application as provided in that section. Such decision may be appealed by either the stowaway or the Service to the Board of Immigration Appeals. If a denial of the application for asylum and for withholding of removal becomes final, the alien shall be removed from the United States in accordance with section 235(a)(2) of the Act. If an approval of the application for asylum or for withholding of removal becomes final, the Service shall terminate removal proceedings under section 235(a)(2) of the Act.

Dated: November 27, 2000.

Janet Reno,

Attorney General.

[FR Doc. 00–30601 Filed 12–5–00; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 109 and 110

[Notice 2000—21]

General Public Political Communications Coordinated With Candidates and Party Committees; Independent Expenditures

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is adopting new rules to address expenditures for coordinated communications that include clearly identified candidates, and that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The rules address expenditures for communications made at the request or suggestion of a candidate, authorized committee or party committee; as well as those where any such person has exercised control or decision-making authority over the communication, or has engaged in substantial discussion or negotiation with those involved in creating, producing, distributing or paying for the communication. The Commission is also revising the definition of ''independent expenditure,'' to conform with this new definition. Further changes to the rules on coordination between political party committees and their candidates are awaiting the outcome of a pending Supreme Court case. Additional information is provided in the supplementary information that follows.

DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 2 U.S.C. 438(d). A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Rosemary C. Smith, Assistant General Counsel, or Ms. Rita A. Reimer, Attorney, 999 E Street, NW., Washington, D.C. 20463, (202) 694–1650 or (800) 424–9530 (toll free).

SUPPLEMENTARY INFORMATION: The Commission is issuing final rules at 11 CFR 100.23 that address coordinated communications that include clearly identified candidates, that are paid for by persons other than candidates, candidates' authorized committees, and party committees. The rules address communications made at the request or suggestion of a candidate, authorized committee or party committee; as well as those where a candidate, authorized committee, or party committee has exercised control or decision-making authority over the communication, or has engaged in substantial discussion or negotiation with those involved in creating, producing, distributing or paying for the communication. Other than the requirement that covered communications include a clearly identified candidate, the new rules contain no content standard. The Commission is also revising its rules at 11 CFR 100.16 and 109.1, which define ''independent expenditure,'' to conform with this new definition; and making conforming amendments to 11 CFR 110.14, the section of the Commission's rules that deals with contributions to and expenditures by delegates and delegate committees.

Section 438(d) of Title 2, United States Code, requires that any rules or regulations 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 the President of the Senate 30 legislative days before they are finally promulgated. Because these rules were approved by the Commission on November 30, 2000, which is less than 30 legislative days before the adjournment of the 106th Congress, the Commission plans to transmit them to Congress on the first day of the 107th Congress, which will occur in January 2001. A Notice announcing the effective date of these rules will be published in the **Federal Register**.

Explanation and Justification

The Federal Election Campaign Act, 2 U.S.C. 431 *et seq.* (''FECA'' or the ''Act'') prohibits corporations and labor organizations from using general treasury funds to make contributions to a candidate for federal office. 2 U.S.C. 441b(a). It also imposes limits on the amount of money or in-kind contributions that other persons may contribute to federal campaigns. 2 U.S.C. 441a(a). Individuals and persons other than corporations, labor organizations, government contractors and foreign nationals can make independent expenditures in connection with federal campaigns. 11 CFR 110.4(a) and 115.2. Independent expenditures must be made without cooperation or consultation with any candidate, or any authorized committee or agent of a candidate; and they shall not be made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of a candidate. 2 U.S.C. 431(17).

Expenditures that are coordinated with a candidate or campaign are considered in-kind contributions. *Buckley* v. *Valeo,* 424 U.S. 1, 46–47 (1976) (footnote omitted) (''*Buckley*''); *Federal Election Commission v. The Christian Coalition,* 52 F.Supp.2d 45, 85 (D.D.C. 1999) (''*Christian Coalition*''). As such, they are subject to the limits and prohibitions set out in the Act. The Act defines ''contribution'' at 2 U.S.C. 431(8) to include any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for federal office.

The Commission is promulgating new rules at 11 CFR 100.23 that define the term *coordinated general public political communication.* They generally follow the standard articulated by the United States District Court for the District of Columbia in the *Christian Coalition* decision, *supra.* This decision sets out at length the standards to be used to determine whether expenditures for communications by unauthorized committees, advocacy groups and individuals are coordinated with candidates or qualify as independent expenditures.

A. History of the Rulemaking

This rulemaking was originally initiated to implement the Supreme Court's plurality opinion in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 518 U.S. 604 (1996) (*Colorado I*) concerning the application of section 441a(d) of the FECA. In that decision, the Court concluded that political parties are capable of making independent expenditures on behalf of their candidates for federal office, and that it would violate the First Amendment to subject such

independent expenditures to the section 441a(d) expenditure limits. *Id.* at 2315.

Section 441a(d) permits national, state, and local committees of political parties to make limited general election campaign expenditures on behalf of their candidates, which are in addition to the amount they may contribute directly to those candidates. 2 U.S.C. 441a(d). These section 441a(d) expenditures are commonly referred to as ''coordinated party expenditures.'' Prior to the *Colorado* case, it was presumed that party committees could not make expenditures independent of their candidates.

The Commission notes that not all coordinated expenditures constitute communications. In fact, party committees may use their coordinated expenditure limits to pay for many other types of expenses incurred by candidates, including staff costs, polling and other services.

Following the *Colorado I* Supreme Court decision, the Democratic Senatorial Campaign Committee and the Democratic Congressional Campaign Committee filed a Petition for Rulemaking urging the Commission to (1) repeal or amend 11 CFR 110.7(b)(4) to the extent that that paragraph prohibited national committees of political parties from making independent expenditures for congressional candidates; (2) repeal or amend 11 CFR Part 109 with respect to which expenditures qualify as ''independent''; and (3) issue new rules to provide meaningful guidance regarding independent expenditures by the national committees of political parties. Although the Petition for Rulemaking urged changes only in the rules applicable to national committees of political parties, the Commission's rulemaking also sought comment on proposed changes to the provisions governing state and local party committees, as well as coordination by outside groups with either candidates or party committees.

In response to the *Colorado I* decision, the Commission promulgated a Final Rule on August 7, 1996 which repealed paragraph (b)(4) of section 110.7. *See* 61 F.R. 40961 (Aug. 7, 1996). That paragraph had provided that party committees could not make independent expenditures in connection with federal campaigns. On the same date, the Commission also published a Notice of Availability (''NOA'') seeking comment on the remainder of the Petitioners'' requests. *See* 61 F.R. 41036 (Aug. 7, 1996). No statements supporting or opposing the petition were received by the close of the comment period.

