

*Nuclear grade graphite for nuclear end use* means graphite having a purity level better than (*i.e.*, less than) 5 parts per million boron equivalent, as measured according to ASTM standard C1233-98 and intended for use in a nuclear reactor. (Nuclear grade graphite for non-nuclear end use is regulated by the Department of Commerce.)

\* \* \* \* \*

■ 3. In § 110.9, paragraph (e) is revised to read as follows:

**§ 110.9 List of Nuclear Material under NRC export licensing authority.**

\* \* \* \* \*

(e) Nuclear grade graphite for nuclear end use.

**§ 110.25 [Removed]**

■ 4. Remove § 110.25.

■ 5. Amend § 110.40 as follows:

■ a. Revise paragraph (b)(3);

■ b. Redesignate paragraphs (b)(4) through (b)(7) as paragraphs (b)(5) through (b)(8);

■ c. In newly redesignated paragraph (b)(7), further redesignate paragraph (iv) as paragraph (b)(7)(v);

■ d. Revise redesignated paragraph (b)(7)(iii);

■ e. Add new paragraphs (b)(4) and (b)(7)(iv).

**§ 110.40 Commission review.**

\* \* \* \* \*

(b) \* \* \*

(3) Nuclear grade graphite for nuclear end use.

(4) 1,000 kilograms or more of deuterium oxide (heavy water), other than exports of heavy water to Canada.

\* \* \* \* \*

(7) \* \* \*

(iii) Nuclear grade graphite for nuclear end use;

(iv) 250 kilograms of source material or heavy water; or

\* \* \* \* \*

■ 6. In § 110.41, paragraph (a)(3) is revised, paragraphs (a)(4) through (a)(9) are redesignated as paragraphs (a)(5) through (a)(10), and a new paragraph (a)(4) is added to read as follows:

**§ 110.41 Executive branch review.**

(a) \* \* \*

(3) Nuclear grade graphite for nuclear end use.

(4) More than 100 curies of tritium, and deuterium oxide (heavy water), other than exports of heavy water to Canada.

\* \* \* \* \*

■ 7. In § 110.42, the introductory language of paragraph (b) is revised to read as follows:

**§ 110.42 Export licensing criteria**

\* \* \* \* \*

(b) The review of license applications for the export of nuclear equipment, other than a production or utilization facility, and for deuterium and nuclear grade graphite for nuclear end use, is governed by the following criteria:

\* \* \* \* \*

■ 8. In § 110.70, paragraph (b)(3) is revised, paragraph (b)(4) is redesignated as paragraph (b)(5), and a new paragraph (b)(4) is added to read as follows:

**§ 110.70 Public notice of receipt of an application**

\* \* \* \* \*

(b) \* \* \*

(3) 10,000 kilograms or more of heavy water.

(4) Nuclear grade graphite for nuclear end use.

\* \* \* \* \*

Dated in Rockville, Maryland, this 12th day of October, 2004.

For the Nuclear Regulatory Commission.

**Luis A. Reyes,**

*Executive Director for Operations.*

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**FEDERAL ELECTION COMMISSION**

**11 CFR Part 114**

[Notice 2005-18]

**Payroll Deductions by Member Corporations for Contributions to a Trade Association's Separate Segregated Fund**

**AGENCY:** Federal Election Commission.

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

**SUMMARY:** The Federal Election Commission is amending its rules regarding contributions to the separate segregated fund ("SSF") of a trade association by employee-stockholders and executive and administrative personnel of corporations that are members of the trade association (collectively, "solicitable class employees"). The revised rules will no longer prohibit corporate members of a trade association from using a payroll deduction or check-off system for employee contributions to the trade association's SSF. Instead, these final rules will allow a corporate member of a trade association to provide incidental services to collect and forward

contributions from its solicitable class employees to the SSF of the trade association, including use of a payroll deduction or check-off system, upon written request of the trade association. These final rules will also require any member corporation that provides incidental services for contributions to a trade association's SSF, as well as the corporation's subsidiaries, divisions, branches and affiliates, to provide the same services for contributions to the SSF of any labor organization that represents members working for the corporation, or the corporation's subsidiaries, divisions, branches or affiliates, upon written request of the labor organization and at a cost not to exceed actual expenses incurred. Additional information appears in the **SUPPLEMENTARY INFORMATION** that follows.

