

**FEDERAL ELECTION COMMISSION****11 CFR Parts 100, 102, 109, 110, and 114****[Notice 1995–23]****Corporate and Labor Organization Activity; Express Advocacy and Coordination With Candidates****AGENCY:** Federal Election Commission.**ACTION:** Final rule and transmittal of regulations to Congress.

**SUMMARY:** The Commission is issuing revised regulations regarding expenditures by corporations and labor organizations. The new rules implement the Supreme Court's opinion in *Federal Election Commission v. Massachusetts Citizens for Life, Inc.*, 479 U.S. 238 (1986) (*MCFL*), by substituting an express advocacy standard for the previous partisan/nonpartisan standard with respect to corporate and labor organization expenditures. Consequently, in many respects, the revised rules permit corporations and labor organizations to engage in a broader range of activities than was permitted under the previous rules. New provisions are also being added to provide corporations and labor organizations with guidance regarding endorsements of candidates, activities which facilitate the making of contributions, and candidate appearances at colleges and universities.

**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. Susan E. Propper, Assistant General Counsel, or Ms. Rosemary C. Smith, Senior Attorney, 999 E Street NW., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

**SUPPLEMENTARY INFORMATION:** The Commission is publishing today the final text of revisions to its regulations at 11 CFR 109.1(b)(4), 110.12, 110.13, 114.1 (a) and (j), 114.2, 114.3, 114.4, 114.12(b) and 114.13. These provisions implement 2 U.S.C. 431(17) and 441b, provisions of the Federal Election Campaign Act of 1971, as amended (the Act or FECA), 2 U.S.C. 431 *et seq.* Also included are conforming amendments to 11 CFR 100.7(b)(21), 100.8 (b)(3) and (b)(23) and 102.4(c)(1). Section 438(d) of Title 2, United States Code, requires that any rule or regulations prescribed by the Commission to carry out the provisions of Title 2 of the United States Code be

transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on December 8, 1995.

**Explanation and Justification**

The new and revised rules reflect recent judicial and Commission interpretations of 2 U.S.C. 441b. This section of the FECA prohibits corporations and labor organizations from using general treasury monies to make contributions or expenditures in connection with federal elections. The new and amended rules contain the following changes:

1. The partisan/nonpartisan standards in previous 11 CFR part 114 have been replaced by new language at section 114.2, 114.3, and 114.4, prohibiting corporations and labor organizations from making expenditures for communications to the general public expressly advocating the election or defeat of federal candidates. This new language applies only to expenditures.

2. The provisions regarding candidate debates, candidate appearances, distributing registration and voting information, voter guides, voting records, and conducting voter registration and get-out-vote drives in sections 110.13, 114.3, 114.4 and 114.13 have been revised and updated.

3. New provisions have been added to sections 110.12, 114.1., 114.2, and 114.4 to define "restricted class," and to address candidate appearances at colleges and universities, endorsements of candidates, and activities which facilitate the making of contributions.

4. New language has been added to 11 CFR 114.2, 114.3 and 114.4 to address the question of when coordination between a candidate and a corporation or labor organization will cause an activity to become a prohibited contribution.

Please note that at an earlier stage of this rulemaking, the Commission revised the definition of express advocacy in accordance with the judicial interpretations found in *Buckley v. Valeo*, 424 U.S. 1, 44 n. 52 (1976) (*Buckley*, *MCFL* and *Federal Election Commission v. Furgatch*, 807 F.2d 857 (9th Cir.), *cert. denied*, 484 U.S. 850 (1987) (*Furgatch*) and moved it to 11 CFR 100.22. See Explanation and Justification for 11 CFR 100.17, 100.22, 106.1, 109.1 and 114.10, 60 FR 35292 (July 6, 1995). At that time, the definition of "clearly identified," in 11 CFR 100.17, was also updated. In addition, new section 114.10 was added to allow qualified nonprofit corporations possessing certain essential

features to use general treasury funds for independent expenditures, and to set out reporting obligations for qualified nonprofit corporations making independent expenditures. Section 114.10 implements the Supreme Court's decisions in *MCFL* and *Austin v. Michigan Chamber of Commerce*, 494 U.S.C. 652 (1990) (*Austin*).

The history of this rulemaking, including the Petition for Rulemaking and the comments and public testimony, are discussed in more detail in the previously published Explanation and Justification at 60 FR 35292 (July 6, 1995), and in the Notice of Proposed Rulemaking at 57 FR 33548 (July 29, 1992) (Notice or NPRM). The promulgation of these regulations, after the close of the thirty legislative day period, will complete the Commission's consideration of the National Right to Work Committee's Petition for Rulemaking.

**Section 100.7(b)(21) Contribution**

Paragraph (b)(21) of this section is being amended by removing the term "nonpartisan" in describing candidate debates because that term is no longer used in the debate rules at 11 CFR 110.13. In addition, the cite to section 114.4(e) is being changed to 111.4(f) to correspond to the renumbering of that section.

**Section 100.8 (b)(3) and (b)(23) Expenditure**

Paragraph (b)(3) of section 100.8 is being amended to delete the term "nonpartisan" in describing the type of voter drive activity which fall outside the definition of "expenditure." In order for this exception to apply, such activity must still be conducted without any effort to determine party or candidate preference. A reference to section 114.3(c)(4) has also been added for the convenience of readers concerned with corporate or labor organization voter drives aimed at the restricted class.

Paragraph (b)(23) of this section is being amended by removing the term "nonpartisan" in describing candidate debates because that term is no longer used in the debate rules at 11 CFR 110.13. In addition, the cite to section 114.4(e) is being changed to 114.4(f) to correspond to the renumbering of that section.

**Section 102.4(c)(1) Administrative Termination**

The citation to the rules governing debt settlement procedures is being changed from 11 CFR 114.10 to 11 CFR part 116. Section 114.10 now covers qualified nonprofit corporations, not debt settlement.