On May 5, 1997 the Commission published an NPRM in which it sought comments on proposed revisions to these regulations. 62 FR 24367 (May 5, 1997). Comments in response to this NPRM were received from Common Cause; the Democratic National Committee (''DNC''); the Democratic Senatorial Campaign Committee (''DSCC'') and the Democratic Congressional Campaign Committee (''DCCC'') (joint comment); the Internal Revenue Service (''IRS''); the National Republican Congressional Committee (''NRCC''); the National Republican Senatorial Committee (''NRSC''); the National Right to Life Committee; the Republican National Committee (''RNC''); and the United States Chamber of Commerce. On June 18, 1997, the Commission held a public hearing on this Notice, at which witnesses testified on behalf of Common Cause, the DNC, the DSCC and the DCCC, the National Right to Life Committee, the NRSC, and the RNC.

The IRS found no conflict with the Internal Revenue Code or that agency's regulations with regard to any Notice considered in the course of this rulemaking. All other comments received in connection with this rulemaking will be discussed *infra.*

The Commission subsequently decided to hold the 1997 rulemaking in abeyance until it received further direction from the courts. The coordinated spending limits were invalidated on constitutional grounds by the district court in *Colorado Republican Federal Campaign Committee* v. *Federal Election Commission,* 41 F. Supp. 2d 1197 (D. Colo. 1999) (*Colorado II*), on remand from the *Colorado I* Supreme Court decision. In May 2000, that decision was affirmed by the Court of Appeals for the Tenth Circuit. 213 F.3d 1221 (10th Cir. 2000). The Supreme Court has now agreed to review this decision. 2000 WL 1201886 (U.S. Oct. 10, 2000) (No. 00–191).

On December 16, 1998, the Commission published a new NPRM putting forth proposed amendments to its rules governing publicly financed presidential primary and general election candidates. 63 FR 69524 (Dec. 16, 1998). Issues concerning coordination between party committees and their presidential candidates, which had been raised in the earlier NPRM, were addressed in the public funding rulemaking. For example, the 1998 NPRM put forward narrative proposals regarding a content-based standard for coordinated communications made to the general public. It also sought comment on coordination between the national committees of political parties and their presidential candidates with respect to poll results, media production, consultants, and employees whose services are intended to benefit the parties' eventual presidential nominees.

The Commission received seven written comments on coordinated expenditures in response to the 1998 NPRM. Commenters included the Brennan Center for Justice at New York University School of Law (''Brennan Center''); Common Cause and Democracy 21 (joint comment); the DNC; the James Madison Center for Free Speech; Perot '96; the RNC; and the law firm of Ryan, Phillips, Utrecht, & MacKinnon, and Patricia Fiori, Esq. (joint comment). The Commission subsequently reopened the comment period and held a public hearing on March 24, 1999, at which witnesses representing the DNC; the James Madison Center for Free Speech; the RNC; and Ryan, Phillips, Utrecht & MacKinnon presented testimony on coordination issues.

On November 3, 1999, the Commission promulgated new paragraph (d) of section 110.7, addressing pre-nomination coordinated expenditures. 64 FR 59606 (Nov. 3, 1999). The new paragraph states that party committees may make coordinated expenditures in connection with the general election campaign before their candidates have been nominated. It further states that all pre-nomination coordinated expenditures are subject to the section 441a(d) coordinated expenditure limitations, whether or not the candidate with whom they are coordinated receives the party's nomination. Please note that new § 110.7(d) applies to all federal elections. For additional information, see *Explanation and Justification for Section 110.7, Party Committee Coordinated Expenditures and Spending Limits (2 U.S.C. 441a(d)),* 64 FR 42579, 42580–81 (Aug. 5, 1999).

The Commission published the document that serves as the primary basis for these final rules, a Supplemental Notice of Proposed Rulemaking (''SNPRM'') addressing general public political communications coordinated with candidates, on December 9, 1999. 64 FR 68951 (Dec. 9, 1999). The Commission received 15 comments in response to the SNPRM, from the Alliance for Justice; the American Federation of Labor-Congress of Industrial Organizations (''AFL-CIO''); the Brennan Center; The Coalition; Common Cause and Democracy 21 (joint comment); the DNC; the DSCC and DCCC (joint

comment); the First Amendment Project of the Americans Back in Charge Foundation; the IRS; the James Madison Center for Free Speech; J. B. Mixon, Jr.; the National Education Association; the NRSC; the RNC; and United States Senators Russell D. Feingold, John McCain, Carl Levin and Richard J. Durbin (joint comment). In addition, the Commission held a public hearing on the SNPRM on February 16, 2000, at which nine witnesses testified on behalf of the Alliance for Justice, the AFL-CIO, the Americans Back in Charge Foundation, the Brennan Center, The Coalition, the DNC, the DSCC and DCCC, the James Madison Center for Free Speech, and the RNC.

B. The Christian Coalition Decision

The *Christian Coalition* case arose out of an FEC enforcement action alleging coordination between the Christian Coalition and various federal campaigns in connection with the 1990, 1992, and 1994 elections, resulting in disbursements from the Coalition's general corporate treasury for voter guides, ''get out the vote'' activities, direct mailings and payments to speakers. The Christian Coalition characterized these activities as independent corporate speech; while the FEC alleged that, because of the varying degrees of interaction between the Christian Coalition and those candidates and their campaigns, the activities must be treated as in-kind contributions that violated the Act's contribution limits and/or prohibitions.

In setting out a working definition of ''coordination,'' the *Christian Coalition* court explained that ''the standard for coordination must be restrictive, limiting the universe of cases triggering potential enforcement actions to those situations in which the coordination is extensive enough to make the potential for corruption through legislative *quid pro quo* palpable without chilling protected contact between candidates and corporations and unions.'' 52 F.Supp.2d at 88–89. The court continued, ''First Amendment clarity demands a definition of ''coordination'' that provides the clearest possible guidance to candidates and constituents, while balancing the Government's compelling interest in preventing corruption of the electoral process with fundamental First Amendment rights to engage in political speech and political association.'' *Id.* at 91. In its opinion the district court referred to ''expressive expenditures,'' as opposed to expenditures for other types of campaign support, and defined a ''coordinated expressive expenditure'' as ''one for a communication made for the purpose of influencing a federal election in which the spender is responsible for a substantial portion of the speech and for which the spender's choice of speech has been arrived at after coordination with the campaign.'' Id. at 85, n. 45.

