



11

Federal Elections

Revised as of April 1, 1980

**CONTAINING
A CODIFICATION OF DOCUMENTS
OF GENERAL APPLICABILITY
AND FUTURE EFFECT**

AS OF APRIL 1, 1980

With Ancillaries

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Table of Contents

	Page
Explanation	v
Title 11:	
Chapter I—Federal Election Commission.....	3
Supplement A—Other regulations implementing section 401 of the Federal Election Campaign Act of 1971.....	139
Finding Aids:	
Indexes to Regulations.....	154
Table of CFR Titles and Chapters.....	197
Alphabetical List of Agencies Appearing in the CFR.....	211
List of CFR Sections Affected	219
Appendix to List of CFR Sections Affected	223

Explanation

The Code of Federal Regulations is a codification of the general and permanent rules published in the Federal Register by the Executive departments and agencies of the Federal Government. The Code is divided into 50 titles which represent broad areas subject to Federal regulation. Each title is divided into chapters which usually bear the name of the issuing agency. Each chapter is further subdivided into parts covering specific regulatory areas.

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Each volume of the Code is revised at least once each calendar year and issued on a quarterly basis approximately as follows:

Title 1 through Title 16.....	as of January 1
Title 17 through Title 27.....	as of April 1
Title 28 through Title 41.....	as of July 1
Title 42 through Title 50.....	as of October 1

The appropriate revision date is printed on the cover of each volume.

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For a summary, legal interpretation, or other explanation of any regulation in this volume, contact the issuing agency. Inquiries concerning editing procedures and reference assistance with respect to the Code of Federal Regulations may be addressed to the Director, Office of the Federal Register, National Archives and Records Service, General Services Administration, Washington, D.C. 20408 (telephone 202-523-3517). Sales are handled exclusively by the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402.

ERNEST J. GALDI,

Acting Director,

Office of the Federal Register.

April 1, 1980.

THIS TITLE

Title 11—**FEDERAL ELECTIONS** is composed of one volume. The contents of this volume represent all current regulations issued by the Federal Election Commission codified under this title of the CFR as of April 1, 1980.

Other regulations implementing section 401 of the Federal Election Campaign Act of 1971 are contained in Supplement A of this volume as follows: Civil Aeronautics Board, 14 CFR Part 374a; Federal Communications Commission, 47 CFR Part 64 (Subpart H), Parts 73 and 76; and Interstate Commerce Commission, 49 CFR Part 1325.

Indexes to regulations for Parts 100-115, 140-145, 9008, and 9031-9038, and an appendix to the List of CFR Sections Affected containing changes to Title 11 prior to the reconstitution of the Federal Election Commission by the Federal Election Campaign Act amendments of 1976 also appear in this volume.

For this volume Dean L. Smith was Chief Editor. The Code of Federal Regulations publication program is under the direction of Martha B. Girard, assisted by Robert E. Jordan.

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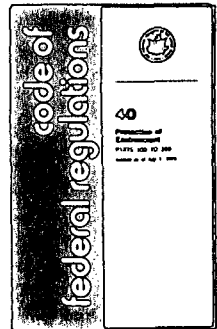
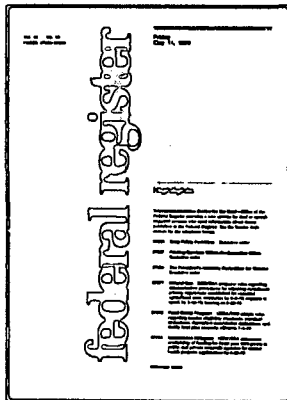
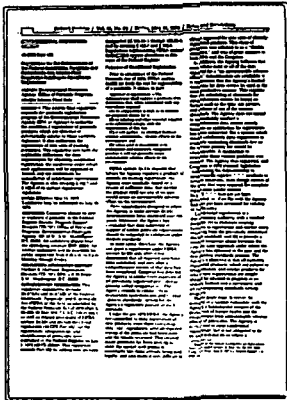
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Title 11—Federal Elections

CHAPTER 1—Federal Election Commission..... *Part*
1

Supplement A—Other regulations implementing
section 401 of the Federal Election Campaign
Act of 1971

CHAPTER I—FEDERAL ELECTION COMMISSION

<i>Part</i>		<i>Page</i>
1	Privacy Act	5
2	Scope and definitions.....	9
3	Meetings.....	9
4	Public records and the Freedom of Information Act.....	12

SUBCHAPTER A—GENERAL

100	Scope and definitions (2 U.S.C. 431)	17
101	Candidate status and designations (2 U.S.C. 432(e)).....	34
102	Registration, organization, and recordkeeping by political committees (2 U.S.C. 433)	35
103	Campaign depositories (2 U.S.C. 432(h)).....	42
104	Reports by political committees (2 U.S.C. 434).....	43
105	Document filing (2 U.S.C. 432(g))	57
106	Allocations of candidate and committee activities..	59
107	Presidential nominating convention, registration and reports	62
108	Filing copies of reports and statements with State officers (2 U.S.C. 439).....	62
109	Independent expenditures (2 U.S.C. 431(17), 434(c)).....	64
110	Contribution and expenditure limitations and prohibitions	65
111	Compliance procedure (2 U.S.C. 437g, 437d(a))	76
112	Advisory opinions (2 U.S.C. 437f)	82
113	Excess campaign funds and funds donated to support Federal officeholder activities (2 U.S.C. 439a)	84
114	Corporate and labor organization activity.....	86
115	Federal contractors	101

SUBCHAPTERS B-C—[RESERVED]

SUBCHAPTER D—PRESIDENTIAL ELECTION CAMPAIGN FUND, GENERAL ELECTION FINANCING

140	Definitions	104
141	Eligibility for payments	106

<i>Part</i>		<i>Page</i>
142	Entitlement of eligible candidates to payments; use of payments.....	107
143	Certification by Commission.....	109
144	Reports and recordkeeping.....	109
145	Examinations and audits; repayments	110
146	Other expenditures.....	111

**SUBCHAPTER F—PRESIDENTIAL ELECTION CAMPAIGN FUND,
FEDERAL FINANCING OF PRESIDENTIAL NOMINATING
CONVENTIONS**

9008	Federal financing of Presidential nominating con- ventions.....	112
------	--	-----

**SUBCHAPTER G—PRESIDENTIAL ELECTION CAMPAIGN FUND,
PRESIDENTIAL PRIMARY MATCHING FUND**

9031	Scope.....	123
9032	Definitions	123
9033	Eligibility	124
9034	Entitlements.....	130
9035	Expenditure limitation.....	134
9036	Certification by the Commission.....	134
9037	Payments	136
9038	Examinations and audits	137

PART 1—PRIVACY ACT

Sec.

- 1.1 Purpose and scope.
- 1.2 Definitions.
- 1.3 Procedures for requests pertaining to individual records in a record system.
- 1.4 Times, places, and requirements for identification of individuals making requests.
- 1.5 Disclosure of requested information to individuals.
- 1.6 Special procedure: Medical records. [Reserved]
- 1.7 Request for correction or amendment to record.
- 1.8 Agency review of request for correction or amendment of record.
- 1.9 Appeal of initial adverse agency determination on amendment or correction.
- 1.10 Disclosure of record to person other than the individual to whom it pertains.
- 1.11 Fees.
- 1.12 Penalties.
- 1.13 General exemptions. [Reserved]
- 1.14 Specific exemptions.

AUTHORITY: 5 U.S.C. 552a.

SOURCE: 41 FR 43064, Sept. 29, 1976, unless otherwise noted.

§ 1.1 Purpose and scope.

(a) The purpose of this part is to set forth rules informing the public as to what information is maintained by the Federal Election Commission about identifiable individuals and to inform those individuals how they may gain access to and correct or amend information about themselves.

(b) The regulations in this part carry out the requirements of the Privacy Act of 1974 (Pub. L. 93-579) and in particular 5 U.S.C. Section 552a as added by that Act.

(c) The regulations in this part apply only to records disclosed or requested under the Privacy Act of 1974, and not to requests for information made pursuant to 5 U.S.C. 552, the Freedom of Information Act, or requests for reports and statements filed with the Federal Election Commission which are public records and available for inspection and copying pursuant to 2 U.S.C. 437g(a)(4) (C) and 438(a)(4).

[41 FR 43064, Sept. 29, 1976, as amended at 45 FR 21209, Apr. 1, 1980]

§ 1.2 Definitions.

As defined in the Privacy Act of 1974 and for the purposes of this part, unless otherwise required by the context, the following terms shall have these meanings:

"Individual" means a citizen of the United States or an alien lawfully admitted for permanent residence.

"Maintain" includes maintain, collect, use or disseminate.

"Record" means any item, collection, or grouping of information about an individual that is maintained by an agency, including but not limited to his or her education, financial transactions, medical history, and criminal or employment history and that contains his or her name, or the identifying number, symbol or other identifying particular assigned to the individual, such as finger or voice print or a photograph.

"Systems of Records" means a group of any records under the control of the Federal Election Commission from which information is retrieved by the name of the individual or by some identifying number, symbol, or other identifying particular assigned to the individual.

"Routine use" means the use of such record for a purpose compatible with the purpose for which the information was collected.

"Commission" means the Federal Election Committee, its Commissioners and employees.

"Commissioners" means the six appointees confirmed by the Senate who are voting members of the Commission.

"Act" means the Federal Election Campaign Act of 1971, as amended and Chapters 95 and 96 of the Internal Revenue Code of 1954.

§ 1.3 Procedures for requests pertaining to individual records in a record system.

(a) Any individual may request the Commission to inform him or her whether a particular record system named by the individual contains a record pertaining to him or her. The request may be made in person or in writing at the location and to the person specified in the notice describing that record system.

(b) An individual who believes that the Commission maintains records pertaining to him or her but who cannot determine which record system contains those records, may request assistance by mail or in person from the Staff Director, Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463 during the hours of 9 a.m. to 5:30 p.m.

(c) Requests under paragraphs (a) or (b) of this section shall be acknowledged by the Commission within 15 days from the date of receipt of the request. If the Commission is unable to locate the information requested under paragraphs (a) or (b) of this section, it shall so notify the individual within 15 days after receipt of the request. Such acknowledgement may request additional information to assist the Commission in locating the record or it may advise the individual that no record or document exists about that individual.

§ 1.4 Times, places, and requirements for identification of individuals making requests.

(a) After being informed by the Commission that a record system contains a record pertaining to him or her, an individual may request the Commission to disclose that record in the manner described in this section. Each request for the disclosure of a record or a copy of it shall be made at the Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463 and to the system manager identified in the notice describing the systems of records, either in writing or in person. Requests may be made by specifically authorized agents or by parents or guardians of individuals.

(b) Each individual requesting the disclosure of a record or copy of a record shall furnish the following information with his or her request:

(1) The name of the record system containing the record;

(2) Proof as described in paragraph (c) of this section that he or she is the individual to whom the requested record relates;

(3) Any other information required by the notice describing the record system.

(c) Proof of identity as required by paragraph (b)(2) of this section shall be provided as described in paragraphs (c)(1) and (2) of this section. Requests made by an agent, parent, or guardian, shall be in accordance with the procedures described in § 1.10.

(1) Requests made in writing shall include a statement, signed by the individual and either notarized or witnessed by two persons (including witnesses' addresses). If the individual appears before a notary, he or she shall submit adequate proof of identification in the form of a drivers license, birth certificate, passport or other identification acceptable to the notary. If the statement is witnessed, it shall include a sentence above the witnesses' signatures that they personally know the individual or that the individual has submitted proof of his or her identification to their satisfaction. In any case in which, because of the extreme sensitivity of the record sought to be seen or copied, the Commission determines that the identification is not adequate, it may request the individual to submit additional proof of identification.

(2) If the request is made in person, the requestor shall submit proof of identification similar to that described in paragraph (c)(1) of this section, acceptable to the Commission. The individual may have a person of his or her own choosing accompany him or her when the record is disclosed.

§ 1.5 Disclosure of requested information to individuals.

(a) Upon submission of proof of identification as required by § 1.4, the Commission shall allow the individual to see and/or obtain a copy of the requested record or shall send a copy of the record to the individual by registered mail. If the individual requests to see the record, the Commission may make the record available either at the location where the record is maintained or at a place more suitable to the requestor, if possible. The record shall be made available as soon as possible but in no event later than 15 days after proof of identification.

(b) The Commission must furnish each record requested by an individual

under this part in a form intelligible to that individual.

(c) If the Commission denies access to a record to an individual, he or she shall be advised of the reason for the denial and advised of the right to judicial review.

(d) Upon request, an individual will be provided access to the accounting of disclosures from his or her record under the same procedures as provided above and in § 1.4.

§ 1.6 Special procedure: Medical records.
[Reserved]

§ 1.7 Request for correction or amendment to record.

(a) Any individual who has reviewed a record pertaining to him or her that was furnished under this part, may request the Commission to correct or amend all or any part of that record.

(b) Each individual requesting a correction or amendment shall send the request to the Commission through the person who furnished the record.

(c) Each request for a correction or amendment of a record shall contain the following information:

(1) The name of the individual requesting the correction or amendment;

(2) The name of the system of records in which the record sought to be amended is maintained;

(3) The location of the system of records from which the individual record was obtained;

(4) A copy of the record sought to be amended or corrected or a sufficiently detailed description of that record;

(5) A statement of the material in the record that the individual desires to correct or amend;

(6) A statement of the basis for the requested correction or amendment including any material that the individual can furnish to substantiate the reasons for the correction or amendment sought.

§ 1.8 Agency review of request for correction or amendment of record.

(a) The Commission shall, not later than ten (10) days (excluding Saturdays, Sundays and legal holidays) after the receipt of the request for a correction or amendment of a record under § 1.7, acknowledge receipt of the

request and inform the individual whether information is required before the correction or amendment can be considered.

(b) If no additional information is required, within ten (10) days from receipt of the request, the Commission shall either make the requested correction or amendment or notify the individual of its refusal to do so, including in the notification the reasons for the refusal, and the appeal procedures provided in § 1.9.

(c) The Commission shall make each requested correction or amendment to a record if that correction or amendment will tend to negate inaccurate, irrelevant, untimely, or incomplete matter in the record.

(d) The Commission shall inform prior recipients of any amendment or correction or notation of dispute of such individual's record if an accounting of the disclosure was made. The individual may request a list of prior recipients if an accounting of the disclosure was made.

§ 1.9 Appeal of initial adverse agency determination on amendment or correction.

(a) Any individual whose request for a correction or amendment has been denied in whole or in part, may appeal that decision to the Commissioners no later than one hundred eighty (180) days after the adverse decision is rendered.

(b) The appeal shall be in writing and shall contain the following information:

(1) The name of the individual making the appeal;

(2) Identification of the record sought to be amended;

(3) The record system in which that record is contained;

(4) A short statement describing the amendment sought; and

(5) The name and location of the agency official who initially denied the correction or amendment.

(c) Not later than thirty (30) days (excluding Saturdays, Sundays and legal holidays) after the date on which the Commission receives the appeal, the Commissioners shall complete their review of the appeal and make a final decision thereon. However, for

good cause shown, the Commissioners may extend that thirty (30) day period. If the Commissioners extend the period, the individual requesting the review shall be promptly notified of the extension and the anticipated date of a decision.

(d) After review of an appeal, the Commission shall send a written notice to the requestor containing the following information:

(1) The decision and, if the denial is upheld, the reasons for the decision;

(2) The right of the requestor to institute a civil action in a Federal District Court for judicial review of the decision; and

(3) The right of the requestor to file with the Commission a concise statement setting forth the reasons for his or her disagreement with the Commission denial of the correction or amendment. The Commission shall make this statement available to any person to whom the record is later disclosed, together with a brief statement, if appropriate, of the Commission's reasons for denying the requested correction or amendment. The Commission shall also send a copy of the statement to prior recipients of the individual's record if an accounting of the disclosures was made.

§ 1.10 Disclosure of record to person other than the individual to whom it pertains.

(a) Any individual who desires to have a record covered by this Part disclosed to or mailed to another person may designate such person and authorize such person to act as his or her agent for that specific purpose. The authorization shall be in writing, signed by the individual and notarized or witnessed as provided in § 1.4(c).

(b) The parent of any minor individual or the legal guardian of any individual who has been declared by a court of competent jurisdiction to be incompetent, due to physical or mental incapacity or age, may act on behalf of that individual in any matter covered by this part. A parent or guardian who desires to act on behalf of such an individual shall present suitable evidence of parentage or guardianship, by birth certificate, certified copy of a court order, or similar docu-

ments, and proof of the individual's identity in a form that complies with § 1.4(c) of this part.

(c) An individual to whom a record is to be disclosed in person, pursuant to this part may have a person of his or her own choosing accompany him or her when the record is disclosed.

§ 1.11 Fees.

(a) The Commission shall not charge an individual for the costs of making a search for a record or the costs of reviewing the record. When the Commission makes a copy of a record as a necessary part of the Process of disclosing the record to an individual, the Commission shall not charge the individual for the cost of making that copy.

(b) If an individual requests the Commission to furnish a copy of the record, the Commission shall charge the individual for the costs of making the copy. The fee that the Commission has established for making a copy is ten cents (\$.10) per page.

§ 1.12 Penalties.

Any person who makes a false statement in connection with any request for a record, or an amendment or correction thereto, under this part, is subject to the penalties prescribed in 18 U.S.C. 494 and 495.

§ 1.13 General exemptions. [Reserved]

§ 1.14 Specific exemptions.

(a) No individual, under the provisions of these regulations, shall be entitled to access to materials compiled in its systems of records identified as FEC audits and investigations (FEC 2) or FEC compliance actions (FEC 3). These exempted systems relate to the Commission's power to exercise exclusive civil jurisdiction over the enforcement of the Act under 2 U.S.C. 437d(a)(6) and (e); and to defend itself in actions filed against it under 2 U.S.C. 437d(a)(6). Further the Commission has a duty to investigate violations of the Act under 2 U.S.C. 437g(a)(2); to conduct audits and investigations pursuant to 2 U.S.C. 438(b); 26 U.S.C. 9007 and 9038; and to refer apparent violations of the Act to the Attorney General or other law enforcement authorities under 2 U.S.C.

437g(a)(5) and 437d(9). Information contained in FEC systems 2 and 3 contain the working papers of the Commission staff and form the basis for either civil and/or criminal proceedings pursuant to the exercise of the powers and duties of the Commission. These materials must be protected until such time as they are subject to public access under the provision of 2 U.S.C. 437g(a)(4)(C) or 5 U.S.C. 552, or other relevant statutes.

(b) The provisions of paragraph (a) of this section shall not apply to the extent that application of the subsection would deny any individual any right, privilege or benefit to which he or she would otherwise be entitled to receive.

[41 FR 43064, Sept. 29, 1976, as amended at 45 FR 21209, Apr. 1, 1980]

PART 2—SCOPE AND DEFINITIONS

- Sec.
- 2.1 Scope.
- 2.2 Commission.
- 2.3 Commissioner or member.
- 2.4 Person.
- 2.5 Meeting.

AUTHORITY: Sec. 3(a), Pub. L. 94-409.

SOURCE: 42 FR 13202, Mar. 9, 1977, unless otherwise noted.

§ 2.1 Scope.

These regulations are promulgated pursuant to the directive of 5 U.S.C. 552b(g) which was added by section 3(a) of Pub. L. 94-409, the Government in the Sunshine Act and specifically implement subsection (b) through (f) of that Act.

§ 2.2 Commission.

“Commission” means the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

§ 2.3 Commissioner or member.

“Commissioner” or “member” means an individual appointed to the Federal Election Commission pursuant to 2 U.S.C. 437(a) and 101(e) of Pub. L. 94-283 and shall also include ex-officio non-voting Commissioners or members, the Secretary of the Senate and the Clerk of the House, but does not

include a proxy or other designated representative of a Commissioner.

§ 2.4 Person.

“Person” includes an individual, partnership, corporation, association, or public or private organization, other than an agency of the United States Government.

§ 2.5 Meeting.

“Meeting” means the deliberation, including those conducted through conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, of at least four voting members of the Commission in collegia where such deliberations determine or result in the point conduct or disposition of official Commission business, but does not include deliberations to schedule a meeting, to take action to open or close a meeting, or to release or withhold information, or to change the subject matter of a meeting under §§ 3.2 and 3.3 of this chapter.

PART 3—MEETINGS

- Sec.
- 3.1 General rules.
- 3.2 Exempted meetings.
- 3.3 Procedure for closing meetings.
- 3.4 Transcripts, recordings and minutes.
- 3.5 Announcement of meetings and schedule changes.
- 3.6 Annual report.

AUTHORITY: Sec. 3(a), Pub. L. 94-409.

SOURCE: 42 FR 13202, Mar. 9, 1977, unless otherwise noted.

§ 3.1 General rules.

(a) Commissioners shall not jointly conduct, determine or dispose of Commission business other than in accordance with this part.

(b) Except as provided in § 3.2, every portion of every Commission meeting shall be open to public observation.

§ 3.2 Exempted meetings.

(a)(1) As required by 2 U.S.C. 437g(a)(12), all Commission meetings, or parts of meetings, pertaining to the notification or investigation of a complaint that the Act has been violated, shall be closed to the public, and the

requirements of §§ 3.3 and 3.5 shall not apply.

(2) For the purposes of this section, "notification or investigation of a complaint" means, *inter alia*, determinations pursuant to 2 U.S.C. 437g(a), the issuance of subpoenas, discussion of civil actions or proceedings, formal agency adjudication pursuant to § 3.3, discussion of referrals to the Department of Justice, or any other matter related to the Commission's enforcement activity.

(b) The requirement of open meetings shall not apply where the Commission finds, (1) pursuant to § 3.3, that an open meeting is more likely than not to result in the disclosure of:

(i) Matters that relate solely to the Commission's internal personnel decisions, rules and practices, except that exemption does not extend to Commission discussions regarding employees' dealings with the public, such as personnel manuals or Commission directives setting forth job functions or procedures;

(ii) Matters which involve the consideration of a proceeding of a formal nature by the Commission against a specific person or the formal censure of any person;

(iii) Information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(iv) Financial information obtained from any person and which is privileged or confidential;

(v) Information the premature disclosure of which would be likely to have a considerable adverse effect on the implementation of a proposed Commission action as long as the Commission has not already disclosed the content on nature of its proposed action, or is not required by law to disclose it prior to final action; and

(2) The public interest does not require the meeting to be open.

[42 FR 13202, Mar. 9, 1977, as amended at 45 FR 21209, Apr. 1, 1980]

§ 3.3 Procedure for closing meetings.

(a) No meeting or portion of a meeting may be closed pursuant to § 3.2(b) to public observation unless a majority of the Commissioners (not including

the ex-officio non-voting Commissioners) vote to take such action.

(b) A Commission vote to close a meeting shall be taken upon the motion of any member, other than the ex-officio non-voting members. A single vote may be taken with respect to a series of meetings, all or a portion or portions of which are proposed to be closed to the public, or with respect to any information concerning such series of meetings, so long as each meeting in such series involves the same particular matters and is scheduled to be held no more than 30 days after the initial meeting in such series.

(c) Although no meeting need be held to consider closing a meeting each vote taken pursuant to paragraph (b) of this section shall be recorded by the Secretary to the Commission. No proxies, written or otherwise, shall be counted.

(d)(1) If the Commission votes to close a meeting, or any portion or portions thereof, to the public, then within 24 hours it shall make publicly available a written statement with respect to such vote. The written statement shall contain:

(i) A citation to the section of these regulations pursuant to which the meeting was closed to public observation together with an explanation as to why the specific discussion comes within the cited exemption;

(ii) The vote of each Commissioner on the motion to close the meeting;

(iii) A list of the names of all persons expected to attend the closed meeting and their affiliations. For purposes of paragraph (d)(1)(iii) of this section, affiliation means title or position, and employer and, in the case of a representative, the name of the person represented, and

(iv) Shall be signed by the Commissioner who presided at the meeting where the vote to close the meeting was taken.

(2) The original copy of the statement shall be maintained in the Commission's Public Records Office.

(e) Each time that the Commission votes, pursuant to paragraph (b) of this section, to close a meeting, the General Counsel shall publicly certify before the meeting may be closed that, in his or her opinion, the meeting may

properly be closed to public observation. The certification shall state each relevant exemptive provision. The original copy of such certification shall be attached to, and preserved with, the statement required by paragraph (d) of this section.

§ 3.4 Transcripts, recordings and minutes.

(a) The Secretary to the Commission shall maintain a complete transcript or electronic recording adequate to record fully the proceedings of each meeting, or portion of a meeting, closed to public observation. An electronic recording of a meeting shall be coded, or other records shall be kept, in a manner adequate to identify each speaker.

(b) In the case of a meeting, or portion of a meeting, closed to public observation because it concerns matters set out in paragraph (a) of § 3.2, the Commission may, in lieu of a complete transcript or electronic recording, maintain a set of minutes. Such minutes shall fully and clearly describe all matters discussed and shall provide a full and accurate summary of any actions taken and the reasons therefor, including a description of each of the views expressed at the meeting on any item by any person attending, and shall reflect the vote of each member on any document considered in connection with any action taken at the meeting.

(c) The Commission shall, within a reasonable time not to exceed 30 days, place on file in the Public Records Office of the Commission, a copy of the transcript, recording, or minutes, as appropriate, which reflects matters discussed or information developed, at the meeting which were not within the scope of the exemption provision of § 3.2 pursuant to which the meeting was closed.

(d) A complete verbatim copy of the transcript, a complete copy of the minutes, or a complete electronic recording of each meeting, or portion of meeting, closed to the public, shall be maintained by the Secretary to the Commission in the confidential files of the Commission, for a period of two years, subsequent to such meeting, or until one year after the conclusion of any agency proceeding with respect to

which the meeting, or portion of the meeting was held, whichever occurs later.

§ 3.5 Announcement of meetings and schedule changes.

(a) In the case of each meeting, the Commission shall publicly announce and shall submit such announcement for publication in the FEDERAL REGISTER at least seven days prior to the day on which the meeting is to be called to order. Such announcement must contain:

(1) The date of the meeting; (2) the place of the meeting; (3) the subject matter of the meeting; (4) whether the meeting is to be open or closed to the public; and (5) the name and telephone number of the official designated by the agency to respond to requests for information about the meeting.

(b) The public announcement and submission for publication required by paragraph (a) of this section shall be made in the case of every meeting to be held by the Commission unless a majority of the Commissioners decide by recorded vote that the situation requires that a particular meeting be called at an earlier date, in which case the Commission shall make, at the earliest practicable time, the public announcement required by paragraph (a) of this section and a concurrent submission to the FEDERAL REGISTER.

(c) The time or place of a meeting may be changed following the public announcement required by paragraphs (a) and (b) of this section only if the Commission publicly announces such change at the earliest practicable time.

(d) The subject matter of a meeting, or the determination of the Commission to open or close a meeting, or portion of a meeting, to the public, may be changed following the public announcement required by paragraphs (a) and (b) of this section only if:

(1) A majority of the entire membership of the Commission determines by a recorded vote that Commission business so requires and that no earlier announcement of the change was possible, and (2) the Commission publicly announces, and concurrently submits for publication in the FEDERAL REGISTER

TER, the change and the vote of each member upon such change at the earliest practicable time.

§ 3.6 Annual report.

The Commission shall report annually to Congress regarding its compliance with such requirements including:

- (a) A tabulation of the total number of Commission meetings open to the public;
- (b) the total number of such meetings closed to the public;
- (c) the reasons for closing such meetings; and
- (d) a description of any litigation brought against the Commission under the Act, including any costs assessed against the Commission in such litigation (whether or not paid by the Commission).

PART 4—PUBLIC RECORDS AND THE FREEDOM OF INFORMATION ACT.

Sec.

- 4.1 Definitions.
- 4.2 Policy of disclosure of records.
- 4.3 Scope.
- 4.4 Availability of records.
- 4.5 Categories of exemptions.
- 4.6 Discretionary release of exempt records.
- 4.7 Requests for records.
- 4.8 Appeal of denial.
- 4.9 Fees.

AUTHORITY: 5 U.S.C. 552.

SOURCE: 44 FR 33368, June 8, 1979, unless otherwise noted.

§ 4.1 Definitions.

As used in this part:

(a) "Commission" means the Federal Election Commission, established by the Federal Election Campaign Act of 1971, as amended.

(b) "Commissioner" means one of the six appointees confirmed by the Senate who is a voting member of the Commission.

(c) "Request" means to seek the release of records under 5 U.S.C. 552.

(d) "Requestor" is any person who submits a request to the Commission.

(e) "Act" means the Federal Election Campaign Act of 1971, as amended by the Federal Election Campaign Act Amendments of 1974, and 1976, and unless specifically excluded, includes Chapters 95 and 96 of the Internal

Revenue Code of 1954 relating to public financing of Federal elections.

§ 4.2 Policy on disclosure of records.

(a) The Commission will make the fullest possible disclosure of records to the public, consistent with the rights of individuals to privacy, the rights of persons contracting with the Commission with respect to trade secret and commercial or financial information entitled to confidential treatment, and the need for the Commission to promote free internal policy deliberations and to pursue its official activities without undue disruption.

(b) All Commission records shall be available to the public unless they are specifically exempt under this part.

(c) To carry out this policy, the Commission shall designate a Freedom of Information Act Officer.

§ 4.3 Scope.

(a) The regulations in this part implement the provisions of the Freedom of Information Act, 5 U.S.C. 552, with respect to the availability of records for inspection and copying.

(b) The regulations in this part do not apply to release of the following records:

(1) Reports of receipts and expenditures, designations of campaign depositories, statements of organization candidate designations of campaign committees; and the indexes compiled from the filings therein.

(2) Requests for advisory opinions, written comments submitted thereto and responses issued by the Commission;

(3) With respect to enforcement matters under the provisions of 2 U.S.C. 437g, the results of any conciliation attempt, including any conciliation agreement entered into by the Commission; and any determination by the Commission that no violation of the Act has occurred.

(4) Copies of studies published pursuant to the Commission's duty to serve as a national clearinghouse on election law administration.

(c) Release of the records identified in paragraphs (b)(1)-(4) above (11 CFR 4.3(b)(1)-(4)) is governed by the provisions of 2 U.S.C. 438(a)(4), 437f(c), 437g(a)(6)(C) and 438(b) and

are available to the public from the Office of Public Records located on the first floor at 1325 K Street, Northwest, Washington, D.C. This office is open Monday through Friday from 9:00 a.m. to 5:00 p.m. except legal holidays.

[44 FR 33368, June 8, 1979; 44 FR 37491, June 27, 1979]

§ 4.4 Availability of records.

(a) In accordance with 5 U.S.C. 552 (a)(2) and (a)(3) the Commission shall make the following materials available for public inspection and copying:

(1) Statements of policy and interpretation which have been adopted by the Commission;

(2) Administrative staff manuals and instructions to staff that affect a member of the public;

(3) Opinions of Commissioners rendered in enforcement cases and General Counsel reports and 2 U.S.C. 437g investigatory materials in enforcement files 60 days after the Commission has voted to close a case and to take no further action; provided that no civil action under 2 U.S.C. 437g (a)(9) has been filed to compel the Commission to take further action. In the event that such civil action is filed, if the court sustains the Commission's action in closing the case, the materials will be made available thereupon. If the Court orders the Commission to take further action, the materials will be made available when the case is again closed;

(4) Letter requests for guidance and responses thereto;

(5) The minutes of Commission meetings and transcripts made from tapes of Commission meetings;

(6) Material routinely prepared for public distribution, e.g. campaign guidelines, FEC Record, press releases, speeches, notices to candidates and committees.

(7) Proposals submitted in response to a request for proposals formulated pursuant to the Federal Procurement Regulations. 41 CFR 1-1.001 *et seq.*

(8) Contracts for services and supplies entered into by the Commission.

(9) Statements and certifications (with respect to closing meetings) as required by the Government in the Sunshine Act, 5 U.S.C. 552b.

(b) The Commission shall maintain and make available current indexes and supplements providing identifying information regarding any matter issued, adopted or promulgated after April 15, 1975 as required by 5 U.S.C. 552(a)(2)(c). These indexes and supplements shall be published and made available on at least a quarterly basis for public distribution unless the Commission determines by Notice in the FEDERAL REGISTER that publication would be unnecessary, impracticable, or not feasible due to budgetary considerations. Nevertheless, copies of any index or supplement shall be made available upon request at a cost not to exceed the direct cost of duplication.

(c) The Freedom of Information Act and the provisions of this part apply only to existing records; they do not require the creation of new records.

(d) If documents or files contain both disclosable and nondisclosable information, the nondisclosable information will be deleted and the disclosable information released unless the disclosable portions cannot be reasonably segregated from the other portions in a manner which will allow meaningful information to be disclosed.

(e) All records created in the process of implementing provisions of 5 U.S.C. 552 will be maintained by the Commission in accordance with the authority granted by General Records Schedule 14, approved by the National Archives and Records Service of the General Services Administration.

§ 4.5 Categories of exemptions.

(a) 5 U.S.C. 552(b) establishes nine categories of matters which are exempt from the mandatory disclosure requirements of 5 U.S.C. 552(a). No requests under 5 U.S.C. 552 shall be denied release unless the record contains, or its disclosure would reveal, matters that are:

(1) Specifically authorized under criteria established by an executive order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive order;

(2) Related solely to the internal personnel rules and practices of the Commission;

(3) Specifically exempted from disclosure by statute, provided that such statute (A) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue, or (B) establishes particular criteria for withholding or refers to particular types of matters to be withheld;

(4) Trade secrets and commercial or financial information obtained from a person which are privileged or confidential. Such information includes confidential business information which concerns or relates to the trade secrets, processes, operations, style of works, or apparatus, or to the production, sales, shipments, purchases, transfers, identification of customers, inventories, or amount of source of income, profits, losses, or expenditures of any person, firm, partnership, corporation, or other organization, if the disclosure is likely to have the effect of either impairing the Commission's ability to obtain such information as is necessary to perform its statutory functions, or causing substantial harm to the competitive position of the person, firm, partnership, corporation, or other organization from which the information was obtained, unless the Commission is required by law to disclose such information. These procedures shall be used for submitting business information in confidence:

(i) A request for confidential treatment shall be addressed to the FOIA officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463, and shall indicate clearly on the envelope that it is a request for confidential treatment.

(ii) With each submission of, or offer to submit, business information which a submitter desires to be treated as confidential under paragraph (a)(4) of this section, the submitter shall provide the following, which may be disclosed to the public: (A) A written description of the nature of the subject information, and a justification for the request for its confidential treatment, and (B) a certification in writing under oath that substantially identical information is not available to the public.

(iii) Approval or denial of requests shall be made only by the FOIA offi-

cer or his or her designees. A denial shall be in writing, shall specify the reason therefore, and shall advise the submitter of the right to appeal to the Commission.

(iv) For good cause shown, the Commission may grant an appeal from a denial by the FOIA Officer or his or her designee if the appeal is filed within fifteen (15) days after receipt of the denial. An appeal shall be addressed to the FOIA Officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463 and shall clearly indicate that it is a confidential submission appeal. An appeal will be decided within twenty (20) days after its receipt (excluding Saturdays, Sundays and legal holidays) unless an extension, stated in writing with the reasons therefore, has been provided the person making the appeal.

(v) Any business information submitted in confidence and determined to be entitled to confidential treatment shall be maintained in confidence by the Commission and not disclosed except as required by law. In the event that any business information submitted to the Commission is not entitled to confidential treatment, the submitter will be permitted to withdraw the tender unless it is the subject of a request under the Freedom of Information Act or of judicial discovery proceedings.

(vi) Since enforcement actions under 2 U.S.C. 437g are confidential by statute, the procedures outlined in § 4.5(a)(4) (i) thru (v) are not applicable.

(5) Inter-agency or intra-agency memoranda or letters which would not be available by law to a party in litigation with the Commission.

(6) Personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

(7) Investigatory records compiled for law enforcement purposes, but only to the extent that the production of such records would (i) interfere with enforcement proceedings, (ii) deprive a person of a right to a fair trial, (iii) constitute an unwarranted invasion of personal privacy, (iv) disclose the identity of a confidential source

and, in the case of a record compiled by a criminal law enforcement authority in the course of a criminal investigation, or by an agency conducting a lawful national security intelligence investigation, confidential information furnished only by the confidential source, (v) disclose investigative techniques and procedures, or (vi) endanger the life or physical safety of law enforcement personnel.

(b) Any reasonably segregable portion of a record shall be provided to any person requesting such record after deletion of the portions which are exempt.

(c) If a requested record is one of another government agency or deals with subject matter to which a government agency other than the Commission has exclusive or primary responsibility, the request for such a record shall be promptly referred by the Commission to that agency for disposition or guidance as to disposition.

(d) Nothing in this part authorizes withholding of information or limiting the availability of records to the public, except as specifically provided in this part; nor is this part authority to withhold information from Congress.

§ 4.6 Discretionary release of exempt records.

The Commission may, in its discretion, release requested records despite the applicability of the exemptions in § 4.5(a), if it determines that it is in the public interest and that the rights of third parties would not be prejudiced.

§ 4.7 Requests for records.

(a) A request to inspect or copy Commission public records as described in § 4.3(b) may be made in person or by mail. The Public Records Office is open Monday through Friday between the hours of 9:00 a.m. and 5:00 p.m. and is located on the first floor, 1325 K Street, Northwest, Washington, D.C. 20463.

(b) Oral or written requests for copies of records not available in the Public Records Office shall be addressed to FOIA Officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463.

The request shall reasonably describe the records sought with sufficient specificity with respect to names, dates and subject matter to permit the records to be located. A requestor will be promptly advised if the records cannot be located on the basis of the description given and that further identifying information must be provided before the request can be satisfied.

(c) Records or copies thereof will normally be made available either immediately upon receipt of a request or within ten working days thereafter, or twenty working days in the case of an appeal, unless in unusual circumstances the time is extended. In the latter event, the requestor shall be notified of the reasons for the extension and the date on which a determination is expected to be made, but in no case shall the extended time exceed ten working days. An extension may be made if it is (1) necessary to locate records or transfer them from physically separate facilities; or (2) necessary to search for, collect, and appropriately examine a large quantity of separate and distinct records which are the subject of a single request; or (3) necessary for consultation with another agency which has a substantial interest in the determination of the request, or with two or more components of the Commission which have a substantial subject matter interest therein.

(d) Any person denied access to records by the Commission shall be notified immediately giving reasons therefore, and notified of the right of such person to appeal such adverse determination to the Commission.

(e) The date of receipt of a request under this part shall be the date on which the FOIA Officer actually receives the request.

§ 4.8 Appeal of denial.

(a) Any person who has been notified pursuant to § 4.6(d) of this part that his/her request for inspection of a record or for a copy has been denied, or who has received no response within ten working days (or within such extended period as is permitted under § 4.7(c) of this part) after the request has been received by the Com-

mission, may appeal the adverse determination or the failure to respond by requesting the Commission to direct that the record be made available.

(b) The appeal request shall be in writing, shall clearly and prominently state on the envelope or other cover and at the top of the first page "FOIA Appeal", and shall identify the record in the form in which it was originally requested.

(c) The appeal request should be delivered or addressed to the FOIA Officer, Federal Election Commission, 1325 K Street, Northwest, Washington, D.C. 20463.

(d) The requestor may state facts and cite legal or other authorities as he/she deems appropriate in support of the appeal request.

(e) For good cause shown, the Commission may disclose a record which is subject to one of the exemptions listed in § 4.5 of this part.

(f) The Commission will make a determination with respect to any appeal within twenty days (excluding Saturdays, Sundays and legal holidays) after receipt of the appeal (or within such extended period as is permitted under § 4.7(c) of this part). If on appeal, the denial of the request for a record or a copy is in whole or in part upheld, the Commission shall advise the requestor of the denial and shall notify him/her of the provisions for judicial review of that determination as set forth in 5 U.S.C. 552(a)(4).

(g) Because of the risk of misunderstanding inherent in oral communications, the Commission will not enter

tain any appeal from an alleged denial or failure to comply with an oral request. Any person who has orally requested a copy of a record that he/she believes to have been improperly denied should resubmit the request in writing as set forth in § 4.7.

§ 1.9 Fees.

(a) Fees will be charged for copies of records which are furnished a requestor under this part and for time spent in locating and reproducing them in accordance with the fee schedule below:

Record search time—1st ½ hour free; Each additional ½ hour.....	\$2.50
Reproduction of documents, per page.....	.10
Transcript of tape-recorded matter, per page.....	3.00

(b) In the event fees for pending requests under this part from the same requestor exceed \$25.00, such records will not be searched for or made available, nor copies furnished, unless the requestor first pays or make acceptable arrangements to pay the total amount due, or if the fee is not precisely ascertainable, the approximate amount due upon the completion of the Commission's search and/or copying. In the event an advance payment hereunder shall differ from the actual fees due, an appropriate adjustment will be made at the time the copies are delivered or made available or a denial of same is notified.

(c) The Commission may reduce or waive payments of fees hereunder if such reduction or waiver would be in the public interest.

SUBCHAPTER A—GENERAL

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

- Sec.
- 100.1 Scope.
- 100.2 Election (2 U.S.C. 431(1)).
- 100.3 Candidate (2 U.S.C. 431(2)).
- 100.4 Federal office (2 U.S.C. 431(3)).
- 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).
- 100.6 Connected organization (2 U.S.C. 431(7)).
- 100.7 Contribution (2 U.S.C. 431(8)).
- 100.8 Expenditure (2 U.S.C. 431(9)).
- 100.9 Commission (2 U.S.C. 431(10)).
- 100.10 Person (2 U.S.C. 431(11)).
- 100.11 State (2 U.S.C. 431(12)).
- 100.12 Identification (2 U.S.C. 431(13)).
- 100.13 National committee (2 U.S.C. 431(14)).
- 100.14 State committee, subordinate committee (2 U.S.C. 431(15)).
- 100.15 Political party (2 U.S.C. 431(16)).
- 100.16 Independent expenditure (2 U.S.C. 431(17)).
- 100.17 Clearly identified (2 U.S.C. 431(18)).
- 100.18 Act (2 U.S.C. 431(19)).
- 100.19 File, filed or filing (2 U.S.C. 434(a)).
- 100.20 Occupation (2 U.S.C. 431(13)).
- 100.21 Employer (2 U.S.C. 431(13)).
- AUTHORITY: 2 U.S.C. 431, 438(a)(8).

SOURCE: 45 FR 15094, Mar. 7, 1980, unless otherwise noted.

§ 100.1 Scope.

This subchapter is issued by the Federal Election Commission to implement the Federal Election Campaign Act of 1971 (Public Law 92-225), as amended by Public Law 93-443, Public Law 94-283, Public Law 95-216, and Public Law 96-187.

§ 100.2 Election (2 U.S.C. 431(1)).

(a) "Election" means the process by which individuals, whether opposed or unopposed, seek nomination for election, or election, to Federal office. The specific types of elections, as set forth at 11 CFR 100.2 (b), (c), (d), (e) and (f) are included in this definition.

(b) *General election.* A general election is an election which meets either of the following conditions:

(1) An election held in even numbered years on the Tuesday following the first Monday in November is a general election.

(2) An election which is held to fill a vacancy in a Federal office (i.e., a special election) and which is intended to result in the final selection of a single individual to the office at stake is a general election. See 11 CFR 100.2(f).

(c) *Primary election.* A primary election is an election which meets one of the following conditions:

(1) An election which is held prior to a general election, as a direct result of which candidates are nominated, in accordance with applicable State law, for election to Federal office in a subsequent election is a primary election.

(2) An election which is held for the expression of a preference for the nomination of persons for election to the office of President of the United States is a primary election.

(3) An election which is held to elect delegates to a national nominating convention is a primary election.

(4) With respect to individuals seeking federal office as independent candidates, or without nomination by a major party (as defined in 26 U.S.C. 9002(6)), the primary election is considered to occur on one of the following dates, at the choice of the candidate:

(i) The day prescribed by applicable State law as the last day to qualify for a position on the general election ballot may be designated as the primary election for such candidate.

(ii) The date of the last major party primary election, caucus, or convention in that State may be designated as the primary election for such candidate.

(iii) In the case of non-major parties, the date of the nomination by that party may be designated as the primary election for such candidate.

(5) With respect to any major party candidate (as defined at 26 U.S.C. 9002(6)) who is unopposed for nomination within his or her own party, and who is certified to appear as that party's nominee in the general election for the office sought, the primary election is considered to have occurred on the date on which the primary election was held by the candidate's party in that State.

(d) *Runoff election.* "Runoff election" means the election which meets either of the following conditions:

(1) The election held after a primary election, and prescribed by applicable State law as the means for deciding which candidate(s) should be certified as a nominee for the Federal office sought, is a runoff election.

(2) The election held after a general election and prescribed by applicable State law as the means for deciding which candidate should be certified as an officeholder elect, is a runoff election.

(e) *Caucus or Convention.* A caucus or convention of a political party is an election if the caucus or convention has the authority to select a nominee for federal office on behalf of that party.

(f) *Special election.* "Special election" means an election which is held to fill a vacancy in a Federal office. A special election may be a primary, general, or runoff election, as defined at 11 CFR 100.2 (b), (c) and (d).

§ 100.3 Candidate (2 U.S.C. 431(2)).

(a) *Definition.* "Candidate" means an individual who seeks nomination for election, or election, to federal office. An individual becomes a candidate for Federal office whenever any of the following events occur:

(1) The individual has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000.

(2) The individual has given his or her consent to another person to receive contributions or make expenditures on behalf of that individual and such person has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000.

(3) After written notification by the Commission that any other person has received contributions aggregating in excess of \$5,000 or made expenditures aggregating in excess of \$5,000 on the individual's behalf, the individual fails to disavow such activity by letter to the Commission within 30 days of receipt of the notification.

(4) The aggregate of contributions received under 11 CFR 100.3(a) (1), (2), and (3), in any combination there-

of, exceeds \$5,000, or the aggregate of expenditures made under 11 CFR 100.3(a) (1), (2), and (3), in any combination thereof, exceeds \$5,000.

(b) *Election cycle.* For purposes of determining whether an individual is a candidate under this section, contributions or expenditures shall be aggregated on an election cycle basis. An election cycle shall begin on the first day following the date of the previous general election for the office or seat which the candidate seeks, unless contributions or expenditures are designated for another election cycle. For an individual who receives contributions or makes expenditures designated for another election cycle, the election cycle shall begin at the time such individual, or any other person acting on the individual's behalf, first receives contributions or makes expenditures in connection with the designated election. The election cycle shall end on the date on which the general election for the office or seat that the individual seeks is held.

§ 100.4 Federal office (2 U.S.C. 431(3)).

"Federal office" means the office of President or Vice President of the United States, Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).

"Political committee" means any group meeting one of the following conditions:

(a) Except as provided in 11 CFR 100.5(b), (c) and (d), any committee, club, association, or other group of persons which receives contributions aggregating in excess of \$1,000 or which makes expenditures aggregating in excess of \$1,000 during a calendar year is a political committee.

(b) Any separate segregated fund established under 2 U.S.C. 441b(b)(2)(C) is a political committee.

(c) Any local committee of a political party is a political committee if: it receives contributions aggregating in excess of \$5,000 during a calendar year; it makes payments exempted from the definition of contribution, under 11 CFR 100.7(b)(9), (15) and

(17), and expenditure, under 11 CFR 100.8(b)(10), (16) and (18), which payments aggregate in excess of \$5,000 during a calendar year; or it makes contributions aggregating in excess of \$1,000 or makes expenditures aggregating in excess of \$1,000 during a calendar year.

(d) An individual's principal campaign committee or authorized committee(s) becomes a political committee(s) when that individual becomes a candidate pursuant to 11 CFR 100.3.

(e) The following are examples of political committees:

(1) *Principal campaign committee.* "Principal campaign committee" means a political committee designated and authorized by a candidate pursuant to 11 CFR 101.1 and 102.1.

(2) *Single candidate committee.* "Single candidate committee" means a political committee other than a principal campaign committee which makes, or receives contributions or makes expenditures on behalf of only one candidate.

(3) *Multi-candidate committee.* "Multi-candidate committee" means a political committee which (i) has been registered with the Commission, Clerk of the House or Secretary of the Senate for at least 6 months; (ii) has received contributions for Federal elections from more than 50 persons; and (iii) (except for any State political party organization) has made contributions to 5 or more Federal candidates.

(4) *Party committee.* "Party committee" means a political committee which represents a political party and is part of the official party structure at the national, State, or local level.

(f) A political committee is either an authorized committee or an unauthorized committee.

(1) *Authorized committee.* An "authorized committee" means the principal campaign committee or any other political committee authorized by a candidate under 11 CFR 102.13 to receive contributions or make expenditures on behalf of such candidate, or which has not been disavowed pursuant to 11 CFR 100.3(a)(3).

(2) *Unauthorized committee.* An "unauthorized committee" is a politi-

cal committee which has not been authorized in writing by a candidate to solicit or receive contributions or make expenditures on behalf of such candidate, or which has been disavowed pursuant to 11 CFR 100.3(a)(3).

(g) *Affiliated committee.* (1) All authorized committees of the same candidate are affiliated.

(2) All committees (including a separate segregated fund, see 11 CFR Part 114) established, financed, maintained, or controlled by the same corporation, labor organization, person, or group of persons including any parent, subsidiary, branch, division, department, or local unit thereof, are affiliated.

(i) Application of the rule of this paragraph means that:

(A) All political committees set up by a single corporation and/or its subsidiaries are affiliated;

(B) All political committees set up by a single national or international union and/or its local unions or other subordinate organizations of the national or international union are affiliated;

(C) All of the political committees set up by an organization of national or international unions, and all of its State and/or local central bodies are affiliated;

(D) All political committees (other than party committees) established by a member organization, including a trade or professional association (see 11 CFR 114.8(a)), and/or by related State and local entities are affiliated;

(E) All the political committees established by the same person or group of persons are affiliated.

(ii) For organizations not covered by paragraph (g)(2)(i) of this section, indicia of establishing, financing, maintaining, or controlling include:

(A) Ownership of a controlling interest in voting shares or securities;

(B) Provisions of bylaws, constitutions, or other documents by which one entity has the authority, power, or ability to direct another entity;

(C) The authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of an entity;

(D) Similar patterns of contributions;

(E) The transfer of funds between committees which represent a substantial portion of the funds of either the transferor or transferee committee, other than the transfer of funds between the committees which jointly raised the funds so transferred.

§ 100.6 Connected organization (2 U.S.C. 431(7)).

(a) "Connected organization" means any organization which is not a political committee but which directly or indirectly establishes, administers, or financially supports a political committee. A connected organization may be a corporation (including a corporation without capital stock), a labor organization, a membership organization, a cooperative or a trade association.

(b) For purposes of 11 CFR 100.6, organizations which are members of the entity (such as corporate members of a trade association) which establishes, administers, or financially supports a political committee are not organizations which directly or indirectly establish, administer or financially support that political committee.

(c) For purposes of 11 CFR 100.6, the term "financially supports" does not include contributions to the political committee, but does include the payment of establishment, administration and solicitation costs of such committee.

§ 100.7 Contribution (2 U.S.C. 431(8)).

(a) The term "contribution" includes the following payments, services or other things of value:

(1) A gift, subscription, loan (except for a loan made in accordance with 11 CFR 100.7(b)(11)), advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office is a contribution.

(i) For purposes of 11 CFR 100.7(a)(1), the term "loan" includes a guarantee, endorsement, and any other form of security.

(A) A loan which exceeds the contribution limitations of 2 U.S.C. 441a and 11 CFR Part 110 shall be unlawful whether or not it is repaid.

(B) A loan is a contribution at the time it is made and is a contribution to the extent that it remains unpaid. The

aggregate amount loaned to a candidate or committee by a contributor, when added to other contributions from that individual to that candidate or committee, shall not exceed the contribution limitations set forth at 11 CFR Part 110. A loan, to the extent it is repaid, is no longer a contribution.

(C) A loan is a contribution by each endorser or guarantor. Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a loan by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors.

(D) If a political committee makes a loan to any person, such loan shall be subject to the limitations of 11 CFR Part 110. Repayment of the principal amount of such loan to such political committee shall not be a contribution by the debtor to the lender committee. Such repayment shall be made with funds which are subject to the prohibitions of 11 CFR 110.4(a) and Part 114. The payment of interest to such committee by the debtor shall be a contribution only to the extent that the interest paid exceeds a commercially reasonable rate prevailing at the time the loan is made. All payments of interest shall be made from funds subject to the prohibitions of 11 CFR 110.4(a) and Part 114.

(ii) For purposes of 11 CFR 100.7(a)(1), the term "money" includes currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instruments payable on demand.

(iii) (A) For purposes of 11 CFR 100.7(a)(1), the term "anything of value" includes all in-kind contributions. Unless specifically exempted under 11 CFR 100.7(b), the provision of any goods or services without

charge or at a charge which is less than the usual and normal charge for such goods or services is a contribution. Examples of such goods or services include, but are not limited to: securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee.

(B) For purposes of 11 CFR 100.7(a)(1)(iii)(A), "usual and normal charge" for goods means the price of those goods in the market from which they ordinarily would have been purchased at the time of the contribution; and "usual and normal charge" for any services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

(2) The entire amount paid to attend a fundraiser or other political event, and the entire amount paid as the purchase price for a fundraising item sold by a political committee is a contribution.

(3) The payment by any person of compensation for the personal services of another person if those services are rendered without charge to a political committee for any purpose, except for legal and accounting services provided under 11 CFR 100.7(b)(13) or (14), is a contribution. No compensation is considered paid to any employee under any of the following conditions:

(i) If an employee is paid on an hourly or salaried basis and is expected to work a particular number of hours per period, no contribution results if the employee engages in political activity during what would otherwise be a regular work period, provided that the taken or released time is made up or completed by the employee within a reasonable time.

(ii) No contribution results where an employee engages in political activity during what would otherwise be normal working hours if the employee

is paid on a commission or piecework basis, or is paid only for work actually performed and the employee's time is considered his or her own to use as he or she sees fit.

(iii) No contribution results where the time used by the employee to engage in political activity is bona fide, although compensable, vacation time or other earned leave time.

(4) The extension of credit by any person for a length of time beyond normal business or trade practice is a contribution, unless the creditor has made a commercially reasonable attempt to collect the debt. (See 11 CFR 114.10). A debt owed by a political committee which is forgiven or settled for less than the amount owed is a contribution unless such debt is settled in accordance with the standards set forth at 11 CFR 114.10.

(b) The term "contribution" does not include the following payments, services or other things of value:

(1) Funds received and payments made solely for the purpose of determining whether an individual should become a candidate are not contributions. Activities permissible under this exemption include, but are not limited to expenses incurred for: conducting a poll, telephone calls and travel, to determine whether an individual should become a candidate. The individual shall keep records of all such funds received and payments made. If the individual subsequently becomes a candidate, the funds received and payments made are contributions and expenditures subject to the limitations, prohibitions and requirements of the Act. Such contributions and expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received or the payments made. This exemption does not include funds received or payments made for general public political advertising; nor does this exemption include funds received or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate.

(2) Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station,

newspaper, magazine, or other periodical publication is not a contribution unless the facility is owned or controlled by any political party, political committee, or candidate, in which case the cost for a news story (i) which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility, and (ii) which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not a contribution.

(3) The value of services provided without compensation by any individual who volunteers on behalf of a candidate or political committee is not a contribution.

(4) No contribution results were an individual, in the course of volunteering personal services on his or her residential premises to any candidate or to any political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a political party for party-related activity. For the purposes of 11 CFR 100.7(b)(4), and individual's residential premises, shall include a recreation room in a residential complex where the individual volunteering services resides, provided that the room is available for use without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not a contribution.

(5) No contribution results where an individual, in the course of volunteering personal services to any candidate or political committee of a political party, obtains the use of a church or community room and provides such room to any candidate for candidate-related activity or to any political committee of a political party for party-related activity, provided that the room is used on a regular basis by members of the community for noncommercial purposes and the room is available for use by members of the community without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not a contribution.

(6) The cost of invitations, food and beverages is not a contribution where such items are voluntarily provided by an individual volunteering personal services on the individual's residential premises or in a church or community room as specified at 11 CFR 100.7(b)(4) and (5) to a candidate for candidate-related activity or to any political committee of a political party for party-related activity, to the extent that: the aggregate value of such invitations, food and beverages provided by the individual on behalf of the candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in any calendar year.

(7) The sale of any food or beverage by a vendor (whether incorporated or not) for use in a candidate's campaign, or for use by a political committee of a political party, at a charge less than the normal or comparable commercial rate, is not a contribution, provided that the charge is at least equal to the cost of such food or beverage to the vendor, to the extent that: the aggregate value of such discount given by the vendor on behalf of any single candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year.

(8) Any unreimbursed payment for transportation expenses incurred by any individual on behalf of any candidate of any political committee of a political party is not a contribution to the extent that: the aggregate value of the payments made by such individual on behalf of a candidate does not exceed \$1,000 with respect to a single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year. Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incidental to volunteer activity is not a contribution.

(9) The payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a

printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not a contribution. The payment of the portion of such costs allocable to Federal candidates must be made from funds subject to the limitations and prohibitions of the Act. If made by a political committee, such payments shall be reported by that committee as disbursements, but need not be allocated in committee reports to specific candidates. This exemption shall not apply to costs incurred by such a committee with respect to the preparation and display of listings made on broadcasting stations, or in newspapers, magazines, and similar types of general public political advertising such as billboards.

(10) Any payment made or obligation incurred by a corporation or a labor organization is not a contribution if under the provisions of 11 CFR Part 114 such payment or obligation would not constitute an expenditure by the corporation or labor organization.

(11) A loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration is not a contribution by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it: bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule. Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written

agreement. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that such agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered a contribution by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. For purposes of 11 CFR 100.7(b)(11), an overdraft made on a checking or savings account shall be considered a contribution by the bank or institution unless: the overdraft is made on an account which is subject to automatic overdraft protection; the overdraft is subject to a definite interest rate which is usual and customary; and there is a definite repayment schedule.

(12) A gift, subscription, loan, advance, or deposit of money or anything of value made to a national committee or a State committee of a political party is not a contribution if it is specifically designated to defray any cost incurred for construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office. If such gift, subscription, loan, advance, or deposit of money or anything of value is made to a committee which is not a political committee under 11 CFR 100.5, the amount need not be reported. However, if such gift, subscription, loan, advance, or deposit of money or anything of value is made to a political committee, it shall be reported in accordance with 11 CFR 104.3(g).

(13) Legal or accounting services rendered to or on behalf of any political committee of a political party are not contributions if the person paying for such services is the regular employer of the individual rendering the services and such services are not attributable to activities which directly further the election of any designated candidate for Federal office. For purposes of 11 CFR 100.7(b)(13), a partnership shall be deemed to be the regular employer of a partner. Amounts

paid by the regular employer for such services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

(14) Legal or accounting services rendered to or on behalf of an authorized committee of a candidate or any other political committee are not contributions if the person paying for such services is the regular employer of the individual rendering the services and if such services are solely to ensure compliance with the Act or 26 U.S.C. 9001 *et seq.* and 9031 *et seq.* For purposes of 11 CFR 100.7(b)(14), a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for these services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

(15) The payment by a state or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not a contribution, provided that the following conditions are met:

(i) Such payment is not for cost incurred in connection with any broadcasting, newspaper, magazine, bill board, direct mail, or similar type of general public communication or political advertising. For purposes of 11 CFR 100.7(b)(15)(i), the term "direct mail" means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(ii) The portion of the cost of such materials allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.

(iii) Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate or candidates for Federal office. For purposes of 11 CFR 100.7(b)(15)(iii), a contribution shall not be considered a "designated contribution" if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(iv) Such materials are distributed by volunteers and not by commercial or for-profit operations. For the purposes of 11 CFR 100.7(b)(15)(iv), payments by the party organization for travel and subsistence or customary token payments to volunteers do not remove such individuals from the volunteer category.

(v) If made by a political committee such payments shall be reported by the political committee as disbursements in accordance with 11 CFR 104.3 but need not be allocated to specific candidates in committee reports.

(vi) Payments by a State candidate or his or her campaign committee to a State or local political party committee for the State candidate's share of expenses for such campaign materials are not contributions, provided the amount paid by the State candidate or his or her committee does not exceed his or her proportionate share of the expenses.

(vii) Campaign materials purchased by the national committee of a political party and delivered to a State or local party committee, or materials purchased with funds donated by the national committee to such State or local committee for the purchase of such materials, shall not qualify under this exemption. Rather, the cost of such materials shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

(16) The payment by a candidate for any public office (including State or local office), or by such candidate's authorized committee, of the costs of that candidate's campaign materials which include information on or any reference to a candidate for Federal office and which are used in connection with volunteer activities (such as pins, bumper stickers, handbills, brochures, posters, and yard signs) is not a contribution to such candidate for Federal office, provided that the payment is not for the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising. The payment of the portion of the cost of such materials allocable to Federal candidates shall be made from contributions subject to the limitations and prohibitions of the Act.

For purposes of 11 CFR 100.7(b)(16), the term "direct mail" means any mailing(s) by commercial vendors or mailing(s) made from lists which were not developed by the candidate.

(17) The payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party, is not a contribution to such candidate(s) provided that the following conditions are met:

(i) Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For purposes of 11 CFR 100.7(b)(17)(i), the term "direct mail" means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(ii) The portion of the costs of such activities allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.