**DATES:** These rules are effective August 22, 2005.

**FOR FURTHER INFORMATION CONTACT:** Mr. Brad C. Deutsch, Assistant General Counsel, or Ms. Amy L. Rothstein, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is promulgating final rules at 11 CFR 114.2 and 114.8 as the last step in a rulemaking process that began in 2003, when the Commission received a petition for rulemaking (the "Petition") from America's Community Bankers and its SSF, the America's Community Bankers Community Campaign Committee (collectively, "Petitioners"). Petitioners asked the Commission to change its rules to allow a corporate member of a trade association to make payroll deductions and check-off systems available to the corporation's restricted class employees for their voluntary contributions to the trade association's SSF.

The Commission issued a Notice of Availability stating that the Petition was available for public review and comment. *See* Notice of Availability, 68 FR 60887 (October 24, 2003). The comment period closed on November 24, 2003. The Commission received 30 comments in response to the Notice of Availability. All of the comments supported the Petition.

After considering the comments on the Petition, the Commission issued a Notice of Proposed Rulemaking ("NPRM"). *See* 69 FR 76628 (Dec. 22, 2004). The NPRM proposed to change the Commission's rules at 11 CFR 114.2 and 114.8 to allow a corporate member of a trade association to provide incidental services to collect and forward voluntary contributions from its

solicitable class employees to the trade association's SSF, including use of a payroll deduction or check-off system, upon written request of the trade association. Under the proposed rules, any corporate member of a trade association that provided incidental services for contributions to the trade association's SSF also would have had to provide the same services for contributions to the SSF of any labor organization that represented members working for the corporation, upon written request of the labor organization and at a cost not to exceed actual expenses incurred.

The Commission received 34 comments in response to the NPRM. None of the comments opposed the proposed changes to the Commission's rules, including a letter from the Internal Revenue Service stating that it had "no comments at this time." The comments are discussed further in the Explanation & Justification, below.

The Commission held a public hearing on May 17, 2005, on this rulemaking.<sup>1</sup> At the hearing, representatives of Petitioner and two other commenters testified. For purposes of this document, the terms "comment" and "commenter" apply to both written comments and oral testimony at the public hearing. The written comments and the transcripts of the hearing are available at [http://www.fec.gov/law/law\\_rulemakings.shtml](http://www.fec.gov/law/law_rulemakings.shtml).

Under the Administrative Procedure Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules that follow were transmitted to Congress on July 15, 2005.

### Explanation and Justification

The Federal Election Campaign Act of 1971, as amended (the "Act"), and the Commission's regulations permit any trade association to solicit contributions to the trade association's SSF from the stockholders and executive and administrative personnel, and their families, of the trade association's member corporations, so long as these member corporations separately and

specifically approved the solicitation and have not approved a solicitation by any other trade association for the same calendar year. See 2 U.S.C.

441b(b)(4)(D); 11 CFR 114.8(c). Once these conditions are met, "[t]here is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use." 11 CFR 114.8(e)(3).

Although the regulations do not limit the methods that a trade association may use to solicit and facilitate the making of voluntary contributions to its SSF from the solicitable class employees of consenting member corporations, before this rulemaking the regulations did limit the methods that a consenting member corporation may use to collect and forward those contributions. Specifically, prior to this rulemaking, 11 CFR 114.8(e)(3) stated that a "member corporation may not use a payroll deduction or check-off system for executive or administrative personnel contributing to the separate segregated fund of the trade association." The Commission has interpreted this prohibition to extend to all employees of the corporation who may be solicited by the trade association (*i.e.*, solicitable class employees), including the member corporation's employee-stockholders. See Advisory Opinion ("AO") 1989-3.

In recent years, the Commission has recognized that corporations have some latitude in collecting and forwarding contributions to a trade association's SSF, so long as the collection does not involve employee payroll deductions. For example, in AO 2003-22, the Commission interpreted the regulations to permit a corporate member of a trade association to collect voluntary contributions in the form of paper checks from its executive and administrative personnel, and to forward the contributions to the trade association's SSF. In that advisory opinion, the Commission also interpreted the regulations to permit corporate executives who were collecting employee contribution checks to use the member corporation's inter-office mail system to help collect the checks, and to provide envelopes and postage in which contributors could send their contributions to the trade association's SSF. See also AO 2000-4 (incorporated credit union members of a trade association permitted to deduct and transfer contributions to the trade association's SSF from the share accounts of the credit unions' individual members).

