent individuals from establishing "sham" membership organizations in an effort to circumvent the Act's contribution and expenditure limits. For this reason, the Commission believes it is appropriate to focus on the structure of the membership organization as well as on who qualifies as a member.

Accordingly, revised paragraph (A)(1) states that a membership organization shall be composed of members vested with the power and authority to operate or administer the organization pursuant to the organization's articles, bylaws, constitution or other formal organizational documents. The Commission believes it is axiomatic that membership organizations should be composed of members, and that members should have the power to operate or administer the organization. This language is a combination of that contained in proposed paragraphs (A)(1) and (A)(3) of the December, 1998 NPRM

(63 F.R. 69224). Proposed paragraph (A)(3) of the December, 1998 NPRM required that the organization "be self governing, such that the power and authority to direct and control the organization is vested in some of all members." The phrases "self-governing" and "direct and control" were removed in favor of the revised language noted above. The Commission notes that organizations would be able to delegate administrative and related responsibilities to smaller committees or other groups of members; the new rule does not require that all members approve all organization actions. Additionally, membership organizations with self-perpetuating boards of directors will be considered to have met this requirement if all members of the board are themselves members of the organization, as long as the organization has chosen this structure and it meets all other requirements of these regulations.

With regard to the requirement in paragraph (A)(2) that the qualifications and requirements for membership be expressly stated, the Commission notes that this provision would not preclude the organizational documents from delegating the responsibility to set specific requirements, such as the amount of dues or other qualifications or requirements, to the board of directors or other committees or groups of members.

The term "constitution" was also added to paragraphs (A)(1), (A)(2) and (A)(3) as a "formal organizational document" in response to several comments noting that many membership organizations considered constitutions to be their primary organizing document.

One commenter asked the Commission to drop the requirement that membership organizations "shall be composed of members," arguing that some membership organizations include non-members and might find it difficult to distinguish between the two. Since the FECA specifically refers to "members," and limits communications and solicitations to members, the Commission believes it is appropriate to include this requirement in the rules. Please note, this does not mean that organizations that permit non-members to participate in certain aspects of their operations will lose their status as a membership organization pursuant to the FECA, although they cannot solicit from or send express advocacy communications to such non members.

Some commenters pointed out that covered organizations may have to amend their bylaws to comply with these new requirements; and that this

can be a lengthy process for those organizations which, for example, must approve the proposed changes at consecutive annual meetings. The Commission may consider such organizations to be in compliance with these rules while steps are underway, in accordance with the organization's rules, to come into compliance, assuming that the other requirements of the rules are met, as long as necessary changes are made at the first opportunity available under the organization's rules.

Revised paragraph (A)(3) states that membership organizations shall make their articles, bylaws or other formal organizational documents available to their members. As noted above, the Supreme Court's language in the *NRWC* decision, 459 U.S. at 204, pointed to the need for members of membership organizations to have "relatively enduring and independently significant financial or organizational attachments" to the organization. Those attachments can hardly be meaningful if the members are unaware of their rights and obligations. This requirement is therefore a corollary to that found at revised paragraph (A)(1), that members constitute the organization.

The NPRM proposed that such documents be made "freely" available to members, a term some commenters thought implied that the documents would have to be provided free of charge. They argued that this could prove costly for small organizations with lengthy organizational documents.

The Commission did not intend by its use of the word "freely" to indicate that the documents would have to be made available "free of charge." Rather, organizations may impose reasonable copying and delivery fees for this service. They may also make these documents available at their headquarters or other offices, where members choosing to do so may consult and copy them.

Labor organizations also asserted that the Commission has no authority to impose requirements in addition to those contained in the Labor-Management Reporting and Disclosure Act of 1959 ("LMRDA") and other Federal labor laws. The Commission believes that the revised rules largely comport with the LMRDA's requirements. However, the FECA and the Federal labor laws were enacted for different purposes, and the Commission cannot be bound by other statutes that would limit its authority in enforcing and interpreting the FECA.

New paragraphs (A)(4) and (5) contain the two preliminary requirements that formerly appeared in paragraphs (A)(2)

and (3). These paragraphs state that membership organizations shall expressly solicit members, and expressly acknowledge the acceptance of membership, such as by sending a membership card or including the member on a membership newsletter list. New paragraph (A)(4) has been revised slightly to clarify that an organization must expressly solicit persons to become members of the organization.

New paragraph (A)(6) contains the language moved from the introductory text of 11 CFR 100.8(b)(4), *supra*. It states that organizations primarily organized for the purpose of influencing the nomination for election, or election, of any individual for Federal office cannot qualify as membership organizations for purposes of these rules.

