

would have made the Commission the point of filing for all 24-hour and 48-hour reports of independent expenditures. The Commission received no comments on this section, and the final rules follow the proposed rules regarding independent expenditures.

Similarly, BCRA establishes the Commission as the place of filing for electioneering communication statements, regardless of the office sought by the clearly identified candidate. 2 U.S.C. 434(f)(1). In the Electioneering Communications NPRM, proposed revisions to section 105.2 would have made the Commission the point of filing for all electioneering communication statements. 67 FR at 51,146. However, the Reporting NPRM proposed that 11 CFR 105.2(b) would not mention electioneering communication statements because section 105.2 only discusses reporting by political committees. 67 FR at 64,562. By operation of 2 U.S.C. 434(f)(3)(B)(ii) and 11 CFR 100.29(c)(3), communications paid for with expenditures and independent expenditures are excluded from the definition of "electioneering communications." Therefore, revised section 105.2(b), as proposed in the Reporting NPRM and as promulgated in these final rules, does not mention statements of electioneering communications. Nonetheless, electioneering communications by others may refer to Senatorial candidates. Under 11 CFR 104.20(b), electioneering communication statements related to electioneering communications that refer to a clearly identified candidate for Senate must be filed with the Commission, not the Secretary of the Senate.

11 CFR 108.1 Filing Requirements

Paragraph (a) of 11 CFR 108.1 contains the general rule that a copy of each report and statement that is required to be filed with the Commission or the Secretary of the Senate must be filed with the Secretary of State for the appropriate State. The Commission is not making any changes to this general rule.

The rules at 11 CFR 108.1(b) provide an exception to the requirement that reporting entities must file copies of their reports with the Secretary of State for the appropriate State. This exception is allowed in States that have received a waiver from the Commission because the State can electronically receive and duplicate reports and statements filed with the Commission. The reporting requirements for both independent expenditures and electioneering communications specifically explain

that if a State has obtained a waiver under 11 CFR 108.1(b), then reporting entities are not required to file reports or statements with the Secretary of State for that State. See 11 CFR 104.4(e)(4) and 104.20(e). In the NPRM, the Commission proposed adding to paragraph (b) a statement that the list of States that have obtained waivers under this section is available on the Commission's website. The Commission received no comments on this proposal, and the final rule follows the proposed rule.

11 CFR 109.2 [Reserved]

Section 109.2 of 11 CFR is removed and reserved for future use.

11 CFR 109.10 Independent Expenditure by Persons Other Than Political Committees

The NPRM proposed to move the reporting requirements for persons other than political committees who make independent expenditures from pre-BCRA 11 CFR 109.2 to new 11 CFR 109.10. Other proposed revisions to this section generally followed the proposals regarding independent expenditure reporting by political committees, which are discussed above in the Explanation and Justification for 11 CFR 104.4. The Commission received no comments on this section. The final rules generally follow the proposed rules except as explained below.

Under new section 109.10, persons other than political committees must report their independent expenditures on either FEC Form 5 or in a signed statement containing certain information regarding the person who made the independent expenditure and the nature of the independent expenditure itself.

Paragraph (a) of new 11 CFR 109.10 states that political committees must report independent expenditures under 11 CFR 104.4.

Section 109.10(b) contains the general reporting requirement for persons other than political committees previously found in 11 CFR 109.2(a). New paragraph (b) states that persons other than political committees must report independent expenditures in excess of \$250 in a calendar year. New paragraph (b) specifically states that these reports must be filed in accordance with the quarterly reporting schedule specified in 11 CFR 104.5(a)(1)(i) and (ii). Paragraph (b) has been revised since the NPRM to establish that reporting entities must follow the quarterly reporting schedule.

Paragraph (c) addresses reports of independent expenditures aggregating \$10,000 or more with respect to a given

election from the beginning of the calendar year up to and including the 20th day before an election. This paragraph requires that 48-hour reports of independent expenditures be received rather than filed by 11:59 pm on the second day after the date on which the \$10,000 threshold is reached.

Revisions to paragraph (d) of new 11 CFR 109.10 (which was pre-BCRA 11 CFR 109.2(b)) also follow the changes in 11 CFR 104.4(c) regarding 24-hour reports of independent expenditures aggregating \$1,000 or more after the 20th day before the election.

Paragraph (e) of new 11 CFR 109.10 (which was pre-BCRA 11 CFR 109.2(a)(1) and (c)) addresses the contents and verification of statements and reports filed under this section. Paragraph (e) has been clarified so that the information required to be disclosed applies to those using FEC Form 5 or a verified statement. Paragraph (e) includes one significant change from pre-BCRA section 109.2(a)(1) and (c): a person making an independent expenditure is now required to certify that the expenditure was made independently from a political party committee and its agents, in addition to pre-BCRA requirement of certification that the expenditure was not coordinated with a candidate, a candidate's authorized committee, or an agent of either of the foregoing. This change reflects the addition of political party committees to the definition of "independent expenditure" in 2 U.S.C. 431(17) and the description of coordination in 2 U.S.C. 441a(a)(7)(B)(ii) under BCRA.

In BCRA, Congress deleted the term "consultation" from the list of activities that compromise the independence of expenditures. See 2 U.S.C. 431(17)(B). Notwithstanding that change, in the Reporting NPRM the Commission proposed the retention of the term "consultation" because it remains, post-BCRA, in other related provisions of the Act. Reporting NPRM, 67 FR at 64,558 and 64,568. For the same reasons explained with reference to the definition of "independent expenditure" in 11 CFR 100.16, see *Coordinated and Independent Expenditures*, NPRM, 67 FR 60,042, 60,061 (Sept. 24, 2002); *Coordinated and Independent Expenditures, Final Rules*, 67 FR (forthcoming Dec. 2002), the Commission is continuing to include "consultation" in the description of activity that would cause an expenditure to lose its independence (i.e., "in cooperation, consultation, or concert with" a candidate or political party committee), even though the