These final rules are substantively identical to the rules proposed by the

Commission in the NPRM, except for one change, discussed below. The rules:

- Remove the prohibition on corporate use of a payroll deduction or check-off system for solicitable class employee contributions to the SSF of a trade association of which the corporation is a member (11 CFR 114.8(e)(3));
- Specifically authorize a member corporation to provide incidental services to collect and forward contributions from its solicitable class employees to a trade association's SSF, including a payroll deduction or check-off system, upon written request of the trade association (new 11 CFR 114.8(e)(4));
- Require any corporation that provides these incidental services, and the corporation's subsidiaries, divisions, branches and affiliates, also to make the same services available to a labor organization representing members who work for the corporation, or the corporation's subsidiaries, divisions, branches or affiliates, for contributions to the labor organization's SSF by members of the labor organization, upon written request by the labor organization and at a cost not to exceed any actual expenses incurred (new 11 CFR 114.8(e)(4)); and
- Clarify that the provision of incidental services pursuant to new 11 CFR 114.8(e)(4) is not prohibited corporate facilitation (new 11 CFR 114.2(f)(5)).

#### 1. 11 CFR 114.8—Trade Associations

Generally, 11 CFR 114.8 sets out the circumstances under which an incorporated trade association may solicit contributions to its SSF. It defines the group of persons that may be solicited, *e.g.*, stockholders and the executive and administrative personnel of member corporations that give a yearly prior approval to the trade association to solicit such personnel, and the methods that may be used for such solicitation. Section 114.8(e) more particularly addresses the timing and methods of such solicitation.

##### A. 11 CFR 114.8(e)(3)

The Commission is deleting the second sentence of former 11 CFR 114.8(e)(3) in its entirety. This second sentence prohibited a corporation from using a payroll deduction or check-off system for contributions by the corporation's solicitable class employees to the SSF of a trade association of which the corporation is a member. The Commission is making this change to conform paragraph 114.8(e)(3) with new paragraph 114.8(e)(4), discussed below.

<sup>1</sup> See Notice of Public Hearing, Candidate Solicitation at State, District and Local Party Fundraising Events; Definition of "Agent" for BCRA Regulations; Payroll Deductions By Member Corporations for Contributions to a Trade Association's Separate Segregated Fund, 70 FR 21,163 (April 25, 2005).

## B. 11 CFR 114.8(e)(4)

The Commission is adding a new paragraph 114.8(e)(4) to allow, but not require, a corporation to provide incidental services to collect and forward contributions from its solicitable class employees to the SSF of a trade association of which the corporation is a member, upon written request of the trade association. The new rule expressly provides that incidental services may include a payroll deduction or check-off system.

## (i) Incidental Services

The Commission is changing the rules to allow a corporate member of a trade association to provide incidental services to collect and forward voluntary contributions from solicitable class employees to the trade association's SSF, because of the special relationship that exists between a trade association and its member corporations. This special relationship is firmly rooted in the Act. Although the Act generally prohibits a corporation and its SSF from soliciting contributions from anyone other than the corporation's own stockholders, executive and administrative personnel, and their families, the Act specifically allows a trade association, including an incorporated trade association and its SSF, to solicit contributions from the stockholders, executive and administrative personnel, and their families, of the trade association's member corporations, to the extent specifically approved by the member corporations. *See* 2 U.S.C. 441b(b)(4)(A)(i); 2 U.S.C. 441b(b)(4)(D).<sup>2</sup>