The court went on to explain that ''an expressive expenditure becomes 'coordinated,' where the candidate or her agents can exercise control over, or where there has been substantial discussion or negotiation between the campaign and the spender over a communication's: (1) Contents; (2) timing; (3) location, mode, or intended audience (*e.g.*, choice between newspaper or radio advertisement); or (4) 'volume' (*e.g.,* number of copies of printed materials or frequency of media spots). 'Substantial discussion or negotiation' is such that the candidate and spender emerge as partners or joint venturers in the expressive expenditure, but the candidate and spender need not be equal partners.'' *Id.* at 92. The court acknowledged that ''a standard that requires 'substantial' anything leaves room for factual dispute,'' but reasoned that the standard reflects a reasonable balance between possibly chilling some protected speech and the need to protect against the ''real dangers to the integrity of the electoral process'' expressive expenditures may present. *Id.*

The district court then applied this standard to the challenged campaign activities. In most instances the court did not find coordination. For example, the court found no coordination between the Christian Coalition and the Bush-Quayle campaign in the preparation of voter guides in connection with the 1992 presidential campaign, explaining that, while the campaign was generally aware President Bush would compare favorably in the eyes of the target audience with the other candidates profiled in the guides, the campaign staff did not seek to discuss the issues that would be profiled or how they would be worded. Nor did they seek to influence the Coalition's decisions as to how many guides would be produced, and when and where they would be distributed. *Id.* at 93–95. Similarly, the fact that a Coalition official served as a volunteer in a 1994 House campaign and also made decisions as to where the Coalition's voter guides would be distributed in connection with that campaign did not amount to coordination where the official did not make his decisions based on any discussions or negotiations with the campaign for which he volunteered. *Id.* at 95–96. In contrast, the court found coordination where the Coalition provided a Senate campaign consultant with a commercially valuable mailing list. *Id.* at 96. The Commission subsequently decided not to appeal the district court's decision.

C. Other Court Decisions

In *Clifton* v. *Federal Election Commission*, 114 F.3d 1309 (1st Cir. 1997), *cert. denied*, 118 S.Ct. 1036 (1998) (''*Clifton*''), the United States Court of Appeals for the First Circuit ruled that coordination in the context of voter guides ''implie(s) some measure of collaboration beyond a mere inquiry as to the position taken by a candidate on an issue.'' 114 F.3d at 1311, citing *Buckley*, 424 U.S. at 46–47 and n. 53 (1976). The court invalidated those portions of the Commission's voter guide regulations at 11 CFR 114.4(c)(5)(i) and (ii)(C) that limit any contact with candidates to written inquiries and replies, and generally require all candidates for the same office to receive equal space and prominence in the guide. *Id.* at 1317. The court also invalidated the Commission's voting record rules at 11 CFR 114.4(c)(4) to the extent they could be read to prohibit mere inquiries to candidates. *Id* [1] In *Federal Election Commission* v. *Public Citizen, Inc.*, 64 F.Supp.2d 1327 (N.D. Ga. 1999), a federal district court followed the *Clifton* ''collaboration'' language in holding that contacts between a public interest group and a candidate made in connection with an advertising campaign to defeat a candidate for the House of Representatives were not coordinated for FECA purposes. The Commission did not appeal that portion of the *Public Citizen* decision that addresses the coordination standard.

D. General Concerns Raised by Commenters

The commenters and witnesses raised several general points in connection with the SNPRM. Several noted that the FECA does not use the terms ''coordinated'' or ''coordination'' in discussing campaign contributions and expenditures. This regulation uses the single term ''coordination'' to encompass those expenditures described in 2 U.S.C. 441a(a)(7)(B)(i) as made ''in cooperation, consultation, or

[1] On July 20, 1999, the Commission received a Petition for Rulemaking from the James Madison Center for Free Speech, on behalf of the Iowa Right to Life Committee, seeking repeal of the rules at 11 CFR 114.4(c)(4) and (c)(5) to reflect the *Clifton* decision. The Commission published an NOA on this petition on Aug. 25, 1999. 64 FR 46319 (Aug. 25, 1999). Further action on that petition, which is related to the issues addressed in this rulemaking, will be taken by the Commission after this rulemaking has been concluded.

concert with, or at the request or suggestion of, a candidate.'' The statutory terms are not inherently clear, nor does the Act's legislative history provide much guidance. Thus, these rules will fill what is largely a vacuum in this area. All of the commenters, regardless of the positions they espoused, asked the Commission to issue clear rules that provide the regulated community with sufficient guidance to easily understand which communications come within the definition.

One commenter, citing *Buckley*, 424 U.S. at 48 (1976), argued that the Commission was powerless to act in this area, because it had not shown that covered communications involved actual corruption between those making the communications in question and the recipient candidates. However, after the SNPRM was published, the Supreme Court's decision in *Nixon* v. *Shrink Missouri Government PAC*, 120 S.Ct. 897 (2000) (*Shrink Missouri*) upheld the constitutionality of State contribution limits, which the Court said could be based, *inter alia*, on newspaper accounts that inferred the impropriety of large contributions. *Id.* at 907. While some commenters argued that the holding in *Shrink Missouri* is limited to non-federal contributions, others stated that, in their view, this decision vitiates the need for the Commission to find *quid pro quo* corruption in a particular case before taking action in this area. The Commission agrees with this latter view, that the holding in *Shrink Missouri* is applicable to federal contribution limits.

E. Content of Covered Communications

Several commenters urged the Commission to limit the definition of general public political communications to communications that contain ''express advocacy'' of the election or defeat of a clearly identified candidate, *i.e.*, those covered by the Commission's definition of ''express advocacy'' as defined at 11 CFR 100.22(a). That paragraph requires the use of individual words or phrases that, in context, can have no other reasonable meaning than to urge the election or defeat of one or more clearly identified candidate(s). They argued that express advocacy is constitutionally required even for communications specifically requested by a candidate to benefit the candidate's campaign. Other commenters, citing the definition of ''independent expenditure'' at 2 U.S.C. 431(17), *supra*, argued that any contact with a candidate or campaign should result in coordination.

Several commenters urged the Commission to limit the definition of general public political communications to communications that refer to clearly identified candidates in their status as candidates, or otherwise refer to an election. They noted, for example, that Members of Congress run for office virtually full-time, and argued that communications that referred to them in passing should not be subject to this standard.