(iii) Such payment is not made from contributions designated to be spent on behalf of a particular candidate or candidates for Federal office. For purposes of 11 CFR 100.7(b)(17)(iii), a contribution shall not be considered a "designated contribution" if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(iv) For purposes of 11 CFR 100.7(b)(17), if such activities include references to any candidate(s) for the House or Senate, the costs of such activities which are allocable to that candidate(s) shall be a contribution to such candidate(s) unless the mention of such candidate(s) is merely incidental to the overall activity.

(v) For purposes of 11 CFR 100.7(b)(17), payment of the costs incurred in the use of phone banks in connection with voter registration and get-out-the-vote activities is not a contribution when such phone banks are operated by volunteer workers. The use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is

permissible. The payment of the costs of such professional services is not an expenditure but shall be reported as a disbursement in accordance with 11 CFR 104.3 if made by a political committee.

(vi) If made by a political committee, such payments for voter registration and get-out-the-vote activities shall be reported by that committee as disbursements in accordance with 11 CFR 104.3, but such payments need not be allocated to specific candidates in committee reports except as provided in 11 CFR 100.7(b)(17)(iv).

(vii) Payments made from funds donated by a national committee of a political party to a State or local party committee for voter registration and get-out-the-vote activities shall not qualify under this exemption. Rather, such funds shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

(18) Payments made to any party committee by a candidate or the authorized committee of a candidate as a condition of ballot access are not contributions.

(19) The payment of any honorarium and related expenses within the meaning of 11 CFR 110.12 is not a contribution.

(20) A gift, subscription, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election; or an election contest concerning a Federal election, is not a contribution except that the prohibitions of 11 CFR 110.4(a) and Part 114 apply.

(21) Funds provided to defray costs incurred in staging nonpartisan candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(e).

(c) For purposes of 11 CFR 100.7 (a) and (b), any contributions or payments made by a married individual shall not be attributed to that individual's spouse, unless otherwise specified by that individual or by the individual's spouse.

[45 FR 15094, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980; 45 FR 23642, Apr. 8, 1980].

§ 100.8 Expenditure (2 U.S.C. 431(9)).

(a) The term "expenditure" includes the following payments, gifts or other things of value:

(1) A purchase, payment, distribution, loan (except for a loan made in accordance with 11 CFR 100.8(b)(12)), advance, deposit, or gift of money or anything of value, made by any person for the purpose of influencing any election for Federal office is an expenditure.

(i) For purposes of 11 CFR 100.8(a)(1), the term "payment" includes payment of any interest on an obligation and any guarantee or endorsement of a loan by a candidate or a political committee.

(ii) For purposes of 11 CFR 100.8(a)(1), the term "payment" does not include the repayment by a political committee of the principal of an outstanding obligation which is owed by such committee, except that the repayment shall be reported as disbursements in accordance with 11 CFR 104.3(b).

(iii) For purposes of 11 CFR 100.8(a)(1), the term "money" includes currency of the United States or of any foreign nation, checks, money orders, or any other negotiable instrument payable on demand.

(iv)(A) For purposes of 11 CFR 100.8(a)(1), the term "anything of value" includes all in-kind contributions. Unless specifically exempted under 11 CFR 100.8(b), the provision of any goods or services without charge or at a charge which is less than the usual and normal charge for the goods or services is an expenditure. Examples of such goods or services include, but are not limited to: securities, facilities, equipment, supplies, personnel, advertising services, membership lists, and mailing lists. If goods or services are provided at less than the usual and normal charge, the amount of the expenditure is the difference between the usual and normal charge for the goods or services at the time of the expenditure and the amount charged the candidate or political committee.

(B) For the purposes of 11 CFR 100.8(a)(1)(iv)(A), "usual and normal charge" for goods means the price of those goods in the market from which

they ordinarily would have been purchased at the time of the expenditure; and "usual and normal charge" for services, other than those provided by an unpaid volunteer, means the hourly or piecework charge for the services at a commercially reasonable rate prevailing at the time the services were rendered.

(2) A written contract, including a media contract, promise, or agreement to make an expenditure is an expenditure as of the date such contract, promise or obligation is made.

(3) An independent expenditure which meets the requirements of 11 CFR 104.4 or Part 109 is an expenditure, and such independent expenditure is to be reported by the person making the expenditure in accordance with 11 CFR 104.4 and Part 109.

(b) The term "expenditure" does not include the following payments, gifts, or other things of value:

(1) Funds received and payments made solely for the purpose of determining whether an individual should become a candidate are not expenditures. Activities permissible under this exemption include, but are not limited to, expenses incurred for: conducting a poll, telephone calls and travel, to determine whether an individual should become a candidate. The individual shall keep records of all such funds received and payments made. If the individual subsequently becomes a candidate, the funds received and payments made are contributions and expenditures subject to the limitations, prohibitions and requirements of the Act. Such contributions and expenditures must be reported with the first report filed by the principal campaign committee of the candidate, regardless of the date the funds were received or the payments made. This exemption does not include funds received or payments made for general public political advertising; nor does this exemption include funds received or payments made for activities designed to amass campaign funds that would be spent after the individual becomes a candidate.

(2) Any cost incurred in covering or carrying a news story, commentary, or editorial by any broadcasting station, newspaper, magazine, or other periodi-

cal publication is not an expenditure, unless the facility is owned or controlled by any political party, political committee or candidate, in which case the cost for a news story (i) which represents a bona fide news account communicated in a publication of general circulation or on a licensed broadcasting facility, and (ii) which is part of a general pattern of campaign-related news accounts which give reasonably equal coverage to all opposing candidates in the circulation or listening area, is not an expenditure.

(3) Any cost incurred for nonpartisan activity designed to encourage individuals to register to vote or to vote is not an expenditure, except that corporations and labor organizations shall engage in such activity in accordance with 11 CFR 114.4(c) and (d). For purposes of 11 CFR 100.8(b)(3), "nonpartisan activity" means that no effort is or has been made to determine the party or candidate preference of individuals before encouraging them to register to vote or to vote.

(4) Any cost incurred for any communication by a membership organization to its members, or by a corporation to its stockholders or executive or administrative personnel, is not an expenditure, so long as the membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any individual to Federal office, except that the costs incurred by a membership organization, including a labor organization, or by a corporation, directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed \$2,000 per election, be reported to the Commission on FEC Form 7 in accordance with 11 CFR 104.6

(i) For purposes of 11 CFR 100.8(b)(4), "labor organization" means an organization of any kind (any local, national, or international union, or any local or State central body of a federation of unions is each considered a separate labor organiza-

tion for purposes of this section) or any agency or employee representative committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(ii) For purposes of 11 CFR 100.8(b)(4), "stockholder" means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends.

(iii) For purposes of 11 CFR 100.8(b)(4), "executive or administrative personnel" means individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(A) This definition includes—

(1) Individuals who run the corporation's business, such as officers; other executives, and plant, division, and section managers; and

(2) Individuals following the recognized professions, such as lawyers and engineers.

(B) This definition does not include—

(1) Professionals who are represented by a labor organization;

(2) Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees;

(3) Former or retired personnel who are not stockholders; or

(4) Individuals who may be paid by the corporation, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)-(1), of the corporation for the purpose of the collection of, and liability for, employee tax under 26 CFR 31.3402(a)-(1).

(C) Individuals on commission may be considered executive or administrative personnel if they have policymaking, managerial, professional, or supervisory responsibility and if the individuals are employees, within the meaning of 26 CFR 31.3401(c)-(1), of the corporation for the purpose of the collection of, and liability for, employee tax under 26 CFR 31.3402(a)-(1).

(D) The Fair Labor Standards Act, 29 USC 201, *et seq.* and the regulations issued pursuant to such Act, 29 CFR 541, *et seq.*, may serve as a guideline in determining whether individuals have policymaking, managerial, professional, or supervisory responsibilities.

(iv) For purposes of 11 CFR 100.8(b)(4), "members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. Members of a local union are considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated. A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund.

(v) For purposes of 11 CFR 100.8(b)(4), "election" means two separate processes in a calendar year, to each of which the \$2,000 threshold described above applies separately. The first process is comprised of all primary elections for Federal office, whenever and wherever held; the second process is comprised of all general elections for Federal office, whenever and wherever held. The term "election" shall also include each special election held to fill a vacancy in a Federal office (11 CFR 100.2(f)) or each runoff election (11 CFR 100.2(d)).

(vi) For purposes of 11 CFR 100.8(b)(4), "corporation" means any separately incorporated entity, whether or not affiliated.

(vii) When the aggregate costs under 11 CFR 100.8(b)(4) exceed \$2,000 per election, all costs of the communication(s) shall be reported on the filing dates specified in 11 CFR 104.6, and shall include the total amount expended for each candidate supported.

(5) No expenditure results where an individual, in the course of volunteering personal services on his or her resi-

dential premises to any candidate or political committee of a political party, provides the use of his or her real or personal property to such candidate for candidate-related activity or to such political committee of a political party for party-related activity. For the purposes of 11 CFR 100.8(b)(5), an individual's residential premises shall include a recreation room in a residential complex where the individual volunteering services resides, provided that the room is available for use without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not an expenditure.

(6) No expenditure results where an individual, in the course of volunteering personal services to any candidate or political committee of a political party, obtains the use of a church or community room and provides such room to any candidate for candidate-related activity or to any political committee of a political party for party-related activity, provided that the room is used on a regular basis by members of the community for noncommercial purposes and the room is available for use by members of the community without regard to political affiliation. A nominal fee paid by such individual for the use of such room is not an expenditure.

(7) The cost of invitations, food, and beverages is not an expenditure where such items are voluntarily provided by an individual in rendering voluntary personal services on the individual's residential premises or in a church or community room as specified at 11 CFR 100.8(b)(5) and (6) to a candidate for candidate-related activity or to a political committee of a political party for party-related activity, to the extent that: the aggregate value of such invitations, food and beverages provided by the individual on behalf of the candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in any calendar year.

(8) The sale of any food or beverage by a vendor (whether incorporated or not) for use in a candidate's campaign, or for use by a political committee of a

political party, at a charge less than the normal or comparable commercial charge, is not an expenditure, provided that the charge is at least equal to the cost of such food or beverage to the vendor, to the extent that the aggregate value of such discount given by the vendor on behalf of any single candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year.

(9) Any unreimbursed payment for transportation expenses incurred by any individual on behalf of any candidate or political committee of a political party is not an expenditure to the extent that the aggregate value of the payments made by such individual on behalf of a candidate does not exceed \$1,000 with respect to a single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year. Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses incident to volunteer activity is not an expenditure.

(10) The payment by a State or local committee of a political party of the costs of preparation, display, or mailing or other distribution incurred by such committee with respect to a printed slate card, sample ballot, palm card, or other printed listing(s) of three or more candidates for any public office for which an election is held in the State in which the committee is organized is not an expenditure. The payment of the portion of such costs allocable to Federal candidates must be made from funds subject to the limitations and prohibitions of the Act. If made by a political party committee, such payments shall be reported by that committee as disbursements, but need not be allocated in committee reports to specific candidates. This exemption shall not apply to costs incurred by such a committee with respect to the preparation and display of listings made on broadcasting stations, or in newspapers, magazines, and similar types of general public political advertising such as billboards.

(11) Any payment made or obligation incurred by a corporation or labor organization is not an expenditure if under the provisions of 11 CFR Part 114 such payment or obligation would not constitute an expenditure by the corporation or labor organization.

(12) A loan of money by a State bank, a federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation, the Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration is not an expenditure by the lending institution if such loan is made in accordance with applicable banking laws and regulations and is made in the ordinary course of business. A loan will be deemed to be made in the ordinary course of business if it bears the usual and customary interest rate of the lending institution for the category of loan involved; is made on a basis which assures repayment; is evidenced by a written instrument; and is subject to a due date or amortization schedule. Such loans shall be reported by the political committee in accordance with 11 CFR 104.3(a). Each endorser or guarantor shall be deemed to have contributed that portion of the total amount of the loan for which he or she agreed to be liable in a written agreement. Any reduction in the unpaid balance of the loan shall reduce proportionately the amount endorsed or guaranteed by each endorser or guarantor in such written agreement. In the event that the loan agreement does not stipulate the portion of the loan for which each endorser or guarantor is liable, the loan shall be considered an expenditure by each endorser or guarantor in the same proportion to the unpaid balance that each endorser or guarantor bears to the total number of endorsers or guarantors. For the purposes of 11 CFR 100.8(b)(12), an overdraft made on a checking or savings account shall be considered an expenditure unless the overdraft is made on an account which is subject to automatic overdraft protection and the overdraft is subject to a definite interest rate and a definite repayment schedule.

(13) A purchase, payment, distribution, loan, advance, or deposit of money or anything of value made to a national committee or a state committee of a political party is not an expenditure if it is specifically designated to defray any cost incurred for construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office. If such purchase, payment, distribution, loan, advance, or deposit of money or anything of value is made to a committee which is not a political committee under 11 CFR 100.5, the amount need not be reported. However, if such purchase, payment, distribution, loan, advance, or deposit of money or anything of value is made to a political committee, it shall be reported in accordance with 11 CFR 104.3(g).

(14) Legal or accounting services rendered to or on behalf of any political committee of a political party are not expenditures if the person paying for such services is the regular employer of the individual rendering the services and such services are not attributable to activities which directly further the election of any designated candidate for Federal office. For purposes of 11 CFR 100.8(b)(14), a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for such services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h).

(15) Legal or accounting services rendered to or on behalf of an authorized committee of a candidate or any other political committee are not expenditures if the person paying for such services is the regular employer of the individual rendering such services and if the services are solely to ensure compliance with the Act or 26 U.S.C. 9001 *et seq.* and 9032 *et seq.* For purposes of 11 CFR 100.8(b)(15), a partnership shall be deemed to be the regular employer of a partner. Amounts paid by the regular employer for these services shall be reported by the committee receiving such services in accordance with 11 CFR 104.3(h). Expenditures for these services by a candidate certified to receive Primary

Matching Funds under 11 CFR Part 9034 or certified to receive payments from the Presidential Election Campaign Fund under 11 CFR Part 143 do not count against such candidate's expenditure limitations under 11 CFR Part 9035 or 11 CFR 110.8.

(16) The payment by a state or local committee of a political party of the costs of campaign materials (such as pins, bumper stickers, handbills, brochures, posters, party tabloids or newsletters, and yard signs) used by such committee in connection with volunteer activities on behalf of any nominee(s) of such party is not an expenditure, provided that the following conditions are met:

(i) Such payment is not for costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For the purposes of 11 CFR 100.8(b)(16)(i), the term "direct mail" means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(ii) The portion of the cost of such materials allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.

(iii) Such payment is not made from contributions designated by the donor to be spent on behalf of a particular candidate or candidates for Federal office. For purposes of 11 CFR 100.8(b)(16)(iii), a contribution shall not be considered a "designated contribution" if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(iv) Such materials are distributed by volunteers and not by commercial or for-profit operations. For the purposes of 11 CFR 100.8(b)(16)(iv), payments by the party organization for travel and subsistence or customary token payments to volunteers do not remove such individuals from the volunteer category.

(v) If made by a political party committee, such payments shall be reported by that committee as disbursements, in accordance with 11 CFR

104.3, but need not be allocated to specific candidates in committee reports.

(vi) Payments by a State candidate or his or her campaign committee to a State or local political party committee for the State candidate's share of expenses for such campaign materials are not expenditures, provided the amount paid by the State candidate or his or her committee does not exceed his or her proportionate share of the expenses.

(vii) Campaign materials purchased by the national committee of a political party and delivered to a State or local party committee, or materials purchased with funds donated by the national committee to such State or local committee for the purchase of such materials, shall not qualify under this exemption. Rather, the cost of such materials shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

(17) The payment by a candidate for any public office (including State or local office), or by such candidate's authorized committee, of the costs of that candidate's campaign materials which include information on or any reference to a candidate for Federal office and which are used in connection with volunteer activities (such as pins, bumper stickers, handbills, brochures, posters, and yard signs) is not an expenditure on behalf of such candidate for Federal office, provided that the payment is not for the use of broadcasting, newspapers, magazines, billboards, direct mail or similar types of general public communication or political advertising. The payment of the portion of the cost of such materials allocable to Federal candidates shall be made from contributions subject to the limitations and prohibitions of the Act. For purposes of 11 CFR 100.8(b)(17), the term "direct mail" means mailings by commercial vendors or mailings made from lists which were not developed by the candidate.

(18) The payment by a State or local committee of a political party of the costs of voter registration and get-out-the-vote activities conducted by such committee on behalf of the Presidential and Vice Presidential nominee(s) of that party is not an expenditure for the purpose of influencing the election

of such candidates provided that the following conditions are met:

(i) Such payment is not for the costs incurred in connection with any broadcasting, newspaper, magazine, billboard, direct mail, or similar type of general public communication or political advertising. For purposes of 11 CFR 100.8(b)(18)(i), the term "direct mail" means any mailing(s) by a commercial vendor or any mailing(s) made from commercial lists.

(ii) The portion of the costs of such activities allocable to Federal candidates is paid from contributions subject to the limitations and prohibitions of the Act.

(iii) Such payment is not made from contributions designated to be spent on behalf of a particular candidate or candidates for Federal office. For the purposes of 11 CFR 100.8(b)(18)(iii), a contribution shall not be considered a "designated contribution" if the party committee disbursing the funds makes the final decision regarding which candidate(s) shall receive the benefit of such disbursement.

(iv) For purposes of 11 CFR 100.8(b)(18), if such activities include references to any candidate(s) for the House or Senate, the costs of such activities which are allocable to that candidate(s) shall be an expenditure on behalf of such candidate(s) unless the mention of such candidate(s) is merely incidental to the overall activity.

(v) For purposes of 11 CFR 100.8(b)(18), payment of the costs incurred in the use of phone banks in connection with voter registration and get-out-the-vote activities is not an expenditure when such phone banks are operated by volunteer workers. The use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is permissible. The payment of the costs of such professional services is not an expenditure but shall be reported as a disbursement in accordance with 11 CFR 104.3 if made by a political committee.

(vi) If made by a political committee, such payments for voter registration and get-out-the-vote activities shall be reported by that committee as disbursements, in accordance with 11

CFR 104.3 but such payments need not be allocated to specific candidates in committee reports except as provided in 11 CFR 100.8(b)(18)(iv).

(vii) Payments made from funds donated by a national committee of a political party to a State or local party committee for voter registration and get-out-the-vote activities shall not qualify under this exemption. Rather, such funds shall be subject to the limitations of 2 U.S.C. 441a(d) and 11 CFR 110.7.

(19) Amounts transferred by a party committee to another party committee or payments made to the appropriate State official of fees collected from candidates or their authorized committees as a condition of ballot access are not expenditures.

(20) A purchase, payment, distribution, loan, advance, or deposit of money or anything of value made with respect to a recount of the results of a Federal election, or an election contest concerning a Federal election, is not an expenditure except that the prohibitions of 11 CFR 110.4(a) and Part 114 apply.

(21) (i) Any costs incurred by a candidate or his or her authorized committees in connection with the solicitation of contributions by a candidate who has been certified to receive Presidential Primary Matching Fund Payments (or a minor or new party candidate receiving general election public financing under 26 U.S.C. 9004), the aggregate of which do not exceed 20 percent of the expenditure limitation applicable to that candidate, are not expenditures, but these costs shall be reported as disbursements under 11 CFR Part 104.

(ii) For purposes of 11 CFR 100.8(b)(21), "in connection with the solicitation of contributions" means any cost reasonably related to fundraising activity, including the costs of printing and postage, the production of and space or air time for, advertisements used for fundraising, and the costs of meals, beverages, and other costs associated with a fundraising reception or dinner.

(iii) The fundraising expenditures need not be allocated on a State by State basis, except where the fundraising activity is aimed at a particular

State and takes place within 28 days prior to a primary election, convention, or caucus. See 11 CFR 110.8(c).

(22) Payments by a candidate from his or her personal funds, as defined at 11 CFR 110.10(b), for the candidate's routine living expenses which would have been incurred without candidacy, including the costs of food and residence, are not expenditures.

(23) Funds used to defray costs incurred in staging nonpartisan candidate debates in accordance with the provisions of 11 CFR 110.13 and 114.4(e).

(c) For purposes of 11 CFR 100.8 (a) and (b), any payments made by a married individual shall not be attributed to that individual's spouse, unless otherwise specified by that individual or by the individuals' spouse.

[45 FR 15094, Mar. 7, 1980; 45 FR 23642, Apr. 8, 1980]

§ 100.9 Commission (2 U.S.C. 431(10)).

"Commission" means the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

§ 100.10 Person (2 U.S.C. 431(11)).

"Person" means an individual, partnership, committee, association, corporation, labor organization, and any other organization, or group of persons, but does not include the Federal government or any authority of the Federal government.

§ 100.11 State (2 U.S.C. 431(12)).

"State" means each State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States.

§ 100.12 Identification (2 U.S.C. 431(13)).

"Identification" means, in the case of an individual, his or her full name, including: first name, middle name or initial, if available, and last name; mailing address; occupation; and the name of his or her employer; and, in the case of any other person, the person's full name and address.

§ 100.13 National committee (2 U.S.C. 431(14)).

"National committee" means the organization which, by virtue of the

bylaws of a political party, is responsible for the day-to-day operation of the political party at the national level, as determined by the Commission.

§ 100.14 State committee, subordinate committee (2 U.S.C. 431(15)).

(a) "State committee" means the organization which by virtue of the bylaws of a political party, is responsible for the day-to-day operation of the political party at the State level, as determined by the Commission.

(b) "Subordinate committee of a State committee" means any organization which is responsible for the day-to-day operation of the political party at the level of city, county, neighborhood, ward, district, precinct, or any other subdivision of a State or any organization under the control or direction of the State committee.

§ 100.15 Political party (2 U.S.C. 431(16)).

"Political party" means an association, committee, or organization which nominates or selects a candidate for election to any Federal office, whose name appears on an election ballot as the candidate of the association, committee, or organization.

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

The term "independent expenditure" means an expenditure for a communication by a person expressly advocating the election or defeat of a clearly identified candidate which is made without cooperation or consultation with any candidate, or any authorized committee or agent of such candidate, and which is not made in concert with, or at the request or suggestion of, any candidate, or any authorized committee or agent of such candidate.

§ 100.17 Clearly identified (2 U.S.C. 431(18)).

The term "clearly identified" means that the name of the candidate involved appears; a photograph or drawing of the candidate appears; or the identity of the candidate is apparent by unambiguous reference.

§ 100.18 Act (2 U.S.C. 431(19)).

"Act" means the Federal Election Campaign Act of 1971 (Public Law 92-225), as amended in 1974 (Public Law 93-443), 1976 (Public Law 94-283), 1977 (Public Law 95-216) and 1980 (Public Law 96-187).

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

With respect to reports, statements, notices, and designations 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 either of the following actions:

(a) A document is timely filed upon delivery to the Federal Election Commission, 1325 K Street NW., Washington, D.C. 20463; the Secretary of the United States Senate, Office of Public Records, 119 D Street NE., Washington, D.C. 20510; or the Clerk of the United States House of Representatives, House Records and Registration, 1036 Longworth House Office Building, Washington, D.C. 20515, as required by 11 CFR Part 105, by the close of the prescribed filing date.

(b) A document is timely filed upon deposit as registered or certified mail in an established U.S. Post Office and postmarked no later than midnight of the day of the filing date, except that pre-election reports so mailed must be postmarked no later than midnight of the fifteenth day before the date of the election. Reports and statements sent by first class mail must be received by the close of business of the prescribed filing date to be timely filed.

§ 100.20 Occupation (2 U.S.C. 431(13)).

"Occupation" means the principal job title or position of an individual and whether or not self-employed.

§ 100.21 Employer (2 U.S.C. 431(13)).

"Employer" means the organization or person by whom an individual is employed, and not the name of his or her supervisor.

PART 101—CANDIDATE STATUS AND DESIGNATIONS (2 U.S.C. 432(e))

Sec.

- 101.1 Candidate designations (2 U.S.C. 432(e)(1)).
- 101.2 Candidate as agent of authorized committee (2 U.S.C. 432(e)(2)).
- 101.3 Funds received or expended prior to becoming a candidate (2 U.S.C. 432(e)(2)).

AUTHORITY: 2 U.S.C. 432(e), 438(a) (f).

SOURCE: 45 FR 15103, Mar. 7, 1980, unless otherwise noted.

§ 101.1 Candidate designations (2 U.S.C. 432(e)(1)).

(a) *Principal Campaign Committee.* Within 15 days after becoming a candidate under 11 CFR 100.3, each candidate, other than a nominee for the office of Vice President, shall designate in writing a principal campaign committee in accordance with 11 CFR 102.12. A candidate shall designate his or her principal campaign committee by filing a Statement of Candidacy on FEC Form 2, or by filing a letter containing the same information (that is, the individual's name and address, party affiliation and office sought, the District and State in which Federal office is sought, and the name and address of his or her principal campaign committee) at the place of filing specified at 11 CFR Part 105. Each principal campaign committee shall register, designate a depository and report in accordance with 11 CFR Parts 102, 103 and 104.

(b) *Authorized Committees.* A candidate may designate additional political committees in accordance with 11 CFR 102.13 to serve as committees which will be authorized to accept contributions or make expenditures on behalf of the candidate. For each such authorized committee, other than a principal campaign committee, the candidate shall file a written designation with his or her principal campaign committee. The principal campaign committee shall file such designations

at the place of filing specified at 11 CFR Part 105.

[45 FR 15103, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980]

§ 101.2 Candidate as agent of authorized committee (2 U.S.C. 432(e)(2)).

(a) Any candidate who receives a contribution as defined at 11 CFR 100.7, obtains any loan, or makes any disbursement, in connection with his or her campaign shall be considered as having received such contribution, obtained such loan or made such disbursement as an agent of his or her authorized committee(s).

(b) When an individual becomes a candidate, any funds received, loans obtained, or disbursements made prior to becoming a candidate in connection with his or her campaign shall be deemed to have been received, obtained or made as an agent of his or her authorized committee(s).

§ 101.3 Funds received or expended prior to becoming a candidate (2 U.S.C. 432(e)(2)).

When an individual becomes a candidate, all funds received or payments made in connection with his or her campaign prior to becoming a candidate shall be considered contributions or expenditures under the Act and shall be reported in accordance with 11 CFR 104.3 in the first report filed by such candidate's principal campaign committee. The individual shall keep records of the name of each contributor, the date of receipt and amount of all contributions received (see 11 CFR 102.9(a)) and all expenditures made (see 11 CFR 102.9(b)) in connection with the individual's campaign prior to becoming a candidate. Contributions received by an individual prior to becoming a candidate, which contributions are not in compliance with the Act, shall be returned to the contributor within ten (10) days after the individual becomes a candidate. The individual shall keep records of all refunds made.

PART 102—REGISTRATION, ORGANIZATION, AND RECORDKEEPING BY POLITICAL COMMITTEES (2 U.S.C. 433)

- Sec.
- 102.1 Registration of political committees (2 U.S.C. 433(a)).
- 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).
- 102.3 Termination of registration (2 U.S.C. 433(d)(1)).
- 102.4 Administrative termination (2 U.S.C. 433(d)(2)).
- 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fundraisers.
- 102.6 Transfers and joint fundraisers.
- 102.7 Organization of political committees (2 U.S.C. 432(a)).
- 102.8 Receipt of contributions (2 U.S.C. 432(b)).
- 102.9 Accounting for contributions and expenditures (2 U.S.C. 432(c)).
- 102.10 Disbursement by check (2 U.S.C. 432(h)(1)).
- 102.11 Petty cash fund (2 U.S.C. 432(h)(2)).
- 102.12 Designation of principal campaign committee (2 U.S.C. 432(e) (1) and (3)).
- 102.13 Authorization of political committees (2 U.S.C. 432(e) (1) and (3)).
- 102.14 Names of political committees (2 U.S.C. 432(e) (4) and (5)).
- 102.15 Commingled funds (2 U.S.C. 432(a)(3)).
- 102.16 Notice: Solicitation of contributions (2 U.S.C. 441d).

AUTHORITY: 2 U.S.C. 432, 433, 438(a)(8), 441d.

SOURCE: 45 FR 15104, Mar. 7, 1980, unless otherwise noted.

§ 102.1 Registration of political committees (2 U.S.C. 433(a)).

(a) *Principal Campaign Committees.* Each principal campaign committee shall file a Statement of Organization in accordance with 11 CFR 102.2 no later than 10 days after designation pursuant to 11 CFR 101.1. In addition, each principal campaign committee shall file all designations, statements and reports which are filed with such committee at the place of filing specified at 11 CFR Part 105.

(b) *Authorized Committees.* Each authorized committee(s) shall file only one Statement of Organization in accordance with 11 CFR 102.2 no later than 10 days after designation pursu-

ant to 11 CFR 101.1. Such Statement(s) shall be filed with the principal campaign committee of the authorizing candidate.

(c) *Separate Segregated Funds.* Each separate segregated fund established under 2 U.S.C. 441b(b)(2)(C) shall file a Statement of Organization with the Federal Election Commission no later than 10 days after establishment. This requirement shall not apply to a fund established solely for the purpose of financing political activity in connection with State or local elections. Examples of establishment events after which a fund would be required to register include, but are not limited to: a vote by the board of directors or comparable governing body of an organization to create a separate segregated fund to be used wholly or in part for federal elections; selection of initial officers to administer such a fund; or payment of the initial operating expenses of such a fund.

(d) *Other Political Committees.* All other committees shall file a Statement of Organization no later than 10 days after becoming a political committee within the meaning of 11 CFR 100.5. Such statement(s) shall be filed at the place of filing specified at 11 CFR Part 105.

§ 102.2 Statement of organization: Forms and committee identification number (2 U.S.C. 433(b), (c)).

(a) *Forms.* (1) The Statement of Organization shall be filed in accordance with 11 CFR Part 105 on Federal Election Commission Form 1, which may be obtained from the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. The Statement shall be signed by the treasurer and shall include the following information:

(i) The name, address, and type of committee;

(ii) The name, address, relationship, and type of any connected organization or affiliated committee in accordance with 11 CFR 102.2(b);

(iii) The name, address, and committee position of the custodian of books and accounts of the committee;

(iv) The name and address of the treasurer of the committee;

(v) If the committee is authorized by a candidate, the name, office sought (including State and Congressional district, when applicable) and party affiliation of the candidate; and the address to which communications should be sent;

(vi) A listing of all banks, safe deposit boxes, or other depositories used by the committee.

(2) Any change or correction in the information previously filed in the Statement of Organization shall be reported no later than 10 days following the date of the change or correction by filing an amended Statement of Organization or by filing a letter noting the change(s). The amendment need list only the name of such committee and the change or correction.

(b) For purposes of 11 CFR 102.2(a)(1)(ii), political committees shall disclose the names of any connected organization(s) or affiliated committee(s) in accordance with 11 CFR 102.2(b) (1) and (2).

(1) "Affiliated committee" includes any committee defined in 11 CFR 100.5(g).

(i) A principal campaign committee is required to disclose the names and addresses of all other authorized committees which have been authorized by its candidate. Authorized committees need only disclose the name of their principal campaign committee.

(ii)(A) Political committees established by a single parent corporation, a single national or international union, a single organization or federation of national or international unions, a single national membership organization or trade association, or any other similar group of persons (other than political party organizations) are required to disclose the names and addresses of all political committees established by any subsidiary, or by any State, local, or other subordinate unit of a national or international union or federation thereof, or by any subordinate units of a national membership organization, trade association, or other group of persons (other than political party organizations).

(B) Political committees established by subsidiaries, or by State, local, or other subordinate units are only re-

quired to disclose the name and address of each political committee established by their parent or superior body, e.g., parent corporation, national or international union or organization or federation of such unions, or national organization or trade association.

(2) "Connected organization" includes any organization defined at 11 CFR 100.6.

(c) *Committee identification number.* Upon receipt of a Statement of Organization under 11 CFR Part 102 by the Commission, an identification number shall be assigned to the committee, receipt shall be acknowledged, and the political committee shall be notified of the number assigned. This identification number shall be entered by the political committee on all subsequent reports or statements filed under the Act, as well as on all communications concerning reports and statements.

§ 102.3 Termination of registration (2 U.S.C. 433(d)(1)).

(a) A political committee (other than a principal campaign committee) may terminate only upon filing a termination report on the appropriate FEC Form or upon filing a written statement containing the same information at the place of filing specified at 11 CFR Part 105. Except as provided in 11 CFR 102.4(c), only a committee which will no longer receive any contributions or make any disbursements that would otherwise qualify it as a political committee may terminate, provided that such committee has no outstanding debts and obligations. In addition to the Notice, the committee shall also provide a final report of receipts and disbursements, which report shall include a statement as to the purpose for which such residual funds will be used, including a statement as to whether such residual funds will be used to defray expenses incurred in connection with an individual's duties as a holder of federal office.

(b) Except as provided at 11 CFR 102.4, a principal campaign committee may not terminate until it has met the requirements of 11 CFR 102.3(a) and until all debts of any other authorized

committee(s) of the candidate have been extinguished.

[45 FR 15104, Mar. 7, as amended at 45 FR 21209, Apr. 1, 1980]

§ 102.4 Administrative termination (2 U.S.C. 433(d)(2)).

(a) The Commission, on its own initiative or upon the request of the political committee itself, may administratively terminate a political committee's reporting obligation on the basis of the following factors:

(1) The committee's aggregate reported financial activity in one year is less than \$5000;

(2) The committee's reports disclose no receipt of contributions for the previous year;

(3) The committee's last report disclosed minimal expenditures;

(4) The committee's primary purpose for filing its reports has been to disclose outstanding debts and obligations;

(5) The committee has failed to file reports for the previous year;

(6) The committee's last report disclosed that the committee's outstanding debts and obligations do not appear to present a possible violation of the prohibitions and limitations of 11 CFR Parts 110 and 114;

(7) The committee's last report disclosed that the Committee does not have substantial outstanding accounts receivable;

(8) The committee's outstanding debts and obligations exceed the total of the committee's reported cash on hand balance.

(b) The Commission shall send a notification to the committee treasurer of its intent to administratively terminate that committee and may request the treasurer to submit information with regard to the factors set forth at 11 CFR 102.4(a). The treasurer shall respond, in writing, within 30 days of receipt of the Commission's notice or request and if the committee objects to such termination, the committee's response shall so state.

(c) The Commission shall administratively terminate a committee if such committee fails to object to the Commission's action under 11 CFR 102.4(b) and the Commission determines that either:

(1) The committee has complied with the debt settlement procedures set forth at 11 CFR 114.10;

(2) The Commission has approved the forgiveness of any loan(s) owed the committee which would have otherwise been considered a contribution under the Act in violation of 11 CFR Part 110;

(3) It does not appear from evidence available that a contribution in violation of 11 CFR Parts 110 and 114 will result.

§ 102.5 Organizations financing political activity in connection with Federal and non-Federal elections, other than through transfers and joint fund-raisers.

(a) Organizations, that are political committees under the Act

(1) Each organization, including a party committee, which finances political activity in connection with both federal and non-federal elections and which qualifies as a political committee under 11 CFR 100.5 shall either:

(i) Establish a separate federal account in a depository in accordance with 11 CFR Part 103. Such account shall be treated as a separate federal political committee which shall comply with the requirements of the Act including the registration and reporting requirements of 11 CFR Parts 102 and 104. Only funds subject to the prohibitions and limitations of the Act shall be deposited in such separate federal account. All disbursements, contributions, expenditures and transfers by the committee in connection with any federal election shall be made from its federal account. No transfers may be made to such federal account from any other account(s) maintained by such organization for the purpose of financing activity in connection with non-federal elections. Administrative expenses shall be allocated pursuant to 11 CFR Part 106 between such federal account and any other account maintained by such committee for the purpose of financing activity in connection with non-federal elections; or

(ii) Establish a political committee which shall receive only contributions subject to the prohibitions and limitations of the Act, regardless of whether

such contributions are for use in connection with federal or non-federal elections. Such organization shall register as a political committee and comply with the requirements of the Act.

(2) Only contributions meeting the conditions set forth at subsections (i), (ii), and (iii) of this section may be deposited in a federal account established under 11 CFR 102.5(a)(1)(i) or may be received by a political committee established under 11 CFR 102.5(a)(1)(i).

(i) Contributions designated for the federal account;

(ii) Contributions that result from a solicitation which expressly states that the contribution will be used in connection with a federal election; and

(iii) Contributions from contributors who are informed that all contributions are subject to the prohibitions and limitations of the Act.

(b) Organizations that are not political committees under the Act

(1) Any organization that makes contributions or expenditures but does not qualify as a political committee under 11 CFR 100.5 and any State or local party organization that makes contributions, expenditures and exempted payments under 11 CFR 100.7(b)(9), (15) and (17) and 100.8(b)(10), (16) and (18) shall either:

(i) Establish a separate account to which only funds subject to the prohibitions and limitations of the Act shall be deposited and from which contributions, expenditures and exempted payments shall be made. Such organization shall keep records of deposits to and disbursements from such account and, upon request, shall make such records available for examination by the Commission.

(ii) Demonstrate through a reasonable accounting method that whenever such organization makes a contribution, expenditure or exempted payment, that organization has received sufficient funds subject to the limitations and prohibitions of the Act to make such contribution, expenditure or payment. Such organization shall keep records of amounts received or expended under this subsection and, upon request, shall make such records

available for examination by the Commission.

[45 FR 15104, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980]

§ 102.6 Transfers and joint fundraisers.

(a) Transfers of funds may be made without limit between affiliated committees, whether or not they are political committees under 11 CFR 100.5; and between or among a national party committee, any State party committee and/or any subordinate party committee whether or not they are political committees under 11 CFR 100.5 and whether or not such committees are affiliated. Transfers will apply toward the thresholds for determining whether a committee is a political committee as defined at 11 CFR 100.5.

(b) For a committee or organization engaging in a joint fundraising with, or acting as a fundraising agent for, any political committee, said committee or organization shall comply with the provisions of 11 CFR 102.8 and in transferring such contributions shall either:

(1) Establish a transmittal account to be used solely for the deposit of funds from a joint fundraiser or collected as a fundraising agent and for forwarding funds to its affiliate. Only funds subject to the prohibitions and limitations of the Act shall be deposited into such account. If any disbursement is made from the account, other than a transfer of funds to an affiliated committee, the account shall be considered a depository of the recipient affiliated political committee and all activity of that account shall be reported; or

(2) Transmit contributions which it has collected as a fundraising agent or in joint fundraising either by money order, cashier's check or similar instrument without depositing such contributions in any account prior to the transfers; or

(3) Deposit contributions which it has collected in joint fundraising or through a check-off plan in an account established solely for State or local election activity. The committee shall forward such contributions to its affiliate in accordance with 11 CFR 102.8. The committee shall make separate deposits of funds received

through joint fundraising activity or through a check-off plan, where any portion of such funds represents contributions to the affiliated political committee. Such record shall include those records required to be kept under 11 CFR 102.8. If contributions of \$50 or less are received at a mass collection, a record shall be kept of the date, the total amount collected, and the name of the function at which the collection was made. For each contribution of \$50 or less which was not received at a mass collection, a record shall be kept of the date and amount of the contribution. Upon request, the organization shall make all records kept under this section available for examination by the Commission.

§ 102.7 Organization of political committees (2 U.S.C. 432(a)).

(a) Every political committee shall have a treasurer and may designate, on the committee's Statement of Organization, an assistant treasurer who shall assume the duties and responsibilities of the treasurer in the event of a temporary or permanent vacancy in the office or in the event the treasurer is unavailable.

(b) Except as provided in subsection (a), no contribution or expenditure shall be accepted or made by or on behalf of a political committee at a time when there is a vacancy in the office of the treasurer.

(c) No expenditure shall be made for or on behalf of a political committee without the authorization of its treasurer or of an agent authorized orally or in writing by the treasurer.

(d) Any candidate who receives a contribution, as defined at 11 CFR 100.7, obtains any loan or makes any disbursement in connection with his or her campaign, shall be considered as having received the contribution, obtained the loan or made the disbursement as an agent of such authorized committee(s).

§ 102.8 Receipt of contributions. (2 U.S.C. 432(b)).

(a) Every person who receives a contribution for an authorized political committee shall, no later than 10 days after receipt, forward such contribution to the treasurer. If the amount of

the contribution is in excess of \$50, such person shall also forward to the treasurer the name and address of the contributor and the date of receipt of the contribution. If the amount of the contribution is in excess of \$200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution.

(b) (1) Every person who receives a contribution of \$50 or less for a political committee which is not an authorized committee shall forward such contribution to the treasurer of the political committee no later than 30 days after receipt.

(2) Every person who receives a contribution in excess of \$50 for a political committee which is not an authorized committee shall, no later than 10 days after receipt of the contribution, forward to the treasurer of the political committee: the contribution; the name and address of the contributor; and the date of receipt of the contribution. If the amount of the contribution is in excess of \$200, such person shall forward the contribution, the identification of the contributor in accordance with 11 CFR 100.12, and the date of receipt of the contribution. Date of receipt shall be the date such person obtains possession of the contribution.

(c) The provisions of 11 CFR 102.8 concerning receipt of contributions for political committees shall also apply to earmarked contributions transmitted by an intermediary or conduit.

§ 102.9 Accounting for contributions and expenditures (2 U.S.C. 432(c)).

The treasurer of a political committee or an agent authorized by the treasurer to receive contributions and make expenditures shall fulfill all recordkeeping duties as set forth at 11 CFR 102.9(a) through (e):

(a) An account shall be kept by any reasonable accounting procedure of all contributions received by or on behalf of the political committee.

(1) For contributions in excess of \$50, such account shall include the name and address of the contributor

and the date of receipt and amount of such contribution.

(2) For contributions from any person whose contributions aggregate more than \$200 during a calendar year, such account shall include the identification of the person, and the date of receipt and amount of such contribution.

(3) For contributions from a political committee, such account shall include the identification of the political committee and the date of receipt and amount of such contribution.

(b)(1) An account shall be kept of all disbursements made by or on behalf of the political committee. Such account shall consist of a record of:

(i) the name and address of every person to whom any disbursement is made;

(ii) the date, amount, and purpose of the disbursement; and

(iii) if the disbursement is made for a candidate, the name and office (including State and congressional district, if any) sought by that candidate.

(iv) For purposes of 11 CFR 102.9(b)(1), "purpose" has the same meaning given the term at 11 CFR 104.3(b)(3)(i)(A).

(2) In addition to the account to be kept under 11 CFR 102.9(b)(1), a receipt or invoice from the payee or a cancelled check to the payee shall be obtained and kept for each disbursement in excess of \$200 by or on behalf of, the committee, except that credit card transactions, shall be documented in accordance with 11 CFR 102.9(b)(2)(ii) and disbursements by share draft or check drawn on a credit union account shall be documented in accordance with 11 CFR 102.9(b)(2)(iii).

(i)(A) For purposes of 11 CFR 102.9(b)(2), "payee" means the person who provides the goods or services to the committee or agent thereof in return for payment, except for an advance of \$500 or less for travel and subsistence to an individual who will be the recipient of the goods or services.

(B) For any advance of \$500 or less to an individual for travel and subsistence, the expense voucher or other expense account documentation and a

cancelled check to the recipient of the advance shall be obtained and kept.

(ii) For any credit card transaction, documentation shall include a monthly billing statement or customer receipt for each transaction and the cancelled check used to pay the credit card account.

(iii) For purposes of 11 CFR 102.9(b)(2), a carbon copy of a share draft or check drawn on a credit union account may be used as a duplicate record of such draft or check provided that the monthly account statement showing that the share draft or check was paid by the credit union is also retained.

(c) The treasurer shall preserve all records and accounts required to be kept under 11 CFR 102.9 for 3 years after the report to which such records and accounts relate is filed.

(d) In performing recordkeeping duties, the treasurer or his or her authorized agent shall use his or her best efforts to obtain, maintain and submit the required information and shall keep a complete record of such efforts. If there is a showing that best efforts have been made, any records of a committee shall be deemed to be in compliance with this Act. With regard to the requirements of 11 CFR 102.9(b)(2) concerning receipts, invoices and cancelled checks, the treasurer will not be deemed to have exercised best efforts to obtain, maintain and submit the records unless he or she has made at least one written effort per transaction to obtain a duplicate copy of the invoice, receipt, or cancelled check.

(e) If the candidate, or his or her authorized committee(s), receives contributions prior to the date of the primary election, which contributions are designated by the candidate or his or her authorized committee(s) for use in connection with the general election, such candidate or such committees shall use an acceptable accounting method to distinguish between contributions received for the primary election and contributions received for the general election. Acceptable methods include, but are not limited to: (1) The designation of separate accounts for each election, caucus, or convention

and (2) the establishment of separate books and records for each election.

§ 102.10 Disbursement by check (2 U.S.C. 432(h)(1)).

All disbursements by a political committee, except for disbursements from the petty cash fund under 11 CFR 102.11, shall be made by check or similar draft drawn on account(s) established at the committee's campaign depository or depositories under 11 CFR Part 103.

§ 102.11 Petty cash fund (2 U.S.C. 432(h)(2)).

A political committee may maintain a petty cash fund out of which it may make expenditures not in excess of \$100 to any person per purchase or transaction. If a petty cash fund is maintained, it shall be the duty of the treasurer of the political committee to keep and maintain a written journal of all disbursements. This written journal shall include the name and address of every person to whom any disbursement is made, as well as the date, amount, and purpose of such disbursement. In addition, if any disbursement is made for a candidate, the journal shall include the name of that candidate and the office (including State and Congressional district) sought by such candidate.

§ 102.12 Designation of principal campaign committee (2 U.S.C. 432(e)(1) and (3)).

(a) Each candidate for Federal office (other than a nominee of a political party to the Office of Vice President) shall designate in writing a political committee to serve as his or her principal campaign committee in accordance with 11 CFR 101.1(a) no later than 15 days after becoming a candidate. Each principal campaign committee shall register, designate a depository and report in accordance with 11 CFR Parts 102, 103 and 104.

(b) No political committee may be designated as the principal campaign committee of more than one candidate.

(c)(1) No political committee which supports or has supported more than one candidate may be designated as a principal campaign committee, except that, after nomination, a candidate for

the office of President of the United States nominated by a political party may designate the national committee of such political party as his or her principal campaign committee. A national committee which is so designated shall maintain separate books of account with respect to its function as a principal campaign committee.

(2) For purposes of 11 CFR 102.12(c), the term "support" does not include contributions by an authorized committee in amounts aggregating \$1,000 or less per election to an authorized committee of any other candidate, except that the national committee of a political party which has been designated as the principal campaign committee of that party's Presidential candidate may contribute to another candidate in accordance with 11 CFR Part 110.

§ 102.13 Authorization of political committees (2 U.S.C. 432(e)(1) and (3)).

(a)(1) Any political committee authorized by a candidate to receive contributions or make expenditures shall be authorized in writing by the candidate. Such authorization must be filed with the principal campaign committee in accordance with 11 CFR 102.1(b).

(2) If an individual fails to disavow activity pursuant to 11 CFR 100.3(a)(3) and is therefore a candidate upon notice by the Commission, he or she shall authorize the committee in writing.

(b) A candidate is not required to authorize a national, State or subordinate State party committee which solicits funds to be expended on the candidate's behalf pursuant to 11 CFR 110.7.

(c)(1) No political committee which supports or has supported more than one candidate may be designated as an authorized committee, except that two or more candidates may designate a political committee established solely for the purpose of joint fundraising by such candidates as an authorized committee.

(2) For purposes of 11 CFR 102.13(c), the term "support" does not include contributions by an authorized committee in amounts aggregating \$1,000 or less per election to an au-

thorized committee of any other candidate, except that the national committee of a political party which has been designated as the principal campaign committee of that party's Presidential candidate may contribute to another candidate in accordance with 11 CFR Part 110.

§ 102.14 Names of political committees (2 U.S.C. 432(e)(4) and (5)).

(a) The name of each authorized committee shall include the name of the candidate who authorized such committee. Except as provided in subsection (b) of this section, any political committee which is not an authorized committee shall not include the name of any candidate in its name.

(b)(1) A delegate committee, as defined at 11 CFR 100.5(a)(5), shall include the word "delegate(s)" in its name and may also include in its name the name of the presidential candidate which the delegate committee supports.

(2) A political committee established solely to draft an individual or to encourage him or her to become a candidate may include the name of such individual in the name of the committee provided the committee's name clearly indicates that it is a draft committee.

(c) The name of a separate segregated fund established pursuant to 11 CFR 102.1(c) shall include the full name of its connected organization. Such fund may also use a clearly recognized abbreviation or acronym by which the connected organization is commonly known. Both the full name and such abbreviation or acronym shall be included on the fund's Statement of Organization, on all reports filed by the fund, and in all notices required by 11 CFR 109.3 and 110.11. The fund may make contributions using its acronym or abbreviated name. A fund established by a corporation which has a number of subsidiaries need not include the name of each subsidiary in its name. Similarly, a separate segregated fund established by a subsidiary need not include in its name the name of its parent or another subsidiary of its parent.

[45 FR 15104, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980]

§ 102.15 Commingled funds (2 U.S.C. 432(a)(3)).

All funds of a political committee shall be segregated from, and may not be commingled with, any personal funds of officers, members or associates of that committee, or with the personal funds of any other individual. See also 11 CFR 103.3 and Part 114 and 2 U.S.C. 441b.

§ 102.16 Notice: Solicitation of contributions (2 U.S.C. 441d).

Each political committee shall comply with the notice requirements for solicitation of contributions set forth at 11 CFR 110.11.

PART 103—CAMPAIGN DEPOSITORIES (2 U.S.C. 432(h))

Sec.

- 103.1 Notification of the commission.
- 103.2 Depositories (2 U.S.C. 432(h)(1)).
- 103.3 Deposit of receipts and disbursements (2 U.S.C. 432(h)(1)).
- 103.4 Vice Presidential candidate campaign depositories.

AUTHORITY: 2 U.S.C. 432(h), 438(a)(8).

SOURCE: 45 FR 15108, Mar. 7, 1980, unless otherwise noted.

§ 103.1 Notification of the commission.

Each committee shall notify the Commission of the campaign depository(ies) it has designated, pursuant to 11 CFR 101.1 and 103.2.

§ 103.2 Depositories (2 U.S.C. 432(h)(1)).

Each political committee shall designate one or more State banks, federally chartered depository institutions (including a national bank), or depository institutions the depositor accounts of which are insured by the Federal Deposit Insurance Corporation, Federal Savings and Loan Insurance Corporation, or the National Credit Union Administration, as its campaign depository or depositories. One or more depositories may be established in one or more States. Each political committee shall maintain at least one checking account or transaction account at one of its depositories. Additional accounts may be established at each depository.

§ 103.3 Deposit of receipts and disbursements (2 U.S.C. 432(h)(1)).

(a) All receipts by a political committee shall be deposited in account(s) established pursuant to 11 CFR 103.2. The treasurer of the committee shall be responsible for making such deposits. All deposits shall be made within 10 days of the treasurer's receipt. A committee shall make all disbursements by check or similar drafts drawn on an account at its designated campaign depository, except for expenditures of \$100 or less made from a petty cash fund maintained pursuant to 11 CFR 102.11. Funds may be transferred from the depository for investment purposes, but shall be returned to the depository before such funds are used to make expenditures.

(b)(1) Contributions which appear to be illegal shall be, within 10 days, either returned to the contributor or deposited into the campaign depository, and reported. If deposited, the treasurer shall make and retain a written record noting the basis for the appearance of illegality. A statement noting that the legality of the contribution is in question should be included in the report. The treasurer shall make his or her best efforts to determine the legality of the contribution.

(2) When a contribution cannot be determined to be legal, refunds shall be made within a reasonable time, and the treasurer shall note the refund by amending the current report or noting the change on the committee's next required report.

§ 103.4 Vice Presidential candidate campaign depositories.

Any campaign depository designated by the principal campaign committee of a political party's candidate for President shall be the campaign depository for that political party's candidate for the office of Vice President.

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

- Sec.
 104.1 Scope (2 U.S.C. 434(a)).
 104.2 Forms.
 104.3 Contents of reports (2 U.S.C. 434(b)).
 104.4 Independent expenditures by political committees (2 U.S.C. 434(c)).

- Sec.
 104.5 Filing dates (2 U.S.C. 434(a)(2)).
 104.6 Form and content of internal communications reports. (2 U.S.C. 431(9)(B)(iii)).
 104.7 Best efforts (2 U.S.C. 432(i)).
 104.8 Uniform reporting of contributions.
 104.9 Uniform reporting of expenditures.
 104.10 Allocation of expenditures among candidates.
 104.11 Continuous reporting of debts and obligations.
 104.12 Beginning cash on hand for political committees.
 104.13 Disclosure of receipt and consumption of in-kind contributions.
 104.14 Formal requirements regarding reports and statements.
 104.15 Sale or use restriction (2 U.S.C. 438(a)(4)).
 104.16 Audits (2 U.S.C. 438(b)).
 104.17 Content of reports; Presidential and Vice-Presidential committees (2 U.S.C. 431 note).

AUTHORITY: 2 U.S.C. 431, note, 431(9)(B)(iii), 432(i), 434, 438(a)(4)(B), 438(b).

SOURCE: 45 FR 15108, Mar. 7, 1980, unless otherwise noted.

§ 104.1 Scope (2 U.S.C. 434(a)).

(a) *Who must report.* Each treasurer of a political committee required to register under 11 CFR Part 102 shall report in accordance with 11 CFR Part 104.

(b) *Who may report.* An individual seeking federal office who has not attained candidate status under 11 CFR 100.3, the committee of such an individual or any other committee may voluntarily register and report in accordance with 11 CFR Parts 102 and 104. An individual shall not become a candidate solely by voluntarily filing a report, nor shall such individual the individual's committee nor any other committee be required to file all reports under 11 CFR 104.5, unless the individual becomes a candidate under 11 CFR 100.3 or unless the committee becomes a political committee under 11 CFR 100.5.

§ 104.2 Forms.

(a) Each report filed by a political committee under 11 CFR Part 104 shall be filed on the appropriate FEC form as set forth below at 11 CFR 104.2(e).

(b) Forms may be obtained from the Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463.

(c) A committee may reproduce FEC forms for its own use provided they are not reduced in size.

(d) With prior approval of the Commission a committee may use, for reporting purposes, computer produced schedules of itemized receipts and disbursements provided they are reduced to the size of FEC forms. The committee shall submit a sample of the proposed format with its request for approval.

(e) The following forms shall be used by the indicated type of reporting committee:

(1) *Presidential committees.* The authorized committees of a candidate for President or Vice President shall file on FEC Form 3-P.

(2) *Congressional candidate committees.* The authorized committees of a candidate for the Senate or the House of Representatives shall file on FEC Form 3.

(3) *Political Committees Other than Authorized Committees.* Political committees other than authorized committees shall file reports on FEC Form 3-X.

[45 FR 15108, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980]

§ 104.3 Contents of reports (2 U.S.C. 434(b)).

(a) *Reporting of Receipts.* Except for reports filed in accordance with 11 CFR 104.17, each report filed under 11 CFR 104.1 shall disclose the total amount of receipts for the reporting period and for the calendar year and shall disclose the information set forth at 11 CFR 104.3(a) (1) through (4). The first report filed by a committee shall also include all amounts received prior to becoming a political committee under 11 CFR 100.5, even if such amounts were not received during the current reporting period.

(1) *Cash on hand.* The amount of cash on hand at the beginning of the reporting period, including: currency; balance on deposit in banks, savings and loan institutions, and other depository institutions; traveler's checks owned by the committee; certificates

of deposit, treasury bills and any other committee investments valued at cost.

(2) *Categories of receipts for all political committees other than authorized committees.* All committees other than authorized committees shall report the total amount of receipts received during the reporting period and, except for itemized and unitemized breakdowns, during the calendar year for each of the following categories:

(i) Contributions from persons other than any committees;

(A) Itemized contributions from persons, other than any committees, including contributions from individuals;

(B) Unitemized contributions from persons, other than any committees, including contributions from individuals;

(C) Total contributions from persons other than any committees, including contributions from individuals;

(ii) Contributions from political party committees, including contributions from party committees which are not political committees under the Act;

(iii) Contributions from political committees, including contributions from committees which are not political committees under the Act but excluding contributions from any party committees;

(iv) Total contributions;

(v) Transfers from affiliated committees or organizations and, where the reporting committee is a political party committee, transfers from other party committees of the same party, regardless of whether such committees are affiliated;

(vi) All loans;

(vii) Offsets to operating expenditures;

(A) Itemized offsets to operating expenditures (such as rebates and refunds);

(B) Unitemized offsets to operating expenditures (such as rebates and refunds);

(C) Total offsets to operating expenditures;

(viii) Other receipts:

(A) Itemized other receipts (such as dividends and interest);

(B) Unitemized other receipts (such as dividends and interest);

(C) The total sum of all other receipts.

(ix) The total sum of all receipts.

(3) *Categories of receipts for authorized committees.* An authorized committee of a candidate for Federal office shall report the total amount of receipts received during the reporting period and, except for itemized and unitemized breakdowns, during the calendar year in each of the following categories:

(i) Contributions from persons, other than any committees;

(A) Itemized contributions from persons, other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees;

(B) Unitemized contributions from persons, other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees;

(C) Total contributions from persons other than any committees, including contributions from individuals, but excluding contributions from a candidate to his or her authorized committees;

(ii) Contributions from the candidate, excluding loans which are reported under 11 CFR 104.3(a)(3)(vii));

(iii) Contributions from political party committees, including party committees which are not political committees under the Act, except that expenditures made under 11 CFR 110.7 (2 U.S.C. 441a(d)), by a party committee shall not be reported as contributions by the authorized committee on whose behalf they are made;

(iv) Contributions from committees, including contributions from committees which are not political committees under the Act, but excluding contributions from any party committees;

(v) Total contributions;

(vi) Transfers from other authorized committee(s) of the same candidate, regardless of amount;

(vii) Loans;

(A) All loans to the committee, except loans made, guaranteed, or endorsed by a candidate to his or her authorized committee;

(B) Loans made, guaranteed, or endorsed by a candidate to his or her authorized committee;

(C) Total loans;

(viii) For authorized committee(s) of Presidential candidates, federal funds received under Chapters 95 and 96 of the Internal Revenue Code of 1954 (Title 26, United States Code);

(ix) Offsets to operating expenditures;

(A) Itemized offsets to operating expenditures (such as refunds and rebates);

(B) Unitemized offsets to operating expenditures (such as refunds and rebates);

(C) Total offsets to operating expenditures;

(x) Other receipts;

(A) Itemized other receipts (such as dividends and interest);

(B) Unitemized other receipts (such as dividends and interest);

(C) Total other receipts;

(xi) Total receipts.

(4) *Itemization of receipts for all committees including authorized and unauthorized committees.* The identification (as defined at 11 CFR 100.12) of each contributor and the aggregate year-to-date total for such contributor in each of the following categories shall be reported.

(i) Each person, other than any committee, who makes a contribution to the reporting committee during the reporting period, whose contribution or contributions aggregate in excess of \$200 per calendar year, together with the date of receipt and amount of any such contributions, except that the reporting committee may elect to report such information for contributors of lesser amount(s) on a separate schedule;

(ii) All committees (including political committees and committees which do not qualify as political committees under the Act) which make contributions to the reporting committee during the reporting period, together with the date of receipt and amount of any such contribution;

(iii) Transfers;

(A) For authorized committees of a candidate for Federal office, each authorized committee which makes a transfer to the reporting committee;

together with the date and amount of such transfer;

(B) For committees which are not authorized by a candidate for Federal office, each affiliated committee or organization which makes a transfer to the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds to the reporting committee from another party committee regardless of whether such committees are affiliated, together with the date and amount of such transfer;

(iv) Each person who makes a loan to the reporting committee or to the candidate acting as an agent of the committee, during the reporting period, together with the identification of any endorser or guarantor of such loan, the date such loan was made and the amount or value of such loan;

(v) Each person who provides a rebate, refund or other offset to operating expenditures to the reporting committee in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such receipt; and

(vi) Each person who provides any dividend, interest, or other receipt to the reporting committee in an aggregate value or amount in excess of \$200 within the calendar year, together with the date and amount of any such receipt.

(b) *Reporting of Disbursements.* Except for reports filed in accordance with 11 CFR 104.17, each report filed under 11 CFR 104.1 shall disclose the total amount of all disbursements for the reporting period and for the calendar year and shall disclose the information set forth at 11 CFR 104.3(b) (1) through (4). The first report filed by a committee shall also include all amounts disbursed prior to becoming a political committee under 11 CFR 100.5, even if such amounts were not disbursed during the current reporting period.