The Commission has recognized this special relationship before. For example, the Commission specifically rejected an interpretation of the Act that would have required a trade association to reimburse its member corporations for incidental costs related to assistance with fundraising by the trade association for its SSF. As the Commission stated, "to require a trade association to reimburse the corporation for incidental services, such as the distribution of the association's [SSF fundraising] material via the corporation's internal mailing system, seemed tenuous since the trade association will be paying for the substantial costs of the solicitation with the membership fees from corporations. Consequently, the Commission has not required the trade association to reimburse the corporation for such

incidental expenditures."<sup>3</sup> *See also* AO 1978-13 ("Just as a corporation is not precluded from giving incidental aid, which entails incidental expenditures, to solicitations made by a trade association, a corporate member of a trade association is not precluded from making incidental expenditures regarding administration of the trade association's [SSF].") (citation omitted); and AO 1979-8 ("Since [the trade association] is permitted to spend dues monies from its corporate members for the establishment, administration, and solicitation of contributions to the PAC, it may also have the benefit of incidental services \* \* \* provided by executive and administrative personnel of its member corporations who conduct those same activities.").

## (ii) Payroll Deductions

Nearly all the commenters observed that it no longer makes sense to distinguish between payroll deductions and other forms of permissible incidental services. The Commission agrees that technological and societal changes over the past 29 years support a change in the treatment of payroll deductions, when used by a corporate member of a trade association.

The availability and use of electronic payments in general have changed considerably since 1976, when the Commission first prohibited corporate use of payroll deduction and check-off systems for employee contributions to a trade association's SSF. Although "it has taken years of investments in electronic infrastructure at homes and businesses to support the use of electronic payments as a convenient and relatively low-cost alternative to checks,"<sup>4</sup> electronic payment systems are now widely used by Federal agencies, such as the Internal Revenue Service and the Social Security Administration, and by the private sector. In fact, there were almost 10 billion more electronic payments in this country than payments by paper check in 2003.<sup>5</sup>

Payroll deductions, in particular, are increasingly prevalent in the workplace. A large number of employees use them to pay for a variety of goods and services, such as health and life

insurance premiums, flexible spending accounts, retirement savings plans, charitable contributions, loan and mortgage payments, gym memberships and club dues. Several commenters observed that payroll deductions are widely available, reliable, simple to administer, convenient, and impose minimal or no cost on the corporations that offer them. The Commission now believes that a member corporation's collection and forwarding of voluntary contributions from solicitable class employees to a trade association's SSF via payroll deduction under these circumstances is a permissible "incidental service."

Several commenters pointed out the important public policy objectives that will be furthered by allowing solicitable class employees to contribute voluntarily through payroll deductions or check-off systems to the SSF of a trade association of which their corporation is a member. By permitting solicitable class employees to sign up for automatic payroll deductions, rather than requiring them to write a contribution check, these employees may spread out their contributions over time, thereby potentially enhancing their participation in the political process. Moreover, the ability to participate in the process by contributing to a trade association's SSF is particularly important for employees of the many small companies that rely exclusively on their trade associations' SSFs to serve as their political voice. This position was reiterated by two of the commenters at the Commission's May 17, 2005 hearing.

As the Supreme Court noted in *Buckley v. Valeo*, "[e]ncouraging citizen participation in political campaigns while continuing to guard against the corrupting potential of large financial contributions to candidates" is an important goal of the Act. *Buckley v. Valeo*, 424 U.S. 1, 36 (1976). The Commission believes that permitting a corporation's solicitable class employees to make voluntary contributions to the SSF of the corporation's trade association through payroll deduction will help to achieve this objective.

In addition, a number of commenters indicated that the use of payroll deductions for voluntary contributions from solicitable class employees to a trade association's SSF will make it easier for the SSF to track and report such contributions. The disclosure requirements of the Act serve three important government interests: (1) Providing the electorate with information; (2) deterring actual corruption and avoiding the appearance

<sup>2</sup> A member corporation may not approve solicitations by more than one trade association in any calendar year. 2 U.S.C. 441b(b)(4)(D); 11 CFR 114.8(c)(2).

<sup>3</sup> Explanation and Justification, Federal Election Regulations, House Document No. 95-44, 95th Cong., 1st Session at 114 (1977).

<sup>4</sup> Remarks by Alan Greenspan at the Federal Reserve Payments System Development Committee 2003 Conference, Oct. 29, 2003.

<sup>5</sup> Federal Reserve Board Press Release: Federal Reserve Studies Confirm Electronic Payments Exceed Check payments for the First Time (Dec. 6, 2004), available at <http://www.federalreserve.gov/boarddocs/press/other/2004/20041206/default.htm> (viewed June 2, 2005).

of corruption; and (3) gathering data necessary for enforcement of the Act. *See McConnell v. Federal Election Commission*, 540 U.S. 93, 196 (2003). The Commission believes that this final rule will help to further these important interests by enhancing the ability of a trade association's SSF to track and report individual employee contributions.