The *Buckley* Court emphasized the necessity of avoiding vague or overbroad regulation of political speech. 424 U.S. at 42–44, 77–80. In light of these constitutional concerns, the Commission's goal in adopting § 100.23 is to establish a test that (1) provides reasonable certainty as to which communications between a person and a candidate or a party committee rise to the level of coordination; and (2) properly balances the Commission's ''interest in unearthing disguised contributions,'' *Clifton*, 114 F.3d at 1315, with the right of the citizenry to engage in discussions about public issues with candidates. *Buckley,* 424 U.S. at 14.

The Commission is addressing the constitutional concerns raised in *Buckley* by creating a safe harbor for issue discussion. Section 100.23(d) makes it clear that a candidate's or political party's response to an inquiry regarding the candidate's or party's position on legislative or public policy issues will not suffice to establish coordination. In addition, the Commission's new rules establish a ''buffer zone'' for protected speech by requiring that discussions or negotiations regarding certain aspects of a communication must be ''substantial'' and result in ''collaboration or agreement'' in order to rise to the level of coordination. See § 100.23(c)(2)(iii). At a minimum, this new rule is more protective of First Amendment rights than the standard it is replacing.

The Commission is not adopting any content standard as a part of these rules at this time. There were significant disagreements among commenters over what content standard, if any, should be adopted. There is a substantial argument that any of the content standards suggested could be under-inclusive in the context of coordination. Some advertising by campaigns, for instance, does not include express advocacy and does not refer specifically to candidates as candidates or state that they are running for election. Allowing candidates, campaigns and political parties to ask corporations, labor unions or other persons to sponsor that kind of advertising without limit or disclosure could ''give short shrift to the government's compelling interest in preventing real and perceived corruption that can flow from large campaign contributions.'' *Christian Coalition*, 52 F.Supp.2d at 88.

The argument that a communication must constitute express advocacy in order to fall within the definition of ''expenditure,'' 2 U.S.C. 431(9), in all circumstances (and thus be controlling for purposes of defining a ''coordinated expenditure'') is not being addressed in this rulemaking. See *Republican National Committee* v. *Federal Election Commission*, 1:98CV1207 (June 25, 1998 D. D.C.) (slip op.), aff'd, No. 98–5263 (D.C. Cir. Nov. 6, 1998). The term ''expenditure'' includes any purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office. Exceptions to this definition are set forth at section 431(9)(B).

A content element in the definition of coordination may be more useful in the context of political party communications coordinated with candidates, a topic which will be addressed in a subsequent phase of this rulemaking. In the party-candidate context the principal question could become how an expenditure is reported rather than how it is financed or whether it is reported at all. The Commission may revisit the issue of a content standard for all coordinated communications when it considers candidate-party coordination.

Section 100.16 Definition of ''independent expenditure''

The Commission is amending the definition of independent expenditure in this section to track more closely the statutory definition of independent expenditure. *See* 2 U.S.C. 431(17). It is also adding a conforming amendment, to indicate that the meaning of the phrase ''made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate,'' is now governed by 11 CFR 100.23, discussed *infra*, instead of former 11 CFR 109.1(b)(4), which has been repealed. Finally, a new cross reference to 11 CFR 109.1 alerts readers to the additional information on independent expenditures contained in that section.

Section 100.23 Coordinated General Public Political Communications

The Commission is adding a new section, 11 CFR 100.23, to its rules, to address expenditures for coordinated communications made for the purpose of influencing federal elections that are

paid for by persons other than candidates, candidates' authorized committees, and party committees. The Commission believes it is appropriate to place this language in a separate section of the rules to properly alert the regulated community of this standard.

New § 100.23 generally follows the language of the *Christian Coalition* decision, discussed above. The Commission is, however, using the phrase ''expenditures for general public political communications'' in place of ''expressive expenditure,'' the term used by the *Christian Coalition* court, because these rules do not address the content standard analysis in *Christian Coalition*, and ''expenditures for general public political communications'' more precisely describes the types of communications covered by these rules. *See* discussion of § 100.23(c)(1), *infra*.

There was no consensus among the comments and witnesses as to whether the Commission should follow the approach set forth in *Christian Coalition*. Some favored this overall approach although they urged the Commission to limit coverage to communications that contained express advocacy. As explained above, the rules do not address this further limitation. Others opposed this approach, urging retention of a broad definition of coordination.

Although the final rules have been modified somewhat from those proposed in the SNPRM, the Commission continues to believe that the *Christian Coalition* court correctly decided which communications are ''coordinated'' in this context. While the court recognized that it was establishing a difficult standard to meet, the Commission believes the court correctly concluded that a high standard is required to safeguard protected core First Amendment rights.

Section 100.23(a) Scope

Paragraph (a)(1) of this section states that these new rules apply to expenditures for general public political communications paid for by separate segregated funds, nonconnected committees, individuals, or any other person except candidates, authorized committees, and party committees. Paragraph (a)(2) notes that coordinated party expenditures made on behalf of a candidate pursuant to 2 U.S.C. 441a(d) are governed by 11 CFR 110.7.

In the SNPRM, the Commission sought comments on whether the standard for coordination proposed in that document should be applied to political party expenditures for general public political communications that are coordinated with particular candidates. All party committees that commented on the SNPRM argued that they should not be covered by these rules. They urged the Commission to wait until *Colorado II* has been decided before acting in that area, since that decision could have major ramifications for any rules that might have been adopted in the meantime.

In light of *Colorado II*, the Commission is not amending the rules in 11 CFR 110.7 governing coordinated expenditures between party committees and candidates at this point. The Commission expects that additional guidance will be forthcoming in that decision, at which time it will re-examine this aspect of the rulemaking.

Section 100.23(b) Treatment of General Public Political Communications as Expenditures and Contributions

As explained above, for purposes of the FECA, a coordinated expenditure is considered both an expenditure by the person making the expenditure and an in-kind contribution to the recipient candidate or political committee. Consistent with such treatment, paragraph (b) of § 100.23 states that any expenditure covered by these rules shall be treated as both an expenditure under 11 CFR 100.8(a) and an in-kind contribution under 11 CFR 100.7(a)(1)(iii). As such, it is subject to the contribution limits of 2 U.S.C. 441a and must be reported as both a contribution and an expenditure as required at 2 U.S.C. 434. Please note that the new rules apply not only to situations in which separate segregated funds and nonconnected committees coordinate their expenditures with candidates, but also where they coordinate with party committees, thus clarifying that party committees can themselves receive coordinated contributions.