(1) *Categories of disbursements for political committees other than authorized committees.* All political committees other than authorized committees shall report the total amount of disbursements made during the re-

porting period and, except for itemized and unitemized breakdowns, during the calendar year in each of the following categories:

(i) Operating expenditures;
 (A) Itemized operating expenditures;
 (B) Unitemized operating expenditures;

(C) Total operating expenditures;
 (ii) Transfers to affiliated committees or organizations and, where the reporting committee is a political party committee, transfers to other political party committees regardless of whether they are affiliated;

(iii) Repayment of all loans;
 (iv) Offsets;

(A) Itemized offsets to contributions (including contribution refunds);

(B) Unitemized offsets to contributions (including contribution refunds);

(C) Total offsets to contributions;

(v) Contributions made to other political committees;
 (vi) Loans made by the reporting committee;

(vii) Independent expenditures made by the reporting committee;

(viii) Expenditures made under 11 CFR 110.7 (2 U.S.C. 441a(d)), See 11 CFR 104.3(a)(3)(iii);

(ix) Other disbursements;
 (A) Itemized other disbursements;

(B) Unitemized other disbursements;
 (C) Total other disbursements;

(x) Total disbursements.
 (2) *Categories of disbursements for authorized committees.* An authorized committee of a candidate for Federal office shall report the total amount of disbursements made during the reporting period and, except for itemized and unitemized breakdowns, during the calendar year in each of the following categories:

(i) Operating expenditures;
 (A) Itemized operating expenditures;
 (B) Unitemized operating expenditures;

(C) Total operating expenditures;
 (ii) Transfers to other committees authorized by the same candidate;

(iii) Repayment of loans;
 (A) Repayment of loans made by or guaranteed by the candidate;

(B) Repayment of all other loans;
 (C) Total loan repayments;

(iv) For an authorized committee of a candidate for the office of President,

disbursements not subject to the limitations of 11 CFR 110.8 (2 U.S.C. 441a(b));

(v) Offsets;

(A) Itemized offsets to contributions (including contribution refunds);

(B) Unitemized offsets to contributions (including contribution refunds);

(C) Total offsets to contributions;

(vi) Other disbursements;

(A) Itemized other disbursements;

(B) Unitemized other disbursements;

(C) Total other disbursements;

(vii) Total disbursements.

(3) *Itemization of disbursements by political committees other than authorized committees.* Each political committee, other than an authorized committee, shall report the full name and address of each person in each of the following categories, as well as the information required by each category;

(i) Each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount, and purpose of such operating expenditure;

(A) As used in 11 CFR 104.3(b)(3), "purpose" means a brief statement or description of why the disbursement was made.

(B) Examples of statements or descriptions which meet the requirements of 11 CFR 104.3(b)(3) include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as "advance", "election day expenses", "other expenses", "expenses"; "expense reimbursement", "miscellaneous", "outside services", "get-out-the-vote" and "voter registration" would not meet the requirements of 11 CFR 104.3(b)(3) for reporting the purpose of an expenditure.

(ii) Each affiliated committee to which a transfer is made by the reporting committee during the reporting period and, where the reporting committee is a political party committee, each transfer of funds by the reporting committee to another political party committee, regardless of wheth-

er such committees are affiliated, together with the date and amount of such transfer;

(iii) Each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment;

(iv) Each person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution refund was reported under 11 CFR 104.3(b)(1)(iv), together with the date and amount of such refund or offset;

(v) Each political committee which has received a contribution from the reporting committee during the reporting period, together with the date and amount of any such contribution, and, in the case of a contribution to an authorized committee, the candidate's name and office sought (including State and Congressional district, if applicable);

(vi) Each person who has received a loan from the reporting committee during the reporting period, together with the date and amount or value of such loan;

(vii) (A) Each person who receives any disbursement during the reporting period, in an aggregate amount or value in excess of \$200 within the calendar year in connection with an independent expenditure by the reporting committee, together with the date, amount, and purpose of any such independent expenditure(s);

(B) For each independent expenditure reported, the committee must also provide a statement which indicates whether such independent expenditure is in support of, or in opposition to a particular candidate, as well as the name of the candidate and office sought by such candidate (including State and Congressional district, when applicable), and a certification, under penalty of perjury, as to whether such independent expenditure is made in cooperation, consultation or concert with, or at the request or suggestion of, any candidate or any authorized committee or agent of such committee;

(C) The information required by 11 CFR 104.3(b)(3)(vii)(A) and (B) shall be reported on Schedule E as part of a

report covering the reporting period in which the aggregate disbursements for any independent expenditure to any person exceed \$200 per calendar year. Schedule E shall also include the total of all such expenditures of \$200 or less made during the reporting period.

(viii) Each person who receives any expenditure from the reporting committee during the reporting period in connection with an expenditure under 11 CFR 110.7 (2 USC 441a(d)), together with the date, amount, and purpose of any such expenditure as well as the name of, and office sought by (including State and Congressional district, when applicable), the candidate on whose behalf the expenditure is made; and

(ix) Each person who has received any disbursement within the reporting period not otherwise disclosed in accordance with 11 CFR 104.3(b)(3) to whom the aggregate amount or value of disbursements made by the reporting committee exceeds \$200 within the calendar year, together with the date, amount and purpose of any such disbursement.

(4) *Itemization of disbursements by authorized committees.* Each authorized committee shall report the full name and address of each person in each of the following categories, as well as the information required by each category.

(i) Each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet the committee's operating expenses, together with the date, amount and purpose of each expenditure.

(A) As used in 11 CFR 104.3(b)(4), "purpose" means a brief statement or description of why the disbursement was made. Examples of statements or descriptions which meet the requirements of 11 CFR 104.3(b)(4) include the following: dinner expenses, media, salary, polling, travel, party fees, phone banks, travel expenses, travel expense reimbursement, and catering costs. However, statements or descriptions such as "advance", "election day expenses", "other expenses", "expenses", "expense reimbursement", "miscellaneous", "outside services"

"get-out-the-vote" and "voter registration" would not meet the requirements of 11 CFR 104.3(b)(4) for reporting the purpose of an expenditure.

(ii) Each authorized committee of the same candidate to which a transfer is made by the reporting committee during the reporting period, together with the date and amount of such transfer;

(iii) Each person who receives a loan repayment from the reporting committee during the reporting period, together with the date and amount of such loan repayment;

(iv) Each person who receives a loan repayment from the candidate, if the proceeds of such loan were used in connection with the candidate's campaign;

(v) Each person who receives a contribution refund or other offset to contributions from the reporting committee where such contribution refund was reported under 11 CFR 104.3(b)(2)(v), together with the date and amount of such refund or offset.

(vi) Each person who has received any disbursement(s) not otherwise disclosed under 11 CFR 104.3(b)(4) to whom the aggregate amount or value of such disbursements exceeds \$200 within the calendar year, together with the date, amount, and purpose of any such disbursement.

(c) *Summary of contributions and operating expenditures.* Each report filed pursuant to 11 CFR 104.1 shall disclose for both the reporting period and the calendar year:

(1) (i) The total contributions to the reporting committee;

(ii) The total offsets to contributions;

(iii) The net contributions (subtract total offsets from total contributions);

(2) (i) The reporting committee's total operating expenditures;

(ii) The total offsets to operating expenditures;

(iii) The net operating expenditures (subtract total offsets from total operating expenditures).

(d) *Reporting debts and obligations.* Each report filed under 11 CFR 104.1 shall, on Schedule C or D, as appropriate, disclose the amount and nature of outstanding debts and obligations owed by or to the reporting commit-

tee. Loans obtained by an individual prior to becoming a candidate for use in connection with that individual's campaign shall be reported as an outstanding loan owed to the lender by the candidate's principal campaign committee, if such loans are outstanding at the time the individual becomes a candidate. Where such debts and obligations are settled for less than their reported amount or value, each report filed under 11 CFR 104.1 shall contain a statement as to the circumstances and conditions under which such debts or obligations were extinguished and the amount paid. See 11 CFR 114.10.

(e) *Use of Pseudonyms.* (1) To determine whether the names and addresses of its contributors are being used in violation of 11 CFR 104.15 to solicit contributions or for commercial purposes, a political committee may submit up to ten (10) pseudonyms on each report filed.

(2) For purposes of this section, a pseudonym is a wholly fictitious name, which does not represent the name of an actual contributor to a committee.

(3) If a committee uses pseudonyms it shall subtract the total dollar amount of the fictitious contributions from the total amount listed as a memo entry on line 11(a) of the Detailed Summary page, "Unitemized contributions from individual persons other than political committees." Thus, the committee will, for this purpose only, be overstating the amount of itemized contributions received and understating the amount of unitemized contributions received.

(4) No authorized committee of a candidate shall attribute more than \$1,000 in contributions to the same pseudonym for each election and no other political committee shall attribute more than \$5,000 in contributions to the same pseudonym in any calendar year.

(5) A committee using pseudonyms shall send a list of such pseudonyms under separate cover directly to the Reports Analysis Division, Federal Election Commission, 1325 K Street N.W., Washington, D.C. 20463, on or before the date on which any report containing such pseudonyms is filed with the Clerk of the House of Representatives, the Secretary of the

Senate, or the Commission. The Commission shall maintain the list, but shall exclude it from the public record. A committee shall not send any list of pseudonyms to the Clerk of the House of Representatives, the Secretary of the Senate, or to any Secretary of State or equivalent state officer.

(6) A political committee shall not use pseudonyms for the purpose of circumventing the reporting requirements or the limitations and prohibitions of the Act.

(f) *Consolidated Reports.* Each principal campaign committee shall consolidate in each report those reports required to be filed with it. Such consolidated reports shall include: (1) Reports submitted to it by any authorized committees and (2) the principal campaign committee's own report. Such consolidation shall be made on FEC Form 3-Z and shall be submitted with the reports of the principal campaign committee and with the reports, or applicable portions thereof, of the committees shown on the consolidation.

(g) *Building Funds.* Gifts, subscriptions, loans, advances, deposits of money or anything of value made to defray costs of construction or purchase of office facilities received by a political committee in accordance with 11 CFR 100.7(b)(12) shall be reported as a memo entry on Schedule A.

(h) *Legal and Accounting Services.* A committee which receives legal or accounting services pursuant to 11 CFR 100.7(b)(13) and (14) shall report as a memo entry, on Schedule A, the amounts paid for these services by the regular employer of the person(s) providing such services; the date(s) such services were performed; and the name of each person performing such services.

(i) *Cumulative Reports.* The reports required to be filed under 11 CFR 104.5 shall be cumulative for the calendar year to which they relate, but if there has been no change in a category reported in a previous report during that year, only the amount thereof need be carried forward.

(j) *Earmarked contributions.* Earmarked contributions shall be reported in accordance with 11 CFR 110.6. See also 11 CFR 102.8(c).

[45 FR 15108, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980]

§ 104.4 Independent expenditures by political committees (2 U.S.C. 434(c)).

(a) Every political committee which makes independent expenditures shall report all such expenditures on Schedule E in accordance with 11 CFR 104.3(b)(3)(vii). Every person (other than a political committee) shall report independent expenditures in accordance with 11 CFR Part 109.

(b) *24 Hour Reports.* Any independent expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours, before 12:01 A.M. of the day of the election, shall be reported within 24 hours after such independent expenditure is made. Such report shall be filed with the appropriate officers listed in 11 CFR 104.4(c) and 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.

(c) *Where to File.* Reports of independent expenditures under 11 CFR 104.4 and Part 109 shall be filed as set forth at 11 CFR 104.4(c)(1) through (3).

(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: with the Secretary of the Senate 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 Clerk of the House and the Secretary of State for the State in which the candidate is seeking election.

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

(a) *Principal Campaign Committee of House or Senate Candidate.* Each treasurer of a principal campaign committee supporting a candidate for the House of Representatives or to the

Senate shall file reports on the dates specified at 11 CFR 104.5(a)(1) and (2).

(1) *Election Year Reports.* (i) *Pre-Election Reports.* (A) Pre-election reports for the primary and general election shall 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 shall be mailed no later than the 15th day before any election.

(B) The report shall 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 shall be filed no later than 30 days after any general election in which the candidate seeks election.

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

(iii) *Quarterly Reports.* (A) Quarterly reports shall 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 shall be filed on January 31 of the following calendar year.

(B) The report shall be complete as of the last day of each calendar quarter.

(C) The requirement for a quarterly report shall be waived if, under 11 CFR 104.5(a)(1)(i), a pre-election report is required to be filed during the period beginning on the fifth day after the close of the calendar quarter and ending on the fifteenth day after the close of the calendar quarter.

(2) *Non-Election Year Reports.* (i) *Semi-annual reports.* (A) The first report shall cover January 1 through June 30, and shall be filed no later than July 31.

(B) The second report shall cover July 1 through December 31, and shall be filed no later than January 31 of the following year.

(b) *Principal Campaign Committee of Presidential Candidate.* Each treasurer of a principal campaign committee of a candidate for President shall file reports on the dates specified at 11 CFR 104.5(b)(1) and (2).

(1) Election Year Reports. (i) If on January 1 of the election year, the committee has received or anticipates receiving contributions aggregating \$100,000 or more, or has made or anticipates making expenditures aggregating \$100,000 or more, it shall file monthly reports.

(A) Each report shall be filed no later than the 20th day after the last day of each month.

(B) The report shall be complete as of the last day of each month.

(C) In lieu of the monthly reports due in November and December, a pre-election report shall be filed as prescribed at 11 CFR 104.5(a)(1)(i), a post-general election report shall be filed as prescribed at 11 CFR 104.5(a)(1)(ii), and a year-end report shall be filed no later than January 31 of the following calendar year.

(ii) If on January 1 of the election year, the committee does not anticipate receiving or has not received contributions aggregating \$100,000 or does not anticipate making or has not made expenditures aggregating \$100,000, the committee shall file a pre-election report or reports, a post-general election report and, quarterly reports, as prescribed in 11 CFR 104.5(a)(1).

(iii) If during the election year, a committee filing under 11 CFR 104.5(b)(1)(ii) receives contributions aggregating \$100,000 or makes expenditures aggregating \$100,000, the treasurer shall begin filing monthly reports as prescribed at 11 CFR 104.5(b)(1)(i) or (ii) quarterly reports as prescribed at 11 CFR 104.5(a)(1).

(2) Non-Election Year Reports. During a non-election year, the treasurer shall file either (i) monthly reports as prescribed at 11 CFR 104.5(b)(1)(i); or (ii) quarterly reports as prescribed at 11 CFR 104.5(a)(1).

(c) *Committees Other Than Authorized Committees of Candidates.* Each political committee which is not the authorized committee of a candidate shall file either: election year and non-election year reports as prescribed at 11 CFR 104.5(c)(1) and (2); or monthly reports as prescribed at 11 CFR 104.5(c)(3). A political committee reporting under 11 CFR 104.5(c) may elect to change the frequency of its reporting from monthly to quarterly and semi-annually or vice versa. A

committee may change its filing frequency only after notifying the Commission in writing of its intention at the time it files a required report under its current filing frequency. Such committee will then be required to file the next required report under its new filing frequency. A committee may change its filing frequency no more than once per calendar year.

(1) Election Year Reports. (i) Quarterly reports. (A) Quarterly reports shall 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 shall be filed on January 31 of the following calendar year.

(B) The reports shall be complete as of the last day of the calendar quarter for which the report is filed.

(C) The requirement for a quarterly report shall be waived if under 11 CFR 104.5(c)(1)(ii) a pre-election report is required to be filed during the period beginning on the fifth day after the close of the calendar quarter and ending on the fifteenth day after the close of the calendar quarter.

(ii) Pre-Election Reports

(A) Pre-election reports for the primary and general election shall be filed by a political committee which makes contributions or expenditures in connection with any such election if such disbursements have not been previously disclosed. Pre-election reports shall be filed no later than 12 days before any primary or general election. If sent by registered or certified mail, the report shall be mailed no later than the 15th day before any election.

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

(iii) Post-General Election Reports

(A) A post-general election report shall be filed no later than 30 days after any general election.

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

(2) Non-Election year
(i) Semi-annual reports

(A) The first report shall cover January 1 through June 30, and shall be filed no later than July 31.

(B) The second report shall cover July 1 through December 31, and shall be filed no later than January 31 of the following year.

(3) **Monthly Reports**

(i) Except as provided at 11 CFR 104.5(c)(3)(ii), monthly reports shall be filed no later than 20 days after the last day of the month.

(ii) In lieu of the monthly reports due in November and December, in any year in which a regularly scheduled general election is held, a pre-election report shall be filed as prescribed at 11 CFR 104.5(a)(1)(i), a post general election report shall be filed as prescribed at 11 CFR 104.5(a)(1)(ii), and a year-end report shall be filed no later than January 31 of the following calendar year.

(d) *Committees supporting Vice Presidential Candidates.* The treasurer of a committee supporting a candidate for the office of Vice President (other than a nominee of a political party) shall file reports on the same basis that the principal campaign committee of a Presidential candidate must file reports under 11 CFR 104.5(b).

(e) *U.S. Post Mark.* A designation, report or statement sent by registered or certified mail shall be considered filed on the date of the U.S. post mark except that a twelve day pre-election report sent by certified or registered mail shall be mailed no later than the 15th day before any election. Designations, reports or statements sent by first class mail must be received by the close of business of the prescribed filing date to be timely filed.

(f) *48 Hour Notification of Contributions.* If any contribution of \$1,000 or more is received by any authorized committee of a candidate after the 20th day, but more than 48 hours, before 12:01 A.M. of the day of the election, the principal campaign committee of that candidate shall notify the Commission, the Clerk of the House, the Secretary of the Senate and the Secretary of State, as appropriate, within 48 hours of receipt of the contribution. The notification shall be in writing and shall include

the name of the candidate and office sought by the candidate, the identification of the contributor, and the date of receipt and amount of the contribution. The notification shall be in addition to the reporting of these contributions on the post-election report.

(g) *24 hour Report of Independent Expenditures.* Any independent expenditures aggregating \$1,000 or more made after the 20th day, but more than 24 hours, before 12:01 A.M. of the day of the election, shall be reported within 24 hours after such independent expenditure is made. Such report shall be filed with the appropriate officers listed in 11 CFR 104.4(c) and 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.

(h) *Special Election Reports.* (1) Within 5 days of the setting of a special election, the Commission shall set filing dates for reports to be filed by principal campaign committees of candidates seeking election, or nomination for election, in special elections and for political committees, other than authorized committees, which make contributions to or expenditures on behalf of a candidate or candidates in special elections. The Commission shall publish such reporting dates in the FEDERAL REGISTER and shall notify the principal campaign committees of all candidates in such election of the reporting dates. The Commission shall not require such committees to file more than one pre-election report for each election and one post-election report for the election which fills the vacancy.

(2) Reports required to be filed under 11 CFR 104.5(a) or (c) may be waived by the Commission for committees filing special election reports if a report under 11 CFR 104.5(a) or (c) is due within 10 days of the date a special election report is due. The Commission shall notify all appropriate committees of reports so waived.

§ 104.6 **Form and content of internal communications reports** (2 U.S.C. 431(a)(B)(iii)).

(a) *Form.* Every membership organization or corporation which makes dis-

bursements for communications pursuant to 11 CFR 100.8(b)(4) and 114.3 shall report to the Commission on FEC Form 7 such costs which are directly attributable to any communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the election or defeat of a clearly identified candidate), if such costs exceed \$2,000 for any election.

(1) For the purposes of 11 CFR 104.6(a), "election" means two separate processes in a calendar year, to each of which the \$2,000 threshold described above applies separately. The first process is comprised of all primary elections for federal office, wherever and whenever held; the second process is comprised of all general elections for federal office, wherever and whenever held.

(2) The term election shall also include each special election held to fill a vacancy in a Federal office (11 CFR 100.2(f)) or each runoff election (11 CFR 100.2(d)).

(b) *Filing Dates.* Organizations required to report under 11 CFR 104.6(a) shall file such reports during a calendar year in which a regularly scheduled general election is held. Such reports shall be filed quarterly in accordance with 11 CFR 104.5(a)(1)(iii) and, with respect to any general election, in accordance with 11 CFR 104.5(a)(1)(i). The organization shall be required to file reports beginning with the first reporting period during which the aggregate cost for such communications exceeds \$2,000 per election as defined in 11 CFR 104.6(a)(1), and for each quarter thereafter in which the organization makes additional disbursements in connection with the same election.

(c) Each report filed under 11 CFR 104.6 shall include, for each communication:

(1) The type of communication (such as direct mail, telephone or telegram);

(2) The date(s) of the communication;

(3) The name of the candidate, the office sought (and the district and state of the office, if applicable), and

whether the communication was for the primary or general election;

(4) Whether the communication was in support of or in opposition to, a particular candidate; and

(5) The cost of the communication.

104.7 Best efforts (2 U.S.C. 432(i)).

(a) When the treasurer of a political committee shows that best efforts have been used to obtain, maintain and submit the information required by the Act for the political committee, any report of such committee shall be considered in compliance with the Act.

(b) With regard to reporting the identification as defined at 11 CFR 100.12 of each person whose contribution(s) to the committee and its affiliated committees aggregate, in excess of \$200 in a calendar year (pursuant to 11 CFR 104.3(a)(4)), the treasurer will not be deemed to have exercised best efforts to obtain the required information unless he or she has made at least one effort per solicitation either by a written request or by an oral request documented in writing to obtain such information from the contributor. For purposes of 11 CFR 104.7(b), such effort shall consist of a clear request for the information (i.e., name, mailing address, occupation, and name of employer) which request informs the contributor that the reporting of such information is required by law

§ 104.8 Uniform reporting of contributions.

(a) A reporting committee shall disclose the identification of each individual who contributes an amount in excess of \$200. This identification shall include the individual's name, mailing address, occupation, the name of his or her employer, if any, and the date of receipt and amount of any such contribution. If an individual contributor's name is known to have changed since an earlier contribution reported during the calendar year, the exact name or address previously used shall be noted with the first reported contribution from that contributor subsequent to the name change.

(b) In each case where a contribution received from an individual in a reporting period is added to previously

unitemized contributions from the same individual and the aggregate exceeds \$200 in a calendar year the reporting committee shall disclose the identification of such individual along with the date of receipt and amount of any such contribution. Except for contributions by payroll deduction, each additional contribution from the individual shall be separately itemized. In the case of a political committee other than an authorized committee which receives contributions through a payroll deduction plan, such committee is not required to separately itemize each additional contribution received from the contributor during the reporting period. In lieu of separate itemization, such committee may report: the aggregate amount of contributions received from the contributor through the payroll deduction plan during the reporting period; the identification of the individual; and a statement of the amount deducted per pay period.

(c) Absent evidence to the contrary, any contribution made by check, money order, or other written instrument shall be reported as a contribution by the last person signing the instrument prior to delivery to the candidate or committee.

(d) A contribution which represents contributions by more than one person shall indicate on the written instrument, or on an accompanying written statement signed by all contributors, the amount to be attributed to each contributor.

§ 104.9 Uniform reporting of expenditures.

(a) The authorized committees of a candidate shall report the full name and mailing address of each person to whom an expenditure in an aggregate amount or value in excess of \$200 within the calendar year is made by the reporting committee to meet the committee's operating expenses together with the date, amount and purpose of such expenditure. As used in 11 CFR 104.9, "purpose" means a brief statement or description as to the reasons for the disbursement. See 11 CFR 104.3(b)(3)(i)(A).

(b) In each case when an expenditure made to a recipient in a reporting period is added to previously unite-

mized expenditures to the same recipient and the total exceeds \$200 for the calendar year, the reporting committee shall disclose the recipient's full name and mailing address on the prescribed reporting forms, together with the date, amount and purpose of such expenditure. As used in 11 CFR 104.9, "purpose" means a brief statement or description as to the reason for the disbursement as defined at 11 CFR 104.3(b)(3)(i)(A).

§ 104.10 Allocation of expenditures among candidates.

A political committee making an expenditure on behalf of more than one candidate for Federal office or on behalf of candidates for both Federal and non-Federal office shall allocate the expenditure(s) among the candidates on a reasonable basis pursuant to 11 CFR Part 106, and report the allocation for each Federal candidate. The treasurer shall retain all documents supporting the allocation in accordance with 11 CFR 104.14.

§ 104.11 Continuous reporting of debts and obligations.

(a) Debts and obligations owed by or to a political committee which remain outstanding shall be continuously reported until extinguished. See 11 CFR 104.3(d). These debts and obligations shall be reported on separate schedules together with a statement explaining the circumstances and conditions under which each debt and obligation was incurred or extinguished. Where such debts and obligations are settled for less than their reported amount or value, the reporting committee shall include a statement as to the circumstances and conditions under which the debt or obligation was extinguished and the amount paid.

(b) A debt, obligation, or other promise to make an expenditure, the amount of which is \$500 or less, shall be reported as of the time payment is made or no later than 60 days after such obligation is incurred, whichever comes first. Any loan, debt or obligation, the amount of which is over \$500 shall be reported as of the time of the transaction.

§ 104.12 Beginning cash on hand for political committees.

Political committees which have cash on hand at the time of registration shall disclose on their first report the source(s) of such funds, including the information required by 11 CFR 104.3(a)(1). The cash on hand balance is assumed to be composed of those contributions most recently received by the committee. The committee shall exclude from funds to be used for Federal elections any contributions not permissible under the Act. See 11 CFR Parts 110, 114, and 115.

§ 104.13 Disclosure of receipt and consumption of in-kind contributions.

(a) (1) The amount of an in-kind contribution shall be equal to the usual and normal value on the date received. Each in-kind contribution shall be reported as a contribution in accordance with 11 CFR 104.3(a).

(2) Except for items noted in 11 CFR 104.13(b), each in-kind contribution shall also be reported as an expenditure at the same usual and normal value and reported on the appropriate expenditure schedule, in accordance with 11 CFR 104.3(b).

(b) Contributions of stocks, bonds, art objects, and other similar items to be liquidated shall be reported as follows:

(1) If the item has not been liquidated at the close of a reporting period, the committee shall record as a memo entry (not as cash) the item's fair market value on the date received, including the name and mailing address (and, where in excess of \$200, the occupation and name of employer) of the contributor.

(2) When the item is sold, the committee shall record the proceeds. It shall also report the (i) name and mailing address (and, where in excess of \$200, the occupation and name of employer) of the purchaser, if purchased directly from the candidate or committee (as the purchaser shall be considered to have made a contribution to the committee), and (ii) the identification of the original contributor.

§ 104.14 Formal requirements regarding reports and statements.

(a) Each individual having the responsibility to file a designation, report, or statement required under this subchapter shall sign the original designation, report or statement.

(b) Each political committee or other person required to file any report or statement under this subchapter shall maintain all records relevant to such reports or statements as follows:

(1) Maintain records, including bank records, with respect to the matters required to be reported, including vouchers, worksheets, receipts, bills and accounts, which shall provide in sufficient detail the necessary information and data from which the filed reports and statements may be verified, explained, clarified, and checked for accuracy and completeness;

(2) Preserve a copy of each report or statement required to be filed under 11 CFR Parts 102 and 104;

(3) Keep all reports required to be preserved under 11 CFR 104.14 available for audit, inspection, or examination by the Commission or its authorized representative(s) for a period of not less than 3 years after the report or statement is filed. (See 11 CFR 102.9(c) for requirements relating to preservation of records and accounts.)

(c) Acknowledgements by the Commission, the Clerk of the House, or the Secretary of the Senate, of the receipt of Statements of Organization, reports or other statements filed under 11 CFR Parts 101, 102 and 104 are intended solely to inform the person filing the report of its receipt and neither the acknowledgement nor the acceptance of a report or statement shall constitute express or implied approval, or in any manner indicate that the contents of any report or statement fulfill the filing or other requirements of the Act or of these regulations.

(d) Each treasurer of a political committee, and any other person required to file any report or statement under these regulations and under the Act, shall be personally responsible for the timely and complete filing of the report or statement and for the accuracy of any information or statement contained in it.

§ 104.15 Sale or use restriction (2 U.S.C. 438(a)(4)).

(a) Any information copied, or otherwise obtained, from any report or statement, or any copy, reproduction, or publication thereof, filed with the Commission Clerk of the House, Secretary of the Senate, or any Secretary of State or other equivalent State officer, shall not be sold or used by any person for the purpose of soliciting contributions or for any commercial purpose, except that the name and address of any political committee may be used to solicit contributions from such committee.

(b) For purposes of 11 CFR 104.15, "soliciting contributions" includes soliciting any type of contribution or donation, such as political or charitable contributions.

(c) The use of information, which is copied or otherwise obtained from reports filed under 11 CFR Part 104, in newspapers, magazines, books or other similar communications is permissible as long as the principal purpose of such communications is not to communicate any contributor information listed on such reports for the purpose of soliciting contributions or for other commercial purposes.

§ 104.16 Audits (2 U.S.C. 438(b)).

(a) The Commission may conduct audits of any political committee required to register under 11 CFR Part 102 and to report under 11 CFR Part 104. Prior to conducting any such audit or investigation, the Commission shall conduct an internal review of reports filed by selected committees to determine whether reports filed by a particular committee meet thresholds established by the Commission for substantial compliance with the Act. Such thresholds may vary according to the type of political committee being reviewed.

(b) The Commission may, upon affirmative vote of four members, conduct an audit and field investigation of any committee which meets the thresholds established pursuant to 11 CFR 104.16(a). All such audits and investigations shall commence within 30 days of such vote except that any audit or investigation of an authorized committee of a candidate shall be com-

menced within 6 months of the election for which such committee was authorized.

(c) The Commission may, upon affirmative vote of four members, conduct an audit and field investigation of any committee pursuant to 11 CFR 111.10.

(d) All audits and field investigations concerning the verification for and the receipt and use of payments under Chapters 95 and 96 of Title 26 shall be given priority over any audit or investigation of committees not receiving such payments.

§ 104.17 Content of reports; Presidential and Vice Presidential committees (2 U.S.C. 431 note).

(a) For all elections occurring prior to January 1, 1981, authorized committees of candidates for President and Vice President may comply with the requirements of 11 CFR 104.17 in lieu of 11 CFR 104.3 (a) and (b).

(b) Each report filed under 11 CFR 104.17 shall include all receipts and disbursements from the close of the last period reported to the close of the current reporting period, and shall disclose—

(1) The amount of cash on hand at the beginning of the calendar year and at the beginning of the reporting period, including currency, balance on deposit in banks and savings and loan institutions, checks, negotiable money orders, and other paper commonly accepted by a bank in a deposit;

(2) The identification, occupation, and principal place of business, if any, of each person who has made a contribution to or for the committee or candidate during the reporting period in an amount or value in excess of \$100, or in an amount of less than \$100 if the person's contributions within a calendar year total more than \$100, together with the amount and date of such contributions;

(3)(i) The total of contributions made to or for a committee or candidate during the reporting period and not reported under (b)(2) above;

(ii) Candidates and committees, which, in addition to the required totals, choose to itemize contributions not in excess of \$100, shall itemize these by attaching a separate sched-

ule. Contributions of \$100 or less shall not be reported on the same schedule with the required itemized contributions in excess of \$100;

(4) The identification of each political committee or other political organization from which the reporting committee or the candidate received, or to which the reporting committee or the candidate made, any transfer of funds in any amount during the reporting period, together with the amounts and dates of all transfers, including aggregate year to date transfers, received from non-affiliated committees, and complete disclosure, pursuant to 11 CFR 110.6 of each transaction involving earmarked funds;

(5) Each loan—

(i)(A) To or from any political committee; or

(B) To a candidate or his or her authorized committees which is—

(ii)(A) Over \$100 in value and made during the reporting period; or

(B) Less than \$100 in value and the total of the loans from one person is over \$100 shall be reported together with the identification, occupation, and principal place of business, if any, of each lender, endorser, or guarantor, as the case may be. The report shall include the date and amount of the loan;

(6) The total amount of proceeds from—

(i) The sale of tickets of each dinner, luncheon, rally, and other fundraising event;

(ii) Mass collections made at these events; and

(iii) Sales of items such as political campaign pins, buttons, badges, flags, emblems, hats, banners, literature, jewelry, and similar materials, as long as the items are sold by the candidate or an authorized committee;

(7) Each receipt in excess of \$100 received during the reporting period, not otherwise listed under (b) (2) through (6) above, together with the identification, date and amount received, occupation, and principal place of business of each such person from whom such receipts have been received during the reporting period; including—

(i) The interest or other proceeds from the investment, in an interest-bearing account, note, bill, stock,

bond, or other similar device, of funds transferred out of a checking account in a campaign depository; and

(ii) Rebates and refunds received by the candidate or committee;

(8)(i) The total of all receipts by or for the committee or candidate during the reporting period and the calendar year; and

(ii) Total receipts less transfers between affiliated political committees (as defined in 11 CFR 100.5(g));

(9) The identification of each person to whom expenditures have been made by or on behalf of the committee or candidate within the reporting period which total more than \$100, or in an amount less than \$100 if the total exceeds \$100 within a calendar year, together with the amount, date and particulars of each such expenditure and the name, address of, and office sought by, each candidate on whose behalf such expenditures were made;

(10) The total of expenditures made by or on behalf of the committee or candidate during the reporting period and the calendar year together with total expenditures less transfers between affiliated political committees (as defined in 11 CFR 100.5) of the candidate;

(11) The amount and nature of outstanding debts and obligations owed by or to the committee including any written contracts, agreements, or promises to make expenditures, see 11 CFR 104.9;

(12) Independent expenditures; see 11 CFR Part 104.4.

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

Sec.

105.1 Place of filing; House candidates, their principal campaign committees, and committees supporting only House candidates (2 U.S.C. 432(g)(1)).

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

105.3 Place of filing; Presidential candidates and their principal campaign committees (2 U.S.C. 432(g)(4)).

105.4 Place of filing; political committees and other persons (2 U.S.C. 432(g)(4)).

Sec.

105.5 Transmittal of microfilm copies and photocopies of original reports filed with the Clerk of the House and the Secretary of the Senate to the Commission (2 U.S.C. 432(g)(3)).

AUTHORITY: 2 U.S.C. 432(g), 438(a)(8).

SOURCE: 45 FR 15116, Mar. 7, 1980, unless otherwise noted.

§ 105.1 Place of filing; House candidates, their principal campaign committees, and committees supporting only House candidates (2 U.S.C. 432(g)(1)).

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 Representative in, or Delegate or Resident Commissioner to, the Congress, by his or her principal campaign committee or by any other political committee(s) which supports only candidates for nomination for election or election to the House of Representatives, shall be filed in original form with, and received by, the Clerk of the House of Representatives as custodian for the Federal Election Commission.

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

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) which 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.

§ 105.3 Place of filing; Presidential candidates and their principal campaign committees (2 U.S.C. 432(g)(4)).

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 for election or election to the office of President or Vice President of the United States or by his or her principal campaign committee shall be filed in original form with the Federal Election Commission.

§ 105.4 Place of filing; political committees and other persons (2 U.S.C. 432(g)(4)).

All designations, statements, reports, and notices, as well as any modifications or amendments thereto, required to be filed under 11 CFR Parts 101, 102, and 104 by a political committee other than any principal campaign committee or any committee referred to in 11 CFR 105.1, 105.2, or 105.3, by persons other than political committees making independent expenditures under 11 CFR Part 109, and by persons required to report the cost of communications under 11 CFR 104.6, shall be filed in original form with the Federal Election Commission.

§ 105.5 Transmittal of microfilm copies and photocopies of original reports filed with the Clerk of the House and the Secretary of the Senate to the Commission (2 U.S.C. 432(g)(3)).

(a) Either a microfilmed copy or photocopy of all original designations, statements, reports, modifications or amendments required to be filed pursuant to 11 CFR 105.1 and 105.2 shall be transmitted by the Clerk of the House or the Secretary of the Senate to the Commission as soon as possible, but in any case no later than two (2) working days after receiving such designations, statements, reports, modifications, or amendments.

(b) The Clerk of the House and the Secretary of the Senate shall then forward to the Commission a microfilm copy and a photocopy of each designation, statement, and report, or any modification or amendment thereto, filed with them pursuant to 11 CFR 105.1 and 105.2.

(c) The Clerk of the House and the Secretary of the Senate shall place a time and date stamp on each original designation, statement, report, modification or amendment received.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

- Sec.
- 106.1 Allocation of expenditures among (or between) candidates and activities.
- 106.2 Allocation of expenditures among States by candidates for Presidential nomination.
- 106.3 Allocation of expenses between campaign and non-campaign related travel.
- 106.4 Allocation of polling expenses.

AUTHORITY: Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 437d(a)(8)), and sec. 315(a)(10), Pub. L. 92-225, 86 Stat. 16, amended by secs. 208(a) and (c)(10), and 209(a)(1) and (b)(1), Pub. L. 93-443, 88 Stat. 1279, 1287, and sec. 105, Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 438(a)(10)).

SOURCE: 41 FR 35944, Aug. 25, 1976, unless otherwise noted.

§ 106.1 Allocation of expenditures among (or between) candidates and activities.

(a) *General Rule:* Expenditures, including independent expenditures, made on behalf of more than one candidate shall be attributed to each candidate in proportion to, and shall be reported to reflect, the benefit reasonably expected to be derived.

(b) An authorized expenditure made by a candidate or political committee on behalf of another candidate shall be reported as a contribution in-kind (transfer) to the candidate on whose behalf the expenditure was made, except that expenditures made by party committees pursuant to § 110.7 need only be reported as an expenditure.

(c) *Exceptions:* (1) Expenditures for rent, personnel, overhead, general administrative, fund-raising, and other day-to-day costs of political committees need not be attributed to individual candidates, unless these expenditures are made on behalf of a clearly identified candidate and the expenditure can be directly attributed to that candidate.

(2) Expenditures for educational campaign seminars, for training of campaign workers, and for registration or get-out-the-vote drives of committees need not be attributed to individ-

ual candidates unless these expenditures are made on behalf of a clearly identified candidate, and the expenditure can be directly attributed to that candidate.

(3) Payments made for the cost of certain voter registration and get-out-the-vote activities conducted by State or local party organizations on behalf of any Presidential or Vice-Presidential candidate(s) are exempt from the definition of a contribution or an expenditure under 11 CFR 100.7(b)(17) and 100.8(b)(18). If the State or local party organization includes references to any candidate(s) seeking nomination or election to the House of Representatives or Senate of the United States the portion of the cost of such activities allocable to such candidate(s) shall be considered a contribution to or an expenditure on behalf of such candidate(s), unless such reference is incidental to the overall activity. If such reference is incidental to the overall activity, such costs shall not be considered a contribution to or expenditure on behalf of any candidate(s).

(d) For purposes of this section, "clearly identified" means—

- (1) The candidate's name appears;
- (2) A photograph or drawing of the candidate appears; or
- (3) The identity of the candidate is apparent by unambiguous reference.

(e) Party committees and other political committees which have established Federal campaign committees pursuant to 11 CFR 102.5 shall allocate administrative expenses on a reasonable basis between their Federal and non-Federal accounts in proportion to the amount of funds expended on Federal and non-Federal elections, or on another reasonable basis.

(2 U.S.C. 438(a)(8))

[41 FR 35944, Aug. 25, 1976, as amended at 45, FR 15117, Mar. 7, 1980; 45 FR 21209, Apr. 1, 1980]

§ 106.2 Allocation of expenditures among States by candidates for Presidential nomination.

(a) Expenditures made by a candidate's authorized committee(s) which seek to influence the nomination of that candidate for the office of President of the United States with respect

to a particular State shall be allocated to that State. This allocation of expenditures shall be reported on FEC Form 3c.

(b) Expenditures for administrative, staff, and overhead costs directly relating to the national campaign headquarters shall be reported but need not be attributed to individual States. Expenditures for staff, media, printing, and other goods and services used in a campaign in a specific State shall be attributed to that State.

(c) An expenditure by a Presidential candidate for use in two or more States, which cannot be attributed in specific amounts to each State, shall be attributed to each State based on the voting age population in each State which can reasonably be expected to be influenced by such expenditure.

(1) Expenditures for publication and distribution of newspaper, magazine, radio, television, and other types of advertisements distributed in more than one State shall be attributed to each State in proportion to the estimated viewing audience or readership of voting age which can reasonably be expected to be influenced by these advertisements.

(2) Expenditures for travel within a State shall be attributed to that State. Expenditures for travel between States need not be attributed to any individual State.

(2 U.S.C. 438(a)(8))

[41 FR 35944, Aug. 25, 1976, as amended at 45 FR 15117, Mar. 7, 1980]

§ 106.3 Allocation of expenses between campaign and non-campaign related travel.

(a) All expenditures for campaign-related travel paid for by a candidate from a campaign account or by his or her authorized committees or by any other political committee shall be reported.

(b)(1) Travel expenses paid for by a candidate from personal funds, or from a source other than a political committee, shall constitute reportable expenditures if the travel is campaign-related.

(2) Where a candidate's trip involves both campaign-related and non-cam-

paigned-related stops, the expenditures allocable for campaign purposes are reportable, and are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign-related stop and ending at the point of origin.

(3) Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts.

(c)(1) Where an individual, other than a candidate, conducts campaign-related activities on a trip, the portion of the trip attributed to each candidate shall be allocated on a reasonable basis.

(2) Travel expenses of a candidate's spouse and family are reportable as expenditures only if the spouse or family members conduct campaign-related activities.

(d) Costs incurred by a candidate for the United States Senate or House of Representatives for travel between Washington, D.C., and the State or district in which he or she is a candidate need not be reported herein unless the costs are paid by a candidate's authorized committee(s), or by any other political committee(s).

(e) Notwithstanding paragraphs (b) and (c) of this section, the reportable expenditure for a candidate who uses government conveyance or accommodations for travel which is campaign-related is the rate for comparable commercial conveyance or accommodation. In the case of a candidate authorized by law or required by national security to be accompanied by staff and equipment, the allocable expenditures are the costs of facilities sufficient to accommodate the party, less authorized or required personnel and equipment. If such a trip includes both campaign and noncampaign stops, equivalent costs are calculated in accordance with paragraphs (b) and (c) of this section.

(2 U.S.C. 438(a)(8))

[41 FR 35944, Aug. 25, 1976, as amended at 45 FR 15117, Mar. 7, 1980]

§ 106.4 Allocation of polling expenses.

(a) The purchase of opinion poll results by a candidate or a candidate's authorized political committee or agent is an expenditure by the candidate. Regarding the purchase of opinion poll results for the purpose of determining whether an individual should become a candidate, see 11 CFR 100.8(b)(1).

(b) The purchase of opinion poll results by a political committee or other person not authorized by a candidate to make expenditures and the subsequent acceptance of the poll results by a candidate or a candidate's authorized political committee or agent or by another unauthorized political committee is a contribution in-kind by the purchaser to the candidate or other political committee and an expenditure by the candidate or other political committee. Regarding the purchase of opinion poll results for the purpose of determining whether an individual should become a candidate, see 11 CFR 100.7(b)(1). The poll results are accepted by a candidate or other political committee if the candidate or the candidate's authorized political committee or agent or the other unauthorized political committee—

(1) Requested the poll results before their receipt;

(2) Uses the poll results; or

(3) Does not notify the contributor that the results are refused.

(c) The acceptance of any part of a poll's results which part, prior to receipt, has been made public without any request, authorization, prearrangement, or coordination by the candidate-recipient or political committee-recipient, shall not be treated as a contribution in-kind and expenditure under paragraph (b) of this section.

(d) The purchase of opinion poll results by an unauthorized political committee for its own use, in whole or in part, is an overhead expenditure by the political committee under § 106.1(c)(1) to the extent of the benefit derived by the committee.

(e) The amount of a contribution under paragraph (b) of this section or of any expenditure under paragraphs (a) and (b) of this section attributable

to each candidate-recipient or political committee-recipient shall be—

(1) That share of the overall cost of the poll which is allocable to each candidate (including State and local candidates) or political committee, based upon the cost allocation formula of the polling firm from which the results are purchased. Under this method the size of the sample, the number of computer column codes, the extent of computer tabulations, and the extent of written analysis and verbal consultation, if applicable, may be used to determine the shares; or

(2) An amount computed by dividing the overall cost of the poll equally among candidates (including State and local candidates) or political committees receiving the results; or

(3) A proportion of the overall cost of the poll equal to the proportion that the number of question results received by the candidate or political committee bears to the total number of question results received by all candidates (including State and local candidates) and political committees; or

(4) An amount computed by any other method which reasonably reflects the benefit derived.

(f) The first candidate(s) or committee(s) receiving poll results under paragraph (b) or (d) of this section and any candidate or political committee receiving poll results under paragraph (b) of this section within 15 days after receipt by the initial recipient(s) shall compute the amount of the contribution in-kind and the expenditure as provided in paragraph (e) of this section.

(g) The amount of the contribution and expenditure reported by a candidate or a political committee receiving poll results under paragraph (b) of this section more than 15 days after receipt of such poll results by the initial recipient(s) shall be—

(1) If the results are received during the period 16 to 60 days following receipt by the initial recipient(s), 50 percent of the amount allocated to an initial recipient of the same results;

(2) If the results are received during the period 61 to 180 days after receipt by the initial recipient(s), 5 percent of the amount allocated to an initial recipient of the same results;

(3) If the results are received more than 180 days after receipt by the initial recipient(s), no amount need be allocated.

(h) A contributor of poll results under paragraph (b) of this section shall maintain records sufficient to support the valuation of the contribution(s) in-kind and shall inform the candidate-recipient(s) or political committee-recipient(s) of the value of the contribution(s).

[41 FR 35944, Aug. 25, 1976, as amended at 45 FR 21209, Apr. 1, 1980]

PART 107—PRESIDENTIAL NOMINATING CONVENTION, REGISTRATION AND REPORTS

§ 107.1 Registration and reports by committees including host committees, organizations or other groups representing a State, city or other local government agency.

Each committee, including a host committee other organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention shall register and report in accordance with 11 CFR 9008.12(a).

(2 U.S.C. 437)

[44 FR 63045, Nov. 1, 1979]

§ 107.2 Registration and reports by political parties.

Each convention committee established under 11 CFR 9008.8(b)(2) by a national committee of a political party and each committee or other organization, including a national committee, which represents a political party in making arrangements for that party's convention held to nominate a presidential or vice presidential candidate shall register and report in accordance with 11 CFR 9008.12(b).

(2 U.S.C. 437)

[44 FR 63045, Nov. 1, 1979]

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

Sec.

108.1 Filing requirements (2 U.S.C. 439(a)(1)).

§ 108.2 Filing copies of reports and statements in connection with the campaign of any candidate seeking nomination for election to the Office of President or Vice-President (2 U.S.C. 439(a)(2)).

§ 108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidate (2 U.S.C. 439(a)(2)).

108.4 Filing copies of reports by committees other than principal campaign committees (2 U.S.C. 439(a)(2)).

108.5 Time and manner of filing copies (2 U.S.C. 434(a)(2)).

108.6 Duties of State officers (2 U.S.C. 439(b)).

108.7 Effect on State law (2 U.S.C. 453).

108.8 Exemption for the District of Columbia.

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

SOURCE: 45 FR 15117, Mar. 7, 1980, unless otherwise noted.

§ 108.1 Filing requirements (2 U.S.C. 439(a)(1)).

A copy of each report and statement required to be filed by any person under the Act shall be filed either with the Secretary of State of the appropriate State or with the State officer who is charge by State law with maintaining state election campaign reports. In States where reports are to be filed with a designated officer other than the Secretary of State, the chief executive officer of that State shall notify the Commission of such designation.

§ 108.2 Filing copies of reports and statements in connection with the campaign of any candidate seeking nomination for election to the Office of President or Vice-President (2 U.S.C. 439(a)(2)).

A copy of each report and statement required to be filed by a Presidential or Vice Presidential candidate's principal campaign committee under the Act, including 11 CFR Part 104, or by any other person making independent expenditures in connection with a candidate seeking nomination for election to the office of President or Vice-

President under 11 CFR 104.4 or Part 109, shall be filed with the State officer of each State in which an expenditure is made in connection with the campaign of a candidate seeking nomination for election to the office of President or Vice-President. The report and statement shall contain all transactions pertaining to that State during the reporting period. Any committee, other than a Presidential or Vice Presidential candidate's principal campaign committee and the candidate's authorized committee(s) shall also file a copy of each report and statement with the appropriate State officer of the State in which such committee has its headquarters pursuant to 11 CFR 108.4.

§ 108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidate (2 U.S.C. 439(a)(2)).

A copy of each report and statement required to be filed by a committee under 11 CFR Part 104, or by any other person under 11 CFR Part 109 shall be filed with the appropriate State officer of that State in which an expenditure is made in connection with the campaign of a candidate for nomination for election or election, to the office of Senator, Representative in, Delegate or Resident Commissioner to the Congress except that political committees other than authorized committees are required to file, and the Secretary of State is required to retain only that portion of the report applicable to candidates seeking election in that State.

§ 108.4 Filing copies of reports by committees other than principal campaign committees (2 U.S.C. 439(a)(2)).

Any unauthorized committee, which makes contributions in connection with a Presidential election and which is required to file a report(s) and statement(s) under the Act shall file a copy of such report(s) and statement(s) with the State officer of the State in which both the recipient and contributing committees have their headquarters.

[45 FR 15117, Mar. 7, 1980, as amended at 45 FR 21209, Apr. 1, 1980]

§ 108.5 Time and manner of filing copies (2 U.S.C. 434(a)(2)).

A copy of any report or statement required to be filed with a State officer under 11 CFR Part 108 shall be filed at the same time as the original report is filed. Each copy of such report or statement shall be a complete, true, and legible copy of the original report or statement filed.

§ 108.6 Duties of State officers (2 U.S.C. 439(b)).

The Secretary of State, or the equivalent State officer shall carry out the duties set forth in 11 CFR 108.5(a) through (d):

(a) Receive and maintain in an orderly manner all reports and statements required to be filed;

(b) Preserve such reports and statements (either in original form or in facsimile copy by microfilm or otherwise) filed under the Act for a period of 2 years from the date of receipt;

(c) Make the reports and statements filed available as soon as practicable (but within 48 hours of receipt) for public inspection and copying during office hours and permit copying of any such reports or statements by hand or by duplicating machine, at the request of any person except that such copying shall be at the expense of the person making the request and at a reasonable fee;

(d) Compile and maintain a current list of all reports and statements or parts of such reports and statements pertaining to each candidate.

§ 108.7 Effect on State law (2 U.S.C. 453).

(a) The provisions of the Federal Election Campaign Act of 1971, as amended, and rules and regulations issued thereunder, supersede and preempt any provision of State law with respect to election to Federal office.

(b) Federal law supersedes State law concerning the—

(1) Organization and registration of political committees supporting Federal candidates;

(2) Disclosure of receipts and expenditures by Federal candidates and political committees; and

(3) Limitation on contributions and expenditures regarding Federal candidates and political committees.

(c) The Act does not supersede State laws which provide for the—

- (1) Manner of qualifying as a candidate or political party organization;
- (2) Dates and places of elections;
- (3) Voter registration;
- (4) Prohibition of false registration, voting fraud, theft of ballots, and similar offenses; or
- (5) Candidate's personal financial disclosure.

§ 108.8 Exemption for the District of Columbia

Any copy of a report required to be filed with the equivalent officer in the District of Columbia shall be deemed to be filed if the original has been filed with the Clerk, Secretary, or the Commission, as appropriate.

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

Sec.

- 109.1 Definitions (2 U.S.C. 431(17)).
- 109.2 Reporting of independent expenditures by persons other than a political committee (2 U.S.C. 434(c)).
- 109.3 Non-authorization notice (2 U.S.C. 441d).

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

SOURCE: 45 FR 15118, Mar. 7, 1980, unless otherwise noted.

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

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

(b) For purposes of this definition—

- (1) "Person" means an individual, partnership, committee, association, or any organization or group of persons, including a separate segregated fund established by a labor organization, corporation, or national bank (see Part 114) but does not mean a labor organization, corporation, or national bank.

(2) "Expressly advocating" means any communication containing a message advocating election or defeat, including but not limited to the name of the candidate, or expressions such as "vote for," "elect," "support," "cast your ballot for," and "Smith for Congress," or "vote against," "defeat," or "reject."

(3) "Clearly identified candidate" means that the name of the candidate appears, a photograph or drawing of the candidate appears, or the identity of the candidate is otherwise apparent by unambiguous reference.

(4) "Made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate or any agent or authorized committee of the candidate" means—

(i) Any arrangement, coordination, or direction by the candidate or his or her agent prior to the publication, distribution, display, or broadcast of the communication. An expenditure will be presumed to be so made when it is—

(A) Based on information about the candidate's plans, projects, or needs provided to the expending person by the candidate, or by the candidate's agents, with a view toward having an expenditure made;

(B) Made by or through any person who is, or has been, authorized to raise or expend funds, who is, or has been, an officer of an authorized committee, or who is, or has been, receiving any form of compensation or reimbursement from the candidate, the candidate's committee or agent;

(ii) But does not include providing to the expending person upon request Commission guidelines on independent expenditures.

(5) "Agent" means any person who has actual oral or written authority, either express or implied, to make or to authorize the making of expenditures on behalf of a candidate, or means any person who has been placed in a position within the campaign organization where it would reasonably appear that in the ordinary course of campaign-related activities he or she may authorize expenditures.

(c) An expenditure not qualifying under this section as an independent

expenditure shall be a contribution in-kind to the candidate and an expenditure by the candidate, unless otherwise exempted.

(d)(1) The financing of the dissemination, distribution, or republication, in whole or in part, of any broadcast or any written, graphic, or other form of campaign materials prepared by the candidate, his campaign committees, or their authorized agents shall be considered a contribution for the purpose of contribution limitations and reporting responsibilities by the person making the expenditure but shall not be considered an expenditure by the candidate or his authorized committees unless made with the cooperation or with the prior consent of, or in consultation with, or at the request or suggestion of, a candidate, or any authorized agent or committee thereof.

(2) This paragraph does not affect the right of a State or subordinate party committee to engage in such dissemination, distribution, or republication as agents designated by the national committee pursuant to § 110.7(a)(4).

(e) No expenditure by an authorized committee of a candidate on behalf of that candidate shall qualify as an independent expenditure.

§ 109.2 Reporting of independent expenditures by persons other than a political committee (2 U.S.C. 434(c)).

(a) Every person other than a political committee, who makes independent expenditures aggregating in excess of \$250 during a calendar year shall file a signed statement or report on FEC Form with the Commission, the Clerk of the House or Secretary of the Senate in accordance with 11 CFR 104.4(c).

(1) If a signed statement is submitted, the 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 which indicates whether such expenditure was in support of, or in opposition to a candi-

date, together with the candidate's name and office sought; (v) a notarized 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 any candidate or any authorized committee or agent thereof; 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) Reports or statements filed under this section shall be filed at the end of the reporting period (quarterly pre-election post-election semi-annual annual) (See 11 CFR 104.5) during which any independent expenditure which aggregates in excess of \$250 is made and in any reporting period thereafter in which additional independent expenditures are made.

(b) Independent expenditures aggregating \$1,000 or more made by any person after the twentieth day, but more than 24 hours before 12:01 A.M. of the day of an election shall be reported within 24 hours after such independent expenditure is made. Such report or statement shall contain the information required by 11 CFR 109.2(a) indicating whether the independent expenditure is made in support of, or in opposition to, a particular candidate and shall be filed with the appropriate officers in accordance with 11 CFR 104.4(c).

§ 109.3 Non-authorization notice (2 U.S.C. 441d).

Whenever any person makes an independent expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate, such person shall comply with the requirements of 11 CFR 110.11.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

Sec.

- 110.1 Contributions by persons.
- 110.2 Contributions by multi-candidate committees (2 U.S.C. 441a(a)(2)).
- 110.3 Affiliated committees; transfers.

- Sec.
- 110.4 Prohibited contributions.
- 110.5 Annual contribution limitation.
- 110.6 Earmarked contributions (2 U.S.C. 441a(a)(7)(A)).
- 110.7 Party committee expenditure limitation (2 U.S.C. 441a(d)).
- 110.8 Presidential candidate expenditure limitations.
- 110.9 Miscellaneous provisions.
- 110.10 Expenditures by candidates.
- 110.11 Communications; advertising (2 U.S.C. 441d).
- 110.12 Honoraria (2 U.S.C. 441i).
- 110.13 Nonpartisan candidate debate.

AUTHORITY: Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 437d(a)(8)), and sec. 315(a)(10), Pub. L. 92-225, 86 Stat. 16, amended by secs. 208(a) and (c)(10), and 209(a)(1) and (b)(1), Pub. L. 93-443, 88 Stat. 1279, 1287, and sec. 105, Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 438(a)(10)).

SOURCE: 41 FR 35948, Aug. 25, 1976, unless otherwise noted.

§ 110.1 Contributions by persons.

(a)(1) No person (except multicandidate committees under § 110.2) shall make contributions to any candidate, his or her authorized political committees or agents with respect to any election to Federal office which in the aggregate exceed \$1,000.

(2) "With respect to any election" means—

(i) In the case of a contribution designated in writing for a particular election, the election so designated, except that a contribution made after a primary election, caucus or convention, and designated for the primary election, caucus or convention shall be made only to the extent that the contribution does not exceed net debts outstanding from the primary election, caucus or convention.

(ii) In the case of a contribution not designated in writing for a particular election,

(A) For a primary election, caucus or convention, if made on or before the date of the election, caucus or convention, or

(B) For a general election if made after the date of the primary election.

(b)(1) No person (except multicandidate committees under § 110.2) shall make contributions to the political

committees established and maintained by a national political party, which, in the aggregate, exceed \$20,000 in any calendar year.

(2) For purposes of this section, "political committees established and maintained by a national political party" means—

(i) The national committee; (ii) the House campaign committee; and (iii) the Senate campaign committee. Each may receive up to the \$20,000 limitation from a contributor, see § 110.5.

(3) The recipient committee shall not be an authorized committee of any candidate.

(c) No person (except multicandidate committees under § 110.2) shall make contributions to any other political committee which in the aggregate exceed \$5,000 in any calendar year.

(d) The limitations in paragraphs (b) and (c) of this section also apply to contributions made to committees making independent expenditures, see Part 109.

(e) A contribution by a partnership shall—

(1) Be attributed to each partner in direct proportion to his or her share of the partnership profits, according to instructions which shall be provided by the partnership to the committee or candidate; or

(2) Be attributed by agreement of the partners, as long as—

(i) Only the profits of the partners to whom the contribution is attributed are reduced (or losses increased), and

(ii) These partners' profits are reduced (or losses increased) in proportion to the contribution attributed to each of them; and

(3) Not exceed the limits in paragraphs (a), (b), and (c) of this section.

(f) If an individual is a candidate for more than one Federal office, a person may contribute not more than \$1,000 to the candidate, or his or her authorized committees for each election for each office, as long as—

(1) The contributor clearly designates in writing for which office each contribution is intended;

(2) The candidate maintains separate campaign organizations, including separate principal campaign committees and separate accounts; and

(3) No funds are transferred, loaned, or otherwise contributed between or among the separate campaigns and no expenditures are made by one campaign on behalf of the other campaign except as provided in § 110.3(a)(2)(iv).

(g)(1) Contributions made to retire debts resulting from elections held prior to January 1, 1975 are not subject to the limitations of this Part 110, as long as contributions and solicitations to retire these debts are clearly designated and used for that purpose.

(2) Contributions made to retire debts resulting from elections held after December 31, 1974 are subject to the limitations of this Part 110.

(h) A person may contribute to a candidate or his or her authorized committee with respect to a particular election and also contribute to a political committee which has supported, or anticipates supporting, the same candidate in the same election, as long as—

(1) The political committee is not the candidate's principal campaign committee or other authorized committee or a single candidate committee;

(2) The contributor does not give with the knowledge that a substantial portion will be contributed to, or expended on behalf of, that candidate for the same election; and

(3) The contributor does not retain control over the funds.

(i)(1) Even though a spouse in a single income family has contributed \$1,000 to a candidate for an election, the other spouse may similarly contribute \$1,000 to the same candidate for the same election, see 11 CFR 104.8(d).

(2) Minor children (children under 18 years of age) may contribute up to \$1,000 to a candidate for an election, see 11 CFR 104.8(d), if—

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

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

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

(j)(1) The limitations on contributions in this section shall apply separately with respect to each election, except that all elections held in a calendar year for the office of President of the United States (except a general election for that office) shall be considered to be one election.

(2) An election in which a candidate is unopposed is a separate election.

(3) If no primary election is held because a candidate is unopposed, the date on which the primary would have been held shall be deemed to be the date of the primary for purposes of the contribution limitations.

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 21209, Apr. 1, 1980]

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

(a) No multicandidate political committee shall make contributions—

(1) To any candidate and his authorized political committees with respect to any election for Federal office which, in the aggregate, exceed \$5,000; "with respect to any election" has the same meaning as in § 110.1(a)(2);

(2) To the political committees established and maintained by a national political party in any calendar year which, in the aggregate, exceed \$15,000;

(i) The recipient committee shall not be an authorized committee of any candidate;

(ii) "Political committees established and maintained by a national political party" means (A) the national committee; (B) Senate campaign committee; and (C) the House campaign committee. Each may receive up to the \$15,000 limitation from a contributor;

(3) To any other political committee in any calendar year which, in the aggregate, exceed \$5,000.

(b) "Multi-candidate political committee" means a committee as defined in 11 CFR 100.5(e)(3).

(c) Notwithstanding any other provision of the Act, the Republican and Democratic Senatorial campaign committees, or the national committee of

a political party, may contribute not more than a combined total of \$17,500 to a candidate for nomination or election to the Senate during the calendar year of the election for which he or she is a candidate. Any contribution made by the committees to a Senate candidate in a year other than that election year shall be considered to be part of the \$17,500 total contribution limit for that election year.

(d)(1) The limitations on contributions in this section (other than paragraph (c) of this section) shall apply separately with respect to each election, except that all elections held in a calendar year for the office of President of the United States (except a general election for that office) shall be considered to be one election.

(2) An election in which a candidate is unopposed is a separate election.

(3) If no primary election is held because a candidate is unopposed, the date on which the primary would have been held shall be deemed to be the date of the primary for purposes of the contribution limitations.

(2 U.S.C. 438(a)(8), 441a, 441d, 441e, 441f, 441g, 441h, 441i)

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 15119, Mar. 7, 1980; 45 FR 21210, Apr. 1, 1980]

§ 110.3 Affiliated committees; transfers.

(a)(1)(i) For purposes of the limitations in §§ 110.1 and 110.2, contributions shall be considered to be made by a single political committee (including a single separate segregated fund) if made by more than one political committee (including a separate segregated fund) established, financed, maintained, or controlled by any corporation, labor organization, or any other person, including any parent, subsidiary, branch, division, department, or local unit thereof, or by a group of those persons, see affiliated committees, 11 CFR 100.5(g).