Removing the regulatory prohibition on the use of payroll deduction and check-off systems could also help to reduce some perceived disadvantages in the fundraising abilities of trade association SSFs. Some commenters indicated that the current prohibition in 11 CFR 114.8(e)(3) disadvantages SSFs sponsored by smaller trade associations that try to compete in the political arena against SSFs sponsored by larger trade associations, because SSFs sponsored by smaller trade associations have fewer resources to devote to fundraising. Other commenters complained that the prohibition further disadvantages SSFs sponsored by trade associations that try to compete with larger corporate and labor organization SSFs, because corporate and labor organization SSFs are allowed to offer payroll deductions for contributions to their own SSFs and are not required to obtain approval before soliciting restricted class or member employees. Removing the prohibition on member corporations' use of payroll deductions to collect solicitable class employee contributions to a trade association's SSF will help to reduce these perceived disadvantages.

The Commission cautions, however, that the provision of incidental services by a member corporation to a trade association remains subject to certain requirements under the Act and Commission regulations. For example, the member corporation must first "separately and specifically approve" the solicitation of its solicitable class employees by a trade association, and it cannot authorize more than one trade association to solicit these employees in any calendar year. *See* 2 U.S.C. 441b(b)(4)(D); 11 CFR 114.8(c), (d).

Moreover, contributions made via payroll deduction or check-off system trigger special recordkeeping obligations for the recipient SSF. Each contributor must affirmatively authorize the deduction in writing, in advance, and the authorization must manifest the contributor's "specific and voluntary donative intent." *See Federal Election Commission v. National Education Association*, 457 F.Supp. 1102 (D.D.C. 1978); AOs 2001-4 and 1997-25. The SSF must maintain the authorization for audit or inspection purposes for at least three years after the filing date of each

report that discloses a contribution made pursuant to the authorization. *See* 11 CFR 104.14(b)(2), 102.9(c); AO 2000-4, n.3.

#### (iii) Equal Access for Labor Organizations

Under the rule proposed in the NPRM, any member corporation that provided incidental services to collect and forward contributions by certain persons to a trade association's SSF also would have had to make these incidental services available to a labor organization representing members working for the corporation, upon written request of the labor organization and at a cost that does not exceed any actual expenses incurred. As stated in the NPRM, the Commission considers this requirement to be necessary to prevent circumvention of provisions in the Act and Commission regulations that seek to prevent corporate SSFs from gaining an unfair fundraising advantage over labor organization SSFs. *See* 69 FR 76631.

One commenter asserted that the Act requires the Commission to change the proposed rule by extending the equal access requirement to a member corporation's subsidiaries, divisions, branches and affiliates, in addition to the corporation itself. The commenter argued that, if a corporate member of a trade association uses a payroll deduction or check-off system to collect and forward employee contributions from solicitable class employees to the trade association's SSF, then a labor organization representing any members that work for the corporation or for any of the corporation's subsidiaries, divisions, branches or affiliates would be entitled to require the corporation and the corporation's subsidiaries, divisions, branches or affiliates to provide a payroll deduction or check-off system to collect and forward contributions to the labor organization's SSF.

The commenter stated that this change to the proposed rule is mandated by 2 U.S.C. 441b(b)(6). Section 441b(b)(6) provides that "[a]ny corporation, including its subsidiaries, branches, divisions, and affiliates," that uses a method of soliciting voluntary contributions or of facilitating the making of voluntary contributions, must make that method available to a labor organization "representing any members working for such corporation, its subsidiaries, branches, divisions, and affiliates," upon written request of the labor organization and at a cost sufficient only to reimburse the corporation for its expenses. 2 U.S.C. 441b(b)(6).

