

(ii) The status of structures, components, or systems that were inoperable at the start of the event and that contributed to the event;

(iii) The dates and approximate times of occurrences;

(iv) The cause of each component or system failure or personnel error, if known;

(v) The failure mode, mechanism, and effect of each failed component, if known;

(vi) A list of systems or secondary functions that were also affected for failures of components with multiple functions;

(vii) For wet spent fuel storage systems only, after the failure that rendered a train of a safety system inoperable, an estimate of the elapsed time from the discovery of the failure until the train was returned to service;

(viii) The method of discovery of each component or system failure or procedural error;

(ix) For each human performance related root cause, the licensee shall discuss the cause(s) and circumstances;

(x) For wet spent fuel storage systems only, any automatically and manually initiated safety system responses;

(xi) The manufacturer and model number (or other identification) of each component that failed during the event;

(xii) The quantities and chemical and physical forms of the spent fuel, HLW, or reactor-related GTCC waste;

(3) An assessment of the safety consequences and implications of the event. This assessment must include the availability of other systems or components that could have performed the same function as the components and systems that failed during the event;

(4) A description of any corrective actions planned as a result of the event, including those to reduce the probability of similar events occurring in the future;

(5) Reference to any previous similar events at the same facility that are known to the licensee;

(6) The name and telephone number of a person within the licensee's organization who is knowledgeable about the event and can provide additional information concerning the event and the facility's characteristics;

(7) The extent of exposure of individuals to radiation or to radioactive materials without identification of individuals by name;

(8) The reports submitted under the provisions of this section must be of sufficient quality to permit legible reproduction and optical scanning.

(h) Supplemental information. The Commission may require the licensee to submit specific additional information

beyond that required by paragraph (g) of this section if the Commission finds that supplemental material is necessary for complete understanding of an unusually complex or significant event. These requests for supplemental information will be made in writing, and the licensee shall submit, as specified in § 72.4, the requested information as a supplement to the initial written report.

(i) *Applicability.* The requirements of this section apply to—

(1)(i) Licensees issued a specific license under § 72.40; and

(ii) Licensees issued a general license under § 72.210, after the licensee has placed spent fuel on the ISFSI storage pad (if the ISFSI is located inside the collocated protected area, for a reactor licensed under part 50 of this chapter) or after the licensee has transferred spent fuel waste outside the reactor licensee's protected area to the ISFSI storage pad (if the ISFSI is located outside the collocated protected area, for a reactor licensed under part 50 of this chapter).

(2) Those non-emergency events specified in paragraphs (b), (c), and (d) of this section that occurred within 3 years of the date of discovery

#### § 72.216 [Removed and Reserved]

4. Section 72.216 is removed and reserved.

### PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

5. The authority citation for Part 73 continues to read as follows:

**Authority:** Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245, sec. 1701, 106 Stat. 2951, 2952, 2953 (42 U.S.C. 5841, 5844, 2297f).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97-425, 96 Stat. 2232, 2241 (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96-295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99-399, 100 Stat. 876 (42 U.S.C. 2169).

6. In § 73.71, paragraph (a)(4) and (d) are revised to read as follows:

#### § 73.71 Reporting of safeguards events.

(a) \* \* \*

(4) The initial telephonic notification must be followed within 60 days by a written report submitted to the U.S. Nuclear Regulatory Commission, Attn: Document Control Desk, Washington, DC 20555-0001. The licensee shall also submit one copy to the appropriate NRC Regional Office listed in appendix A to this part. The report must include

sufficient information for NRC analysis and evaluation.

\* \* \* \* \*

(d) Each licensee shall submit to the Commission the 60-day written reports required under the provisions of this section that are of a quality that will permit legible reproduction and processing. If the facility is subject to § 50.73 of this chapter, the licensee shall prepare the written report on NRC Form 366. If the facility is not subject to § 50.73 of this chapter, the licensee shall not use this form but shall prepare the written report in letter format. The report must include sufficient information for NRC analysis and evaluation.

\* \* \* \* \*

7. In Appendix G to Part 73, the introductory sentence in paragraph I is revised to read as follows:

#### Appendix G to Part 73—Reportable Safeguards Events

\* \* \* \* \*

I. Events to be reported within one hour of discovery, followed by a written report within 60 days.

\* \* \* \* \*

Dated at Rockville, Maryland, this 6th day of August, 2002.

For the Nuclear Regulatory Commission.

**William D. Travers,**

*Executive Director for Operations.*

[FR Doc. 02-21414 Filed 8-21-02; 8:45 am]

BILLING CODE 7590-01-P

### FEDERAL ELECTION COMMISSION

#### 11 CFR Part 110

[Notice 2002-14]

#### Contribution Limitations and Prohibitions

**AGENCY:** Federal Election Commission.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission seeks comments on proposed changes to its rules relating to contribution limitations and prohibitions under the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). The proposed rules are based on the Bipartisan Campaign Reform Act of 2002 ("BCRA"), which increases contribution limits for individuals and political committees; prohibits contributions and donations by minors to certain political committees; and prohibits contributions, donations, and certain expenditures and disbursements by foreign nationals. Please note that the draft rules that follow do not represent

a final decision by the Commission on the issues presented by this rulemaking. Further information is provided in the supplementary information that follows.

**DATES:** Comments must be received on or before September 13, 2002. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on October 3, 2002, at 10 a.m. Persons wishing to testify at the hearing should so indicate in their written or electronic comments.

**ADDRESSES:** All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to [BCRAPart110@fec.gov](mailto:BCRAPart110@fec.gov) and must include the full name, electronic mail address, and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address, and postal service address of the commenter will not be considered. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street NW., Washington, DC 20463. Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web Site within ten business days of the close of the comment period. If the Commission conducts a hearing on these proposed rules, the hearing will be held in the Commission's ninth floor meeting room, 999 E Street, NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mai T. Dinh, Acting Assistant General Counsel, or Attorneys Mr. Michael Marinelli (contribution limitations), Ms. Dawn Odrowski (minor contributions), or Ms. Anne A. Weissenborn (foreign nationals), 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Bipartisan Campaign Reform Act of 2002, Public Law 107-155, 116 Stat. 81 (March 27, 2002), contains extensive detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This Notice of Proposed Rulemaking ("NPRM") is part of a continuing series of rulemakings the Commission is publishing over the next several months in order to meet the rulemaking deadlines set out in BCRA.

This NPRM addresses the increase in contribution limits, the prohibition on contributions and donations by minors

to certain political committees, and the prohibition on contributions, donations, and certain expenditures by foreign nationals. These changes to the Act addressed in this NPRM are only a few of many changes made to the Act by BCRA. Other rulemakings have addressed or will address: (1) Non-Federal funds or "soft money" (promulgated on June 22, 2002, 67 FR 49063 (July 29, 2002)); (2) coordinated and independent expenditures;<sup>1</sup> (3) the so-called "millionaires' amendment," which increases contribution limits for congressional candidates facing self-financed candidates on a sliding scale, based on the amount of personal funds the opponent contributes to his or her campaign; (4) electioneering communications (for NPRM, *see* 67 FR 51131 (Aug. 7, 2002)); (5) other new and amended provisions, including inaugural committees, fraudulent solicitations, disclaimers, personal use of campaign funds, and civil penalties; (6) reporting; and (7) reorganization of "contribution" and "expenditure" definitions (for final rules, *see* 67 FR 50582, August 5, 2002). The reporting NPRM will contain the reporting rules proposed in several of the other NPRMs and will restructure 11 CFR part 104 to make the reporting rules more user-friendly. Section 402(c) of BCRA establishes a 270-day deadline for the Commission to promulgate these rules. Since BCRA was signed into law on March 27, 2002, the 270-day deadline is December 22, 2002.

### Introduction

The Act limits the amounts that individuals and entities are permitted to contribute, and who may contribute those amounts, to candidates, political committees, and political party committees for use in Federal elections. 2 U.S.C. 441a and 441e. BCRA amends the FECA by increasing some of the contribution limits in 2 U.S.C. 441a (but only for contributions made on or after January 1, 2003), and by prohibiting certain contributions by minors in new 2 U.S.C. 441k. BCRA also amends 2 U.S.C. 441e, which prohibits contributions, donations, and expenditures made by foreign nationals. The proposed rules would implement these amendments.

<sup>1</sup> This NPRM will also address certain communications that are coordinated with candidate or political party committees that would otherwise constitute electioneering communications.

### Increases in Contribution Limits

#### 1. Increases in the Contribution Limits for Individuals (11 CFR 110.1 and 110.5)

The Act limits the amount that individuals may contribute to candidates, political committees, and political parties for use in Federal elections. 2 U.S.C. 441a. The pre-BCRA provisions of the Act permit persons to contribute up to \$1,000 to Federal candidates per election and up to \$20,000 per year to political committees established and maintained by national political parties.<sup>2</sup> For contributions made on or after January 1, 2003, BCRA amends 2 U.S.C. 441a(a)(1)(A) to increase the amount persons can contribute to Federal candidates to \$2,000 per election and amends 2 U.S.C. 441a(a)(1)(B) to increase the amount that may be contributed by individuals to committees maintained and controlled by national political parties to \$25,000 per year.

