

**FEDERAL ELECTION COMMISSION****11 CFR Parts 100, 104, 105, 108 and 109**

[Notice 2002—26]

**Bipartisan Campaign Reform Act of 2002 Reporting****AGENCY:** Federal Election Commission.**ACTION:** Final rules and transmittal of regulations to Congress.

**SUMMARY:** The Federal Election Commission is promulgating new and revised rules regarding the reporting of electioneering communications and independent expenditures, monthly reporting by national political party committees and quarterly reporting by the principal campaign committees of candidates for the House of Representatives and Senate, as well as reporting related to party committee building funds. These rules implement several provisions of the Bipartisan Campaign Reform Act of 2002 ("BCRA") that amend the Federal Election Campaign Act of 1971, as amended ("FECA" or "the Act"). Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

**EFFECTIVE DATE:** February 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. J. Duane Pugh Jr., Acting Special Assistant General Counsel, Ms. Mai T. Dinh, Acting Assistant General Counsel, or Ms. Cheryl A. F. Hemsley, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Pub. L. 107-155, 116 Stat. 81 (2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971, as amended, 2 U.S.C. 431 *et seq.* This is one in a series of rulemakings the Commission is undertaking to implement the provisions of BCRA. The deadline for the promulgation of these rules is 270 days after the date of enactment, which is December 22, 2002.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on BCRA Reporting were transmitted to Congress on December 18, 2002.

**Introduction**

These final rules address: (1) Reporting of electioneering communications; (2) reporting of independent expenditures; (3) quarterly reporting by the principal campaign committees of candidates for the House of Representatives and the Senate; (4) monthly reporting by political party committees; and (5) the reporting of funds for political party committee office buildings. See 2 U.S.C. 434(a), (e), (f) and (g); BCRA sec. 103, 201, 212, 501 and 503, 116 Stat. at 87-90, 93-94, and 114-115.

The Commission issued a Notice of Proposed Rulemaking ("NPRM") addressing many of BCRA's reporting requirements. See 67 FR 64,555 (Oct. 21, 2002) ("Reporting NPRM"). The Commission also previously sought comments on two of these topics in Notices of Proposed Rulemakings on Electioneering Communications, 67 FR 51,131 (Aug. 7, 2002), and Coordinated and Independent Expenditures, 67 FR 60,042 (Sept. 24, 2002). The Commission based the rules for another topic, the reporting of funds for the purchase or construction of party office buildings, on recently published final rules. See Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rules, 67 FR 49,123 (July 29, 2002).

The Commission received four comments on this rulemaking. In addition, comments responding to the reporting issues in the previous NPRMs regarding electioneering communications and independent expenditures were considered by the Commission in developing these final reporting rules and are discussed in more detail below. The Commission received fifteen comments on electioneering communications reporting and two comments on coordinated and independent expenditures reporting. In addition, the Commission received testimony during the public hearings on electioneering communications on August 28 and 29, 2002, and on coordinated and independent expenditures on October 23 and 24, 2002.

The Commission also recently issued a Statement of Policy, explaining that during the transition period following BCRA's effective date, the Commission intends to refrain from pursuing reporting entities for violations of the reporting requirements if they comply with Interim Reporting Procedures, which are specified in the Statement of Policy. FEC Policy Statement: Interim Reporting Procedures, 67 FR 71,075 (Nov. 29, 2002). All comments received,

hearing transcripts, NPRMs, Final Rules, and the Statement of Policy are on the Commission's Web site at <http://www.fec.gov>. The development of new reporting forms and instructions is underway, and the new materials will be posted on the Commission's Web site as they are completed. The Commission intends to have the new forms and instructions completed for reports due March 20, 2003, covering February 2003.

BCRA requires the Commission to promulgate standards for reporting computer software and also imposes certain other requirements on the Commission and on various persons who file reports with the Commission, which will take effect when that computer software becomes available. 2 U.S.C. 434(a)(12). Although these Congressional mandates are related to reporting, which is the subject of these final rules, the Commission does not propose to address computer software standards in these final rules. The computer software standards need to be developed in conjunction with revisions to the Commission's reporting forms. Therefore, the Commission proposes to address computer software standards as soon as possible and will solicit public comments on the software standards at that time.

**Explanation and Justification****11 CFR 100.19 File, Filed, or Filing (2 U.S.C. 434(a))**

The Commission's regulations at 11 CFR 100.19 define *file*, *filed*, and *filing*. The Commission proposed revisions in the NPRM to section 100.19 to redefine when 24-hour reports of independent expenditures would be considered filed and when the new 48-hour reports of independent expenditures and 24-hour reports of electioneering communications would be considered filed. The Commission received no comments on these proposed rules. The final rules are substantially similar to the proposed rules in the NPRM, with the changes noted below. The Commission notes that the paragraphs in 11 CFR 100.19 should be read together, and the entire section should be reviewed for applicable requirements.

Paragraph (a) of section 100.19 is unaffected by this rulemaking, except for a new heading. It retains the pre-BCRA general rule that a document is considered timely filed if it is delivered to the appropriate filing office (either the Commission or the Secretary of the Senate) by the close of business on the prescribed filing date. Paragraph (b) of section 100.19 retains the pre-BCRA

rule that a document is also considered timely filed if it is sent by registered or certified mail and postmarked by 11:59 p.m. Eastern Standard/Daylight Time on the prescribed filing date—except for pre-election reports. Pre-election reports must be filed no later than the 12th day before the relevant election or posted by registered or certified mail no later than the 15th day before the relevant election. See, e.g., 2 U.S.C. 434(a)(2)(A)(i). The references to midnight in paragraph (b) are being changed to 11:59 PM Eastern Standard/Daylight Time, whichever is applicable, consistent with paragraphs (c), (d), and (f) of this section. The revisions to paragraph (b) of section 100.19 clarify that paragraph (b) does not apply to reports addressed by paragraph (c) through new paragraph (f). The proposed new subtitle for paragraph (b) of “general rule” is not included in the final rules because paragraphs (a) and (b) of section 100.19 could both be considered part of the general rule.

Those exceptions are as follows: Paragraph (c) for electronic filing—“filed” means received and validated by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the filing date; paragraph (d) for 24-hour and 48-hour reports of independent expenditures—“filed” means received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following (24-hour reports) or the second day following (48-hour reports) the date on which the spending threshold is reached in accordance with 11 CFR 104.4(f); paragraph (e) for 48-hour notices of last-minute contributions—“filed” means received by the Commission or the Secretary of the Senate within 48 hours of the receipt of a “last-minute” contribution of \$1,000 or more, which can be accomplished by using a facsimile transmission or the Commission’s website; paragraph (f) for 24-hour statements of electioneering communications—“filed” means received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time of the day following the disclosure date. See 11 CFR 104.20.

Paragraphs (c) and (e) of section 100.19 remain substantially unchanged, except for new headings.

Revised paragraph (d) of section 100.19 requires that both the new 48-hour reports of independent expenditures and the 24-hour reports of independent expenditures must be received by the Commission by the filing deadline. 2 U.S.C. 434(g)(4). Because the reasons behind the filing requirements for 24-hour reports apply equally to the essentially similar 48-

hour reports, the final rules treat 48-hour reports the same as 24-hour reports with regard to permissible means of filing. The 24-hour and 48-hour reporting provisions allow reporting entities to submit their reports using facsimile machines or electronic mail, as long as they are not required under 11 CFR 104.18 to file electronically. Paragraph (d)(3) has also been revised since the NPRM to state that the Commission’s website may be used to file 24-hour and 48-hour reports of independent expenditures. Use of the Commission’s website, facsimile machines or electronic mail for such purposes or for electioneering communication statements under section 100.19(f), discussed below, does not constitute electronic filing under 11 CFR 104.18, so such use will not constitute mandatory or voluntary electronic filing under 11 CFR 104.18(a) or (b). Sending 24-hour reports by mail is not a viable option because it is unlikely these reports will be received by the Commission within 24 hours of the independent expenditures. See Independent Expenditure Reporting; Final Rules, 67 FR 12,834, at 12,835 (Mar. 20, 2002).

New paragraph (f) of section 100.19 addresses electioneering communications, which must be reported within 24 hours of the “disclosure date.” See 2 U.S.C. 434(f)(1) and 11 CFR 104.20 below. The Commission is adding new paragraph (f) to 11 CFR 100.19 to require these 24-hour statements be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date, rather than filed by that time. To assist reporting entities with meeting this deadline, the final rule specifically allows filing by facsimile machine or electronic mail in addition to any other delivery method that accomplishes Commission receipt before the conclusion of the day following the disclosure date. For the same reasons that are discussed with regard to paragraph (d) of 11 CFR 100.19, new paragraph (f) follows the timing and filing methods of 24-hour and 48-hour reports for independent expenditures.

#### *11 CFR 104.3(g) Funds for Party Office Buildings*

Before BCRA, the Act and Commission regulations provided an exception to the definition of contribution for donations to a national or State party committee that were specifically designated to defray any cost incurred for the construction or purchase of its office facility. Pre-BCRA 2 U.S.C. 431(8)(B)(viii); pre-BCRA 11

CFR 100.7(b)(12); 11 CFR 100.84. This exception is reflected in previous 11 CFR 104.3(g), which provided that funds or anything of value that were given to defray the costs of a party office facility and received by a political party committee must be reported as memo entries on Schedule A.

BCRA repealed the building fund exception to the definition of contribution for national party committees. BCRA, sec. 103(b)(1)(A), 116 Stat. at 87. Subsequent technical amendments at 2 U.S.C. 453(b) permit State and local political party committees to purchase or construct State and local party office buildings with non-Federal funds, subject to State law. BCRA, sec. 103(b)(2), 116 Stat. at 87–88. To implement these provisions of BCRA, the Commission promulgated new regulations at 11 CFR 300.12(b)(3) and (d), which eliminate this former exception for national party committees, and at 11 CFR 300.35, which provides that the source and reporting of donations used for the costs incurred by a State or local party committee for the purchase or construction of its office building are subject to State law if donated to a non-Federal account of the party committee. Prohibited and Excessive Contributions: Non-Federal Funds or Soft Money; Final Rule, 67 FR 49,064, at 49,123 and 49,127 (July 29, 2002). However, if funds or things of value are contributed to or used by the Federal account of a State or local party committee for the purchase or construction of its office building, then these amounts or items are contributions under the Act. Consequently, new paragraph (g)(1) of 11 CFR 104.3 makes it clear that any funds or things of value received by a Federal account and used for the purchase or construction of an office building, regardless of contributor-specified purposes, are contributions and are not treated differently from other funds or things of value received by a Federal account. New paragraph (g)(2) states that gifts, subscriptions, loans, advances, deposits of money, or anything of value donated to a non-Federal account of a State or local party committee that are used for the purchase or construction of its office building are not contributions subject to the reporting requirements of FECA, but are subject to applicable State law reporting requirements. New paragraph (g)(3) specifies that national party committees’ receipts used to defray the costs of the construction or purchase of its office building are contributions subject to paragraph (g)(1). Thus, the memo entries required under previous

11 CFR 104.3(g) are no longer appropriate. New section 104.3(g) should be read in conjunction with 11 CFR 300.12(b)(3) and (d), 300.13, and 300.35. The Commission received no comments on this section.

*11 CFR 104.4 Independent Expenditures by Political Committees (2 U.S.C. 434(b), (d) and (g))*

1. Introduction

Prior to BCRA, the Commission had established reporting requirements for political committees making independent expenditures in accordance with 2 U.S.C. 434(b) and (g). See pre-BCRA 11 CFR 104.4. In the NPRM, the Commission proposed to revise the rules for political committees reporting independent expenditures made less than 20 days but more than 24 hours before an election and proposed to add new rules regarding the 48-hour reports of independent expenditures during the rest of the calendar year to implement BCRA's new reporting requirements for such independent expenditures. See 2 U.S.C. 434g.

The Commission received one comment on this section in the Reporting NPRM and one, from the same commenter, when these rules were published for comment in the Coordinated and Independent Expenditures NPRM, 67 FR 60,042 (Sept. 25, 2002). The commenter agreed with the proposal that 24-hour and 48-hour reports of independent expenditures need not be filed until the communications are publicly distributed or otherwise publicly disseminated. With the exception of certain clarifying changes suggested by the commenter, the final rules mirror those proposed in the NPRM.

2. 11 CFR 104.4(a) Regularly Scheduled Reporting

Paragraph (a) of section 104.4 is unaffected, other than the addition of a new heading, minor clarifications, a grammatical correction, and an updated cross-reference.

3. 11 CFR 104.4(b) Reports of Independent Expenditures Made at Any Time Up To and Including the 20th Day Before an Election

New paragraph (b) addresses reports of independent expenditures made by a political committee at any point in the campaign up to and including the 20th day before an election.

*A. 11 CFR 104.4(b)(1) Independent Expenditures Aggregating Less Than \$10,000*

New paragraph (b)(1) addresses independent expenditures aggregating less than \$10,000 with respect to a given election during the calendar year, up to and including the 20th day before an election. This calendar-year aggregation is based on 2 U.S.C. 434(b)(4), which requires calendar-year aggregation for reports of independent expenditures by political committees. Under the new rule, political committees must report the independent expenditures on Schedule E of FEC Form 3X, filed no later than the regular reporting date under 11 CFR 104.5. The Commission interprets 2 U.S.C. 434(g), added to the Act by BCRA, to require aggregation toward the various thresholds for independent expenditure reporting to be calculated on a per-election basis within the calendar year. For example, if a political committee makes \$5,000 in independent expenditures with respect to a Senate candidate, and \$5,000 in independent expenditures with respect to a House of Representatives candidate, and both of these ads are publicly distributed before the 20th day before the primary election, that political committee is not required to file 48-hour reports, but must disclose the independent expenditures on its regularly scheduled reports. If the political committee makes \$5,000 in independent expenditures with respect to a clearly identified candidate in the primary, and an additional \$5,000 in independent expenditures with respect to the same candidate in the general election but outside the 20-day window, no 48-hour reports are required; but again the political committee must disclose the independent expenditures on its regularly scheduled reports. If, however, the political committee made \$6,000 in independent expenditures supporting a Senate candidate in the primary election, and \$4,000 in independent expenditures opposing that Senate candidate's opponent in the primary, and these communications are published in a newspaper more than twenty days before the primary, the political committee must file a 48-hour report. The Commission received no comments on the interpretation implemented by this paragraph.

*B. 11 CFR 104.4(b)(2) Independent Expenditures Aggregating \$10,000 or More*

New paragraph (b)(2) addresses independent expenditures aggregating \$10,000 or more during the calendar year up to and including the 20th day

before an election. Political committees must file these reports on Schedule E of FEC Form 3X. These reports must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Further, political committees must file an additional 48-hour report each time subsequent independent expenditures reach or exceed the \$10,000 threshold with respect to the same election to which the first report related.

4. 11 CFR 104.4(c) Reports of Independent Expenditures Made Less Than 20 Days, But More Than 24 Hours Before the Day of an Election

Revisions to renumbered paragraph (c) (which was pre-BCRA 11 CFR 104.4(b)) state that 24-hour reports must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which the \$1,000 threshold is reached during the final 20 days before the election. Further, revisions to this paragraph also indicate that additional 24-hour reports must be filed each time during the 24-hour reporting period in which subsequent independent expenditures reach or exceed the \$1,000 threshold with respect to the same election to which the previous report related.

5. 11 CFR 104.4(d) Verification

New paragraph (d) contains the report verification information previously found in pre-BCRA paragraph (b) of section 104.4. There are non-substantive grammatical changes to conform this paragraph to the rest of section 104.4.

6. 11 CFR 104.4(e) Where to File

New paragraph (e) largely restates pre-BCRA paragraph (c) of section 104.4. However, this paragraph has been reorganized since it was published in the Reporting NPRM. In the Reporting NPRM, paragraph (e)(2) would have addressed independent expenditures related to both Senate and House of Representatives candidates, and it would have omitted reference to the Secretary of Senate. In the final rule, paragraph (e)(2) addresses independent expenditures related to Senate candidates, and it retains the former requirement in 11 CFR 104.4(c) that regularly scheduled reports of independent expenditures related to Senate candidates must be filed with the Secretary of Senate. 11 CFR 104.4(e)(2)(i). However, with respect to

24-hour and 48-hour reports of independent expenditures relating to Senate candidates under BCRA, the Commission and not the Secretary of the Senate is the place of filing. 11 CFR 104.4(e)(2)(ii); see 2 U.S.C. 434(g)(3); see also the discussion of 11 CFR 105.2, below.

Proposed paragraph (e)(3) in the Reporting NPRM is being renumbered paragraph (e)(4), and it provides that if a State has obtained a waiver under 11 CFR 108.1(b), then reports of independent expenditures are not required to be filed with that State's Secretary of State.

#### 7. 11 CFR 104.4(f) Aggregating Independent Expenditures for Reporting Purposes

Paragraph (f) of 11 CFR 104.4 addresses aggregation of independent expenditures for reporting purposes. The provisions of pre-BCRA 11 CFR 109.1(f) are being moved to this section and revised to explain when and how political committees and other persons making independent expenditures must aggregate independent expenditures for purposes of determining whether 48-hour and 24-hour reports must be filed. Note that this aggregation rule applies to independent expenditures by political committees, as well as other persons; new 11 CFR 109.10(c) and (d) cross-reference this paragraph. Paragraph (f) establishes that every date on which a communication that constitutes an independent expenditure is "publicly distributed" or otherwise publicly disseminated serves as the date used to determine whether the total amount of independent expenditures has, in the aggregate, reached or exceeded the threshold reporting amounts (\$1,000 for 24-hour reports or \$10,000 for 48-hour reports). The term "publicly distributed" has the same meaning as provided in new 11 CFR 100.29(b)(3), which the Commission promulgated as part of the electioneering communications rulemaking. Electioneering Communications Final Rules, 67 FR 65,190, 65,192, 65,211 (Oct. 23, 2002). The term "publicly disseminated" refers to communications that are made public via other media, e.g., newspaper, magazines, handbills. Thus, paragraph (f) sets the same date as the starting date from which a person would have one or two days, where applicable, to file a 24-hour or 48-hour report of independent expenditures.

Congress changed the reporting requirements for independent expenditures by adding the phrase "or contracts to make" in 2 U.S.C. 434(g)(1) and (2). By doing so, BCRA ties 24-hour and 48-hour reporting of independent

expenditures to the time when a person "makes or contracts to make independent expenditures" aggregating at or above the \$1,000 and \$10,000 thresholds, respectively. Therefore, under new 11 CFR 104.4(f), each person must include in the calculation of the aggregate amount of independent expenditures, both disbursements for independent expenditures and all contracts obligating funds for disbursements for independent expenditures. Under this new rule and the timing requirements described above, when a communication that constitutes an independent expenditure is publicly distributed or publicly disseminated, the person who paid for, or who contracted to pay for, the communication is able to determine whether the communication satisfies the "express advocacy" requirement of the definition of an independent expenditure (see 11 CFR 100.16) and therefore must determine whether the disbursement for that communication constitutes an independent expenditure. A person reaching or exceeding the applicable reporting threshold is required to submit a report by 11:59 p.m. Eastern Standard/Daylight Time on the day after, for 24-hour reporting, or two days after, for 48-hour reporting, the date of the public distribution or public dissemination of that communication. Please note that under these rules, independent expenditures must be reported by political committees after a disbursement is made, or a debt reportable under 11 CFR 104.11(b) is incurred, for an independent expenditure, but no later than 11:59 p.m. on the day following the date on which the independent expenditure is first publicly distributed or otherwise publicly disseminated.

In some situations, a political committee does not make a payment or incur a reportable debt before the communication that constitutes the independent expenditure is publicly distributed or otherwise publicly disseminated. If the communication is both publicly distributed or otherwise publicly disseminated and paid for in the same reporting period, then the political committee must report the independent expenditure on Schedule E for that reporting period. If the communication is aired in one reporting period (e.g., during August for a monthly filer) and payment is made in a later reporting period (e.g., during September), then the political committee must report the independent expenditure as a memo entry on Schedule E on its August report if the \$10,000 threshold has been exceeded

and on Schedule D if it is a reportable debt under 11 CFR 104.11. The September report should show a payment on Schedule E and the same payment on Schedule D, if applicable.

In other situations, however, a political committee may pay the production and distribution costs associated with an independent expenditure in one reporting period, but not publicly distribute or otherwise publicly disseminate it until a later reporting period. In this case, the political committee must report the payment as a disbursement on Schedule B for operating expenditures. When, in a subsequent reporting period, the communication is publicly distributed or otherwise publicly disseminated, the political committee must file a Schedule E for the independent expenditure referencing the earlier Schedule B transaction. The political committee must also report the disbursement for the independent expenditure as a negative entry on Schedule B so the total disbursements are not inflated. Alternatively, if the political committee wishes to disclose the independent expenditure before the communication is publicly disseminated, it could report the independent expenditure on Schedule E for the reporting period in which the disbursement is made, with no further reporting obligation except for the 48-hour report if the total amount of disbursements for independent expenditures equals or exceeds \$10,000 on the day the communication is publicly distributed or otherwise publicly disseminated.

Obligations incurred, but not yet paid that are reportable debts, must be reported on Schedule D. For independent expenditures once the \$10,000 threshold is exceeded, political committees must also report memo entries on Schedule E. When, in a subsequent reporting period, the communication is publicly distributed or otherwise publicly disseminated, the political committee must file a Schedule E referencing the debt on Schedule D. The political committee must continue to report the debt on Schedule D and any payment on the debt on Schedules D and E, until the debt is extinguished.

The Commission received one comment supporting this proposal to base reporting of independent expenditures on the date of public distribution or public dissemination, rather than on the date a contract is executed. The policy reasons for adopting this reading of BCRA are the same as those set forth in the Explanation and Justification below for the reporting of electioneering communications.

## 8. Additional Requirements in the Internal Revenue Code

The Commission received one comment from the Internal Revenue Service ("IRS") on the coordinated and independent expenditure NPRM, which noted generally that even though some entities that are political organizations within the meaning of section 527 of the Internal Revenue Code may not be obliged to report contributions or expenditures to the Commission, these entities may still be required to report to the IRS. The IRS offered the following explanation, which the Commission is including here to provide additional guidance regarding the potential overlap between the Internal Revenue Code and the Commission's regulations. Section 527(j) of the Internal Revenue Code requires the reporting on IRS Form 8872 of certain contributions received and expenditures made by a tax-exempt political organization unless (i) the organization reports under the FECA as a political committee; (ii) the organization is a State or local committee of a political party or political committee of a State or local candidate; (iii) the organization is a qualified State or local political organization within the meaning of section 527(e)(5) of the Internal Revenue Code; (iv) the organization reasonably anticipates that it will not have gross receipts of \$25,000 or more for any taxable year; (v) the organization is otherwise exempt from Federal income taxation under section 501(a) of the Internal Revenue Code because it is described in section 501(c) of the Internal Revenue Code; or (vi) the expenditure made is treated as an independent expenditure under the FECA. In certain situations this could require a tax-exempt political organization making coordinated expenditures to report such expenditures on IRS Form 8872 even though that organization would not be required to report such items to the Commission. Moreover, a tax-exempt political organization that is required to report one or more independent expenditures to the Commission might also have to report certain contributions received and other expenditures to the IRS.

### 11 CFR 104.5 Filing Dates (2 U.S.C. 434(a)(2))

Section 104.5 sets forth filing dates for all reporting entities, including political committees. The NPRM proposed revisions to the rules for 24-hour reports of independent expenditures and proposed adding provisions for 24-hour reports of electioneering

communications and 48-hour reports of independent expenditures. The final rules in section 104.5 track the proposed rules, with the changes described below.

Section 104.5(a) is being revised to set forth the new reporting schedule for the principal campaign committees of House of Representatives and Senate candidates. Prior to BCRA, the principal campaign committees of these candidates were allowed to file semi-annually in non-election years. After November 5, 2002, excluding reports for 2002 runoff elections, principal campaign committees of House of Representatives and Senate candidates must file quarterly reports in non-election years, as well as in the election year. 2 U.S.C. 434(a)(2)(B). Revised paragraphs (a) and (a)(1) of section 104.5 now state that these committees must file quarterly reports. Like other quarterly reports, these must be complete as of March 31, June 30, September 30, and December 31, and must be filed by April 15, July 15, October 15, and January 31 of the following year, respectively. Paragraph (a)(2) of 11 CFR 104.5 sets forth the requirements for pre-election and post-general election reports in the election year and is identical to paragraphs (a)(1)(i) and (ii) of pre-BCRA 11 CFR 104.5. The rules regarding semi-annual reporting from pre-BCRA section 104.5(a) are being deleted. Please note that these new reporting dates do not affect the principal campaign committees or other authorized committees of Presidential candidates.

Revisions to paragraph (c) state that while unauthorized political committees may choose to file quarterly or monthly, a national committee of a political party must report monthly under new 11 CFR 104.5(c)(4), which is discussed below. Consequently, national party committees are no longer permitted to change their filing frequency. Paragraphs (c) and (c)(4) have been revised since the NPRM to consolidate the references to the national party committees, including the national congressional campaign committees.

Paragraph (c)(4) of 11 CFR 104.5 is a new provision implementing the BCRA requirement that all national political party committees must report on a monthly basis. 2 U.S.C. 434(a)(4)(B). Previously, national party committees were allowed to file quarterly in the election year and semi-annually in the non-election years. Under the changes to the Act made by BCRA, national political party committees must file monthly, and must file pre-general election and post-general election reports. BCRA's changes to FECA in this

regard may be intended to remove any doubt as to whether national political party committees that file quarterly must file these pre-election reports if they do not make any contributions or expenditures on behalf of candidates in these elections during pre-election reporting periods. These rules implement BCRA's amendment. No commenters addressed this topic.

The Commission sought, but received no comments on whether the national Congressional campaign committees of the political parties should be included in this new monthly filing requirement for national political party committees. The final rules require the Congressional campaign committees of national parties to file monthly for several reasons. First, Congressional campaign committees are treated as committees of a national political party elsewhere in the Act and the regulations. For example, 11 CFR 110.1 specifically includes the Congressional campaign committees as committees that are "established and maintained by a national political party." Further, the Supreme Court in *FEC v. Democratic Senate Campaign Committee*, 454 U.S. 27, 39 (1981), stated that the National Republican Senatorial Committee is part of the Republican Party organization. By analogy, the other Congressional campaign committees are also a part of their national party organizations. Moreover, the Commission notes that BCRA included a committee of a national political party in this monthly filing requirement, rather than the committee of a national political party. The wording seems to foreclose the argument that Congress intended to include only the national committees of the political parties in the monthly filing requirement.

Paragraph (g) of 11 CFR 104.5 moves the pre-BCRA contents of paragraph (g) to new paragraph (g)(2) with revisions, and adds a new paragraph (g)(1), which requires that 48-hour reports of independent expenditures must be received by the Commission no later than 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. The Commission received one comment on paragraph (g) of section 104.5, which urged the Commission to clarify that the filing requirements for subsequent reports of independent expenditures (24-hour and 48-hour reports) would be triggered by the public dissemination or distribution of the communication (as with the initial reports). Note that the term "publicly distributed" refers to communications distributed by radio or

television (*see* 11 CFR 100.29(b)(3)) and the term “publicly disseminated” refers to communications that are made public via other media, *e.g.*, newspaper, magazines, handbills. New paragraph (g)(4) explains when communications that are mailed are considered to be “publicly distributed.”

New paragraph (j) of section 104.5 addresses the filing dates for electioneering communications. Specifically, it provides that the 24-hour statements must be received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date.

#### 11 CFR 104.19 [Reserved]

Section 104.19 of 11 CFR is added and reserved for future use.

#### 11 CFR 104.20 Reporting Electioneering Communications

##### 1. Introduction

In the Explanation and Justification for the Electioneering Communications Final Rules, the Commission stated it would revise the proposed rules on reporting electioneering communications and re-propose the rules as part of this rulemaking.<sup>1</sup> 67 FR at 65,209. Consequently, the NPRM for this reporting rulemaking included the revised proposed rules for the reporting requirements for electioneering communications at proposed 11 CFR 104.20. The following explanation and justification for 11 CFR 104.20 discusses comments resulting from the Reporting NPRM and the Electioneering Communications NPRM. Although the Electioneering Communications NPRM would have designated the reporting of electioneering communications as section 104.19, the proposed rules in the Reporting NPRM designated reporting of electioneering communications as proposed section 104.20. In the following explanation and justification, citations to 104.19 refer to the original proposed rules in the Electioneering Communications NPRM, and citations to 104.20 refer to the proposed rules in the Reporting NPRM and the final rules.

##### 2. 11 CFR 104.20(a) Definitions

New section 104.20(a) includes the definitions for the relevant terms that are used throughout new section 104.20. These terms are: (1) Disclosure date; (2) direct costs of producing or airing electioneering communications; (3) persons sharing or exercising direction or control; (4) identification; and (5) publicly distributed.

##### A. 11 CFR 104.20(a)(1) Definition of “Disclosure Date”

BCRA requires persons who make electioneering communications that cost more than \$10,000 to file disclosure statements with the Commission within 24 hours of the disclosure date. 2 U.S.C. 434(f)(1). In the Electioneering Communications NPRM, proposed section 104.19(b) would have defined “disclosure date” as “the first date by which a person has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing electioneering communications aggregating in excess of \$10,000.” 67 FR at 51,145. The Electioneering Communications NPRM, however, also sought comment on whether the disclosure date should be the date on which the electioneering communication aired. Thus, under this proposal, an organization could make disbursements or enter into a contract to make disbursements that exceed \$10,000, but would not be required to disclose the disbursements or contract until the electioneering communication is aired. Although BCRA uses the term “airing,” the Commission has determined that “publicly distributed” more accurately encompasses how electioneering communications are disseminated to the public, including the airing of these communications. *See* below for discussion of the definition of “publicly distributed.”

All of the commenters who addressed this issue disagreed with the proposed rule in the Electioneering Communications NPRM and advocated adopting a final rule that would define “disclosure date” as the date of the public distribution of the electioneering communication. They argued that there is no electioneering communication, and therefore no reporting requirement, until the communication is actually publicly distributed.

Taking into consideration the comments described above, proposed section 104.20(a)(1) in the Reporting NPRM would have defined “disclosure date” as the date on which an electioneering communication is publicly distributed where there have been disbursements, or executed contracts for disbursements, for the direct costs of producing or airing an electioneering communication aggregating in excess of \$10,000. The Commission received one comment on the revised proposed definition of “disclosure date” at section 104.20(a)(1), which supported this approach. The final rule in section 104.20(a)(1) is similar to the proposed

rule. This date reflects the Commission’s concerns that there are legal and practical issues associated with compelling disclosure of potential electioneering communications before they are finalized and publicly distributed, and premature disclosure may require reporting entities to divulge confidential strategic and political information about their possible future activities.

Consequently, under new section 104.20(a)(1)(i), “disclosure date” means the first time in a calendar year that an electioneering communication is publicly distributed where the maker of the electioneering communications has also surpassed the \$10,000 disbursement threshold. Counting toward the threshold are disbursements made at any time for the direct costs of producing or airing either that communication or any other previously unreported electioneering communication. Thus, even disbursements for the direct costs of producing or airing the electioneering communication made in calendar years prior to the public distribution of the electioneering communication are aggregated toward the \$10,000 threshold. Conversely, any costs already reported for earlier electioneering communications are not aggregated toward the \$10,000 threshold. After the first disclosure date, subsequent disclosure dates occur in the same calendar year in which an electioneering communication is publicly distributed, if that person has made additional disbursements for the direct costs of producing or airing an electioneering communication that, in the aggregate, exceed \$10,000. 11 CFR 104.20(a)(1)(ii). The following example illustrates how the definition of “disclosure date” operates. From November of one year to March of the next year, Person X spends \$25,000 in direct costs to produce and air an electioneering communication, and the communication is publicly distributed on March 15. Thus, March 15 is the initial disclosure date under 11 CFR 104.20(a)(1)(i). Person X then pays another \$5000 to publicly distribute the same communication on April 1. April 1 is not a disclosure date because the subsequent disbursement does not exceed \$10,000. On April 15, Person X publicly distributes a different electioneering communication for which she spent \$7000 in direct costs to produce and air. April 15 is a disclosure date under 11 CFR 104.20(a)(1)(ii) because that is the date on which the communication was publicly distributed and the aggregation of the

<sup>1</sup> The original proposed rules were part of the Electioneering Communications NPRM. *See* 67 FR at 51,145.

disbursements for the direct costs after the initial disclosure date (\$5000 plus \$7000) exceeds \$10,000.

*B. 11 CFR 104.20(a)(2) Definition of "Direct Costs of Producing or Airing Electioneering Communications"*

In the Electioneering Communications NPRM, proposed section 104.19(a) would have required every person who makes a disbursement, or executes a contract, for the direct costs of producing or airing electioneering communications that aggregate in excess of \$10,000 during a calendar year, to file a statement with the Commission. Electioneering Communications NPRM, 67 FR at 51,145–46. Furthermore, proposed section 104.19(a)(2) would have included a non-exhaustive list of what constitutes direct costs of electioneering communications. *Id.* The Commission sought comment on two issues relating to this proposed requirement. The first was whether the list in proposed section 104.19(a)(2) was adequate and whether the list should be exhaustive. The second issue was whether the direct costs of producing an electioneering communication and the direct costs of airing it should be aggregated separately or together to determine whether such costs exceed \$10,000. The second issue is discussed in further detail in the explanation and justification for new section 104.20(b).

The commenters on the Electioneering Communications NPRM were split on the issue of whether the list of direct costs in proposed section 104.19(a)(2) should be exhaustive or non-exhaustive. One commenter who supported an exhaustive list argued that it is clear what is involved in producing a communication, and the proposed rule adequately addresses those costs. Another commenter recommended a non-exhaustive list so that the Commission could retain flexibility to identify other costs associated with producing and airing communications not listed in the proposed rules.

In order to provide clear guidance on this issue, proposed 11 CFR 104.20(a)(2) in the Reporting NPRM included an exhaustive list of direct costs associated with producing or airing an electioneering communication. The Commission sought comments on whether the proposed definition should include any other direct costs associated with producing or airing electioneering communications. In particular, the Commission sought comment on what, if any, additional in-house production costs should be considered direct costs.

The final rule in new section 104.20(a)(2) is similar to the proposed rule in the Reporting NPRM, and

defines "direct costs of producing or airing" with an exhaustive list. Paragraph (a)(2)(i) has been clarified to include "costs charged by a vendor" to show that the nature of service, not the nature of the vendor providing the service, controls whether its cost should be included. (The NPRM version listed "costs charged by a production company," which unduly focused on the type of company providing the service.) Paragraph (a)(2)(ii) has been revised to include the cost of studio time and material costs, which are in-house out-of-pocket production costs. The Commission understands "direct cost of producing or airing electioneering communications" as used in 2 U.S.C. 434(f)(4)(A) and (B) to include all such out-of-pocket costs and to not distinguish between those provided by vendors or those provided by in-house resources.

One commenter addressed the issue of what should be included in an exhaustive list. The commenter supported an exhaustive list and agreed with the items on the list in proposed section 104.20(a)(2). The commenter also suggested that the Commission make clear in the final rule that the definition does not "include planning or preparatory costs such as polling and focus groups, or in-house costs such as staff compensation and other overhead."

Paragraph (a)(2)'s list of vendor production costs, in-house production costs, and airtime costs is exhaustive. Only costs that fit within these categories are included. Illustrative examples of costs charged by a vendor are also included in the regulation, and these examples are not exhaustive. Paragraph (a)(2)(ii) makes clear that part of the costs addressed by the commenter, which are described as "in-house costs such as staff compensation and other overhead," are not among the enumerated out-of-pocket costs, so they will not be included in paragraph (a)(2)(ii). The other of the commenter's examples of polling and focus groups are not production costs as they are too attenuated from the resulting communication to be considered "direct costs of producing or airing an electioneering communication" under 2 U.S.C. 434(f)(4).

The final rule requires statements of electioneering communications to be filed when the direct costs of producing or airing electioneering communications exceed \$10,000. In both the Reporting NPRM and the Electioneering Communications NPRM, the Commission sought comment on how to aggregate the direct costs of producing or airing an electioneering communication to determine whether

the \$10,000 threshold has been exceeded. The commenters on the Electioneering Communications NPRM disagreed on this issue. Some commenters argued that BCRA should be read to require that production costs should be aggregated separately for the airtime costs. Under this interpretation, if it costs a person \$7,000 to produce the electioneering communication and \$7,000 to air it, the threshold is not met because neither the direct costs of producing or airing the electioneering communication exceeded \$10,000. In contrast, other commenters argued that BCRA mandates that the direct costs of producing and airing the electioneering communication be aggregated. Under this approach, the example above would result in the \$10,000 threshold being met because the direct costs of producing and airing are \$14,000.

The Commission has decided that it is appropriate to require that the costs of producing and the costs of airing be added together, rather than counted separately, to determine whether the threshold has been met. Thus, when the direct costs of producing or airing an electioneering communication exceed \$10,000 when combined, the person who makes the electioneering communication would be required to file a statement with the Commission when the electioneering communication is publicly distributed. Additionally, the Commission agrees with a commenter who noted that, as a practical matter, for most electioneering communications, the \$10,000 threshold will be exceeded, regardless of whether the production costs and the airing costs are aggregated separately or together.

*C. 11 CFR 104.20(a)(3) Definition of "Persons Sharing or Exercising Direction or Control"*

The Electioneering Communications NPRM included two proposed alternatives, identified as Alternative 4–A and Alternative 4–B, to implement the BCRA requirement to disclose "any person sharing or exercising direction or control over the activities" of the person making the disbursement for electioneering communications. See 2 U.S.C. 434(f)(2)(A). Many of the commenters asserted that both alternatives were vague and could encompass a large number of people, especially for electioneering communications made by membership organizations. Some of the commenters were also concerned that disclosing this information may reveal sensitive or confidential information and the decision-making processes of organizations, especially non-profit organizations, thereby placing them at a



competitive disadvantage. For these reasons, these commenters argued that the Commission should require limited, if any, disclosure of persons who share or exercise direction or control over the person who makes disbursements for electioneering communications or the activities involved in making electioneering communications.

In contrast, several commenters, including the Congressional sponsors of BCRA, disagreed with both alternatives because in their view neither would disclose sufficiently the information required by BCRA. *See* 2 U.S.C. 434(f)(2)(A). They asserted that BCRA requires disclosure of not only those who have direction or control over the electioneering communications, but also those who have direction or control over the organization that makes the electioneering communications.

While the Commission recognizes the concerns of those who objected to disclosure of the decision-making process of their organizations, BCRA requires persons who make electioneering communications to disclose those who share or exercise direction or control over the person making the disbursement for electioneering communications. 2 U.S.C. 434(f)(2)(A). Because neither Alternative 4-A nor Alternative 4-B in the Electioneering Communications NPRM appeared to encompass the disclosure required by BCRA, proposed section 104.20(c)(2) in the Reporting NPRM did not incorporate either of the two alternatives. Instead, proposed paragraph (c)(2) followed the wording of 2 U.S.C. 434(f)(2)(A).

To provide further guidance on proposed section 104.20(c)(2), the proposed rules included a definition of "sharing or exercising direction or control." Because it appears that the term "direction or control" in 2 U.S.C. 434(f)(2)(A) refers to the management or decision-making process of an organization, including a qualified nonprofit corporation ("QNC"), proposed section 104.20(a)(3) would have defined "sharing or exercising direction or control" to mean exercising authority or responsibility for policy formulation, day-to-day management, obligation of funds, or hiring or firing employees.

The Commission also sought comment on an alternative definition of "sharing or exercising direction or control" that was not in the proposed rule. Reporting NPRM, 67 FR at 64,560. Under the alternative definition described in the NPRM, the term would mean the officers, directors, partners, or any other individuals who have the authority to bind the organization,

entity, or person making the disbursement for electioneering communication. With this alternative the Commission sought a more objective, bright-line definition of "direction or control" that focused the definition on those persons who have the authority to act on behalf of the organization. One commenter addressed this issue. The commenter supported the alternative definition arguing that proposed section 104.20(a)(3) was overly broad and that the alternative definition better captured the requirements of BCRA. The commenter also suggested that the alternative definition be further narrowed to include only officers, directors, and partners.

The Commission is adopting this bright-line alternative approach described in the NPRM, with the clarifications described below, as new section 104.20(a)(3) because it properly encompasses BCRA's clear requirement to identify persons who exercise direction or control over the person making the electioneering communication. The Commission prefers the clarity of the bright-line approach to what may be the broader coverage of the NPRM's proposed rule text in order to avoid the vagueness involved in describing the functions that the rule intended to capture. New section 104.20(a)(3) defines "persons sharing or exercising direction or control" with a list of organizational positions that are readily known and verifiable: officer, director, executive director, partner, and in the case of unincorporated organizations, owner. In addition to this list, new section 104.20(a)(3) includes the "equivalent" of executive director. This term is intended to include the senior staff position in an organization, whatever its title, that functions as an executive director does. Thus, the Commission believes that the positions named or described in new section 104.20(a)(3) provide sufficient scope to capture responsible persons without sweeping too broadly.

#### *D. 11 CFR 104.20(a)(4) Definition of "Identification"*

New section 104.20(a)(4) incorporates the definition of the term "identification" in 11 CFR 100.12. This definition is identical to the proposed definition. No commenter discussed this definition.

#### *E. 101 CFR 104.20(a)(5) Definition of "Publicly Distributed"*

In the Electioneering Communications Final Rules, the Commission defines "publicly distributed" to mean "aired,

broadcast, cablecast, or otherwise disseminated through the facilities of a television station, radio station, cable television system, or satellite system." 11 CFR 100.29(b)(6). Therefore, new section 104.20(a)(5) adopts the definition of "publicly distributed" in 11 CFR 100.29(b)(6). The term "publicly distributed" is used throughout the final rules instead of "airing," except in the definition of "direct costs of producing or airing."

#### *3. 11 CFR 104.20(b) Who Must Report and When*

New section 104.20(b) details who must report electioneering communications to the Commission and when those statements are due. The final rule states that every person who makes a disbursement or executes a contract to make a disbursement for electioneering communications that exceeds \$10,000 in direct costs must file a statement with the Commission by the end of the day following the disclosure date. The various elements of this final rule are discussed in further detail below.

The definitions of "electioneering communication" in 11 CFR 100.29 and "disclosure date" in 11 CFR 104.20(a)(1) must be satisfied in order for an electioneering communication reporting obligation to arise. Thus, for example, because expenditures are exempted from the definition of "electioneering communication" by 2 U.S.C. 434(f)(3)(B)(ii) and 11 CFR 100.29(c)(3), political committees that pay for communications with funds reportable as expenditures do not report these payments under 11 CFR 104.20. Similarly, a "disclosure date" must have occurred, so the provisions of 11 CFR 104.20(a)(1)(i) or (ii) must have been satisfied.

BCRA requires that statements of electioneering communications be filed within 24 hours of the disclosure date, that is the date on which an electioneering communication is publicly distributed, assuming the \$10,000 threshold has been exceeded. 11 CFR 104.20(a)(1). One witness at the August 28, 2002 public hearing on electioneering communications acknowledged that in some cases it may be difficult to ascertain when an electioneering communication is publicly distributed for purposes of triggering the 24-hour reporting period. This is because the contract may not specify a precise time that the communication will be publicly distributed or because in some instances the broadcaster does not air the communication during the block of time specified in the contract, although the



day of initial broadcast will generally be known. To address the concern that a person may not know the exact time an electioneering communication is publicly distributed during the day that it is scheduled to air, the Commission is interpreting the 24-hour period in which to report the electioneering communication as starting at the end of the day in which the communication is publicly distributed. Therefore, new section 104.20(b) requires reporting of an electioneering communication by the end of the following day. The Commission did not receive any comments on this rule.

The last sentence of proposed section 104.20(b) stated that “[p]ersons *other than political committees* must file these 24-hour statements on FEC Form 9” (emphasis added). One commenter correctly noted that the highlighted language may be misleading because the Commission had stated in the Electioneering Communications Final Rules that, by operation of the expenditure and independent expenditure exemption from the definition of “electioneering communications,” political committees do not make disbursements for electioneering communications. See 67 FR at 65,197–98. Therefore, the final rule includes a sentence that makes clear that political committees report communications that are described in 11 CFR 100.29(a) as expenditures or independent expenditures and not as an electioneering communication. For those persons who are required to report electioneering communications, new section 104.20(b) requires all the information specified in new section 104.20(c) be reported on FEC Form 9.

#### 4. 11 CFR 104.20(c) Contents of Statements

New section 104.20(c) lists eight items that must be included in the statements of electioneering communications that must be filed with the Commission. No commenters addressed the introductory part of paragraph (c). The final rule slightly rewords the proposed rule to clarify that the information to be reported on FEC Form 9 pertains to electioneering communications.

##### A. 11 CFR 104.20(c)(1) Identification of the Person Making the Disbursements

New section 104.20(c)(1) requires identification of the persons who make a disbursement, or execute a contract to make a disbursement, for an electioneering communication. Under 11 CFR 100.12, as incorporated by new section 104.20(a)(4), “identification” means an individual’s first name, middle name or initial, if available, and

last name; mailing address; occupation; and the name of his or her employer; and, if the person is not an individual, the person’s full name and address. New section 104.20(c)(1) additionally requires a person that is not an individual to list its principal place of business. This rule implements the requirements in BCRA at 2 U.S.C. 434(f)(2)(A) and (B). The Commission did not receive any comments concerning this paragraph.

##### B. 11 CFR 104.20(c)(2) Identification of Persons Sharing or Exercising Direction or Control

As mandated by BCRA at 2 U.S.C. 434(f)(2)(A), new section 104.20(c)(2) requires identification of persons sharing or exercising direction or control over persons described in paragraph (c)(1), disclosing the same type of information. While one commenter addressed the definition of “sharing or exercising direction or control,” see above, no commenter specifically discussed this rule.

##### C. 11 CFR 104.20(c)(3) Identification of the Custodian of the Books and Accounts

BCRA at 2 U.S.C. 434(f)(2)(A) requires disclosure of the person who is the custodian of the books and accounts from which electioneering communication disbursements are made. New section 104.20(c)(3) implements this new provision. The information that must be disclosed about that person under BCRA and the new rules is the same as the information that must be disclosed about the persons described in paragraphs (c)(1) and (c)(2), except for paragraph (c)(1)’s requirement that a person that is not an individual state its principal place of business. The Commission did not receive any comments on this rule.

##### D. 11 CFR 104.20(c)(4) Disclosure of the Amount of Each Disbursement

BCRA also requires disclosure of disbursements of more than \$200 during the period covered by the statement, the date the disbursement was made, and the identification of the person who receives the disbursement. 2 U.S.C. 434(f)(2)(C). The final rule in new section 104.20(c)(4) follows the wording of the proposed rule without change in implementing this BCRA provision. No commenter discussed this provision in the proposed rules.

##### E. 11 CFR 104.20(c)(5) Disclosure of Candidates and Elections

Under 2 U.S.C. 434(f)(2)(D), the elections to which electioneering communications pertain, as well as the

names of all clearly identified candidates referred to in the electioneering communications, must be disclosed. The Electioneering Communications NPRM provided two alternatives to proposed 11 CFR 104.19(b)(5), identified as Alternative 5–A and Alternative 5–B, which would have implemented this statutory provision. 67 FR 51,146. Both alternatives would have required disclosure of the elections and all clearly identified candidates who are referred to in the electioneering communication, but would have contained different wording. Commenters preferred the wording of Alternative 5–B because it was easier to read and was more consistent with 2 U.S.C. 434(f)(2)(D). Because Alternative 5–B arguably was more consistent with the definition of “disclosure date,” see above, leaving no doubt as to which clearly identified candidates appear in an electioneering communication, proposed section 104.20(c)(5) in the Reporting NPRM incorporated the wording of Alternative 5–B. As such, the final rule remains unchanged from the proposed rule. No comments were received in response to the Reporting NPRM concerning proposed section 104.20(c)(5).

##### F. 11 CFR 104.20(c)(6) Disclosure Date

New section 104.20(c)(6) requires that electioneering communications statements list the disclosure date, as defined in section 104.20(a)(1), of each electioneering communication. While BCRA does not specifically require the disclosure date to be reported, this information is necessary as it is the triggering mechanism for filing the statement. This is similar to requiring the disclosure of the date an independent expenditure aggregating \$1,000 or more is made during the 24-hour reporting period. The Commission did not receive any comments on this requirement.

##### G. 11 CFR 104.20(c)(7) Disclosure of Donors to a Segregated Bank Account

BCRA requires persons who make disbursements for electioneering communications exclusively from segregated bank accounts to disclose the names and addresses of contributors who contribute an aggregate of \$1,000 or more to that segregated account. 2 U.S.C. 434(f)(2)(E). In the Electioneering Communications NPRM, the Commission sought comment on whether amounts given to persons who make disbursements for electioneering communications are contributions subject to the limitations, prohibitions, and reporting requirements of the Act.

In the new reporting provisions for electioneering communications in BCRA, the statute uses the terms “contributor” and “contributed,” “but it does not use the term “contribution.” 2 U.S.C. 434(f)(2)(E) and (F). BCRA uses the more general “disbursement” more frequently. 2 U.S.C. 434(f)(2)(A), (B), (C), (E), and (F). Nor does BCRA amend the definition of “contribution.” See 2 U.S.C. 431(8). Additionally, the Commission concluded that political committees do not make disbursements for electioneering communications by operation of the expenditure and independent expenditure exemptions. Based on this analysis, the Commission proposed to treat funds given to persons who make electioneering communications as “donations.” See also Reporting NPRM, 67 FR at 64,560–61. One commenter agreed with the Commission’s approach and none opposed it. At this point, the Commission concludes that its analysis of the statutory wording is correct. Accordingly, the final rules treat these funds as “donations” and not as “contributions.”

In reading 2 U.S.C. 434(f)(2)(E) and (F) together with 2 U.S.C. 441b(c)(3)(B), the Commission stated in the Electioneering Communications NPRM that the disclosure requirements for segregated bank accounts appear to apply only to qualified nonprofit corporations (QNCs) organized under 26 U.S.C. 501(c)(4). See 67 FR at 51,143 and 11 CFR 114.10. Therefore, proposed 11 CFR 104.19(b)(6) would have permitted only QNCs to use segregated bank accounts to limit disclosure of their donors to only those who donate \$1000 or more to that account. Commenters on the Electioneering Communications NPRM urged that this option be made available to all persons who make electioneering communications, and not just QNCs. Because the Commission agreed with this suggestion, proposed 104.20(c)(7) in the Reporting NPRM made this option available to all persons.

The Commission continues to agree with this approach. Accordingly, new section 104.20(c)(7) in the final rules allows all persons who establish a separate bank account consisting of funds provided solely by individuals who are United States citizens, nationals, or permanent residents to limit their reporting of the identities of their donors of \$1,000 or more to those donors who have given directly to that bank account, as long as only funds from the separate bank account are used to pay for electioneering communications. Please note that the final rules at 11 CFR 114.14(d)(2), as published previously in the

Electioneering Communications Final Rules, provide such persons that are not QNCs with the option of establishing a segregated bank account similar to that allowed to QNCs. 67 FR 65,212.

Although no commenter addressed this provision specifically, one joint comment questioned the requirement that QNCs disclose their donors. The joint commenter made constitutional arguments and cited *FEC v. Massachusetts Citizens for Life*, 479 U.S. 238 (1986) (“*MCFL*”) and other cases in support of the assertions that disclosure of its donors imposes a burden on its free speech rights. They also stated that the segregated bank account option creates an administrative burden and would still require disclosure of some of their donors. The joint comment suggested that, with regard to QNCs, the Commission impose the same requirements for disclosure of electioneering communication as it does for independent expenditures arguing that legislative history indicates that Congress intended them to be treated similarly.

In some respects, the reporting rules applicable to QNCs’ electioneering communications require less disclosure than those applicable to QNCs’ independent expenditures. Electioneering communication rules require disclosure of donors of \$1,000 or more, while independent expenditure rules require disclosure of contributors of more than \$200. Compare new 11 CFR 104.20(c)(7) or (8) with new 11 CFR 109.10(e)(1)(vi). Additionally, electioneering communications are not subject to disclosure until disbursements related to them exceed \$10,000, and the similar threshold for independent expenditures is \$250. See 11 CFR 104.20(a)(1). While reporting of independent expenditure contributors is limited to those who contributed specifically for independent expenditures, 11 CFR 109.10(e)(1)(vi), QNCs can also reduce their reporting obligations by using separate bank accounts pursuant to 11 CFR 104.20(c)(7).

More generally, a commenter on the Electioneering Communications NPRM and the joint comment on the Reporting NPRM argued that the members of the organizations they represent could be subject to negative consequences if their names are disclosed in connection with an electioneering communication. The FECA provides for an advisory opinion process concerning the application of any of the statutes within the Commission’s jurisdiction or any regulations promulgated by the Commission, and such groups could also seek an advisory opinion from the

Commission to determine if the groups would be entitled to an exemption from disclosure that would be analogous to the exemption provided to the Socialist Workers Party. See Advisory Opinions 1990–13 and 1996–46 (both of which allowed the Socialist Workers Party to withhold the identities of its contributors and persons to whom it had disbursed funds because of a reasonable probability that the compelled disclosure of the party’s contributors’ names would subject them to threats, harassment, or reprisals from either Government officials or private parties). BCRA’s legislative history shows that some in Congress recognized the need for limited exceptions in these circumstances. See 148 Cong. Rec. S2136 (daily ed. Mar. 20, 2002) (remarks of Sen. Snowe). The Commission disagrees with the joint commenters’ assertion that the standard for obtaining a waiver is too high, given the significant disclosure interests Congress sought to protect in the political arena.

Nevertheless, *MCFL* status does not exempt a corporation from the independent expenditure reporting requirements. It only exempts the *MCFL* corporation’s use of its own funds from the prohibitions of 2 U.S.C. 441b. The Supreme Court in *MCFL* specifically noted the reporting requirements of 2 U.S.C. 434(c) and stated that “these reporting obligations provide precisely the information necessary to monitor *MCFL*’s independent spending activity and its receipt of contributions.” *MCFL*, 479 U.S. at 262. Thus, the Commission’s extension of the exemption of *MCFL* does not apply to reporting requirements for electioneering communications. Therefore, the Commission declines to create separate electioneering communication reporting requirements for QNCs.

#### *H. 11 CFR 104.20(c)(8) Disclosure of Donors When Not Using a Segregated Bank Account*

The Electioneering Communications NPRM explaining proposed section 104.19(b)(7) clearly stated that all persons who make electioneering communications, including QNCs that do not use segregated bank accounts, would be required to disclose their contributors who contribute an aggregate of \$1,000 or more during the prescribed time period. 67 FR 51,143. Nevertheless, some commenters interpreted proposed section 104.19(b)(7) to apply only to QNCs and objected to limiting the disclosure requirements to only QNCs. They argued that BCRA does not limit the requirements of 2 U.S.C. 434(f)(2)(E) and (F) to just QNCs. Consequently, they

recommended that all persons who make electioneering communications should be required to disclose their contributors under proposed section 104.19(b)(7). Additionally, some commenters expressed concern as to the requirement that organizations would be required to disclose their donors because donors may become inhibited from making donations aggregating \$1,000 or more.

In order to eliminate the confusion, proposed 11 CFR 104.20(c)(8) in the Reporting NPRM differed from proposed section 104.19(b)(7) in the Electioneering Communications NPRM in that it removed the reference to QNCs. Thus, proposed section 104.20(c)(8) sought to clarify that all persons who make electioneering communications would be required to disclose their donors who donate \$1,000 or more in the aggregate during the prescribed period, if they do not use segregated bank accounts. Other than the commenters that objected to disclosure of their donors, discussed above, the Commission did not receive any comments on this requirement. Because BCRA at 2 U.S.C. 434(f)(2)(F) specifically mandates disclosure of this information, the final rule at 11 CFR 104.20(c)(8) is identical to the proposed rule in the Reporting NPRM.