In support of the rule proposed in the NPRM, however, the Petitioner asserted that 2 U.S.C. 441b(b)(6) must be read together with 2 U.S.C. 441b(b)(4)(D), the statutory provision enabling the solicitation of executive and administrative employees of member corporations for contributions to a trade association's SSF. While acknowledging that the Act and regulations strike a careful balance between corporations and labor organizations, the Petitioner argued that 2 U.S.C. 441b(b)(4)(D) specifically limits the scope of trade association solicitations of solicitable employees of the member corporation, and does not extend the scope of permissible solicitations to other employees of non-member subsidiaries or affiliates.

The Commission believes that 2 U.S.C. 441b(b)(6) and its implementing regulation, 11 CFR 114.5(k)(1), require the proposed rule to be changed as requested by the commenter. Although, as noted by the Petitioner, a trade association's ability to seek solicitation rights from member corporations is governed by 2 U.S.C. 441b(b)(4)(D), the member corporations themselves are separately subject to the broad equal access provisions of 2 U.S.C. 441b(b)(6) and 11 CFR 114.5(k)(1). Moreover, these equal access provisions do not distinguish between corporate methods of facilitating the making of contributions to a corporation's own SSF and corporate methods of facilitating the making of contributions to the SSF of a trade association of which the corporation is a member. Rather, the provisions apply broadly to "[a]ny corporation \* \* \* that utilizes a method of \* \* \* facilitating the making of voluntary contributions." 2 U.S.C. 441b(b)(6); 11 CFR 114.5(k). Methods of facilitating the making of contributions include payroll deduction and check-off systems. *See* 114.1(f).

Thus, under this new rule, any corporate member of a trade association that chooses to provide incidental services to collect and forward voluntary contributions from its solicitable class employees to the trade association's SSF must provide the same services upon request to the SSF of a labor organization representing any members working for the corporation or the corporation's subsidiaries, divisions, branches, or affiliates. In addition, the subsidiaries, divisions, branches, and affiliates of the corporate member must also provide the same incidental services upon request to the SSF of a labor organization representing any members working for the corporation or the corporation's subsidiaries, divisions, branches, or affiliates.

This result is also consistent with the Commission's application of the equal access provisions of 2 U.S.C. 441b(b)(6) to twice yearly solicitations. *See* 2 U.S.C. 441b(b)(4)(B); 11 CFR 114.6. In the context of twice yearly solicitations, if any corporate unit within a corporate family uses a method of facilitating the making of contributions to the corporation's SSF, then all units within that family must make the method available to a labor organization. *See, e.g.,* AO 1990-25 (a parent corporation that uses a method of facilitation for only certain subsidiaries must nonetheless ensure that the method is available to a labor organization, even at subsidiaries that do not themselves use the method of facilitation).

In addition to being compelled by the Act, there are strong policy reasons for making this change. The Petitioners and other commenters acknowledged that corporations that do not have their own SSF may rely exclusively on their trade associations' SSFs to serve as their proxy SSFs in representing their corporate interests in the political arena. In such circumstances, the Commission concludes that labor organizations should have the same rights that they would enjoy if the corporations had established their own SSFs.

Moreover, under the rule proposed in the NPRM, corporate families that employ most of their administrative and management personnel in one corporation, and most of their members of labor organizations in another corporation, could have effectively undermined the equal access rights of labor organizations, by providing incidental services to collect and forward solicitable class employee contributions to a trade association's SSF only within the corporation employing executive and administrative personnel and not in the corporation employing labor organization members. This outcome would be inconsistent with the careful balance struck by Congress and the Commission between corporate SSFs and labor organization SSFs. *See, e.g.,* 122 Cong. Rec. 3782 (daily ed. May 3, 1976) (Statement of Rep. Brademas, reprinted in Legislative History of the Federal Election Campaign Act Amendments of 1976 at 1082).

The Commission is also mindful that virtually all commenters indicated that payroll deductions are both easy to administer and common, and that this new rule requires any labor organization requesting access to such a method of facilitating contributions to reimburse the corporation for the expenses incurred.