(ii) Application of the rule of this paragraph means—

(A) All of the political committees set up by a single corporation and/or its subsidiaries are treated as a single political committee;

(B) All of the political committees set up by a single national or international union and/or its local unions or

other subordinate organizations are treated as a single political committee;

(C) All of the political committees set up by an organization of national or international unions and/or all its State and local central bodies are treated as a single political committee;

(D) All of the political committees (other than party committees, see paragraph (b) of this section set up by a membership organization, including trade or professional associations, see § 114.8(a), and/or by related State and local entities of that organization or group, are treated as a single political committee;

(E) All of the political committees set up by the same group of persons are treated as a single political committee.

(iii) For organizations not described by paragraphs (a)(1)(i) or (ii) of this section, indicative of establishing, financing, maintaining, or controlling may include—

(A) Ownership of a controlling interest in voting shares or securities;

(B) Provisions of by-laws, constitutions, or other documents by which one entity has the authority, power, or ability to direct another entity;

(C) The authority, power, or ability to hire, appoint, discipline, discharge, demote, or remove or otherwise influence the decision of the officers or members of an entity;

(D) Similar patterns of contributions;

(E) The transfer of funds between committees which represent a substantial portion of the funds of either the transferor or transferee committee, other than the transfer of funds between the committees which jointly raised the funds so transferred.

(2) This part shall not limit transfers between—

(i) Political committees of the funds raised through joint fundraising;

(ii) Authorized committees of the same candidate, or between the candidate and his or her authorized committees, if the candidate has not received a waiver from reporting;

(iii) The primary campaign and general election campaign of a candidate, of funds unused for the primary;

(iv) A candidate's previous campaign committee and his or her currently

registered principal campaign committee or other authorized committee; as long as none of the funds transferred contain contributions which would be in violation of the Act; or

(v) The principal campaign committees of a candidate seeking nomination or election to more than one Federal office, as long as—

(A) The transfer is made when the candidate is not actively seeking nomination or election to more than one office. For purposes of this paragraph, "not actively seeking" means a principal campaign committee has filed a termination report with the Commission, or has notified the Commission that the candidate and his authorized committees will make no further expenditure, except in connection with the retirement of debts outstanding at the time of the notification;

(B) The limitations on contributions by persons are not exceeded by the transfer. To assure this, the contributions making up the funds transferred shall be reviewed, beginning with the last received and working back until the amount transferred is reached. A person's contribution or any portion thereof, shall be excluded if, when added to contributions already made to the transferee principal campaign committee, it causes the contributor to exceed his or her limitation; and

(C) The candidate has not received funds under 26 U.S.C. 9006 or 9037.

(b)(1) For purposes of the limitations in § 110.1 and § 110.2,

(i) All contributions made by the national committee of a political party, and any political committees established, financed, maintained, or controlled by the same national committee; and

(ii) All contributions made by the State committee of a political party, shall be considered to be made by separate political committees.

(2) For purposes of this section,

(i) The House campaign committee of each political party shall be considered separate from the national committee of that party, giving the national committee and the House campaign committees separate limitations;

(ii) All contributions made by the political committees established, financed, maintained, or controlled by a

State party committee and by subordinate State party committees shall be presumed to be made by one political committee. This presumption shall not apply if—

(A) The political committee of the party unit in question has not received funds from any other political committee established, financed, maintained, or controlled by any party unit; and

(B) The political committee of the party unit in question does not make its contributions in cooperation, consultation or concert with, or at the request or suggestion of any other party unit or political committee established, financed, maintained, or controlled by another party unit.

(3) For example, as a result of paragraph (b)(1) of this section,

(i) The national committee of a party and that party's House campaign committee may each contribute a total of \$1,000 (\$5,000 if a multicandidate committee) and the State committee of a party and each of its independent subordinate committees, may each contribute a total of \$1,000 (\$5,000 if a multicandidate committee) to a candidate for nomination for President of the United States, or to a candidate for the House for each election;

(ii) A State committee and any subordinate committee able to demonstrate independence under the criteria of § 110.3(b)(2)(ii) may each contribute \$1,000 (\$5,000 if a multicandidate committee) to a candidate for each election.

(4) The national committee of a political party and the Senate campaign committee have special limitations regarding Senate candidates, see § 110.2(c).

(c) Transfers between and among political committees which are national, State, district, or local committees, and subordinate committees thereof, of the same political party are unlimited.

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980]

§ 110.4 Prohibited contributions.

(a)(1) A foreign national shall not directly or through any other person make a contribution, or expressly or

impliedly promise to make a contribution, in connection with a convention, caucus, primary, general, special, or runoff election in connection with any local, State or Federal public office.

(2) No person shall solicit, accept, or receive a contribution as set out above from a foreign national.

(3) For purposes of this section, "foreign national" means—

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

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

(iii) Except that "foreign national" shall not include any individual who is a citizen of the United States.

(b)(1) No person shall—

(i) Make a contribution in the name of another;

(ii) Knowingly permit his or her name to be used to effect that contribution; or

(iii) Knowingly accept a contribution made by one person in the name of another.

(2) Examples of "contribution in the name of another" include—

(i) Giving money or anything of value, all or part of which was provided to the contributor by another person (the true contributor) without disclosing the source of money or the thing of value to the recipient candidate or committee at the time the contribution is made, see § 110.6; or

(ii) Making a contribution of money or anything of value and attributing as the source of the money or the thing of value another person when in fact the contributor is the source.

(c)(1) With respect to any campaign for nomination for election, or election, to Federal office, no person shall make contributions to a candidate or political committee of currency of the United States, or of any foreign country, which in the aggregate exceed \$100.

(2) A candidate or committee receiving a cash contribution in excess of \$100 shall promptly return the amount over \$100 to the contributor.

(3) A candidate or committee receiving an anonymous cash contribution in excess of \$50 shall promptly dispose

of the amount over \$50. The amount over \$50 may be used for any lawful purpose unrelated to any Federal election, campaign, or candidate.

§ 110.5 Annual contribution limitation.

(a) No individual shall make contributions aggregating more than \$25,000 in any calendar year.

(b) For purposes of this section,

(1) Any contribution made in a year other than in the calendar year in which an election is held shall be considered to be made during the calendar year in which the election is held, as long as the contribution is made with respect to a particular candidate and election;

(2) An individual's contribution to a political committee in a non-election year shall not be attributable to the calendar year in which an election is held, as long as the political committee is not the principal campaign committee, or other authorized committee of a candidate, or a single candidate committee supporting the candidate and as long as the contribution is not otherwise designated for a particular election.

(c) The limitation in (a) also applies to contributions made to a person who is making independent expenditures, see Part 109.

§ 110.6 Earmarked contributions (2 U.S.C. 441a(a)(7)(A)).

(a) All contributions by a person made on behalf of or to a candidate, including contributions which are in any way earmarked or otherwise directed to the candidate through an intermediary or conduit, are contributions from the person to the candidate.

(b) For purposes of this section, earmarked means a designation, instruction, or encumbrance (including those which are direct or indirect, express or implied, oral or written) which results in all or any part of a contribution or expenditure being made to, or expended on behalf of, a clearly identified candidate or a candidate's authorized committee.

(c) The intermediary or conduit of the earmarked contribution shall report the original source and intended recipient of the contribution to the

Commission, the Clerk of the House of Representatives, or the Secretary of the Senate, as appropriate, (see Part 105), and to the intended recipient.

(1) The report to the Commission, Clerk, or Secretary shall be included in the conduit or intermediary's next due quarterly, pre- or post-election, or annual report, or, if the conduit is not a reporting entity, by letter to the Commission, and shall—

(i) If the contribution passed through the conduit's account, disclose each contribution, regardless of amount, on schedules of itemized receipts and expenditures;

(ii) If the contribution was passed on in the form of the contributor's check, disclose each contribution on a separate schedule attached to the conduit's next report, or attached to the letter to the Commission.

(2) The report to the intended recipient shall be made when the contribution is passed on to the intended recipient.

(3) The intended recipient shall disclose on his next report each conduit through which the contribution passed.

(4) The reports in (1) and (2) above shall contain the information required in 11 CFR 110.6(c)(4) (i) through (iii).

(i) The name and mailing address of the contributor and if the contribution exceeds \$200, the contributor's occupation and the name of his or her employer.

(ii) The amount of the contribution, the date received by the conduit, and the intended recipient as designated by the contributor;

(iii) The date the contribution was passed on to the intended recipient, and whether the contribution was passed on in cash, by the contributor's check, or by the conduit's check.

(5) This section shall not apply to occasional, isolated, or incidental physical transfers of checks, or other written instruments payable to a candidate or his or her authorized committees. For purposes of this paragraph, "occasional, isolated, or incidental" means no more than \$1,000 is conveyed to any one candidate or committee in a calendar year.

(d)(1) A conduit or intermediary's contribution limits are not affected by

passing on earmarked contributions, except where the conduit exercises any direction or control over the choice of the recipient candidate.

(2) If a conduit exercises any direction or control over the choice of the recipient candidate, the contribution shall be considered a contribution by both the original contributor and the conduit, and shall be so reported by the conduit to the Commission, Clerk, or Secretary, as appropriate, or, if the conduit is not a reporting entity, by letter to the Commission, and to the recipient. The recipient candidate or committee shall report it in its reporting of contributions received, indicating that the contribution is made by both the original contributor and the conduit, but that the actual cash received does not reflect the two contributions.

(2 U.S.C. 438(a)(8), 441a, 441d, 441e, 441f, 441g, 441h, 441i)

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 15119, Mar. 7, 1980]

§ 110.7 Party committee expenditure limitations (2 U.S.C. 441a(d)).

(a)(1) The national committee of a political party may make expenditures in connection with the general election campaign of any candidate for President of the United States affiliated with the party.

(2) The expenditures shall not exceed an amount equal to 2 cents multiplied by the voting age population of the United States.

(3) Any expenditure under this paragraph (a) shall be in addition to—

(i) Any expenditure by a national committee of a political party serving as the principal campaign committee of a candidate for President of the United States; and

(ii) Any contribution by the national committee to the candidate permissible under §§ 110.1 or 110.2.

(4) The national committee of a political party may make expenditures authorized by this section through any designated agent, including State and subordinate party committees.

(5) The national committee of a political party may not make independent expenditures (see Part 109) in connection with the general election cam-

paign of a candidate for President of the United States.

(b)(1) The national committee of a political party, and a State committee of a political party, including any subordinate committee of a State committee, may each make expenditures in connection with the general election campaign of a candidate for Federal office in that State who is affiliated with the party.

(2) The expenditures shall not exceed—

(i) In the case of a candidate for election to the office of Senator, or of Representative from a State which is entitled to only one Representative, the greater of—

(A) Two cents multiplied by the voting age population of the State; or

(B) Twenty thousand dollars; and

(ii) In the case of a candidate for election to the office of Representative, Delegate, or Resident Commissioner in any other State, \$10,000.

(3) Any expenditure under paragraph (b) shall be in addition to any contribution by a committee to the candidate permissible under §§ 110.1 or 110.2.

(4) The party committees identified in (b)(1) shall not make independent expenditures in connection with the general election campaign of candidates for Federal office.

(c) For limitation purposes, State committee includes subordinate State committees. State committees and subordinate State committees combined shall not exceed the limits in paragraph (b)(2) of this section. To ensure compliance with the limitations, the State committee shall administer the limitation in one of the following ways:

(1) The State central committee shall be responsible for insuring that the expenditures of the entire party organization are within the limitations, including receiving reports from any subordinate committee making expenditures under paragraph (b) of this section, and filing consolidated reports showing all expenditures in the State with the Commission; or

(2) Any other method, submitted in advance and approved by the Commission which permits control over expenditures.

(2 U.S.C. 438(a)(8), 441a, 441d, 441e, 441f, 441g, 441h, 441i)

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 15119, Mar. 7, 1980; 45 FR 27435, Apr. 23, 1980]

§ 110.8 Presidential candidate expenditure limitations.

(a) No candidate for the office of President of the United States who is eligible under 26 U.S.C. 9003 (relating to conditions for eligibility for payments) or under 26 U.S.C. 9033 (relating to eligibility for payments) to receive payments from the Secretary of the Treasury and has received payments, may make expenditures in excess of—

(1) \$10,000,000 in the case of a campaign for nomination for election to the office, except the aggregate of expenditures under this paragraph in any one State shall not exceed the greater of 16 cents multiplied by the voting age population of the State or \$200,000; or

(2) \$20,000,000 in the case of a campaign for election to the office.

(b) The expenditure limitations shall not be considered violated if, after the date of the primary or general election, convention or caucus, receipt of refunds and rebates causes a candidate's expenditures to be within the limitations.

(c) For the State limitations in paragraph (a)(1) of this section—

(1) Expenditures made in a State after the date of the primary election, convention or caucus relating to the primary election, convention or caucus count toward that State's expenditure limitation;

(2) Expenditures for fundraising activities targeted at a particular State and occurring within 28 days before that state's primary election, convention, or caucus shall be presumed to be attributable to the expenditure limitation for that State, 11 CFR 100.8(b)(21) (relating to the 20% fundraising exemption) notwithstanding.

(d)(1) If an individual is a candidate for more than one Federal office, or for a Federal office and a State office, he or she must designate separate principal campaign committees and establish completely separate campaign organizations.

(2) No funds, goods, or services, including loans and loan guarantees, may be transferred between or used by the separate campaigns, except as provided in § 110.3(a)(2)(iv).

(3) Except for Presidential candidates receiving Presidential Primary Matching Funds, see 26 U.S.C. 9032, or General Election Public Financing, see 26 U.S.C. 9002, campaigns may share personnel and facilities, as long as expenditures are allocated between the campaigns, and the payment made from each campaign account reflects the allocation.

(e)(1) A political party may make reimbursement for the expenses of a candidate who is engaging in party-building activities, without the payment being considered a contribution to the candidate, and without the unreimbursed expense being considered an expenditure counting against the limitations in paragraph (a)(1) or (2) of this section, as long as—

(i) The event is a bona fide party event or appearance; and

(ii) No aspect of the solicitation for the event, the setting of the event, and the remarks or activities of the candidate in connection with the event were for the purpose of influencing the candidate's nomination or election.

(2)(i) An event or appearance meeting the requirements of paragraph (e)(1) of this section and occurring prior to January 1 of the year of the election for which the individual is a candidate is presumptively party-related;

(ii) Notwithstanding the requirements of paragraph (e)(1) of this section, an event or appearance occurring on or after January 1 of the year of the election for which the individual is a candidate is presumptively for the purpose of influencing the candidate's election, and any contributions or expenditures are governed by the contribution and expenditure limitations of this Part 110.

(iii) The presumptions in paragraphs (e)(2)(i) and (ii) of this section may be rebutted by a showing to the Commission that the appearance or event was, or was not, party-related, as the case may be.

(f)(1) Expenditures made by or on behalf of any candidate nominated by

a political party for election to the office of Vice President of the United States shall be considered to be expenditures made by or on behalf of the candidate of such party for election to the office of President of the United States.

(2) Expenditures from personal funds made by a candidate for Vice President shall be considered to be expenditures by the candidate for President, if the candidate is receiving General Election Public Financing, see § 141.2(c).

(g) An expenditure is made on behalf of a candidate, including a Vice-Presidential candidate, if it is made by—

(1) An authorized committee or any other agent of the candidate for purposes of making any expenditure;

(2) Any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate to make the expenditure; or

(3) A committee not authorized in writing, so long as it is requested by the candidate, an authorized committee of the candidate, or an agent of the candidate to make the expenditure.

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980.]

§ 110.9 Miscellaneous provisions.

(a) *Violation of Limitations.* No candidate or political committee shall accept any contribution or make any expenditure in violation of the provisions of Part 110. No officer or employee of a political committee shall accept a contribution made for the benefit or use of a candidate, or make any expenditure on behalf of a candidate, in violation of any limitation imposed on contributions and expenditures under this Part 110.

(b) *Fraudulent Misrepresentation.* No person who is a candidate for Federal office or an employee or agent of such a candidate shall—

(1) Fraudulently misrepresent himself or any committee or organization under his control as speaking or writing, or otherwise acting for or on behalf of any other candidate, or political party or employee or agent thereof on a matter which is damaging to

such other candidate or political party or employee or agent thereof; or

(2) Willfully and knowingly participate in or conspire to participate in any plan or design to violate paragraph (b)(1) of this section.

(c) *Price Index Increase.* (1) Each limitation established by § 110.7 and § 110.8 shall be increased by the annual percent difference of the price index, as certified to the Commission by the Secretary of Labor. Each amount so increased shall be the amount in effect for that calendar year.

(2) For purposes of paragraph (c)(1) of this section, the term "price index" means the average over a calendar year of the Consumer Price Index (all items—United States city average) published monthly by the Bureau of Labor Statistics.

(d) *Voting Age Population.* The Commission shall assure that there is annually published in the FEDERAL REGISTER an estimate of the voting age population based on an estimate of the voting age population of the United States, of each State, and of each congressional district. The term "voting age population" means resident population, 18 years of age or older.

§ 110.10 Expenditures by candidates.

(a) Except as provided in Subchapters C and D of this chapter pertaining to Presidential candidates, candidates for Federal office may make unlimited expenditures from personal funds.

(b) For purposes of this section, "personal funds" means—

(1) Any assets to which at the time he or she became a candidate the candidate had legal and rightful title, or with respect to which the candidate had the right of beneficial enjoyment, under applicable State law, and which the candidate had legal right of access to or control over, including funds from immediate family members; and

(2) Salary and other earned income from bona fide employment; dividends and proceeds from the sale of the candidate's stocks or other investments; bequests to the candidate; income from trusts established before candidacy; income from trusts established by bequest after candidacy of which

the candidate is the beneficiary; gifts of a personal nature which had been customarily received prior to candidacy; proceeds from lotteries and similar legal games of chance.

§ 110.11 Communications; advertising (2 U.S.C. 441d).

(a)(1) Except as provided at 11 CFR 110.11(a)(2) whenever any person makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate or solicits any contribution through any broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or any other type of general public political advertising, a disclaimer meeting the requirements of 11 CFR 110.11(a)(1) (i), (ii), (iii), or (iv) shall appear or be presented in a clear and conspicuous manner to give the reader, observer or listener adequate notice of the identity of persons who paid for or who authorized the communication; but such person is not required to place a disclaimer on the front face or page of any such material:

(i) Such communication is paid for and authorized by a candidate, an authorized committee of a candidate, or its agent(s), shall clearly state that the communication has been paid for by such authorized political committee; or

(ii) Such communication, if authorized by a candidate, an authorized committee of a candidate or an agent thereof, but is paid for by any other person(s), shall clearly state that the communication is authorized by such candidate, authorized committee or agent and is paid for by such other persons; or

(iii) For solicitations on behalf of a candidate, such communication if not authorized by a candidate, an authorized political committee of a candidate, or its agents shall clearly state the full name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

(iv) Such communication, if paid for and authorized by a political committee, other than an authorized commit-

tee of a candidate(s) shall clearly state that the communication has been paid for by such political committee.

(2) The requirements of 11 CFR 110.11(a)(1) do not apply to bumper stickers, pins, buttons, pens and similar small items upon which the disclaimer cannot be conveniently printed.

(b)(1) No person who sells space in a newspaper or magazine to a candidate, an authorized committee of a candidate, or an agent of the candidate, for use in connection with the candidate's campaign for nomination or for election, shall charge an amount for the space which exceeds the comparable rate for the space for non-campaign purposes.

(2) For purposes of this section, "comparable rate" means the rate charged to a national or general rate advertiser, and shall include discount privileges usually and normally available to a national or general rate advertiser.

(2 U.S.C. 438(a)(8), 441a, 441d, 441e, 441f, 441g, 441h, 441i)

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 15122, Mar. 7, 1980].

§ 110.12 Honoraria (2 U.S.C. 441i).

(a) No individual while an elected or appointed officer or employee of any branch of the federal government shall accept any honorarium which exceeds the limitations of 11 CFR 110.12(a)(1) and (2).

(1) Any honoraria which exceeds \$2,000 shall not be accepted.

(2) The aggregate amount of all honorarium accepted by any individual in any calendar year, which honoraria are not otherwise prohibited by 11 CFR 110.12(a)(1), shall not exceed \$25,000.

(3) For purposes of 11 CFR 110.12(a), amounts which are returned to the person who paid for the honorarium before the end of the calendar year in which it was received shall not be added to the aggregate amount of honoraria received by an individual during any calendar year.

(4) For purposes of 11 CFR 110.12(a), an honorarium shall be treated as accepted only in the year in which that honorarium is received.

(b) The term "honorarium" means a payment of money or anything of value received by an officer or employee of the Federal government, if it is accepted as consideration for an appearance, speech, or article. An honorarium does not include payment for or provision of actual travel and subsistence, including transportation, accommodations, and meals for the officer or employee and spouse or an aide, and does not include amounts paid or incurred for any agents' fees or commissions.

(1) *Officer or Employee.* The term "officer or employee of the Federal government," or "officer or employee," means any person appointed or elected to a position of responsibility or authority in the United States government, regardless of whether the person is compensated for this position; and any other person receiving a salary, compensation, or reimbursement from the United States government, who accepts an honorarium for an appearance, speech, or article. Included within this class is the President; the Vice President; any Member of Congress; any judge of any court of the United States; any Cabinet officer; and any other elected or appointed officer or employee of any branch of the Federal government.

(2) *Appearance.* "Appearance" means attendance at a public or private conference, convention, meeting, social event, or like gathering, and the incidental conversation or remarks made at that time.

(3) *Speech.* "Speech" means an address, oration, or other form of oral presentation, regardless of whether presented in person, recorded, or broadcast over the media.

(4) *Article.* "Article" means a writing other than a book, which has been or is intended to be published.

(5) *Accepted.* "Accepted" means that there has been actual or constructive receipt of the honorarium and that the federal officeholder or employee exercises dominion or control over it and determines its subsequent use. However, an honorarium is not accepted if the federal officeholder or employee makes a suggestion that the honorarium be given instead to a charitable organization which is se-

lected by the person paying the honorarium from a list of 5 or more charitable organizations provided by the officeholder or employee. Nothing in this paragraph shall be construed as an interpretation of relevant provisions of the Internal Revenue Service Code (Title 26, United State Code).

(6) *Charitable Organization.* "Charitable organization" means any organization described in 26 U.S.C. 170(c).

(c) The term "honorarium" does not include—

(1) *An award.* An award is a gift of money or anything of value given—

(i) Primarily in recognition of religious, charitable, scientific, educational, artistic, literary, or civil achievement;

(ii) Based on a selection process with established criteria and which does not require the officer or employee to apply for or take any other action in the way of competition for the award;

(iii) Gratuitously under circumstances which do not require the recipient to make an appearance or speech, or write an article as a condition for receiving the award; and

(iv) Which is not made to serve in place of an honorarium or a contribution.

(2) *A gift.* A gift is a voluntary conveyance of real or personal property which is made gratuitously, and is not supported by consideration, and is not made to serve in place of an honorarium or a contribution.

(3) *A stipend.* A stipend is a payment for services on a continuing basis, including a salary or other compensation paid by news media for commentary on events other than the campaign of the individual compensated. A stipend cannot be paid by a political committee other than a candidate's principal campaign committee or other authorized committee to that candidate.

(2 U.S.C. 438(a)(8), 441a, 441d, 441e, 441f, 441g, 441h, 441i)

[41 FR 35948, Aug. 25, 1976, as amended at 45 FR 15120, Mar. 7, 1980]

§ 110.13 Nonpartisan candidate debates.

(a) *Staging organizations.* (1) A nonprofit organization which is exempt from federal taxation under 26 U.S.C. 501(c)(3), and a nonprofit organization

which is exempt from federal taxation under 26 U.S.C. 501(c)(4) and which does not endorse, support or oppose political candidates or political parties may stage nonpartisan candidate debates in accordance with 11 CFR 110.13(b) and 114.4(e).

(2) Broadcasters, bona fide newspapers, magazines and other periodical publications may stage nonpartisan candidate debates in accordance with 11 CFR 110.13(b) and 114.4(e).

(b) *Debate Structure.* The structure of debates staged in accordance with 11 CFR 110.13 and 114.4(e) is left to the discretion of the staging organization, provided that (1) such debates include at least two candidates, and (2) such debates are nonpartisan in that they do not promote or advance one candidate over another.

(2 U.S.C. 431(e), 431(f) and 441b)

[44 FR 76736, Dec. 27, 1979]

PART 111—COMPLIANCE PROCEDURE (2 U.S.C. 437g, 437d(a))

Sec.

111.1 Scope (2 U.S.C. 437g).

111.2 Computation of time.

111.3 Initiation of compliance matters (2 U.S.C. 437g(a)(1), (2)).

111.4 Complaints (2 U.S.C. 437g(a)(1)).

111.5 Initial complaint processing; notification (2 U.S.C. 437g(a)(1)).

111.6 Opportunity to demonstrate that no action should be taken on complaint-generated matters (2 U.S.C. 437g(a)(1)).

111.7 General Counsel's recommendation on complaint-generated matters (2 U.S.C. 437g(a)(1)).

111.8 Internally generated matters; referrals (2 U.S.C. 437g(a)(2)).

111.9 The reason to believe finding; notification (2 U.S.C. 437g(a)(2)).

111.10 Investigation (2 U.S.C. 437g(a)(2)).

111.11 Written questions under order (2 U.S.C. 437d(a)(1)).

111.12 Subpoenas and subpoenas duces tecum; depositions (2 U.S.C. 437d(a)(3), (4)).

111.13 Service of subpoenas, orders and notifications (2 U.S.C. 437d(a)(3), (4)).

111.14 Witness fees and mileage (2 U.S.C. 437d(a)(5)).

111.15 Motions to quash or modify a subpoena (2 U.S.C. 437d(a)(3), (4)).

111.16 The probable cause to believe recommendation; briefing procedures (2 U.S.C. 437g(a)(3)).

111.17 The probable cause to believe finding; notification (2 U.S.C. 437d(a)(4)).

Sec.

- 111.18 Conciliation (2 U.S.C. 437g(a)(4)).
 111.19 Civil proceedings (2 U.S.C. 437g(a)(6)).
 111.20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).
 111.21 Confidentiality (2 U.S.C. 437g(a)(12)).
 111.22 Ex parte communications.
 111.23 Representation by counsel; notification.
 AUTHORITY: 2 U.S.C. 437g, 437d(a), 438(a)(8).

SOURCE: 45 FR 15120, Mar. 7, 1980, unless otherwise noted.

§ 111.1 Scope (2 U.S.C. 437g).

These regulations provide procedures for processing possible violations of the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431, *et seq.*) and chapters 95 and 96 of the Internal Revenue Code of 1954 (26 U.S.C. 9001, *et seq.* and 9031 *et seq.*).

§ 111.2 Computation of time.

(a) *General rule:* In computing any period of time prescribed or allowed by this part, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday. As used in this section, the term "legal holiday" includes New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday for employees of the United States by the President or the Congress of the United States.

(b) *Special Rule for Periods Less Than Seven Days:* When the period of time prescribed or allowed is less than seven (7) days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation.

(c) *Special Rule for Service By Mail:* Whenever the Commission of any person has the right or is required to do some act within a prescribed period after the service of any paper by or upon the Commission or such person and the paper is served by or upon the Commission or such person by mail, three (3) days shall be added to the prescribed period.

§ 111.3 Initiation of compliance matters (2 U.S.C. 437g(a)(1), (2)).

(a) Compliance matters may be initiated by a complaint or on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities.

(b) Matters initiated by complaint are subject to the provisions of 11 CFR 111.4 through 111.7. Matters initiated on the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities are subject to the provisions of 11 CFR 111.8. All compliance matters are subject to the provisions of 11 CFR 111.2 and 111.9 through 111.23.

§ 111.4 Complaints (2 U.S.C. 437g(a)(1)).

(a) Any person who believes that a violation of any statute or regulation over which the Commission has jurisdiction has occurred or is about to occur may file a complaint in writing to the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. If possible, three (3) copies should be submitted.

(b) A complaint shall comply with the following:

(1) It shall provide the full name and address of the complainant; and

(2) The contents of the complaint shall be sworn to and signed in the presence of a notary public and shall be notarized.

(c) All statements made in a complaint are subject to the statutes governing perjury and to 18 U.S.C. 1001. The complaint should differentiate between statements based upon personal knowledge and statements based upon information and belief.

(d) The complaint should conform to the following provisions:

(1) It should clearly identify as a respondent each person or entity who is alleged to have committed a violation;

(2) Statements which are not based upon personal knowledge should be accompanied by an identification of the source of information which gives rise to the complainants belief in the truth of such statements;

(3) It should contain a clear and concise recitation of the facts which describe a violation of a statute or regu-

lation over which the Commission has jurisdiction; and

(4) It should be accompanied by any documentation supporting the facts alleged if such documentation is known of, or available to, the complainant.

§ 111.5 Initial complaint processing; notification (2 U.S.C. 437g(a)(1)).

(a) Upon receipt of a complaint, the General Counsel shall review the complaint for substantial compliance with the technical requirements of 11 CFR 111.4, and, if it complies with those requirements shall within five (5) days after receipt notify each respondent that the complaint has been filed, advise them of Commission compliance procedures, and enclose a copy of the complaint.

(b) If a complaint does not comply with the requirements of 11 CFR 111.4, the General Counsel shall so notify the complainant and any person(s) or entity(ies) identified therein as respondent(s), within the five (5) day period specified in 11 CFR 111.5(a), that no action shall be taken on the basis of that complaint. A copy of the complaint shall be enclosed with the notification to each respondent.

§ 111.6 Opportunity to demonstrate that no action should be taken on complaint-generated matters (2 U.S.C. 437g(a)(1)).

(a) A respondent shall be afforded an opportunity to demonstrate that no action should be taken on the basis of a complaint by submitting, within fifteen (15) days from receipt of a copy of the complaint, a letter or memorandum setting forth reasons why the Commission should take no action.

(b) The Commission shall not take any action, or make any finding, against a respondent other than action dismissing the complaint, unless it has considered such response or unless no such response has been served upon the Commission within the fifteen (15) day period specified in 11 CFR 111.6(a).

§ 111.7 General Counsel's recommendation on complaint-generated matters (2 U.S.C. 437g(a)(1)).

(a) Following either the expiration of the fifteen (15) day period specified by 11 CFR 111.6(a) or the receipt of a response as specified by 11 CFR 111.6(a), whichever occurs first, the General Counsel may recommend to the Commission whether or not it should find reason to believe that a respondent has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction.

(b) The General Counsel may recommend that the Commission find that there is no reason to believe that a violation has been committed or is about to be committed, or that the Commission otherwise dismiss a complaint without regard to the provisions of 11 CFR 111.6(a).

§ 111.8 Internally generated matters; referrals (2 U.S.C. 437g(a)(2)).

(a) On the basis of information ascertained by the Commission in the normal course of carrying out its supervisory responsibilities, or on the basis of a referral from an agency of the United States or of any state, the General Counsel may recommend in writing that the Commission find reason to believe that a person or entity has committed or is about to commit a violation of statutes or regulations over which the Commission has jurisdiction.

(b) If the Commission finds reason to believe that a violation has occurred or is about to occur the notification to respondent required by 11 CFR 111.9(a) shall include a copy of a staff report setting forth the legal basis and the alleged facts which support the Commission's action.

(c) Prior to taking any action pursuant to this section against any person who has failed to file a disclosure report required by 11 CFR 104.5(a)(1)(iii) for the calendar quarter immediately preceeding the election involved or by § 104.5(a)(1)(i), the Commission shall notify such person of failure to file the required reports. If a satisfactory response is not received within four (4) business days, the Commission shall publish before

the election the name of the person and the report or reports such person has failed to file.

[45 FR 15120, Mar. 7, 1980, as amended at 45 FR 21210, Apr. 1, 1980]

§ 111.9 The reason to believe finding; notification (2 U.S.C. 437g(a)(2)).

(a) If the Commission, either after reviewing a complaint-generated recommendation as described in 11 CFR 111.7 and any response of a respondent submitted pursuant to 11 CFR 111.6, or after reviewing an internally-generated recommendation as described in 11 CFR 111.8, determines by an affirmative vote of four (4) of its members that it has reason to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction, its Chairman or Vice Chairman shall notify such respondent of the Commission's finding by letter, setting forth the sections of the statute or regulations alleged to have been violated and the alleged factual basis supporting the finding.

(b) If the Commission finds no reason to believe, or otherwise terminates its proceedings, the General Counsel shall so advise both complainant and respondent by letter.

§ 111.10 Investigation (2 U.S.C. 437g(a)(2)).

(a) An investigation shall be conducted in any case in which the Commission finds reason to believe that a violation of a statute or regulation over which the Commission has jurisdiction has occurred or is about to occur.

(b) In its investigation, the Commission may utilize the provisions of 11 CFR 111.11 through 111.15. The investigation may include, but is not limited to, field investigations, audits, and other methods of information-gathering.

§ 111.11 Written questions under order (2 U.S.C. 437d(a)(1)).

The Commission may authorize its Chairman or Vice Chairman to issue an order requiring any person to submit sworn written answers to written questions and may specify a date by which such answers must be submitted.

§ 111.12 Subpoenas and subpoenas duces tecum; depositions (2 U.S.C. 437d(a)(3), (4)).

(a) The Commission may authorize its Chairman or Vice Chairman to issue subpoenas requiring the attendance and testimony of any person by deposition and to issue subpoenas duces tecum for the production of documentary or other tangible evidence in connection with a deposition or otherwise.

(b) If oral testimony is ordered to be taken by deposition or documents are ordered to be produced, the subpoena shall so state and shall advise the deponent or person subpoenaed that all testimony will be under oath. A deposition may be taken before any person having the power to administer oaths.

(c) The Federal Rules of Civil Procedure, Rule 30(e), shall govern the opportunity to review and sign depositions taken pursuant to this section.

§ 111.13 Service of subpoenas, orders and notifications (2 U.S.C. 437d(a)(3), (4)).

(a) Service of a subpoena, order or notification upon a person named therein shall be made by delivering a copy to that person in the manner described by 11 CFR 111.13 (b), (c), and (d). In the case of subpoenas, fees for one day's attendance and mileage shall be tendered as specified in 11 CFR 111.14.

(b) Whenever service is to be made upon a person who has advised the Commission of representation by an attorney pursuant to 11 CFR 111.23, the service shall be made upon the attorney by any of the methods specified in 11 CFR 111.13(c).

(c) Delivery of subpoenas, orders and notifications to a natural person may be made by handing a copy to the person, or leaving a copy at his or her office with the person in charge thereof, by leaving a copy at his or her dwelling place or usual place of abode with some person of suitable age and discretion residing therein, or by mailing a copy by registered or certified mail to his or her last known address, or by any other method whereby actual notice is given.

(d) When the person to be served is not a natural person delivery of subpoenas, orders and notifications may

be made by mailing a copy by registered or certified mail to the person at its place of business or by handing a copy to a registered agent for service, or to any officer, director, or agent in charge of any office of such person, or by mailing a copy by registered or certified mail to such representative at his or her last known address, or by any other method whereby actual notice is given.

§ 111.14 Witness fees and mileage (2 U.S.C. 437d(a)(5)).

Witnesses subpoenaed to appear for depositions shall be paid the same fees and mileage as witnesses in the courts of the United States. Such fees may be tendered at the time the witness appears for such deposition, or within a reasonable time thereafter.

§ 111.15 Motions to quash or modify a subpoena (2 U.S.C. 437d(a) (3), (4)).

(a) Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 5 days after the date of receipt of such subpoena, apply to the Commission to quash or modify such subpoena, accompanying such application with a brief statement of the reasons therefor. Motions to quash shall be filed with the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. If possible, three (3) copies should be submitted.

(b) The Commission may deny the application or quash the subpoena or modify the subpoena.

(c) The person subpoenaed and the General Counsel may agree to change the date, time, or place of a deposition or for the production of documents without affecting the force and effect of the subpoena, but such agreements shall be confirmed in writing.

§ 111.16 The probable cause to believe recommendation; briefing procedures (2 U.S.C. 437g(a)(3)).

(a) Upon completion of the investigation, the General Counsel shall prepare a brief setting forth his or her position on the factual and legal issues of the case and containing a recommendation on whether or not the Commission should find probable

cause to believe that a violation has occurred or is about to occur.

(b) The General Counsel shall notify each respondent of the recommendation and enclose a copy of his or her brief.

(c) Within fifteen (15) days from receipt of the General Counsel's brief, respondent may file a brief with the Commission Secretary, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463, setting forth respondent's position on the factual and legal issues of the case. If possible, ten (10) copies of such brief should be filed with the Commission Secretary and three (3) copies should be submitted to the General Counsel, Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

(d) After reviewing the respondent's brief, the General Counsel shall advise the Commission in writing whether he or she intends to proceed with the recommendation or to withdraw the recommendation from Commission consideration.

§ 111.17 The probable cause to believe finding; notification (2 U.S.C. 437g(a)(4)).

(a) If the Commission, after having found reason to believe and after following the procedures set forth in 11 CFR 111.16, determines by an affirmative vote of four (4) of its members that there is probable cause to believe that a respondent has violated a statute or regulation over which the Commission has jurisdiction, the Commission shall authorize the General Counsel to so notify the respondent by letter.

(b) If the Commission finds no probable cause to believe or otherwise orders a termination of Commission proceedings, it shall authorize the General Counsel to so notify both respondent and complainant by letter.

§ 111.18 Conciliation (2 U.S.C. 437g(a)(4)).

(a) Upon a Commission finding of probable cause to believe, the Office of General Counsel shall attempt to correct or prevent the violation by informal methods of conference conciliation and persuasion, and shall attempt to reach a tentative conciliation agreement with the respondent.

(b) A conciliation agreement is not binding upon either party unless and until it is signed by the respondent and by the General Counsel upon approval by the affirmative vote of four (4) members of the Commission.

(c) If the probable cause to believe finding is made within forty-five days prior to any election, such conciliation attempt shall continue for at least fifteen (15) days from the date of such finding. In all other cases such attempts by the Commission shall continue for at least thirty (30) days, not to exceed ninety (90) days.

(d) Nothing in these regulations shall be construed to prevent the Commission from entering into a conciliation agreement with a respondent prior to a Commission finding of probable cause if a respondent indicates by letter to the General Counsel a desire to enter into negotiations directed towards reaching such a conciliation agreement. However, the Commission is not required to enter into any negotiations directed towards reaching a conciliation agreement unless and until it makes a finding of probable cause to believe. Any conciliation agreement reached under this subsection (b) of this section and shall have the same force and effect as a conciliation agreement reached after a Commission finding of probable cause to believe.

(e) If a conciliation agreement is reached between the Commission and the respondent, the General Counsel shall send a copy of the signed agreement to both complainant and respondent.

§ 111.19 Civil proceedings (2 U.S.C. 437g(a)(6)).

(a) If no conciliation agreement is finalized within the applicable minimum period specified by 11 CFR 111.18(c) the General Counsel may recommend to the Commission that the Commission authorize a civil action for relief in an appropriate court of the United States.

(b) Upon recommendation of the General Counsel, the Commission may, by an affirmative vote of four (4) of its members, authorize the General Counsel to commence a civil action for

relief in an appropriate court of the United States.

(c) The provisions of 11 CFR 111.18(c) shall not preclude the Commission upon request of a respondent, from entering into a conciliation agreement even after a recommendation to file a civil action has been made pursuant to this section. Any conciliation agreement reached under this subsection is subject to the provisions of 11 CFR 111.18(b) and shall have the same force and effect as a conciliation agreement reached under 11 CFR 111.18(c).

§ 111.20 Public disclosure of Commission action (2 U.S.C. 437g(a)(4)).

(a) If the Commission makes a finding of no reason to believe or no probable cause to believe or otherwise terminates its proceedings, it shall make public such action and the basis therefor no later than thirty (30) days from the date on which the required notifications are sent to complainant and respondent.

(b) If a conciliation agreement is finalized, the Commission shall make public such conciliation agreement forthwith.

§ 111.21 Confidentiality (2 U.S.C. 437g(a)(12)).

(a) Except as provided in 11 CFR 111.20, no complaint filed with the Commission, nor any notification sent by the Commission, nor any investigation conducted by the Commission, nor any findings made by the Commission shall be made public by the Commission or by any person or entity without the written consent of the respondent with respect to whom the complaint was filed, the notification sent, the investigation conducted, or the finding made.

(b) Except as provided in 11 CFR 111.20(b), no action by the Commission or by any person, and no information derived in connection with conciliation efforts pursuant to 11 CFR 111.18, may be made public by the Commission except upon a written request by respondent and approval thereof by the Commission.

(c) Nothing in these regulations shall be construed to prevent the introduction of evidence in the courts of

the United States which could properly be introduced pursuant to the Federal Rules of Evidence or Federal Rules of Civil Procedure.

§ 111.22 *Ex parte* communications.

(a) In order to avoid the possibility of prejudice, real or apparent, to the public interest in enforcement actions pending before the Commission pursuant to 11 CFR Part 111, except to the extent required for the disposition of *ex parte* matters as required by law (for example, during the normal course of an investigation or a conciliation effort), no interested person outside the agency shall make or cause to be made to any Commissioner or any member of any Commissioner's staff any *ex parte* communication relative to the factual or legal merits of any enforcement action, nor shall any Commissioner or member of any Commissioner's staff make or entertain any such *ex parte* communications.

(b) The prohibition of this regulation shall apply from the time a complaint is filed with the Commission pursuant to 11 CFR Part 111 or from the time that the Commission determines on the basis of information ascertained in the normal course of its supervisory responsibilities that it has reason to believe that a violation has occurred or may occur pursuant to 11 CFR Part 111, and remains in force until the Commission has finally concluded all action with respect to the enforcement matter in question.

(c) Nothing in this section shall be construed to prohibit contact between a respondent or respondent's attorney and any attorney or staff member of the Office of General Counsel in the course of representing the Commission or the respondent with respect to an enforcement proceeding or civil action. No statement made by such a Commission attorney or staff member during any such communication shall bind or estop the Commission in any way.

§ 111.23 Representation by counsel; notification.

(a) If a respondent wishes to be represented by counsel with regard to any matter pending before the Commission, respondent shall so advise the Commission by sending a letter of rep-

resentation signed by the respondent, which letter shall state the following:

(1) The name, address, and telephone number of the counsel;

(2) A statement authorizing such counsel to receive any and all notifications and other communications from the Commission on behalf of respondent.

(b) Upon receipt of a letter of representation, the Commission shall have no contact with respondent except through the designated counsel unless authorized in writing by respondent.

PART 112—ADVISORY OPINIONS
(2 U.S.C. 437f)

Sec.

112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).

112.2 Public availability of requests (2 U.S.C. 437f(d)).

112.3 Written comments on requests (2 U.S.C. 437f(d)).

112.4 Issuance of advisory opinions (2 U.S.C. 437f (a) and (b)).

112.5 Reliance on advisory opinions (2 U.S.C. 437f(c)).

112.6 Reconsideration of advisory opinions.

AUTHORITY: 2 U.S.C. 437f, 438(a)(8).

SOURCE: 45 FR 15123, Mar. 7, 1980, unless otherwise noted.

§ 112.1 Requests for advisory opinions (2 U.S.C. 437f(a)(1)).

(a) Any person may request in writing an advisory opinion concerning the application of the Act, chapters 95 or 96 of the Internal Revenue Code of 1954, or any regulation prescribed by the Commission. An authorized agent of the requesting person may submit the advisory opinion request, but the agent shall disclose the identity of his or her principal.

(b) The written advisory opinion request shall set forth a specific transaction or activity that the requesting person plans to undertake or is presently undertaking and intends to undertake in the future. Requests presenting a general question of interpretation, or posing a hypothetical situation, or regarding the activities of third parties, do not qualify as advisory opinion requests.

(c) Advisory opinion requests shall include a complete description of all facts relevant to the specific transac-

tion or activity with respect to which the request is made.

(d) The Office of General Counsel shall review all requests for advisory opinions submitted under 11 CFR 112.1. If the Office of General Counsel determines that a request for an advisory opinion is incomplete or otherwise not qualified under 11 CFR 112.1, it shall, within 10 calendar days of receipt of such request, notify the requesting person and specify the deficiencies in the request.

(e) Advisory opinion requests should be sent to the Federal Election Commission, Office of General Counsel, 1325 K Street, N.W., Washington, D.C. 20463.

(f) Upon receipt by the Commission, each request which qualifies as an advisory opinion request (AOR) under 11 CFR 112.1 shall be assigned an AOR number for reference purposes.

§ 112.2 Public availability of requests (2 U.S.C. 437f(d)).

(a) Advisory opinion requests which qualify under 11 CFR 112.1 shall be made public at the Commission promptly upon their receipt.

(b) A copy of the original request and any supplements thereto, shall be available for public inspection and purchase at the Public Disclosure Division of the Commission.

§ 112.3 Written comments on requests (2 U.S.C. 437f(d)).

(a) Any interested person may submit written comments concerning advisory opinion requests made public at the Commission.

(b) The written comments shall be submitted within 10 calendar days following the date the request is made public at the Commission. However, if the 10th calendar day falls on a Saturday, Sunday, or Federal holiday, the 10 day period ends at the close of the business day next following the weekend or holiday. Additional time for submission of written comments may be granted upon written request for an extension by the person who wishes to submit comments or may be granted by the Commission without an extension request.

(c) Comments on advisory opinion requests should refer to the AOR

number of the request, and statutory references should be to the United States Code citations, rather than to Public Law citations.

(d) Written comments and requests for additional time to comment shall be sent to the Federal Election Commission, Office of General Counsel, 1325 K Street, N.W., Washington, D.C. 20463.

(e) Before it issues an advisory opinion the Commission shall accept and consider all written comments submitted within the 10-day comment period or any extension thereof.

§ 112.4 Issuance of advisory opinions (2 U.S.C. 437f(a) and (b)).

(a) Within 60 calendar days after receiving an advisory opinion request that qualifies under 11 CFR 112.1, the Commission shall issue to the requesting person a written advisory opinion or shall issue a written response stating that the Commission was unable to approve an advisory opinion by the required affirmative vote of 4 members.

(b) The 60 calendar day period of 11 CFR 112.4(a) is reduced to 20 calendar days for an advisory opinion request qualified under 11 CFR 112.1 provided the request:

(1) is submitted by any candidate, including any authorized committee of the candidate (or agent of either), within the 60 calendar days preceding the date of any election for Federal office in which the candidate is seeking nomination or election; and

(2) presents a specific transaction or activity related to the election that may invoke the 20 day period if the connection is explained in the request.

(c) The 60 day and 20 day periods referred to in 11 CFR 112.4(a) and (b) only apply when the Commission has received a qualified and complete advisory opinion request under 11 CFR 112.1, and when the 60th or 20th day occurs on a Saturday, Sunday or Federal holiday, the respective period ends at the close of the business day next following the weekend or holiday.

(d) The Commission may issue advisory opinions pertaining only to the Federal Election Campaign Act of 1971, as amended, chapters 95 or 96 of

the Internal Revenue Code of 1954, or rules or regulations duly prescribed under those statutes.

(e) Any rule of law which is not stated in the Act or in chapters 95 or 96 of the Internal Revenue Code of 1954, or in a regulation duly prescribed by the Commission, may be initially proposed only as a rule or regulation pursuant to procedures established in 2 USC 438(d) or 26 USC 9009(c) and 9039(c) as applicable.

(f) No opinion of an advisory nature may be issued by the Commission or any of its employees except in accordance with 11 CFR Part 112; however, this limitation does not preclude distribution by the Commission of information consistent with the Act and chapters 95 or 96 of the Internal Revenue Code of 1954.

(g) When issued by the Commission, each advisory opinion or other response under 11 CFR 112.4(a) shall be made public and sent by mail, or personally delivered to the person who requested the opinion.

§ 112.5 Reliance on advisory opinions (2 U.S.C. 437f(c)).

(a) An advisory opinion rendered by the Commission under 11 CFR Part 112 may be relied upon by:

(1) any person involved in the specific transaction or activity with respect to which such advisory opinion is rendered, and

(2) any person involved in any specific transaction or activity which is indistinguishable in all its material aspects from the transaction or activity with respect to which such advisory opinion is rendered.

(b) Notwithstanding any other provision of law, any person who relies upon an advisory opinion in accordance with 11 CFR 112.5(a) and who acts in good faith in accordance with that advisory opinion shall not, as a result of any such act, be subject to any sanction provided by the Federal Election Campaign Act of 1971, as amended, or by chapters 95 or 96 of the Internal Revenue Code of 1954.

§ 112.6 Reconsideration of advisory opinions.

(a) The Commission may reconsider an advisory opinion previously issued

if the person to whom the opinion was issued submits a written request for reconsideration within 30 calendar days of receipt of the opinion and if, upon the motion of a Commissioner who voted with the majority that originally approved the opinion, the Commission adopts the motion to reconsider by the affirmative vote of 4 members.

(b) The Commission may reconsider an advisory opinion previously issued if, upon the motion of a Commissioner who voted with the majority that originally approved the opinion and within 30 calendar days after the date the Commission approved the opinion, the Commission adopts the motion to reconsider by the affirmative vote of 4 members.

(c) In the event an advisory opinion is reconsidered pursuant to 11 CFR 112.6(b), the action taken in good faith reliance on that advisory opinion by the person to whom the opinion was issued shall not result in any sanction provided by the Act or chapters 95 or 96 of the Internal Revenue Code of 1954. 11 CFR 112.6(c) shall not be effective after the date when the person to whom the advisory opinion was issued has received actual notice of the Commission's decision to reconsider that advisory opinion.

(d) Adoption of a motion to reconsider vacates the advisory opinion to which it relates.

PART 113—EXCESS CAMPAIGN FUNDS AND FUNDS DONATED TO SUPPORT FEDERAL OFFICEHOLDER ACTIVITIES (2 U.S.C. 439a)

Sec.

113.1 Definitions (2 U.S.C. 439a).

113.2 Use of funds (2 U.S.C. 439a).

113.3 Deposits of funds donated to a Federal or State officeholder (2 U.S.C. 432(h)).

113.4 Contribution and expenditure limitations (2 U.S.C. 441a).

AUTHORITY: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

SOURCE: 45 FR 15124, Mar. 7, 1980, unless otherwise noted.

§ 113.1 Definitions (2 U.S.C. 439a).

When used in this Part—

(a) *Funds donated.* "Funds donated" means all funds, including, but not limited to, gifts, loans, advances, credits or deposits of money which are donated for the purpose of supporting the activities of a Federal or State officeholder; but does not mean funds appropriated by Congress, a State legislature, or another similar public appropriating body, or personal funds of the officeholder donated to an account containing only those personal funds.

(b) *Office account.* "Office account" means an account established for the purposes of supporting the activities of a Federal or State officeholder which contains excess campaign funds and funds donated, but does not include an account used exclusively for funds appropriated by Congress, a State legislature, or another similar public appropriating body, or an account of the officeholder which contains only the personal funds of the officeholder, or an account containing only appropriated funds and only personal funds of the officeholder.

(c) *Federal officeholder.* "Federal officeholder" means an individual elected to or serving in the office of President or Vice President of the United States; or a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

(d) *State officeholder.* "State officeholder" means an individual elected to or serving in any elected public office within a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico or any subdivision thereof.

(e) *Excess campaign funds.* "Excess campaign funds" means amounts received by a candidate as contributions which he or she determines are in excess of any amount necessary to defray his or her campaign expenditures.

§ 113.2 Use of funds (2 U.S.C. 439a).

Excess campaign funds and funds donated:

(a) May be used to defray any ordinary and necessary expenses incurred in connection with the recipient's duties as a holder of Federal office, if applicable; or

(b) May be contributed to any organization described in section 170(c) of Title 26, of the United States Code; or

(c) May be transferred without limitation to any national, State, or local committee or any political party; or

(d) May be used for any other lawful purpose, except that, with respect to any individual who is not a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress on the date of the enactment of the Federal Election Campaign Act Amendments of 1979 (January 8, 1980), no such amounts may be converted by any person to any personal use, other than: to defray any ordinary and necessary expenses incurred in connection with his or her duties as a holder of Federal office; or to repay to a candidate any loan the proceeds of which were used in connection with his or her campaign.

§ 113.3 Deposits of funds donated to a Federal or State officeholder (2 U.S.C. 432(h)).

All funds donated to a federal officeholder, or State officeholder who is a candidate for federal office, shall be deposited into one of the following accounts:

(a) An account of the officeholder's principal campaign committee or other authorized committee pursuant to 11 CFR Part 103;

(b) An account to which only funds donated to an individual to support his or her activities as a holder of federal office are deposited (including an office account).

§ 113.4 Contribution and expenditure limitations (2 U.S.C. 441a).

(a) Any contributions to, or expenditures from an office account which are made for the purpose of influencing a federal election shall be subject to 2 U.S.C., 441a and 11 CFR Part 110 of these regulations.

(b) If any treasury funds of a corporation or labor organization are donated to an office account, no funds from that office account may be transferred to a political committee account or otherwise used in connection with a federal election.

PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY

Sec.

- 114.1 Definitions.
- 114.2 Prohibitions on contributions and expenditures.
- 114.3 Partisan communications.
- 114.4 Nonpartisan communications.
- 114.5 Separate segregated funds.
- 114.6 Twice yearly solicitations.
- 114.7 Membership organizations, cooperatives, or corporations without capital stock.
- 114.8 Trade associations.
- 114.9 Use of corporate or labor organization facilities and means of transportation.
- 114.10 Extension of credit and settlement of corporate debts.
- 114.11 Employee participation plans.
- 114.12 Miscellaneous provisions.

AUTHORITY: Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 437d(a)(8)), and sec. 315(a)(10), Pub. L. 92-225, 86 Stat. 16, amended by secs. 208(a) and (c)(10), and 209(a)(1) and (b)(1), Pub. L. 93-443, 88 Stat. 1279, 1287, and sec. 105, Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 438(a)(10)).

SOURCE: 41 FR 35955, Aug. 25, 1976, unless otherwise noted.

§ 114.1 Definitions.

(a) For purposes of Part 114 and section 12(h) of the Public Utility Holding Company Act (15 U.S.C. 79l(h))—

(1) The term “contribution or expenditure” shall include any direct or indirect payment, distribution, loan, advance, deposit, or gift of money, or any services, or anything of value (except a loan of money by a State bank, a Federally chartered depository institution (including a national bank) or a depository institution whose deposits and accounts are insured by the Federal Deposit Insurance Corporation, the National Savings and Loan Insurance Corporation, or the National Credit Union Administration, if such loan is made in accordance with 11 CFR 100.7(b)(11) to any candidate, political party or committee, organization, or any other person in connection with any election to any of the offices referred to in § 114.2(a) or (b) as applicable.

(2) The term contribution and expenditures shall *not* include—

(i) Communications by a corporation to its stockholders and executive or administrative personnel and their families or by a labor organization to its members and their families on any subject;

(ii) Nonpartisan registration and get-out-the-vote campaigns by a corporation aimed at its stockholders and executive or administrative personnel and their families or by a labor organization aimed at its members and their families;

(iii) The establishment, administration, and solicitation of contributions to a separate segregated fund to be utilized for political purposes by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock;

(iv) An honorarium, including actual travel and subsistence, as defined in § 110.12;

(v) The sale of any food or beverage by a corporate vendor for use in a candidate’s campaign or for use by a political committee of a political party at a charge less than the normal of comparable commercial rate, if the charge is at least equal to the costs of such food or beverage to the vendor, to the extent that: the aggregate value of such discount by the vendor on behalf of a single candidate does not exceed \$1,000 with respect to any single election; and on behalf of all political committees of each political party does not exceed \$2,000 in a calendar year.

(vi) The payment for legal or accounting services rendered to or on behalf of any political committee of a political party other than services attributable to activities which directly further the election of a designated candidate or candidates for Federal office if the corporation or labor organization paying for the services is the regular employer of the individual rendering the services. This exclusion shall not be applicable if additional employees are hired for the purpose of rendering services or if additional employees are hired in order to make regular employees available;

(vii) The payment for legal or accounting services rendered to or on behalf of an authorized committee of

a candidate or any other political committee solely for the purpose of ensuring compliance with this Act or chapter 95 or 96 of the Internal Revenue Code of 1954 if the corporation or labor organization paying for the services is the regular employer of the individual rendering the services, but amounts paid or incurred for these services shall be reported in accordance with Part 104. This exclusion shall not be applicable if additional employees are hired for the purpose of rendering services or if additional employees are hired in order to make regular employees available;

(viii) Activity permitted under 11 CFR 9008.7 with respect to a presidential nominating convention;

(ix) A gift, subscription, loan, advance, or deposit of money or anything of value to a national committee of a political party or a State committee of a political party which is specifically designated for the purpose of defraying any cost incurred with respect to the construction or purchase of any office facility which is not acquired for the purpose of influencing the election of any candidate in any particular election for Federal office, except that any gift, subscription, loan, advance, or deposit of money or anything of value, and any such cost, shall be reported in accordance with 11 CFR 104.3(g); or

(x) Any activity which is specifically permitted by Part 114.

(b) "Establishment, administration, and solicitation costs" means the cost of office space, phones, salaries, utilities, supplies, legal and accounting fees, fund-raising and other expenses incurred in setting up and running a separate segregated fund established by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock.

(c) "Executive or administrative personnel" means individuals employed by a corporation who are paid on a salary rather than hourly basis and who have policymaking, managerial, professional, or supervisory responsibilities.

(1) This definition includes—

(i) The individuals who run the corporation's business such as officers, other executives, and plant, division, and section managers; and

(ii) Individuals following the recognized professions, such as lawyers and engineers.

(2) This definition does *not* include—

(i) Professionals who are represented by a labor organization;

(ii) Salaried foremen and other salaried lower level supervisors having direct supervision over hourly employees;

(iii) Former or retired personnel who are not stockholders; or

(iv) Individuals who may be paid by the corporation, such as consultants, but who are not employees, within the meaning of 26 CFR 31.3401(c)-1 of the corporation for the purpose of income withholding tax on employee wages under Internal Revenue Code of 1954, section 3402.

(3) Individuals on commission may be considered executive or administrative personnel if they have policymaking, managerial, professional, or supervisory responsibility and if the individuals are employees, within the meaning of 26 CFR 31.3401(c)-1 of the corporation for the purpose of income withholding tax on employee wages under the Internal Revenue Code of 1954, section 3402.

(4) The Fair Labor Standards Act, 29 U.S.C. 201, et seq. and the regulations issued pursuant to that Act, 29 CFR 541, may serve as a guideline in determining whether individuals have policymaking, managerial, professional, or supervisory responsibilities.

(d) "Labor organization" means any organization of any kind, or any agency or employee representative committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(e) "Members" means all persons who are currently satisfying the requirements for membership in a membership organization, trade association, cooperative, or corporation without capital stock and in the case of a labor organization, persons who are currently satisfying the requirements for membership in a local, national, or international labor organization. Members of a local union are

considered to be members of any national or international union of which the local union is a part and of any federation with which the local, national, or international union is affiliated. A person is not considered a member under this definition if the only requirement for membership is a contribution to a separate segregated fund.

(f) "Method of facilitating the making of contributions" means the manner in which the contributions are received or collected such as, but not limited to, payroll deduction or check-off systems, other periodic payment plans, or return envelopes enclosed in a solicitation request.

(g) "Method of soliciting voluntary contributions" means the manner in which the solicitation is undertaken including, but not limited to, mailings, oral requests for contributions, and hand distribution of pamphlets.

(h) "Stockholder" means a person who has a vested beneficial interest in stock, has the power to direct how that stock shall be voted, if it is voting stock, and has the right to receive dividends.

(i) "Voluntary contributions" are contributions which have been obtained by the separate segregated fund of a corporation or labor organization in a manner which is in compliance with § 114.5(a) and which is in accordance with other provisions of the Act.

(2 U.S.C. 431(8)(B)(iii), 432(c)(3), 438(a)(8), 441b)

[41 FR 35955, Aug. 25, 1976, as amended at 44 FR 63045, Nov. 1, 1979; 45 FR 15125, Mar. 7, 1980; 45 FR 21210, Apr. 1, 1980]

§ 114.2 Prohibitions on contributions and expenditures.

(a) National banks, or corporations organized by authority of any law of Congress, are prohibited from making a contribution or expenditure, as defined in § 114.1(a), in connection with election to any political office, including local, State and Federal offices, or in connection with any primary election or political convention or caucus held to select candidates for any political office, including any local, State or Federal office.

(1) Such national banks and corporations may engage in the activities per-

mitted by this part, except to the extent that such activity is foreclosed by provisions of law other than the Act.

(2) The provisions of this part apply to the activities of a national bank or corporation organized by any law of Congress in connection with both State and Federal elections.

(b) Any corporation whatever or any labor organization is prohibited from making a contribution or expenditure, as defined in § 114.1(a) in connection with any Federal election.

(c) A candidate, political committee, or other person is prohibited from knowingly accepting or receiving any contribution prohibited by this section.

(d) No officer or director of any corporation or any national bank, and no officer of any labor organization shall consent to any contribution or expenditure by the corporation, national bank, or labor organization prohibited by this section.

§ 114.3 Partisan communications.

(a) A corporation may make partisan communications in connection with a Federal election to its stockholders and executive or administrative personnel and their families. A labor organization may make partisan communications in connection with a Federal election to its members and their families.

(b) Expenditures for partisan communications which expressly advocate the election or defeat of a clearly identified candidate must be reported in accord with § 100.8(b)(4).