Current 11 CFR 110.1(b)(1) and (c)(1), which contain the contribution limits in 2 U.S.C. 441a(a)(1)(A) and (B), would be amended to incorporate the new increased contribution limits. Proposed paragraph (b)(1) would establish the new base contribution limit of \$2,000 that a person may contribute to a candidate for election to any Federal office. Under proposed paragraph (b)(1)(i), that limit of \$2,000 would be increased if necessary each election cycle by the difference in the price index in accordance with proposed 11 CFR 110.17, which is discussed below. Once the limit is increased, proposed paragraph (b)(1)(ii) would establish the effective dates of the increase from the day after the last general election to the day of the next general election. Because the contribution limits could change every two years, depending upon the consumer price index, proposed paragraph (b)(1)(iii) states that the Commission would publish the new contribution limits in effect in the **Federal Register** every odd-numbered year and maintain that information on its Web Site. Proposed section 110.1(c)(1) would parallel proposed section 110.1(b)(1), except it would establish the base contribution limit that

<sup>2</sup> The Act also permits a person to contribute up to \$5,000 per year to any other political committees. 2 U.S.C. 441a (a)(1)(C). This limit was left unchanged by BCRA. However BCRA did revise 2 U.S.C. 441a(a)(1) by adding paragraph (D), which permits persons to make up to \$10,000 in contributions to a political committee established and maintained by a State committee of a political party in a calendar year. This provision is addressed in a separate rulemaking. See Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money Final Rules, 67 FR 49063 (July 29, 2002).

a person would be able to make to a political committee of a national political party at \$25,000 per calendar year. Proposed paragraphs (c)(1)(i), (ii), and (iii) would mirror proposed paragraph (b)(1)(i), (ii), and (iii), applying the same indexing as necessary each election cycle with the same effective dates.

The limit for the calendar year when the change becomes effective would be affected as well. These new contribution limits would be effective January 1, 2003, and would apply to contributions made on or after that date. The Commission seeks comments on whether these increased contribution limits should apply to elections that occurred before the effective date of the increase in the contribution limits. For example, if the contribution limit were to be increased from \$2,000 to \$2,100, effective November 3, 2004, and contributor X makes a \$2,000 contribution to candidate Y in October of 2004, could contributor X make a \$100 contribution after November 3, 2004 designated for the general election, provided that candidate Y's principal campaign committee still has net debts outstanding?

BCRA also amends the provisions in the Act that establish the aggregate contributions that may be made by individuals. Under 2 U.S.C. 441a(a)(3), individuals have been permitted to make no more than \$25,000 in aggregate contributions per calendar year. This section has been revised by BCRA to establish new bi-annual aggregate limits that permit individuals to make up to \$95,000 in contributions, including up to \$37,500 in contributions to candidates and their authorized committees and up to \$57,500 in contributions to any other committees. 2 U.S.C. 441a(a)(3)(A) and (B). The \$57,500 aggregate contribution limit contains a further restriction in that no more than \$37,500 of this amount may be given to committees that are not the political committees of national political parties. 2 U.S.C. 441a(a)(3)(B).

Current 11 CFR 110.5(b) would be amended to incorporate the increased bi-annual aggregate contribution limits, which will be effective January 1, 2003. Proposed paragraph (b)(1)(i) would contain the new bi-annual aggregate limit for contributions to candidates and their authorized committees. Proposed paragraph (b)(1)(ii) would contain the new bi-annual aggregate limit for contributions to other political committees.

However, 2 U.S.C. 441a(i)(1)(C) and 441a-1(a)(1)(B) contain an important exception to the contribution limits that has implications for the bi-annual

aggregate limits for individuals. Under these sections, the individual contribution limits to candidates for the U.S. House of Representatives and U.S. Senate are increased if the candidate is opposing another candidate who makes expenditures from his or her personal funds above a certain threshold. Contributions made under these provisions do not apply to the individual contributor's bi-annual aggregate limits. 2 U.S.C. 441a(i)(1)(C) and 441a-1(a)(1)(B). Proposed paragraph 110.5(b)(1)(iii) would reflect this exception, which will be addressed in greater detail in a separate NPRM concerning the so-called "millionaires' amendment."

Proposed paragraph (b)(2) of 11 CFR 110.5 would reference the increase, if necessary, in the bi-annual aggregate limits by the percent difference in the price index as described in proposed 11 CFR 110.17 (*see* the discussion below). Proposed paragraph (b)(3) would provide that the time period in which the price indexing applies also applies to the aggregation of contributions for purposes of the application of the bi-annual aggregate limits. An example of how the time period would operate for both the increase and the aggregation would also be included in proposed paragraph (b)(3). Proposed paragraph (b)(4) would restate the Commission's intention to publish information regarding the adjusted limits in the **Federal Register** and on the Commission's web site.

### *2. Increases in the Limits for Contributions by Party Committees to Senate Candidates (11 CFR 110.2)*

Under pre-BCRA 2 U.S.C. 441a(h), the Republican and Democratic Senatorial campaign committees or the national committee of a political party or any combination of such committees were permitted to contribute \$17,500 to a candidate for election or nomination to the U.S. Senate during the year of the election. BCRA amends this section of the Act to increase the amount that may be contributed by these committees to senatorial candidates to \$35,000 on or after January 1, 2003. Current 11 CFR 110.2(e), which contains this limit, would be amended to increase the limit to \$35,000.

### *3. Extension of Indexing to Inflation for Some Contribution Limitations (11 CFR 110.5 and 110.17)*

Pre-BCRA 2 U.S.C. 441a(c) mandated yearly indexing to inflation of the expenditure limitations established by 2 U.S.C. 441a(b) (the limits on expenditures by candidates for the office of President of the United States

who accept public funding) and 2 U.S.C. 441a(d) (the limits on expenditures by national party committees, State party committees, or their subordinate committees in connection with the general election campaign of candidates for Federal office).

BCRA amends 2 U.S.C. 441a(c) to extend the inflation indexing to: the limitations for contributions made by persons under 2 U.S.C. 441a(a)(1)(A) and 441a(a)(1)(B); the bi-annual aggregate contribution limits for individuals now found at 2 U.S.C. 441a(a)(3); and the limitation for contributions made to U.S. Senate candidates by certain party committees at 2 U.S.C. 441a(h). 2 U.S.C. 441a(c)(1)(B). The adjustments for inflation for 2 U.S.C. 441a(a)(1)(A), 441a(a)(1)(B), 441a(a)(3) and 441a(h) are to be made only in odd-numbered years and such increases will be in effect for the 2-year period beginning on the first day following the date of the general election in the year preceding and ending on the date of the next general election. 2 U.S.C. 441a(c)(1)(C).

BCRA, however, presents a conflict concerning the interaction of 2 U.S.C. 441a(a)(3), which establishes the bi-annual aggregate contribution limits for individuals, and 2 U.S.C. 441a(c)(1)(C), which mandates indexing to inflation of these bi-annual aggregate limits. Section 441a(a)(3) of the Act specifically provides that the bi-annual aggregate limits for contributions made by individuals should apply during the period that begins on January 1 of an odd-numbered year and ends on December 31 of the next even-numbered year. For example, the dollar aggregate limits operate from January 1, 2005 to December 31, 2006. However, the inflation indexing for this provision as applied by 2 U.S.C. 441a(c)(1)(C) would operate from the day after the general election to the date of the next general election, e.g. November 3, 2004 to November 7, 2006, after which date the next two year inflation indexing period would alter the bi-annual aggregate contribution limits again. Thus, these competing time limits seem to dictate different contributions limits for the period from November 3, 2004 to January 1, 2005 and could not be applied simultaneously. Therefore, the conflict between 2 U.S.C. 441a(a)(3) and 441a(c)(1)(C) must be resolved to determine the time period in which the bi-annual aggregate contribution limits apply.

It is one principle of legislative interpretation that where two provisions of a statute are in conflict, the conflicting provision which is last in time or last in order of arrangement

prevails. See *Inter-Continental Promotions v. MacDonald*, 367 F.2d 293 (5th Cir. 1966). Following this principle, because 2 U.S.C. 441a(c)(1)(C) appears later than 2 U.S.C. 441a(a)(3) in order of arrangement, both in BCRA and as codified in the Act, 2 U.S.C. 441a(c)(1)(C) would determine the time period of the bi-annual contribution limits for 2 U.S.C. 441a(a)(3). Therefore, the proposed rules would set the time period for the bi-annual contribution limits from the day after the general election, i.e. the first Wednesday following the first Monday in November of an even numbered year, to the date of the next general election, i.e. the first Tuesday following the first Monday in November of the next even numbered year. See proposed 11 CFR 110.5(b) and 110.17 below. Under this approach, runoff elections following the general election would not postpone the increase in the annual contribution limits. The Commission seeks comment on whether this interpretation of the statutory language and the proposed time period for the bi-annual aggregate contribution limits is appropriate.

Another question for the interpretation of the BCRA amendments to 2 U.S.C. 441a(c) relates to a timing issue in the administrative application of the inflation indexing. The increased contribution limits of 2 U.S.C. 441a(a)(1)(A) and (B), 441a(a)(3), and 441a(h) apply to contributions made on or after January 1, 2003. However, under the interpretation outlined above, 2 U.S.C. 441a(c)(1)(C) requires that these same contribution limits be increased through indexing for inflation in odd-numbered years with the increase in effect starting with the day following the last general election in the previous year. This could imply that initial contribution limits authorized by BCRA to take legal effect on January 1, 2003, should also be increased by the difference in the price index. Comments are requested on this possible interpretation, which is not included in the proposed revisions to section 110.5 below.

A further change in 2 U.S.C. 441a(c) is the introduction of a rounding provision for all the amounts that are increased by the indexing to inflation in 2 U.S.C. 441a. If the final amount is not a multiple of \$100, it is rounded to the nearest multiple of \$100. 2 U.S.C. 441a(c)(1)(B)(iii).

