

committees that make independent expenditures.

This section is being updated for the reasons set forth above in the discussion regarding 11 CFR 110.1. The Commission received no comments on this section.

Additional changes to 11 CFR 110.2 were addressed in a separate rulemaking on BCRA's increased contribution limits. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002).

#### *11 CFR 110.7 Removed and Reserved*

The pre-BCRA regulations at 11 CFR 110.7 contained the coordinated party expenditure limits and related provisions. As explained above, the Commission is moving section 110.7, in amended form, to 11 CFR part 109, subpart D. Specifically, the provisions in section 110.7 are revised and redesignated as follows: 11 CFR 110.7(a) and (b) to 11 CFR 109.32(a) and (b) and 109.36; 11 CFR 110.7(c) to 11 CFR 109.33; and 11 CFR 110.7(d) to 11 CFR 109.34.

#### *11 CFR 110.8 Presidential Candidate Expenditure Limitations*

As in 11 CFR 109.32(a) and (b) discussed above, the Commission clarifies that the expenditure limits for publicly funded Presidential candidates are increased in accordance with 11 CFR 110.17. See 11 CFR 110.8(a)(2). To accommodate this new section 110.8(a)(2), the Commission is redesignating pre-BCRA paragraphs (a)(1) and (a)(2) as (a)(1)(i) and (a)(1)(ii), respectively.

In 11 CFR 110.8(a)(3), the Commission references the definition of "voting age population" at 11 CFR 110.18. The voting age population is a factor in the calculation of expenditure limitations in 11 CFR 110.8(a). No commenters addressed this section.

The Commission also made additional changes to 11 CFR 110.9(c) in a separate rulemaking, including moving it to 11 CFR 110.17. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002).

#### *11 CFR 110.14 Contributions to and Expenditures by Delegates and Delegate Committees*

In light of the Congressional repeal of former 11 CFR 100.23, the removal of the separate definition of "independent expenditure" under 11 CFR 109.1, and the removal of 11 CFR 109.2, see Final Rules and Explanation and Justification for Bipartisan Campaign Reform Act of

2002 Reporting, published elsewhere in this issue of the **Federal Register**, the Commission is making several necessary technical revisions to 11 CFR 110.14. These technical revisions were not originally proposed in the NPRM. Within 11 CFR 110.14, the Commission is replacing all references to a "coordinated general public political communication under 11 CFR 100.23" with references to "coordinated communication under 11 CFR 109.21." In addition, the Commission is replacing all citations to former 11 CFR 109.2 with citations to 11 CFR 109.10. Finally, the Commission is replacing all references to independent expenditures under 11 CFR part 109 with references to independent expenditures under 11 CFR 100.16 to reflect the removal of the definition of "independent expenditure" in former 11 CFR 109.1.

#### *11 CFR 110.18 Voting Age Population*

The Commission is moving pre-BCRA section 110.9(d) regarding voting age population ("VAP") to 11 CFR 110.18 as part of a reorganization of section 110.9. This provision is referenced in sections 109.32(a) and (b) (coordinated party expenditure limits) and 110.8(a)(3) (Presidential candidate expenditure limits) where the VAP is used as a factor in calculating the limits. Section 110.18 is revised from pre-BCRA section 110.9(d) to clarify that the Secretary of Commerce each year certifies to the Commission and publishes in the **Federal Register** an estimate of the VAP pursuant to 2 U.S.C. 441a(e). No comments addressed this provision.

Changes to the other provisions of section 110.9, including paragraph (c) of this section, are addressed in a separate rulemaking. See Final Rules and Explanation and Justification for Contribution Limitations and Prohibitions, 67 FR 69,928 (November 19, 2002).

#### *11 CFR 114.4 Disbursements for Communications Beyond the Restricted Class in Connection With a Federal Election*

Paragraph (c)(5) of section 114.4 pertains to voter guides paid for by corporations and labor organizations. The Commission makes several changes to this paragraph to conform with other regulatory changes in response to BCRA.

The pre-BCRA version of paragraphs (c)(5)(i) and (ii) of section 114.4 provided that a corporation or labor organization must not, among other things, "contact" a candidate in the preparation of a voter guide, except in writing. In this rulemaking, the Commission is promulgating a safe harbor in the coordination rules that

allows a person, such as a corporation or labor union, to contact a candidate to inquire about the candidate's positions on legislative or policy issues without a subsequent communication paid for by that person being deemed coordinated with the candidate (assuming there are no other actions resulting in coordination). See 11 CFR 109.21(f) and the above discussion relating to this provision.

Accordingly, paragraph (c)(5)(i) of section 114.4 is being amended to delete the prohibition against any contact with a candidate in the preparation of a voter guide.

Paragraph (c)(5)(ii) of section 114.4 is being amended to delete the requirement that contact with the candidate be in writing.

The Commission is also making several non-substantive changes to paragraphs (c)(5)(i) and (ii) of section 114.4 to conform these provisions to the statutory provisions on which they are based. Compare 2 U.S.C. 441a(a)(7)(B) with 11 CFR 114.5(c)(5)(i) and (ii).

The Commission received three comments on this section, all of which urged the Commission to include an exception to the coordination standard at 11 CFR 109.21 for inquiries to candidates in connection with voter guides. The Commission is including the described safe harbor at 11 CFR 109.21(f) to address this concern.

The Commission notes that an appeals court in one circuit invalidated portions of pre-BCRA 11 CFR 114.4(c)(5). See *Clifton v. Federal Election Commission*, 927 F. Supp. 493 (D. Me. 1996), modified in part and remanded in part, 114 F.3d 1309 (1st Cir. 1997), cert. denied, 522 U.S. 1108 (1998). Subsequently a Petition for Rulemaking asked the Commission to repeal its voter guide regulation. See Notice of Availability, 64 FR 46,319 (Aug. 25, 1999). The Commission's present rulemaking consists of changes necessitated by BCRA, although any additional changes to the voter guide regulations could be addressed in a future rulemaking.

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

The Commission certifies that the attached rules will not have a significant economic impact on a substantial number of small entities. The basis of this certification is that the national, State, and local party committees of the two major political parties, and other political committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental