

*Section 109.1(b)(4) Coordination with Candidates*

The Notice suggested revising 11 CFR 109.1(b)(4) to indicate that the limited types of communication with candidates and their campaign staff which are described in 11 CFR 114.2(c), 114.3 and 114.4 do not constitute coordination if they comply with the requirements of those sections. Upon further reflection, this proposal has been dropped because 11 CFR part 109 covers all persons, and the Commission's concerns regarding the coordination of corporate or labor organization activity is more appropriately addressed in 11 CFR 114.2 through 114.4, which are discussed below.

*Section 110.12 Candidate Appearance on Public Educational Institution Premises*

New section 110.12 of the regulations addresses candidate appearances on the premises of public educational institutions. This section generally follows new paragraph (c)(7) of section 114.4, which is discussed more fully below. It has been included in the regulations so that public colleges and universities may continue to invite candidates to appear and address either the academic community or the general public in the same manner as incorporated private colleges and universities. A number of commenters pointed out that private schools should be treated the same as public educational institutions. Please note, however, that these institutions are also governed by state law which may impose additional requirements in this area.

*Section 110.13 Candidate Debates*

The Commission has revised its regulations at 11 CFR 110.13 governing the staging of candidate debates in several respects. First, the previous requirement that debates be "nonpartisan" has been removed. However, the rules continue to specify that candidate debates may not be structured to promote or advance a particular candidate. Also, debates may not be coordinated with a candidate in a manner that would result in the making of an in-kind contribution.

In the NPRM, the Commission has proposed several additional requirements, such as a restriction on discussing campaign strategy and tactics with the candidate or agents of the candidate. The NPRM also included restrictions on giving one candidate more time during the debate or more advance information as to the questions to be asked. Several commenters were

critical of these proposals. While this language has been deleted from the final rules, these restrictions are subsumed within the requirement that the debate not be structured to promote or advance a particular candidate over the others.

The Commission also considered including language stating that staging organizations may not expressly advocate the election or defeat of any clearly identified candidate during the debates. That language does not need to be included in the final rule because the rules already state that the debates may not be structured to promote or advance one candidate over another. Please note that no portion of the entire event, including any pre-debate or post-debate commentary and analysis, may be structured to promote or advance a particular candidate. Nevertheless, a news organization that stages a candidate debate may produce a separate editorial containing express advocacy under the news story exception to the definitions of contribution and expenditure in 11 CFR 100.7(b)(2) and 100.8(b)(2).

*1. Definition of Staging Organization*

Section 110.13(a) addresses several issues that have been raised regarding nonprofit groups and media organizations that wish to be staging organizations for candidate debates. First, this provision was rewritten to clarify that nonprofit organizations described in 26 U.S.C. 501 (c)(3) and (c)(4) may stage debates even if they have not received official confirmation from the Internal Revenue Service of their status as nonprofit organizations. In addition, the previous language may have been confusing because it described these entities as "exempt from Federal taxation", when they may be required to pay taxes on their nonexempt function income. Please note that under section 110.13, it is possible for a candidate debate to be sponsored by multiple staging organizations. The Internal Revenue Service commented that while the requirements in the FEC's rules are not identical to the factors the IRS considers, they do not conflict with the IRS's rules regarding political activity carried out by 501(c) organizations. Another commenter questioned the reason for disqualifying nonprofit organizations from staging debates if they endorsed candidates, as long as the debate is fair. The Commission is retaining this requirement because it is needed to ensure the integrity of candidate debates.

Section 110.13(a)(2) follows the previous provision by indicating that broadcasters and the print media may

stage candidate debates, but it does not indicate whether local cable stations or cable networks may stage debates.

However, questions involving cable debates will be addressed in a separate NPRM. This area is currently subject to many changes, and the Commission intends to consult further with the Federal Communications Commission before addressing it.

Two comments questioned the use of the term "*bona fide*" to describe newspapers who may qualify as debate staging organizations, and the Commission's authority to determine what is a *bona fide* newspaper or magazine under the First Amendment guarantee of freedom of the press. *Bona fide* newspapers and magazines include publications of general circulation containing news, information, opinion, and entertainment, which appear at regular intervals and derive their revenues from subscriptions and advertising. This term is explained in more detail in the Explanation and Justification for the 1979 rules on funding and sponsorship of federal candidate debates. See 44 FR 76734 (December 27, 1979). These rules were transmitted to Congress on December 20, 1979, together with the Explanation and Justification. They became effective on April 1, 1980, after neither house of Congress disapproved them under 2 U.S.C. 438(d)(2). (An earlier version of the candidate debate rules was disapproved by Congress on September 18, 1979. See 44 FR 39348 (July 5, 1979).) This is, as the Supreme Court has noted, an "indication that Congress does not look favorably" upon the Commission's construction of the Act. *FEC v. Democratic Senatorial Campaign Committee*, 454 U.S. 27, 34 (1981). See also, e.g., *Sibbach v. Wilson*, 312 U.S. 1, 16 (1941) ("That no adverse action was taken by Congress indicates, at least, that no transgression of legislative policy was found"). Accordingly, the revised rules follow the previous provisions by retaining the term "*bona fide*" to describe newspapers and magazines that may stage candidate debates.

Finally, please note that the purpose of section 110.13 and 114.4(f) is to provide a specific exception so that certain nonprofit organizations and the news media may stage debates, without being deemed to have made prohibited corporate contributions to the candidates taking part in debates. This exception is consistent with the traditional role these organizations have played in the political process. Individuals and unincorporated entities wishing to stage debates are not covered by the exception.