#### *I. Disclosure Requirements for Individuals Who Make Electioneering Communications*

The Commission also sought comments on how the proposed rules would apply to individuals making electioneering communications. The Commission did not receive any comments on this topic. The Commission concludes that, in instances where an individual makes a disbursement for an electioneering communication, 11 CFR 104.20(c)(1) requires disclosure of the identification of the individual, which means his or her name, address, occupation, and employer.

New 11 CFR 104.20(c)(2) requires the identification of any person sharing or exercising direction or control over the activities of the person who made the disbursement, or who executed a contract to make a disbursement, which implements 2 U.S.C. 434(f)(2)(A). The term "direction or control" in 2 U.S.C. 434(f)(2)(A) refers to the management or decision-making process of an organization, as the Commission has noted. See Explanation and Justification for 11 CFR 104.20(c)(2), above, and Reporting NPRM, 67 FR at 64,560. Therefore, the Commission defines "sharing or exercising direction or control" in new 11 CFR 104.20(a)(3)

with a four-part test applicable only to organizations and entities. Individuals are required to disclose any person sharing or exercising direction or control over their electioneering communication activities.

For purposes of new 11 CFR 104.20(c)(7) and (8), individuals are required to disclose donations received, which does not include salary, wages, or other compensation for employment. Donations required to be disclosed do include, however, gifts of \$1,000 or more from any source. The remainder of 11 CFR 104.20(c) applies to individuals in the same manner it applies to any other persons making electioneering communications. See 11 CFR 104.20(c)(3) through (6).

#### **8. 11 CFR 104.20(d) Recordkeeping Requirement**

The final rules at 11 CFR 104.20(d) require all persons who make electioneering communications or accept donations for the purpose of making electioneering communications to maintain records in accordance with 11 CFR 104.14. In the Electioneering Communications NPRM, proposed section 104.19(c) would have exempted QNCs from the recordkeeping requirements. The commenters who addressed this issue were split on whether QNCs should be exempted from the recordkeeping requirements. A commenter who did not support the exemption argued that because these entities are required to report their electioneering communications, they should also be required to maintain records that relate to the electioneering communications to support their reports.

In determining that all of the reporting and recordkeeping requirements for political committees were too burdensome for QNCs making independent expenditures, the Supreme Court in *MCFL* noted that MCFL, Inc. was subject to more "extensive requirements and more stringent restrictions" than unincorporated nonprofit organizations. 479 U.S. at 254–255. For this reason, proposed section 104.20(d) in the Reporting NPRM required QNCs to maintain only those records that pertain to their electioneering communications, which is a much reduced obligation. Additionally, this recordkeeping requirement is identical to what is required of any other person, including unincorporated nonprofit organizations, that make disbursements for electioneering communications. Furthermore, the availability of these records is necessary to assess the accuracy of the electioneering

communications reports filed by QNCs. Thus, proposed paragraph (d) in the Reporting NPRM did not include an exemption for QNCs. No subsequent comments were received concerning this paragraph. After consideration of the reasons stated above and in the NPRM, the Commission has concluded that a QNC exemption from recordkeeping is unwarranted. Therefore, new section 104.20(d) requires all persons, including QNCs, who make or accept donations for electioneering communications to maintain records in accordance with 11 CFR 104.14.

#### **9. 11 CFR 104.20(e) State Waivers**

Paragraph (e), which was not included in the NPRM, repeats the information in 11 CFR 104.20(b) that the place of filing for statements of electioneering communications is the Commission. This paragraph also states that like all other reports or statements, copies of the statement filed with the Commission must also be filed with the appropriate State official unless the state has obtained a waiver under 11 CFR 108.1(b). The NPRM sought comment on whether this waiver should apply to statements of electioneering communications. The Commission received no comments on this issue. Because section 108.1 of 11 CFR applies to all reports and statements filed with the Commission (and when appropriate the Secretary of the Senate), statements of electioneering communications clearly fall within its rubric. See discussion of 11 CFR 108.1, below.

#### *11 CFR 105.2 Place of Filing; Senate Candidates, Their Principal Campaign Committees, and Committees Supporting Only Senate Candidates (2 U.S.C. 434(g)(3))*

The Commission's pre-BCRA regulations required that 24-hour reports of independent expenditures supporting or opposing Senate candidates be filed with the Secretary of the Senate. See pre-BCRA 11 CFR 104.4(c)(2), 105.2, and 109.2(b). Revisions to 11 CFR 105.2 place the text of pre-BCRA 11 CFR 105.2 in paragraph (a), and add the heading, "General Rule."

New paragraph (b) of 11 CFR 105.2, headed, "Exceptions," implements exceptions to this general rule created by BCRA. BCRA establishes the Commission as the place of filing for both 24-hour and 48-hour reports of independent expenditures, regardless of the office sought by the clearly identified candidate. 2 U.S.C. 434(g)(3)(A). In the Reporting NPRM, the proposed revisions to section 105.2

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

statutory definition in 2 U.S.C. 431(17) does not retain the term.

The comment from the Internal Revenue Service, which is described in the Explanation and Justification of 11 CFR 104.4, above, will be of interest to political organizations within the meaning of section 527 of the Internal Revenue Code.

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

The Commission certifies that the attached final rules do not have a significant economic impact on a substantial number of small entities. The bases of this certification are several. There are four areas in which new rules are being promulgated. The economic impact on small entities of each new rule is addressed below.

**1. Independent Expenditure Reporting**

First, with regard to the final rules addressing independent expenditures, the national, State, and local party committees of the two major political parties, and other political committees, are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. Further, individuals operating under these rules are not small entities.

The small entities to which the rules do apply will not be unduly burdened by the final rules because there is no significant extra cost involved, as independent expenditures must already be reported. Collectively, the differential costs will not exceed \$100 million per year. In addition, new reporting requirements will not significantly increase costs, as they only apply to those spending \$10,000 or more on independent expenditures, and the actual reporting requirements are the minimum necessary to comply with the new statute enacted by Congress.

**2. Electioneering Communications**

Second, with regard to the final rules addressing electioneering communications, the only burden the final rules impose is on persons who make electioneering communications, and that burden is a minimal one, requiring persons who make such communications to provide the names and addresses of those who made donations of \$1000 or more to that person when the costs of the electioneering communication exceed \$10,000 per year. If that person is a corporation that qualifies as a QNC, then it must also certify that it meets that status. The number of small entities

affected by the final rules is not substantial.

In addition, the Commission is promulgating several rules that reduce any burden that might be placed on persons who must file electioneering communication reports. First, the Commission interprets the reporting requirement such that no reporting is required until after an electioneering communication is publicly distributed. More than likely, this will only require that person to file one report with the Commission. Also, the Commission is allowing all persons paying for electioneering communications to establish segregated bank accounts, and to report the names and addresses of only those persons who contributed to those accounts. Further, the Commission interprets the statute to not require that a certification of QNC status be filed until the person is also required to file a disclosure report. These are significant steps the Commission is taking to reduce the burden on those who make electioneering communications. The overall burden on the small entities affected by these final rules for reporting electioneering communications will not be \$100 million on an annual basis. Moreover, these final rules are no more than what is strictly necessary to comply with the new statute enacted by Congress.

**3. Reporting Schedules for House of Representatives and Senate Candidates**

Third, regarding the new rules requiring a new reporting schedule for non-election years for the authorized committees of House of Representatives and Senate candidates, the frequency of reports has increased. However, the additional cost will not reach \$100 million on an annual basis. Moreover, these final rules are no more than what is strictly necessary to comply with the new statute enacted by Congress.

**4. Reporting Schedules for National Committees of Political Parties**

Fourth, regarding the new rules requiring a different reporting schedule for national committees of political parties, as noted above, the two major national party committees are not small entities under 5 U.S.C. 601. In addition, the new reporting schedule applicable to other national party committees will not result in a cost of \$100 million per year, and is no more than what is strictly necessary to comply with the new statute enacted by Congress.

**List of Subjects**

**11 CFR Part 100**

Elections.

**11 CFR Part 104**

Campaign funds, Political committees and parties, Reporting and recordkeeping requirements.

**11 CFR Part 105**

Campaign funds, Political candidates, Political committees and parties, Reporting and recordkeeping requirements.

**11 CFR Part 108**

Elections, Reporting and recordkeeping requirements.

**11 CFR Part 109**

Elections, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, subchapter A of chapter I of title 11 of the Code of Federal Regulations is amended as follows:

**PART 100—SCOPE AND DEFINITIONS**

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

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

2. Section 100.19 is revised as follows:

(a) Revising the introductory text and paragraphs (b) through (e).

(b) Adding a heading to paragraph (a) and adding paragraph (f).

The revisions and additions read as follows.

**§ 100.19 File, filed, or filing (2 U.S.C. 434(a)).**

With respect to documents required to be filed under 11 CFR parts 101, 102, 104, 105, 107, 108, and 109, and any modifications or amendments thereto, the terms *file*, *filed*, and *filing* mean one of the actions set forth in paragraphs (a) through (f) of this section. For purposes of this section, document means any report, statement, notice, or designation required by the Act to be filed with the Commission or the Secretary of the Senate.

(a) *Where to deliver reports.* \* \* \*

(b) *Timely filed.* A document, other than those addressed in paragraphs (c) through (f) of this section, is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the filing date, except that pre-election reports so mailed must be postmarked no later than 11:59 p.m. Eastern Standard/Daylight Time on the fifteenth day before the date of the election.

Documents sent by first class mail must be received by the close of business on the prescribed filing date to be timely filed.

(c) *Electronically filed reports.* For electronic filing purposes, a document is timely filed when it is received and validated by the Federal Election Commission by 11:59 p.m. Eastern Standard/Daylight Time on the filing date.

(d) *48-hour and 24-hour reports of independent expenditures.*

(1) *48-hour reports of independent expenditures.* A 48-hour report of independent expenditures under 11 CFR 104.4(b) or 109.10(c) is timely filed when it is received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which independent expenditures aggregate \$10,000 or more in accordance with 11 CFR 104.4(f), any time during the calendar year up to and including the 20th day before an election.

(2) *24-hour reports of independent expenditures.* A 24-hour report of independent expenditures under 11 CFR 104.4(c) or 109.10(d) is timely filed when it is received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which independent expenditures aggregate \$1,000 or more, in accordance with 11 CFR 104.4(f), during the period less than 20 days but more than 24 hours before an election.

(3) *Permissible means of filing.* In addition to other permissible means of filing, a 24-hour report or 48-hour report of independent expenditures may be filed using a facsimile machine or by electronic mail if the reporting entity is not required to file electronically in accordance with 11 CFR 104.18. Political committees, regardless of whether they are required to file electronically under 11 CFR 104.18, may file 24-hour reports using the Commission's website's on-line program.

(e) *48-hour statements of last-minute contributions.* In addition to other permissible means of filing, authorized committees that are not required to file electronically may file 48-hour notifications of contributions using facsimile machines. All authorized committees that file with the Commission, including electronic reporting entities, may use the Commission's website's on-line program to file 48-hour notifications of contributions. See 11 CFR 104.5(f).