#### (iv) Reimbursement by Labor Organizations

This final rule distinguishes between providing incidental services to collect and forward solicitable class employee contributions to a trade association's SSF on the one hand, and providing incidental services to collect and forward employee-member contributions to a labor organization's SSF on the other hand, with regard to the requirement for reimbursement by the recipient SSF. As noted above, "incidental services by corporate members would not require reimbursement by the trade association since, in any event, reimbursement if required would come from membership dues paid to the trade association by its corporate members." AO 1979-8 (citation omitted); *see also* AO 1978-13. A labor organization or its SSF that receives incidental services from a corporate employer of members of the labor organization, by contrast, is required to reimburse the corporation for the cost of providing those services. *See* AOs 1981-39 and 1979-21. The Commission has previously concluded that a prohibited corporate contribution would result from a failure by a labor organization to reimburse a corporation for actual expenses incurred by the corporation in providing a payroll deduction or check-off system for contributions to the labor organization's SSF. *Id.*

#### 2. 11 CFR 114.2—Prohibitions on Contributions and Expenditures

The Commission is making a conforming change to 11 CFR 114.2(f), which prohibits a corporation from facilitating the making of contributions to political committees, other than to the corporation's own SSF. The term "facilitation" means "using corporate or labor organization resources or facilities to engage in fundraising activities in connection with any federal election." 11 CFR 114.2(f)(1). Facilitation does not include, however, enrollment by a corporation or labor organization of members of the corporation's or labor organization's restricted class in a payroll deduction plan or check-off system to make contributions to the corporation's or labor organization's SSF. *See* 11 CFR 114.2(f)(4)(i).

The Commission is adding a new paragraph (5) to 11 CFR 114.2(f), to specify that facilitation also does not include the provision of incidental services by a corporation to collect and forward voluntary contributions from its solicitable class employees to the SSF of a trade association of which the corporation is a member, pursuant to 11

CFR 114.8(e)(4), as revised. New 11 CFR 114.2(f)(5) expressly permits a corporation to collect these contributions through a payroll deduction or check-off system. The Commission did not receive any comments on this change, which was proposed in the NPRM.

Additionally, the Commission is revising the second sentence of paragraph (a) of 11 CFR 114.2 to correct two typographical errors. In the phrase that currently reads, "\* \* \* form making expenditures as defined in 11 FR 114.1(a) \* \* \*," the Commission is changing the word "form" to "from" and is correcting the citation to "11 CFR 114.1(a)." Because these corrections are technical, they are not a substantive rule requiring notice and comment under the Administrative Procedure Act, 5 U.S.C. 553.

#### 3. Other Issues

In response to the NPRM, one commenter asked the Commission also to change 11 CFR 114.7, to allow a corporation to provide incidental services to collect and forward contributions to a membership organization's SSF from employees who are members of the membership organization. The Commission has determined, however, that this proposal falls outside of the scope of this rulemaking.

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

The Commission certifies that the attached final rules would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the attached rules permit, but do not require, a corporation to provide incidental services to collect and forward contributions from its solicitable class employees to the separate segregated fund of a trade association of which the corporation is a member, including the use of a payroll deduction or check-off system. A corporation is currently permitted to collect and transmit contributions by other means to the SSF of a trade association of which the corporation is a member. The attached rules enable those corporations that wish to transmit employee contributions to trade association SSFs to do so more efficiently and use fewer resources.

#### List of Subjects in 11 CFR Part 114

Business and industry, Elections, Labor.

■ For the reasons set out in the preamble, subchapter A of chapter 1 of title 11 of

the *Code of Federal Regulations* is amended as follows:

## PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

■ 1. The authority citation for part 114 continues to read as follows:

**Authority:** 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8), 441b.

■ 2. Section 114.2 is amended by revising the second sentence of paragraph (a) and by adding new paragraph (f)(5), to read as follows:

### § 114.2 Prohibitions on contributions and expenditures.

(a) \* \* \*

National banks and corporations organized by authority of any law of Congress are prohibited from making expenditures as defined in 11 CFR 114.1(a) for communications to those outside the restricted class expressly advocating the election or defeat of one or more clearly identified candidate(s) or the candidates of a clearly identified political party, with respect to an election to any political office, including any local, State, or Federal office.

\* \* \* \* \*

(f) \* \* \*

(5) Facilitating the making of contributions also does not include the provision of incidental services by a corporation to collect and forward contributions from its employee stockholders and executive and administrative personnel to the separate segregated fund of a trade association of which the corporation is a member, including collection through a payroll deduction or check-off system, pursuant to 11 CFR 114.8(e)(4).