(c) The manner in which partisan communications may be made includes, but is not limited to—

(1) The distribution of printed material of a partisan nature by a corporation to its stockholders and executive or administrative personnel and their families, or by a labor organization to its members and their families. Provided;

(i) That the material is produced at the expense of the corporation or labor organization or the separate segregated fund of either; and

(ii) That the material constitutes a communication of the views of the corporation or the labor organization,

and is not simply the republication or reproduction in whole or in any part, of any broadcast transcript or tape or any written, graphic, or other form of campaign materials prepared by the candidate, his or her campaign committees, or their authorized agents.

(2) Allowing a candidate or party representative to address the stockholders and executive or administrative personnel of the corporation and their families at a meeting, convention, or other regularly scheduled function of the corporation which is primarily held for other purposes or allowing a candidate or party representative to address the members of a labor organization and their families at a meeting, convention, or other regularly scheduled function of the labor organization which is primarily held for other purposes. The candidate or party representative may ask for contributions to his or her campaign or party at the time of the appearance, ask that contributions be sent to his or her campaign or party, or ask that contributions to the separate segregated fund of the corporation or labor organization be designated for his or her campaign or party.

(3) The establishment and operation of phone banks by a corporation to communicate with its stockholders and executive or administrative personnel and their families urging them to register and/or vote for a particular candidate or candidates, and the establishment and operation of phone banks by a labor organization to communicate with its members and their families urging them to register and/or vote for a particular candidate or candidates.

(4) Registration and get-out-the-vote drives, as by providing transportation to the polls, by a corporation aimed at its stockholders and executive or administrative personnel and their families or by a labor organization aimed at its members and their families. Such drives may be partisan in that individuals may be urged to register with a particular party or to vote for a particular candidate or candidates, but assistance in registering or voting may not be withheld or refused on a partisan basis, and if transportation or other services are offered in connec-

tion with a registration or get-out-the-vote drive, such transportation or services may not be withheld or refused on a partisan basis.

[41 FR 35955, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980]

§ 114.4 Nonpartisan communications.

(a) *Communications by a corporation to its stockholders and executive or administrative personnel and by a labor organization to its members.* (1) A corporation may make nonpartisan communications on any subjects to its stockholders and executive or administrative personnel. A labor organization may make nonpartisan communications to its members on any subject.

(2) A corporation may engage in nonpartisan registration and get-out-the-vote activity aimed at its stockholders and executive or administrative personnel and their families. A labor organization may engage in nonpartisan registration and get-out-the-vote activity aimed at its members and their families.

(b) *Candidate and party appearances*—(1) *Corporations.* Under the following circumstances, corporations may permit candidates (or their representatives) or representatives of political parties on corporate premises to address or meet employees in addition to stockholders and executive or administrative personnel:

(i) If a candidate for the House or Senate is permitted on the premises to address or meet employees, all candidates for that seat who request to appear must be given the same opportunity to appear;

(ii) If a Presidential candidate is permitted on the premises, all candidates for that office who request to appear must be given the same opportunity to appear;

(iii) If representatives of political parties are permitted on the premises, representatives of all political parties which had a candidate or candidates on the ballot in the last general election or which anticipate having or will have a candidate or candidates on the ballot in the next general election which request to appear must be given the same opportunity to appear.

(iv) A corporation, its stockholders, executive or administrative personnel,

or other employees of the corporation or its separate segregated fund shall make no effort, either oral or written, to solicit or direct or control contributions by members of the audience or group to any candidate or party in conjunction with any appearance by any candidate or party representative under this section; and

(v) A corporation, its stockholders, executive or administrative personnel or other employees of the corporation or its separate segregated fund shall not, in conjunction with any candidate or party representative appearances under this section, endorse or otherwise support one particular candidate or group of candidates or one particular political party over another political party.

(2) *Labor organizations.* A labor organization may permit candidates (or their representatives) or representatives of political parties on the organization's premises to address employees of the labor organization in addition to members of the labor organization if the conditions in paragraphs (b)(1)(i) through (iii) of this section are met.

(i) An official, member, or employee of a labor organization or its separate segregated fund shall not make any effort, either oral or written, to solicit or direct or control contributions by members of the audience to any candidate or party representative under this section.

(ii) An official, member, or employee of a labor organization or its separate segregated fund shall not, in conjunction with any candidate's or party representative's appearance under this section, endorse or otherwise support one particular candidate or group of candidates over another candidate or group of candidates or one particular political party over another political party.

(c) *Nonpartisan registration and voting information.* (1) A corporation or labor organization may, by posters or in newsletters or other communications, urge the employees of the corporation or of the labor organization to register or to vote or to otherwise participate in the political process if—

(i) The communication mentions no political affiliation (except as permitted by paragraph (c)(1)(ii) of this sec-

tion) and is restricted to urging acts such as contributing, voting, and/or registering and, describing the hours and places of registration and voting; and

(ii) Information about particular candidates or political parties is not included in the communication, except that the corporation or labor organization may reprint the entire list of names and political affiliations of candidates on the official ballot.

(2) A corporation or labor organization may distribute or reprint (in whole) any registration or voting information, such as instructional materials, which have been produced by the official election administrators for distribution to the general public. A corporation or labor organization may distribute official registration-by-mail forms to the general public if permitted by the applicable State law. The registration forms must be distributed in a nonpartisan manner, and the corporation or labor organization may not, in connection with the distribution, endorse, support, or otherwise promote registration with a particular party.

(3) A corporation or labor organization may distribute voter guides or other types of brochures describing the candidates and their positions if—

(i) The materials do not favor one candidate or political party over another; and

(ii) The materials are obtained from a civic or other nonprofit organization which does not endorse or support or is not affiliated with any candidate or political party.

(d) *Nonpartisan registration and get-out-the-vote drives.* (1) A corporation may support nonpartisan registration and get-out-the-vote drives, as by transporting people to the polls, which are not restricted to its stockholders and executive or administrative personnel and their families, and a labor organization may support such drives which are not restricted to its members and their families if:

(i) The corporation or labor organization jointly sponsors the drives with a civic or other nonprofit organization which does not support or endorse candidates or political parties and if

the activities are conducted by the other organization; and

(ii) These services are made available without regard to the voter's political preference.

(2) A corporation or labor organization may donate funds to be used for nonpartisan registration and get-out-the-vote drives to civic and other non-profit organizations which do not endorse candidates or political parties.

(3) The civic or nonprofit organization, in conducting the nonpartisan registration and get-out-the-vote activities, may utilize the employees and facilities of a corporation or the employees or members and facilities of a labor organization.

(e) *Nonpartisan candidate debates.*

(1) A nonprofit organization qualified under 11 CFR 110.13(a)(1) may use its own funds and may accept funds donated by corporations or labor organizations under 11 CFR 114.4(e)(3) to defray costs incurred in staging nonpartisan candidate debates held in accordance with 11 CFR 110.13.

(2) A bona fide broadcaster, newspaper, magazine and other periodical publication may use its own funds to defray costs incurred in staging nonpartisan public candidate debates held in accordance with 11 CFR 110.13.

(3) A corporation or labor organization may donate funds to nonprofit organizations qualified under 11 CFR 110.13(a)(1) to stage nonpartisan candidate debates held in accordance with 11 CFR 110.13 and 114.4(e).

(2 U.S.C. 431(e), 431(f) and 441b)

[41 FR 35955, Aug. 25, 1976, as amended at 42 FR 19324, Apr. 13, 1977; 44 FR 76736, Dec. 27, 1979]

§ 114.5 Separate segregated funds.

(a) *Voluntary contributions to a separate segregated fund.* (1) A separate segregated fund is prohibited from making a contribution or expenditure by utilizing money or anything of value secured by physical force, job discrimination, financial reprisals, or the threat of force, job discrimination, or financial reprisal; or by dues, fees, or other monies required as a condition of membership in a labor organization or as a condition of employment or by monies obtained in any commercial transaction. For purposes

of this section, fees or monies paid as a condition of acquiring or retaining membership or employment are monies required as a condition of membership or employment, even though they are refundable upon request of the payor.

(2) A guideline for contributions may be suggested by a corporation or a labor organization, or the separate segregated fund of either, provided that the person soliciting or the solicitation informs the persons being solicited—

(i) That the guidelines are merely suggestions; and

(ii) That an individual is free to contribute more or less than the guidelines suggest and the corporation or labor organization will not favor or disadvantage anyone by reason of the amount of their contribution or their decision not to contribute.

A corporation or labor organization or the separate segregated fund of either may not enforce any guideline for contributions.

(3) Any person soliciting an employee or member for a contribution to a separate segregated fund must inform such employee or member of the political purposes of the fund at the time of the solicitation.

(4) Any persons soliciting an employee or member for a contribution to a separate segregated fund must inform the employee or member at the time of such solicitation of his or her right to refuse to so contribute without any reprisal.

(5) Any written solicitation for a contribution to a separate segregated fund which is addressed to an employee or member must contain statements which comply with the requirements of paragraphs (a)(3) and (4) of this section, and if a guideline is suggested, statements which comply with the requirements of paragraph (a)(2) of this section.

(b) *Use of treasury monies.* Corporations, labor organizations, membership organizations, cooperatives, or corporations without capital stock may use general treasury monies, including monies obtained in commercial transactions and dues monies or membership fees, for the establishment, administration, and solicitation of contri-

butions to its separate segregated fund. A corporation, labor organization, membership organization, cooperative, or corporation without capital stock may not use the establishment, administration, and solicitation process as a means of exchanging treasury monies for voluntary contributions.

(1) A contributor may not be paid for his or her contribution through a bonus, expense account, or other form of direct or indirect compensation.

(2) A corporation, labor organization, membership organization, cooperative, or corporation without capital stock may, subject to the provisions of 39 U.S.C. 3005 and Chapter 61, Title 18, United States Code, utilize a raffle or other fundraising device which involves a prize, so long as State law permits and the prize is not disproportionately valuable. Dances, parties, and other types of entertainment may also be used as fundraising devices. When using raffles or entertainment to raise funds, a reasonable practice to follow is for the separate segregated fund to reimburse the corporation or labor organization for costs which exceed one-third of the money contributed.

(c) *Membership in separate segregated funds.* (1) A separate segregated fund established by a corporation, labor organization, membership organization, cooperative, or corporation without capital stock may provide that persons who contribute a certain amount to its separate segregated fund will become "members" of its separate segregated fund, so long as—

(i) The fund accepts contributions of all amounts, subject to the limitations of Part 110;

(ii) Subject to paragraph (c)(1)(iii) of this section, nothing of value may be given in return for or in the course of membership;

(iii) The fund may use membership status for intangible privileges such as allowing members only to choose the candidates to whom the fund will contribute.

(2) The fact that the separate segregated fund of a corporation, labor organization, membership organization, cooperative, or corporation without capital stock is a "membership group" does not provide the corporation,

labor organization, membership organization, cooperative, or corporation without capital stock with any greater right of communication or solicitation than the corporation, labor organization, membership organization, cooperative, or corporation without capital stock is otherwise granted under this part.

(d) *Control of funds.* A corporation, membership organization, cooperative, corporation without capital stock, or labor organization may exercise control over its separate segregated fund.

(e) *Disclosure.* Separate segregated funds are subject to the following disclosure requirements:

(1) A corporation or labor organization is not required to report any payment made or obligation incurred which is not a contribution or expenditure, as defined in § 114.1(a), except those reporting requirements specifically set forth in this section.

(2) A membership organization or corporation is not required to report the cost of any communication to its members or stockholders or executive or administrative personnel, if such membership organization or corporation is not organized primarily for the purpose of influencing the nomination for election, or election, of any person to Federal office, except that—

(i) The costs incurred by a membership organization, including a labor organization, or by a corporation, directly attributable to a communication expressly advocating the election or defeat of a clearly identified candidate (other than a communication primarily devoted to subjects other than the express advocacy of the election or defeat of a clearly identified candidate) shall, if those costs exceed \$2,000 per election, be reported in accordance with 11 CFR 100.8(b)(4); and

(ii) The amounts paid or incurred for legal or accounting services rendered to or on behalf of a candidate or political committee solely for the purpose of ensuring compliance with the provisions of the Act or chapter 95 or 96 of the Internal Revenue Code of 1954 paid by a corporation or labor organization which is the regular employer of the individual rendering such services, shall be reported in ac-

cordance with the provisions of Part 104.

(3) A separate segregated fund is subject to all other disclosure requirements of political committees as set forth in Part 104.

(f) *Contribution limits.* Separate segregated funds are subject to the contribution limitations for political committees set forth in Part 110. (See particularly § 110.3).

(g) *Solicitations.* Except as specifically provided in §§ 114.6, 114.7, and 114.8, a corporation and/or its separate segregated fund or a labor organization and/or its separate segregated fund is subject to the following limitations on solicitations:

(1) A corporation, or a separate segregated fund established by a corporation is prohibited from soliciting contributions to such a fund from any person other than its stockholders and their families and its executive or administrative personnel and their families. A corporation may solicit the executive or administrative personnel of its subsidiaries, branches, divisions, and affiliates and their families.

(2) A labor organization, or a separate segregated fund established by a labor organization is prohibited from soliciting contributions to such a fund from any person other than its members and their families.

(h) *Accidental or inadvertent solicitation.* Accidental or inadvertent solicitation by a corporation or labor organization, or the separate segregated fund of either, of persons apart from and beyond those whom it is permitted to solicit will not be deemed a violation, provided that such corporation or labor organization or separate segregated fund has used its best efforts to comply with the limitations regarding the persons it may solicit and that the method of solicitation is corrected forthwith after the discovery of such erroneous solicitation.

(i) *Communications paid for with voluntary contributions.* A separate segregated fund may, using voluntary contributions, communicate with the general public, except that such communications may not solicit contributions to a separate segregated fund established by a corporation, labor organization, membership organization, co-

operative, or corporation without capital stock, unless such solicitation is permitted under paragraph (g) of this section.

(j) *Acceptance of contributions.* A separate segregated fund may accept contributions from persons otherwise permitted by law to make contributions.

(k) *Availability of methods.* Any corporation, including its subsidiaries, branches, divisions, and affiliates, that uses a method of soliciting voluntary contributions or facilitating the making of voluntary contributions from its stockholders or executive or administrative personnel and their families, shall make that method available to a labor organization representing any members working for the corporation, its subsidiaries, branches, divisions, and affiliates for soliciting voluntary contributions or facilitating the making of voluntary contributions from its members and their families. Such method shall be made available on the written request of the labor organization and at a cost sufficient only to reimburse the corporation for the expenses incurred thereby. For example—

(1) If a corporation, including its subsidiaries, branches, divisions, or affiliates utilizes a payroll deduction plan, check-off system, or other plan which deducts contributions from the dividend or payroll checks of stockholders or executive or administrative personnel, the corporation shall, upon written request of the labor organization, make that method available to members of the labor organization working for the corporation, its subsidiaries, branches, divisions, or affiliates, who wish to contribute to the separate segregated fund of the labor organization representing any members working for the corporation, or any of its subsidiaries, branches, divisions, or affiliates. The corporation shall make the payroll deduction plan available to the labor organization at a cost sufficient only to reimburse the corporation for the actual expenses incurred thereby.

(2) If a corporation uses a computer for addressing envelopes or labels for a solicitation to its stockholders or executive or administrative personnel,

the corporation shall, upon written request, program the computer to enable the labor organization to solicit its members. The corporation shall charge the labor organization a cost sufficient only to reimburse the corporation for the actual expenses incurred in programming the computers and the allocated cost of employee time relating to the work, and the materials used.

(3) If a corporation uses corporate facilities, such as a company dining room or cafeteria, for meetings of stockholders or executive or administrative personnel at which solicitations are made, the corporation shall upon written request of the labor organization allow that labor organization to use existing corporate facilities for meetings to solicit its members. The labor organization shall be required to reimburse the corporation for any actual expenses incurred thereby, such as any increase in the overhead to the corporation and any cost involved in setting up the facilities.

(4) If a corporation uses no method to solicit voluntary contributions or to facilitate the making of voluntary contributions from stockholders or executive or administrative personnel, it is not required by law to make any method available to the labor organization for its members. The corporation and the labor organization may agree upon making any lawful method available even though such agreement is not required by the Act.

(5) The availability of methods of twice yearly solicitations is subject to the provisions of § 114.6(e).

(1) *Methods permitted by law to labor organizations.* Notwithstanding any other law, any method of soliciting voluntary contributions or of facilitating the making of voluntary contributions to a separate segregated fund established by a corporation, permitted by law to corporations with regard to stockholders and executive or administrative personnel, shall also be permitted to labor organizations with regard to their members.

[41 FR 35955, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980]

§ 114.6 Twice yearly solicitations.

(a) A corporation and/or its separate segregated fund may make a total of two written solicitations for contributions to its separate segregated fund per calendar year of its employees other than stockholders, executive or administrative personnel, and their families. Employees as used in this section does not include former or retired employees who are not stockholders. Nothing in this paragraph shall limit the number of solicitations a corporation may make of its stockholders and executive or administrative personnel under § 114.5(g).

(b) A labor organization and/or its separate segregated fund may make a total of two written solicitations per calendar year of employees who are not members of the labor organization, executive or administrative personnel, or stockholders (and their families) of a corporation in which the labor organization represents members working for the corporation. Nothing in this paragraph shall limit the number of solicitations a labor organization may make of its members under § 114.5(g).

(c) *Written solicitation.* A solicitation under this section may be made only by mail addressed to stockholders, executive or administrative personnel, or employees at their residences. All written solicitations must inform the recipient—

(1) Of the existence of the custodial arrangement described hereinafter;

(2) That the corporation, labor organization, or the separate segregated fund of either cannot be informed of persons who do not make contributions; and

(3) That persons who, in a calendar year make a single contribution of \$50 or less, or multiple contributions aggregating \$200 or less may maintain their anonymity by returning their contributions to the custodian.

(d) *The custodial arrangement.* In order to maintain the anonymity of persons who do not wish to contribute and of persons who wish to respond with a single contribution of \$50 or less, or multiple contributions aggregating \$200 or less in a calendar year, and to satisfy the recordkeeping provisions, the corporation, labor organiza-

tion, or separate segregated fund of either shall establish a custodial arrangement for collecting the contributions under this section.

(1) The custodian for a separate segregated fund established by a corporation shall not be a stockholder, officer, executive or administrative personnel, or employee of the corporation, or an officer, or employee of its separate segregated fund. The custodian for a separate segregated fund established by a labor organization shall not be a member, officer or employee of the labor organization or its separate segregated fund.

(2) The custodian shall keep the records of contributions received in accordance with the requirements of Part 102 and shall also—

(i) Establish a separate account and deposit contributions in accordance with the provisions of Part 103;

(ii) Provide the fund with the identification of any person who makes a single contribution of more than \$50 and the identification of any person who makes multiple contributions aggregating more than \$200. The custodian must provide this information within a reasonable time prior to the reporting date of the fund under Part 104;

(iii) Periodically forward all funds in the separate account, by check drawn on that account, to the separate segregated fund; and

(iv) Treat all funds which appear to be illegal in accordance with the provisions of § 103.3(b).

(3) The custodian shall not—

(i) Make the records of persons making a single contribution of \$50 or less, or multiple contributions aggregating \$200 or less, in a calendar year, available to any person other than representatives of the Federal Election Commission, the Clerk of the House or the Secretary of the Senate, as appropriate, and law enforcement officials or judicial bodies.

(ii) Provide the corporation or labor organization or the separate segregated fund of either with any information pertaining to persons who, in a calendar year, make a single contribution of \$50 or less or multiple contributions aggregating \$200 or less except that the custodian may forward to the

corporation, labor organization or separate segregated fund of either the total number of contributions received; or

(iii) Provide the corporation, labor organization, or the separate segregated fund of either with any information pertaining to persons who have not contributed.

(4) The corporation, labor organization, or the separate segregated fund of either shall provide the custodian with a list of all contributions, indicating the contributor's identification and amount contributed, which have been made directly to the separate segregated fund by any person within the group of persons solicited under this section.

(5) Notwithstanding the prohibitions of paragraph (d)(1) of this section, the custodian may be employed by the separate segregated fund as its treasurer and may handle all of its contributions, provided that the custodian preserves the anonymity of the contributors as required by this section. The custodian shall file the required reports with the Federal Election Commission, the Clerk of the House, or the Secretary of the Senate, as appropriate. A custodian who serves as treasurer is subject to all of the duties, responsibilities, and liabilities of a treasurer under the Act, and may not participate in the decision making process whereby the separate segregated fund makes contributions and expenditures.

(e) *Availability of methods.* (1) A corporation or labor organization or the separate segregated fund of either may not use a payroll deduction plan, a check-off system, or other plan which deducts contributions from an employee's paycheck as a method of facilitating the making of contributions under this section.

(2) The twice yearly solicitation may only be used by a corporation or labor organization to solicit contributions to its separate segregated fund and may not be used for any other purpose.

(3) A corporation is required to make available to a labor organization representing any members working for the corporation or its subsidiaries, branches, divisions, or affiliates the method which the corporation uses to

solicit employees under this section during any calendar year.

(i) If the corporation uses a method to solicit any employees under this section, the corporation is required to make that method available to the labor organization to solicit the employees of the corporation who are not represented by that labor organization, and the executive or administrative personnel and the stockholders of the corporation and their families.

(ii) If the corporation does not wish to disclose the names and addresses of stockholders or employees, the corporation shall make the names and addresses of stockholders and employees available to an independent mailing service which shall be retained to make the mailing for *both* the corporation and the labor organization for any mailings under this section.

(iii) If the corporation makes no solicitation of employees under this section during the calendar year, the corporation is not required to make any method or any names and addresses available to any labor organization.

(4) The corporation shall notify the labor organization of its intention to make a solicitation under this section during a calendar year and of the method it will use, within a reasonable time prior to the solicitation, in order to allow the labor organization opportunity to make a similar solicitation.

(5) If there are several labor organizations representing members employed at a single corporation, its subsidiaries, branches, divisions, or affiliates, the labor organizations, either singularly or jointly, may not make a combined total of more than two written solicitations per calendar year. A written solicitation may contain a request for contributions to each separate fund established by the various labor organizations making the combined mailing.

(2 U.S.C. 431(8)(B)(iii), 432(c)(3), 438(8)(a))

[41 FR 35955, Aug. 25, 1976, as amended at 45 FR 15125, Mar. 7, 1980]

§ 114.7 Membership organizations, cooperatives, or corporations without capital stock.

(a) Membership organizations, cooperatives, or corporations without cap-

ital stock, or separate segregated funds established by such persons may solicit contributions to the fund from members of the organization, cooperative, or corporation without capital stock.

(b) Nothing in this section waives the prohibition on contributions to the separate segregated fund by corporations, national banks, or labor organizations which are members of a membership organization, cooperative, or corporation without capital stock.

(c) A trade association whose membership is made up in whole or in part of corporations is subject to the provisions of § 114.8 when soliciting any stockholders or executive or administrative personnel of member corporations. A trade association which is a membership organization may solicit its noncorporate members under the provisions of this section.

(d) The question of whether a professional organization is a corporation is determined by the law of the State in which the professional organization exists.

(e) There is no limitation upon the number of times an organization under this section may solicit its members.

(f) There is no limitation under this section on the method of solicitation or the method of facilitating the making of voluntary contributions which may be used.

(g) A membership organization, cooperative, or corporation without capital stock and the separate segregated funds of the organizations are subject to the provisions in § 114.5(a).

(h) A membership organization, cooperative, or corporation without capital stock may communicate with its members under the provisions of § 114.3.

(i) A mutual life insurance company may solicit its policyholders if the policyholders are members within the organizational structure.

(j) A membership organization, including a trade association, cooperative, or corporation without capital stock or a separate segregated fund established by such organization may not solicit contributions from the separate segregated funds established by its members. The separate segregated

fund established by a membership organization, including a trade association, cooperative, or corporation without capital stock may, however, accept unsolicited contributions from the separate segregated funds established by its members.

§ 114.8 Trade associations.

(a) *Definition.* A trade association is generally a membership organization of persons engaging in a similar or related line of commerce, organized to promote and improve business conditions in that line of commerce and not to engage in a regular business of a kind ordinarily carried on for profit, and no part of the net earnings of which inures to the benefit of any member.

(b) *Prohibition.* Nothing in this section waives the prohibition on contributions by corporations which are members of a trade association.

(c) *Limitations.* A trade association or a separate segregated fund established by a trade association may solicit contributions from the stockholders and executive or administrative personnel of the member corporations of such trade association and the families of such stockholders and personnel if—

(1) The member corporation involved has separately and specifically approved the solicitations; and

(2) The member corporation has not approved a solicitation by any other trade association during the calendar year.

(d) *Separate and specific approval.*

(1) The member corporation must knowingly and specifically approve any solicitation for a trade association, whether the solicitation is done by the trade association, its separate segregated fund, or the corporation or any of its personnel, for contributions to the trade association's separate segregated fund.

(2) A copy of each approved request received by a trade association or its separate segregated fund shall be maintained by the trade association or its fund for three years from the date the approval is given.

(3) The request for approval may contain a copy of solicitation materials which will be used if approval is grant-

ed. Such a mailing must specifically indicate the requirement of approval and the limitation of paragraph (c)(2) of this section, and approval must be granted to the trade association or its separate segregated fund prior to the time any solicitation is made of the stockholders or executive or administrative personnel by the trade association, its separate segregated fund, or by the corporation for contributions to the separate segregated fund of the trade association. (The request for approval may be sent to the representatives of the corporation with whom the trade association normally conducts the association's activities.)

(4) A separate authorization specifically allowing a trade association to solicit its corporate member's stockholders and executive or administrative personnel applies through the calendar year in which it is obtained. A separate authorization must be obtained each year.

(5) In its request to a member corporation, a trade association may indicate that it intends to solicit, for example, a limited class of the executive or administrative personnel of the member corporation, or only the executive or administrative personnel but not the stockholders of the member corporation. Moreover, in its approval, a member corporation may similarly limit any solicitation by the trade association or its separate segregated fund. In any event, a member corporation, once it has approved any solicitation—even to a limited extent—of its personnel or stockholders by a trade association or its separate segregated fund, is precluded from approving any such solicitation by another trade association or its separate segregated fund and the corporation and its personnel are precluded from soliciting the corporation's executive or administrative personnel or stockholders on behalf of another trade association or its separate segregated fund.

(e) *Solicitation.* (1) After a trade association has obtained the approval required in paragraph (c) of this section, there is no limit on the number of times the trade association or its separate segregated fund may solicit the persons approved by the member corporation during the calendar year to

which the approval applies. The member corporation may, however, in its approval limit the number of times solicitations may be made.

(2) A member corporation which grants permission to a trade association to solicit is in no way restricted in its rights under § 114.5(g) to solicit its stockholders or executive or administrative personnel and their families for contributions to the corporation's own separate segregated fund.

(3) There is no limitation on the method of soliciting voluntary contributions or the method of facilitating the making of voluntary contributions which a trade association may use. The member corporation may not use a payroll deduction or checkoff system for executive or administrative personnel contributing to the separate segregated fund of the trade association.

(4) A trade association and/or its separate segregated fund is subject to the provisions of § 114.5(a).

(f) *Solicitation of a subsidiary corporation.* If a parent corporation is a member of the trade association, but its subsidiary is not, the trade association or its separate segregated fund may only solicit the parent's executive or administrative personnel and shareholders and their families; and no personnel of the subsidiary may be solicited. If a subsidiary is a member, but the parent is not, the trade association or its separate segregated fund may solicit the subsidiary's personnel and their families; it may not solicit the parent's shareholders. If both parent and subsidiary are members, executive and administrative personnel and stockholders of each and their families may be solicited.

(g) *Federations of trade associations.* (1) A federation of trade associations is an organization representing trade associations involved in the same or allied line of commerce. Such a federation may, subject to the following limitations, solicit the members of the federation's regional, State, or local affiliates or members, provided that all of the political committees established, financed, maintained, or controlled by the federation and its regional, State, or local affiliates or members are considered one political

committee for the purposes of the limitations in §§ 110.1 and 110.2.

(i) The federation and its member associations may engage in a joint solicitation; or

(ii) The member association may delegate its solicitation rights to the federation.

(2) A federation is subject to the provisions of this section when soliciting the stockholders and executive or administrative personnel of the corporate members of its member associations.

(h) *Communications other than solicitations.* A trade association may make communications, other than solicitations, to its members under the provisions of § 114.3. When making communications to a member which is a corporation, the trade association may communicate with the representatives of the corporation with whom the trade association normally conducts the association's activities.

(i) *Trade association employees.* (1) A trade association may communicate with its executive or administrative personnel under the provisions of § 114.3; a trade association may communicate with its other employees under the provisions of § 114.4.

(2) A trade association may solicit its executive or administrative personnel under the provisions of § 114.5(g); a trade association may solicit its other employees under the provisions of § 114.6.

§ 114.9 Use of corporate or labor organization facilities and means of transportation.

(a) *Use of corporate facilities for individual volunteer activity by stockholders and employees.* (1) Stockholders and employees of the corporation may, subject to the rules and practices of the corporation, make occasional, isolated, or incidental use of the facilities of a corporation for individual volunteer activity in connection with a Federal election and will be required to reimburse the corporation only to the extent that the overhead or operating costs of the corporation are increased. As used in this paragraph, "occasional, isolated, or incidental use" generally means—

(i) When used by employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

(ii) When used by stockholders other than employees during the working period, such use does not interfere with the corporation in carrying out its normal activities; but

(iii) Any such activity which does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, shall be considered as occasional, isolated, or incidental use of the corporate facilities.

(2) A stockholder or employee who makes more than occasional, isolated, or incidental use of a corporation's facilities for individual volunteer activities in connection with a Federal election is required to reimburse the corporation within a commercially reasonable time for the normal and usual rental charge, as defined in 11 CFR 100.7(a)(1)(iii)(B), for the use of such facilities.

(b) *Use of labor organization facilities for individual volunteer activity by officials, members and employees.*

(1) The officials, members, and employees of a labor organization may, subject to the rules and practices of the labor organization, make occasional, isolated, or incidental use of the facilities of a labor organization for individual volunteer activity in connection with a Federal election and will be required to reimburse the labor organization only to the extent that the overhead or operating costs of the labor organization are increased. As used in this paragraph, "occasional, isolated, or incidental use" generally means—

(i) When used by employees during working hours, an amount of activity during any particular work period which does not prevent the employee from completing the normal amount of work which that employee usually carries out during such work period; or

(ii) When used by members other than employees during the working period, such use does not interfere

with the labor organization in carrying out its normal activities; but

(iii) Any such activity which does not exceed one hour per week or four hours per month, regardless of whether the activity is undertaken during or after normal working hours, shall be considered as occasional, isolated, or incidental use of the labor organization facilities.

(2) The officials, members, and employees who make more than occasional, isolated, or incidental use of a labor organization's facilities for individual volunteer activities in connection with a Federal election are required to reimburse the labor organization within a commercially reasonable time for the normal and usual rental charge, as defined in 11 CFR 100.7(a)(1)(iii)(B), for the use of such facilities.

(c) *Use of corporate or labor organization facilities to produce materials.*

Any person who uses the facilities of a corporation or labor organization to produce materials in connection with a Federal election is required to reimburse the corporation or labor organization within a commercially reasonable time for the normal and usual charge for producing such materials in the commercial market.

(d) *Use or rental of corporate or labor organization facilities by other persons.*

Persons, other than those specifically mentioned in paragraphs (a) and (b) of this section, who make any use of corporate or labor organization facilities, such as by using telephones or typewriters or borrowing office furniture, for activity in connection with a Federal election are required to reimburse the corporation or labor organization within a commercially reasonable time in the amount of the normal and usual rental charge, as defined in 11 CFR 100.7(a)(1)(iii)(B), for the use of the facilities.

(e) *Use of airplanes and other means of transportation.*

(1) A candidate, candidate's agent, or person traveling on behalf of a candidate who uses an airplane which is owned or leased by a corporation or labor organization other than a corporation or labor organization licensed to offer commercial services for travel in connection with a Federal election must, in ad-

vance, reimburse the corporation or labor organization—

(i) In the case of travel to a city served by regularly scheduled commercial service, the first class air fare;

(ii) In the case of travel to a city not served by a regularly scheduled commercial service, the usual charter rate.

(2) A candidate, candidate's agent, or person traveling on behalf of a candidate who uses other means of transportation owned or leased by a corporation or labor organization must reimburse, within a commercially reasonable time, the corporation or labor organization at the normal and usual rental charge.

[41 FR 35955, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980]

§ 114.10 Extension of credit and settlement of corporate debts.

(a) A corporation may extend credit to a candidate, political committee, or other person in connection with a Federal election provided that the credit is extended in the ordinary course of the corporation's business and the terms are substantially similar to extensions of credit to nonpolitical debtors which are of similar risk and size of obligation. Nothing in this section modifies regulations prescribed by the Civil Aeronautics Board, the Federal Communications Commission or the Interstate Commerce Commission issued pursuant to 2 U.S.C. 451 or any other regulations prescribed by other Federal agencies with regard to credit extended by the regulated corporations.

(b) Except as specifically provided in paragraph (c) of this section, a corporation may not forgive prior debts or settle debts which have been incurred by a candidate or political committee or other person for use in connection with a Federal election for less than the amount owed on the debt.

(c) A corporation may settle or forgive a debt if the creditor has treated the outstanding debt in a commercially reasonable manner. A settlement will be considered commercially reasonable if—

(1) The initial extension of credit was made in accordance with regulations issued pursuant to 2 U.S.C. 451 or paragraph (a) of this section.

(2) The candidate or political committee or person has undertaken all commercially reasonable efforts to satisfy the outstanding debt; and

(3) The corporate creditor has pursued its remedies in a manner similar in intensity to that employed by the corporation in pursuit of a non-political debtor, including lawsuits if filed in similar circumstances.

The corporation and/or the debtor must file a statement of settlement with the Commission including the initial terms of credit, the steps the debtor has taken to satisfy the debt, and remedies pursued by the creditor. This statement must be filed prior to the termination of the reporting status of the debtor and the settlement is subject to Commission review.

§ 114.11 Employee participation plans.

(a) A corporation may establish and administer an employee participation plan (i.e. a "trustee plan") which is a political giving program in which a corporation pays the cost of establishing and administering separate bank accounts for any employee who wishes to participate. The cost of administering and establishing includes the payment of costs for a payroll deduction or check-off plan and the cost of maintaining the separate bank accounts.

(1) The employees must exercise complete control and discretion over the disbursement of the monies in their accounts.

(2) The trustee, bank, or other administrator shall not provide the corporation or its separate segregated fund any report of the source or recipient of any contribution(s) or donation(s) into or out of any account or of the amount any employee has in an account.

(3) The trustee, bank, or other administrator may provide the corporation or its separate segregated fund with a periodic report limited to information about the total number of employees in the program, the total number of funds in all the accounts combined, and the total amount of contributions made to all candidates and committees combined.

(4) No stockholder, director, or employee of the corporation or its separate segregated fund may exert pres-

sure of any kind to induce participation in the program.

(5) No stockholder, director, or employee of the corporation or its separate segregated fund may exercise any direction or control, either oral or written, over contributions by participants in the program, to any candidate, group of candidates, political party, or other person.

(b) An employee participation plan must be made available to all employees including members of a labor organization who are employees of the corporation. Communications about participation in the plan may be conducted by either the corporation or the labor organization or both.

(c) A labor organization may establish and administer an employee participation plan subject to the above provisions, except that the cost shall be borne by the labor organization.

(d) The method used to transmit employee or member contributions to the candidate or political committee may not in any manner identify the corporation or labor organization which established the employee participation plan.

§ 114.12—Miscellaneous provisions.

(a) An organization may incorporate and not be subject to the provisions of this Part if the organization incorporates for liability purposes only, and if the organization is a political committee as defined in 11 CFR 100.5. Notwithstanding the corporate status of the political committee, the treasurer of an incorporated political committee remains personally responsible for carrying out their respective duties under the Act.

(b) Notwithstanding any other provision of Part 114, a corporation or a labor organization which customarily makes its meeting rooms available to clubs, civic or community organizations, or other groups may make such facilities available to a political committee or candidate if the meeting rooms are made available on a nonpartisan basis and on the same terms given to other groups using the meeting rooms.

(c)(1) A corporation of labor organization may not pay the employer's share of the cost of fringe benefits,

such as health and life insurance and retirement, for employees or members on leave-without-pay to participate in political campaigns of Federal candidates. The separate segregated fund of a corporation or a labor organization may pay the employer's share of fringe benefits, and such payment would be a contribution in-kind to the candidate. An employee or member may, out of unreimbursed personal funds, assure the continuity of his or her fringe benefits during absence from work for political campaigning, and such payment would not be a contribution in-kind.

(2) Service credit for periods of leave-without-pay is not considered compensation for purposes of this section if the employer normally gives identical treatment to employees placed on leave-without-pay for non-political purposes.

(d) A corporation which, prior to May 11, 1976, had solicited employees other than stockholders or executive or administrative personnel for voluntary contributions to its separate segregated fund and had offered such employees the opportunity to enroll in a payroll deduction plan may, until December 31, 1976, unless the employee withdraws before that date, continue to deduct contributions from the checks of employees who signed up prior to May 11, 1976. Any solicitation of such employees after May 11, 1976, is subject to the provisions of 2 U.S.C. 441b(b)(4)(B) and § 114.6 when prescribed.

[41 FR 35955, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980]

PART 115—FEDERAL CONTRACTORS

Sec.

- 115.1 Definitions.
- 115.2 Prohibition.
- 115.3 Corporations, labor organizations, membership organizations, cooperatives, and corporations without capital stock.
- 115.4 Partnerships.
- 115.5 Individuals and sole proprietors.
- 115.6 Employee contributions or expenditures.

AUTHORITY: Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2) U.S.C. 437d(a)(8)), and sec. 315(a)(10), Pub.

§ 115.1

L. 92-225, 86 Stat. 16, amended by secs. 208(a) and (c)(10), and 209(a)(1) and (b)(1), Pub. L. 93-443, 88 Stat. 1279, 1287, and sec. 105, Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 438(a)(10)).

SOURCE: 41 35963, Aug. 25, 1976, unless otherwise noted.

§ 115.1 Definitions.

(a) "A Federal contractor" means a person, as defined in 11 CFR 100.10 who—

(1) Enters into any contract with the United States or any department or agency thereof either for—

(i) The rendition of personal services; or

(ii) Furnishing any material, supplies, or equipment; or

(iii) Selling any land or buildings;

(2) If the payment for the performance of the contract or payment for the material, supplies, equipment, land, or building is to be made in whole or in part from funds appropriated by the Congress.

(b) The period during which a person is prohibited from making a contribution or expenditure is the time between the earlier of the commencement of negotiations or when the requests for proposals are sent out, and the later of—

(1) The completion of performance under; or

(2) The termination of negotiations for, the contract or furnishing of material, supplies, equipment, land, or buildings, or the rendition of personal services.

(c) For purposes of this part, a contract includes

(1) A sole source, negotiated, or advertised procurement conducted by the United States or any of its agencies;

(2) A written (except as otherwise authorized) contract, between any person and the United States or any of its departments or agencies, for the furnishing of personal property, real property, or personal services; and

(3) Any modification of a contract.

(d) The basic contractual relationship must be with the United States or any department or agency thereof. A person who contracts with a State or local jurisdiction or entity other than the United States or any department or agency thereof is not subject to this

Title 11—Federal Elections

part, even if the State or local jurisdiction or entity is funded in whole or in part from funds appropriated by the Congress. The third party beneficiary of a Federal contract is not subject to the prohibitions of this part.

(e) The term labor organization has the meaning given it by § 114.1(a).

[41 FR 35963, Aug. 25, 1976, as amended at 45 FR 21210, Apr. 1, 1980]

§ 115.2 Prohibition.

(a) It shall be unlawful for a Federal contractor, as defined in § 115.1(a), to make, either directly or indirectly, any contribution or expenditure of money or other thing of value, or to promise expressly or impliedly to make any such contribution or expenditure to any political party, committee, or candidate for Federal office or to any person for any political purpose or use. This prohibition does not apply to contributions or expenditures in connection with State or local elections.

(b) This prohibition runs for the time period set forth in § 115.1(b).

(c) It shall be unlawful for any person knowingly to solicit any such contribution from a Federal contractor.

§ 115.3 Corporations, labor organizations, membership organizations, cooperatives, and corporations without capital stock.

(a) Corporations, labor organizations, membership organizations, cooperatives, and corporations without capital stock to which this part applies may expend treasury monies to establish, administer, and solicit contributions to any separate segregated fund subject to the provisions of Part 114. Each specific prohibition, allowance, and duty applicable to a corporation, labor organization, or separate segregated fund under Part 114 applies to a corporation, labor organization, or separate segregated fund to which this part applies.

(b) The question of whether a professional organization is a corporation is determined by the law of the State in which the professional organization exists.

§ 115.4 Partnerships.

(a) The assets of a partnership which is a Federal contractor may not be used to make contributions or expenditures in connection with Federal elections.

(b) Individual partners may make contributions or expenditures in their own names from their personal assets.

(c) Nothing in this part prohibits an employee of a partnership which is a Federal contractor from making contributions or expenditures from his or her personal assets.

§ 115.5 Individuals and sole proprietors.

Individuals or sole proprietors who are Federal contractors are prohibited from making contributions or expendi-

tures from their business, personal, or other funds under their dominion or control. The spouse of an individual or sole proprietor who is a Federal contractor is not prohibited from making a personal contribution or expenditure in his or her name.

§ 115.6 Employee contributions or expenditures.

Nothing in this part shall prohibit the stockholders, officers, or employees of a corporation, the employees, officers, or members of an unincorporated association, cooperative, membership organization, labor organization, or other group or organization which is a Federal contractor from making contributions or expenditures from their personal assets.

SUBCHAPTERS B-C—[RESERVED]

SUBCHAPTER D—PRESIDENTIAL ELECTION CAMPAIGN FUND,
GENERAL ELECTION FINANCING

PART 140—DEFINITIONS

- Sec.
- 140.1 Authorized committee.
- 140.2 Candidate.
- 140.3 Commission.
- 140.4 Eligible candidates.
- 140.5 Fund.
- 140.6 Major party.
- 140.7 Minor party.
- 140.8 New party.
- 140.9 Political committee.
- 140.10 Presidential election.
- 140.11 Qualified campaign expense.
- 140.12 Expenditure report period.
- 140.13 Contribution, exclusions.
- 140.14 Secretary.

AUTHORITY: Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 437d(a)(8)), and sec. 404(c)(13), Pub. L. 93-443, 88 Stat. 1293 (26 U.S.C. 9009(b)).

SOURCE: 41 FR 35972, Aug. 25, 1976, unless otherwise noted.

§ 140.1 Authorized committee.

“Authorized committee” means, with respect to the candidates of a political party for President and Vice President of the United States, any political committee which is authorized in writing by such candidates to incur expenses to further the election of such candidates. Such authorization shall be addressed to the chairman of such political committee, and a copy of such authorization shall be filed by such candidates with the Commission. Any withdrawal of any authorization shall also be in writing and shall be addressed and filed in the same manner as the authorization.

§ 140.2 Candidate.

(a) “Candidate” means, with respect to any Presidential election, an individual who—

(1) Has been nominated for election to the office of President of the United States or the office of Vice

President of the United States by a major party; or

(2) Has qualified to have his name on the election ballot (or to have the names of electors pledged to him on the election ballot) as the candidate of a political party for election to either such office in 10 or more States.

(b) For purposes of §§ 140.6, 140.7, and 142.2 the term “candidate” means, with respect to any preceding Presidential election, an individual who received popular votes for the office of President in such election.

(c) The term “candidate” shall not include any individual who has ceased actively to seek election to the office of President of the United States or to the office of Vice President of the United States in more than one State.

§ 140.3 Commission.

“Commission” means the Federal Election Commission, 1325 K Street, NW., Washington, D.C. 20463.

§ 140.4 Eligible candidates.

“Eligible candidates” means the candidates of a political party for President and Vice President of the United States who have met all applicable conditions for eligibility to receive payments under this chapter set forth in Part 141.

§ 140.5 Fund.

“Fund” means the President Election Campaign Fund established by 26 U.S.C. 9006(a).

§ 140.6 Major party.

“Major party” means, with respect to any Presidential election, a political party whose candidate for the office of President in the preceding Presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes

received by all candidates for such office.

§ 140.7 Minor party.

"Minor party" means, with respect to any Presidential election, a political party whose candidate for the office of President in the preceding Presidential election received, as the candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office.

§ 140.8 New party.

"New party" means, with respect to any Presidential election, a political party which is neither a major party nor a minor party.

§ 140.9 Political committee.

"Political committee" means any committee, association, or organization (whether or not incorporated) which accepts contributions or makes expenditures for the purpose of influencing, or attempting to influence, the nomination or election of one or more individuals to Federal, State, or local elective public office.

§ 140.10 Presidential election.

"Presidential election" means the election of Presidential and Vice-Presidential electors.

§ 140.11 Qualified campaign expense.

"Qualified campaign expense" means an expense—

(a) Incurred—

(1) By the candidate of a political party for the office of President to further his election to such office or to further the election of the candidate of such political party for the office of Vice President, or both;

(2) By the candidate of a political party for the office of the Vice President to further his election to that office or to further the election of the candidate of the political party for the office of President, or both;

(3) By an authorized committee of the candidates of a political party for the offices of President and Vice President to further the election of either or both of the candidates to the respective offices; or

(4) By a person authorized by the Presidential or Vice-Presidential candidate or any of their authorized committees, as the case may be, to incur an expense on behalf of the candidate or committee;

(b) Incurred within the expenditure report period or incurred before the beginning of such period to the extent such expense is for property, services, or facilities used during such period; or

(c) Incurred for travel, such as renting airplanes and buses, but only to the extent of the greater of—

(1) Gross transportation expenses, less Secret Service and media reimbursements; or

(2) The product of (i) the highest rate for which reimbursement is sought by the candidate for transportation, multiplied by (ii) the total persons transported, less the number of—

(A) Airline or bus company employees;

(B) Secret Service; and

(C) Media personnel;

(d) Neither the incurring nor payment of which constitutes a violation of any law of the United States or of the State in which the expense is incurred or paid.

(e) "Qualified campaign expense" does not include, inter alia, amounts paid by a campaign for—

(1) Expenses incurred after the expenditure report period;

(2) Legal and accounting services paid for by the lawyer's or accountant's regular employers, or by the candidate or his or her committee and rendered solely for the purposes of insuring compliance with this Act or chapter 95 of the Internal Revenue Code of 1954, except if the candidate wishes to treat those expenses as qualified campaign expenses, and, in any event, amounts paid or incurred for these services shall be reported in accordance with Part 104.

§ 140.12 Expenditure report period.

"Expenditure report period" with respect to any Presidential election means—

(a) In the case of a major party, the period beginning with the first day of September before the election, or, if

earlier, with the date on which such major party at its national convention nominated its candidate for election to the office of President of the United States, and ending 30 days after the date of the Presidential election; and

(b) In the case of a party which is not a major party, the same period as the expenditure report period of the major party which has the shortest expenditure report period for such Presidential election under paragraph (a) of this section.

§ 140.13 Contribution; exclusions.

For purposes of this subchapter—

(a) "Contribution" is given the meaning in § 100.4; and

(b) "Contribution" does not include

(1) A loan of money by a national or State bank made in accordance with applicable banking laws and regulations and in the ordinary course of business and not endorsed or guaranteed by any person other than the candidate to the extent that the amount so endorsed by the candidate, when added to all other expenditures made from his personal funds and those of his immediate family, does not exceed \$50,000;

(2) Reimbursements to the candidate or his or her authorized committee from members of the press, the Secret Service, or other persons for air and surface transportation; or

(3) Contributions made to a candidate or his or her committees to defray nonqualified campaign expenses (see § 140.11(e)). These contributions are subject to the limitations of Part 110, and shall be deposited in, and disbursed from, a separate account and not commingled with any money from the fund.

§ 140.14 Secretary.

"Secretary" means the Secretary of the Treasury.

PART 141—ELIGIBILITY FOR PAYMENTS

Sec.

141.1 Candidate agreements.

141.2 Candidate certifications.

141.3 Allowable contributions.

AUTHORITY: Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat.

1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 437d(a)(8)), and sec. 404(c)(13), Pub. L. 93-443, 88 Stat. 1293 (26 U.S.C. 9009(b)).

SOURCE: 41 FR 35974, Aug. 25, 1976, unless otherwise noted.

§ 141.1 Candidate agreements.

In order to be eligible to receive any payments under § 143.2, the candidates of a political party in a Presidential election shall, in writing—

(a) Agree to obtain and furnish to the Commission such evidence as it may request of the qualified campaign expenses of such candidates;

(b) Agree to keep and furnish to the Commission such records, books, and other information as it may request;

(c) Agree to an audit and examination by the Commission under Part 145 and to pay any amounts required to be paid under that section; and

(d) Provide the Commission with the name and mailing address of the person to whom the payment should be sent and the name and address of the national or State bank designated by the candidate as a campaign depository.

§ 141.2 Candidate certifications.

(a) Major parties. In order to be eligible to receive any payments under § 143.2, the candidates of a major party in a Presidential election shall certify to the Commission, under penalty of perjury, that—

(1) The candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which they will be entitled under § 142.1; and

(2) No contributions to defray qualified campaign expenses have been or will be accepted by such candidates or any of their authorized committees, except to the extent necessary to make up any deficiency in payments received out of the fund on account of the application of 26 U.S.C. 9006(d), and no contributions to defray expenses which would be qualified campaign expenses but for § 140.11(c) have been or will be accepted by such candidates or any of their authorized committees.

(b) Minor and new parties. In order to be eligible to receive any payments

under § 143.2, the candidates of a minor or new party in a Presidential election shall certify to the Commission, under penalty of perjury, that—

(1) Such candidates and their authorized committees will not incur qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party are entitled under § 142.1; and—

(2) Such candidates and their authorized committees will accept and expend or retain contributions to defray qualified campaign expenses only to the extent that the qualified campaign expenses incurred by such candidates and their authorized committees certified to under paragraph (b)(1) of this section exceed the aggregate payments received by such candidates out of the fund pursuant to § 143.2.

(c) All parties. In order to be eligible to receive any payment under § 143.2, the candidate of a major, minor, or new party in an election for the office of President shall certify to the Commission, under penalty of perjury, that such candidate will not knowingly make expenditures from his personal funds, or the personal funds of his immediate family, in connection with his campaign for election to the office of President in excess of, in the aggregate, \$50,000. For purposes of this paragraph, expenditures from personal funds made by a candidate of a major, minor, or new party for the office of Vice President shall be considered to be expenditures by the candidate of such party for the office of President.

(1) For purposes of this paragraph the term "immediate family" means a candidate's spouse, and any child, parent, grandparent, brother, half-brother, sister, or half-sister of the candidate, and the spouses of such persons.

(2) For purposes of this paragraph expenditures made by an individual after January 29, 1976, and before May 11, 1976, shall not be taken into account.

(3) Expenditures from personal funds made under this paragraph shall not count toward the expenditure limitations.

(d) The certifications in paragraphs (a)-(c) of this section shall be made no sooner than the day upon which the individual became a nominee and no later than 14 days after the nomination.

§ 141.3 Allowable contributions.

Candidates for the office of President and Vice President may accept contributions to defray the expenses specified in § 140.11(e)(1) and (2), provided that—

(a) No donations are made by an organization prohibited from contributing by Parts 114 and 115, and contributions from other persons do not exceed the limitations set forth in Part 110;

(b) The contributions shall be deposited and maintained in an account separate from that described in § 143.2, and shall not be commingled with the money paid to the candidates by the Secretary pursuant to § 143.2;

(c) Receipt of any and all of these contributions shall be reported in a report separate from, and in addition to, the report required by § 144.1;

(d) Any solicitation for these contributions must clearly state the purpose to which the contributions are to be applied; and

(e) Any excess of the contributions may not be used to retire debts remaining from the Presidential primaries.

PART 142—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS

Sec.

142.1 Major parties.

142.2 Minor parties.

142.3 Minor and new parties; post-election payments.

142.4 Use of payments.

142.5 Withdrawal by candidate.

AUTHORITY: Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 437d(a)(8)), and sec. 404(c)(13), Pub. L. 93-443, 88 Stat. 1293 (26 U.S.C. 9009(b)).

SOURCE: 41 FR 35974, Aug. 25, 1976, unless otherwise noted.

§ 142.1 Major parties.

The eligible candidates of each major party in a Presidential election shall be entitled to equal payments under § 143.2 in an amount which, in the aggregate, shall not exceed the expenditure limitations applicable to such candidates under 2 U.S.C. 441a(b)(1)(B).

§ 142.2 Minor parties.

(a) The eligible candidates of a minor party in a Presidential election shall be entitled to payments under § 143.2 equal, in the aggregate, to an amount which bears the same ratio to the amount allowed under § 142.1 for a major party as the number of popular votes received by the candidate for President of the minor party, as such candidate, in the preceding Presidential election bears to the average number of popular votes received by the candidates for President of the major parties in the preceding Presidential election.

(b) If the candidate of one or more political parties (not including a major party) for the office of President was a candidate for such office in the preceding Presidential election and received 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office, such candidate and his running mate for the office of Vice President, upon compliance with the provisions of §§ 141.1 and 141.2, shall be treated as eligible candidates entitled to payments under § 142.1 in an amount computed as provided in paragraph (a) of this section by taking into account all the popular votes received by such candidate for the office of President in the preceding Presidential election. If eligible candidates of a minor party are entitled to payments under this paragraph, such entitlement shall be reduced by the amount of the entitlement allowed under paragraph (a) of this section.

§ 142.3 Minor and new parties; post-election payments.

(a) The eligible candidates of a minor party or a new party in a Presidential election whose candidate for President in such election receives, as such candidate, 5 percent or more of

the total number of popular votes cast for the office of President in such election shall be entitled to payments under this part equal, in the aggregate, to an amount which bears the same ratio to the amount allowed under § 142.1 for a major party as the number of popular votes received by such candidate in such election bears to the average number of popular votes received in such election by the candidates for President of the major parties.

(b) In the case of eligible candidates entitled to payments under § 142.2 the amount allowable under this paragraph shall be limited to the amount, if any, by which the entitlement under the preceding sentence exceeds the amount of the entitlement under § 142.2.

§ 142.4 Use of payments.

(a) The eligible candidates of a political party shall be entitled to payments only—

(1) To defray qualified campaign expenses incurred by such eligible candidates or their authorized committees; or

(2) To repay bank loans in the case of a major party candidate, and all other loans in the case of a minor or new party candidate, the proceeds of which were used to defray such qualified campaign expenses or otherwise to restore funds (other than contributions to defray qualified campaign expenses received and expended by minor or new party candidates or committees) used to defray such qualified campaign expenses.

(b) Payments may be invested by an eligible candidate or his or her authorized committee, but any income derived from an investment, such as interest on a certificate of deposit, shall be returned to the Secretary.

§ 142.5 Withdrawal by candidate.

In any case in which an individual ceases to be a candidate as a result of the operation of the last sentence of § 140.2(c) such individual—

(a) Shall no longer be eligible to receive any payments under § 143.2, except that such individual shall be eligible to receive payments under such section to defray qualified cam-

paigned expenses incurred while actively seeking election to the office of President of the United States or to the office of Vice President of the United States in more than one State; and

(b) Shall pay to the Secretary or his delegate, as soon as practicable after the date upon which such individual ceases to be a candidate, an amount equal to the amount of payments received by such individual under § 143.2 which are used to defray qualified campaign expenses.

PART 143—CERTIFICATION BY COMMISSION

Sec.

- 143.1 Initial certification.
- 143.2 Payments from the fund.
- 143.3 Finality of certification; hearings.

AUTHORITY: Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 437d(a)(8)), and sec. 404(c)(13), Pub. L. 93-443, 88 Stat. 1293 (26 U.S.C. 9009(b)).

SOURCE: 41 FR 35975, Aug. 25, 1976, unless otherwise noted.

§ 143.1 Initial certification.

Not later than 10 days after both of the candidates of a political party for President and Vice President of the United States have met all applicable conditions for eligibility to receive payments under Part 141, the Commission shall certify to the Secretary for payment to the eligible candidates under § 143.2 payment in full of amounts to which the candidates are entitled under Part 142.

§ 143.2 Payments from the fund.

(a) Upon receipt of a certification from the Commission under § 143.1 for payment to the eligible candidates of a political party, the Secretary shall pay to Presidential and Vice-Presidential candidates out of the fund the amount certified by the Commission.

(b) Payment received by the Presidential candidate shall be deposited in a separate account maintained by his principal campaign committee. The Presidential candidate nominated by a political party may designate the national committee of that political

party as the candidate's principal campaign committee.

(c) Payment received by the Vice-Presidential candidate may be deposited in a separate account other than the Presidential account in paragraph (b) of this section as long as that account is in the same depository as that maintained by the Presidential candidate.

(d) No funds other than the payments received from the Treasury and the reimbursements described in § 140.11(c) may be deposited in the accounts described in paragraphs (b) and (c) of this section.

(e) Except as provided by this subchapter, amounts paid to any candidate shall be under control of that candidate.

§ 143.3 Finality of certification; hearings.

(a) Certifications by the Commission under § 143.1, and all determinations made by it under this subchapter shall be final and conclusive, except to the extent that they are subject to examination and audit by the Commission under Part 145 and judicial review under 26 U.S.C. 9011.

(b)(1) If the candidate disputes any determination made by the Commission under § 143.1, the candidate shall notify the Commission within 15 days of the determination in order to request a redetermination.

(2) Upon receipt of the request for a re-determination, the Commission shall afford the candidate an opportunity to be heard and to present supporting evidence.

PART 144—REPORTS AND RECORDKEEPING

Sec.

- 144.1 Separate reports.
- 144.2 Allocation of administrative expenses.

AUTHORITY: Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 437d(a)(8)), and sec. 404(c)(13), Pub. L. 93-443, 88 Stat. 1293 (26 U.S.C. 9009(b)).

§ 144.1 Separate reports.

(a) The principal campaign committee of any Presidential candidate of a

major party, the candidate himself, unless waived, and all authorized committees shall report all expenditures with respect to the general election separately from any other monthly or quarterly reports, as if the general election were the only election activity engaged in by the committees and the candidate.

(b) In addition to the requirements in paragraph (a) of this section, minor and new parties shall report the receipt of any private contributions for the general election.

[41 FR 35975, Aug. 25, 1976]

§ 144.2 Allocation of administrative expenses.

If an authorized committee (including the national committee if authorized) of the candidates of a political party for President and Vice President of the United States also incurs expenses to further the election of one or more other individuals to Federal, State, or local elective public office, expenses incurred by such committee which are not specifically to further the election of such other individual or individuals shall be considered as incurred to further the election of such candidates for President and Vice President in proportion to the number of other candidates supported. For example, if an authorized committee supports the Presidential candidate, the Vice-Presidential candidate, 5 congressional candidates, and 9 State candidates, the total number of candidates supported is 16. The amount of overhead and administrative expenses incurred by the authorized committee for the Presidential and Vice-Presidential candidates is $\frac{1}{16}$ or $\frac{1}{8}$.

[41 FR 35975, Aug. 25, 1976]

PART 145—EXAMINATIONS AND AUDITS; REPAYMENTS

Sec.

145.1 Audits, records, and investigations.

145.2 Repayments.

145.3 Notification.

AUTHORITY: Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat 481 (2

U.S.C. 437d(a)(8)), and sec. 404(c)(13), Pub. L. 93-443, 88 Stat. 1293 (26 U.S.C. 9009(b)).

SOURCE: 41 FR 35975, Aug. 25, 1976, unless otherwise noted.

§ 145.1 Audits, records, and investigations.

(a) After each Presidential election, the Commission shall conduct a thorough examination and audit of the qualified campaign expenses of the candidates of each political party for President and Vice President.

(b) In addition, the Commission may conduct other examinations and audits or investigations and require the keeping and submission of books, records, and information as it deems necessary to carry out the functions and duties imposed on it by this subchapter.

§ 145.2 Repayments.

(a) If the Commission determines that—

(1) Any portion of the payments made to the eligible candidates of a political party under § 143.2 was in excess of the aggregate payments to which candidates were entitled under Part 142;

(2) The eligible candidates of a political party and their authorized committees incurred qualified campaign expenses in excess of the aggregate payments to which the eligible candidates of a major party were entitled under Part 142;

(3) The eligible candidates of a major party or any authorized committee of such candidates accepted contributions (other than contributions to make up deficiencies in payments out of the fund on account of the application of 26 U.S.C. 9006(c) or loans from a bank) to defray qualified campaign expenses (other than those excess qualified campaign expenses with respect to which repayment is already required under paragraph (a)(2) of this section); or

(4) Any amount of any payment made to the eligible candidates of a political party under § 143.2 was used for any purpose other than—

(i) To defray qualified campaign expenses with respect to which the payment was made; or

(ii) To repay loans the proceeds of which were used, or otherwise to re-

store funds (other than contributions received by a minor or new party candidate to defray qualified campaign expenses which were received and expended) which were used, to defray qualified campaign expenses;

The Commission shall notify such candidates of the amount so used, and such candidates shall pay to the Secretary an amount equal to the amount determined under paragraphs (a)(1)-(4) of this section.

(b) Any portion of the payment under § 143.2 which remains unspent after all qualified campaign expenses have been paid shall be returned to the Secretary.

(c) No repayment shall be required from the eligible candidates of a political party under § 145.2 to the extent that any repayment, when added to other repayments required from the candidates under § 145.2, exceeds the amount of payments received by the candidates under § 143.2.