(f) *24-hour statements of electioneering communications.* A 24-hour statement of electioneering communications under 11 CFR 104.20 is timely filed when it is received by the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. (See 11

CFR 104.20(a)(1) and (b)). In addition to other permissible means of filing, a 24-hour statement of electioneering communications may be filed using a facsimile machine or by electronic mail if the reporting entity is not required to file electronically in accordance with 11 CFR 104.18.

#### **PART 104—REPORTS BY POLITICAL COMMITTEES (2 U.S.C. 434)**

3. The authority citation for part 104 continues to read as follows:

**Authority:** 2 U.S.C. 431(1), 431(8), 431(9), 432(i), 434, 438(a)(8) and (b), and 439a.

4. In § 104.3, paragraph (g) is revised to read as follows:

##### **§ 104.3 Contents of reports (2 U.S.C. 434(b), 439a).**

\* \* \* \* \*

##### **(g) Building funds.**

(1) A political party committee must report gifts, subscriptions, loans, advances, deposits of money, or anything of value that are used by the political party committee's Federal accounts to defray the costs of construction or purchase of the committee's office building. See 11 CFR 300.35. Such a receipt is a contribution subject to the limitations and prohibitions of the Act and reportable as a contribution, regardless of whether the contributor has designated the funds or things of value for such purpose and regardless of whether such funds are deposited in a separate Federal account dedicated to that purpose.

(2) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that are donated to a non-Federal account of a State or local party committee and are used by that party committee for the purchase or construction of its office building are not contributions subject to the reporting requirements of the Act. The reporting of such funds or things of value is subject to State law.

(3) Gifts, subscriptions, loans, advances, deposits of money, or anything of value that are used by a national committee of a political party to defray the costs of construction or purchase of the national committee's office building are contributions subject to the requirements of paragraph (g)(1) of this section.

\* \* \* \* \*

5. Section 104.4 is revised to read as follows:

##### **§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(b), (d), and (g)).**

(a) *Regularly scheduled reporting.* Every political committee that makes

independent expenditures must report all such independent expenditures on Schedule E in accordance with 11 CFR 104.3(b)(3)(vii). Every person that is not a political committee must report independent expenditures in accordance with paragraphs (e) and (f) of this section and 11 CFR 109.10.

(b) *Reports of independent expenditures made at any time up to and including the 20th day before an election.*

(1) *Independent expenditures aggregating less than \$10,000 in a calendar year.* Political committees must report on Schedule E of FEC Form 3X at the time of their regular reports in accordance with 11 CFR 104.3, 104.5 and 104.9, all independent expenditures aggregating less than \$10,000 with respect to a given election any time during the calendar year up to and including the 20th day before an election.

(2) *Independent expenditures aggregating \$10,000 or more in a calendar year.* Political committees must report on Schedule E of FEC Form 3X all independent expenditures aggregating \$10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election. Political committees must ensure that the Commission receives these reports by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional \$10,000 or more, the political committee must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which the communication is publicly distributed or otherwise publicly disseminated. (See paragraph (f) of this section for aggregation.) Each 48-hour report must contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. In addition to other permissible means of filing, a political committee may file the 48-hour reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(c) *Reports of independent expenditures made less than 20 days, but more than 24 hours before the day of an election.* Political committees must ensure that the Commission

receives reports of independent expenditures aggregating \$1,000 or more with respect to a given election, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of the election, by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional \$1,000 or more, the political committee must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. (See paragraph (f) of this section for aggregation.) Each 24-hour report shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved. Political committees may file reports under this section by any of the means permissible under 11 CFR 100.19(d)(3).

(d) *Verification.* Political committees must verify reports of independent expenditures filed under paragraph (b) or (c) of this section by one of the methods stated in paragraph (d)(1) or (2) of this section. Any report verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(1) For reports filed on paper (e.g., by hand-delivery, U.S. Mail or facsimile machine), the treasurer of the political committee that made the independent expenditure must certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(2) For reports filed by electronic mail, the treasurer of the political committee that made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by 11 CFR 104.3(b)(3)(vii).

(e) *Where to file.* Reports of independent expenditures under this section and 11 CFR 109.10(b) shall be filed as follows:

(1) For independent expenditures in support of, or in opposition to, a candidate for President or Vice President: with the Commission and the

Secretary of State for the State in which the expenditure is made.

(2) For independent expenditures in support of, or in opposition to, a candidate for the Senate:

(i) For regularly scheduled reports, with the Secretary of the Senate and the Secretary of State for the State in which the candidate is seeking election; or

(ii) For 24-hour and 48-hour reports, with the Commission and the Secretary of State for the State in which the candidate is seeking election.

(3) For independent expenditures in support of, or in opposition to, a candidate for the House of Representatives: with the Commission and the Secretary of State for the State in which the candidate is seeking election.

(4) Notwithstanding the requirements of paragraphs (e)(1), (2), and (3) of this section, political committees and other persons shall not be required to file reports of independent expenditures with the Secretary of State if that State has obtained a waiver under 11 CFR 108.1(b).

(f) *Aggregating independent expenditures for reporting purposes.* For purposes of determining whether 24-hour and 48-hour reports must be filed in accordance with paragraphs (b) and (c) of this section and 11 CFR 109.10(c) and (d), aggregations of independent expenditures must be calculated as of the first date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated, and as of the date that any such communication with respect to the same election is subsequently publicly distributed or otherwise publicly disseminated. Every person must include in the aggregate total all disbursements during the calendar year for independent expenditures, and all enforceable contracts, either oral or written, obligating funds for disbursements during the calendar year for independent expenditures, where those independent expenditures are made with respect to the same election for Federal office.

6. In § 104.5, paragraph (a), the intro text and heading of paragraph (c), and paragraph (g) are revised to read as follows, and paragraphs (c)(4) and (j) are added to read as follows:

**§ 104.5 Filing dates (2 U.S.C. 434(a)(2)).**

(a) *Principal campaign committee of House of Representatives or Senate candidate.* Each treasurer of a principal campaign committee of a candidate for the House of Representatives or for the Senate must file quarterly reports on the dates specified in paragraph (a)(1) of

this section in both election years and non-election years, and must file additional reports on the dates specified in paragraph (a)(2) of this section in election years.

*(1) Quarterly reports.*

(i) Quarterly reports must be filed no later than the 15th day following the close of the immediately preceding calendar quarter (on April 15, July 15, and October 15), except that the report for the final calendar quarter of the year must be filed no later than January 31 of the following calendar year.

(ii) The report must be complete as of the last day of each calendar quarter.

(iii) The requirement for a quarterly report shall be waived if, under paragraph (a)(2) of this section, a pre-election report is required to be filed during the period beginning on the 5th day after the close of the calendar quarter and ending on the 15th day after the close of the calendar quarter.

*(2) Additional reports in the election year.*

*(i) Pre-election reports.*

(A) Pre-election reports for the primary and general election must be filed no later than 12 days before any primary or general election in which the candidate seeks election. If sent by registered or certified mail, the report must be mailed no later than the 15th day before any election.

(B) The pre-election report must disclose all receipts and disbursements as of the 20th day before a primary or general election.

*(ii) Post-general election report.*

(A) The post-general election report must be filed no later than 30 days after any general election in which the candidate seeks election.

(B) The post-general election report must be complete as of the 20th day after the general election.

\* \* \* \* \*

(c) *Political committees that are not authorized committees of candidates.* Except as provided in paragraph (c)(4) of this section, each political committee that is not the authorized committee of a candidate must file either: Election year and non-election year reports in accordance with paragraphs (c)(1) and (2) of this section; or monthly reports in accordance with paragraph (c)(3) of this section. A political committee reporting under paragraph (c) of this section may elect to change the frequency of its reporting from monthly to quarterly and semi-annually or *vice versa*. A political committee reporting under this paragraph (c) may change the frequency of its reporting only after notifying the Commission in writing of its intention at the time it files a required report



under its current filing frequency. Such political committee will then be required to file the next required report under its new filing frequency. A political committee may change its filing frequency no more than once per calendar year.

\* \* \* \* \*

(4) *National party committee reporting.* Notwithstanding anything to the contrary in this paragraph, a national committee of a political party, including a national Congressional campaign committee, must report monthly in accordance with paragraph (c)(3) of this section in both election and non-election years.

\* \* \* \* \*

(g) *Reports of independent expenditures.*

(1) *48-hour reports of independent expenditures.* Every person that must file a 48-hour report under 11 CFR 104.4(b) must ensure the Commission receives the report by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate \$10,000 or more, that person must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which the \$10,000 threshold is reached or exceeded. (See 11 CFR 104.4(f) for aggregation.)

(2) *24-hour reports of independent expenditures.* Every person that must file a 24-hour report under 11 CFR 104.4(c) must ensure that the Commission receives the report by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication that constitutes an independent expenditure is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures by that person relating to the same election as that to which the previous report relates aggregate \$1,000 or more, that person must ensure that the Commission receives a 24-hour report of the subsequent independent expenditures by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which the \$1,000 threshold is reached or exceeded. (See 11 CFR 104.4(f) for aggregation.)

(3) Each 24-hour or 48-hour report of independent expenditures filed under

this section shall contain the information required by 11 CFR 104.3(b)(3)(vii) indicating whether the independent expenditure is made in support of, or in opposition to, the candidate involved.

(4) For purposes of this part and 11 CFR part 109, a communication that is mailed to its intended audience is publicly disseminated when it is relinquished to the U.S. Postal Service.

\* \* \* \* \*

(j) *24-hour statements of electioneering communications.* Every person who has made a disbursement or who has executed a contract to make a disbursement for the direct costs of producing or airing electioneering communications as defined in 11 CFR 100.29 aggregating in excess of \$10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. The statement shall be filed under penalty of perjury and in accordance with 11 CFR 104.20.

#### § 104.19 [Reserved.]

7. Section 104.19 is added and reserved.

8. Section 104.20 is added to read as follows:

#### § 104.20 Reporting electioneering communications (2 U.S.C. 434(f)).

(a) *Definitions.*

(1) *Disclosure date* means:

(i) The first date on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of \$10,000; or

(ii) Any other date during the same calendar year on which an electioneering communication is publicly distributed provided that the person making the electioneering communication has made one or more disbursements, or has executed one or more contracts to make disbursements, for the direct costs of producing or airing one or more electioneering communications aggregating in excess of \$10,000 since the most recent disclosure date during such calendar year.

(2) *Direct costs of producing or airing electioneering communications* means the following:

(i) Costs charged by a vendor, such as studio rental time, staff salaries, costs of

video or audio recording media, and talent; or

(ii) The cost of airtime on broadcast, cable or satellite radio and television stations, studio time, material costs, and the charges for a broker to purchase the airtime.

(3) *Persons sharing or exercising direction or control* means officers, directors, executive directors or their equivalent, partners, and in the case of unincorporated organizations, owners, of the entity or person making the disbursement for the electioneering communication.

(4) *Identification* has the same meaning as in 11 CFR 100.12.

(5) *Publicly distributed* has the same meaning as in 11 CFR 100.29(a)(3).

(b) *Who must report and when.* Every person who has made an electioneering communication, as defined in 11 CFR 100.29, aggregating in excess of \$10,000 during any calendar year shall file a statement with the Commission by 11:59 p.m. Eastern Standard/Daylight Time on the day following the disclosure date. The statement shall be filed under penalty of perjury, shall contain the information set forth in paragraph (c) of this section, and shall be filed on FEC Form 9. Political committees that make communications that are described in 11 CFR 100.29(a) must report such communications as expenditures or independent expenditures under 11 CFR 104.3 and 104.4, and not under this section.