Section 100.23(c) Coordination With Candidates and Party Committees

This paragraph contains the text of the coordination standard: it addresses what contact between a campaign and a person paying for a communication made in connection with that campaign is sufficient to bring that communication within the purview of these rules. Please note that the standards set forth in paragraphs (2)(i), (2)(ii) and (2)(iii) are alternatives. Communications that meet the standard established by any one of these paragraphs are considered coordinated general public political communications for purposes of these rules.

The SNPRM proposed alternative language for the introductory text of this paragraph. Both Alternatives, designated Alternative 1–A and Alternative 1–B, stated that general public political communications would be considered coordinated if paid for by any person other than a candidate, the candidate's authorized committee, or a party committee, provided that the requirements set forth in paragraphs (c)(2)(i), (c)(2)(ii), or (c)(2)(iii) of this section, *infra,* were met. Alternative 1–B would have added an additional requirement before a communication be considered coordinated, namely that it be distributed primarily in the geographic area in which the candidate was running. Alternative 1-A omitted this geographical restriction.

The SNPRM explained that Alternative 1–B was intended to ensure that costs of national legislative campaigns that refer to clearly-identified candidates, and may be designed or endorsed by one or more of the named candidates, not be considered expenditures on behalf of those candidates' campaigns. The Commission noted, however, two concerns with Alternative 1–B: (1) The definition of ''coordination'' would exclude media broadcasts to several adjacent states; and (2) the definition of ''coordination'' would exclude communications disseminated in one state that solicit funds on behalf of a candidate running in another state, if contributors are asked to send their contributions directly to the candidate on whose behalf they are made.

One commenter pointed out that a geographic limit has nothing to do with the concept of coordination. No one addressed the Commission's concern that Alternative 1–B would allow persons to solicit contributions to be sent directly to candidates in another state, without these contributions being considered coordinated. The Commission is adopting Alternative 1–A, because the geographic restriction does not get at the question of whether the parties coordinated a communication.

Please note that, in the SNPRM, the requirement at paragraph (1) of this section that covered communications be paid for by any person other than the candidate, the candidate's authorized committee, or a party committee, was included as part of the introductory text. For clarity, the Commission has decided to place this language in a separate paragraph.

Section 100.23(c)(2)(i) The ''Request or Suggestion'' Standard

The Commission also sought comment on two alternatives of a provision, to be located in paragraph (c)(2)(i), which addressed

communications made at the request or suggestion of the candidate or campaign, and those authorized by a candidate or campaign. Alternative 2–A stated that coordination would occur when a communication is created, produced or distributed at the request or suggestion of, or when authorized by, a candidate, candidate's authorized committee, a party committee, or an agent of any of the foregoing. Alternative 2–B would have limited such coordination to those instances where the parties also discuss the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement.

One commenter urged the Commission to adopt Alternative 2–A, because it is consistent with the statutory language. Another found even Alternative 2–B to be overly broad. A party committee argued that the definition was overly broad as applied to party committees; however, as discussed above, that portion of the rulemaking has been held in abeyance pending the Supreme Court's decision in *Colorado II*.

The Commission is adopting an amended version of Alternative 2–A because it is more consistent with the FECA than Alternative 2–B. Section 441a(a)(7)(B)(i) states that ''expenditures made by any person in cooperation, consultation, or concert, with, or at the request or suggestion of, a candidate, * * * shall be considered to be a contribution to such candidate.'' The new rule also reflects the following language in the *Christian Coalition* decision: ''The fact that the candidate has requested or suggested that a spender engage in certain speech indicates that the speech is valuable to the candidate, giving such expenditures sufficient contribution-like qualities to fall within the Act's prohibition on contributions.'' 52 F.Supp.2d at 91. The Commission has accordingly decided to adopt an amended version of Alternative 2–A, so that a communication made at the request or suggestion of a candidate will be considered to be coordinated with that candidate, regardless of whether any of the further contacts that would have been required by Alternative 2–B took place. The Commission emphasizes that this regulation encompasses only requests or suggestions for communications to the general public. Thus, a general appeal for support would clearly not fall within the scope of this regulation.

The proposed rules indicated that general public political communications authorized by candidates or party committees would be considered to be coordinated. The final coordination rules do not cover authorized communications, because these expenditures are already in-kind contributions to the candidates or party committees under 11 CFR 100.7(a)(1)(iii), and thus are not mentioned in the statutory definition of ''independent expenditure'' at 2 U.S.C. 431(17). Thus, if these communications contain express advocacy or solicit contributions, they must state who paid for them, and if applicable, that they are authorized by the candidate or the candidate's committee. *See* 11 CFR 110.11(a)(1).

The SNPRM sought comments on a hypothetical in which, shortly before an election, a candidate complained to a supporter that no one had publicized various problems in the personal life of his opponent. The supporter then ran such advertisements. Most of those who commented on this hypothetical thought this hypothetical should fall within the ''request or suggestion'' language. However, some witnesses said that it would not be considered coordinated under either Alternative 2–A or 2–B, and urged the Commission to revise the proposed regulation to ensure that such communications would in fact be considered coordinated. The Commission notes that this hypothetical turns on the precise language used, which would be needed to determine if in fact the candidate requested or suggested that the supporter run the advertisements in question. If the candidate made no request or suggestion, the communication would not be coordinated for purposes of these rules.

In determining whether a particular statement by a candidate or committee constitutes an appeal for an in-kind contribution in the form of a general public political communication, the Commission will consider both whether the requested action appears to be for the purpose of influencing a Federal election and the specificity of the request or suggestion. Such determinations would turn on the same factors addressed specifically in the ''substantial discussion'' standard, *infra*, with the principal difference being that a request or suggestion could be made by a candidate, authorized committee or party committee without any negotiation or immediate response from an outside group. If such a request or suggestion indicated that a communication with specified content would be valuable or important to a candidate or committee, then payments for the communication would constitute in-kind contributions.

One commenter proposed an additional hypothetical, in which a candidate's campaign committee chose to target only urban areas with campaign advertisements because it could not afford to cover the entire State. The director of a rural Political Action Committee (''PAC'') later met the campaign manager and asked whether the campaign would be running ads in rural areas. Told that it would not be, due to lack of money, the rural PAC paid for and distributed the ads. The Commission notes that this mailing would be covered by 11 CFR 109.1(d)(1), part of the Commission's definition of independent expenditures, which states that the financing or dissemination, distribution, or republication of any campaign materials prepared by a candidate, campaign committee or their authorized agent is a contribution by the person making the expenditure, but not an expenditure by the candidate or committee unless coordination is present. *See also* 11 CFR 100.7(a)(1)(iii).