(d)(1) The candidates shall repay to the Secretary within 90 days of the notice in paragraph (a) of this section, an amount equal to the excess payments or an amount equal to the amount expended for nonqualified campaign expenditures. Upon application submitted by the candidate, the Commission may grant a 90-day extension of the repayment period.

(2) If the candidates dispute the Commission's determination that a repayment is required, they shall notify the Commission within 30 days of receipt of the Commission's notification to the candidates.

(i) The Commission, or its designee, shall conduct a hearing at a mutually agreeable time and place, at which the candidate may make a showing of where the Commission erred in its determination of repayment.

(ii) Based on the hearing, the Commission shall reaffirm or modify its initial determination, which shall constitute final and conclusive determination, and shall so notify the candidate.

§ 145.3 Notification.

No notification shall be made by the Commission under § 145.2(a) with respect to a Presidential election more than 3 years after the day of the election.

PART 146—OTHER EXPENDITURES

§ 146.1 Expenditures by political party committees.

Notwithstanding the expenditure limitation applicable to the candidates, national, State, and subordinate committees of a political party may make expenditures in connection with a Presidential general election in amounts that do not exceed those specified in § 110.7.

(Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 437d(a)(8)), and sec. 404(c)(13), Pub. L. 93-443, 88 Stat. 1293 (26 U.S.C. 9009(b)))

[41 FR 35976, Aug. 25, 1976]

**SUBCHAPTER F—PRESIDENTIAL ELECTION CAMPAIGN FUND,
FEDERAL FINANCING OF PRESIDENTIAL NOMINATING
CONVENTIONS**

**PART 9008—FEDERAL FINANCING OF
PRESIDENTIAL NOMINATING CON-
VENTIONS**

Sec.

9008.1 Scope.

9008.2 Definitions.

9008.3 Entitlement to payment from the fund.

9008.4 Adjustment of entitlement.

9008.5 Limitation on payments.

9008.6 Use of funds.

9008.7 Limitation of expenditures.

9008.8 Payment and certification procedures.

9008.9 Examination and audits.

9008.10 Repayments.

9008.11 Resolution of disputes concerning repayments.

9008.12 Registration and reports.

AUTHORITY: Sec. 406(a), Pub. L. 93-443, 88 Stat. 1294-96, as amended by sec. 303, 307(a), Pub. L. 94-283, 90 Stat. 498, 501 (26 U.S.C. 9008).

SOURCE: 44 FR 63039, Nov. 1, 1979, unless otherwise noted.

§ 9008.1 Scope.

(a) This part interprets 2 U.S.C. 437 and 26 U.S.C. 9008. Under 26 U.S.C. 9008(b), the national committees of both major and minor parties are entitled to public funds to defray expenses incurred with respect to a Presidential nominating convention. Under 26 U.S.C. 9008(d), expenditures with regard to such a convention by a national committee receiving public funds are limited to \$2,000,000, as adjusted by the Consumer Price Index. New parties are not entitled to receive any public funds to defray convention expenses.

(b) Under 2 U.S.C. 437, each committee or organization which represents a national party in making arrangements for that party's presidential nominating convention is required to file disclosure reports. This reporting obligation extends to all such committees or organizations, regardless of whether or not public funds were used or available to defray convention expenses. In addition, 2 U.S.C. 437 re-

quires reports from each committee or organization which represents a State, a political subdivision or any other group of persons in dealing with national political party officials with respect to matters involving a presidential nominating convention held in the State or subdivision. Under this provision, the host committee in the convention city is required to report contributions or expenditures with respect to a presidential nominating convention. However, unsuccessful efforts to attract a convention need not be reported by any city, committee or other organization.

§ 9008.2 Definitions.

(a) "Commission" means the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463.

(b) "Fund" means the Presidential Election Campaign Fund established by 26 U.S.C. 9006(a).

(c) "Major party" means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 25 percent or more of the total number of popular votes received by all candidates for such office.

(d) "Minor party" means, with respect to any presidential election, a political party whose candidate for the office of President in the preceding presidential election received, as the candidate of such party, 5 percent or more, but less than 25 percent, of the total number of popular votes received by all candidates for such office.

(e) "National committee" means the organization which, by virtue of the by-laws of the political party, is responsible for the day to day operation of that party at the national level. (2 U.S.C. 431(14)).

(f) "New party" means, with respect to any presidential election, a political party which is neither a major party nor a minor party.

(g) "Nominating convention" means a convention, caucus or other meeting which is held by a political party at the national level and which chooses the presidential nominee of the party through selection by delegates to that convention or through other similar means.

(h) "Secretary" means the Secretary of the Treasury of the United States.

[44 FR 63039, Nov. 1, 1979, as amended at 45 FR 21210, Apr. 1, 1980]

§ 9008.3 Entitlement to payments from the fund.

(a) *Major parties.* Subject to the provisions of 11 CFR Part 9008, the national committee of a major party shall be entitled to receive payments under 11 CFR 9008.8 with respect to any presidential nominating convention, in amounts which, in the aggregate, shall not exceed \$3 million, as adjusted by the Consumer Price Index under 11 CFR 9008.4(a).

(b) *Minor parties.* Subject to the provisions of 11 CFR Part 9008, the national committee of a minor party shall be entitled to payments under 11 CFR 9008.8 with respect to any presidential nominating convention in amounts which, in the aggregate, shall not exceed an amount which bears the same ratio to the amount which the national committee of a major party is entitled to receive under 11 CFR 9008.4 as the number of popular votes received in the preceding presidential election by that minor party's presidential candidate bears to the average number of popular votes received in the preceding presidential election by all of the major party presidential candidates.

[44 FR 63039, Nov. 1, 1979, as amended at 45 FR 15126, Mar. 7, 1980]

§ 9008.4 Adjustment of entitlement.

(a) The entitlements established by 11 CFR 9008.3 shall be adjusted on the basis of the Consumer Price Index pursuant to the provisions of 2 U.S.C. 441a(c).

(b) The entitlements established by 11 CFR 9008.3 shall be decreased by the amount of income generated by the investment of public funds under

11 CFR 9008.6(a)(5), less any tax paid on such income.

(c) The entitlements established by 11 CFR 9008.3 shall be adjusted so as not to exceed the difference between the expenditure limitations of 11 CFR 9008.7(a) and the amount of private contributions received under § 9008.8(a) by the national committee of a political party. In calculating these adjustments, amounts expended by Government agencies and municipal corporations in accordance with 11 CFR 9008.7(b); in kind contributions by businesses to the national committee or convention committee in accordance with 11 CFR 9008.7(c); expenditures by host committees in accordance with 11 CFR 9008.7(d); expenditures to participate in or attend the convention under 11 CFR 9008.7(e); and legal and accounting services rendered in accordance with 11 CFR 9008.7(f) will not be considered private contributions or expenditures counting against the limitation.

§ 9008.5 Limitation on payments.

Payments to the national committee of a major party or a minor party under 11 CFR 9008.8 from the account designated for such committee shall be limited to the amounts in such account at the time of payment.

§ 9008.6 Use of funds.

(a) *Permissible Uses.* Any payment made under 11 CFR 9008.8 shall be used only for the following purposes:

(1) Such payment may be used to defray convention expenses (including the payment of deposits) incurred by or on behalf of the national committee receiving such payments; or

(2) Such payment may be used to repay the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses; or

(3) Such payment may be used to restore funds (including advances from the national committee to the convention committee), other than contributions to the committee for the purpose of defraying convention expenses, where such funds were used to defray convention expenses.

(4) Convention expenses includes all expenses incurred by or on behalf of a

political party national committee or convention committee with respect to and for the purpose of conducting a presidential nominating convention or convention-related activities. Such expenses include, but are not limited to:

(i) Expenses for preparing, maintaining, and dismantling the physical site of the convention, including rental of the hall, platforms and seating, decorations, telephones, security, convention hall utilities, etc.;

(ii) Salaries and expenses of convention committee employees, volunteers and similar personnel, whose responsibilities involve planning, management or otherwise conducting the convention;

(iii) Salary or portion of the salary of any national committee employee for any period of time during which, as a major responsibility, that employee performs services related to the convention;

(iv) Expenses of national committee employees, volunteers or other similar personnel if those expenses were incurred in the performance of services for the convention in addition to the services normally rendered to the national committee by such personnel;

(v) Expenses for conducting meetings of or related to committees dealing with the conduct and operation of the convention, such as rules, credentials, platform, site, contests, call, arrangements and permanent organization committees, with such expenses including printing materials and rental costs for meeting space.

(vi) Expenses incurred in securing a convention city and facility;

(vii) Expenses incurred in providing a transportation system in the convention city for use by delegates and other persons attending or otherwise connected with the convention;

(viii) Expenses for entertainment activities which are part of official convention activity sponsored by the national committee, such expenses to include (but not limited to) dinners, concerts, and receptions; except that expenses for the following activities are excluded: (A) Entertainment activities sponsored by or on behalf of candidates for nomination to the office of President or Vice President, or State delegations; (B) entertainment activi-

ties sponsored by the national committee if the purpose of the activity is solely for national committee business, such as fundraising events, or selection of new national committee officers; (C) entertainment activities sponsored by persons other than the national committee; and (D) entertainment activities prohibited by law;

(ix) Expenses for printing convention programs, a journal of proceedings, agendas, tickets, badges, passes, and other similar publications;

(x) Administrative and office expenses for conducting the convention, such expenses to include stationery, office supplies, office machines, and telephone charges; but excluded from these expenses are the cost of any services supplied by the national committee at its headquarters or principal office if such services are incidental to the convention and not utilized primarily for the convention; and

(xi) Payment of the principal and interest, at a commercially reasonable rate, on loans the proceeds of which were used to defray convention expenses.

(5) Any investment of public funds or any other use of public funds to generate income is permissible only if the income so generated is used to defray convention expenses. Such income, less any tax paid on it, will be applied against the national committee's payments under 11 CFR 9008.2, or where appropriate, the Commission may determine that a repayment is required on the basis of such income.

(b) *Prohibited uses.* (1) No part of any payment made under 11 CFR 9008.8 shall be used to defray the expenses of any candidate, delegate, or alternate delegate who is participating in any presidential nominating convention except that the expenses of a person participating in the convention as official personnel of the national party may be defrayed with public funds even though that person is simultaneously participating as delegate or candidate to the convention. This part shall not prohibit candidates, delegates or alternate delegates who are participating in a presidential nominating convention from attending official party convention activities including but not limited to dinners, concerts

and receptions, where such activities are paid for with public funds.

(2) Public funds shall not be used to defray any expense the incurring or payment of which violates any law of the United States or any law of the State in which such expense is incurred or paid, or any regulation prescribed under federal or State laws.

(3) Public funds shall not be used to pay civil or criminal penalties required to be paid pursuant to the Act (as defined at 2 U.S.C. 431(19)). Any amounts received or expended by the national committee or convention committee of a political party to pay such penalties shall not be considered contributions or expenditures, except that such amounts shall be reported in accordance with 11 CFR Part 104 and shall be subject to the prohibitions of 11 CFR 110.4 and 11 CFR Parts 114 and 115.

[44 FR 63039, Nov. 1, 1979, as amended at 45 FR 21210, Apr. 1, 1980]

§ 9008.7 Limitation of expenditures.

(a) *National party limitations*—(1) *Major parties.* Except as provided by 11 CFR 9008.7(a)(3), the national committee of a major party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which such committee is entitled under 11 CFR 9008.3, and 9008.4.

(2) *Minor parties.* Except as provided by 11 CFR 9008.7(a)(3), the national committee of a minor party may not incur convention expenses with respect to a Presidential nominating convention which, in the aggregate, exceed the amount to which the national committee of a major party is entitled under 11 CFR 9008.3 and 9008.4.

(3) *Authorization to exceed limitation.* The Commission may authorize the national committee of a major party or minor party to make expenditures for convention expenses, which expenditures exceed the limitation established by 11 CFR 9008.7(a)(1) or (2). This authorization shall be based upon a determination by the Commission that, due to extraordinary and unforeseen circumstances, the expenditures are necessary to assure the ef-

fective operation of the Presidential nominating convention by the committee. Examples of "extraordinary and unforeseen circumstances" include, but are not limited to, a natural disaster or a catastrophic occurrence at the convention site. In no case, however, will such authorization entitle a national committee to receive public funds greater than the entitlement specified under 11 CFR 9008.3 and 9008.4. All private contributions received to defray expenditures under 11 CFR 9008.7(a)(3) shall be subject to all reporting requirements, limitations (except for limitations imposed by 11 CFR 9008.7(a)(1) and (2)) and prohibitions of the Act (as defined at 2 U.S.C. 431(19)).

(b) *Expenditures by Government Agencies and Municipal Corporations.*

(1) Federal, State or local government agencies and municipal corporations may make expenditures for facilities or services with respect to a presidential nominating convention. Such expenditures will not be considered contributions to the national committee, expenditures counting against the national committee's limitation, or illegal corporate contributions by the agency or municipal corporation. In providing facilities or services to the national committee, the agency or municipal corporation may not obtain facilities, services or goods from other persons at less than fair market value, except that the agency or municipal corporation may accept reduced or discounted rates, provided that such reductions were made in the ordinary course of business.

(2) Examples of expenditures which government agencies and municipal corporations may make under 11 CFR 9008.7(b) include but are not limited to:

(i) Granting the national committee use of an auditorium or convention center; construction and convention related services therein such as: Construction of podiums; press tables; false floors; camera platforms; additional seating; lighting; electrical, air conditioning and loudspeaker systems; offices; office equipment; and decorations;

(ii) Various local transportation services, including the provision of buses and automobiles;

(iii) Law enforcement services necessary to assure orderly conventions;

(iv) Use of convention bureau personnel to provide central housing and reservation services;

(v) Hotel rooms at no charge or a reduced rate on the basis of the number of rooms actually booked for the convention;

(vi) Accommodations and hospitality for committees of the parties responsible for choosing the sites of the conventions, and

(vii) Other similar convention related facilities and services.

(c) *In-Kind Contributions by Businesses*—(1) *Discounts by retail businesses.* (i) Retail businesses may sell, lease or rent their products, materials, services or space to the national committee with respect to a presidential nominating convention at reduced or discounted rates: *Provided*, That such reductions or discounts are in the ordinary course of business. For purposes of this section, a bank shall not be considered a retail business.

(ii) Discounts or reductions in accordance with 11 CFR 9008.7(c)(i) will not count toward the national party expenditure limitation under 11 CFR 9008.7(a).

(2) *Samples and promotional material.* (i) Local businesses may sell, at nominal cost, or provide at no charge, any of their products or services in the form of samples, discount coupons, promotional items, such as maps, pens, or pencils, with the business' name imprinted on the item, to those attending the convention functions. Such samples, coupons and promotional items shall be: Of nominal value; provided solely for bona fide advertising or promotional purposes; and provided in the ordinary course of business.

(ii) The samples and promotional material may be distributed by or with the help of persons employed by the business, or employed by or volunteering for the national party or a citizen host committee.

(iii) For purposes of 11 CFR 9008.7(c)(2), a local bank shall be considered a local business.

(iv) For purposes of 11 CFR 9008.7(c)(2), any business within the Standard Metropolitan Statistical Area (SMSA) of the convention city shall be considered a local business. There shall be a rebuttable presumption that any business located outside the SMSA is not a local business. This presumption may be rebutted by a showing that the volume of business in an area outside the SMSA would be directly affected by the presence of the convention.

(v) The value of the benefits provided under 11 CFR 9008.7(c)(2) will not count toward the national party's expenditure limitation under 11 CFR 9008.7(a).

(d) *Contributions to and Expenditures by Host Committees*—(1) *Host Committee Organization.* A host committee includes any local organization, such as a local civic association, business league, chamber of commerce, real estate board, board of trade, or convention bureau: Which is not organized for profit; whose net earnings do not inure to the benefit of any private shareholder or individual; and whose principal objective is the encouragement of commerce in the convention city, as well as the projection of favorable image of the city to convention attendees. A host committee must register in accordance with 11 CFR 9008.12(a)(1)(i).

(2) *Contributions and Expenditures to Promote Convention City and Its Commerce.* (i) Local businesses, excluding banks, local municipal corporations and government agencies, local labor organizations, and individuals may donate funds or make in kind contributions to a host committee for the purposes set forth at 11 CFR 9008.7(d)(2)(iii).

(ii) The donor may restrict the use of funds by earmarking them for a particular project, by having the donation acknowledged (e.g. courtesy of XYZ Company) or by placing any other similar restriction on the use of the funds.

(iii) A host committee shall use funds donated under 11 CFR 9008.7(d)(2)(i) for only the following purposes:

(A) To defray those expenses incurred for the purpose of promoting

the suitability of the city as a convention site;

(B) To defray those expenses incurred for welcoming the convention attendees to the city, such as expenses for information booths, receptions, and tours;

(C) To defray those expenses incurred in facilitating commerce, such as providing the convention and attendees with shopping and entertainment guides and distributing the samples and promotional material specified in § 9008.7(c)(2);

(D) To defray the administrative expenses incurred by the host committee, such as salaries, rent, travel, and liability insurance;

(iv) For purposes of 11 CFR 9008.7(d)(2), any business, municipal corporation, agency or labor organization within the Standard Metropolitan Statistical Area (SMSA) of the convention city shall be considered local. There shall be a rebuttable presumption that any such entity located outside the SMSA is not local. This presumption may be rebutted by a showing that the volume of business in an area lying outside the SMSA would be directly affected by the presence of the convention.

(3) *Contributions and Expenditures to Defray Convention Expenses.* (i) Local retail businesses, excluding banks, as well as local municipal corporations and government agencies may donate funds to a host committee for use by that committee in defraying convention expenses. Examples of expenditures which the host committee may make for convention expenses include but are not limited to those set forth at 11 CFR 9008.7(b)(2). No other corporate funds may be used to pay such expenses.

(ii) The amount of the donation under 11 CFR 9008.7(d)(3)(i) must be proportionate to the commercial return reasonably expected by the business, corporation or agency during the life of the convention.

(iii) The host committee must maintain funds donated under 11 CFR 9008.7(d)(3)(i) in a separate account.

(iv) For purposes of 11 CFR 9008.7(d)(3), any determination as to whether or not a business, labor organization, municipal corporation or

agency is local shall be made in accordance with 11 CFR 9008.7(d)(2)(iv).

(v) For purposes of 11 CFR 9008.7(d)(3)(ii), the life of the convention shall begin seven days before the opening of the convention and end three days after the close of the convention.

(4) *Expenditure limitation.* Funds used by the host committee in accordance with §§ 9008.7(d)(2) and 9008.7(d)(3) shall not be considered expenditures and shall not count against the expenditure limitation under 11 CFR 9008.7(a).

(e) *Expenditures to Participate in or Attend Convention.* Expenditures made by presidential candidates from campaign accounts, by delegates, or by any other individual from his or her personal funds for the purpose of attending or participating in the convention or convention related activities, or by State or local committees of a political party on behalf of such delegates of individuals shall not be considered expenditures made by or on behalf of the national party, and shall therefore not be subject to the overall expenditure limitations of 11 CFR 9008.7.

(f) *Legal and Accounting Services.*

(1) The payment of compensation to an individual by his or her regular employer for legal and accounting services rendered to or on behalf of the national committee shall not be considered an expenditure and shall not count against the expenditure limitation under 11 CFR 9008.7.

(2) The payment by the national committee of compensation to any individual for legal and accounting services rendered to or on behalf of the national committee shall be considered an expenditure and shall count against the expenditure limitation under 11 CFR 9008.7, whether paid from public funds or from private contributions.

[44 FR 63039, Nov. 1, 1979, as amended at 45 FR 21210, Apr. 1, 1980]

§ 9008.8 Payment and certification procedures.

(a) *Optional payments; private contributions.* (1) The national committee of a major or minor party may elect to receive all, part, or none of the

amounts to which it is entitled under 11 CFR 9008.3 and 9008.4

(2) The national committee of a major party electing to receive all or part of the amounts to which it is entitled under 11 CFR 9008.3 and 9008.4 may receive and use private contributions, so long as the sum of the contributions which are used to defray convention expenses and the amount of entitlements elected to be received does not exceed the total expenditure limitation under 11 CFR 9008.7.

(3) A minor party electing to receive all or part of the amounts to which it is entitled under 11 CFR 9008.3 and 9008.4 may receive and use private contributions for the nominating convention, so long as the sum of the contributions which are used to defray convention expenses and the amount of entitlements elected to be received does not exceed the total expenditure limitation under 11 CFR 9008.7.

(4) All private contributions received by the national committee to defray convention expenses shall be subject to all reporting requirements, limitations and prohibitions of the Act (as defined at 2 U.S.C. 431(19)).

(b) *Eligibility requirements.* (1) To qualify for entitlement under 11 CFR 9008.3 and 9008.4, the national committee of a major or minor political party shall establish a convention committee pursuant to 11 CFR 9008.8(b)(2) and shall file an application statement pursuant to 11 CFR 9008.8(b)(3). The convention committee, in conjunction with the national committee, shall file an agreement to comply with the conditions set forth at 11 CFR 9008.8(b)(4).

(2) The national committee shall establish a convention committee which shall be responsible for conducting the day to day arrangements and operations of that party's presidential nominating convention. The convention committee shall register with the Commission as a political committee pursuant to 11 CFR Part 102. The convention committee shall receive all public funds to which the national committee is entitled under 11 CFR 9008.3 and 9008.4 and all private contributions made for the purpose of defraying convention expenses. All expenditures on behalf of the national

committee for convention expenses shall be made by the convention committee.

(3) The national committee shall file with the Commission an application statement including the information set forth below and any changes in such information must be reported to the Commission within 10 days following the change:

(i) The name and address of the national committee;

(ii) The name and address of the convention committee and of the officers of that committee;

(iii) The name of the city where the convention is to be held and the approximate dates;

(iv) The name, address, and position of the convention committee officers designated by the national committee to sign requests for payments; and

(v) The name and address of the commercial bank to be used as the depository of the convention committee;

(4) The convention committee shall, by letter to the Commission, agree to the conditions set forth below and such agreement shall also be binding upon the national committee.

(i) The convention committee shall agree to comply with the applicable expenditure limitation set forth at 11 CFR 9008.7.

(ii) The convention committee shall agree to file convention reports as required under 2 U.S.C. 437 and 11 CFR 9008.12.

(iii) The convention committee shall agree to establish one or more accounts into which all public funds received under 11 CFR 9008.3 and 9008.4 must be deposited and from which all expenditures for convention expenses must be made, provided that such account(s) shall contain only public funds.

(iv) The convention committee shall agree to establish one or more accounts into which all private contributions received to defray convention expenses shall be deposited and from which all expenditures to defray such expense shall be made: *Provided*, That such accounts contain private contributions solely.

(v) The convention committee shall agree to obtain and furnish to the Commission at its request evidence of

convention expenses made by the committee. The convention committee has the burden of proving that expenditures by the convention committee were for purposes of defraying convention expenses as set forth at 11 CFR 9008.6(a)(4). The convention committee must include as part of the evidence of convention expenses the following documentation:

(A) For expenditures exceeding \$100 or for expenditures of less than \$100 to a payee who receives expenditures aggregating more than \$100 per year, either:

(1) A receipted bill which is from the payee and states the particulars of the expenditure; or

(2) If such a receipted bill is not available, the following documents, which must state the particulars of the expenditure:

(a) A cancelled check negotiated by the payee; plus

(b) One of the following documents generated by the payee—a bill, invoice, voucher or contemporaneous memorandum;

(c) Where the documents specified at paragraph (b) are not available, a voucher or contemporaneous memorandum from the committee; or

(3) If neither a receipted bill nor the documentation specified in paragraph (c) is available, a cancelled check stating the particulars of the expenditure.

(4) Where the supporting documentation required above is not available, the committee may present a cancelled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(a) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented, such as where the expenditure is one of a number of documented expenditures relating to the operation of a committee office;

(b) Evidence that the expenditure is covered by a preestablished written committee policy, such as a per diem policy.

(B) For all other expenditures:

(1) If from the petty cash fund, a record disclosing the identification of

the payee, the amount and the date of the expenditure; or

(2) A cancelled check which has been negotiated by the payee and states the identification of the payee, and the amount and date of the expenditure.

(C) For purposes of 11 CFR 9008.8(b)(4)(v), "payee" means the person who provides the goods or services to the committee in return for the expenditure except for an advance of \$2,000 or less for travel and/or subsistence to an individual who will be the recipient of the goods or services purchased.

(D) For purposes of 11 CFR 9008.8(b)(4)(v), the term "particulars" means the identification of the payee, the date and amount of the expenditure, and a description of the goods or services purchased.

(E) Upon the request of the Commission the convention committee shall supply an explanation of the connection between the expenditure and the convention.

(vi) The convention committee shall agree to furnish to the Commission any books, records, including bank records for all accounts, and a copy of any contract which the national committee enters into with a host committee or convention city, as well as other information that the Commission may request.

(vii) The convention committee shall agree to permit an audit and examination pursuant to 26 U.S.C. 9008(g) and 11 CFR 9008.9 of all convention expenses; to facilitate such audit by making available office space, records, and such personnel as is necessary to the conduct of the audit and examination; and to pay any amounts required to be paid under 26 U.S.C. 9008(h) and 11 CFR 9008.10.

(viii) The convention committee shall pay any civil penalties included in a conciliation agreement with or imposed under 2 U.S.C. 437g.

(5) The application statement and agreement may be filed anytime after June 1 of the calendar year preceding the year in which a Presidential nominating convention of a political party is held, but no later than first day of the convention.

(c) *Increase in certified amount.* If the application statement is filed before it is possible to determine the cost of living increase for the year preceding the convention, that amount determined by the increase shall be paid to the national committee promptly after the increase has been determined.

(d) *Availability of payments.* The national committee of a major or minor party may receive payments under 11 CFR 9008.8 beginning on July 1 of the calendar year immediately preceding the calendar in which a Presidential nominating convention of the political party involved is held.

(e) *Certification of payment.* After a national committee has properly submitted its application statement and agreement as required under 11 CFR 9008.8(b), and upon receipt of a written request, payment of the committee's entitlement shall be certified by the Commission to the Secretary of the Treasury.

[44 FR 63039, Nov. 1, 1979, as amended at 44 FR 77137, Dec. 31, 1979; 45 FR 21209, Apr. 1, 1980]

§ 9008.9 Examination and audits.

The Commission shall conduct an examination and audit of the convention committee no later than December 31 of the calendar year of the convention and may at any time conduct other examinations and audits as it deems necessary. The Commission shall also conduct an examination and audit of each host committee registered under 11 CFR 9008.12(a)(1).

§ 9008.10 Repayments.

(a) *Excess Payments.* If the Commission determines that any portion of the payments to the national committee or convention committee under 11 CFR 9008.8(b) was in excess of the aggregate payments to which the national committee was entitled under 11 CFR 9008.3 and 9008.4, it shall so notify the national committee, and the national committee shall pay to the Secretary an amount equal to such portion.

(b) *Excessive Expenditures.* If the Commission determines that the national committee or convention committee incurred convention expenses

in excess of the limitations under 11 CFR 9008.7(a), it shall notify such national committee of the amount of such excessive expenditures, and such national committee shall pay to the Secretary an amount equal to the amount specified.

(c) *Excessive Contributions.* If the Commission determines that the national committee accepted contributions to defray convention expenses which, when added to the amount of payments received, exceeds the expenditure limitation of such party, it shall notify such national committee of the amount of the contributions so accepted, and such national committee shall pay to the Secretary an amount equal to the amount specified.

(d) *Improper Usage or Documentation.* If the Commission determines that any amount of any payment to the national committee or convention committee under 11 CFR 9008.8(b) was used for any purposes other than the purposes authorized at 11 CFR 9008.6 or was not documented in accordance with 11 CFR 9008.8(b)(4)(v), it shall notify the national committee of the amount improperly used or documented and such national committee shall pay to the Secretary an amount equal to the amount specified.

(e) *Unspent Funds.* (1) If any portion of the payment under 11 CFR 9008.3 remains unspent after all convention expenses have been paid, that portion shall be returned to the Secretary of the Treasury.

(2) The national committee or convention committee shall make an interim repayment of unspent funds based on the financial position of the committee as of the end of the sixth month following the last day of the convention, allowing for a reasonable amount as determined by the Commission to be withheld for unanticipated contingencies. If, after written request by the national committee or convention committee, the Commission determines, upon review of evidence presented by either committee, that amounts previously refunded are needed to defray convention expenses, the Commission shall certify such amount for payment.

(3) All unspent funds shall be repaid to the U.S. Treasury no later than 24

months after the last day of the convention, unless the national committee has been granted an extension of time. The Commission may grant any extension of time it deems appropriate upon request of the national committee.

(f) *Repayment Limit.* No repayment shall be required from the national committee or the convention committee under 11 CFR 9008.10, which, when added to other repayments required from such national committee under this section, exceeds the amount of payments received by such national committee under §§ 9008.3 and 9008.4.

(g) *Notice.* (1) If the Commission determines that repayment is required, it shall give written notification to committee of the amounts required to be paid and the reasons therefor. No notification shall be made by the Commission under this section more than 3 years after the last day of the Presidential nominating convention.

(2) The national committee shall repay to the Secretary, within 90 days of the notice, the amount of the repayment. Upon application submitted by the national committee or convention committee, the Commission may grant a 90-day extension of the repayment period.

(3) All repayments shall be made payable to the U.S. Treasury, Bureau of Government Finance Operations and shall be deposited in the general fund of the Treasury.

[44 FR 63039, Nov. 1, 1979, as amended at 44 FR 77137, Dec. 31, 1979]

§ 9008.11 Resolution of disputes concerning repayments.

(a) If the convention committee or national committee disputes the Commission's determination under 11 CFR 9008.10 that a repayment is required, it shall submit to the Commission in writing within 30 days of receipt of the Commission's notice legal or factual materials to demonstrate that a repayment is not required.

(b) The Commission will consider any written legal or factual material submitted by either committee in making its final determination. Such materials may be submitted by counsel if the committee so desires.

(c) A final determination by the Commission that a national committee must repay a certain amount shall be accompanied by a written statement of reasons for the Commission's actions. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

(d) The national committee shall repay to the Secretary any amount required to be repaid within ten days of receipt of the Commission's notification of final determination.

(e) Any final repayment determination made by the Commission shall be subject to review by the U.S. Court of Appeals for the District of Columbia upon petition filed in such court by any interested person. Any petition filed pursuant to this section shall be filed within 30 days after the determination by the Commission for which review is sought.

§ 9008.12 Registration and reports.

(a) Registration and reports by committees, including host committees, other organizations or groups which represent a municipality, State, or other local government agency.

(1) Registration. (i) Each committee, including a host committee, other organization or group of persons which represents a State, municipality, local government agency or other political subdivision in dealing with officials of a national political party with respect to matters involving a presidential nominating convention shall register with the Commission on the Convention Registration Form within 10 days of the date on which such party chooses the convention city. The following information shall be required of the registrant: the name and address; the name of its officers; and a list of the activities which the registering entity plans to undertake in connection with the convention.

(ii) Any such committee organization or group organization which is unsuccessful in its efforts to attract the convention to a city need not register under 11 CFR 9008.12(a)(1)(i).

(2) Post-Convention and quarterly reports; Content and Time of Filing. (i) Each committee, organization or

group required to register under 11 CFR 9008.12(a)(1)(i) shall file a post convention report with the Commission FEC Form 4. This report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. This report shall disclose all receipts and disbursements, including in-kind contributions, made with respect to a presidential nominating convention. This report shall be complete as of 15 days prior to the date on which it must be filed.

(i) If such committee, organization or group has receipts or makes disbursements after the completion date of the post convention report, it shall begin to file quarterly reports no later than 10 days after the end of the following calendar quarter. This report shall disclose all transactions completed as of the close of that calendar quarter. Quarterly reports shall be filed thereafter until the committee, organization or group ceases all activity which must be reported under 11 CFR 9008.12(a)(2).

(ii) Such committee, organization or group shall file a final report with the Commission not later than 10 days after it ceases activity which must be reported under 11 CFR 9008.12(a)(2), unless such status is reflected in either the post convention report or a quarterly report.

(b) Registration and reports by political parties—(1) Registration. (i) Each convention committee established by a national committee under 11 CFR 9008.8(b)(2) shall register with the Commission on FEC Form 1 as a political committee pursuant to 11 CFR Part 102 and shall file reports with the Commission as required at § 9008.12(b)(2).

(ii) Each committee or other organization, including a national committee, which represents a national major, minor, or new political party in making arrangements for that party's convention held to nominate a candidate for the office of President or Vice President shall register on FEC Form 1 with the Commission as a political committee pursuant to 11 CFR Part 102, except that this registration requirement shall not apply to a conven-

tion committee which must register under 11 CFR 9008.12(b)(1)(i).

(iii) A State party committee or a subordinate committee of a State party committee which only assists delegates and alternates to the convention from that State with travel expenses and arrangements, or which sponsors caucuses, receptions, and similar activities at the convention site, need not register or report under 11 CFR 9008.12(b).

(2) Quarterly and Post convention reports; Content and Time of Filing.

(i) Each committee or other organization required to register under 11 CFR 9008.12(b)(1) shall file reports in accordance with 11 CFR 9008.12(b)(2)(ii).

(ii) The first quarterly report shall be filed on FEC Form 4 no later than 10 days after the end of the calendar quarter in which a committee either receives payment under 11 CFR 9008.8 or for parties which do not accept public funds, no later than 10 days after the calendar quarter in which the committee receives contributions or makes expenditures to defray convention expenses. Quarterly reports shall be completed as of the close of the quarter and shall continue to be filed until such committee ceases activity in connection with that party's presidential nominating convention. However, any quarterly report due within 20 days before or after the convention shall be suspended and the committee shall in lieu of such quarterly report file a post convention report. The post convention report shall be filed on the earlier of: 60 days following the last day the convention is officially in session; or 20 days prior to the presidential general election. The post convention report shall be complete as of 15 days prior to the date on which the report must be filed.

(3) A convention committee which has received payments under 11 CFR 9008.8 shall cease activity no later than 24 months after the convention, unless the committee has been granted an extension of time. The Commission may grant any extension of time it deems appropriate upon request of the committee at least 30 days prior to the close of the 24 month period.

SUBCHAPTER G—PRESIDENTIAL ELECTION CAMPAIGN FUND, PRESIDENTIAL PRIMARY MATCHING FUND

PART 9031—SCOPE

§ 9031.1 Scope.

The restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431-455 of Title 2 and regulations prescribed thereunder. Unless expressly stated to the contrary, this subchapter does not affect the restrictions, obligations and liabilities imposed by sections 431-455 of Title 2 and regulations prescribed thereunder.

(Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1297, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 437d(a)(8), and sec. 408(c), Pub. L. 93-443, 88 Stat. 1297 (26 U.S.C. 9039(b)))

[44 FR 20341, Apr. 4, 1979]

PART 9032—DEFINITIONS

Sec.

- 9032.1 Authorized Committee.
- 9032.2 Candidate.
- 9032.3 Commission.
- 9032.4 Contribution.
- 9032.5 Matching payment account.
- 9032.6 Matching payment period.
- 9032.7 Primary election.
- 9032.8 Political committee.
- 9032.9 Qualified campaign expense.
- 9032.10 State.

AUTHORITY: Sec. 408(c), Pub. L. 93-443, 88 Stat. 1297, as amended by sec. 115(c)(2), Pub. L. 94-283, 90 Stat. 495, 500 (26 U.S.C. 9032).

SOURCE: 44 FR 20341, Apr. 4, 1979, unless otherwise noted.

§ 9032.1 Authorized Committee.

(a) "Authorized committee" means any political committee which is authorized by a candidate to solicit or receive contributions or to make expenditures on behalf of the candidate. This authorization shall be in writing and addressed to the authorized political committee. A copy of the authorization shall be filed by the candidate with the Commission. A withdrawal of authorization shall also be in writing

and shall be addressed and filed in the same manner as the authorization.

(b) An expenditure by an authorized committee on behalf of the candidate who authorized the committee cannot qualify as an independent expenditure.

§ 9032.2 Candidate.

"Candidate" means an individual who seeks nomination for election to the office of President of the United States. An individual is considered to seek nomination for election if he or she—

(a) Takes the action necessary under the law of a State to qualify for a caucus, convention, primary election or run off election;

(b) Receives contributions or incurs qualified campaign expenses;

(c) Gives consent to any other person to receive contributions or to incur qualified campaign expenses on his or her behalf; or

(d) Receives written notification from the Commission that any other person is receiving contributions or making expenditures on the individual's behalf and fails to disavow that activity by letter to the Commission within 30 days of notification.

§ 9032.3 Commission.

"Commission" means the Federal Election Commission, 1325 "K" Street, Northwest, Washington, D.C. 20463.

§ 9032.4 Contribution.

For purposes of Subchapter C, "contribution" has the same meaning given the term under 2 U.S.C. 431(e) and 11 CFR 100.7, except as provided at 11 CFR 9034.4(e).

[44 FR 20341, Apr. 4, 1979, as amended at 45 FR 21210, Apr. 1, 1980]

§ 9032.5 Matching payment account.

"Matching payment account" means the Presidential Primary Matching Payment Account established by the

Secretary of the Treasury under 26 U.S.C. 9037(a).

§ 9032.6 Matching payment period.

“Matching payment period” means the period beginning January 1 of the year in which a Presidential general election is held and ending on one of the following dates:

(a) For a candidate seeking the nomination of a party which nominates its Presidential candidate at a national convention, the date on which the party nominates its candidate.

(b) For a candidate seeking the nomination of a party which does not make its nomination at a national convention, the earlier of—

(1) The date the party nominates its Presidential candidate, or

(2) The last day of the last national convention held by a major party in the calendar year.

§ 9032.7 Primary election.

“Primary election” means an election, including a runoff election, or a nominating convention or a caucus held by a political party—

(a) For the selection of delegates to a national nominating convention of a political party;

(b) For the expression of a preference for the nomination of Presidential candidates;

(c) For the purposes stated in both paragraphs (a) and (b) of this section; or

(d) To nominate a Presidential candidate.

§ 9032.8 Political committee.

“Political committee” means any committee, club, association, organization or other group of persons (whether or not incorporated) which accepts contributions or incurs qualified campaign expenses for the purposes of influencing, or attempting to influence, the nomination of any individual for election to the office of President of the United States.

§ 9032.9 Qualified campaign expense.

(a) “Qualified campaign expense” means a purchase, payment, distribution, loan, advance, deposit, or gift of money or anything of value—

(1) Incurred by a candidate or his or her authorized committees from the date the individual becomes a candidate through the last day of the candidate’s eligibility as determined under 11 CFR 9033.4;

(2) Made in connection with his or her campaign for nomination; and

(3) Neither the incurrence nor payment of which constitutes a violation of any law of the United States or of any law of any State in which the expense is incurred or paid, or of any regulation prescribed under such law of the United States or of any State, except that any State law which has been preempted by the Federal Election Campaign Act of 1971, as amended shall not be considered a State law for purposes of this subchapter.

(b) An expenditure is made on behalf of a candidate, including a Vice Presidential candidate, if it is made by—

(1) An authorized committee or any other agent of the candidate for purposes of making an expenditure

(2) Any person authorized or requested by the candidate, an authorized committee of the candidate, or an agent of the candidate to make the expenditure; or

(3) A committee which has been requested by the candidate, by an authorized committee of the candidate, or by an agent of the candidate to make the expenditure, even though such committee is not authorized in writing.

[44 FR 20341, Apr. 4, 1979, as amended at 44 FR 63757, Nov. 15, 1979]

§ 9032.10 State.

“State” means each State of the United States, Puerto Rico, the Canal Zone, the Virgin Islands, the District of Columbia, and Guam.

PART 9033—ELIGIBILITY

Sec.

- 9033.1 Candidate agreements.
- 9033.2 Candidate certifications; threshold amounts.
- 9033.3 Expenditure limitation certification.
- 9033.4 Matching payment threshold requirements.
- 9033.5 Ineligibility dates defined.
- 9033.6 Determination of inactive candidacy.

- Sec.
 9033.7 Determination of active candidacy.
 9033.8 Reestablishment of eligibility.
 9033.9 Suspension of payments.

AUTHORITY: Sec. 408(c), Pub. L. 93-443, 88 Stat. 1297, as amended by sec. 305(c) and 306(b)(2), Pub. L. 94-283, 90 Stat. 499-500 (26 U.S.C. 9033).

SOURCE: 44 FR 20342, Apr. 4, 1979, unless otherwise noted.

§ 9033.1 Candidate agreements.

(a) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall agree in a letter signed by the candidate to the Commission that the candidate and his or her principal campaign committee will comply with the conditions set forth below.

(1) The candidate has the burden of proving that expenditures by the candidate, the principal campaign committee or any authorized committee are qualified campaign expenses. The candidate shall agree to obtain and furnish to the Commission at its request any evidence regarding qualified campaign expenses by the candidate, the principal campaign committee and all authorized committees. The candidate must include as part of this evidence the following documentation:

(i) For expenditures exceeding \$100 or for expenditures of less than \$100 to a payee who receives expenditures aggregating more than \$100 per year, either:

(A) A receipted bill which is from the payee and states the particulars of the expenditure; or

(B) If such a receipted bill is not available, the following documents, which must state the particulars of the expenditure:

(1) A cancelled check negotiated by the payee; plus

(2) One of the following documents generated by the payee—a bill, invoice, voucher or contemporaneous memorandum;

(3) Where the documents specified in Subsection (2) (11 CFR 9033.1(a)(1)(i)(B)(2)) are not available, a voucher or contemporaneous memorandum from the candidate or the committee; or

(C) If neither a receipted bill nor the documentation specified in subsection

(ii) is available, a cancelled check stating the particulars of the expenditure.

(D) Where the supporting documentation required above (11 CFR 9033.1(a)(1)(i) (A), (B), (C)) is not available, the candidate or committee may present a cancelled check and collateral evidence to document the qualified campaign expense. Such collateral evidence may include but is not limited to:

(1) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented, such as where the expenditure is one of a number of documented expenditures relating to a campaign mailing or to the operation of a campaign office;

(2) Evidence that the expenditure is covered by a preestablished written campaign committee policy, such as a per diem policy; etc.

(ii) For all other expenditures:

(A) If from the petty cash fund, a record disclosing the identification of the payee, the amount and the date of the expenditure; or

(B) A cancelled check which has been negotiated by the payee and states the identification of the payee, and the amount and date of the expenditure.

(C) For purposes of subparagraph (1), (11 CFR 9033.1(a)(1)) "payee" means the person who provides the goods or services to the candidate or committee in return for the expenditure except for an advance of \$500 or less for travel and/or subsistence to an individual who will be the recipient of the goods or services purchased.

(D) For purposes of subparagraph (1) (11 CFR 9033.1(a)(1)), the term "particulars" means the identification of the payee, the date and amount of the expenditure, and a description of the goods or services purchased.

(2) Upon the request of the Commission the candidate shall supply an explanation of the connection between the expenditure and the campaign;

(3) The candidate shall keep and furnish to the Commission any books, records, including bank records for all accounts and supporting documentation for matching fund submissions, or other information that the Commission may request, as well as copies of

books and records maintained by all authorized committees of the candidate.

(4) For purposes of audit and examination pursuant to Part 9038, of this chapter, and at the Commission's request, the candidate shall gather the books and records specified in subsection 3 in one centralized location.

(5) The candidate shall permit an audit and examination pursuant to Part 9038 of this chapter of all campaign expenditures, including those made by all authorized committees; facilitate such audit by making available office space, records, and such personnel as is necessary to the conduct of the audit and examination; and pay any amounts required to be paid under Part 9038 of this chapter.

(6) The candidate shall submit the name and mailing address of the person who is entitled to receive matching fund payments on behalf of the candidate and the name and address of the national or State bank designated by the candidate as a campaign depository as required at 11 CFR Part 103 of this chapter and § 9037.3.

(7) The candidate shall prepare matching fund submissions in accordance with Federal Election Commission Guideline for Presentation in Good Order.

(8) The candidate shall comply with applicable requirements of Sections 431-434; 437b Title 2, U.S. Code and Parts 100-108 of these Regulations.

(9) The candidate shall pay any civil penalties included in a conciliation agreement with or imposed under 2 U.S.C. 437g against the candidate, the principal campaign committee or any authorized committee of the candidate.

(b) The candidate may submit the letter containing the agreements required under § 9033.1 at any time after January 1 of the year immediately preceding the Presidential election year.

(c) Payments may be suspended to a candidate if he or she knowingly, willfully and substantially fails to comply with the disclosure requirements of 2 U.S.C. 434 and 11 CFR Part 104 as specified in the candidate agreement. Any determination to suspend pay-

ments shall be made in accordance with the procedure set forth at § 9033.9.

[44 FR 20342, Apr. 4, 1979, as amended at 44 FR 63758, Nov. 5, 1979; 45 FR 21210, Apr. 1, 1980]

§ 9033.2 Candidate certifications; threshold amount.

A candidate seeking to become eligible to receive Presidential primary matching fund payments shall make the following certifications to the Commission in a written statement signed by the candidate:

(a) The candidate shall certify that he or she is seeking nomination by a political party to the office of President in more than one State. For purposes of this section in order for a candidate to be deemed to be seeking nomination by a political party to the office of President, the party whose nomination the candidate seeks must have a procedure for holding a primary election, as defined in 11 CFR 9032.7, for nomination to that office.

(1) For purposes of this section (11 CFR 9033.2) the term political party means an association, committee or organization which nominates an individual for election to the office of President. The fact that an association, committee or organization qualifies as a political party under this section does not affect the party's status as a national political party for purposes of 2 U.S.C. 441a(a)(1)(B) and 441a(a)(2)(B).

(b) The candidate and his or her authorized committee(s) shall certify that they have not incurred and will not incur expenditures in connection with the candidate's campaign for nomination, which expenditures are in excess of the limitations under 11 CFR Part 9035.

(c)(1)(i) The candidate and his or her authorized committees shall certify that they have received matchable contributions which, in the aggregate, exceed \$5,000 in contributions from individuals who are residents of each of at least 20 States, and which with respect to any individual do not exceed \$250.

(ii) In order to be considered a resident for threshold purposes, the individual need not meet the qualifica-

tions of voting, residence, but a candidate may not submit contributions from one individual as a resident of more than one State.

(2) For each State in which the candidate certifies he or she has met this requirement, the candidate shall—

(i) Submit an alphabetical list of contributors showing: each contributor's full name and residential address; the date of the deposit into the designated campaign depository; the dollar amount of each contribution submitted for matching purposes; the matchable portion thereof; the total amount of all matchable contributions submitted; an indication of which contributions were received as a result of entertainment activity; and for individuals whose aggregate contributions exceed \$100 per calendar year, the occupation and principal place of business;

(ii) Submit a photocopy of each check or other written instrument for each contribution which the candidate submits to establish eligibility for matching funds. The photocopies shall be segregated alphabetically by State, and shall be accompanied by and referenced to copies of the relevant deposit slip.

(3) Contributions which are not submitted in compliance with this subsection shall not count toward the threshold amount.

(d) The Commission may conduct audits of candidate records and make verifications of contributions submitted under this section to determine eligibility and shall notify candidates if it chooses to conduct such audits or verifications. In that case, the Commission may, at its own discretion waive the submission requirement under subsection (c)(2)(11 CFR 9033.2(c)(2)).

(e) The candidate may submit the certifications required under 11 CFR 9033.2 at any time after January 1 of the year immediately preceding the Presidential election year.

(f) Payments may be suspended to a candidate if he or she knowingly and willfully exceeds the expenditure limitations at 11 CFR 9035. Any determination to suspend payments shall be made in accordance with the procedure set forth at 11 CFR 9033.9.

[44 FR 20342, Apr. 4, 1979, as amended at 44 FR 63758, Nov. 5, 1979]

§ 9033.3 Expenditure limitation certification.

(a) If the Commission makes an initial determination that a candidate or the candidate's authorized committee(s) have knowingly, willfully, and substantially exceeded the expenditure limitations at 11 CFR Part 9035 prior to that candidate's application for certification, the Commission may make an initial determination that the candidate is ineligible to receive matching funds.

(b) The Commission shall notify the candidate of its initial determination, provide the legal and factual reasons for its initial determination and advise the candidate of the evidence upon which its initial determination is based. The candidate will be given an opportunity, within 20 days of the Commission's notice, to submit written legal or factual materials to demonstrate that he or she has not knowingly, willfully and substantially exceeded the expenditure limitations at 11 CFR Part 9035.

(c) The Commission will consider all written legal or factual materials submitted by the candidate under 11 CFR 9033.3(b) in making its final determination. These materials may be submitted by counsel on the candidate's behalf.

(d) A final determination of the candidate's ineligibility by the Commission shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

(e) A candidate who receives a final determination of ineligibility under 11 CFR 9033.3(d) shall be ineligible to receive matching fund payments under 11 CFR 9034.1.

[44 FR 63758, Nov. 5, 1979]

§ 9033.4 Matching payment threshold requirements.

The Commission shall, as soon as practicable and, during the Presidential election year, generally within 5

working days, examine the submission under 11 CFR 9033.1 and 9033.2 and shall either—

(a) Make a determination that the candidate has satisfied the minimum contribution threshold requirement under 11 CFR 9033.2(c); or

(b) Make an initial determination that the candidate has failed to satisfy the matching payment threshold requirements. The Commission shall notify the candidate of its initial determination, giving the legal and factual reasons for the determination and advising the candidate of the evidence upon which its initial determination is based. The candidate will be given an opportunity to satisfy the threshold requirements or to submit within 30 days of the receipt of the Commission's notice written legal or factual materials to demonstrate that he or she has satisfied those requirements. The Commission will consider any written legal or factual materials submitted by the candidate before making its final determination. Such materials may be submitted by counsel if the candidate so desires. A final determination that the candidate has failed to satisfy threshold requirements shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the legal and factual reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

[44 FR 20342, Apr. 4, 1979. Redesignated at 44 FR 63758, Nov. 5, 1979]

§ 9033.5 Ineligibility dates defined.

The ineligibility date of a candidate is determined by 11 CFR 9033.4(a), (b), or (c), whichever occurs first.

(a) The ineligibility date shall be the day on which an individual ceases to be a candidate because he or she is not actively conducting campaigns in more than one State in connection with seeking the Presidential nomination. This date shall be the earlier of—

(1) The date the candidate publicly announces that he or she will not be actively conducting campaigns in more than one State; or

(2) The date the candidate notifies the Commission by letter that he or

she is not actively conducting campaigns in more than one state; or

(3) The date which the Commission determines under 11 CFR 9033.6 to be the date that the candidate is not actively seeking election in more than one State.

(b) The ineligibility date shall be the 30th day following the date of the second consecutive primary election in which such individual receives less than 10 percent of the number of popular votes cast for all candidates of the same party for the same office in that primary election, if the candidate permitted or authorized his or her name to appear on the ballot, unless the candidate certifies to the Commission at least 25 business days prior to the primary that he or she will not be an active candidate in the primary involved.

(1) The Commission may refuse to accept the candidate's certification if it determines under 11 CFR 9033.7 that the candidate is an active candidate in the primary involved.

(2) For purposes of this paragraph, if the candidate is running in two primary elections in different States on the same date, the highest percentage of votes a candidate receives in any one State will govern. Separate primary elections held in more than one State on the same date are not deemed to be consecutive primaries. If two primary elections are held on the same date in the same State (e.g., a primary to select delegates to a national nominating convention and a primary for the expression of preference for the nomination of candidates for election to the office of President), the highest percentage of votes a candidate receives in either election will govern.

(c) The ineligibility date shall be the last day of the matching payment period for the candidate as specified in 11 CFR 9032.6.

[44 FR 20342, Apr. 4, 1979. Redesignated and amended at 44 FR 63758, Nov. 5, 1979]

§ 9033.6 Determination of Inactive Candidacy.

(a) The Commission may on the basis of the factors listed in 11 CFR 9033.6(e) make an initial determination that a candidate is no longer actively seeking nomination for election

in more than one State at any time after March 1 but before July 1 of the Presidential election year.

(b) The Commission shall notify the candidate in writing of its initial determination, giving the legal and factual reasons for the determination and advising the candidate of the evidence upon which its initial determination is based and of the date on which active campaigning in more than one State ceased. The candidate will be given an opportunity to submit within 15 business days of receipt of the Commission's notice, written legal or factual materials to demonstrate that he or she is actively campaigning in more than one State.

(c) The Commission will consider any written legal or factual materials submitted by the candidate in making its final determination. Such materials may be submitted by counsel if the candidate so desires. In addition prior to making a final determination, the Commission will consider the factors listed in paragraph (e) of this section.

(d) A final determination of inactive candidacy shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

(e) In making its final determination, the Commission shall consider, but is not limited to considering, the following factors:

(1) The frequency and type of public appearances, speeches, and advertisements;

(2) Campaign activity with respect to soliciting contributions or making expenditures for campaign purposes;

(3) Continued employment of campaign personnel or the use of volunteers; and

(4) The release of committed delegates.

(f) Upon a final determination by the Commission that the candidate is inactive, that candidate's eligibility for matching payments will terminate.

144 FR 20342, Apr. 4, 1979. Redesignated and amended at 44 FR 63758, Nov. 5, 1979]

§ 9033.7 Determination of active candidacy.

(a) Where a candidate certifies to the Commission under 11 CFR 9033.5(b) that he will not be an active candidate in an upcoming primary, the Commission may within 10 business days of receiving such certification notify the candidate in writing that it has made an initial determination that the candidate is an active candidate in the primary involved. This initial determination shall be based on the factors listed in 11 CFR 9033.6(e).

(b) The Commission's notice shall set forth the legal and factual reasons for the initial determination and advise the candidate of the evidence upon which its initial determination is based. The candidate will be given an opportunity to submit within 10 business days of receipt of the Commission's notice written legal or factual materials to demonstrate that he or she is not an active candidate in the primary involved.

(c) The Commission will consider any written legal or factual materials submitted by the candidate in making its final determination. Such materials may be submitted by counsel if the candidate so desires. In addition, prior to making a final determination, the Commission will consider the factors listed in 11 CFR 9033.6(e).

(d) A final determination by the Commission under 11 CFR 9033.7 shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

[44 FR 20342, Apr. 4, 1979. Redesignated and amended at 44 FR 63758, Nov. 5, 1979]

§ 9033.8 Reestablishment of eligibility.

(a) A candidate who has become ineligible under 11 CFR 9033.5(a) on the basis that he or she is not actively campaigning in more than one state may reestablish eligibility for matching payments by submitting to the Commission evidence of active campaigning in more than one State. In determining whether the candidate

has reestablished eligibility, the Commission will consider, but is not limited to considering, the factors listed in 11 CFR 9033.6(e). The Commission shall make its determination without requiring the individual to reestablish eligibility under 11 CFR 9033.1 and 2. The day the Commission determines to be the day the candidate become active again will be the reestablishment of eligibility date.

(b) A candidate determined to be ineligible under 11 CFR 9033.5(b) by failing to obtain the required percentage of votes in two consecutive primaries may have his or her eligibility reestablished if the candidate receives at least 20 percent of the total number of votes cast for candidates of the same party for the same office in a primary election held subsequent to the date of the election which rendered the candidate ineligible.

[44 FR 20342, Apr. 4, 1979. Redesignated and amended at 44 FR 63758, Nov. 5, 1979]

§ 9033.9 Suspension of payments.

(a) If the Commission has reason to believe that a candidate or his or her authorized committee(s) has knowingly, willfully and substantially failed to comply with the disclosure requirements of 2 U.S.C. 434 and 11 CFR Part 104, or that a candidate or his or her authorized committee(s) has knowingly and willfully exceeded the expenditure limitations at 11 CFR 9035, the Commission may make an initial determination to suspend payments to that candidate or his or her authorized committee(s).

(b) The Commission shall notify the candidate of its initial determination, giving the legal and factual reasons for the determination and advising the candidate of the evidence upon which its initial determination is based. The candidate will be given an opportunity within 20 days of the Commission's notice to comply with the above cited provisions or to submit written legal or factual materials to demonstrate that he or she is not in violation of those provisions.

(c) The Commission will consider any written legal or factual materials submitted by the candidate in making its final determination. Such materials

may be submitted by counsel if the candidate so desires.

(d) A final determination to suspend payments by the Commission shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

(e) A candidate whose payments have been suspended under this section may become entitled to receive payments if he or she fulfills the following conditions:

(1) For candidates whose suspension was based on failure to comply with reporting requirements, compliance with reporting requirements and payments or agreement to pay any civil or criminal penalties resulting from failure to comply; or

(2) For candidates whose payments were suspended for exceeding expenditure limitations, repayment of an amount equal to the amount by which the candidate exceeded the expenditure limitation and payment of or agreement to pay any civil or criminal penalties resulting from violation of limitation.

[44 FR 20342, Apr. 4, 1979. Redesignated and amended at 44 FR 63758, Nov. 5, 1979; 45 FR 21210, Apr. 1, 1980]

PART 9034—ENTITLEMENTS

Sec.

- 9034.1 Candidate entitlements.
- 9034.2 Matchable campaign contributions.
- 9034.3 Nonmatchable campaign contributions.
- 9034.4 Use of contributions and matching payments.
- 9034.5 Net outstanding campaign obligations.

AUTHORITY: Sec. 408(c), Pub. L. 93-443, 88 Stat. 1299, as amended by sec. 307(b), Pub. L. 94-283, 90 Stat. 501 (26 U.S.C. 9034).

SOURCE: 44 FR 20345, Apr. 4, 1979, unless otherwise noted.

§ 9034.1 Candidate entitlements.

(a) A candidate who has been notified by the Commission under 11 CFR 9036.1 that he or she has successfully satisfied eligibility and certification requirements is entitled to receive pay-

ments, in an amount equal to the amount of each matchable campaign contribution received by the candidate, except that a candidate who has become ineligible under 11 CFR 9033.5 may not receive further matching payments regardless of the date of deposit of the underlying contributions if he or she has no net outstanding campaign obligations as defined in 11 CFR 9034.5.

(b) If on the date of ineligibility a candidate has net outstanding campaign obligations as defined under 11 CFR 9034.5, that candidate may continue to receive matching payments for matchable contributions received and deposited before December 31 of the Presidential election year only if on the date of submission there are remaining net outstanding campaign obligations. The candidate shall be entitled to payment only if at the time of submission the sum of the contributions received on or after the date of ineligibility plus matching funds received on or after the date of ineligibility (on the basis of post ineligibility contributions) is less than the candidate's net outstanding campaign obligations. This entitlement will be equal to the lesser of:

(1) The amount of contributions submitted for matching; or

(2) The remaining net outstanding campaign obligations.

(c) A candidate whose eligibility has been reestablished under 11 CFR 9033.8 or who after suspension of payments has met the conditions set forth at 11 CFR 9033.9(e) is entitled to receive payments for matchable contributions for which payments were not received during the ineligibility or suspension period.

(d) The total amount of payments to a candidate under this section shall not exceed 50% of the total expenditure limitation applicable under 11 CFR 9035.

[44 FR 20345, Apr. 4, 1979; as amended at 44 FR 63758, Nov. 5, 1979]

§ 9034.2 Matchable campaign contributions.

(a) Contributions meeting the following requirements will be considered matchable campaign contributions.

(1) The contribution must be a gift of money made: by an individual; by a written instrument identifying the contributor by full name and mailing address; and for the purpose of influencing the result of a primary election.

(2) The contribution shall be matchable only to the extent of the first \$250 contributed by an individual.

(3) The amount of the contribution which is submitted for matching shall be actually received by the candidate or any of the candidate's authorized committees and deposited in a designated campaign depository maintained by the principal campaign committee.

(4) The written instrument used in making the contribution shall be dated, physically received and deposited by the candidate or authorized committee on or after January 1 of the year immediately preceding the calendar year of the Presidential election, but no later than December 31 following the matching payment period.

(b) For purposes of this section, the term "written instrument" means a check written on a personal, escrow or trust account; a money order; or any other negotiable instrument.

(c) The written instrument must be: payable on demand; and to the order of, or specifically endorsed without qualification to, the Presidential candidate, his or her principal campaign committee, or his or her authorized committee. The written instrument shall contain: The full name and signature of the contributor, except in the case of contributions from joint accounts or by certain money orders; the amount and date of the contribution; and the mailing address of the contributor.

(1) In cases of a check drawn on a joint checking account the contributor is considered to be the owner whose signature appears on the check. To be attributed equally to other joint tenants of the account, the check or other accompanying written document shall contain the signature(s) of the joint tenant(s).

(2) In cases of money orders which do not contain the signature of the contributor, an accompanying written

document shall contain the signature of the contributor.

(3) Checks drawn on escrow or trust account can only be a contribution from the person who has beneficial ownership of the account and therefore must be signed by that person with the statement that the giving of the contribution does not violate the conditions of the trust or escrow agreement.

(4) Contributions in the form of checks written on partnership accounts or accounts of unincorporated associations or businesses are matchable contributions, so long as:

(i) The checks are accompanied by documentation which specifies that the contribution is made by a specific individual or individuals;

(ii) Such documentation is signed by the individual or individuals; and

(iii) The aggregate amount of the contributions drawn on a partnership or unincorporated association or business does not exceed \$1,000 to any one Presidential candidate seeking nomination.

[44 FR 22407, Apr. 13, 1979; 44 FR 25193, Apr. 30, 1979]

§ 9034.3 Nonmatchable campaign contributions.