The current regulation at 11 CFR 110.9(c) that describes the expenditure limits subject to inflation indexing does not include any of the inflation indexing discussed above. In order to address the price indexing for the new contributions and expenditures limitations in a

comprehensive manner, the Commission proposes to add new section 110.17 to track the changes to 2 U.S.C. 441a(c). In this new section 110.17, proposed paragraph (a) would restate current section 110.9(c) for the price index increases that previously existed for the party committee and Presidential candidate spending limits established by 11 CFR 110.7 and 110.8.

However, proposed paragraph (a) would contain one important change from current 11 CFR 110.9(c). Section 110.9(c) had incorrectly stated that the expenditure limitations established by sections 110.7 and 110.8 would be increased by the annual percent difference of the price index, as certified to the Commission by the Secretary of Labor. Section 441a(c) of the Act does not use an annual percent difference of the price index to calculate the increases. Instead, it requires the use of the percent difference between the price index for the 12 months preceding the beginning of the calendar year in which the change is made and the base period. For party committee expenditures limitations and Presidential candidate expenditures limitations, the base period is calendar year 1974 with the change being in effect for that calendar year. Proposed paragraph (a) would correctly state the standard to be applied and would delete the term "annual" from the regulation.

Proposed paragraph (b) of new section 110.17 would track 2 U.S.C. 441a(c)(1)(B) and state that the following contributions limits would be indexed to inflation: Proposed 11 CFR 110.1(b)(1) (limits for individuals contributing to candidates and authorized political committees); proposed 110.1(c)(1) (limits for contributions made to national party committees); proposed 110.2(e) (limits for contributions made by party committees to Senatorial candidates); and proposed 110.5 (bi-annual aggregate contribution limits for individuals). Consequently, current paragraph 110.9(c) would be removed.

Proposed section 110.17(b)(1) would specify that these contribution limitations would be increased during odd numbered years and that the increased limit would be in effect for a two-year period. Proposed paragraph (b)(2) would establish that 2001 is the base year for the calculation of the price index difference. Proposed paragraph 110.17(c) would implement the new rounding provision found at 2 U.S.C. 441a(c)(B)(iii).

The Act at 2 U.S.C. 441a(c)(2)(A) and proposed paragraph 110.17(d) specifically identify the price index as the average over a calendar year of the

Consumer Price Index (all items-United States city average) published by the Bureau of Labor Statistics. The Department of Labor computes the CPI using two population groups: All Urban Consumers (CPI-U) and Clerical Workers (CPI-W). The CPI-U represents approximately 87% of the total United States population while the CPI-W, a subset of the CPI-U, represents 32% of the total United States population.<sup>3</sup> While neither the Act nor BCRA have specified which population group is to be used, the Commission has historically used the more inclusive CPI-U since that would seem the best method to calculate changes in the affected limitation. The Commission invites comments on whether this or an alternative approach would be preferable.

Proposed paragraph 110.17(e) would state that the Commission would provide information concerning the amount of the adjusted contribution limitations through the **Federal Register** and the Commission's web site.

In order to alert the reader to these contribution limit increases, each section containing a contribution increase that is subject to the indexing also contains a new paragraph referring to these increases. These would be proposed paragraphs 110.1(b)(1)(i), (ii), and (iii); (c)(1)(i), (ii), and (iii); 110.2(e)(2); and 110.5(b)(2).

#### Prohibition on Contributions by Minors

Senator McCain, a primary sponsor of BCRA, stated during the Senate debate that the prohibition on contributions by minors is intended to prevent evasion of FECA's contribution limits and "restores the integrity of the individual contribution limits by preventing parents from funneling contributions through their children, many of whom are simply too young to make such contributions knowingly." 148 Cong. Rec. S2145-2146 (daily ed. March 20, 2002).

During the debate, BCRA's sponsors acknowledged that many individuals younger than 18 years old enthusiastically supported candidates and pointed out that they could continue to do so by volunteering on campaigns and expressing their views through speaking and writing. See 148 Cong. Rec. S2146 (daily ed. March 20, 2002).

<sup>3</sup> The CPI published by the Department of Labor may be found over the Internet at <http://www.bls.gov/cpi/home.htm>.

### 1. 11 CFR 110.19 Contributions by Minors

BCRA prohibits minors (individuals 17 years old and younger) from making a contribution to a candidate or a contribution or donation to a political party committee. *See* 2 U.S.C. 441k. The Commission is proposing to place the regulations that address this prohibition in a new section 11 CFR 110.19.

Under current regulations, a child under 18 years of age may make contributions in accordance with the limits of the Act provided that the child voluntarily and willingly makes the decision to contribute, the funds, goods or services contributed are owned or controlled exclusively by the child, and the contribution is not made from the proceeds of a gift given to the child to make a contribution or is not in any way controlled by an individual other than the child. *See* current 11 CFR 110.1(i)(2). Consequently, the proposed rules would amend current 11 CFR 110.1(i)(2) to conform with BCRA. *See* below for discussion of the proposed conforming amendments.

Proposed paragraph (a) of new 11 CFR 110.19 would address contributions by minors to candidates. That paragraph would state that an individual who is 17 years old or younger must not make a contribution to a candidate for Federal office. Proposed paragraph (a) would further clarify that a contribution to a Federal candidate includes a contribution to a candidate's principal campaign committee, to any other authorized committee of that candidate, or to any entity directly or indirectly established, financed, maintained or controlled by one or more Federal candidates.

The Commission believes that prohibiting contributions by minors to entities directly or indirectly established, financed, maintained or controlled by a Federal candidate is within the scope of BCRA, but it seeks comment on this issue. The Commission also seeks comment on whether minors who are emancipated under State law should be exempt from the prohibition. A condition of emancipation under State law usually entails a showing that a minor manages his or her own financial affairs, which would lessen the likelihood that a parent would funnel contributions through the emancipated minor child. Finally, the Commission seeks comment on whether the regulations should make clear that the relevant time for determining whether a minor has made a prohibited contribution is the age of the minor at the time he or she makes a contribution, i.e., when the minor relinquishes

control over the contribution. *See* 11 CFR 110.1(b)(6).

Proposed § 110.19(b) addresses contributions and donations made by minors to political party committees. Because BCRA specifically prohibits donations as well as contributions by minors to "a committee of a political party," proposed paragraph (b) states that individuals 17 years old or younger may not make contributions or donations to a national, State, district or local committee of a political party. Thus, as proposed, the regulations would interpret BCRA as prohibiting minors from making any donations whatsoever to non-Federal accounts of State, district and local party committees. To the extent that a non-Federal account of a State or local party committee may contain Levin funds, i.e., funds raised under State law but limited under Federal law to \$10,000 per contributor, to finance certain Federal election activity such as voter registration and get-out-the vote activities, prohibiting donations by minors to State, district and local party committees has a clear nexus to Federal elections. It should be noted that this interpretation may preempt certain State laws to the extent that States permit minors to donate to state and local political parties.

The Commission seeks comment, however, as to whether a narrower construction of the prohibition on donations by minors to state, district, and local political party committees may be warranted. For example, the prohibition on donations by minors in 2 U.S.C. 441k could be interpreted to apply only to donations used to conduct activities that have some effect on Federal elections. Consequently, under this interpretation, a minor may make a donation only if the recipient state, district, or local party committee can show through a reasonable accounting method or by establishing a separate account that the donation is used exclusively for purposes that have no effect upon any Federal election to the extent permitted by State law. It is important to note, however, that a number of State laws treat contributions by minors as contributions by their parent(s) or guardian(s). *See* for example, Kan. Stat. Ann. 25-4153(c) and Okla. Stat. t. 74, 257:10-1-2(a)(1) and (h)(2).

Proposed 11 CFR 110.19(c) addresses contributions to other political committees, such as separate segregated funds and non-connected committees. The proposed rule would prohibit an individual who is 17 years old or younger from making a contribution to any such political committee if the

contribution is earmarked or otherwise directed to one or more Federal candidates or political committees or organizations covered in proposed paragraphs (a) and (b).

Proposed 11 CFR 110.19(d) would make clear that minors are not prohibited from volunteering their services to Federal candidates, political party committees or other political committees. The exclusion of volunteer services is based on the statement made by Senator McCain in the BCRA Senate debate, as noted above, that Congress intended that minors could continue to participate in campaigns by volunteering.

Proposed paragraph (e) would define an entity "directly or indirectly established, financed, maintained, or controlled" by a candidate for purposes of the prohibition on minors' contributions to candidates as one that meets the definition of "directly or indirectly establish, finance, maintain or control" at 11 CFR 300.2(c). For the definition, *see* Final Rules for "Excessive and Prohibited Contributions: Non-Federal Funds or Soft Money," 67 FR 49063 (July 29, 2002).

### 2. Conforming Amendments to 11 CFR 110.1(i)

As discussed above, beginning on November 6, 2002, BCRA prohibits individuals who are 17 years old or younger from making contributions to Federal candidates and contributions or donations to political party committees. However, BCRA also provides that this prohibition will not apply with respect to runoff elections, recounts or election contests resulting from elections held prior to November 6, 2002. *See* 2 U.S.C. 431 note. Consequently, the current regulation concerning contributions by minors at 11 CFR 110.1(i)(2) would be amended by adding new paragraph (i)(3) to clarify that the provisions of 11 CFR 110.1(i)(2) would continue to apply to contributions made by minors to authorized committees and political party committees in connection with runoff elections, recounts or election contests resulting from elections held prior to November 6, 2002. It would also clarify that contributions made by minors to authorized committees and political party committees for all other elections held after November 6, 2002 would be governed by proposed 11 CFR 110.19.