Section 100.23(c)(2)(ii) The ''Control or Decision-Making'' Standard

Paragraph (c)(2)(ii) states that communications are coordinated if the candidate or the candidate's agent, or a party committee or its agent, has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of the communication. This standard is based on the *Christian Coalition* definition, 52 F.Supp.2d at 92; and it, too, would turn on the specific actions involved in each case. The commenters did not focus extensively on this portion of the proposed definition.

Section 100.23(c)(2)(iii) The ''Substantial Discussion or Negotiation'' Standard

Under 11 CFR 100.23, a general public political communication is considered coordinated if it is made after substantial discussion or negotiation between the creator, producer or distributor of the communication, or person paying for the communication, and a candidate, candidate's authorized committee or a party committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement. The paragraph further provides that substantial discussion or negotiation

can be evidenced by one or more meetings, conversations or conferences regarding the value or importance of that communication for a particular election.

Some commenters expressed uncertainty about the scope of ''substantial,'' which admittedly ''leaves room for factual dispute.'' *Christian Coalition*, 52 F.Supp.2d at 92. By including the word ''substantial,'' the Commission intends to make clear that whether or not ''discussions or negotiations'' satisfy the requirements of § 100.23(c)(2)(iii) will depend not on their frequency but on their substance. The ''substance'' must go beyond protected issue discussion to specific information about how to communicate an issue in a way that is valuable or important for the campaign. The Commission has concluded that when the topic of discussion turns from the candidate's views on a political issue to the candidate's views on how to communicate that issue, there is far greater likelihood of collaboration. Thus, numerous discussions with a campaign about a complex or controversial public issue would not be considered ''substantial'' for the purposes of paragraph (c)(2)(iii), but a brief discussion as to how to phrase an issue, or as to which issues to emphasize, could be considered ''substantial.''

The word ''substantial'' applies not only to discussions about the content of a communication, but also to discussions about the timing, location, mode, intended audience, volume of distribution or frequency of placement of a communication. In those circumstances, ''substantial'' is meant to exclude discussions that do not include enough specific information for collaboration or agreement to occur. For example, if a person states that he is planning to pay for a communication ''soon,'' or to run the ad ''on TV,'' without further probing from the campaign, this would not be considered ''substantial.''

The Commission recognizes, as did the *Christian Coalition* court, that use of the term ''substantial'' means that determinations involving this standard will likely be fact-specific. 52 F.Supp.2d at 92. Those seeking additional guidance as to the application of this standard to specific facts and circumstances are encouraged to make use of the Commission's advisory opinion process. *See* 2 U.S.C. 437f and 11 CFR Part 112.

Section 100.23(d) Exception

Consistent with *Buckley, Christian Coalition,* and *Clifton*, paragraph (d) of new section 100.23 provides that a candidate's or political party's response to an inquiry regarding the candidate's or the party's position on legislative or public policy issues does not alone make the communication coordinated.

Several commenters urged the Commission to broaden this exception to include, for example, public policy announcements or communications disseminated as part of a public policy debate; and legislative lobbying campaigns, including grass roots lobbying. While the Commission is generally sympathetic to these concerns, it can be difficult to distinguish between lobbying activities and electoral campaigning. As the *Buckley* Court explained, ''(T)he distinction between discussion of issues and candidates and advocacy of election or defeat of candidates may often dissolve in practical application.'' 424 U.S. at 42. Further, some of these communications may have components that could trigger application of these rules. Thus the Commission is not enacting the blanket exception recommended by these commenters. However, the Commission stresses that such contacts, while not receiving a blanket exception, do not necessarily result in coordination. The test of 11 CFR 100.23 (c) must still be met.

Section 100.23(e) Definitions

This paragraph defines the terms ''general public political communications,'' ''clearly identified,'' and ''agent'' for purposes of these rules. The term ''general public political communications'' includes those made through a broadcasting station, including a cable television operator; newspaper; magazine; outdoor advertising facility; mailing or any electronic medium, including over the Internet or on a web site. Including cable television broadcasts is consistent with the Commission's candidate debate regulations at 11 CFR 110.13(a)(2), while including communications made over the Internet reflects the expanding role of that medium in federal campaigns.

The definition is limited to those communications having an intended audience of over one hundred people. The exclusion of communications with an intended audience of one hundred people or fewer mirrors the Commission's disclaimer rules at 11 CFR 110.11(a)(3), which exempt from the disclaimer requirements direct mailings of one hundred pieces or less.

The term ''general public political communication'' is similar to the term ''general public political advertising,'' which appears in three places in the Act and in several sections of the regulations. The latter term has similar and generally consistent meanings in the Act and the Commission's rules. For example, the definitions of ''contribution'' and ''expenditure'' at 2 U.S.C. 431(8)(B)(v) and 431(9)(B)(iv) respectively refer to ''broadcasting stations, newspapers, magazines, or similar types of general public political advertising.'' Section 441d(a) of the Act, which addresses communications that require a disclaimer, includes the same list and adds outdoor advertising facilities and direct mailings. The corresponding rules are found at 11 CFR 100.7(b)(9) (definition of ''contribution''), 100.8(b)(10) (definition of ''expenditure''), and 110.11(a)(1) (communications requiring disclaimers). The Commission therefore believes this term is preferable to ''expressive communications,'' the term used in the *Christian Coalition* decision.

The Commission sought comments on a hypothetical in which a Savings and Loan League runs public service announcements intended to reinforce the public's confidence in the safety of deposits in savings and loan institutions. The announcements, which are run in January of an election year, feature a U.S. Senator who is a candidate for reelection. The commenters who discussed this hypothetical argued that the announcements should not be considered coordinated general public political communications, both because of the timing of the announcements, early in an election year, and because they had no electoral content. Although the Commission is not including a specific time period prior to an election in the text of the new rules, timing is an element of coordination in 11 CFR 100.23(c)(2)(ii) and (iii). The *Christian Coalition* decision supports the idea that the timing of a communication is one aspect of whether it is coordinated with a campaign. *Christian Coalition*, 52 F.Supp. 3d at 92. However, as discussed above, the Commission does not believe that the lack of electoral content is controlling.

