exceeded, would require a separate inner container, is an inherently inconsistent safety practice; and

(3) The performance requirements for Type B packages as called for by 10 CFR Part 71 establish containment conditions under different levels of package trauma. The satisfaction of these requirements should be a matter of proper design work by the package designer and proper evaluation of the design through regulatory review. The imposition of any specific package design feature such as that contained in 10 CFR 71.63(b) is gratuitous. The regulations are not formulated as package design specifications, nor should they be.

The petitioner believes that the continuing presence of § 71.63(b) engenders excessively high costs in the transport of some radioactive materials without a clearly measurable net safety benefit. The petitioner states that this is so in part because the ultimate release limits allowed under Part 71 package performance requirements are identical with or without a ''separate inner container,'' and because the presence of a ''separate inner container'' promotes additional exposures to radiation through the additional handling required for the ''separate inner container.'' The petitioner further states that ''* * * excessively high costs occur in some transport campaigns,'' and that one example ''* * * of damage to our national budget is in the transport of transuranic wastes.'' Because large numbers of transuranic waste drums must be shipped in packages that have a ''separate inner container'' to comply with the existing rule, the petitioner believes that large savings would accrue without this rule. Therefore, the petitioner believes that elimination of § 71.63(b) would resolve these regulatory ''defects.''

As a corollary to the primary petition, the petitioner believes that an option to eliminate § 71.63(a) as well as § 71.63(b) should also be considered. This option would have the effect of totally eliminating § 71.63. The petitioner believes that the arguments propounded to support the elimination § 71.63(b) also support the elimination of § 71.63(a).

The Petitioner's Conclusions

The petitioner has concluded that NRC regulations in 10 CFR Part 71 which govern packaging and transportation of radioactive material must be amended to delete the provision regarding special requirements for plutonium shipments. The petitioner believes that a Type B package should be sufficient for a quantity of radionuclide Y which exceeds the A_2 limit if such a package is sufficient for a quantity of radionuclide X which exceeds the A_2 limit. It is the petitioner's view that this should be true for every other radionuclide including plutonium.

Dated at Rockville, Maryland, this 11th day of February 1998.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Secretary of the Commission.

[FR Doc. 98–4146 Filed 2–18–98; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL ELECTION COMMISSION

11 CFR Part 100

[Notice 1998–6]

Definition of ''Express Advocacy''

AGENCY: Federal Election Commission.

ACTION: Notice of disposition of petition for rulemaking.

SUMMARY: The Commission announces its disposition of a Petition for Rulemaking filed on October 20, 1997 by James Bopp, Jr., on behalf of the James Madison Center for Free Speech. The petition urged the Commission to revise its definition of ''express advocacy'' to reflect a recent U.S. Circuit Court of Appeals Decision. The Commission has decided not to initiate a rulemaking in response to this Petition.

DATES: February 12, 1998.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On October 20, 1997, the Commission received a Petition for Rulemaking from James Bopp, Jr., on behalf of the James Madison Center for Free Speech. The Petition urged the Commission to revise the definition of ''express advocacy'' set forth at 11 CFR 100.22 to reflect the decision in *Maine Right to Life Committee* v. *FEC*, 914 F.Supp. 8 (D.Me. 1995), *aff'd per curiam*, 98 F.3d 1 (1st Cir. 1996), *cert. denied*, 118 S.Ct. 52 (1997). Specifically, the Petition urges repeal of 11 CFR 100.22(b), which was held invalid in that case. The challenged paragraph defines ''express advocacy'' to include communications in which the electoral portion is ''unmistakable, unambiguous, and suggestive of only one meaning, and reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action.''

The Fourth Circuit reached a similar conclusion in *FEC* v. *Christian Action Network (''CAN'')*, 92 F.3d 1178 (4th Cir. 1997). However, the Ninth Circuit earlier reached a contrary result in *FEC* v. *Furgatch*, 807 F.2d 857 (9th Cir.), *cert. denied*, 484 U.S. 850 (1987), the decision on which 11 CFR 100.22(b) is largely based. Thus there is a conflict among the circuits on this issue.

The Commission published a Notice of Availability on the Petition on November 6, 1997, 62 FR 60047. In response, the Commission received comments from American Target Advertising, Inc.; the Brennan Center for Justice; Common Cause; Alan Dye, of Webster, Chamberlain & Bean; the Attorney General for the State of Hawaii; the Attorney General for the State of Iowa; the Attorney General for the Commonwealth of Kentucky; U.S. Senator Carl Levin; the National Voting Rights Institute; the Attorney General for the State of New Mexico; the Attorney General for the State of Oklahoma; the Republican National Committee; and the State of Vermont. After reviewing these comments and other information, the Commission has decided not to open a rulemaking in response to this Petition.

First, the Supreme Court has repeatedly admonished ''that denial of a petition for certiorari imports nothing as to the merits of a lower court decision.'' *Griffin* v. *United States*, 336 U.S. 704, 716 (1949), *reh. denied*, 337 U.S. 921. This is especially true where, as here, the Court has declined to review decisions from different circuits that reach different results on the same question.

Consistent with this reasoning, while Supreme Court decisions are binding nationwide, the rule of *stare decisis* requires only that a decision by a circuit court of appeals be followed within the circuit in which it is issued. Since government agencies typically operate nationwide, it is not unusual for an agency to find that different courts have interpreted its statutes or rules in different ways.

The Supreme Court has recognized that, when confronted with this situation, an agency is free to adhere to its preferred interpretation in all circuits that have not rejected that interpretation. It is collaterally estopped only from raising the same claim against the same party in any location, or from continuing to pursue the issue against any party in a circuit that has already rejected the agency's interpretation.