Because 2 U.S.C. 441k specifically prohibits contributions by minors to candidates and political party committees rather than to political committees in general, the proposed rules contemplate that minors could

continue to make contributions to political committees other than authorized committees or political party committees in accordance with the requirements of 11 CFR 110.1(i)(2). Consequently, 11 CFR 110.1(i)(2) would be amended to reflect this interpretation. The Commission seeks comment on whether 2 U.S.C. 441k could be interpreted to also prohibit contributions by minors to these other political committees.

### Reattribution and Redesignation

With BCRA's renewed focus on contribution limits, the Commission is considering updating and streamlining its rules for designating contributions for a particular election or attributing contributions to particular donors. Current 11 CFR 110.1 and 110.2 set forth the procedures for the redesignation or reattribution of excessive contributions. Section 110.1(b)(5) permits an excessive contribution to a candidate that is not designated in writing for a particular election, provided that a signed, written redesignation is obtained from the contributor within 60 days. See 11 CFR 110.1(b)(5)(i)(C) and 110.1(b)(5)(ii). Given the amount of resources the Commission and the regulated community have had to devote to authorized committees' failure to properly follow these procedures, the Commission seeks comment on several ways to address this problem. Although BCRA does not address the procedures for handling excessive contributions, the Commission seeks comment on the following possible changes to §§ sections 110.1, 110.2 and 102.9 as a matter of administrative convenience and to better effectuate donor intent.

One possible change to § 110.1(b)(5) would be to presume that when a contributor makes an undesignated, excessive contribution to a candidate's authorized committee before a primary election, the contributor intends to contribute the excessive amount to the general election, provided that the total amount contributed does not exceed the limitations on contributions for both elections. If this presumption were allowed, the authorized committee would be permitted to treat the excessive amount of the contribution as a contribution made with respect to the general election without needing to obtain written permission from the contributor, or even to notify the contributor that such action had been taken. This approach, which is included in the proposed rules as Alternative 1-A in § 110.1(b)(5)(ii)(B), would be designed to minimize the administrative

burden on authorized committees when a contributor's intent could be reasonably inferred.

Alternatively, or in conjunction with the presumption approach, the committee could be required to inform the contributor as to how the contribution had been designated, and that the contributor may request a refund. This approach is included in the proposed rules as Alternative 1-B in § 110.1(b)(5)(ii)(B). As with the presumption approach, no confirmation from the contributor would be required. If the Commission were to adopt the notification approach, then 11 CFR 110.1(l) would need to be amended to specify the documentation required to be retained under such an approach.

The Commission seeks comment on how this notification approach compares to or fits with the presumption approach. Would the benefit of requiring notification of contributors outweigh the administrative burden to authorized committees of providing and retaining records of such notification? What methods of notification (*e.g.*, mail, electronic mail or oral communication accompanied by a contemporaneous signed record of the conversation) should be permitted if this notification approach is adopted? Should notification be required within thirty days of the treasurer's receipt of the contribution? If a contributor requests a refund, should the treasurer be required to make the refund within thirty days of receipt of the request?

The Commission specifically seeks comment on the merits of applying the presumption or notification approach described above to an undesignated, excessive contribution received before a primary election. In addition, the Commission seeks comment on whether it should allow the presumption or notification approach for other types of redesignations, or for reattributions. See 11 CFR 110.1(b)(5)(i), 110.1(k) and 110.2(b)(5)(i). For example, should the Commission permit backward-looking presumptions, so that excessive general election contributions received after a primary election may be designated by an authorized committee to pay off primary debt? Alternatively, should it be presumed that a contributor intended to contribute an excessive amount beyond a current election cycle? Are backward-looking presumptions or presumptions beyond a current election cycle consistent with what contributors can be reasonably expected to have intended? More generally, if the Commission adopts the presumption or notification approach for certain contributions in § 110.1, should the

Commission make conforming changes to the requirements for contributions by multicandidate political committees in § 110.2? Are there circumstances where the presumption or notification approach would be appropriate for the reattribution of a contribution to a different donor, such as when a contribution made by written instrument is imprinted with the names of more than one account holder? Alternatives 2-A and 2-B in proposed 11 CFR 110.1(k)(3)(ii)(B) sets forth how the presumption and notification approaches could be applied under those circumstances. If the Commission adopts the presumption or notification approach for certain types of redesignations or reattributions, conforming amendments will be required in §§ 110.1 and 110.2.

Whether or not the Commission decides to allow the presumption or notification approach for certain types of redesignations or reattributions, there will remain circumstances where redesignation or reattribution might not be appropriate without some form of authorization from the contributor. See, *e.g.*, 11 CFR 110.1(b)(5)(i)(B). Under current §§ 110.1 and 110.2, authorization from the contributor can only be obtained through written authorization signed by the contributor. The Commission seeks comment on whether it should eliminate the signature requirement for all redesignations and reattributions under 11 CFR 110.1 and 110.2, and instead permit authorization from the contributor by email or through oral communications with the contributor when there is a contemporaneous signed record of the conversation, as is permitted under the Commission's best efforts regulations (*see* 11 CFR 104.7(b)(2)). Eliminating the signature requirement or permitting committees to obtain authorization orally or by e-mail for redesignations and reattributions would require amendments to §§ 110.1 and 110.2.

In addition to concerns about balancing administrative burdens with adequate protection of contributors' intent, the Commission has concerns about some committees' illegal use of contributions received for the general election during the primary election, despite the existing requirement that authorized committees distinguish contributions received for the primary election and contributions received for the general election. See 11 CFR 102.9(e). In order to reduce the illegal use of funds during the primary election through the use of contributions intended for the general election, the Commission seeks comment on whether

all committees should be required to segregate contributions for the primary election from contributions for the general election. This could be done by tightening the requirements currently set forth in 11 CFR 102.9(e) so that separate accounts for primary and general election contributions would be mandatory, not optional.

Recordkeeping also plays a crucial role in ensuring compliance with the Act's contribution limitations. The Commission seeks comment on whether the recordkeeping duties set forth in 11 CFR 102.9 should explicitly require political committees to retain certain records of all contributions over \$50. Should political committees be required to keep copies of contribution checks, either as photocopies or as digital images? Should committees be required to keep records of contributions made by credit card or debit card, such as credit card slips, processing batch reports, or other records created by the committee or provided by the credit or debit card processor? Many committees keep such records now, so it is not anticipated that it would create a significant additional administrative burden if such a recordkeeping requirement were adopted. Finally, the Commission seeks comment on whether 11 CFR 102.9 should include an explicit requirement that political committees maintain copies of all written solicitations.

#### **Prohibition on Contributions, Donations, Expenditures and Disbursements by Foreign Nationals (11 CFR 110.20)**

As indicated by the title of section 303 of BCRA, "Strengthening Foreign Money Ban," Congress amended 2 U.S.C. 441e to further delineate and expand the ban on campaign contributions and donations by foreign nationals. BCRA expressly applies the ban to contributions and donations solicited or made directly or indirectly to candidates for State and local as well as Federal office. 2 U.S.C. 441e(a)(1)(A) and (a)(2). Furthermore, the prohibition is expressly applied to contributions and donations to committees of political parties and is extended to disbursements for electioneering communications as well as to expenditures and independent expenditures. 2 U.S.C. 441e(a)(1)(B) and (C).

Consequently, the Commission proposes to amend 11 CFR part 110 to implement the revised statutory provision. The proposed rules would remove and reserve 11 CFR 110.4(a), the current regulation that addresses foreign nationals. In its place, new § 110.20

would be created to describe the prohibitions on contributions, donations, expenditures, independent expenditures, and disbursements by foreign nationals. This new section would also incorporate the provision in 2 U.S.C. 441e(a)(2) which prohibits persons from soliciting, accepting, or receiving contributions and donations from foreign nationals.

#### **1. "Indirectly" versus "Through Any Other Person"**

BCRA bans foreign national contributions and donations made "directly or indirectly." Former 2 U.S.C. 441e(a) banned foreign national contributions made directly "or through any other person." It is unclear what Congress intended in changing the terminology. While both phrases would address contributions made through conduits, the term "indirectly" could have a broader scope because the general purpose of section 303 of BCRA is to strengthen the ban on contributions and donations by foreign nationals. Comments are solicited as to whether "indirectly" should be construed to have a broader meaning than "through any other person" and if so, whether the rules should explicitly reflect this interpretation by defining "indirectly." Please note that the proposed rule does not define "indirectly."

Given the above-cited statutory provisions, proposed paragraph 110.20(a) would explicitly state that foreign nationals shall not, directly or indirectly, make contributions or donations in connection with any election for Federal, State, or local office. Because BCRA retains the provision on express or implied promise, proposed paragraph (a) would also include that language. Additionally, proposed paragraph (a) would define "election" in accordance with 11 CFR 100.2 and proposed 11 CFR 110.20(j). While current § 100.2 addresses Federal elections, proposed paragraph (j) would define "election" generically so that it would include State and local elections.

Comment is also sought on whether "indirectly" should cover a foreign controlled U.S. corporation, including a U.S. subsidiary of a foreign corporation, when such corporation seeks to make (1) non-federal donations of corporate treasury funds, or (2) federal contributions through a political action committee. Specifically, the Commission seeks comment on whether BCRA's new statutory language prohibits foreign controlled U.S. corporations, including a U.S. subsidiary of a foreign corporation, from making corporate donations, or from

making federal contributions from their PACs, or both.