This is another situation that would turn on the specific facts. *See* discussion of the first hypothetical discussed in connection with paragraph (c)(2)(i), *supra.*

Section 100.23(e)(2) Definition of ''Clearly Identified''

The new rules at 11 CFR 100.23(b) limit their coverage to communications that include a ''clearly identified candidate.'' Paragraph (e)(2) of § 100.23 explains that the term ''clearly identified candidate'' has the same

meaning as that in 11 CFR 100.17, which is based on 2 U.S.C. 431(18). Thus, it includes communications where the candidate's name, nickname, photograph, or drawing appears, or the identity of the candidate is otherwise apparent through an unambiguous reference such as ''the President,'' ''your Congressman,'' or ''the incumbent,'' or through an unambiguous reference to his or her status as a candidate such as ''the Democratic Presidential nominee'' or ''the Republican candidate for Senate in the State of Georgia.''

Section 100.23(e)(3) Definition of ''Agent''

This paragraph notes that the definition of ''agent'' for purposes of these new rules is identical to that found at 11 CFR 109.1(b)(5), part of the rules defining independent expenditures. The term ''agent'' in this context means any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate; or any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures. The Commission is including this cross reference in 11 CFR 100.23 to clarify that the term has the same meaning in the context of coordinated general public political communications.

Section 109.1 Independent Expenditures

In its 1997 NPRM, the Commission sought comment on several proposed revisions to this section, which defines the term ''independent expenditure.'' The commenters and witnesses who addressed this issue at the Commission's 1997 public hearing had equally wide-ranging views this issue. However, those events took place prior to the *Christian Coalition* decision, which the Commission has determined should serve as the basis for this definition.

The Commission is amending the definition of ''independent expenditure'' in paragraph (a) to track more closely the statutory definition of independent expenditure. *See* 2 U.S.C. 431(17). In addition, the § 109.1(a) Commission has included a cross-reference 11 CFR 100.23, to indicate that the meaning of the phrase ''made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent of authorized committee of such candidate,'' is now clarified by § 100.23, instead of by former paragraph (b)(4) of § 109.1. The Commission is deleting paragraph (b)(4) because the standards for coordination set forth in that section were overbroad. *See Christian Coalition*, 52 F.Supp. at 90.

Former § 109.1(b)(4) explained what was meant by the phrase, ''made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate, or any agent, or authorized committee of the candidate.'' It indicated that this covered ''any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication.'' This phrase has been clarified, consistent with the *Christian Coalition* decision, and moved to new 11 CFR 100.23(c)(2).

Former paragraph (b)(4) also addressed contacts between the campaign and the person making the expenditure. For example, it included, at former paragraph (b)(4)(i)(A), a presumption that coordination applied to expenditures ''based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made.'' The *Christian Coalition* court, likening this regulation to an ''insider trading'' standard, held it to be overbroad. 52 F.Supp. 2d at 89–91. The Commission is accordingly revising this paragraph to explain that a communication is ''made with the cooperation of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate'' if it is a coordinated general public political communication under 11 CFR 100.23.

Section 110.14 Contributions To and Expenditures By Delegates and Delegate Committees

This section of the Commission's rules sets forth the prohibitions, limitations and reporting requirements under the Act applicable to all levels of a delegate selection process. Paragraphs (f)(2)(i), (f)(2)(ii), (f)(3)(iii), (*i*)(2)(i), (*i*)(2)(ii), and (*i*)(3)(iii) address independent expenditures and in-kind contributions. The Commission is making conforming amendments to these paragraphs to reflect new 11 CFR 100.23 and revised 11 CFR 109.1.

Advisory Opinions Superseded

The Commission has in the past issued Advisory Opinions (''AO'') that employed a broader definition of ''coordination'' than is contained in these new rules. Many of these AOs addressed the ''insider trading'' situation in which a campaign employee later became involved, or sought to become involved, with an entity that wished to make independent expenditures. This prohibition was found to be overly broad by the *Christian Coalition* court. *See* discussion of revised 11 CFR 109.1(b)(4), *supra*, which has been rewritten to reflect that aspect of the decision. The following AOs are superseded, to the extent they conflict with these new rules: AOs 1999–17, 1998–22, 1996–1, 1993–18, 1982–20, 1980–116, 1979–80.

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

The Commission certifies that these rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that the rules follow court decisions that expand the definition of certain coordinated communications made in support of or in opposition to clearly identified federal candidates. The rules also permit, but do not require, small entities to make independent expenditures. Therefore, there will be no significant economic impact on a substantial number of small entities.

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 109

Elections, Reporting and recordkeeping requirements.

11 CFR Part 110

Campaign funds, Political committees and parties.

For the reasons set out in the preamble, Subchapter A, Chapter I of title 11 of the *Code of Federal Regulations* is amended to read as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 434(a)(11), and 438(a)(8).

2. Section 100.16 is revised to read as follows:

§ 100.16 Independent expenditure (2 U.S.C. 431(17)).

The term *independent expenditure* means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made with the cooperation of or in consultation with, or in concert with, or

at the request or suggestion of, a candidate or any agent or authorized committee of such candidate. A communication is ''made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate'' if it is a coordinated general public political communication under 11 CFR 100.23. *See* 11 CFR 109.1.

3. Section 100.23 is added to read as follows:

§ 100.23 Coordinated General Public Political Communications.

(a) *Scope.*

(1) This section applies to expenditures for general public political communications paid for by persons other than candidates, authorized committees, and party committees.

(2) Coordinated party expenditures made on behalf of a candidate pursuant to 2 U.S.C. 441a(d) are governed by 11 CFR 110.7.

(b) *Treatment of expenditures for general public political communications as expenditures and contributions.* Any expenditure for general public political communication that includes a clearly identified candidate and is coordinated with that candidate, an opposing candidate or a party committee supporting or opposing that candidate is both an expenditure under 11 CFR 100.8(a) and an in-kind contribution under 11 CFR 100.7(a)(1)(iii).

(c) *Coordination with candidates and party committees.* An expenditure for a general public political communication is considered to be coordinated with a candidate or party committee if the communication—

(1) Is paid for by any person other than the candidate, the candidate's authorized committee, or a party committee, and

(2) Is created, produced or distributed—

(i) At the request or suggestion of the candidate, the candidate's authorized committee, a party committee, or the agent of any of the foregoing;

(ii) After the candidate or the candidate's agent, or a party committee or its agent, has exercised control or decision-making authority over the content, timing, location, mode, intended audience, volume of distribution, or frequency of placement of that communication; or

(iii) After substantial discussion or negotiation between the creator, producer or distributor of the communication, or the person paying for the communication, and the candidate, the candidate's authorized committee, a party committee, or the agent of such candidate or committee, regarding the content, timing, location, mode, intended audience, volume of distribution or frequency of placement of that communication, the result of which is collaboration or agreement. Substantial discussion or negotiation may be evidenced by one or more meetings, conversations or conferences regarding the value or importance of the communication for a particular election.

