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Section 438(d) of Title 2, United States Code, requires that any rule or regulation 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 to the President of the Senate 30 legislative days before they are finally promulgated. This regulation was transmitted to Congress on March 10, 1989.

FEDERAL ELECTION COMMISSION

11 CFR Part 114

(Notice 1989-4)

Trade Association Solicitation

AGENCY: Federal Election Commission

ACTION: Final rule, transmittal of regulation to Congress

SUMMARY: The Commission has revised its regulation at 11 CFR 114.8(f), governing the solicitation of parent and subsidiary corporations by a trade association or a trade association's separate segregated fund. Section 114.8 sets forth the rules under which a trade association may solicit the restricted class of its member corporations. The revision clearly states that a trade association or its separate segregated fund may solicit no part of the restricted class of the parent if the parent corporation is not a member of the association although the parent's subsidiary is a member. The revision also specifies in each sentence the categories of persons who constitute the restricted class. Supplementary information, set out below, provides further information on the revision.

DATES: Further action, including the announcement of an effective date, will be taken after the regulation has 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, Federal Election Commission, 999 E Street, NW., Washington, DC 20463, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of a revised rule at 11 CFR 114.8(f), governing the solicitation of parent and subsidiary corporations by a trade association or its separate segregated fund.

On September 15, 1988, the Commission issued a Notice of Proposed Rulemaking in which it sought comments on proposed revisions of § 114.8(f) and two other regulations. 53 FR 35827. The Commission received no comments in response to the Notice.

Explanation and Justification

The Federal Election Campaign Act of 1971, as amended, (the "Act"), 2 U.S.C. 431 *et seq.*, permits trade associations to solicit the executive or administrative personnel, stockholders, and families of such personnel and stockholders (the "restricted class") of the trade association's member corporations, subject to certain conditions. 2 U.S.C. 441b(b)(4)(D). Section 114.8(f) of the Commission's regulations applies this basic rule to situations where a parent corporation is a member of a trade association but its subsidiary is not, or vice versa.

Under the current § 114.8(f), if the parent corporation is a member of a trade association but the subsidiary is not, the trade association or its separate segregated fund may solicit only the restricted class of the parent. To be consistent with the Act, the regulations should further provide that if the subsidiary corporation is a member of a trade association but its parent is not, then the trade association and its separate segregated fund may solicit only the restricted class of the subsidiary; the trade association may not solicit the parent corporation's restricted class. As the Notice of Proposed Rulemaking pointed out, however, current § 114.8(f) states that the trade association is prohibited from soliciting only the "shareholders" of the non-member parent corporation. The revision corrects this language. The Commission notes that this revision does not represent a change in agency policy but rather is a more accurate statement of the current law. It has been the consistent position of the Commission that trade associations may only solicit the restricted class of their member corporations. In addition, unlike the earlier proposed version, the new rule also specifies in each sentence the categories of persons who constitute the relevant restricted class.