#### **2. Impact of the Addition of "Donation" in the Foreign National Ban**

In BCRA, Congress added the "donation" of funds by foreign nationals to its prior ban on "contributions" by foreign nationals. In 2000, the Commission included in its legislative recommendations to Congress a proposal that 2 U.S.C. 441e be amended to clarify that the statutory prohibition on foreign national contributions extends to State and local elections. The Commission noted that this could be accomplished by changing "contribution" to "donation."

In BCRA, Congress chose to retain "contribution" and to add "donation" as a prohibited activity, while also explicitly listing "a Federal, State, or local election" as the elections in connection with which such contributions and donations must not be made. By means of this two-fold approach, Congress left no doubt as to its intention to prohibit foreign national support of candidates and their committees for all Federal, State, and local elections.

According to the section-by-section analysis of BCRA by Senator Feingold, the revision to 2 U.S.C. 441e "prohibits foreign nationals from making any contribution to a committee of a political party or any contribution in connection with federal, state or local elections, including any electioneering communications. This clarifies that the ban on contributions [by] foreign nationals applies to soft money donations." (Statement of Sen. Feingold, 148 Cong. Rec. S1991-1997 (daily ed. Mar. 18, 2002)).

While final rules entitled "Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money" define "donation" at 11 CFR 300.2(e) for purposes of 11 CFR part 300, the proposed rules do not define "donation" for purposes of this rulemaking. The Commission seeks comments on whether it should include a definition of "donation" and, if so, should the definition be limited to proposed 11 CFR 110.20 or 11 CFR part 110, or should it be included in 11 CFR part 100 and have general applicability to all of the Commission's regulations.

#### **3. Effects on Committees of Political Parties**

BCRA also expressly extends the prohibition on foreign national contributions and donations to those made to committees of political parties, with foreign nationals prohibited from making any donations to such

committees. 2 U.S.C. 441e(a)(1)(B). The particular committees covered would include the national party committees, the national congressional campaign committees, as well as all State, district, local, and subordinate committees. In light of the addition of "donation" to the statutory language, it appears that the prohibition on foreign national funds would extend to all political party organizations, whether or not they are political committees under the Act. In addition, because many party committee activities affect Federal, State, and local elections, this interpretation is supported by, and would reinforce, the prohibition in 2 U.S.C. 441e(a)(1)(A) on foreign national contributions and donations in connection with a Federal, State, or local election. Consequently, proposed 11 CFR 110.20(b) would adopt this interpretation. Comments are requested on whether the proposed rules should adopt a different interpretation.

#### 4. Expenditures, Independent Expenditures, and Disbursements for Electioneering Communications

BCRA prohibits a foreign national from making "an expenditure, independent expenditure, or disbursement for an electioneering communication."<sup>4</sup> 2 U.S.C. 441e(a)(1)(C). This provision, read alone, could be construed so that "expenditure," "independent expenditure," and "disbursement" modify "for an electioneering communication," therefore narrowing the scope of "expenditure" and "independent expenditure" to include only "electioneering communications." BCRA, however, expressly exempts from the definition of "electioneering communication" "a communication which constitutes an expenditure or an independent expenditure under this Act. \* \* \*" 2 U.S.C. 434(f)(3)(B)(ii). Thus, statutory construction would require that the phrase "for an electioneering communication" at 2 U.S.C. 441e(a)(1)(C) is read as modified only by the term "disbursement," with the prohibitions against an expenditure" or an "independent expenditure" being general in scope, *i.e.*, not limited to electioneering communications.

<sup>4</sup> BCRA defines "electioneering communication" as a "broadcast, cable, or satellite communication" that "refers to a clearly identified candidate for Federal office," that is made within particular time frames, and that is targeted to the relevant electorate if it refers to a candidate other than those for the office of President or Vice-President. 2 U.S.C. 434(f)(3)(A)(i)(I). For a discussion of electioneering communications, see the Notice of Proposed Rulemaking entitled "Electioneering Communication," 67 FR 51131 (August 7, 2002).

Consequently, proposed 11 CFR 110.20(d) would prohibit expenditures, independent expenditures, and disbursements<sup>5</sup> by foreign nationals for activities in connection with Federal, State, or local elections. Proposed paragraph (e) would specifically prohibit disbursements for electioneering communications by foreign nationals.

#### 5. Other Disbursements

BCRA expressly prohibits all expenditures and independent expenditures by foreign nationals, and also prohibits all disbursements by foreign nationals for electioneering communications. Section 431(9)(A)(1) of FECA defines "expenditure" as "any purchase, payment, \* \* \* or anything of value made for the purpose of influencing any election for Federal office," and 2 U.S.C. 431(17) defines "independent expenditure" as "an expenditure by a person expressly advocating the election or defeat of a clearly defined candidate which is made without cooperation or consultation with any candidate \* \* \*." Thus, the terms "expenditure" and "independent expenditure" apply only to activities related to Federal elections. In contrast, "disbursement," a term used in both FECA and BCRA, but not defined in the statutes, is now defined in new 11 CFR 300.2(d) as "any purchase or payment made by (1) a political committee; or (2) any other person, including an organization that is not a political committee, that is subject to the Act." This definition of "disbursement" covers all payments including "expenditures," "independent expenditures," and those made in connection with non-Federal elections.

However, BCRA does not contain an express prohibition against foreign national disbursements for activities other than electioneering communications. This omission leaves in question the status of disbursements by foreign nationals for activities in connection with State and local elections that are by definition not "expenditures" or "independent expenditures" because they are not made to influence Federal elections. How the Commission addressed a similar issue in the past, however, provides guidance on this question.

Former 2 U.S.C. 441e contained no express prohibition against expenditures by foreign nationals. In response to this statutory silence, the Commission in 1989 revised 11 CFR 110.4(a) to state that foreign nationals were prohibited from making

<sup>5</sup> See below for discussion on disbursements.

expenditures as well as contributions. The Explanation and Justification for that amendment stated: "The FECA generally prohibits expenditures when it prohibits contributions by a specific category [of] persons, thereby ensuring that the person cannot accomplish indirectly what they are prohibited from doing directly." 54 FR 8581 (Nov. 24, 1989). The Explanation and Justification continued: "Nothing in Section 441e's legislative history suggests that Congress intended to deviate from the FECA's general pattern of treating contributions and expenditures in parallel fashion." *Id.*

As discussed above, BCRA adds "donations" to the activities prohibited to foreign nationals, this being one way in which the reach of the statute is extended to State and local elections to which the term "contributions" does not apply. As was the case earlier with the FECA, there is nothing in BCRA that would indicate an intent on the part of Congress to treat disbursements for State or local elections any differently than it now treats expenditures for Federal elections. Therefore, the Commission in the regulations proposes to treat "donations" and "disbursements" in the same parallel fashion as it has treated "contributions" and "expenditures" in the past.

Consequently, proposed 11 CFR 110.20(d) would also prohibit disbursements by foreign nationals whether or not they are made for electioneering communications. Comments are sought as to whether a definition of "disbursement" using language similar to that in 11 CFR 300.2(d) should be included in 11 CFR 110.20.

#### 6. Building Funds

The FECA prohibits foreign nationals from making any contribution or donation to national party committees, including donations for the purchase or construction of an office building. See 2 U.S.C. 441e. In addition, new 11 CFR 300.35(a) explicitly provides that the prohibitions in BCRA against contributions and donations by foreign nationals do not permit party committees to spend funds contributed or donated by foreign nationals for the purchase or construction of State or local party committee office buildings. Final Rule and Explanation and Justification, 67 FR 49101, 49127 (July 29, 2002). The Explanation and Justification for 11 CFR 300.35 indicates that this prohibition on foreign national funding also extends to in-kind contributions or donations. Consistent with new 11 CFR 300.35(a), the Commission proposes to add paragraph

(f) to 11 CFR 110.20 to explicitly state that foreign nationals are prohibited from making contributions or donations to committees of a political party for the construction or purchase of any office building.

*7. Soliciting, Accepting, or Receiving Contributions or Donations from Foreign Nationals; Assisting Foreign Nationals to Make Contributions or Donations*

BCRA prohibits any person from soliciting, accepting, or receiving from a foreign national a contribution or donation made in connection with a Federal, State, or local election, or made to a party committee. 2 U.S.C. 441e(a)(2). However, both the former and the current foreign national prohibitions in 2 U.S.C. 441e are silent as to the degree of knowledge, if any, that such person should be shown to have had regarding the foreign national status of the contributor or donor before the person will be deemed to have violated the statute. In contrast, other parts of FECA and BCRA expressly provide that knowledge is an element of the violation.<sup>6</sup>

The Commission in recent years has addressed the issue of required knowledge in a number of complex enforcement matters arising under former 2 U.S.C. 441e(a). In these matters, the Commission has confronted the questions of whether the statute or the First Amendment requires a person to have had knowledge of the contributor or donor's foreign national status in order to have been in violation of the foreign-national prohibition, and, if so, what degree of knowledge was required. Should, for example, actual knowledge at the time of a solicitation or receipt have been a prerequisite for a violation, or should the person have been required to follow up on certain factors that would have raised the suspicions of an objective observer?