(d) *Exception.* A candidate's or political party's response to an inquiry regarding the candidate's or party's position on legislative or public policy issues does not alone make the communication coordinated.

(e) *Definitions.* For purposes of this section:

(1) *General public political communications* include those made through a broadcasting station (including a cable television operator), newspaper, magazine, outdoor advertising facility, mailing or any electronic medium, including the Internet or on a web site, with an intended audience of over one hundred people.

(2) *Clearly identified* has the same meaning as set forth in 11 CFR 100.17.

(3) *Agent* has the same meaning as set forth in 11 CFR 109.1(b)(5).

PART 109—INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 434(c))

4. The authority citation for part 109 continues to read as follows:

Authority: 2 U.S.C. 431(17), 434(c), 438(a)(8), 441d.

5. Section 109.1 is amended by revising paragraphs (a), (b)(4) and (d)(1) to read as follows:

§ 109.1 Definitions (2 U.S.C. 431(17)).

(a) *Independent expenditure* means an expenditure by a person for a communication expressly advocating the election or defeat of a clearly identified candidate that is not made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate.

(b) * * *

(4) A communication is ''made with the cooperation of, or in consultation with, or in concert with, or at the request or suggestion of, a candidate or any agent or authorized committee of such candidate'' if it is a coordinated general public political communication under 11 CFR 100.23.

* * * * *

(d)(1) The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered a contribution for the purposes of contribution limitations and reporting responsibilities by the person making the expenditure but shall not be considered an expenditure by the candidate or his authorized committees unless the dissemination, distribution, or republication of campaign materials is a coordinated general public political communication under 11 CFR 100.23

* * * * *

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

6. The authority citation for part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(a)(8), 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g and 441h.

7. Section 110.14 is amended by revising the introductory text to paragraphs (f)(2)(i) and (f)(2)(ii); paragraph (f)(3)(iii); the introductory text to paragraphs (i)(2)(i) and (i)(2)(ii); and paragraph (i)(3)(iii) to read as follows:

§ 110.14 Contributions to and expenditures by delegates and delegate committees.

* * * * *

(f) * * *

(2) * * *

(i) Such expenditures are independent expenditures under 11 CFR part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated general public political communication under 11 CFR 100.23.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated general public political communication under 11 CFR 100.23.

* * * * *

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated general public political communications under 11 CFR 100.23.

* * * * *

(i) * * *

* * *

(2) * * *

(i) Such expenditures are in-kind contributions to a Federal candidate if they are coordinated general public political communications under 11 CFR 100.23.

* * * * *

(ii) Such expenditures are independent expenditures under 11 CFR part 109 if they are made for a communication expressly advocating the election or defeat of a clearly identified Federal candidate that is not a coordinated general public political communication under 11 CFR 100.23.

* * * * *

(3) * * *

(iii) Such expenditures are not chargeable to the presidential candidate's expenditure limitation under 11 CFR 110.8 unless they were coordinated general public political communications under 11 CFR 100.23.

* * * * *

Dated: November 30, 2000.

Darryl R. Wold,

Chairman, Federal Election Commission.

[FR Doc. 00–31013 Filed 12–5–00; 8:45 am]

BILLING CODE 6715–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM179; Special Conditions No. 25–168–SC]

Special Conditions: Gulfstream Aerospace Corporation Model G–1159, G–1159A, and G–1159B Series Airplanes as Modified by Duncan Aviation; High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued for the Gulfstream Model G–1159, G–1159A, and G–1159B series airplanes modified by Duncan Aviation. These modified airplanes will have a novel or unusual design feature(s) associated with new avionics/electronics and electrical systems that will perform critical functions. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of high-intensity radiated fields (HIRF). These special conditions contain the additional safety standards the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: The effective date of these special conditions is November 29, 2000. Comments must be received on or before January 22, 2001.

ADDRESSES: Comments on these special conditions may be mailed in duplicate to: Federal Aviation Administration, Transport Airplane Directorate, Attention: Rules Docket (ANM–114), Docket No. NM179, 1601 Lind Avenue SW., Renton, Washington 98055–4056; or delivered in duplicate to the Transport Airplane Directorate at that address. All comments must be marked: Docket No. NM179. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: For information concerning the certification program for Gulfstream Model G–1159, G–1159A, and G–1159B series airplanes, contact: Meghan Gordon, Federal Aviation Administration, Transport Airplane Directorate, Standardization Branch, ANM–113, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2138; fax (425) 227–1149.

For information on the general subject of HIRF, contact: Massoud Sadeghi, Federal Aviation Administration, Transport airplane Directorate, Airplane and Flight Crew Interface Branch, ANM–111, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (425) 227–2117; fax (425) 227–1320.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA therefore finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Although these special conditions are being issued as final special conditions without prior public notice, interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator. The special conditions may be changed in light of the comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to these special conditions must include a self-addressed, stamped postcard on which the following statement is made: ''Comments to NM179.'' The postcard will be date stamped and returned to the commenter.

Background

On September 13, 2000, and on September 20, 2000, Duncan Aviation, 15745 South Airport Road, Battle Creek, Michigan 49015, submitted applications to the FAA for two Supplemental Type Certificates (STC). These STC's are for modifying Gulfstream Aerospace Model G–1159, G–1159A, and G–1159B series airplanes to include:

- The Collins FDS–2000 Flight Display System; and
- Dual Collins AHS–3000A Altitude Heading Reference Systems.

The FDS–2000 system is a replacement of the existing electro-mechanical Attitude Directional Indicator (ADI) and Horizontal Situational Indicator (HSI) flight instruments. It also provides additional functional capability and redundancy in the system.

The AHS–3000A system is a replacement for the existing electro-mechanical vertical and directional gyros. It also provides additional functional capability and redundancy in the system.

The avionics/electronics and electrical systems installed in the Gulfstream Model G–1159, G–1159A, and G–1159B airplanes have the potential to be vulnerable to high-intensity radiated fields (HIRF) external to the airplane.

The subject Gulfstream airplanes are T-tail, low swept-wing small transport category airplanes. The Model G–1159 airplane is powered by two Rolls Royce SPEY RB (163) 511–8 series engines mounted on pylons extending from the aft fuselage, and it has a maximum takeoff weight of 64,800 pounds. The Models G–1159A and G–1159B are slightly larger than the Model G–1159. These models are powered by two Rolls Royce SPEY RB (163–25) 511–8 series engines, and have a maximum takeoff