*Section 100.8(b)(4)(iv)(B) Definition of "member" of a membership organization*

The Commission interprets the Supreme Court's requirement in the *NRWC* decision that members of membership organizations have a "relatively enduring and independently significant financial or organizational" attachment, *supra*, to mean that members must have a long term and continuous bond with the organization itself. The new rules define this as either a meaningful ownership or investment stake; the payment of dues on a regular basis; or direct participatory rights in the governance of the organization.

The introductory language of paragraph (b)(4)(iv)(B), which states that members must satisfy the requirements for membership in a membership organization and affirmatively accept the organization's invitation to become a member, has not been changed. Nor has paragraph (B)(1), which confers membership on those having some significant financial attachment to the organization, such as a significant investment or ownership stake.

One commenter objected to this provision, saying that it would allow wealthy individuals and other entities to purchase memberships, and that the payment of dues should be sufficient for this purpose. However, this provision addresses the situation where a member may pay several hundred thousand dollars to purchase a seat on a stock exchange, for example, but does not pay dues.

Paragraph (B)(2) requires members to pay membership dues at least annually, of a specific amount predetermined by the organization. Commenters largely agreed with the Commission's proposal

not to set any minimum amount of dues, because this varies so widely from organization to organization. The term "at least" has been added to the language proposed in the NPRM to address situations where dues are paid more frequently, i.e., bi-weekly or monthly, as is true of most labor organizations.

Several commenters expressed concern over the annual dues requirement, noting that, despite an organization's best efforts, not all members renew their memberships within a twelve-month period. These commenters raised the question of whether the annual dues standard would require organizations to exclude, for FECA purposes, any members who are late in paying dues. As long as organizations maintain and enforce an annual (or more frequent) dues requirement, payments within a flexible window or subject to a reasonable grace period would meet this requirement.

Paragraph (B)(3) defines significant organizational attachment to include (i) the affirmation of membership on at least an annual basis, and (ii) direct participatory rights in the governance of the organization. The regulation cites as examples of such rights the right to vote directly or indirectly for at least one individual on the membership organization's highest governing board; the right to vote on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; or the right to participate directly in similar aspects of the organization's governance.

The Commission notes that these requirements apply only to those members who do not pay annual dues, or whose financial attachment to the organization is not a significant investment or ownership stake. This allays the concern of some commenters that, as the proposal was originally drafted, members might be required to annually affirm their membership in addition to paying annual dues.

As with the annual dues requirement, the Commission intends to give organizations some flexibility in interpreting the phrase "annual affirmation." For example, such activities as attending and signing in at a membership meeting or responding to a membership questionnaire would satisfy this requirement. The organization would not have to send out a mailing form for this purpose unless a member did not pay dues and had no other significant contact with the organization over the period in question.

Several commenters objected to the annual affirmation requirement proposed in the NPRM, and the Commission has substantially loosened this in an effort to address their concerns. It has not eliminated it entirely, however, because the Commission is bound by the Supreme Court's requirement that there be a significant or relatively enduring attachment between the member and the organization.

*Section 100.8(b)(4)(iv)(C) Case-by-case Determinations*

The Commission is revising paragraph (b)(4)(iv)(C) of this section, which provides for case-by-case determinations of membership status through the advisory opinion ("AO") process for those who do not precisely meet the requirements set forth in paragraph (B), to specifically state that it applies to retired members, in addition to the student and lifetime members addressed in the former version.

The NPRM proposed adding new paragraph (b)(4)(iv)(D) to address the status of retired union members who had paid dues for a period of at least ten years. Some unions commented that they could not easily determine which retired members met this criterion. Other commenters urged the Commission to treat all retired members the same, regardless of whether they had retired from a union or from some other organization.

It is apparent from these comments that membership organizations have a wide range of relationships with their retired members. For this reason the Commission has decided that it is best to address this situation through the advisory opinion process, as is true of student, lifetime, honorary and similar member categories. In addition, please note that the Commission has addressed the question of retired members in AOs 1995-14, 1995-13, and 1987-5, which continue to provide guidance to similarly-situated organizations.

For instance, the most permissive advisory opinion, AO 1987-5, approved a life membership policy including members who had paid dues for ten years and reached age 65. That opinion also involved the retention of voting rights, which would not be essential under the new rules. These new rules include separate annual dues and organizational attachment tests as alternatives. Members who possess the requisite voting rights and affirm membership at least annually would qualify as members regardless of whether they ever paid dues.

#### *Section 100.8(b)(4)(iv)(D) Labor Organizations*

This provision, which has not been revised, states that, notwithstanding the requirements of paragraphs (b)(4)(iv)(B)(1) through (3) 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.