■ 3. In § 114.8, paragraph (e)(3) is revised, paragraph (e)(4) is redesignated as new paragraph (e)(5), and new paragraph (e)(4) is added to read as follows:

### § 114.8 Trade associations.

\* \* \* \* \*

(e) \* \* \*

(3) There is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use.

(4) A corporation may provide incidental services to collect and forward contributions from its employee stockholders and executive and administrative personnel to the separate segregated fund of a trade association of which the corporation is a member, including a payroll deduction or check-off system, upon written request of the

trade association. Any corporation that provides such incidental services, and the corporation's subsidiaries, branches, divisions, and affiliates, shall make those incidental services available to a labor organization representing any members working for the corporation or the corporation's subsidiaries, branches, divisions, or affiliates, upon written request of the labor organization and at a cost sufficient only to reimburse the corporation or the corporation's subsidiaries, branches, divisions, and affiliates, for the expenses incurred thereby.

\* \* \* \* \*

Dated: July 14, 2005.

**Scott E. Thomas,**

*Chairman, Federal Election Commission.*

[FR Doc. 05-14318 Filed 7-20-05; 8:45 am]

BILLING CODE 6715-01-P

## DEPARTMENT OF TRANSPORTATION

### Federal Aviation Administration

#### 14 CFR Part 39

[Docket No. FAA-2005-20882; Directorate Identifier 2004-NM-241-AD; Amendment 39-14192; AD 2005-15-03]

RIN 2120-AA64

**Airworthiness Directives; McDonnell Douglas Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, MD-10-30F, MD-11, and MD-11F Airplanes**

**AGENCY:** Federal Aviation Administration (FAA), Department of Transportation (DOT).

**ACTION:** Final rule.

**SUMMARY:** The FAA is adopting a new airworthiness directive (AD) for certain McDonnell Douglas airplanes identified above. This AD requires repetitive functional tests for noisy or improper operation of the exterior emergency control handle assemblies of the mid, overwing, and aft passenger doors, and corrective actions if necessary. This AD also provides for optional terminating action for the repetitive tests. This AD is prompted by a report that the exterior emergency control mechanism handles were inoperative on a McDonnell Douglas Model MD-11 airplane. We are issuing this AD to prevent failure of the passenger doors to operate properly in an emergency condition, which could delay an emergency evacuation and possibly result in injury to passengers and flightcrew.

**DATES:** Effective August 25, 2005.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the AD as of August 25, 2005.

**ADDRESSES:** You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility, U.S. Department of Transportation, 400 Seventh Street, SW., Nassif Building, Room PL-401, Washington, DC.

Contact Boeing Commercial Airplanes, Long Beach Division, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Data and Service Management, Dept. C1-L5A (D800-0024), for service information identified in this AD.

**FOR FURTHER INFORMATION CONTACT:** Ken Sujishi, Aerospace Engineer, Cabin Safety/Mechanical and Environmental Systems Branch, ANM-150L, FAA, Los Angeles Aircraft Certification Office, 3960 Paramount Boulevard, Lakewood, California 90712-4137; telephone (562) 627-5353; fax (562) 627-5210.

### SUPPLEMENTARY INFORMATION:

#### Examining the Docket

You may examine the AD docket on the Internet at <http://dms.dot.gov> or in person at the Docket Management Facility office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The Docket Management Facility office (telephone (800) 647-5227) is located on the plaza level of the Nassif Building at the street address stated in the **ADDRESSES** section.

### Discussion

The FAA issued a notice of proposed rulemaking (NPRM) to amend 14 CFR part 39 to include an AD that would apply to McDonnell Douglas Model DC-10-10, DC-10-10F, DC-10-15, DC-10-30, DC-10-30F (KC-10A and KDC-10), DC-10-40, DC-10-40F, MD-10-10F, MD-10-30F, MD-11, and MD-11F airplanes. That NPRM was published in the **Federal Register** on April 7, 2005 (70 FR 17618). That NPRM proposed to require repetitive functional tests for noisy or improper operation of the exterior emergency control handle assemblies of the mid, overwing, and aft passenger doors, and corrective actions if necessary. That NPRM also proposed to provide for optional terminating action for the repetitive tests.

### Comments

We provided the public the opportunity to participate in the development of this AD. We received no comments on the NPRM or on the determination of the cost to the public.