United States v. *Mendoza*, 464 U.S. 154 (1984). Indeed, the *Mendoza* Court encouraged agencies to seek reviews in other circuits if they disagree with one circuit's view of the law, since to allow ''only one final adjudication would deprive this Court of the benefit it receives from permitting several courts of appeals to explore a difficult question before this Court grants *certiorari*.'' *Id.* at 160 (citations omitted). Thus, Petitioner's assertion that the Commission's action in declining to follow one Circuit Court's decision nationwide is ''unprecedented'' is incorrect. Rather, it is the norm.

However, the primary reason for the Commission's decision not to open a rulemaking in response to this Petition is its continued belief that the definition of ''express advocacy'' found at 11 CFR 100.22(b) is constitutional. A communication that is ''unmistakable, unambiguous, and suggestive of only one meaning,'' where ''reasonable minds could not differ as to whether it encourages actions to elect or defeat one or more clearly identified candidate(s) or encourages some other kind of action'' can be read consistently with both *Buckley* v. *Valeo*, 424 U.S. 1 (1976), and *FEC* v. *Massachusetts Citizens for Life*, 238, 249 (1986) (''*MCFL*'').

While the *Buckley* Court gave specific examples of words it found to convey express advocacy, it made clear that the list was not exhaustive. *Buckley*, 424 U.S. at 44 n.52. Further, in discussing the reporting requirements triggered by independent expenditures made to fund ''express advocacy'' communications, the Court noted that this portion of the Federal Election Campaign Act, 2 U.S.C. 434(c), reaches ''only funds that expressly advocate the election or defeat of a clearly identified candidate,'' adding that ''[t]his reading is directed precisely to that spending that is unambiguously related to the campaign of a particular federal candidate.'' *Id.* at 80 (footnote omitted). In *MCFL*, the Court held that materials that were ''marginally less direct than 'Vote for Smith' '' were, nevertheless, express candidate advocacy, even though the materials themselves stated that they were not endorsing particular candidates. *MCFL*, 479 U.S. at 249. One commenter, who believes that *Furgatch* correctly held that a ''short list of words * * * does not exhaust the capacity of the English language'' to advocate the election or defeat of a candidate, 807 F.2d at 863, noted that, under the change proposed by the Petitioner, ''only those who lacked the minimal wherewithal to choose some words other than 'vote for' or the like would be subject to the regulation.''

In sum, both because it is well settled that a decision by one Circuit Court of Appeals is not binding in other circuits, and because the Commission believes the challenged regulation is constitutional, the Commission has decided not to open a rulemaking in response to this Petition.

Therefore, at its open meeting of February 12, 1998, the Commission voted not to initiate a rulemaking to revise the Commission's definition of express advocacy found at 11 CFR 100.22. Copies of the General Counsel's recommendation on which the Commission's decision is based are available for public inspection and copying in the Commission's Public Records Office, 999 E Street, N.W., Washington, D.C. 20463, (202) 219–4140 or toll-free (800) 424–9530. Interested persons may also obtain a copy by dialing the Commission's FAXLINE service at (202) 501–3413 and following its instructions. Request document # 232.

Dated: February 13, 1998.

Joan D. Aikens,

Chairman, Federal Election Commission.

[FR Doc. 98–4166 Filed 2–18–98; 8:45 am]

BILLING CODE 6715–01–P

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 933

[No. 98–05]

RIN 3069–AA67

Membership Approval

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Finance Board) is proposing to amend its regulation on membership in the Federal Home Loan Banks (Banks) (Membership Regulation) to make certain technical and substantive revisions to the regulation that would improve the operation of the membership application process, as well as further streamline application processing for certain types of applicants for Bank membership.

DATES: Comments on this proposed rule must be received in writing on or before March 23, 1998.

ADDRESSES: Comments should be mailed to: Elaine L. Baker, Secretary to the Board, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Richard Tucker, Deputy Director, Compliance Assistance Division, Office of Policy, (202) 408–2848, or Sharon B. Like, Senior Attorney-Adviser, Office of General Counsel, (202) 408–2930, Federal Housing Finance Board, 1777 F Street, N.W., Washington, D.C. 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

Under the Federal Home Loan Bank Act (Act), the Finance Board is responsible for the supervision and regulation of the 12 Banks, which provide advances and other financial services to their member institutions. See 12 U.S.C. 1422a(a). Institutions may become members of a Bank if they meet certain membership eligibility and minimum stock purchase criteria set forth in the Act and the Finance Board's implementing Membership Regulation. See *id.* sections 1424, 1426, 1430(e)(3); 12 CFR part 933.

On August 16, 1996, the Finance Board published a final rule amending the Membership Regulation to authorize the 12 Banks, rather than the Finance Board, to approve or deny all applications for Bank membership, subject to certain criteria for determining compliance with the statutory eligibility requirements for Bank membership formerly contained in policy guidelines used by the Finance Board in approving membership applications. See 61 FR 42531 (Aug. 16, 1996) (codified at 12 CFR part 933); Federal Home Loan Bank System Membership Application Guidelines, Finance Board Res. No. 93–88 (Nov. 17, 1993) (Guidelines). The final rule also provided for streamlined application processing for certain types of membership applications. See 12 CFR part 933.

In the course of processing and approving membership applications under the Membership Regulation, the Banks have raised a number of technical and substantive issues with the Regulation whose resolution would improve operation of the membership application process and streamline membership application processing for certain types of institutions. These issues and proposed amendments for addressing these issues are discussed below in the **ANALYSIS OF PROPOSED RULE** section. The Finance Board requests comment on all aspects of the proposed amendments.