The NPRM proposed deleting this language and replacing it with the provision relating to retired union members that has now been incorporated into the case-by-case determination process. At the time the NPRM was published, the Commission believed that unions with several organized levels would fall within the provisions relating to multi-tiered organizations contained in new paragraph 100.8(b)(4)(iv)(E) of this section, *infra*. However, some of the labor organizations that commented pointed out that their particular organizational structure did not precisely fit this model. The Commission is therefore retaining the current language to insure that unions continue to be treated as Congress intended in drafting this portion of the FECA. See *FEC v. Sailors' Union of the Pacific Political Fund*, 824 F. Supp. 492, 495 (N.D. Cal. 1986), *aff'd* 828 F.2d 502 (9th Cir. 1987).

#### *Section 100.8(b)(4)(iv)(E) Multi-tiered Organizations*

This provision, which was originally proposed in the 1997 NPRM, states that, in the case of a membership organization which has a national federation structure or has several levels, including, for example, national, state 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 these rules. It further states that the factors set forth in the Commission's affiliation rules at 11 CFR 100.5(g)(2), (3) and (4) shall be used to determine whether entities are affiliated for purposes of this paragraph.

The commenter who first recommended this approach noted that a person who joins one tier of a multi-tiered organization clearly demonstrates an intention to associate with the entire organization. This new approach will also make enforcement easier and prevent what could otherwise be a large

number of requests for advisory opinions from multi-tiered organizations. No comments were received opposing this change.

#### *Section 100.8(b)(4)(iv)(F) Inapplicability of State Law*

Paragraph (b)(4)(iv)(F) provides that, for purposes of these rules, the status of a membership organization 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. Several commenters objected to this proposal, arguing that the Commission should defer to State law in this area.

Where an organization does not have "members" under that definition of state law, the right to vote for directors, and to exercise other rights normally given to members, is typically vested in the directors themselves. The board of directors thus elects its own successors, and in that sense is a self-perpetuating, autonomous board.

State law, however, also typically gives an organization that elects not to have "members" as defined by state law the right to have other persons affiliated with the organization under such terms and conditions as the organizational documents or directors provide, and to call those persons "members" if the organization wishes to do so. In that circumstance, if the terms and conditions of membership satisfied these regulations, those persons would be "members" for purposes of the FECA, even if they were not "members" as defined under state law.

The Commission does not believe that the vagaries of state law should determine whether or not an organization has members for purposes of the FECA. Therefore, the regulations make it clear that the determination of whether an organization has members for purposes of the FECA will be determined under these regulations, and not by the definitions of state law that may either include or exclude persons as members of an organization for reasons unrelated to the FECA.

#### *Section 114.1(e) Definition of Membership Organization for Purposes of Corporate and Labor Organization Activity*

Revised section 114.1(e) is identical to revised section 100.8(b)(4)(iv). Please note, however, that the reference to unincorporated associations which appears in revised 11 CFR 100.8(b)(4) applies only to Part 100 and not to Part 114, since part 114 addresses only

activities by corporations and labor organizations.

#### *Section 114.8(g) Federations of Trade Associations*

As was the case with rural cooperatives, the 1998 NPRM proposed the repeal of 11 CFR 114.8(g), relating to federations of trade associations, because it believed these provisions would be encompassed by the proposed multi-tier language. While no commenter addressed this change, the Commission notes that parts of this section address additional issues that are beyond the scope of the present rulemaking. For example, there is a difference in the trade association context between the groups that can be solicited for contributions to the trade association's SSF and those who can get other election-influencing messages that are not SSF solicitations. For this reason, the Commission is retaining the current language without revision.

#### *Other Issues*

##### *Rural Cooperatives*

The Commission's rules at 11 CFR 114.7(k) allow certain rural cooperatives to, *inter alia*, solicit from and make express advocacy electoral communications to not only their own members, but the members of the cooperative's regional, state or local affiliates. The 1998 NPRM proposed repealing this provision and addressing this situation through 11 CFR 100.8(b)(4)(iv)(E), the general multi-tiered organization provision discussed above. However, one of the rural electric cooperatives that commented stated that the structure of most rural cooperatives does not readily correspond to the multi-tiered model envisioned in that section. The Commission is therefore retaining 11 CFR 114.7(k), to insure continued coverage of rural cooperatives under these rules.

##### *Advisory Opinions Superseded*

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 rules 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 former rules because they did not have the required voting rights. The new rules supersede that portion of the AO that

requires voting rights to establish membership.

#### The Regulatory Flexibility Act

One commenter disputed the Commission's certification under the Regulatory Flexibility Act, 5 U.S.C. 605(b), in the NPRM that the proposed rule would not have a significant economic impact on a substantial number of small entities. While the Commission does not concur with that assessment, it nevertheless has taken steps to allay this commenter's concerns by clarifying that (1) organizations may charge reasonable copying and mailing fees for making their organizational documents available to their members; and (2) organizations may follow their usual procedures in revising their bylaws or other documents, if these rules require this action.

