placement is easily overlooked. Technical requirements for televised communications are set forth in new paragraph (a)(5)(iii), discussed *infra*.

Placement of Disclaimer

New paragraph (a)(5)(i) states that the disclaimer need not appear on the front or cover page of a communication as long as it appears within the communication, except on communications such as billboards that contain only a front face. This provision formerly appeared in paragraph (a)(1) of this section.

Packaged Materials

New paragraph (a)(5)(ii) clarifies that all materials included in a package that would require a disclaimer if distributed separately must contain the required disclaimer, even if they are included in a package with solicitations or other materials that already have a disclaimer. Questions have arisen in the past as to whether a single disclaimer per package would satisfy the purposes of this requirement.

One commenter and witness at the hearing sought further clarification on how this will be interpreted. All items intended for separate distribution (e.g., a campaign poster included in a mailing of campaign literature) are covered by this requirement.

Televised Communications

New paragraph (a)(5)(iii) responds to a commenter's request that the Commission incorporate into the text of these rules the Federal Communication Commission's ["FCC"] disclaimer size requirements for televised political advertisements concerning candidates for public office. These requirements, which are set forth at 47 CFR 73.1212(a)(2)(ii), require in any such advertisement that the sponsor be identified with letters equal to or greater than four (4) percent of the vertical picture height that air for not less than four (4) seconds. The new rule states that disclaimers in a televised communication shall be considered clear and conspicuous if they meet these requirements.

In *Dalton Moore*, 7 FCC Rcd 3587 (1992), the FCC explained that twenty (20) scan lines meets the four (4) percent requirement. Also, FCC staff has advised the Commission that the four (4) percent/twenty (20) lines requirement applies to each line of type, and that if the type is upper and lower case, the requirement applies to the smaller (lower case) type.

One commenter, while correctly noting that the FCC and not the FEC has authority over these technical requirements, nevertheless requested that the Commission modify them. However, it is impossible for one agency to amend another's rules. Also, the FCC conducted a lengthy rulemaking, in which the FEC participated, before deciding that the current standards were appropriate. 57 FR 8279 (Mar. 9, 1992).

Exceptions

New paragraph (a)(6) lists the exceptions to the general requirements. Former 11 CFR 110.11(a)(2) has been broken down into new paragraphs (a)(6)(i) and (a)(6)(ii), which address the "small item" and "impracticable item" exceptions, respectively. In addition, the "impracticable item" provision, which formerly included "skywriting, watertowers or other means of displaying an advertisement of such a nature that the inclusion of a disclaimer would be impracticable," has been amended to specifically include "wearing apparel," such as T-shirts or baseball caps, that contain a political message.

While no comments were received on this issue, the question continues to arise as to whether such items require a disclaimer. Since in many instances it is impracticable to include disclaimers on wearing apparel, the Commission believes this further exception is appropriate.

Consistent with the Notice, new paragraph (a)(6)(iii) clarifies that checks, receipts and similar items of minimal value that do not contain a political message and that are used for purely administrative purposes do not require a disclaimer.

Activities by Separate Segregated Funds or Their Connected Organizations

New paragraph (a)(7) corresponds to former 11 CFR 110.11(a)(1)(iv)(B). It exempts from the disclaimer requirements solicitations for contributions to an SSF from those persons the fund may solicit under the applicable provisions of 11 CFR part 114, or communications to such persons, because this does not constitute general public political advertising. This language encompasses mailings by a corporation or labor organization to the corporation's or labor organization's restricted class, as well as comparable activities conducted by membership organizations and trade associations pursuant to 11 CFR 114.7 and 114.8.

Other Issues

Disclaimers on the Internet

In AO 1995–9, the Commission determined that Internet

communications and solicitations that constitute general public political advertising require disclaimers as set forth in 2 U.S.C. 441d(a) and former 11 CFR 110.11(a)(1). These communications and others that are indistinguishable in all material aspects from those addressed in the advisory opinion will now be subject to the requirements of paragraph (a)(1) of this section.

Disclaimers on "Push Polls"

Two commenters and several witnesses at the hearing discussed the possibility that the Commission require disclaimers on "push polls." This term has generally been used to refer to phone bank activities or written surveys that provide false or misleading information about a candidate under the guise of conducting a legitimate poll. For example, if the person being polled states a preference for candidate X, the poll might ask whether X would still be the preferred choice if "you knew he or she had a drunken driving record," "a history of recreational drug use," "was soft on crime," or the like. Such slanted surveys can result in both skewed poll results (if a poll is in fact conducted) and damage to the candidate's reputation.

One of the commenters, Congresswoman Maloney, has introduced a bill, H.R. 324 in the 104th Congress, that would include phone banks in the listing of types of communications set forth in 2 U.S.C. 441d(a) that trigger the disclaimer requirements. As discussed above, the Commission proposed in the NPRM that phone banks be added to the comparable listing in the disclaimer rules, but during consideration of the final rules, the Commission did not reach a majority decision by the required four affirmative votes. Consequently, the final disclaimer rules do not apply to push polls conducted by using phone banks.

The question of requiring disclaimers during telephone push polling also involves significant legal and constitutional issues that have not been put out for notice and comment as required by the Administrative Procedure Act at 5 U.S.C. 553. As noted by some of the witnesses, it may require amendments to the FECA before the Commission can take further action. For example, it does not appear that all push polls contain "express advocacy" or contribution solicitations, a critical point under these rules.

Thus, the new regulations only require disclaimers for push polls that qualify as general public political advertising and that either contain a