Whether the foreign national prohibition as amended by BCRA contains a knowledge requirement is an important issue that may affect the implementation of this prohibition. One alternative is to assume, given the silence in both FECA and BCRA on this question, that Congress intended this to be a strict liability statute. The fact that Congress has used "knowingly" in other provisions of FECA and BCRA but did not include this standard with regard to the solicitation, acceptance or receipt of foreign national contributions and donations could be construed as intent

not to require knowledge in this regard. However, an exception to the plain meaning rule is that it is not applied when an injustice would result. Sutherland Statutory Construction 47:25. Based upon Commission enforcement experience with political committees, and, in particular, with the involvement of volunteers in the solicitation and receipt of contributions and donation, a knowledge requirement, and related standards for the levels of knowledge to be required, may produce a less harsh result than a strict liability standard. Proposed 11 CFR 110.20(g), discussed below, would include a knowledge requirement with three different degrees of knowledge. Comments are sought regarding the addition of a knowledge requirement and of standards to be applied in determining whether such knowledge existed in a particular situation.

Additionally, the foreign national prohibition raises issues concerning the liability of persons who knowingly assist foreign nationals in making contributions or donations. Recently the Commission has addressed situations in which the liability of someone who served as a conduit or intermediary for a foreign national contribution was in question because he or she had not technically solicited, accepted or received the contribution at issue. Section 441e of FECA does not explicitly address those who assist others to violate its prohibition on foreign national contributions and donations. However, the Commission has taken the position in enforcement matters that, because 2 U.S.C. 441e prohibits foreign nationals from making contributions directly or through another person, and because the statute also prohibits persons from soliciting, accepting or receiving such contributions or donations, even a U.S. citizen's use of money acquired from a foreign national is prohibited, if that money was acquired for the purpose of enabling the foreign national to make political contributions.

Accordingly, proposed 11 CFR 110.20(g)(1) would prohibit any person from knowingly soliciting, accepting or receiving a contribution or donation from a foreign national. Proposed 11 CFR 110.20(g)(2) would prohibit any person from knowingly acting as a conduit or intermediary for receipt of a contribution or donation from a foreign national. Proposed 11 CFR 110.20(g)(3) would prohibit any person from knowingly providing substantial assistance with regard to the making of a contribution or donation by a foreign national.

Proposed paragraph (g)(4) would set forth the standards to be applied in determining whether the knowledge required by proposed paragraphs (g)(1), (2), and (3) exists in particular situations. Proposed paragraph (g)(4)(i) through (iii) would provide three alternative ways, any one of which would establish that a person has knowingly solicited, accepted or received a contribution or donation from a foreign national, or that a person knowingly acted as a conduit or intermediary for a foreign national to make a contribution or donation.

The first knowledge standard at proposed paragraph (g)(4)(i) would be that of actual knowledge. The second standard at proposed paragraph (g)(4)(ii) would require awareness on the part of the person soliciting, accepting or receiving a contribution or donation of certain facts that would lead a reasonable person to conclude that there is a substantial probability that the contribution or donation has come from a foreign source. This second standard would be in effect a "reason to know" standard, and is different from a "should have known" standard. Restatement (Second) of Agency, sec. 9, cmts. d and e (1958). The third standard at proposed paragraph (g)(4)(iii) would address situations in which the person soliciting, accepting or receiving a contribution is or becomes aware of facts that should have led any reasonable person to inquire about the status of the contributor or donor; however, the solicitor or recipient failed to so inquire. This third alternative would be in effect a willful blindness standard covering situations in which a known fact may not equal a substantial probability of illegality but at least should prompt an inquiry. Proposed paragraph (g)(5) would set out several categories of facts that are intended to be illustrative of the types of information that should lead a recipient to question the origins of a contribution or donation under proposed paragraph (g)(4)(ii) or (iii).

Comments are requested as to whether the standards or levels of knowledge at proposed paragraph (g)(4) are appropriate and whether there are other potential facts that should be added to those at proposed paragraph (g)(5). Further, comments are requested as to whether the regulation should expressly require that recipient candidates and committees actively seek information about the nationality of contributors and donors whenever one of the factors listed is at issue.

Current Commission regulations provide that political committee treasurers shall examine all

<sup>6</sup> "No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of this section \* \* \*." 2 U.S.C. 441a(f) (emphasis added).

contributions received for evidence of illegality. See 11 CFR 103.3(b). Contributions that “present genuine questions” as to whether they were made by corporations, labor organizations, foreign nationals, or other prohibited sources may, within 10 days of receipt, either be deposited or returned to the contributor. *Id.* If any such contribution is deposited, the treasurer has an affirmative duty to investigate the contribution and use best efforts to determine the legality of the contribution. 11 CFR 103.3(b)(1). If, despite such due diligence, the treasurer is unable to determine the legality of the contribution within 30 days, the treasurer is required to refund the contribution to the contributor. *Id.*

If a treasurer of a political committee later discovers that a contribution is illegal based on new information that was not available at the time the contribution was received and deposited, the treasurer must refund the contribution to the contributor within 30 days of the date in which the illegality is discovered. 11 CFR 103.3(b)(2). This provision applies “to contributions from foreign nationals or Federal contractors when there is no evidence of illegality on the face of the contributions themselves.” Explanation and Justification, 52 FR 760, 768–69 (Jan. 9, 1987).

In light of BCRA’s new statutory provisions regarding the foreign-national ban, the Commission seeks comment on when political committees and their treasurers have an affirmative duty to investigate contributions and donations to confirm that they do not come from foreign sources. Specifically, the Commission seeks comment on whether such an affirmative duty is limited to circumstances when contributions and donations “present genuine questions” as to whether they are lawful, as outlined in 11 CFR 103.3. Are there additional circumstances when such an affirmative duty arises? Are the circumstances limited to when there is “evidence of illegality on the face of the contributions themselves” (Explanation and Justification, 52 FR at 768–69) or when the political committee otherwise has specific, credible information at the time of the contribution indicating that the contribution may be from a foreign source? See proposed 11 CFR 110.20(g)(5) (identifying specific factual circumstances). Should the Commission consider creating any safe harbors within which political committees are deemed to have satisfied whatever affirmative duty exists to investigate contributions or donations to confirm that they do not come from foreign

sources? One possible safe harbor could be for political committees who acquire proof of U.S. citizenship (such as copies of U.S. passports) for donors who reside outside the United States or who list a foreign address or who make a contribution or donation through a foreign bank. If a political committee later discovers that a contribution or donation is illegal based on new information that was not available at the time the contribution or donation was received and deposited, is the political committee immunized from liability under section 303 of BCRA, provided that the political committee refunds the contribution or donation within 30 days of the date in which the illegality is discovered pursuant to 11 CFR 103.3(b)(2)? Comments are sought on all of these issues.

In addition, comments are sought as to whether the Commission should incorporate into proposed § 110.20(g) the definition of “solicit” in 11 CFR 300.2(m),<sup>7</sup> whether it should leave the term undefined, or whether it should give the term a more expansive or a narrower reading in this context.

Proposed 11 CFR 110.20(h) would retain the current prohibition at 11 CFR 110.4(a)(3) on participation by foreign nationals in the decision-making process of any person, including entities such as corporations, labor organizations or political committees, related to Federal and non-Federal election-related activities. Foreign nationals would thus continue to be prohibited from taking part in decisions about contributions to any candidates or committees and about expenditures made in support of, or in opposition to, such candidates or committees. Foreign nationals would also continue to be prohibited from involvement in the direct management of a political committee, including a separate segregated fund and a non-connected committee.

#### 8. Definitions

Proposed new 11 CFR 110.20(i) would retain the definition of “foreign national” currently found at 11 CFR 110.4(a)(4). Proposed 11 CFR 110.20(i)(1) and (2) would include the current exemptions for certain foreign principals as provided in 22 U.S.C. 611(b) and for permanent resident aliens as defined in 8 U.S.C. 1101(a)(20). At proposed 11 CFR 110.20(i)(3), however, the definition of “foreign national” would be narrowed by the exclusion of

<sup>7</sup> The definition is part of the recently adopted final rules entitled “Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money,” 67 FR 49063 (July 29, 2002).

U.S. nationals as they are in turn defined in 8 U.S.C. 1101(a)(22).<sup>8</sup>

Proposed new 11 CFR 110.20(j) would define “election” for purposes of this section. Although “election” is defined at 11 CFR 100.2, the definition at that section is stated expressly in terms of Federal elections. New 11 CFR 110.20(j) would extend the overall definition to include elections at all political levels.

#### 9. Donations to Presidential Inaugural Committees

Section 308 of BCRA amends section 510 of Title 36, United States Code, to prohibit Presidential inaugural committees from accepting donations from foreign nationals as defined in 2 U.S.C. 441e(b). 36 U.S.C. 510(c). Although section 308 does not amend Title 2, United States Code, its prohibition on donations by foreign nationals to Presidential inaugural committees, including its reference to the definition of “foreign national” in the Act, fits naturally within 11 CFR 110.20. Therefore, proposed new 11 CFR 110.20(c) has been created for this purpose.

Section 308 does not include a prohibition against the making of donations to Presidential inaugural committees by foreign nationals. Comments are sought as to whether the regulations should include a prohibition in this regard.

#### Conforming Amendment to 11 CFR 110.9

Current 11 CFR 110.9, entitled “Miscellaneous provisions,” includes four paragraphs that address: (a) Violations of the contribution limitations; (b) fraudulent misrepresentations; (c) price index increase; and (d) voting age population. Because this rulemaking and other BCRA rulemaking projects<sup>9</sup> would amend and move the provisions on fraudulent misrepresentation, the price index increase, and voting age population, only paragraph (a) of § 110.9, addressing violations of the contribution limitations, would remain. Therefore, the proposed rules would amend § 110.9 so that it contains only the provisions of paragraph (a) and the title of § 110.9 would be amended to

<sup>8</sup> “National of the United States” is defined as “(A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States.” 8 U.S.C. 1101(a)(22).