#### Certification of no Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

These rules do not 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. The increased costs of such activity, if any, do not qualify as "significant" 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, Subchapter A, Chapter I of Title 11 of the Code of Federal Regulations is amended as follows:

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

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

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

2. Section 100.8 is 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 communication by a membership

organization, including a labor organization, to its members, or any cost incurred for any communication by a corporation to its stockholders or executive or administrative personnel, is not an expenditure, 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, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents;

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

(3) Makes its articles, bylaws, constitution or other formal organizational documents available to its members;

(4) Expressly solicits persons to become members;

(5) Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and

(6) 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, and either:

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

(2) Pay membership dues at least annually, of a specific amount predetermined by the organization; or

(3) Have a significant organizational attachment to the membership

organization which includes: affirmation of membership on at least an annual basis and direct participatory rights in the governance of the organization. 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 on policy questions where the highest governing body of the membership organization is obligated to abide by the results; the right to approve the organization's annual budget; 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 who do not precisely meet the requirements of the general rule, but have a relatively enduring and independently significant financial or organizational attachment to the organization, may be considered members for purposes of this section. For example, student members who pay a lower amount of dues while in school, long term dues paying members who qualify for lifetime membership status with little or no dues obligation, and retired members may be considered members of the organization.

(D) Notwithstanding the requirements of paragraphs (b)(4)(iv)(B)(1) through (3) 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.

(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 paragraphs (b)(4)(iv)(B)(1), (2), or (3) 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)(2), (3) and (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.

\* \* \* \* \*

## PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

3. The authority citation for Part 114 continues 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 is amended by revising paragraph (e) to read as follows:

### § 114.1 Definitions.

\* \* \* \* \*

(e)(1) For purposes of this part *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, some or all of whom are vested with the power and authority to operate or administer the organization, pursuant to the organization's articles, bylaws, constitution or other formal organizational documents;

(ii) Expressly states the qualifications and requirements for membership in its articles, bylaws, constitution or other formal organizational documents;

(iii) Makes its articles, bylaws, constitution, or other formal organizational documents available to its members upon request;

(iv) Expressly solicits persons to become members;

(v) Expressly acknowledges the acceptance of membership, such as by sending a membership card or including the member's name on a membership newsletter list; and

(vi) 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 this part, 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, and either:

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

(ii) Pay membership dues at least annually, of a specific amount predetermined by the organization; or

(iii) Have a significant organizational attachment to the membership organization which includes: affirmation of membership on at least an annual basis; and direct participatory rights in the governance of the organization. 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; the right to approve the organization's annual budget; 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 who do not precisely meet the requirements on the general rule, but have a relatively enduring and independently significant financial or organizational attachment to the organization, may be considered members for purposes of this section. For example, student members who pay a lower amount of dues while in school, long term dues paying members who qualify for lifetime membership status with little or no dues obligation, and retired members of the organization may be considered members for purposes of these rules.

(4) Notwithstanding the requirements of paragraphs (e)(2)(i) through (iii) 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.

(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 paragraphs (e)(2)(i), (ii), or (iii) of this section shall also qualify as a member of all affiliates for purposes of this part. The factors set forth at 11 CFR 100.5 (g)(2), (3) and (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.

\* \* \* \* \*

Dated: July 27, 1999.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

[FR Doc. 99-19515 Filed 7-29-99; 8:45 am]

BILLING CODE 6715-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. 98-ANE-21-AD; Amendment 39-11233; AD 98-23-07 R1]

### Airworthiness Directives; Pratt & Whitney JT9D Series Turbofan Engines

**AGENCY:** Federal Aviation Administration, DOT.

**ACTION:** Final rule; rescission; request for comments.

**SUMMARY:** This amendment rescinds Airworthiness Directive (AD) 98-23-07, which is applicable to certain Pratt & Whitney (PW) JT9D series turbofan engines. That AD requires a one-time acid etch inspection of the turbine exhaust case (TEC) wall between and on either side of the "3R" and "S" rails in the engine mount lug area (top quadrant of the case) for the presence of weld material, and if weld material is detected, removal from service and replacement with serviceable parts. The requirements of that AD were intended to prevent TEC structural failure under abnormal operating conditions, which could result in reduced main mount load capability, engine separation from the wing and subsequent loss of control of the airplane. Since the issuance of that AD, the FAA received reports from the manufacturer that describe a new safety analysis that determines the acid etch inspection for weld material is unnecessary.

**DATES:** Effective July 30, 1999.

Comments for inclusion in the Rules Docket must be received on or before September 28, 1999.

**ADDRESSES:** Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Regional Counsel, Attention: Rules Docket No. 98-ANE-21-AD, 12 New England Executive Park, Burlington, MA 01803-5299. Comments may also be sent via the Internet using the following address: "9-ane-adcomment@faa.gov". Comments sent via the Internet must contain the docket number in the subject line.

**FOR FURTHER INFORMATION CONTACT:** Tara Goodman, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England