A contribution to a candidate other than one which meets the requirements of 11 CFR 9034.2 is not matchable. Contributions which are not matchable include:

(a) In-kind contributions of real or personal property;

(b) A subscription, loan, advance, or deposit of money, or anything of value;

(c) A contract, promise, or agreement, whether or not legally enforceable, such as a pledge card or credit card transaction, to make a contribution for any such purposes (but a gift of money by written instrument is not rendered unmatchable solely because the contribution was preceded by a promise or pledge);

(d) Funds from a corporation, labor organization, government contractor, political committee as defined in 11 CFR 100.5 or any group of persons other than those under 11 CFR 9034.2(c)(4);

(e) Contributions which are illegally made or accepted, such as contributions in the name of another;

(f) Contributions in the form of a check drawn upon the account of a committee, corporation, union, or government contractor even though the funds represented personal funds earmarked by a contributing individual to a Presidential candidate;

(g) Contributions in the form of the purchase price paid for an item with significant intrinsic and enduring value, such as a watch;

(h) Contributions in the form of the purchase price paid for a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes;

(i) Contributions in the form of the purchase price paid for the admission to any activity that primarily confers private benefits in the form of entertainment to the contributor, such as a concert, motion picture, or theatrical performance, in which case the amount of the matchable contribution shall include only the excess of the amount paid for admission over the fair market value of all the benefits available to the purchaser of the ticket, using a good faith reasonable estimate.

(1) The fair market value and any amount in excess of the fair market value of the benefits conferred shall be clearly and separately indicated on the promotional material and the tickets for the event, and a copy of such material and of a ticket shall accompany the submission of documentation under 11 CFR 9033.2 and 9036.2.

(2) A contribution in the form of the purchase price paid for admission to an activity that is essentially political is fully matchable. An "essentially political" program is one the principal purpose of which is political speech or discussion, such as the traditional political dinner or reception.

(j) Contributions which are made by persons without the necessary donative intent to make a gift or made for any purpose other than to influence the result of a primary election; and

(k) Contributions of currency of the United States or currency of any foreign country.

[44 FR 20345, Apr. 4, 1979, as amended at 45 FR 21210, Apr. 1, 1980]

§ 9034.4 Use of contributions and matching payments.

(a) Except as provided in paragraph (e) of this section, all contributions received by an individual from the date he or she becomes a candidate and all matching payments received by the candidate shall be used only to defray qualified campaign expenses or to repay loans or otherwise restore funds (other than contributions which were received and expended to defray qualified campaign expenses), which were used to defray qualified campaign expenses.

(b) Any expenses incurred after a candidate reaches the date of ineligibility under 11 CFR 9033.5 are *not* qualified campaign expenses, except as provided in paragraph (c) of this section.

(c) Winding down costs shall be considered a qualified campaign expense if such costs are:

(1) Incurred before the date of ineligibility; or

(2) Associated with the termination of political activity, such as the cost of complying with post election requirements of the Act and other necessary administrative costs, including office space rental, staff salaries, etc.

(3) For purposes of this subsection, winding down costs shall be deemed to have been incurred before the candidate's date of ineligibility if an oral or written arrangement or commitment for the activity was made on or before candidate's date of ineligibility

(d) An expenditure which is in excess of any of the limitations under 11 CFR 9035 shall not be considered a qualified campaign expense.

(e) Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and can not be defrayed from contributions or matching payments. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures, but such amounts shall be reported in accordance with 11 CFR Part 104.

(f) Even though incurred prior to the date an individual becomes a candidate, payments made for the purpose of determining whether an individual should become a candidate,

such as those incurred in conducting a poll, shall be considered qualified campaign expenses if the individual subsequently becomes a candidate.

(g) Where a candidate has received matching funds and is simultaneously seeking nomination or election to another Federal office, any transfer of funds between his or her principal campaign committees or authorized committees must be in accordance with 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(a)(1)(v).

(h) A candidate whose eligibility has been reestablished under 11 CFR 9033.8 or who after suspension of payments has met the conditions set forth at 11 CFR 9033.9(e) is entitled to receive payments for matchable contributions for which payments were not received during the ineligibility or suspension period.

[44 FR 20345, Apr. 4, 1979, as amended at 44 FR 63758, Nov. 5, 1979]

§ 9034.5 Net outstanding campaign obligations.

(a) A candidate's net outstanding campaign obligations equal the difference between paragraph (a) (1) and (2) of this section:

(1) The total of all outstanding obligations for qualified campaign expenses as of the candidate's date of ineligibility under 11 CFR 9033.5, plus estimated necessary winding down costs as defined under 11 CFR 9034.4(c) less

(2) The total of:

(i) Cash on hand as of the close of business on the last day of eligibility (including all contributions received as of that date whether or not submitted for matching);

(ii) The fair market value of capital assets on hand; and

(iii) Amounts owed to the campaign in the form of credits, returns, receivables, or rebates of qualified campaign expenses; or a commercially reasonable amount based on the collectibility of those credits, returns, receivables or rebates.

(b) The candidate shall submit a statement of net outstanding campaign obligations within 15 days of the candidate's date of ineligibility.

(c) For purposes of this section, a capital asset means any property

which has remaining useful life exceeding 1 year from the date of the candidate's ineligibility: *Provided*, That the fair market value at the date of ineligibility exceeds \$500.

[44 FR 20345, Apr. 4, 1979, as amended at 44 FR 63758, Nov. 5, 1979]

**PART 9035—EXPENDITURE
LIMITATION**

Sec.

9035.1 Qualified campaign expense limitation.

9035.2 Limitation on expenditures from personal or family funds.

§ 9035.1 Campaign expenditures limitations.

(a) No candidate or his or her authorized committee(s) shall knowingly incur expenditures in connection with the candidate's campaign for nomination, which expenditures, in the aggregate, exceed \$10,000,000 (as adjusted under 2 USC 441a(c)), except that the aggregate expenditures by a candidate in any one State shall not exceed the greater of: 16 cents (as adjusted under 2 USC 441a(c)) multiplied by the voting age population of the State (as certified under 2 USC 441a(e)); or \$200,000 (as adjusted under 2 USC 441a(c)).

(b) The expenditure limitations of 11 CFR 9035.1 shall not apply to a candidate who at no time receives matching funds.

(Sec. 408(c), Pub. L. 93-443, 88 Stat. 1300, as amended by sec. 305(a), 307(c), Pub. L. 94-283, 90 Stat. 494, 501 (26 U.S.C. 9035))

[44 FR 63758, Nov. 5, 1979]

§ 9035.2 Limitation on expenditures from personal or family funds.

(a) No candidate who has accepted matching funds shall knowingly make expenditures from his or her personal funds, or funds of his or her immediate family, in connection with his or her campaign for nomination for election to the office of President in excess of, in the aggregate \$50,000.

(b) For purposes of this section, the term "immediate family" means a candidate, spouse, and any child, parent, grandparent, brother, half-brother,

sister, or half-sister of the candidate, and the spouses of such persons.

(c) For purposes of this section, "personal funds" has the same meaning as specified in 11 CFR 110.10.

(Sec. 408(c), Pub. L. 93-443, 88 Stat. 1300, as amended by sec. 305(a), 307(c), Pub. L. 94-283, 90 Stat. 494, 501 (26 U.S.C. 9035))

[44 FR 20346, Apr. 4, 1979]

**PART 9036—CERTIFICATION BY THE
COMMISSION**

Sec.

9036.1 Initial certification.

9036.2 Additional certification.

9036.3 Insufficient documentation.

9036.4 Certification review and notice.

9036.5 Resubmission and hearing opportunity.

9036.6 Continuation of certification.

AUTHORITY: Sec. 408(c), Pub. L. 93-443, 88 Stat. 1300 (26 U.S.C. 9036).

SOURCE: 44 FR 20346, Apr. 4, 1979, unless otherwise noted.

§ 9036.1 Initial certification.

(a) After a determination has been made that the candidate has successfully satisfied the eligibility and certification requirements under 11 CFR 9033.1 and 9033.2 including the threshold requirement, the Commission shall so notify the candidate in writing and shall request the submission in accordance with paragraph (b) of this section of all contributions received and deposited by a date specified by the Commission.

(b) Contributions which are submitted for purposes of meeting the threshold requirements must be submitted in accordance with the Federal Election Commission Guideline for Presentation in Good Order.

(c) Within 10 calendar days after the Commission has sent notification to the candidate under subsection (a) (11 CFR 9036.1(a)), but not before the beginning of the matching payment period, the Commission shall certify to the Secretary of the Treasury for payment of the amount to which such candidate is entitled.

§ 9036.2 Additional certifications.

(a) To obtain subsequent certifications following the initial certification and payment, a candidate shall file all

information required for the initial eligibility under Part 9033, except that:

(1) The alphabetical listing of contributors need not be segregated by State;

(2) The candidate need not resubmit the agreement under 11 CFR 9033.1 and the the certifications under § 9033.2; and

(3) The occupation and name of employer need not be disclosed for individuals whose aggregate contributions exceed \$100 per calendar year, except that such information is subject to recordkeeping and reporting requirements under 2 U.S.C. 432(c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i).

(b) Requests for additional certifications may be submitted on dates to be determined and published by the Commission from time to time.

(c) Except as provided by 11 CFR 9036.4, requests for additional certification shall cover a period beginning the day following the close of the period for the previous submission.

(d) All submissions for matching payments must be in accordance with the Federal Election Commission Guideline for Presentation in Good Order.

(e) The Commission shall certify to the Secretary of the Treasury any additional amount to which a candidate is entitled within 15 calendar days of receipt of information submitted under paragraph (a) (11 CFR 9036.2(a)), but not before the beginning of the matching payment period.

[44 FR 20346, Apr. 4, 1979, as amended at 45 FR 23642, Apr. 8, 1980]

§ 9036.3 Insufficient documentation.

Contributions which are otherwise matchable may be rejected for matching purposes because of insufficient supporting documentation. These contributions may become matchable if there is a proper resubmission in accordance with 11 CFR 9036.5 and 9036.6. Insufficient documentation includes:

(a) Discrepancies in the written instrument, such as:

(1) Instruments drawn on other than personal accounts of contributors and not signed by the contributing individual;

(2) Signature discrepancies; and

(3) Lack of the contributor's signature, the amount of the contribution, or the listing of the committee or candidate as payee;

(b) Discrepancies between listed contributions and supporting documentation, such as:

(1) The contributor's name is misspelled;

(2) The listed amount requested for matching exceeds the amount contained on the written instrument; and

(3) A written instrument has not been submitted to support a listed contribution;

(c) Discrepancies within or between contribution lists submitted, such as:

(1) The address of the contributor is missing or incomplete or the contributor's name is alphabetized incorrectly, or more than one contributor is listed per item; and

(2) A discrepancy in aggregation within or between submissions, or a listing of a contributor more than once within the same submission.

§ 9036.4 Certification review and notice.

(a) The Commission will review the submission to determine if the submission meets acceptable standards of good order under 11 CFR 9036.2 and 9036.3. Those submissions not meeting the standards will not be certified, and the candidate will be requested to resubmit the documentation. Submissions of a sufficient size will be reviewed using statistical sampling, and the candidate will be given a reduced amount based on the results of the sample. (Note that under 11 CFR 9036.5 contributions which are submitted and rejected may be resubmitted for matching.) If the Commission certifies to the Treasury for payment an amount which is less than the amount requested by the candidate, the Commission shall notify the candidate in writing which notice or notices shall include:

(1) The amount less than the full amount requested for certification;

(2) The amount of the contribution and the name of the contributor which the Commission considers not matchable and the reasons therefor, or, if statistical sampling is used, the

estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions which are not in dispute and which the Commission will certify to the Treasury for payment; and

(4) A statement that the candidate has the opportunity to supply the Commission with additional documentation or other explanation in the form of a resubmission under 11 CFR 9036.5 in order as to make the disputed contributions matchable.

(b) In any case where the candidate or his or her committee has knowledge that a contribution which has been submitted for matching purposes does not so qualify, such as a check returned to the committee for insufficient funds, the Commission shall be notified as soon as possible so that a proper adjustment may be made in the amount to be certified.

§ 9036.5 Resubmissions and hearing opportunity.

(a) Contributions which were submitted and rejected under 11 CFR 9036.4 may be resubmitted with the necessary information.

(b) In order to be reviewed, the resubmission of disputed contributions shall be made on a separate list identifying the submission in which the contributions were originally submitted.

(c) Resubmissions must be presented to the Commission at a time specified and, to the extent approved, will be certified to the Secretary of the Treasury within 15 calendar days.

(d) If the candidate chooses to make a resubmission and the Commission determines that the disputed contribution is still unmatchable, the Commission will notify the candidate in writing of its determination. The Commission will advise the candidate of the legal and factual reasons for its determination and of the evidence on which that determination is based. The candidate will be given an opportunity to submit within 30 days of the Commission's notice written legal or factual materials to demonstrate that the contribution is matchable.

(e) The Commission will consider any written legal or factual materials submitted by the candidate in making its final determination. Such materials

may be submitted by counsel if the candidate so desires.

(f) A final determination by the Commission that a contribution is not matchable shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

§ 9036.6 Continuation of certification.

(a) Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit contributions to the commission to be certified for matching through January 21 of the year following the election.

(b) No contribution will be matched if it is submitted after this period, regardless of the date the contributions were deposited.

PART 9037—PAYMENTS

Sec.

9037.1 Payments of Presidential primary matching funds.

9037.2 Equitable distribution of funds.

9037.3 Deposits of Presidential primary matching funds.

AUTHORITY: Sec. 408(a), Pub. L. 93-443, 88 Stat. 1300 (26 U.S.C. 9037).

SOURCE: 44 FR 20347, Apr. 4, 1979, unless otherwise noted.

§ 9037.1 Payments of Presidential primary matching funds.

Upon receipt of a written certification from the Commission, but not before the beginning of the matching payment period, the Secretary of the Treasury or his or her delegate will promptly transfer the amount certified from the matching payment account to the candidate.

§ 9037.2 Equitable distribution of funds.

In making such transfers to candidates of the same political party, the Secretary or his or her delegate will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary or his or her delegate will take into account, in seeking to achieve an

equitable distribution of funds available in the matching payment account, the sequence in which such certifications are received.

§ 9037.3 Deposits of Presidential primary matching funds.

Upon receipt of any matching funds, the candidate shall deposit the full amount received into a checking account maintained by the candidate's principal campaign committee in the depository designated by the candidate.

PART 9038—EXAMINATIONS AND AUDITS

- Sec. 9038.1 Audit.
- 9038.2 Repayments.
- 9038.3 Liquidation of Obligations; repayment.

AUTHORITY: Sec. 408(c), Pub. L. 93-443, 88 Stat. 1300 (26 U.S.C. 9038).

SOURCE: 44 FR 20347, Apr. 4, 1979, unless otherwise noted.

§ 9038.1 Audit.

(a) After the close of a matching payment period, the Commission shall conduct an audit of the qualified campaign expenses of every candidate and his or her authorized committees who received Presidential primary matching funds. For candidates whose date of ineligibility occurs before the end of the matching payment period, the audit may be conducted at any time after the date of ineligibility.

(b) In addition, the Commission may conduct other examinations and audits from time to time as it deems necessary to carry out the provisions of this subchapter.

§ 9038.2 Repayments.

(a) If the Commission determines that:

(1) Any portion of the payments made to a candidate from the matching payment account was in excess of the aggregate amount to which such candidate was entitled; or

(2) Any amount of any payment made to a candidate from the matching payment account or any contributions received by the candidate were used for any purposes other than—

(i) To defray qualified campaign expenses; or

(ii) To repay loans which were used to defray qualified campaign expenses; or

(iii) To restore funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses; or

(3) Any amounts spent by the candidate from matching funds or from private contributions were not documented in accordance with 11 CFR 9033.1(a)(1); the Commission shall notify the candidate as soon as possible, but no later than 3 years after the end of such matching payment period. The candidate shall repay to the Secretary of the Treasury, within 90 days of the notice, an amount equal to the amount improperly paid under § 9038.2(a)(1), an amount equal to the amount improperly expended under 11 CFR 9038.2(a)(2), or an amount equal to the amount of any expenditure which is improperly documented under 11 CFR 9038.2(a)(3). The Commission's notice shall set forth the legal and factual reasons for the determination that a repayment is required and shall also advise the candidate of the evidence upon which that determination is based. Upon application by the candidate, the Commission may grant a 90 day extension of the repayment period.

(b) If the candidate disputes the Commission's determination that a repayment is required, he or she shall be given an opportunity to submit in writing, within 30 days of receipt of the Commission's notice, legal or factual materials to demonstrate that a repayment is not required.

(c) The Commission will consider any written legal or factual materials submitted by the candidate in making its final determination. Such materials may be submitted by counsel if the candidate so desires.

(d) A final determination by the Commission that a candidate must repay a certain amount shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall summarize the

results of any investigation upon which the determination is based.

(e) The Candidate shall repay to the Secretary of the Treasury the amount specified by the Commission in its notice of final determination within 20 days from the date the notice is received by the candidate. Upon application by the candidate, the Commission may grant a 90 day extension of this period.

§ 9038.3 Liquidation of obligations; repayment.

(a) Amounts received by the candidate from the matching payment account may be retained for 6 months after the end of the matching payment period and may be used to pay qualified campaign expenses incurred by the candidate.

(b) After all obligations have been liquidated, the candidate shall so inform the Commission in writing.

(c)(1) If on the last day of candidate eligibility the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus; the candidate shall within 30 days of the ineligibility date repay to the Secretary of the Treasury an amount which represents the amount of matching funds contained in the candidate's surplus. The amount shall be an amount equal to that portion of the surplus which bears the same ratio to the total surplus that the total amount received by the candidate from the matching payment account bears to the total deposits made to the candidate's accounts.

(2) For purposes of this subsection, total deposits shall be considered all deposits to all candidate accounts minus transfers between accounts, refunds, rebates, reimbursements, checks returned for insufficient funds, proceeds of loans and other similar amounts.

**SUPPLEMENT A—OTHER REGULATIONS
IMPLEMENTING
SECTION 401 OF THE FEDERAL
ELECTION CAMPAIGN ACT OF 1971**

CIVIL AERONAUTICS BOARD

<i>Part</i>		<i>Page</i>
374a	Regulations pursuant to section 401 of the Federal Election Campaign Act of 1971 with respect to extension of credit by air carriers to political candidates.....	140

FEDERAL COMMUNICATIONS COMMISSION

64	Extension of unsecured credit for interstate and foreign communications services to candidates for Federal office	144
73	Radio broadcast services	145
76	Cable television service.....	149

INTERSTATE COMMERCE COMMISSION

1325	Extension of credit to candidates for Federal office or their representatives	151
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CIVIL AERONAUTICS BOARD

PART 374a—REGULATIONS PURSUANT TO SECTION 401 OF THE FEDERAL ELECTION CAMPAIGN ACT OF 1971 WITH RESPECT TO EXTENSION OF CREDIT BY AIR CARRIERS TO POLITICAL CANDIDATES

Sec.

- 374a.1 Purpose.
- 374a.2 Applicability.
- 374a.3 Definitions.
- 374a.4 Conditions governing extension of unsecured credit.
- 374a.5 Exemption authority.
- 374a.6 Reporting requirements.
- 374a.7 Record retention requirements.
- 374a.8 Prospective application of part.

AUTHORITY: Secs. 204(a), 401, 403, 404(b), 407, and 416 of the Federal Aviation Act of 1958, as amended, 72 Stat. 743, 754 [as amended by 76 Stat. 143, 82 Stat. 867], 758 [as amended by 74 Stat. 445], 760, 766 [as amended by 84 Stat. 103], 771; 49 U.S.C. 1324, 1371, 1373, 1374, 1377, 1386; and sec. 401 of the Federal Election Campaign Act of 1971, Pub. L. 92-225; 86 Stat. 19, 2 U.S.C. 451.

SOURCE: CAB Reg. SPR-53, 37 FR 9388, May 10, 1972, unless otherwise noted.

EDITORIAL NOTE: This part also codified as 14 CFR Part 374a.

§ 374a.1 Purpose.

Section 401 of the Federal Election Campaign Act of 1971 (Pub. L. 92-225, 86 Stat. 19, 2 U.S.C. 451, enacted February 7, 1972, and hereafter referred to as the "Election Campaign Act") directs the Civil Aeronautics Board to promulgate, within 90 days after enactment, regulations with respect to the extension of unsecured credit by any person regulated by the Board to any candidate for Federal office, or to any person on behalf of such a candidate, for goods furnished or services rendered in connection with the campaign of such candidate for nomination for election, or election, to such office. The purpose of this part is to issue rules pursuant to said section 401 of the Election Campaign Act in accordance with the Civil Aeronautics Board's responsibility thereunder.

§ 374a.2 Applicability.

This regulation shall be applicable to all air carriers as defined in this part.

§ 374a.3 Definitions.

"Adequate security" means (a) a bond, issued by a surety meeting the standards prescribed for sureties in Part 378 of the Board's Special Regulations (14 CFR, Part 378), in an amount not less than one hundred and fifty percent (150%) of the credit limit established by the air carrier for the candidate, or the person acting on behalf of a candidate, as the case may be, by the terms of which bond the surety undertakes to pay to the air carrier any and all amounts (not exceeding the face amount of the bond) for which the assured candidate or the assured person acting on behalf of a candidate, as the case may be, is or may become legally liable to the air carrier for transportation, as defined in this part; or (b) collateral with a market value equal to one hundred and fifty percent (150%) of the established credit limit for such account, which collateral must be deposited in escrow and must consist of Federal, State, or municipal bonds or other negotiable securities which are publicly traded on a securities exchange.

"Air carrier" means any air carrier holding a certificate of public convenience and necessity issued under section 401 of the Federal Aviation Act of 1958, as amended.

"Candidate" means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected. For purposes of this part, an individual shall be deemed to seek nomination for election, or election, if he has (a) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office; or (b) received contributions or made expenditures, or given his consent for any other person to receive contributions or make expenditures, with a view to bringing about his nomination for election, or election, to such office.

"Election" shall have reference to (a) a general, special, primary, or runoff election; (b) a convention or caucus of a political party held to nominate a candidate; (c) a primary election held for the selection of delegates to a national nominating convention of a political party; or (d) a primary election held for the expression of a preference for the nomination of persons for election to Federal office.

"Established credit limit" means the dollar limit of credit established by the carrier extending credit.

"Federal office" means the office of President or Vice President of the United States, or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

"Person acting on behalf of a candidate" means (a) a political committee acting on behalf of, or a person employed by such candidate or by such political committee or by such political committee to act on behalf of, such candidate in connection with such candidate's campaign for nomination for election, or election, to Federal office; (b) a person's acting under a contract with, or as an agent of, such candidate or political committee to engage in activities in connection with such candidate's campaign for nomination for election, or election, to Federal office; or (c) a person for whom such candidate or political committee pays, directly or indirectly, for services purchased by such person. The term includes persons acting on behalf of more than one candidate.

"Payment in advance" means payment by cash, check, money order, or by credit card (if the issuer of such card is not an air carrier or a subsidiary, parent, or affiliate thereof) prior to performance of such transportation by an air carrier.

"Political committee" means any committee, association, corporation, or organization which accepts contributions, or makes expenditures, for the purpose of supporting a candidate or candidates for nomination for election, or election, to Federal office.

"Transportation" means (a) the carriage of persons or property (including services connected therewith) for compensation or hire to or from any place

in the United States, or (b) the lease or rental of aircraft, with or without crew.

§ 374a.4 Conditions governing extension of unsecured credit.

(a) Unless adequate security is posted, a full payment in advance is made, no air carrier shall provide transportation to any person it knows, or has reasons to know, is a candidate or a person acting on behalf of such candidate, in connection with the campaign of such candidate, except in accordance with, and subject to the following conditions:

(1) At least once a month the air carrier shall submit to each such candidate or person, a statement covering all unsecured credit extended to such candidate or person, as the case may be (whether in connection with the campaign of such candidate or otherwise): *Provided*, That, during the months of September and October prior to each election, statements shall be submitted on no less than a semi-monthly basis.

(2) Such statements shall be mailed no later than the second business day following the last day of the billing period covered by the statement.

(3) The amount of indebtedness shown on each such statement shall be payable in full no later than 14 days after the last day of the billing period, after which time the indebtedness shall be overdue.

(4)(i) Unsecured credit shall not be extended by an air carrier to a candidate, or to any person acting on his behalf in connection with the campaign of such candidate, so long as any overdue indebtedness of such candidate to such air carrier shall remain unpaid, in whole or in part, or so long as such air carrier shall know that any overdue indebtedness of such candidate to any other air carrier remains unpaid, in whole or in part.

(ii) Unsecured credit shall not be extended by an air carrier to a person acting on behalf of a candidate, for transportation in connection with the campaign of such candidate, so long as any overdue indebtedness of such person to such carrier shall remain unpaid, in whole or in part, or so long as such air carrier shall know that any

overdue indebtedness of such person to any other air carrier remains unpaid, in whole or in part.

(5)(i) With respect to transportation in connection with the campaign of any candidate to be performed after June 1, 1972, unsecured credit shall not be extended by an air carrier to any person acting on behalf of a candidate unless the carrier is authorized in writing by such candidate to extend such credit. The foregoing sentence shall not be construed as requiring the candidate to assume liability to the carrier for credit so extended.

(ii) Within 7 days after indebtedness becomes overdue for any unsecured credit extended by an air carrier to a person acting on behalf of a candidate in accordance with paragraph (a)(5)(i) of this section, the carrier shall notify such candidate in writing of the amount of such overdue indebtedness, and, unless paid in full within 14 days after the date of such notice, such overdue indebtedness shall be deemed to be the overdue indebtedness of such candidate, for the purposes of paragraph (a)(4)(i) of this section.

(b) It shall be presumed that a candidate or person acting on behalf of a candidate intends to use transportation in connection with the campaign of such candidate for nomination for election, or election, to Federal office.

§ 374a.5 Exemption authority.

Air carriers are exempt from the following provisions of title IV of the Federal Aviation Act of 1958, as amended: (a) Section 403, (b) section 404(b), and any and all other provisions of title IV of the Federal Aviation Act of 1958, as amended, to the extent necessary to enable air carriers to comply with the provisions of this Part.

§ 374a.6 Reporting requirements.

(a) Air carriers shall make monthly reports to the Board with respect to the extension of credit for transportation furnished to candidates, or persons acting on behalf of candidates, during the period from 6 months before nomination, if any, or from 6 months before election, until the date of election. After such described period, monthly reports shall also be

filed until the air carrier has filed a negative report; thereafter, no further monthly report need be filed until the commencement of the next such described period.

(b)(1) A separate report shall be filed for each candidate with an aggregate indebtedness balance of over \$5,000 on the last day of the month to which the report pertains. The report shall cover all debts incurred by the candidate, whether or not incurred in connection with his campaign, and all debts incurred by persons acting on his behalf in connection with such campaign. The indebtedness accounts reported shall be those which the air carrier knows, or has reason to know, have been incurred by or on behalf of a candidate; and it shall be presumed that the transportation for which the indebtedness has been incurred is intended to be used in connection with the campaign of such candidate for nomination for election, or election, to Federal office.

(2) The report required by this paragraph (b) shall be filed with the Board's Bureau of Accounts and Statistics not later than the 20th day following the end of the calendar month to which the report pertains. They shall include the following data: (i) Name of account; (ii) the credit limit established for such account; (iii) the balance, if any, of the amount payable for transportation not paid for in advance; (iv) any unpaid balance of the charges for such transportation as of the last day of the month covered by the report, and the length of time that such balance has remained unpaid; and (v) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

(3) The report required by this paragraph (b) shall be in the form attached hereto as Appendix A.¹

(c) A separate report shall be filed for each person acting on behalf of any candidate, if the aggregate indebtedness balance of such person to the reporting air carrier (including all debts incurred by such person, whether or not incurred in connection with the campaign of a candidate, as defined in this part) is over \$5,000 on the

¹Filed as part of the original document.

last day of the month to which the report pertains. The report shall be filed with the Board's Bureau of Accounts and Statistics not later than the 20th day following the end of the calendar month to which the report pertains and shall include (1) the credit limitation established for such person; (2) the balance, if any, of the amount payable for transportation not paid in advance; (3) any unpaid balance of the charges for such transportation as of the last day of the month covered by the report, and the length of time that such balance has remained unpaid; and (4) a description of the type and value of any bond, collateral, or other security securing such unpaid balance.

§ 374a.7. Record retention requirements.

(a) Every air carrier subject to the part shall retain for 2 years after a Federal election true copies of the following documents at its principal or general office in the United States.

(1) All documents which evidence or reflect the furnishing of transportation to a candidate for political office or a person acting on his behalf;

(2) All statements, invoices, bills, and receipts with respect to the furnishing

of such transportation referred to in paragraph (a)(1) of this section.

(b) Every air carrier shall make the documents listed in this section available in the United States upon request by an authorized representative of the Board and shall permit such representative to make such notes and copies thereof as he deems appropriate.

§ 374a.8 Prospective application of part.

The provisions of this part shall apply only to the extension of credit by an air carrier to a candidate, or to a person acting on his behalf, which is made subsequent to the effective date of this part, and shall not be applicable to debts incurred prior to such date but which are unpaid as of the effective date of this part. The provisions of this part will be applicable, however, to all credit transactions which occur subsequent to the effective date of the part even though the credit account in which the transaction takes place was opened prior to the effective date of the part.

NOTE: The reporting requirements herein have been approved by the Office of Management and Budget in accordance with the Federal Reports Act of 1942.

FEDERAL COMMUNICATIONS COMMISSION

PART 64—EXTENSION OF UNSECURED CREDIT FOR INTERSTATE AND FOREIGN COMMUNICATIONS SERVICES TO CANDIDATES FOR FEDERAL OFFICE

Sec.

64.801 Purpose.

64.802 Applicability.

64.803 Definitions.

64.804 Rules governing the extension of unsecured credit to candidates or persons on behalf of such candidates for Federal office for interstate and foreign common carrier communication services.

AUTHORITY: Secs. 4(i), 201(b), 202(a), 203, 218, and 219 of the Communications Act of 1934, as amended, and section 401 of the Federal Campaign Act of 1971.

SOURCE: FCC 72-390, 37 FR 9393, May 10, 1972, unless otherwise noted.

EDITORIAL NOTE: This part also codified as 47 CFR Part 64, Subpart H.

§ 64.801 Purpose.

Pursuant to section 401 of the Federal Election Campaign Act of 1971, Pub. L. 92-225, these rules prescribe the general terms and conditions for the extension of unsecured credit by a communication common carrier to a candidate or person on behalf of such candidate for Federal office.

§ 64.802 Applicability.

These rules shall apply to each communication common carrier subject to the whole or part of the Communications Act of 1934, as amended.

§ 64.803 Definitions.

For the purposes of this subpart:

(a) "Candidate" means an individual who seeks nomination for election, or election, to Federal office, whether or not such individual is elected, and an individual shall be deemed to seek nomination for election, or election, if he has (1) taken the action necessary under the law of a State to qualify himself for nomination for election, or election, to Federal office, or (2) received contributions or made expenditures, or has given his consent for any other person to receive contributions or make expenditures, with a view to

bringing about his nomination for election, or election, to such office.

(b) "Election" means (1) a general, special, primary, or runoff election, (2) a convention or caucus of a political party held to nominate a candidate, (3) a primary election held for the selection of delegates to a national nominating convention of a political party, and (4) a primary election held for the expression of a preference for the nomination of persons for election to the office of President.

(c) "Federal office" means the office of President or Vice President of the United States; or of Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

(d) "Person" means an individual, partnership, committee, association, corporation, labor organization, and any other organization or group of persons.

(e) "Unsecured credit" means the furnishing of service without maintaining on a continuing basis advance payment, deposit, or other security, that is designed to assure payment of the estimated amount of service for each future 2 month period, with revised estimates to be made on at least a monthly basis.

§ 64.804 Rules governing the extension of unsecured credit to candidates or persons on behalf of such candidates for Federal office for interstate and foreign common carrier communication services.

(a) There is no obligation upon a carrier to extend unsecured credit for interstate and foreign communication services to a candidate or person on behalf of such candidate for Federal office. However, if the carrier chooses to extend such unsecured credit, it shall comply with the requirements set forth in paragraphs (b) through (g) of this section.

(b) If a carrier decides to extend unsecured credit to any candidate for Federal office or any person on behalf of such candidate, then unsecured credit shall be extended on substantially equal terms and conditions to all

candidates and all persons on behalf of all candidates for the same office, with due regard for differences in the estimated quantity of service to be furnished each such candidate or person.

(c) Before extending unsecured credit, a carrier shall obtain a signed written application for service which shall identify the applicant and the candidate and state whether or not the candidate assumes responsibility for the charges, and which shall also expressly state as follows:

(1) That service is being requested by the applicant or applicants and that the person or persons making the application will be individually, jointly and severally liable for the payment of all charges; and;

(2) That the applicant(s) understands that the carrier will (under the provisions of paragraph (d) of this section) discontinue service upon written notice if any amount due is not paid upon demand.

(d) If charges for services rendered are not paid to the carrier within 15 days from rendition of a bill therefor, the carrier shall forthwith at the end of the 15-day period serve written notice on the applicant of intent to discontinue service within 7 days of date of such notice for nonpayment and shall discontinue service at the end of the 7-day period unless all such sums due are paid in full within such 7-day period.

(e) Each carrier shall take appropriate action at law to collect any unpaid balance on an account for interstate and foreign communication services rendered to a candidate or person on behalf of such candidate prior to the expiration of the statute of limitations under section 415(a) of the Communications Act of 1934, as amended.

(f) The records of each account, involving the extension by a carrier of unsecured credit to a candidate or person on behalf of such candidate for common carrier communications services shall be maintained by the carrier so as to show separately, for interstate and foreign communication services all charges, credits, adjustments, and security, if any, and balance receivable.

(g) On or before January 31 and July 31, 1973, and corresponding dates of each year thereafter, each carrier

which had operating revenues in the preceding year in excess of \$1 million shall file with the Commission a report by account of any amount due and unpaid, as of the end of the month prior to the reporting date, for interstate and foreign communication services rendered to a candidate or person on behalf of such candidate when such amount results from the extension of unsecured credit. Each report shall include the following information:

- (1) Name of candidate.
- (2) Name and address of person or persons applying for service.
- (3) Balance due carrier.
- (4) Reason for nonpayment.
- (5) Payment arrangements, if any.
- (6) Date service discontinued.
- (7) Date, nature and status of any action taken at law in compliance with paragraph (e) of this section.

PART 73—RADIO BROADCAST SERVICES

Subpart A—Standard Broadcast Stations

Sec.

73.120 Broadcasts by candidates for public office.

73.123 Personal attacks; political editorials.

Subpart B—FM Broadcast Stations

73.290 Broadcasts by candidates for public office.

73.291 Personal attacks; political editorials.

Subpart C—Noncommercial Educational FM Broadcast Stations

73.590 Broadcasts by candidates for public office.

73.591 Personal attacks.

Subpart D—[Reserved]

Subpart E—Television Broadcast Stations

73.657 Broadcasts by candidates for public office.

73.679 Personal attacks; political editorials.

Subpart H—Rules Applicable to All Broadcast Stations

73.1910 Fairness Doctrine.

73.1920 Personal attacks.

73.1930 Political editorials.

73.1940 Broadcasts by candidates for public office.

§ 73.120

AUTHORITY: Secs. 4 and 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply secs. 301, 303, 307, 48 Stat. 1081, 1082, as amended, 1083, as amended, 47 U.S.C. 301, 303, 307. Other statutory and executive order provisions authorizing or interpreted or applied by specific sections are cited to text.

EDITORIAL NOTE: These provisions are also codified in 47 CFR Part 73.

Subpart A—Standard Broadcast Stations

§ 73.120 Broadcasts by candidates for public office.

See § 73.1940.

[43 FR 32795, July 28, 1978]

§ 73.123 Personal attacks; political editorials.

See §§ 73.1910, 73.1920, and 73.1930.

[43 FR 45845, Oct. 4, 1978]

Subpart B—FM Broadcast Stations

§ 73.290 Broadcasts by candidates for public office.

See § 73.1940.

[43 FR 32795, July 28, 1978]

§ 73.291 Personal attacks; political editorials.

See §§ 73.1910, 73.1920, and 73.1930.

[43 FR 45845, Oct. 4, 1978. Redesignated at 44 FR 65764, Nov. 15, 1979]

Subpart C—Noncommercial Educational FM Broadcast Stations

§ 73.590 Broadcasts by candidates for public office.

See § 73.1940.

[43 FR 32795, July 28, 1978]

§ 73.591 Personal attacks.

See §§ 73.1910 and 73.1920.

[43 FR 45846, Oct. 4, 1978. Redesignated at 44 FR 65764, Nov. 15, 1979]

Title 11—Federal Elections

Subpart D—[Reserved]

Subpart E—Television Broadcast Stations

§ 73.657 Broadcasts by candidates for public office.

See § 73.1940.

[43 FR 32795, July 28, 1978]

§ 73.679 Personal attacks; political editorials.

See §§ 73.1910, 73.1920, and 73.1930.

[43 FR 45846, Oct. 4, 1978]

Subpart H—Rules Applicable to All Broadcast Stations

§ 73.1910 Fairness Doctrine.

The Fairness Doctrine is contained in section 315(a) of the Communications Act of 1934, as amended, which provides that broadcasters have certain obligations to afford reasonable opportunity for the discussion of conflicting views on issues of public importance. See FCC public notice "Fairness Doctrine and the Public Interest Standards," 39 FR 26372. Copies may be obtained from the FCC upon request.

[43 FR 45856, Oct. 4, 1978]

§ 73.1920 Personal attacks.

(a) When, during the presentation of views on a controversial issue of public importance, an attack is made upon the honesty, character, integrity or like personal qualities of an identified person or group, the licensee shall, within a reasonable time and in no event later than one week after the attack, transmit to the persons or group attacked:

(1) Notification of the date, time and identification of the broadcast;

(2) A script or tape (or an accurate summary if a script or tape is not available) of the attack; and

(3) An offer of a reasonable opportunity to respond over the licensee's facilities.

(b) The provisions of paragraph (a) of this section shall apply to broadcast material which falls within one or more of the following categories:

(1) Personal attacks on foreign groups or foreign public figures;

(2) Personal attacks occurring during uses by legally qualified candidates;

(3) Personal attacks made during broadcasts not included in paragraph (b)(2) of this section and made by legally qualified candidates, their authorized spokespersons, or those associated with them in the campaign, on other such candidates, their authorized spokespersons or persons associated with the candidates in the campaign; and

(4) Bona fide newscasts, bona fide news interviews, and on-the-spot coverage of a bona fide news event, including commentary or analysis contained in the foregoing programs.

(c) The provisions of paragraph (a) of this section shall be applicable to editorials of the licensee, except in the case of noncommercial educational stations since they are precluded from editorializing (section 399(a), Communications Act).

[43 FR 45856, Oct. 4, 1978, as amended at 44 FR 45956, Aug. 6, 1979]

§ 73.1930 Political editorials.

(a) Where a licensee, in an editorial, (1) Endorses or (2) opposes a legally qualified candidate or candidates, the licensee shall, within 24 hours after the editorial, transmit to, respectively, (i) the other qualified candidate or candidates for the same office or (ii) the candidate opposed in the editorial, (A) notification of the date and the time of the editorial, (B) a script or tape of the editorial and (C) an offer of a reasonable opportunity for the candidate or a spokesman of the candidate to respond over the licensee's facilities. Where such editorials are broadcast within 72 hours prior to the day of the election, the licensee shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

(b) Inasmuch as noncommercial educational stations may not engage in editorializing nor may support nor oppose any candidate for political office (section 399(a), Communications

Act), the provisions of paragraph (a) of this section, do not apply to such stations.

[43 FR 45856, Oct. 4, 1978]

§ 73.1940 Broadcasts by candidates for public office.

(a) *Definitions.* (1) A legally qualified candidate for public office is any person who:

(i) Has publicly announced his or her intention to run for nomination or office;

(ii) Is qualified under the applicable local, State or Federal law to hold the office for which he or she is a candidate; and

(iii) Has met the qualifications set forth in either paragraphs (a) (2), (3), or (4), of this section.

(2) A person seeking election to any public office including that of President or Vice President of the United States, or nomination for any public office except that of President or Vice President, by means of a primary, general or special election, shall be considered a legally qualified candidate if, in addition to meeting the criteria set forth in paragraph (a)(1) of this section, that person:

(i) Has qualified for a place on the ballot; or

(ii) Has publicly committed himself or herself to seeking election by the write-in method and is eligible under applicable law to be voted for by sticker, by writing in his or her name on the ballot or by other method, and makes a substantial showing that he or she is a bona fide candidate for nomination or office.

Person seeking election to the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered legally qualified candidates only in those States or territories (or the District of Columbia) in which they have met the requirements set forth in paragraph (a) (1) and (2) of this rule. Except, that any such person who has met the requirements set forth in paragraph (a) (1) and (2) in at least 10 States (or 9 and the District of Columbia) shall be considered a legally qualified candidate for election in all States, territor-

ies, and the District of Columbia for purposes of this Act.

(3) A person seeking nomination to any public office, except that of President or Vice President of the United States, by means of a convention, caucus or similar procedure, shall be considered a legally qualified candidate if, in addition to meeting the requirements set forth in paragraph (a)(1) of this section, that person makes a substantial showing that he or she is a bona fide candidate for such nomination: Except, that no person shall be considered a legally qualified candidate for nomination by the means set forth in this paragraph prior to 90 days before the beginning of the convention, caucus or similar procedure in which he or she seeks nomination.

(4) A person seeking nomination for the office of President or Vice President of the United States shall, for the purposes of the Communications Act and the rules thereunder, be considered a legally qualified candidate only in those States or territories (or the District of Columbia) in which, in addition to meeting the requirements set forth in paragraph (a)(1) of this section.

(i) He or she, or proposed delegates on his or her behalf, have qualified for the primary or Presidential preference ballot in that State, territory or the District of Columbia, or

(ii) He or she has made a substantial showing of bona fide candidacy for such nomination in that State, territory or the District of Columbia; Except, that any such person meeting the requirements set forth in paragraph (a) (1) and (4) in at least 10 States (or nine and the District of Columbia) shall be considered a legally qualified candidate for nomination in all States, territories and the District of Columbia for purposes of this act.

(5) The term "substantial showing" of bona fide candidacy as used in paragraphs (a) (2), (3), and (4) of this section means evidence that the person claiming to be a candidate has engaged to a substantial degree in activities commonly associated with political campaigning. Such activities normally would include making campaign speeches, distributing campaign litera-

ture, issuing press releases, maintaining a campaign committee, and establishing campaign headquarters (even though the headquarters in some instances might be the residence of the candidate or his campaign manager). Not all of the listed activities are necessarily required in each case to demonstrate a substantial showing, and there may be activities not listed herein which would contribute to such a showing.

(b) *Charges for use of stations.* The charges, if any, made for the use of any broadcasting station by any person who is a legally qualified candidate for any public office in connection with his campaign for nomination for election, or election, to such office shall not exceed

(1) During the 45 days preceding the date of a primary or primary runoff election and during the 60 days preceding the date of a general or special election in which such person is a candidate, the lowest unit charge of the station for the same class and amount of time for the same period, and

(2) At any other time the charges made for comparable use of such station by other users thereof. The rates, if any, charged all such candidates for the same office shall be uniform and shall not be rebated by any means direct or indirect. A candidate shall be charged no more than the rate the station would charge if the candidate were a commercial advertiser whose advertising was directed to promoting its business within the same area as that encompassed by the particular office for which such person is a candidate. All discount privileges otherwise offered by a station to commercial advertisers shall be available upon equal terms to all candidates for public office.

(3) This paragraph shall not apply to any station which is not licensed for commercial operation.

(c) *Discrimination between candidates.* In making time available to candidates for public office, no licensee shall make any discrimination between candidates in practices, regulations, facilities, or services for or in connection with the service rendered pursuant to this part, or make or give any preference to any candidate for public

office or subject any such candidate to any prejudice or disadvantage; nor shall any licensee make any contract or other agreement which shall have the effect of permitting any legally qualified candidate for any public office to broadcast to the exclusion of other legally qualified candidates for the same public office.

(d) *Records, inspection.* Every licensee shall keep and permit public inspection of a complete record (political file) of all requests for broadcast time made by or on behalf of candidates for public office, together with an appropriate notation showing the disposition made by the licensee of such requests, and the charges made, if any, if the request is granted. When free time is provided for use by or on behalf of such candidates, a record of the free time provided shall be placed in the political file. All records required by this paragraph shall be placed in the political file as soon as possible and shall be retained for a period of 2 years. See §§ 1.526-27 of this chapter.

(e) *Time of request.* A request for equal opportunities must be submitted to the licensee within 1 week of the day on which the first prior use, giving rise to the right of equal opportunities, occurred. *Provided, however,* That where the person was not a candidate at the time of such first prior use, he shall submit his request within 1 week of the first subsequent use after he has become a legally qualified candidate for the office in question.

(f) *Burden of proof.* A candidate requesting equal opportunities of the licensee, or complaining of noncompliance to the Commission shall have the burden of proving that he and his opponent are legally qualified candidates for the same public office.

(g) *General requirements.* (1) Except as otherwise indicated in paragraph (g)(2) of this section, no station licensee is required to permit the use of its facilities by any legally qualified candidate for public office, but if any licensee shall permit any such candidate to use its facilities, it shall afford equal opportunities to all other candidates for that office to use such facilities. Such licensee shall have no power of censorship over the material broad-

cast by any such candidate. Appearance by a legally qualified candidate on any: (i) Bona fide newscast, (ii) bona fide news interview, (iii) bona fide news documentary (if the appearance of the candidate is incidental to the presentation of the subjects covered by the news documentary), or (iv) on-the-spot coverage of bona fide news events (including, but not limited to political conventions and activities incidental thereto) shall not be deemed to be use of a broadcasting station. (Section 315(a) of the Communications Act.)

(2) Section 312(a)(7) of the Communications Act provides that the Commission may revoke any station license or construction permit for willful or repeated failure to allow reasonable access to, or to permit purchase of, reasonable amounts of time for the use of a broadcasting station by a legally qualified candidate for Federal elective office on behalf of his candidacy.

(h) *Political broadcasting primer.* A detailed study of these rules regarding broadcasts by candidates for Federal and non-Federal public office is available in the FCC public notice of July 20, 1978, "The Law of Political Broadcasting and Cablecasting." Copies may be obtained from the FCC upon request.

[43 FR 32795, July 28, 1978; as amended at 43 FR 45856, Oct. 4, 1978; 43 FR 55769, Nov. 29, 1978]

PART 76—CABLE TELEVISION SERVICE

§ 76.209 Fairness doctrine; personal attacks; political editorials.

(a) A cable television system engaging in origination cablecasting shall afford reasonable opportunity for the discussion of conflicting views on issues of public importance.

NOTE: See public notice, "Applicability of the Fairness Doctrine in the Handling of Controversial Issues of Public Importance," 29 FR 10415.

(b) When, during such origination cablecasting, an attack is made upon the honesty, character, integrity, or like personal qualities of an identified

person or group, the cable television system operator shall, within a reasonable time and in no event later than one (1) week after the attack, transmit to the person or group attacked: (1) Notification of the date, time, and identification of the cablecast; (2) a script or tape (or an accurate summary if a script or tape is not available) of the attack; and (3) an offer a reasonable opportunity to respond over the system's facilities.

(c) The provisions of paragraph (b) of this section shall not apply to cablecast material which falls within one or more of the following categories:

(1) Personal attacks on foreign groups or foreign public figures;

(2) Personal attacks occurring during uses by legally qualified candidates;

(3) Personal attacks made during cablecasts not included in paragraph (b)(2) of this section and made by legally qualified candidates, their authorized spokespersons or those associated with them in the campaign, on other such candidates, their authorized spokespersons or persons associated with the candidates in the campaign; and

(4) Bona fide newscasts, bona fide news interviews, and on-the-spot coverage of bona fide news events (including commentary or analysis contained in the foregoing programs, but, the provisions of paragraph (b) of this sec-

tion shall be applicable to editorials of the cable television system operator).

(d) Where a cable television system operator, in an editorial, (1) endorses or (2) opposes a legally qualified candidate or candidates, the system operator shall, within 24 hours of the editorial, transmit to respectively (i) the other qualified candidate or candidates for the same office, or (ii) the candidate opposed in the editorial, (a) notification of the date, time, and channel of the editorial; (b) a script or tape of the editorial; and (c) an offer of a reasonable opportunity for a candidate or spokesman of the candidate to respond over the system's facilities: *Provided, however,* That where such editorials are cablecast within 72 hours prior to the day of the election, the system operator shall comply with the provisions of this paragraph sufficiently far in advance of the broadcast to enable the candidate or candidates to have a reasonable opportunity to prepare a response and to present it in a timely fashion.

(Secs. 2, 3, 4, 5, 301, 303, 307, 308, 309, 315, 317, 48 Stat. as amended 1064, 1065, 1066, 1068, 1081, 1082, 1083, 1084, 1085, 1088, 1089; 47 U.S.C. 152, 153, 154, 155, 301, 303, 307, 308, 309, 315, 317)

[37 FR 3278 Feb. 12, 1972, as amended at 42 FR 19347, Apr. 13, 1977; 44 FR 45956, Aug. 6, 1979]

EDITORIAL NOTE: This section is also codified in 47 CFR Part 76.

INTERSTATE COMMERCE COMMISSION

PART 1325—EXTENSION OF CREDIT TO CANDIDATES FOR FEDERAL OFFICE OR THEIR REPRESENTATIVES

Sec.

1325.1 Extension of unsecured credit prohibited.

1325.2 Credit agreements.

1325.3 Federal office.

AUTHORITY: Pub. L. 92-225, the Federal Election Campaign Act of 1971, enacted Feb. 7, 1972.

SOURCE: ICC Ex Part 283, 37 FR 10446, May 23, 1972, unless otherwise noted.

EDITORIAL NOTE: This part also codified as 49 CFR Part 1325.

§ 1325.1 Extension of unsecured credit prohibited.

Persons subject to regulations by the Interstate Commerce Commission shall not knowingly and willfully provide, for candidates for Federal office or their representatives, service or goods related to their campaign without obtaining either prepayment or a binding guarantee of payment through a sufficient deposit, bond, col-

lateral, or other means of security. The extension of credit to such persons shall not exceed the amount of the security posted.

§ 1325.2 Credit agreements.

(a) All agreements to extend credit to candidates for Federal office or their representatives by person subject to regulation by the Interstate Commerce Commission, (1) must be in writing, (2) must contain a detailed description of the deposit, bond, collateral, or other means of security, used to secure payment of the debt, and (3) must be signed by all parties to the agreement. A copy of each such agreement must be filed with this Commission's Bureau of Operations in Washington, D.C., within 20 days of the date of its execution.

§ 1325.3 Federal office.

For the purposes of this section, "Federal office" means the office of the President or Vice President of the United States; or of a Senator or Representative in, or Delegate or Resident Commissioner to, the Congress of the United States.

FINDING AIDS

A list of CFR titles, subtitles, chapters, subchapters and parts, and an alphabetical list of agencies publishing in the CFR are included in the subject index volume to the Code of Federal Regulations which is published separately and revised semiannually January 1 and July 1.

Indexes to Regulations:

General, Parts 100-115

General Election Financing, Parts 140-145

Federal Financing of Presidential Nominating Conventions, Part 9008

Presidential Primary Matching Fund, Parts 9031-9038

Table of CFR Titles and Chapters

Alphabetical List of Agencies Appearing in the CFR

List of CFR Sections Affected

Appendix to List of CFR Sections Affected

INDEXES TO REGULATIONS

Subject Index Terms

- Acceptance.
Account *See* Campaign Depository.
Accountants' services *See* Legal/Accounting Services.
Act.
Administrative expenses *See* Allocation; Corporation/Labor Union/National Bank; separate segregated fund.
Administrative personnel.
Advertising/Solicitation.
Advisory opinions.
Agent.
Affiliated committees.
Allocation.
Anonymous contributions *See* Cash.
Appearances by candidate *See* Candidate, appearances by.
Appropriate state.
Attorney General *See* Enforcement.
Attorneys' services *See* Legal/Accounting Services.
Authorized committees.
Awards *See* Honoraria.
Banks.
Billboards *See* Advertising/Solicitation.
Bumper stickers *See* Advertising/Solicitation.
Campaign Advertising *See* Advertising/Solicitation.
Campaign debts *See* Debts; candidate.
Campaign depository.
Campaign funds.
Candidate.
Cash.
Chairman *See* Political committee, organization.
Check.
Check-off *See* Corporation/Labor Union/National Bank, payroll deduction.
Children.
Civil actions *See* Enforcement.
Clearly identified candidate.
Clerk of the House.
Commission *See* Federal Election Commission.
Committee *See* Political committee.
Common control *See* Control.
Communications.
Complaints *See* Enforcement.
Compliance *See* Enforcement
Conduit/Intermediary.
Congress, members of.
Connected organization.
Constituent service costs *See* Office accounts.
Contractor, government *See* Federal contractor.
Continuous reporting.
Contribution.
Control
Convention, National nominating.
Cooperation, consultation, concert *See* Contribution, in-Kind; expenditure.
Corporation/Labor Union/National Bank.
Credit, extension of.
Currency *See* Cash.
Debts.
Definitions.
Deposition *See* Enforcement.
Depository *See* Campaign Depository.
District of Columbia.
Document filing.
Drives *See* Voter drives.
Dual candidate.
Earmarking *See* Conduit/Intermediary; contribution, earmarked.
Educational conferences.
Effect on state law *See* State law.
Election.
Employee participation plan.
Enforcement.
Excess campaign funds *See* Campaign funds; office accounts.
Executive or administrative personnel.
Expenditure.
Extension of credit *See* Credit, extension of.
Family of candidate.
Federal contractor.
Federal corporation.
Federal Election Commission.
Federal office.
Federal officeholder.
File, filed, or filing.
Foreign national.
Forms.
Franking account *See* Office accounts.
Fraudulent misrepresentation.
Fringe benefits.
Fundraising.
Get-out-the-vote drives *See* Voter drives.
Gifts.
Government contractor *See* Federal contractor
Honoraria.
Host committees, national conventions *See* Convention, National Nominating.
House Campaign Committees.
Identification.
Immediate family *See* Family of candidate.
In-kind contributions *See* Contribution, in-kind.
Incorporation.
Independent expenditure.
Insurance companies.
Intermediary *See* Conduit/Intermediary; contribution, earmarked.
Investment of contributions *See* Contribution, investment.
Labor Unions. *See* Corporation/Labor Union/National Bank.

Index

- Legal/Accounting services.
- Limitations.
- Lists.
- Litigation.
- Loans.
- Local party *See* National/State/Local Party.
- Media.
- Members of Congress *See* Congress, members of.
- Membership organizations.
- Misrepresentation of campaign authority
See Fraudulent misrepresentation.
- Multicandidate committee.
- Mutual Life Insurance Company *See* Insurance companies.
- National banks *See* Banks.
- National/State/Local Party.
- News *See* Media.
- Newsletter fund *See* Office accounts.
- Non-election year.
- Notice *See* Advertising/Solicitations; communications; media.
- Occupation.
- Office accounts.
- Officers of political committee *See* Political committee, officers.
- Opinion polls *See* Polling.
- Organization of political committees *See* Political committee, organization.
- PAC (Political Action Committee) *See* Political Committee; separate segregated fund.
- Partnerships.
- Party *See* National/State/Local Party.
- Payroll deduction *See* Corporation/Labor Union/National Bank.
- Person.
- Personal funds.
- Personal services *See* Contribution; volunteer.
- Petty cash fund.
- Point of entry *See* Document filing.
- Political Action Committee *See* Affiliated committees; political committee; separate segregated fund.
- Political committee.
- Political party -*See* National/State/Local Party.
- Polling.
- Post-election.
- Postmark as date of filing *See* File, filed, or filing.
- Preemption of State Law *See* State Law.
- Presidential expenditures *See* Allocation; expenditure; limitations.
- Price index.
- Primary election.
- Principal Campaign Committee.
- Principal place of business.
- Prohibition of contributions in name of another *See* Contribution.
- Proliferation of committees.
- Property.
- Proprietor, sole *See* Sole proprietor.
- Public inspection of reports.
- Public Utilities Holding Company Act.
- Publication or distribution of political statements.
- Raffle.
- Recordkeeping.
- Registration.
- Registration of voters *See* Voter drives, registration.
- Regulations *See* Rules.
- Reports.
- Retiring debts *See* Debts.
- Rules and regulations.
- Salaries.
- Sample ballot *See* State card.
- Secretary of the Senate.
- Segregated fund *See* Separate segregated fund.
- Senatorial Campaign Committees.
- Separate segregated fund.
- Single candidate committee.
- State card.
- Sole proprietor.
- Solicitation *See* Advertising/Solicitation; communications.
- Special election *See* Election.
- Spouse *See* Family of candidate.
- State.
- State banks *See* Banks.
- State law.
- State officers.
- State party *See* National/State/Local Party.
- Statements filed with state officers *See* Document filing; state officers.
- Support.
- Termination.
- Trade associations.
- Transfers of funds.
- Travel expenses.
- Treasurer of political committee.
- Trustee plan *See* Employee participation plan.
- Unauthorized committee.
- Unused campaign funds *See* Campaign funds.
- Use of contributed amounts *See* Campaign funds; office accounts.
- Vendor.
- Violations.
- Volunteer.
- Voter drives.
- Voting age population.
- Waiver of reporting requirements.