<sup>9</sup> The BCRA rulemaking project entitled “Other Provisions” will address the fraudulent misrepresentation provisions and the BCRA rulemaking project entitled “Coordination and Independent Expenditures” will address the voting age population provisions.

“Violations of limitations” to reflect that change.

The proposed rules would also add the word “knowingly” in two places pertaining to the acceptance of contributions in violation of the limitations and prohibitions set forth in 11 CFR part 110. This revision would better reflect the knowledge requirement in 2 U.S.C. 441a(f) and 441f.

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

The Commission certifies that the attached proposed rules, if promulgated, 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 are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions.

Minors and most of foreign nationals are individuals, and therefore, not small entities. Furthermore, the proposed rules, which are based on statutory language, clarify and describe in further detail the already existing ban on contributions by foreign nationals. Additionally, to the extent that there may be foreign nationals that may fall within the definition of “small entities,” their numbers are not substantial, particularly the number that would make a donation, expenditure, independent expenditure, or disbursement in connection with a Federal, State, or local election.

In addition, the small entities to which the rules would apply would not be unduly burdened by the proposed increased contribution levels, which would give such small entities more latitude in the amount they contribute. The increase in contribution limits for individuals and national party committees would not create a burden for them even if they were small entities.

#### **List of Subjects in 11 CFR Part 110**

Campaign funds, Political committees and parties.

For reasons set out in the preamble, it is proposed to amend subchapter A of chapter I of title 11 of the *Code of Federal Regulations* as follows:

#### **PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS**

1. The authority citation for part 110 would be revised 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, 441h, and 441k.

2. Section 110.1 would be amended by revising paragraphs (a), (b)(1), (b)(5)(ii), (c)(1), (i), and (k)(3)(ii) to read as follows:

#### **§ 110.1 Contributions by persons other than multicandidate political committees (2 U.S.C. 441a(a)(1)).**

(a) *Scope.* This section applies to all contributions made by any persons as defined in 11 CFR 110.10, except multicandidate political committees as defined in 11 CFR 110.5(e)(3) or entities and individuals prohibited from making contributions under 11 CFR 110.19 and 110.20 and 11 CFR parts 114 and 115.

(b) *Contributions to candidates;* designations; and redesignations. (1) No person shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election for Federal office that, in the aggregate, exceed \$2,000.

(i) The limitation in the introductory text of paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17.

(ii) The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election. For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006.

(iii) In every odd numbered year, the Commission will publish in the Federal Register the amount of the contribution limit in effect and place such information on the Commission's Web site.

\* \* \* \* \*

(5) \* \* \*

(ii) (A) A contribution shall be considered to be redesignated for another election if—

(1) The treasurer of the recipient authorized political committee requests that the contributor provide a written redesignation of the contribution and informs the contributor that the contributor may request the refund of the contribution as an alternative to providing a written redesignation; and

(2) Within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written redesignation of the contribution for another election, which is signed by the contributor.

#### **Alternative 1–A**

(B) Notwithstanding paragraph (b)(5)(ii)(A) of this section or any other provision of this section, the treasurer of

the recipient authorized political committee may treat all or part of the amount of the contribution that exceeds the contribution limits in paragraph (b)(1) of this section as made with respect to the general election, provided that:

(1) The contribution was made before the primary election;

(2) The contribution was not designated for a particular election;

(3) The contribution would exceed the limitation on contributions set forth in paragraph (b)(1) of this section if it were treated as a contribution made for the primary election; and

(4) Such redesignation would not cause the contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section.

#### **Alternative 1–B**

(B) Notwithstanding paragraph (b)(5)(ii)(A) of this section or any other provision of this section, the treasurer of the recipient authorized political committee may treat all or part of the amount of the contribution that exceeds the contribution limits in paragraph (b)(1) of this section as made with respect to the general election, provided that:

(1) The contribution was made before the primary election;

(2) The contribution was not designated for a particular election;

(3) The contribution would exceed the limitation on contributions set forth in paragraph (b)(1) of this section if it were treated as a contribution made for the primary election;

(4) Such redesignation would not cause the contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section;

(5) The treasurer of the recipient authorized political committee notifies the contributor of how the contribution was redesignated and that the contributor may request a refund of the contribution; and

(6) Within thirty days from the date of the treasurer's receipt of the contribution, the treasurer shall provide notification required in paragraph (b)(5)(ii)(B)(5) of this section to the contributor in writing; by electronic mail; or through oral communication with the contributor, provided that the treasurer makes a contemporaneous, signed record of the conversation.

\* \* \* \* \*

(c) *Contributions to political party committees.* (1) No person shall make contributions to the political committees established and maintained by a national political party in any calendar year that in the aggregate exceed \$25,000.

(i) The limitation in paragraph (c)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17.

(ii) The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election. For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006.

(iii) In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limit in effect and place such information on the Commission's web site.

\* \* \* \* \*

(i) *Contributions by spouses and minors.* (1) The limitations on contributions of this section shall apply separately to contributions made by each spouse even if only one spouse has income.

(2) Minor children (children under 18 years of age) may make contributions to any political committee, other than an authorized committee or a political party committee, which in the aggregate do not exceed the limitations on contributions of this section, if—

(i) The decision to contribute is made knowingly and voluntarily by the minor child;

(ii) The funds, goods, or services contributed are owned or controlled exclusively by the minor child, such as income earned by the child, the proceeds of a trust for which the child is the beneficiary, or a savings account opened and maintained exclusively in the child's name; and

(iii) The contribution is not made from the proceeds of a gift, the purpose of which was to provide funds to be contributed, or is not in any other way controlled by another individual.

(3) Paragraph (i)(2) of this section will apply to contributions made by minor children to authorized committees and political party committees for runoff elections, recounts or election contests resulting from elections held prior to November 6, 2002. For all other elections held after November 6, 2002, contributions by minor children to authorized committees and political party committees are prohibited. See 11 CFR 110.19.

\* \* \* \* \*

(k) \* \* \*  
(3) \* \* \*

(ii) (A) A contribution shall be considered to be reattributed to another contributor if—

(1) The treasurer of the recipient authorized political committee asks the contributor whether the contribution is intended to be a joint contribution by more than one person, and informs the contributor that he or she may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution; and

(2) Within sixty days from the date of the treasurer's receipt of the contribution, the contributor provides the treasurer with a written reattribution of the contribution, which is signed by each contributor, and which indicates the amount to be attributed to each contributor if equal attribution is not intended.

**Alternative 2-A**

(B) Notwithstanding paragraph (k)(3)(ii)(A) of this section or any other provision of this section, a contribution described in paragraph (k)(3)(i) of this section that was made by a written instrument that is imprinted with the names of more than one account holder may be apportioned equally between the account holders, unless a different instruction is provided by the account holder(s) on the instrument or in a separate writing, provided that such apportionment would not cause a contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section.

**Alternative 2-B**

(B)(1) Notwithstanding paragraph (k)(3)(ii)(A) of this section or any other provision of this section, a contribution described in paragraph (k)(3)(i) of this section that was made by a written instrument that is imprinted with the names of more than one account holder may be apportioned equally between the account holders, unless a different instruction is provided by the account holder(s) on the instrument or in a separate writing, provided that such apportionment would not cause a contributor to exceed any of the limitations on contributions set forth in paragraph (b)(1) of this section.

(2) The treasurer of the recipient authorized political committee shall notify each account holder of how the contribution was apportioned and that the contributors may request the return of the excessive portion of the contribution if it is not intended to be a joint contribution. Within thirty days from the date of the treasurer's receipt of the contribution, the treasurer shall provide such notification to each account holder in writing; by electronic mail; or through oral communication, provided that the treasurer makes a

contemporaneous, signed record of the conversation(s).

\* \* \* \* \*

3. Section 110.2 would be amended by revising the section heading and paragraph (e) to read as follows:

**§ 110.2 Contributions by multi-candidate political committees (2 U.S.C. 441a(a)(2)).**

\* \* \* \* \*

(e) *Contributions by political party committees to Senatorial candidates.* (1) Notwithstanding any other provision of the Act, or of these regulations, the Republican and Democratic Senatorial campaign committees, or the national committee of a political party, may make contributions of not more than a combined total of \$35,000 to a candidate for nomination or election to the Senate during the calendar year of the election for which he or she is a candidate. Any contribution made by such committee to a Senatorial candidate under this paragraph in a year other than the calendar year in which the election is held shall be considered to be made during the calendar year in which the election is held.

(2) The limitation in paragraph (e)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election. For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006. In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limit in effect and place such information on the Commission's web site.

\* \* \* \* \*

4. Section 110.4 would be amended by revising the section heading and by removing and reserving paragraph (a).

**§ 110.4 Prohibited contributions (2 U.S.C. 441f, 441g, 432(c)(2)).**

\* \* \* \* \*

5. Section 110.5 would be amended by revising the section heading and paragraphs (a), (b), (d), and (e) to read as follows:

**§ 110.5 Aggregate bi-annual contribution limitation for individuals (2 U.S.C. 441a(a)(3)).**

(a) *Scope.* This section applies to all contributions made by any individual, except individuals prohibited from making contributions under 11 CFR 110.19 and 110.20 and 11 CFR part 115.

(b) *Bi-annual limitations.* (1) In the two-year period described in paragraphs (b)(2) and (3) of this section, no individual may make contributions aggregating more than \$95,000, including:

(i) \$37,500 in the case of contributions to candidates and the authorized committees of candidates; and

(ii) \$57,500 in the case of any other contributions, of which not more than \$37,500 may be attributable to contributions to political committees which are not political committees of national political parties;

(iii) However, contributions made under the increased limits under 11 CFR part 400 are not subject to the limitations of paragraph (b)(1)(i) and (ii) of this section.