(c) *Contents of statement.* Statements of electioneering communications filed under paragraph (b) of this section shall disclose the following information:

(1) The identification of the person who made the disbursement, or who executed a contract to make a disbursement, and, if the person is not an individual, the person's principal place of business;

(2) The identification of any person sharing or exercising direction or control over the activities of the person who made the disbursement or who executed a contract to make a disbursement;

(3) The identification of the custodian of the books and accounts from which the disbursements were made;

(4) The amount of each disbursement, or amount obligated, of more than \$200 during the period covered by the statement, the date the disbursement was made, or the contract was executed, and the identification of the person to whom that disbursement was made;

(5) All clearly identified candidates referred to in the electioneering communication and the elections in which they are candidates;

(6) The disclosure date, as defined in paragraph (a) of this section;

(7) If the disbursements were paid exclusively from a segregated bank account consisting of funds provided solely by individuals who are United States citizens, United States nationals, or who are lawfully admitted for permanent residence under 8 U.S.C. 1101(a)(20), the name and address of each donor who donated an amount aggregating \$1,000 or more to the segregated bank account, aggregating since the first day of the preceding calendar year; and

(8) If the disbursements were not paid exclusively from a segregated bank account described in paragraph (c)(7) of this section, the name and address of each donor who donated an amount aggregating \$1,000 or more to the person making the disbursement, aggregating since the first day of the preceding calendar year.

(d) *Recordkeeping.* All persons who make electioneering communications or who accept donations for the purpose of making electioneering communications must maintain records in accordance with 11 CFR 104.14.

(e) *State waivers.* Statements of electioneering communications that must be filed with the Commission must also be filed with the Secretary of State of the appropriate State if the State has not obtained a waiver under 11 CFR 108.1(b).

#### **PART 105—DOCUMENT FILING (2 U.S.C. 432(g))**

9. The authority citation for part 105 is revised to read as follows:

**Authority:** 2 U.S.C. 432(g), 434, 438(a)(8).

10. Section 105.2 is revised to read as follows:

##### **§ 105.2 Place of filing; Senate candidates, their principal campaign committees, and committees supporting only Senate candidates (2 U.S.C. 432(g), 434(g)(3)).**

(a) *General Rule.* Except as provided in paragraph (b) of this section, all designations, statements, reports, and notices as well as any modification(s) or amendment(s) thereto, required to be filed under 11 CFR parts 101, 102, and 104 by a candidate for nomination or election to the office of United States Senator, by his or her principal campaign committee or by any other political committee(s) that supports only candidates for nomination for election or election to the Senate of the United States shall be filed in original form with, and received by, the Secretary of the Senate, as custodian for the Federal Election Commission.

(b) *Exceptions.* 24-hour and 48-hour reports of independent expenditures must be filed with the Commission and not with the Secretary of the Senate, even if the communication refers to a Senate candidate.

#### **PART 108—FILING COPIES OF REPORTS AND STATEMENTS WITH STATE OFFICERS (2 U.S.C. 439)**

11. The authority citation for part 108 would continue to read as follows:

**Authority:** 2 U.S.C. 434(a)(2), 438(a)(8), 439, 453.

12. Paragraph (b) of § 108.1 is revised to read as follows:

##### **§ 108.1 Filing Requirements (2 U.S.C. 439(a)(1))**

\* \* \* \* \*

(b) The filing requirements and duties of State officers under this part 108 shall not apply to a State if the Commission has determined that the State maintains a system that can electronically receive and duplicate reports and statements filed with the Commission. Once a State has obtained a waiver pursuant to this paragraph, the waiver shall apply to all reports that can be electronically accessed and duplicated from the Commission, regardless of whether the report or statement was originally filed with the Commission. The list of States that have obtained waivers under this section is available on the Commission's website.

#### **PART 109—COORDINATED AND INDEPENDENT EXPENDITURES (2 U.S.C. 431(17), 441a, Pub. L. 107–155 sec. 214(c) (March 27, 2002))**

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

**Authority:** 2 U.S.C. 431(17), 434(c), 441a; Pub. L. 155–107 sec. 214(c).

##### **§ 109.2 [Removed and Reserved]**

14. Section 109.2 is removed and reserved.

15. Section 109.10 is added to read as follows:

##### **§ 109.10 How do political committees and other persons report independent expenditures?**

(a) Political committees, including political party committees, must report independent expenditures under 11 CFR 104.4.

(b) Every person that is not a political committee and that makes independent expenditures aggregating in excess of \$250 with respect to a given election in a calendar year shall file a verified statement or report on FEC Form 5 in accordance with 11 CFR 104.4(e)

containing the information required by paragraph (e) of this section. Every person filing a report or statement under this section shall do so in accordance with the quarterly reporting schedule specified in 11 CFR 104.5(a)(1)(i) and (ii) and shall file a report or statement for any quarterly period during which any such independent expenditures that aggregate in excess of \$250 are made and in any quarterly reporting period thereafter in which additional independent expenditures are made.

(c) Every person that is not a political committee and that makes independent expenditures aggregating \$10,000 or more with respect to a given election any time during the calendar year up to and including the 20th day before an election, must report the independent expenditures on FEC Form 5, or by signed statement if the person is not otherwise required to file electronically under 11 CFR 104.18. (See 11 CFR 104.4(f) for aggregation.) The person making the independent expenditures aggregating \$10,000 or more must ensure that the Commission receives the report or statement by 11:59 p.m. Eastern Standard/Daylight Time on the second day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate an additional \$10,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 48-hour report of the subsequent independent expenditures. Each 48-hour report must contain the information required by paragraph (e)(1) of this section.

(d) Every person making, after the 20th day, but more than 24 hours before 12:01 a.m. of the day of an election, independent expenditures aggregating \$1,000 or more with respect to a given election must report those independent expenditures and ensure that the Commission receives the report or signed statement by 11:59 p.m. Eastern Standard/Daylight Time on the day following the date on which a communication is publicly distributed or otherwise publicly disseminated. Each time subsequent independent expenditures relating to the same election aggregate \$1,000 or more, the person making the independent expenditures must ensure that the Commission receives a new 24-hour report of the subsequent independent expenditures. (See 11 CFR 104.4(f) for aggregation.) Such report or statement shall contain the information required by paragraph (e) of this section.

(e) *Content of verified reports and statements and verification of reports and statements.*

(1) *Contents of verified reports and statement.* If a signed report or statement is submitted, the report or statement shall include:

(i) The reporting person's name, mailing address, occupation, and the name of his or her employer, if any;

(ii) The identification (name and mailing address) of the person to whom the expenditure was made;

(iii) The amount, date, and purpose of each expenditure;

(iv) A statement that indicates whether such expenditure was in support of, or in opposition to a candidate, together with the candidate's name and office sought;

(v) A verified certification under penalty of perjury as to whether such expenditure was made in cooperation, consultation, or concert with, or at the request or suggestion of a candidate, a candidate's authorized committee, or their agents, or a political party committee or its agents; and

(vi) The identification of each person who made a contribution in excess of \$200 to the person filing such report, which contribution was made for the purpose of furthering the reported independent expenditure.

(2) *Verification of independent expenditure statements and reports.* Every person shall verify reports and statements of independent expenditures filed pursuant to the requirements of this section by one of the methods stated in paragraph (2)(i) or (ii) of this section. Any report or statement verified under either of these methods shall be treated for all purposes (including penalties for perjury) in the same manner as a document verified by signature.

(i) For reports or statements filed on paper (e.g., by hand-delivery, U.S. Mail, or facsimile machine), the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by handwritten signature immediately following the certification required by paragraph (e)(1)(v) of this section.

(ii) For reports or statements filed by electronic mail, the person who made the independent expenditure shall certify, under penalty of perjury, the independence of the expenditure by typing the treasurer's name immediately following the certification required by paragraph (e)(1)(v) of this section.

Dated: December 17, 2002.

**David M. Mason,**

*Chairman, Federal Election Commission.*

[FR Doc. 03-91 Filed 1-2-03; 8:45 am]

**BILLING CODE 6715-01-P**

## FEDERAL ELECTION COMMISSION

### 11 CFR Parts 100, 102, 109, 110, and 114

[Notice 2002-27]

#### Coordinated and Independent Expenditures

**AGENCY:** Federal Election Commission.

**ACTION:** Final rules and transmittal of regulations to Congress.

**SUMMARY:** The Federal Election Commission is issuing final rules regarding payments for communications that are coordinated with a candidate, a candidate's authorized committee, or a political party committee. The final rules also address expenditures by political party committees that are made either in coordination with, or independently from, candidates. These final rules implement several requirements in the Bipartisan Campaign Reform Act of 2002 ("BCRA") that significantly amend the Federal Election Campaign Act of 1971, as amended ("FECA" or the "Act"). Further information is contained in the Supplementary Information that follows.

**EFFECTIVE DATE:** February 3, 2003.

**FOR FURTHER INFORMATION CONTACT:** Mr. John Vergelli, Acting Assistant General Counsel, or Attorneys Mr. Mark Allen (coordinated party expenditures), and Mr. Richard Ewell (coordinated communications paid for by other political committees and other persons), 999 E Street NW., Washington, DC, 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Bipartisan Campaign Reform Act of 2002 ("BCRA"), Public Law 107-155, 116 Stat. 81 (March 27, 2002), contains extensive and detailed amendments to the Federal Election Campaign Act of 1971 ("FECA" or "the Act"), as amended, 2 U.S.C. 431 *et seq.* This is one in a series of rulemakings the Commission is undertaking in order to implement the provisions of BCRA and to meet the rulemaking deadlines set out in BCRA.

Section 402(c)(1) of BCRA establishes a general deadline of 270 days for the Commission to promulgate regulations to carry out BCRA, which is December 22, 2002. The final rules do not apply

with respect to runoff elections, recounts, or election contests resulting from the November 2002 general election. 2 U.S.C. 431 note.

Because of the brief period before the statutory deadline for promulgating these rules, the Commission received and considered public comments expeditiously. The Notice of Proposed Rulemaking ("NPRM"), on which these final rules are based, was published in the **Federal Register** on September 24, 2002. 67 FR 60,042 (September 24, 2002). The written comments were due by October 11, 2002. The Commission received 27 comments from 21 commenters. The names of the commenters and their comments are available at <http://www.fec.gov/register.htm> under "Coordinated and Independent Expenditures." A public hearing was held on Wednesday, October 23, 2002, and Thursday, October 24, 2002, at which 14 witnesses testified. A transcript of those hearings is also available at <http://www.fec.gov/register.htm>.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on coordinated and independent expenditures were transmitted to Congress on December 18, 2002.

#### Introduction

These final rules primarily address communications that are made in coordination with a candidate, an authorized committee of a candidate, or a political party committee. The regulations set forth the meaning of "coordination." They also set forth statutory requirements for political party committees with respect to the permitted timing of independent and coordinated expenditures, and transfers and assignments.

#### Explanation and Justification

##### 1. Statutory Overview

FECA limits the amount of contributions to Federal candidates, their authorized committees, and other political committees. 2 U.S.C. 441a(a). Under FECA and the Commission's regulations, these contributions may take the form of money or "anything of value" (the latter is an "in-kind contribution" provided to a candidate or political committee.) See 11 CFR 100.52(d)(1). Candidates must disclose