(2) The limitation in paragraph (b)(1) of this section shall be increased by the percent difference in the price index in accordance with 11 CFR 110.17. The increased limitation shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amount is increased and ending on the date of the next general election.

(3) The contribution limits in paragraph (b)(1) must be aggregated within the same time period as described in paragraph (b)(2). For example, an increase in the limitation made in January 2005 is effective from November 3, 2004 to November 7, 2006. Contributions must likewise be aggregated from November 3, 2004 to November 7, 2006.

(4) In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limit in effect and place such information on the Commission's web site.

\* \* \* \* \*

(d) *Independent expenditures.* The bi-annual limitation on contributions in this section applies to contributions made to persons, including political committees, making independent expenditures under 11 CFR part 109.

(e) *Contributions to delegates and delegate committees.* The bi-annual limitation on contributions in this section applies to contributions to delegate and delegate committees under 11 CFR 110.14.

6. Section 110.9 would be revised to read as follows:

**§ 110.9 Violation of limitations.**

No candidate or political committee shall knowingly accept any contribution or make any expenditure in violation of the provisions of part 110. No officer or employee of a political committee shall

knowingly accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this part 110.

**§§ 110.15 and 110.16 [Added and Reserved]**

7. Sections 110.15 and 110.16 would be added and reserved.

8. Section 110.17 would be added to read as follows:

**§ 110.17 Price index increase.**

(a) *Price index increases for party committee expenditure limitations and Presidential candidate expenditure limitations.* The limitations on expenditures established by 11 CFR 110.7 and 110.8 shall be increased by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(1) Each amount so increased shall be the amount in effect for that calendar year.

(2) For purposes of this paragraph (a) the term base period means calendar year 1974.

(b) *Price index increases for contributions by persons, by political parties to Senatorial candidates, and the bi-annual aggregate contribution limitation for individuals.* The limitations on contributions established by 11 CFR 110.1(b) and (c), 110.2(e), and 110.5, shall be increased only in odd-numbered years by the percent difference between the price index, as certified to the Commission by the Secretary of Labor, for the 12 months preceding the beginning of the calendar year and the price index for the base period.

(1) The increased limitations shall be in effect for the 2-year period beginning on the first day following the date of the last general election in the year preceding the year in which the amounts are increased and ending on the date of the next general election. For example, increases in the limitations made in January 2005 are effective from November 3, 2004 to November 7, 2006.

(2) For purposes of this paragraph (b) the term base period means calendar year 2001.

(c) *Rounding of price index increases.* If any amount after adjustment under paragraph (a) or (b) of this section is not a multiple of \$100, such amount shall be rounded to the nearest multiple of \$100.

(d) *Definition of price index.* For purposes of this section, the term price

index means the average over a calendar year of the Consumer Price Index (all items-United States city average) published monthly by the Bureau of Labor Statistics.

(e) *Publication of price index increases.* In every odd numbered year, the Commission will publish in the **Federal Register** the amount of the contribution limits in effect and place such information on the Commission's web site.

**§§ 110.18 [Added and Reserved]**

9. Section 110.18 would be added and reserved.

10. Section 110.19 would be added to read as follows:

**§ 110.19 Contributions by minors.**

(a) *Contributions to candidates.* An individual who is 17 years old or younger shall not make a contribution to a candidate for Federal office, including a contribution to any of the following:

(1) A principal campaign committee designated pursuant to 11 CFR 101.1(a);

(2) Any other political committee authorized by a candidate under 11 CFR 101.1(b) and 102.13 to receive contributions or make expenditures on behalf of such candidate; or

(3) Any entity directly or indirectly established, financed, maintained or controlled by one or more Federal candidates.

(b) *Contributions to political party committees.* An individual who is 17 years old or younger shall not make a contribution or donation to:

(1) A national, State, district or local committee of a political party, including a national congressional campaign committee; or

(2) Any entity directly or indirectly established, financed, maintained or controlled by a national, State, district or local committee of a political party.

(c) *Contributions to other political committees.* An individual who is 17 years old or younger shall not make a contribution to any other political committee if that contribution is earmarked or otherwise directed to one or more Federal candidates or political committees or organizations covered by paragraphs (a) and (b) of this section. See 11 CFR 110.6.

(d) *Volunteer services.* Nothing in this section shall prohibit an individual who is 17 years old or younger from providing volunteer services to any Federal candidate or political committee.

(e) *Definition of directly or indirectly established, financed, maintained or controlled.* Directly or indirectly established, financed, maintained or controlled has the same meaning as in 11 CFR 300.2(c).

11. Section 110.20 would be added to read as follows:

**§ 110.20 Prohibition on contributions, donations, expenditures and disbursements by foreign nationals.**

(a) A foreign national shall not, directly or indirectly, make a contribution or a donation of money or other thing of value, or expressly or impliedly promise to make a contribution or donation in connection with any local, State or Federal election as defined in 11 CFR 100.2 and paragraph (j) of this section.

(b) A foreign national shall not, directly or indirectly, make a contribution or donation to a committee of a political party. For purposes of this section, a committee of a political party includes a national party committee, a national congressional campaign committee, a State, district, or local party committee, or a subordinate committee of a State party committee, whether or not it is a political committee.

(c) A Presidential inaugural committee shall not knowingly accept any donation from a foreign national.

(d) A foreign national shall not, directly or indirectly, make any expenditure, independent expenditure, or disbursement in connection with any Federal, State, or local election as defined in 11 CFR 100.2 and paragraph (j) of this section.

(e) A foreign national shall not, directly or indirectly, make any disbursement for an electioneering communication as defined in 11 CFR 100.29.

(f) A foreign national shall not, directly or indirectly, make a contribution or donation to a committee of a political party for the purchase or construction of an office building. See 11 CFR 300.10 and 300.35.

(g)(1) No person shall knowingly solicit, accept, or receive from a foreign national any contribution or donation prohibited by paragraphs (a) through (c) of this section.

(2) No person shall knowingly receive funds as a conduit or intermediary for a contribution or donation prohibited by paragraphs (a) through (c) of this section.

(3) No person shall knowingly provide substantial assistance with regard to the making of a contribution or donation prohibited by paragraphs (a) through (c) of this section.

(4) For purposes of paragraphs (c) and (g) of this section, knowingly means that a person must:

(i) Have actual knowledge that the source of the funds solicited, accepted or received is a foreign national, or

(ii) Have been aware of facts that would lead a reasonable person to conclude that there is a substantial probability that the source of the funds solicited, accepted or received is a foreign national; or

(iii) Have been aware of facts that would have led a reasonable person to inquire whether the source of the funds solicited, accepted, or received is a foreign national, but the person failed to conduct a reasonable inquiry.

(5) For purposes of paragraphs (g)(4)(ii) and (iii) of this section, pertinent facts include, but are not limited to:

(i) The use by the contributor or donor of a foreign passport or passport number for identification purposes;

(ii) The provision by the contributor or donor of a foreign address;

(iii) The contribution or donation is made by means of a check or other written instrument drawn on a foreign bank or by a wire transfer from a foreign bank; or

(iv) The contributor or donor resides abroad.

(h) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or non-Federal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

(i) For purposes of this section, *foreign national* means—

(1) A foreign principal, as defined in 22 U.S.C. 611(b); or

(2) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence as defined in 8 U.S.C. 1101(a)(20); however,

(3) *Foreign national* shall not include any individual who is a citizen of the United States, or who is a national of the United States as defined in 8 U.S.C. 1101(a)(22).

(j) For purposes of this section, *election* means the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to public office. This definition includes any general, primary, special and runoff election, and a caucus or convention of a political party.

Dated: August 16, 2002.

**Karl J. Sandstrom,**

*Vice Chairman, Federal Election Commission.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Aviation Administration**

**14 CFR Part 25**

[Docket No. 26015; Notice No. 89-25]

RIN 2120-AD34

**Airplane Engine Cowling Retention**

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

**ACTION:** Notice of proposed rulemaking (NPRM); withdrawal.

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**SUMMARY:** The FAA is withdrawing a previously published Notice of Proposed Rulemaking (NPRM) (54 FR 38610, September 19, 1989) that would provide improved engine cowling retention for transport category airplanes by adding specific design requirements for cowling retention systems. The proposed rule would have promoted design and construction of cowling retention systems to withstand vibration, inertial loads, over-pressure, normal air loads, and thermal conditions of an engine compartment fire after failure or improper fastening of latching devices. We are withdrawing the proposed rule because the proposal has been surpassed by technological advances. The issues will be addressed by future regulatory action based on recommendations from the Aviation Rulemaking Advisory Committee, and will be harmonized with similar regulations in Europe and Transport Canada.

**FOR FURTHER INFORMATION CONTACT:** Michael McRae, Propulsion and Mechanical Systems Branch, Federal Aviation Administration, telephone 425-227-2113, e-mail [mike.mcrae@faa.gov](mailto:mike.mcrae@faa.gov).

**SUPPLEMENTARY INFORMATION**

**Background**

On September 19, 1989, the FAA published Notice of Proposed Rulemaking No. 89-25 (54 FR 38610) to propose an amendment to 14 CFR part 25, and invited public comment on the issue of engine cowling retention. Section 25.1193, Cowling and nacelle skin, addresses the design of engine cowlings, but does not address the single failure of a latch or hinge, or an improperly fastened latch. Several in-