General, Parts 100-115

A

	<i>Section</i>
Advertising/Solicitation:	
Comparable rate charged.....	§ 110.11(b)
Notice required.....	§ 102.16; § 110.11(a)
Advisory Opinions:	
Issuance of.....	§ 112.4
Reconsideration of.....	§ 112.6
Reliance on.....	§ 112.5
Requests for.....	§ 112.1
made public.....	§ 112.2
written comments on.....	§ 112.3
Standing to receive.....	§ 112.1(a)
Affiliated Committee:	
Definition.....	§ 100.5(g); § 110.3
Contribution limitations.....	§ 110.3
Disclosure of.....	§ 102.2(b)
Transfers between.....	§ 102.6(a)
Audits:	
By Commission.....	§ 104.16
Preservation of reports for.....	§ 104.14(b)(3)
Authorized Committee:	
As affiliated committee.....	§ 100.5(g)
Contributions received by.....	§ 102.8(a)
Definition.....	§ 100.5(d); § 100.5(f)(1)
Designation of, by candidate.....	§ 101.1(b); § 102.13 (a) and (c)
Registration of.....	§ 102.1(b)
Reports by.....	§ 104.3(f)
Restrictions on name of.....	§ 102.14(a)

C

Campaign Depository:	
Deposit of receipts in.....	§ 103.3(a)
Designation of, by political committee.....	§ 103.1; § 103.2
Disbursements from.....	§ 102.10; § 103.3(a)
For committees financing both federal and non-federal elections.....	§ 102.5
For joint fundraising.....	§ 102.6(b)
For Vice Presidential candidate campaign.....	§ 103.4
Communications:	
Newstory exempted from contribution/expenditure... § 100.7(b)(2); § 100.8(b)(2)	
Nonpartisan communications by corporations, labor organizations or other membership organizations.....	§ 114.1(a)(2)(ii); § 114.4
Notice required.....	§ 110.11(a)
Partisan communications by corporations, labor organizations or other membership organizations.....	§ 100.8(b)(4); § 114.1(a)(2)(i); § 114.3
Candidate:	
As agent of authorized committee.....	§ 101.2; § 102.7(d)
Clearly identified, definition.....	§ 100.17
Contributions to.....	§ 110.1; § 110.2
Definition.....	§ 100.3

Candidate—Continued	Section
Designations by.....	§ 101.1
of authorized committees.....	§ 101.1(b); § 102.13
of principal campaign committee.....	§ 101.1(a); § 102.12
when individual is candidate for more than one federal office, or for federal and state office.....	§ 110.8(d)
Expenditures by, from personal funds.....	§ 110.10
Expenditures made for more than one candidate.....	§ 106.1
Fraudulent misrepresentation by candidate.....	§ 110.9(b)
Living expenses.....	§ 100.8(b)(22)
Presidential candidate expenditure limitations.....	§ 110.8
Travel by.....	§ 106.3
Compliance:	
Briefing procedures.....	§ 111.16
Civil proceedings.....	§ 111.19
Complaints.....	§ 111.4; § 111.5; § 111.6; § 111.7
Computation of time.....	§ 111.2
Confidentiality.....	§ 111.21
Conciliation agreements.....	§ 111.18
Ex parte communications.....	§ 111.22
Initiation of compliance matters.....	§ 111.3
Internally generated compliance matters.....	§ 111.8
Investigation.....	§ 111.10
Motions to quash or modify subpoenas.....	§ 111.15
Probable cause to believe recommendation.....	§ 111.16
notification.....	§ 111.17
Public disclosure of Commission action.....	§ 111.20
Reason to believe finding.....	§ 111.9
Representation by counsel, notification.....	§ 111.23
Service of subpoenas, orders and notifications.....	§ 111.13
Subpoenas, depositions.....	§ 111.12
Witness fees and mileage.....	§ 111.14
Written questions under order.....	§ 111.11
Connected Organization:	
Definition.....	§ 100.6
Disclosure of.....	§ 102.2(b)
<i>See also:</i> Affiliated Committee	
Contributions:	
Accounting for.....	§ 102.9(a)
Criteria for establishing candidate status.....	§ 100.3(a)
Definition.....	§ 100.7(a)
Determining candidate "support".....	§ 102.12(c)(2); § 102.13(c)(2)
Earmarked.....	§ 102.8(c); § 110.6
Exemptions from definition.....	§ 100.7(b)
Financing both federal and non-federal elections.....	§ 102.5
Forty-eight hour notification of.....	§ 104.5(f)
Identification of contributor.....	§ 104.7(b); § 104.8
Impermissible.....	§ 101.3; § 103.3(b); § 104.12; § 110.4; § 114.2; § 114.8(b); § 115.2(a)
In-kind	
"anything of value" defined.....	§ 100.7(a)(1)(iii); § 100.8(a)(1)(iv)
opinion polling expenses.....	§ 106.4(b)
reporting of.....	§ 104.13; § 106.1(b); § 106.4(b)
when not an independent expenditure.....	§ 109.1(c)
Limitations on contributions	
affiliated committees share one limit.....	§ 110.3(a)(1)(i)
annual limitations.....	§ 110.5
by a minor.....	§ 110.1(i)(2)

Index

Contributions—Continued

	<i>Section</i>
Limitations on contributions—Continued	
by candidates.....	§ 110.1(f)
by multicandidate committees.....	§ 110.2
by partners.....	§ 110.1(e); § 115.4(c)
by persons.....	§ 110.1
by spouses.....	§ 100.7(c); § 110.1(i)(1)
exempted contributions.....	§ 100.7(b) (6), (7) and (8)
to both a candidate's authorized committee and a committee that	
supports the same candidate.....	§ 110.1(h)
to retire debts.....	§ 110.1(g)
violations of.....	§ 110.9
Raised jointly by non-political and political committees.....	§ 102.6
Receipt of.....	§ 102.8
Received prior to an individual's becoming a candidate.....	§ 101.3
Reporting of	
by authorized committees... § 104.3(a)(3); § 104.3(a)(4) (i) and (ii);	§ 104.3(b)(4)(v)
by political committees other than authorized committees... § 104.3(a)(2);	§ 104.3(a)(4)(i) and (ii); § 104.3(b)(1)(v); § 104.3(b)(3)(iv) and (v)
summary.....	§ 104.3(c)(1)
Solicitation of	
notices required.....	§ 102.16; § 110.11; § 104.5(a)(3), (4) and (5)
restrictions on use of reports for.....	§ 114.15(a) and (b)
to retire debts.....	§ 110.1(g)
See also: Corporation/Labor Organization/National Bank	
Convention, National Nominating:	
Reports and registration by	
host committees.....	§ 107.1
organizations and groups representing a local government	
agency.....	§ 107.1
organizations and groups representing a state or municipality.....	§ 107.1
political parties.....	§ 107.2
Corporation/Labor Organization/National Bank:	
Affiliated committees of.....	§ 110.3(a)
Candidate and party appearances.....	§ 114.3(c)(2); § 114.4(b)
Communications to stockholders, executives or members	
nonpartisan registration and voting information.....	§ 114.4(c)
registration and get-out-the-vote drives.....	§ 114.3(c)(4); § 114.4(d)
partisan.....	§ 100.8(b)(4); § 114.3
Connected organization	
Definition.....	§ 100.6
Reported.....	§ 102.2(b)
Contributions and expenditures prohibited.....	§ 114.2
Debt settlement.....	§ 114.10(b) and (c)
Employee participation plan.....	§ 114.11
Establishment, administration and solicitation costs... § 114.1(a)(2)(iii);	§ 114.1(b); § 114.5(b)
Extension of credit by.....	§ 114.10(a)
Facilities	
customarily made available to civic organizations.....	§ 114.12(b)
isolated use by corporate employees or union members.....	§ 114.9(a) and (b)
reimbursement for costs required if used by other persons.....	§ 114.9(d)
Fringe benefits while employee on leave.....	§ 114.12(c)
Good Government activities.....	§ 114.3(c)(2); § 114.4(b)
Incorporation for liability purposes only.....	§ 114.12(a)
Legal and accounting services.....	§ 114.1(a)(2)(vi) and (vii)
Partisan communications.....	§ 114.3

Corporation/Labor Organization/National Bank—Continued

Payroll deduction/check-off plans	<i>Section</i>
employee participation plans.....	§ 114.11
for executives, shareholders, members.....	§ 114.5(k)
Presidential nominating convention activity.....	§ 114.1(a)(2)(viii)
prohibited by corporate member to trade association's separate segregated fund.....	§ 114.8(e)(3)
prohibited under twice yearly solicitations.....	§ 114.6(e)(1)
Raffle as fundraiser.....	§ 114.5(b)(2)
Separate segregated funds	
coercion prohibited.....	§ 114.5(a)
communications paid with voluntary contributions.....	§ 114.5(i)
control by parent organization.....	§ 114.5(d)
defined as political committee.....	§ 100.5(b)
membership in.....	§ 114.5(c)
registration of.....	§ 102.1(c)
subject to contribution limits.....	§ 114.5(f)
voluntary contributions to.....	§ 114.5(a)
Solicitations	
accidental or inadvertent.....	§ 114.5(h)
methods available.....	§ 114.5(k); § 114.6(e)
methods permitted by law to labor unions.....	§ 114.5(l)
must inform employee of political purpose and right to refuse... notification required.....	§ 114.5(a)(3) and (4)
of all employees twice yearly.....	§ 114.6
of members.....	§ 114.5(g)
of shareholders and executive and administrative personnel.....	§ 114.5(g)
Transportation provided to candidate.....	§ 114.9(e)
Trustee plan	
<i>See:</i> Employee participation plan	
Twice yearly solicitations; § 114.5(e)(3); § 114.6	
<i>See also:</i> Membership Organization; Separate Segregated Fund; Trade Association	

D

Debts:

See: Reporting

Definitions:

Act.....	§ 100.18
Affiliated committee.....	§ 100.5(g)
Agent.....	§ 109.1(b)(5)
Anything of value.....	§ 100.7(a)(1)(iii); § 100.8(a)(1)(iv)
Authorized committee.....	§ 100.5(d); § 100.5(f)(1)
Candidate.....	§ 100.3(a)
Caucus.....	§ 100.2(e)
Clearly identified candidate.....	§ 100.17
Commission.....	§ 100.9
Connected organization.....	§ 100.6
Contribution.....	§ 100.7(a)
Contribution exemptions.....	§ 100.7(b)
Convention.....	§ 100.2(e)
Corporation.....	§ 100.8(b)(4)(vi)
Election.....	§ 100.2(a)
Election cycle.....	§ 100.3(b)
Employee participation plan.....	§ 114.11(a)
Employer.....	§ 100.21

Index

Definitions—Continued

	<i>Section</i>
Excess campaign funds.....	§ 113.1(e)
Executive or administrative personnel.....	§ 100.8(b)(4)(iii); § 114.1(c)
Expenditure.....	§ 100.8(a)
Expenditure exemptions.....	§ 100.8(b)
Expressly advocating.....	§ 109.1(b)(2)
Federal Election Commission.....	§ 100.9
Federal office.....	§ 100.4
Federal officeholder.....	§ 113.1(c)
File, filed or filing.....	§ 100.19
Foreign national.....	§ 110.4(a)(3)
Funds donated.....	§ 113.1(a)
General election.....	§ 100.2(b)
Honorarium.....	§ 110.12(b)
Identification.....	§ 100.12
Independent expenditure.....	§ 100.16; § 109.1(a)
Labor organization.....	§ 100.8(b)(4)(i); § 114.1(d)
Member.....	§ 100.8(b)(4)(iv); § 114.1(e)
Multicandidate committee.....	§ 100.5(e)(3)
National committee.....	§ 100.13
Occupation.....	§ 100.20
Office account.....	§ 113.1(b)
Party committee.....	§ 100.5(e)(4)
Person.....	§ 100.10
Personal funds.....	§ 110.10(b)
Petty cash fund.....	§ 102.11
Political committee.....	§ 100.5
Political party.....	§ 100.15
Primary election.....	§ 100.2(c)
Principal campaign committee.....	§ 100.5(d); § 100.5(e)(1)
Runoff election.....	§ 100.2(d)
Single candidate committee.....	§ 100.5(e)(2)
Special election.....	§ 100.2(f)
Speech.....	§ 110.12(b)(3)
State.....	§ 100.11
State committee.....	§ 100.14(a)
Subordinate committee of state committee.....	§ 100.14(b)
Support.....	§ 102.12(c)(2); § 102.13(c)(2)
Stockholder.....	§ 100.8(b)(4)(ii); § 114.1(h)
Trade association.....	§ 114.8(a)
Unauthorized committee.....	§ 100.5(f)(2)
Voluntary contributions.....	§ 114.1(i)
Voting age population.....	§ 110.9(d)

Depository:

See: Campaign Depository

E

Election:

Definition.....	§ 100.2(a)
caucus or convention.....	§ 100.2(e)
cycle.....	§ 100.3(b)
general.....	§ 100.2(b)
primary.....	§ 100.2(c)
runoff.....	§ 100.2(d)
special.....	§ 100.2(f)

Enforcement:

See: Compliance

Excess Campaign Funds:	<i>Section</i>
Definition.....	§ 113.1(e)
Use of.....	§ 113.1(e); § 113.2
Expenditures:	
Accounting for.....	§ 102.9(b)
Allocation of	
among (or between) candidates.....	§ 104.10; § 106.1
among states, by candidates for Presidential nomination.....	§ 106.2
between campaign and noncampaign travel.....	§ 106.3
for polling expenses.....	§ 106.4
Criteria for establishing candidate status.....	§ 100.3
Definition, § 100.8(a)	
Disbursement of	
by check.....	§ 102.10
from petty cash fund.....	§ 102.11
Exemptions from definition.....	§ 100.8(b)
Identifying recipient of.....	§ 104.9
Limitations on	
by candidate, from personal funds.....	§ 110.10
by party committees.....	§ 110.7
by Presidential candidate.....	§ 110.8
exempted expenditures.....	§ 100.8(b) (7), (8) and (9)
“price index” increase of.....	§ 110.9(c)
violations of.....	§ 110.9(a)
Independent expenditures	
<i>See: Independent Expenditures</i>	
Operating expenditures	
reporting of	
by authorized committees...§ 104.3 (a)(3) (ix); § 104.3 (a)(4) (v); § 104.3 (b)(2) (i)	
by political committees other than authorized committees...§ 104.3 (a)(2) (vii); § 104.3 (a)(4) (v); § 104.3 (b)(1) (i)	
summary.....	§ 104.3(c)(2)
Prohibited expenditures for national banks, corporations and labor organizations.....	§ 114.2
Reporting of	
by authorized committees.....	§ 104.3(b) (2) and (4)
by political committees other than authorized committees...§ 104.3(b) (1) and (3)	
in-kind contributions as expenditures.....	§ 104.13(a)(2); § 109.1(c)
F	
Federal Contractor:	
Contributions and expenditures by, prohibited.....	§ 115.2(a)
Definition.....	§ 115.1(a)
Employee contributions or expenditures.....	§ 115.6
Individuals and sole proprietors.....	§ 115.5
Partnership.....	§ 115.4
Separate segregated funds established by.....	§ 115.3
Federal Election Commission:	
Advisory opinions	
<i>See: Advisory Opinions</i>	
Audits and investigations by.....	§ 104.16
Definition.....	§ 100.9
Enforcement by, Part 111	

Index

	Section
Federal Officeholder:	
Definition.....	§ 113.1(c)
Filing Reports, Designations and Statements:	
Definition of filing.....	§ 100.19
Forty-eight hour notification of contribution.....	§ 104.5(f)
Independent expenditure reports.....	§ 104.4; § 109.2
Internal communication reports by membership organizations and corporations.....	§ 104.6; § 105.4
National nominating convention reports.....	§ 107
Postmarks, when filing by mail.....	§ 104.5(e)
Transmittal of documents to Commission by Secretary of Senate and Clerk of House.....	§ 105.5
When to file.....	§ 104.5
With appropriate federal office	
by House candidate committees.....	§ 105.1
by other committees.....	§ 105.4
by Presidential and Vice Presidential candidate principal campaign committees.....	§ 105.3
by Senate candidate committees.....	§ 105.2
With state officers.....	§ 108.1
by committees and persons other than principal campaigning committees.....	§ 108.4
by Congressional candidate committees.....	§ 108.3
by Presidential and Vice Presidential candidate principal campaign committees.....	§ 108.2
duties of officers.....	§ 108.6
effect on state law.....	§ 108.7
exemption for District of Columbia.....	§ 108.8
time and manner of filing.....	§ 108.5
<i>See also:</i> Forms; Reporting	
Forms:	
Computer-produced schedules in lieu of.....	§ 104.2(d)
Consolidated reports.....	§ 104.3(f)
Donations toward political committee office facilities, separate schedule for.....	§ 104.3(g)
For Congressional candidate committees.....	§ 104.2(e)(2)
For Presidential and Vice Presidential candidate committees.....	§ 104.2(e)(1)
For Presidential candidates and their committees, reporting expenditures by state.....	§ 106.2(a)
For political committees other than authorized committees.....	§ 104.2(e)(3)
Independent expenditures.....	§ 104.4(a); § 109.2(a)
Internal communications by membership organization or labor organization.....	§ 104.6(a)
Legal and accounting services, separate schedule for.....	§ 104.3(h)
Notice of Termination.....	§ 102.3
Obtainable from the Commission.....	§ 104.2(b)
Reproduction of.....	§ 104.2(c)
Statement of Candidate.....	§ 101.1
Statement of Organization.....	§ 102.1; § 102.2
<i>See also:</i> Filing Reports, Designations and Statements; Reporting	

H

Honorarium:	
Definition.....	§ 110.12(b)
Limitations on accepting.....	§ 110.12(a)
Not a contribution.....	§ 100.7(b)(19)

I

Independent Expenditures:	<i>Section</i>
Certification of.....	§ 109.2(a)(1)
Definition.....	§ 100.16; § 109.1(a)
For public communications, notice required.....	§ 109.4; § 110.11
Made on behalf of more than one candidate.....	§ 106.1(a)
Reporting of.....	§ 100.8(a)(3); § 104.4; § 109.2
by persons other than a political committee.....	§ 109.2
by political committees other than authorized committees... (vii)	§ 104.3 (b)(1) (vii) § 104.3 (b)(3) (vii)
twenty-four hour reports.....	§ 104.4(b)

L

Labor Organization:	
<i>See: Corporation/Labor Organization/National Bank</i>	
Legal and Accounting Services:	
By corporations and labor organizations.....	§ 114.1 (a)(2) (vi) and (vii)
Not a contribution.....	§ 100.7(b) (13) and (14)
Not an expenditure.....	§ 100.8(b) (14) and (15)
Reporting of.....	§ 104.3(h)
Loans:	
As contribution.....	§ 100.7(a)(1)
As expenditure.....	§ 100.8(a)(1)
Not a contribution.....	§ 100.7(b) (11), (12) and (20); § 102.4(c)(2)
Not an expenditure.....	§ 100.8(b) (12), (13) and (20)
Reporting of	
by authorized committees... (b)(2) (iii); § 104.3 (b)(4) (iii) and (iv); § 104.3 (d)	§ 104.3 (a)(3) (vii); § 104.3 (a)(4) (iv); § 104.3 (b)(2) (iii); § 104.3 (b)(4) (iii) and (iv); § 104.3 (d)
by political committees other than authorized committees... (vi); § 104.3 (a)(4) (iv); § 104.3 (b)(1) (iii) and (vi); § 104.3 (b)(3) (iii) and (vi); § 104.3 (d)	§ 104.3 (a)(2) (vi); § 104.3 (a)(4) (iv); § 104.3 (b)(1) (iii) and (vi); § 104.3 (b)(3) (iii) and (vi); § 104.3 (d)

M

Membership Organizations:	
As trade association.....	§ 114.7(c)
Definition of "member".....	§ 114.1(e)
Mutual life insurance companies.....	§ 114.7(i)
Professional organizations, state law determines corporate/noncorporate status.....	§ 114.7(d)
Reporting of communications.....	§ 100.8(b)(4)
Separate segregated fund, established by.....	§ 114.7(g)
Single contribution limitation.....	§ 110.3(a)
Solicitations by.....	§ 114.7 (a), (e), (f) and (j)
<i>See also: Corporation/Labor Organization/National Bank; Separate Segregated Fund; Trade Association</i>	
Multicandidate Committee:	
Definition.....	§ 100.5(e)(3)
Contribution limitations.....	§ 110.2

N

National Banks:	
<i>See: Corporation/Labor Organization/National Bank</i>	
National/State/Local Party Committees:	
Affiliated committees.....	§ 100.5(c)(2); § 110.3(b)

Index

National/State/Local Party Committees—Continued

	<i>Section</i>
Allocation of expenditures	
exceptions.....	§ 106.6(c)
federal/non-federal administrative.....	§ 106.1(e)
in general.....	§ 106.1(a)
Committees established and maintained by national party committees.....	§ 110.1(b)(2); § 110.2(a)(2)(ii)
Contribution/expenditure exceptions	
ballot access payments.....	§ 100.7(b)(18); § 100.8(b)(19)
campaign materials for volunteer activities.....	§ 100.7(b)(15); § 100.8(b)(16)
food, beverages and invitations.....	§ 100.7(b) (6) and (7); § 100.8(b) (7) and (8)
legal or accounting services...§ 100.7(b) (13) and (14); § 100.8(b) (14) and (15)	
nonpartisan activity.....	§ 100.8(b)(3)
office building fund.....	§ 100.7(b)(12); § 100.8(b)(13)
recount of results of federal elections.....	§ 100.7(b)(20)
slate card costs.....	§ 100.7(b)(9); § 100.8(b)(10)
travel expenses.....	§ 100.7(b)(8); § 100.8(b)(9)
use of residential premises, church or community room § 100.7(b) (4) and (5); § 100.8(b) (5) and (6)	
voter registration and get-out-the-vote activities for Presidential and Vice Presidential nominees.....	§ 100.7(b)(17); § 100.8(b)(18)
Defined as a political committee.....	§ 100.5(c)
Definitions	
national committee.....	§ 100.13
party committee.....	§ 100.5(e)(4)
political party.....	§ 100.15
state committee.....	§ 100.14(a)
subordinate committee of state committee.....	§ 100.14(b)
Expenditure limitations.....	§ 110.7
Federal/non-federal election financing.....	§ 102.5
Registration requirements.....	§ 102.1
Separate contribution limits	
for national and state party committees.....	§ 110.3(b)(1)
for state party and independent subordinate party committees... § 110.3(b)(3)(ii)	
for Senate candidates from national party and Senate campaign committees.....	§ 110.2(c)
Subordinate state committees	
presumed not independent of state committee for contribution limit purposes.....	§ 110.3(b)(2)(ii)
share state expenditure limit.....	§ 110.7(c)
Transfers between committees of same political party unlimited... § 102.6(a); § 110.3(c)	

Office Accounts:

Appropriated and personal funds not included.....	§ 113.1 (a) and (b)
Contribution and exemption limits may apply.....	§ 113.4
Definition.....	§ 113.1(b)
Funds donated to	
definition.....	§ 113.1(a)
deposit of.....	§ 113.3
use of.....	§ 113.1

P

Party Committee:

See: National/State/Local Party Committees

Personal Funds:

	<i>Section</i>
For living expenses of candidate.....	§ 100.8(b)(22)
For travel expenses of candidate.....	§ 106.3(b)(1)
For unlimited expenditures by candidate.....	§ 110.10
Segregated from political funds.....	§ 102.15

Political Committee:

Accounting for contributions and expenditures.....	§ 102.9
Authorized by candidate.....	§ 102.13
Campaign depository	
See: Campaign Depository	
Comingled funds of.....	§ 102.15
Definition.....	§ 100.5
affiliated committee.....	§ 100.5(g)
authorized committee.....	§ 100.5(d); § 100.5(f)(1)
multicandidate committee.....	§ 100.5(e)(3)
principal campaign committee.....	§ 100.5(d) and (e)(1)
separate segregated fund.....	§ 100.5(b)
single candidate committee.....	§ 100.5(e)(2)
unauthorized committee.....	§ 100.5(f)(2)
Delegate committee, restriction on name of.....	§ 102.14(b)(1)
Designation of principal campaign committee.....	§ 102.12
Draft committee, restriction on name of.....	§ 102.14(b)(2)
Financing of, for federal/non-federal election.....	§ 102.5
Identification number.....	§ 102.2(c)
Names of.....	§ 102.14
Organization of.....	§ 102.7

Party committee:

See: National/State/Local Party Committees

Registration of.....	§ 102.1
authorized committees.....	§ 102.1(b)
other political committees.....	§ 102.1(d)
principal campaign committees.....	§ 102.1(a)
separate segregated funds.....	§ 102.1(c)

Reporting

See: Reporting

Statement of Organization.....	§ 102.1; § 102.2(a)
--------------------------------	---------------------

Termination of

by political committee.....	§ 102.3
by the Commission.....	§ 102.4

Transfers between § 102.6

See also: Separate Segregated Fund; National/State/Local Party Committees

Principal Campaign Committee:

Consolidated report filed by.....	§ 104.3(f)
Definition.....	§ 100.5(d); § 100.5(e)(1)
Designation of	
by candidate.....	§ 101.1(a); § 102.12(a)
restrictions on.....	§ 102.12 (b) and (c)
Registration of.....	§ 102.1(a)
Termination of.....	§ 102.3(b)

Index

R

	<i>Section</i>
Recordkeeping:	
Allocation of expenditures among candidates.....	§ 104.10; § 106.1
Best efforts.....	§ 102.9(d); § 104.7
Disbursements	
account of.....	§ 102.9(b)
by check.....	§ 102.10; § 103.3(a)
from petty cash fund.....	§ 102.11; § 103.3(a)
Distinguishing between primary and general election contributions.....	§ 102.9(e)
Federal/non-federal election finance activities.....	§ 102.5; § 106.1(e)
Identifying contributor.....	§ 104.7(b); § 104.8
Identifying recipient of expenditure.....	§ 104.9
Illegal contributions.....	§ 103.3(b)
In-kind contributions.....	§ 104.13
Joint fundraising.....	§ 102.6(b)
Receipt of contributions.....	§ 102.8; § 102.9(a)
Records	
accuracy of.....	§ 104.14(d)
maintenance of.....	§ 102.9(d); § 104.14(b)(1)
preservation of.....	§ 102.9(c); § 104.14(b) (2) and (3)
<i>See also: Filing Reports, Designations and Statements; Reporting</i>	
Reporting:	
Allocation of expenditures among candidates.....	§ 104.10; § 106.1
Best efforts.....	§ 104.7
Consolidated, for principal campaign committees.....	§ 104.3(f)
Cumulative.....	§ 104.3(i)
Debts and obligations.....	§ 104.3(d); § 104.11
Disbursements.....	§ 104.3(b)
Donations toward political committee office facilities....	§ 100.7(b)(12); § 104.3(g)
Earmarked contributions.....	§ 110.6
Formal requirements.....	§ 104.14
Identifying contributor.....	§ 104.7(b); § 104.8
Identifying recipient of expenditure.....	§ 104.9
Independent expenditures	
by political committees.....	§ 104.4
by persons other than political committees.....	§ 109.2
In-kind contributions.....	§ 104.13; § 106.1(b) § 106.4(b)
Internal communications by membership organizations and corporations.....	§ 104.6; § 105.4
Legal and accounting services.....	§ 104.3(h)
National nominating convention reports.....	§ 107.1; § 107.2
Presidential and Vice Presidential committee reports for elections prior to January 1, 1980.....	§ 104.12
Receipts.....	§ 104.3(a); § 104.17
Summary of contributions and operating expenditures.....	§ 104.3(c)
Use of pseudonyms.....	§ 104.3(e)
Who reports.....	§ 104.1

S

Separate Segregated Fund:	
Affiliated committee.....	§ 100.5(g); § 110.3(a)
Coercion prohibited.....	§ 114.5(a)
Communications to general public.....	§ 114.5(i)
Contribution limits	
affiliated committees share one limit.....	§ 110.3(a)(1)(i)
application of.....	§ 114.5(f)

Separate Segregated Fund—Continued	<i>Section</i>
Contributions to.....	§ 114.5(a)
Control of funds by parent organization.....	§ 114.5(d)
Costs incurred for establishing, administering and soliciting contribu- tions to fund	
not contribution or expenditure.....	§ 114.1(a)(2)(iii)
treasury funds used for.....	§ 114.5(b)
Establishment by	
federal contractors.....	§ 115.3
membership organization.....	§ 114.7
national banks, corporations, labor unions.....	§ 114.1(a)(2)(iii); § 114.5
trade associations.....	§ 114.8
Membership in.....	§ 114.5(c)
Name must include name of connected organization.....	§ 102.14(c)
Payroll deduction	
<i>See:</i> Corporation/Labor Organization/National Bank	
Registration of.....	§ 102.1(c)
State Officeholder:	
Definition.....	§ 113.1(d)

T

Testing-the-Waters Activities:	
Exempted from contribution/expend § 100.7(b)(1); § 100.8(b)(1)	
Trade Association:	
Affiliated committees of.....	§ 110.3(a)(1)
Communications	
to executives, shareholders.....	§ 114.3
to members.....	§ 114.3
to non-executives.....	§ 114.4
Definition.....	§ 114.8(a)
Employees.....	§ 114.8(i)
communications to.....	§ 114.3; § 114.4
solicitations of.....	§ 114.5; § 114.6
Federation of trade associations	
definition.....	§ 114.8(g)(1)
solicitations by.....	§ 114.8(g)
Payroll deductions.....	§ 114.5(k)(1); § 114.8(e)(3)
Solicitations by.....	§ 114.7(c) and (j); § 114.8(c), (d), (e) and (f)
Transfer of Funds:	
As criteria for "affiliation" between committees... § 100.5(g)(2)(ii)(E);	§ 110.3(a)(1)(iii)(E)
From excess campaign funds and funds donated.....	§ 113.2(c)
Joint fundraising contributions.....	§ 102.6(b)
Reporting	
by authorized committees... § 104.3(a)(3)(vi); § 104.3(a)(4)(iii)(A);	§ 104.3(b)(2)(ii); § 104.3(b)(4)(ii)
by political committees other than authorized committees... § 104.3(a)(2)(v);	§ 104.3(a)(4)(iii)(B); § 104.3(b)(1)(ii); § 104.3(b)(3)(ii)
Unlimited transfers.....	§ 102.6(a); § 110.3(a)(2)

U

Unauthorized Committee:	
Definition.....	§ 100.5(f)(2)
Contributions from.....	§ 102.8(b)(1)

Index

V

Volunteer Activities:

	<i>Section</i>
Campaign materials	
used by candidate.....	§ 100.7(b)(16); § 100.8(b)(17)
used by party.....	§ 100.7(b)(15); § 100.8(b)(16)
Church or community room.....	§ 100.7(b)(5); § 100.8(b)(6)
Invitations, food, beverages.....	§ 100.7(b)(6); § 100.8(b)(7)
Property.....	§ 100.7(b)(4); § 100.8(b)(5)
Services.....	§ 100.7(b)(3)
Travel.....	§ 100.7(b)(8); § 100.8(b)(9)
Vendor sale of food or beverage.....	§ 100.7(b)(7); § 100.8(b)(8)
Voter Drives:	
By corporations and labor organizations...§ 100.8(b)(3); § 114.1(a)(2)(ii); § 114.4(a)(2); § 114.4(c); § 114.4(d); § 114.3(c)(4)	
By party committee.....	§ 100.7(b)(17); § 100.8(b)(18)

General Election Financing, Parts 140-145

A

Accounts:

	Section
Maintained by Presidential candidate	
for deposit of private contributions.....	§ 141.3(b)
for deposit of public funds.....	§ 143.2(b)
candidate agreement on.....	§ 141.1(d)
must be segregated.....	§ 143.2(d)
Maintained by Vice-Presidential candidate.....	§ 143.2(c)

Adjustment of Entitlement: *See:* Entitlement, repayments

Administrative Expenses:

Allocation of administrative expenses.....	§ 144.2
--	---------

Agreements:

Candidate agreements to	
keep books and records.....	§ 141.1(b)
make repayments.....	§ 141.1(c)
permit audits and examinations.....	§ 141.1(c)
provide information on qualified campaign expenses.....	§ 141.1(a)
provide name and address of depository.....	§ 141.1(d)

See also: Certifications

Audits: *See:* Examinations and Audits

Authorized Committee:

Covered by

candidate certifications.....	§ 141.2
repayment provisions.....	§ 145.2(a)
Definition.....	§ 140.1

Expenses incurred by authorized committee are qualified campaign expenses..... § 140.11(a)(3)

Reimbursements to committee by press and Secret Service are not contributions..... § 140.13(b)(2)

Reports..... § 144.1(a)

Support of other candidates by authorized committee..... § 144.2

Use of public funds to defray qualified campaign expenses of authorized committee..... § 142.4(a)(1)

See also: Political Committee

C

Candidate:

Agreements.....	§ 146.1
-----------------	---------

See also: Agreements

Authorization by

of political committee.....	§ 140.1
of qualified campaign expense.....	§ 140.11(a)

Certifications

See also: Certifications

 major party..... § 141.2(a); § 141.2(c)

 minor/new party..... § 141.2(b); § 141.2(c)

Contributions to

See: Contributions

Definition.....	§ 140.2
-----------------	---------

 exception..... § 140.2(c)

	<i>Section</i>
Candidate—Continued	
Eligible candidate, definition.....	§ 140.4
<i>See also:</i> Eligibility	
Entitlement.....	§ 142
<i>See also:</i> Entitlement	
Immediate family of.....	§ 141.2(c)
Major party candidate	
certifications of.....	§ 141.2(a); § 141.2(c)
definition of.....	§ 140.6
entitlement of.....	§ 142.1
Minor party candidate	
certifications of.....	§ 141.2(b); § 141.2(c)
definition of.....	§ 140.7
entitlement of.....	§ 142.2
post-election payments to.....	§ 142.3
New party candidate	
certifications of.....	§ 141.2(b); § 141.2(c)
definition of.....	§ 140.8
entitlement of.....	§ 142.2
post-election payments to.....	§ 142.3
Repayments	
<i>See:</i> Repayments	
Reporting.....	§ 144.1
Separate account for public funds.....	§ 143.2(b)
Support of other candidates by.....	§ 144.2
Use of payments	
<i>See:</i> Use of Funds	
Use of personal fund.....	§ 141.2(c)
Vice-Presidential	
acceptance of contributions by.....	§ 141.3
authorization by	
of authorized committee.....	§ 140.1
of qualified campaign expense.....	§ 140.11(a)
certification to.....	§ 143.2(c)
election, definition.....	§ 140.10
separate account of.....	§ 143.2(c)
support of other candidates by.....	§ 144.2
use of personal funds by.....	§ 141.2(c)
withdrawal by.....	§ 142.5(a)
Withdrawal by	
ineligible for payments.....	§ 142.5(a)
repayment required.....	§ 142.5(b)
Certifications:	
By candidate to FEC	
major party candidates comply with	
expenditure limits.....	§ 141.2(a)(1)
limits on use of contributions.....	§ 141.2(a)(2)
personal expenditure limits.....	§ 141.2(c)
minor/new party candidates comply with	
expenditure limitations.....	§ 141.2(b)(1)
limits on use of contributions.....	§ 141.2(b)(2)
personal expenditure limits.....	§ 141.2(c)
by FEC to Secretary of Treasury	
finality of.....	§ 143.3(a)
hearing for disputed certifications.....	§ 143.3(b)
initial.....	§ 143.1
payment by Secretary.....	§ 143.2
<i>See also:</i> Agreements, Entitlement	

Index

Commission:	Section
Definition.....	§ 140.3
Contributions:	
Definition.....	§ 140.13(a)
exceptions.....	§ 140.13(b)
From immediate family.....	§ 141.2(c)
Limitation.....	§ 140.13(b)
Prohibited.....	§ 141.3(a)
Reportable.....	§ 141.3(c)
Segregated account for.....	§ 141.3(b)
Solicitation of.....	§ 141.3(d)
To defray expenses incurred after expenditure report period.....	§ 140.11(e)(1); § 141.3
To defray legal and accounting services.....	§ 140.11(e)(1)
To defray qualified campaign expenses of	
major party candidates, prohibited.....	§ 141.2(a)(2)
minor/new party candidates, limited.....	§ 141.2(b)(2)
To retire primary debts, prohibited.....	§ 141.3(e)
To supplement entitlement.....	§ 142.2
Corporation:	
Contributions from, prohibited.....	§ 141.3(a)

D

Definitions:	
Authorized committee.....	§ 140.1
Candidate.....	§ 140.2
Commission.....	§ 140.3
Contribution.....	§ 140.13
Eligible candidates.....	§ 140.4
Expenditure report period.....	§ 140.12
Fund.....	§ 140.5
Immediate family.....	§ 141.2(c)(1)
Major party.....	§ 140.6
Minor party.....	§ 140.7
New party.....	§ 140.8
Political committee.....	§ 140.9
Presidential election.....	§ 140.10
Qualified campaign expense.....	§ 140.11
Secretary.....	§ 140.14
Disbursements: <i>See: Payments, Repayments</i>	
Documentation: <i>See: Certification, Payments</i>	

E

Election:	
Expenditure report period for.....	§ 140.12
Presidential, definition.....	§ 140.10
Use of private contributions in.....	§ 140.13(b)(3); § 141.3
Votes in previous	
as definition of major party.....	§ 140.6
as definition of minor party.....	§ 140.7
in computing entitlement	
for minor parties.....	§ 142.2
for post-election payments.....	§ 142.3
Eligibility:	
Candidate agreements.....	§ 141.1

Eligibility—Continued	<i>Section</i>
Candidate certifications.....	§ 141.2
Eligible candidates, definition.....	§ 140.4
FEC certification of.....	§ 143.1; § 143.3(a)
Termination of.....	§ 142.5(a)
<i>See also: Agreements, Certifications</i>	
Entitlement:	
Adjustment of entitlement	
for minor party candidates.....	§ 142.2(b); § 142.3
for new party candidates.....	§ 142.3
resulting from	
acceptance of private contributions.....	§ 141.2(a)(2); § 141.2(b)(2)
unspent public funds.....	§ 145.2(b)
withdrawal of candidate.....	§ 142.5
Investment of funds.....	§ 142.4(b)
Major party entitlement.....	§ 142.1
Minor party entitlement	
candidate in previous election.....	§ 142.2(b)
current candidate.....	§ 142.2(a)
Post-election payments	
limitations.....	§ 142.3(l)
minor/new party.....	§ 142.3(a)
Use of funds.....	§ 142.4
Withdrawal by candidate and entitlement.....	§ 142.5
<i>See also: Certifications</i>	
Examinations and Audits:	
Additional.....	§ 145.1(b)
Candidate agreement to allow.....	§ 141.1(c)
Repayments determined by.....	§ 145.2(a)
Required.....	§ 145.1(a)
Expenditures:	
Administrative expenses, allocation of.....	§ 144.2
Limitations on expenditures by candidate	
candidate certification to observe	
major party.....	§ 141.2(a)(2)
minor party.....	§ 141.2(b)(2)
from funds of immediate family.....	§ 141.2(c)
from personal funds.....	§ 141.2(c)
Limitations on expenditures by political party committees.....	§ 146.1
Qualified campaign expenses	
definition.....	§ 140.11
exceptions.....	§ 140.11(e)
expenses incurred after expense reporting period.....	§ 140.11(e)(1)
legal and accounting services.....	§ 140.11(e)(2)
public funds to defray.....	§ 142.4
Report period	
definition.....	§ 140.12
expenses incurred after.....	§ 140.11(e)(1)
To defray nonqualified campaign expenses.....	§ 141.3
To support other candidates.....	§ 144.2
<i>See also: Payments</i>	
Expenditure Report Period: <i>See: Expenditures</i>	

Index

F

Filing Dates: *See: Notifications, Reports*
Funds: *See: Entitlement Payments, Use of Funds*

G

General Election: *See: Election*
Government Contractor: *Section*
Contributions from prohibited..... § 141.3(a)
See also: Corporations

H

Hearings:
For disputed initial certification..... § 143.3(b)
For disputed repayments..... § 145.2(d)(2)

I

Ineligibility: *See: Eligibility*
Investment of Public Funds:
General election funds..... § 142.4(h)

L

Labor Organization:
Contributions from prohibited..... § 141.3(a)
See also: Contributions
Legal and Accounting Services:
Contributions to defray..... § 141.3
Exempt from definition of qualified campaign expense..... § 140.11(e)(2)
Limitations: *See: Contributions, Expenditures*
Loans:
Not a contribution..... § 140.13
Public funds may be used to repay..... § 142.4(a)(2)

M

Major Party:
Candidate certifications
no contributions to defray qualified campaign expenses..... § 141.2(a)(2)
to observe expenditure limitations..... § 141.2(a)(1)
Definition..... § 140.6
Entitlement..... § 142.1
Expenditure report period..... § 140.12(a)
Reports..... § 144.1(a)
See also: Reports
See also: Minor Party, National Party Committee
Minor Party:
Candidate certifications concerning
acceptance of private contributions..... § 141.2(b)(2)
expenditure limitations..... § 141.2(b)(1)
Definition..... § 140.7
Entitlement
current candidate..... § 142.2(a)
post-election payments..... § 142.3
previous candidate..... § 142.2(b)

Minor Party—Continued

Section

Expenditure report period.....	§ 140.12(b)
Reports.....	§ 144.1(b)

See also: Major Party, National Party Committee
 Money: *See:* Contributions, Expenditures, Payments

N

National Party Committee:

Allocation of administrative expenses by.....	§ 144.2
Expenditure limitations.....	§ 146.1
Major party <i>See:</i> Major Party	
May be designated as candidate's principal campaign committee.....	§ 143.2(b)
Minor party <i>See:</i> Minor Party	
New party <i>See:</i> New Party	

New Party:

Candidate certifications concerning	
acceptance of private contributions.....	§ 141.2(b)(2)
expenditure limitations.....	§ 141.2(b)(1)
Definition.....	§ 140.8
Entitlement.....	§ 142.3
Expenditure report period.....	§ 140.12(b)
Reports.....	§ 144.1(b)

See also: National Party Committee

Notifications:

By candidate to FEC concerning	
disputed initial determination.....	§ 143.3(b)
disputed repayment.....	§ 145.2(d)(2)
By FEC to candidate concerning repayment.....	§ 145.2(d)(2)(ii); § 145.3

See also: Reports

P

Party: *See:* Major Party, Minor Party, New Party, National Party Committee

Payments:

Audits.....	§ 145.1
Bank depository for.....	§ 143.2(b)
Deficiency in payments	
major party.....	§ 141.2(a)(2)
minor/new party.....	§ 141.2(b)(2)
Eligibility for certification by candidates to FEC	
all candidates.....	§ 141.2(c)
major party candidates.....	§ 141.2(a)
minor/new party candidates.....	§ 141.2(b)
Entitlement to funds	
all candidates.....	§ 142.4
major party candidates.....	§ 142.1
minor party candidates.....	§ 142.2; § 142.3
new party candidates.....	§ 142.3
FEC certification to Secretary of Treasury.....	§ 143.1
Investment of.....	§ 142.4(b)
Post-election payments.....	§ 142.3
Repayments <i>See:</i> Repayments	
Secretary of Treasury disbursements.....	§ 143.2(a)
Use of payments <i>See:</i> Use of Funds	
<i>See also:</i> Eligibility, Secretary of the Treasury	

Personal Funds:

Definition.....	§ 141.2(c)
-----------------	------------

Index

	<i>Section</i>
Personal Funds—Continued	
Limitations on.....	§ 141.2(c)
Loan to supplement.....	§ 140.13(b)(1)
Political Committee:	
Definition.....	§ 140.9
Party committees.....	§ 146.1
<i>See also:</i> Authorized Committee	
Post-Election Payments: <i>See:</i> Entitlement, Payments	
Presidential Election Campaign Fund: <i>See:</i> Payments, Secretary of Treasury	
Public Funds: <i>See:</i> Entitlement, Payments, Repayments, Use of Funds	

Q

Qualified Campaign Expenses:	
After all are paid.....	§ 145.2(b)
Authorized committees may make.....	§ 140.1
Campaign expenses exceeding limitations.....	§ 145.2(a)
Candidate agreement to keep records of.....	§ 141.1(a)
Candidate certifications not to exceed limitation on	
major party.....	§ 141.2(a)(1)
minor/new party.....	§ 141.2(b)(1)
Definition.....	§ 140.11
exceptions	
incurred after expenditure report period.....	§ 140.11(e)(1)
legal and accounting fees.....	§ 140.11(e)(2)
Defrayal of after withdrawal of candidate.....	§ 142.5
Reports.....	§ 144.1
Use of contributions for	
major party.....	§ 141.2(a)(2)
minor/new party.....	§ 141.2(b)(2)
Use of personal funds for.....	§ 141.2(c)
Use of public funds for.....	§ 142.4(a)
Use of public funds for other than.....	§ 145.2(a)(4)

R

Reimbursements:	
For travel.....	§ 140.13(b)(2)
In computing qualified campaign expense.....	§ 140.11(c)
May be commingled with public funds.....	§ 143.2(d)
Repayments:	
Candidate agreement to comply with.....	§ 141.1(c)
Date for.....	§ 145.2(d)
Dispute on.....	§ 145.2(d)(2)
Extension for.....	§ 145.2(d)(1)
Limits on.....	§ 145.2(c)
Notification of need for.....	§ 145.2(a); § 145.3
Required when	
candidate withdraws.....	§ 142.5(b)
expenses exceed entitlement.....	§ 145.2(a)(2)
funds used for nonqualified campaign expenses.....	§ 145.2(a)(4)
income derived from interest.....	§ 142.4(b)
payments exceed entitlement.....	§ 145.2(a)(1)
private contributions accepted to defray qualified campaign expenses.....	§ 145.2(a)(3)
unspent payments remain after debts paid.....	§ 145.2(b)

Reports:	<i>Section</i>
By major party candidates.....	§ 144.1(a)
By minor/new party candidates.....	§ 144.1(b)
Contributions to defray nonqualified campaign expenses.....	§ 141.3(c)
Expenditure report period.....	§ 140.12
Expenditures incurred after expenditure report period.....	§ 141.3(c)
Legal and accounting services.....	§ 140.11(e)(2); § 141.3(c)
Private contributions.....	§ 141.3(c)

See also: Notifications

§

Secretary of Treasury:	
Definition.....	§ 140.14
FEC certification to.....	§ 143.1
Payment to candidate.....	§ 143.2(a)
Repayments to	
after candidate withdrawal.....	§ 142.5(b)
after FEC determination of need for.....	§ 145.2(a)
after income received from investment.....	§ 142.4(b)

State:	
Qualification for State ballots defines candidates.....	§ 140.2(a)(2)
Support of candidates for State office.....	§ 144.2

State Party:	
Expenditure limitations.....	§ 146.1

See also: National Party Committee

U

Use of Funds:	
Personal funds.....	§ 141.2(c)
Private contributions used by candidate for nonqualified campaign expense.....	§ 140.11(e); § 140.13(b)(3)
may not pay debt from primary.....	§ 141.3(e)
must be segregated.....	§ 141.3(b)
Public funds used by candidate	
control over.....	§ 143.2(e)
defray qualified campaign expenses.....	§ 140.11; § 142.4(a)(1)
investment.....	§ 142.4(b)
repay bank loans.....	§ 142.4(a)(2)
support other candidates.....	§ 144.2

Federal Financing of Presidential Nominating Conventions, Part 9008

A

Accounts:

	<i>Section</i>
Maintained by convention committee	
bank depository required.....	§ 9008.8(b)(3)(v)
bank records for all accounts furnished when requested by FEC...	§ 9008.8(b)(4)(vi)
for deposit of private contributions.....	§ 9008.8(b)(4)(iv)
for deposit of public funds.....	§ 9008.8(b)(4)(iii)
limitation on payments from account.....	§ 9008.5
Maintained by host committee for contributions from local retail businesses, municipal corporations and government agencies...	§ 9008.7(d)(3)(iii)

Administrative Expenses:

Of host committee.....	§ 9008.7(d)(2)(iii)(D)
Of national or convention committee.....	§ 9008.6(a)(4)(x)

Advertising:

As acknowledgement of donation to host committee.....	§ 9008.7(d)(2)(ii)
By host committee for promotion.....	§ 9008.7(d)(2)(iii)(A)
By local businesses on samples and promotional material.....	§ 9008.7(c)(2)

Agreements:

By convention committee, letter of agreement.....	§ 9008.8(b)(1), (4) and (5)
By national committee, application statement.....	§ 9008.8(b)(1), (3) and (5)

Audits: See: Examinations and Audits

B

Banks:

Considered local business for purposes of providing samples and pro- motional material to national committee.....	§ 9008.7(c)(2)(iii)
Not considered a retail business for purposes of providing discounts to national committee.....	§ 9008.7(c)(1)(i)
Prohibited from donating to host committee.....	§ 9008.7(d)(2)(i) and (3)(i)

See also: Accounts

C

Candidate:

Expenditure by, from campaign account to attend convention, except- ed from expenditure limit.....	§ 9008.7(e)
Expenditure from public convention funds to defray expenses of, pro- hibited.....	§ 9008.6(b)(1)

Certifications:

By FEC to Secretary of Treasury for national committee's entitle- ment.....	§ 9008.8(e)
--	-------------

Commission: See: Federal Election Commission

Contributions:

To host committee to promote convention city and commerce.....	§ 9008.7(d)(2)
acceptable contributors.....	§ 9008.7(d)(2)(i) and (iv)
donor may restrict use of funds.....	§ 9008.7(d)(2)(ii)
use of funds.....	§ 9008.7(d)(2)(iii)

Index

Convention, Nominating—Continued

	<i>Section</i>
Public funds for use of convention—Continued	
limitation on payments from account.....	§ 9008.5
permissible uses.....	§ 9008.6(a)
prohibited uses.....	§ 9008.6(b)

See also: Convention Committee, Host Committee, National Party Committee, Use of Funds

Corporation:

Contributions to host committee to defray convention expenses....	§ 9008.7(d)(3)
amount proportionate to expected commercial return.....	§ 9008.7(d)(3)(ii)
Contributions to host committee to promote convention city and commerce.....	§ 9008.7(d)(2)
Local, definition of.....	§ 9008.7(c)(2)(iv) and (d)(2)(iv)
Municipal corporations	
expenditures by, not counted against national party limitation... § 9008.4(c);	§ 9008.7(b)
facilities, services provided at no charge.....	§ 9008.7(b)
Private business concerns	
discounts to national committee by retail businesses.....	§ 9008.7(c)(1)
samples and promotional material provided by local businesses... § 9008.7(c)(2)	§ 9008.7(c)(2)

See also: Banks

D

Definitions:

Commission.....	§ 9008.2(a)
Convention.....	§ 9008.2(g)
Convention committee.....	§ 9008.8(b)(2)
Convention expenses.....	§ 9008.6(a)(4)
Fund.....	§ 9008.2(b)
Host committee.....	§ 9008.7(d)(1)
Life of the convention.....	§ 9008.7(d)(3)(v)
Local business.....	§ 9008.7(c)(2)(iv) and (d)(2)(iv)
Major party.....	§ 9008.2(c)
Minor party.....	§ 9008.2(d)
National committee.....	§ 9008.2(e)
New party.....	§ 9008.2(f)
Nominating convention.....	§ 9008.2(g)
Secretary.....	§ 9008.2(h)

Delegates to National Convention:

Expenditures from personal funds to attend convention, excepted from expenditure limit.....	§ 9008.7(e)
Expenditures from public convention funds to defray expenses of, prohibited.....	§ 9008.6(b)(1)

E

Eligibility:

Major party.....	§ 9008.1(a)
Minor party.....	§ 9008.1(a)
New party, ineligible.....	§ 9008.1(a)
Requirements.....	§ 9008.8(b)

Entitlement:

Acceptance of entitlement.....	§ 9008.8(a)(1)
Adjustment of entitlement	
by Consumer Price Index.....	§ 9008.1(a); § 9008.3(a); § 9008.4(a)
by difference between expenditure limitation and private contributions received.....	§ 9008.4(c)
by income from investment of public funds.....	§ 9008.4(b)
not affected by increased expenditure limits.....	§ 9008.7(a)(3)

Entitlement—Continued	<i>Section</i>
Eligibility requirements.....	§ 9008.8(b)
Major party entitlement.....	§ 9008.1(a); § 9008.3(a)
Minor party entitlement.....	§ 9008.1(a); § 9008.3(b)
New party not entitled.....	§ 9008.1(a)
Private contributions and entitlement.....	§ 9008.4(c); § 9008.8(a)(2), (3) and (4)
<i>See also: Use of Funds</i>	
Examinations and Audits:	
Conducted by FEC.....	§ 9008.9
Convention committee agreement to permit.....	§ 9008.8(b)(4)(vii)
Expenditures:	
By convention committee.....	§ 9008.8(b)(2)
By host committee.....	§ 9008.7(d)
Documentation	
by convention committee.....	§ 9008.8(b)(4)(v)
improper.....	§ 9008.10(d)
Exceptions	
discounts by retail businesses.....	§ 9008.7(c)(1)
expenditures by government agencies and municipal corporations... § 9008.4(c); § 9008.7(b)	
expenditures by host committees.....	§ 9008.4(c); § 9008.7(d)(4)
expenditures to participate in or attend the convention... § 9008.4(c); § 9008.7(e)	
in-kind contributions by businesses.....	§ 9008.4(c); § 9008.7(c)
legal and accounting services.....	§ 9008.4(c); § 9008.7(f)(1)
payments for civil or criminal penalties.....	§ 9008.6(b)(3)
samples and promotional material from local businesses.....	§ 9008.7(c)(2)
Limitations..... § 9008.7	
authorization to exceed limitation under extraordinary circum- stances.....	§ 9008.7(a)(3)
convention committee must comply with.....	§ 9008.8(b)(4)(i)
exceeding limitations.....	§ 9008.10(b)
major party.....	§ 9008.7(a)(1)
minor party.....	§ 9008.7(a)(2)

F

Federal Election Commission:	
Authorization by, to exceed expenditure limit under extraordinary circumstances.....	§ 9008.7(a)(3)
Certification to Secretary of Treasury for public funds.....	§ 9008.8(e)
Definition.....	§ 9008.2(a)
Examinations and audits conducted by FEC.....	§ 9008.9
Repayments	
notification by FEC, to national committee.....	§ 9008.10(g)
resolution of disputed repayments.....	§ 9008.11
Funds: See: Entitlement, Payments, Use of Funds	

H

Host Committee:	
Audit of, by FEC.....	§ 9008.9
Contributions to defray convention expenses.....	§ 9008.7(d)(3)
Contributions to promote convention city and commerce.....	§ 9008.7(d)(2)
Definition.....	§ 9008.7(d)(1)
Expenditures by, excepted.....	§ 9008.4(c); § 9008.7(d)(4)
Registration of.....	§ 9008.7(d)(1); § 9008.12(a)(1)(i)
Reporting obligations.....	§ 9008.1(b); § 9008.12(a)(2)

Index

Host Committee—Continued Section
Use of funds..... § 9008.7(d)(2)(iii)
See also: Contributions, Use of Funds

I

Ineligibility: *See: Eligibility*
Investment of Public Funds:
Convention funds..... § 9008.4(b); § 9008.6(a)(5)

L

Legal and Accounting Services:
As excepted expenditure..... § 9008.4(c); § 9008.7(f)(1)
As expenditure..... § 9008.7(f)(2)
Limitations: *See: Expenditures*
Loans:
Public funds may be used to repay..... § 9008.6(a)(2) and (4)(xi)

M

Major Party:
Definition..... § 9008.2(c)
Entitlement..... § 9008.1(a); § 9008.3(a)
 acceptance of..... § 9008.8(a)(1)
 eligibility requirements..... § 9008.8(b)
Establishment of convention committee..... § 9008.8(b)(1)
Expenditure limitations..... § 9008.7(a)(1)
 authorization to exceed limitation..... § 9008.7(a)(3)
Payments
See: Payments
Private contributions to..... § 9008.8(a) (2) and (4)
Reports..... § 9008.12(b)

Minor Party:
Definition..... § 9008.2(d)
Entitlement..... § 9008.1(a); § 9008.3(b)
 acceptance of..... § 9008.8(a)(1)
 eligibility requirements..... § 9008.8(b)
Establishment of convention committee..... § 9008.8(b)(1)
Expenditure limitations..... § 9008.7(a)(2)
 authorization to exceed limitation..... § 9008.7(a)(3)
Payments
See: Payments
Private contributions to..... § 9008.8(a) (3) and (4)
Reports..... § 9008.12(b)

Money: *See: Contributions, Expenditures, Payments, Repayments*

N

Notifications:
By FEC to national committee concerning repayments..... § 9008.10(g)
By national committee to FEC concerning disputed repayments..... § 9008.11(a)
National Party Committee:
Convention committee, establishment of..... § 9008.8(b)(1)
See also: Convention Committee
Definition..... § 9008.2(e)
Entitlement..... § 9008.1(a); § 9008.3
See also: Entitlement
Expenditures by
See: Expenditures

National Party Committee—Continued

Payments to	<i>Section</i>
availability of (date).....	§ 9008.8(d)
certification of.....	§ 9008.8(e)
increase in certified amount.....	§ 9008.8(c)
limitation on, from account.....	§ 9008.5
repayments.....	§ 9008.10
<i>See also: Repayments</i>	
Registration.....	§ 9008.12(b)(1)(ii)
Reporting requirements.....	§ 9008.12(b)(2)
Use of public funds	
definition of convention expenses.....	§ 9008.6(a)(4)
permissible uses.....	§ 9008.6(a)
prohibited uses.....	§ 9008.6(b)
<i>See also: Use of Funds</i>	
New Party:	
Definition.....	§ 9008.2(f)
Not entitled to public funds.....	§ 9008.1(a)

P

Party: *See: Major Party, Minor Party, National Party Committee, New Party*

Payments:	
Acceptance of, optional.....	§ 9008.8(a)(1)
Application for.....	§ 9008.8(b)(1)
Availability of (date).....	§ 9008.8(d)
Bank depository for.....	§ 9008.8(b)(4)(iii)
Certified by Commission to Secretary of Treasury.....	§ 9008.8(e)
Eligibility for.....	§ 9008.1(a); § 9008.8(b)
Entitlement.....	§ 9008.1(a); § 9008.3
<i>See also: Entitlement</i>	
Excess payments, repayment of.....	§ 9008.10(a)
Increase in certified amount.....	§ 9008.8(c)
Investment of.....	§ 9008.4(a); § 9008.6(a)(5)
Limitation on payments from account.....	§ 9008.5
Private contributions and payments.....	§ 9008.8(a)(2), (3) and (4)
Received by convention committee.....	§ 9008.8(b)(2)
Repayments <i>See: Repayments</i>	
Requests for payments, signed by convention committee officers...	§ 9008.8(b)(3)(iv)

See also: Use of Funds

Private Business Concerns:

See: Corporation

Public Funds

See: Eligibility, Entitlement, Payments, Repayments, Use of Funds

R

Repayments:	
Convention committee agreement to repay.....	§ 9008.8(b)(4)(vii)
Date for repayment.....	§ 9008.10(g)(2)
Disputed repayments.....	§ 9008.11
Extension of repayment period.....	§ 9008.10(g)(2)
Limit on repayments.....	§ 9008.10(f)
Notification by FEC.....	§ 9008.10(g)(1)
Payable to U.S. Treasury.....	§ 9008.10(g)(3)

Index

Repayments—Continued

	<i>Section</i>
Required when	
contributions, when added to payments received, exceed expenditure limit.....	§ 9008.10(c)
convention expenses exceed expenditure limit.....	§ 9008.10(b)
funds improperly documented.....	§ 9008.10(d)
funds remain unspent after convention expenses paid.....	§ 9008.10(e)
funds used for unauthorized expenses.....	§ 9008.10(d)
payments exceed entitlement.....	§ 9008.10(a)
Unspent funds.....	§ 9008.10(e)
date for repayment.....	§ 9008.10(e)(3)
extension of time by FEC for repayment.....	§ 9008.10(e)(3)
interim repayment.....	§ 9008.10(e)(2)
refunded, but later needed to defray expenses.....	§ 9008.10(e)(2)

Reports:

By convention committees, national committees, and committees and organizations representing a national party... § 9008.1(b); § 9008.8(b)(4)(ii); § 9008.12(b)	
post-convention reports, content and filing date.....	§ 9008.12(b)(2) (i) and (ii)
quarterly reports, content and filing dates.....	§ 9008.12(b)(2) (i) and (ii)
registration.....	§ 9008.12(b)(1) (i) and (ii)
By host committees and other committees or organizations representing municipal, state or other local Government agencies... § 9008.1(b); § 9008.12(a)	
final report, filing date.....	§ 9008.12(a)(2)(iii)
post-convention report, content and filing date.....	§ 9008.12(a)(2)(i)
quarterly reports, content and filing dates.....	§ 9008.12(a)(2)(ii)
registration.....	§ 9008.12(a)(1)(i)

Exceptions

state or subordinate state party committees.....	§ 9008.12(b)(1)(iii)
unsuccessful efforts to attract convention.....	§ 9008.1(b); § 9008.12(a)(1)(ii)

See also: 11 CFR, Part 107

S

Secretary of Treasury:

Definition.....	§ 9008.2(h)
FEC certifications to, for payment of entitlement.....	§ 9008.8(e)
Repayments made to.....	§ 9008.10(g)(3)

U

Use of Funds:

Donated funds used by host committee.....	§ 9008.7(d)(2)(iii)
defray administrative expenses.....	§ 9008.7(d)(2)(iii)(D)
facilitate commerce.....	§ 9008.7(d)(2)(iii)(C)
promote suitability of city as convention site.....	§ 9008.7(d)(2)(iii)(A)
welcome convention attendees.....	§ 9008.7(d)(2)(iii)(B)
Private contributions used by national committee.....	§ 9008.8(a) (2), (3) and (4)
Public funds used by national committee	
permissible uses.....	§ 9008.6(a)
definition of convention expenses.....	§ 9008.6(a)(4)
defray convention expenses.....	§ 9008.6(a)(1)
investment of funds.....	§ 9008.6(a)(5)
repay principal and interest on loans.....	§ 9008.6(a) (2) and (4)(xi)
restore other funds used for convention expenses.....	§ 9008.6(a)(3)
prohibited uses.....	§ 9008.6(b)
defray candidate/delegate expenses.....	§ 9008.6(b)(1)
improper use of funds, repayment required.....	§ 9008.10(d)
payment of civil or criminal penalties.....	§ 9008.6(b)(3)
payments that violate federal/state laws.....	§ 9008.6(b)(2)

Presidential Primary Matching Fund, Parts 9031-9038

A

Section

Accounts:

Primary Election Accounts

Matching payment account maintained by U.S. Treasury

Definition of.....	§ 9032.5
Equal distribution of funds from.....	§ 9037.2
Repayment of funds from.....	§ 9038.2
Transfer of funds from.....	§ 9037.1

Special account maintained by principal campaign committee

Deposit of matching funds into.....	§ 9037.3
Designation of.....	§ 9033.1(a)(6)

Advertising:

Primary Election Advertising

Use in determining or reestablishing active candidacy...§ 9033.6(e)(1);	
	§ 9033.7(c)

Agreements:

Primary Election Agreements

Candidate must agree to

Comply with agreements.....	§ 9033.1(a)
Comply with Title 2.....	§ 9033.1(a)(8)
Gather books and records in centralized location.....	§ 9033.1(a)(4)
Keep and furnish books, records.....	§ 9033.1(a)(3)
Make repayments.....	§ 9033.1(a)(5)
Obtain and furnish evidence of qualified expenses.....	§ 9033.1(a)(1)
Pay civil penalties.....	§ 9033.1(a)(9)
Permit audits and examinations.....	§ 9033.1(a)(5)
Prepare submissions in good order.....	§ 9033.1(a)(7)

Candidate failure to comply with disclosure requirements.....	§ 9033.1(c)
Date for submitting.....	§ 9033.1(b)

Appeals:

Primary Election Appeal Procedures

Active candidacy.....	§ 9033.7
Inactive candidacy.....	§ 9033.6
Ineligibility for matching funds determination.....	§ 9033.3 (b) and (c)
Repayments.....	§ 9038.2(b)
Resubmissions.....	§ 9036.5
Suspension of payments.....	§ 9033.9(b)

Audits:

See: Examinations and audits

Authorized Committee:

Authorized Committee for Primary Election

Covered by

Audit and examination requirements.....	§ 9033.1(a)(5) and § 9038.1
Candidate agreements.....	§ 9033.1(a)(1)
Expenditure limitations.....	§ 9033.2(b); § 9033.3(a), § 9035.1
Threshold certification requirements.....	§ 9033.2(b) and (c)
Definition.....	§ 9032.1

Authorized Committee—Continued

Section

Authorized Committee for Primary Elections—Continued

- Expenses incurred by authorized committee are qualified campaign expenses..... § 9032.9(a)(1)
- Expenses incurred by authorized committee in excess of limitations..... § 9033.2(b); § 9033.3(a); § 9035.1

C

Candidate:

Primary Election Candidate

- Active candidacy..... § 9033.7
- Agreements by..... § 9033.1

See also: Agreements

Appeals

See: Appeals

Authorization

- Of person who makes qualified campaign expenditures..... § 9032.9
- Of political committee..... § 9032.1

Certifications..... § 9033.2

See also: Certifications

Continuation of payments to..... § 9036.6(a)

Contributions to

See: Contributions

Definition of..... § 9032.2

Deposit of funds by..... § 9037.3

Eligibility for matching funds

Initial..... § 9033.4

Reestablishment of..... § 9033.8

See also: Eligibility

Entitlement..... § 9034.1

See also: Entitlement

Expenditure Limitations

See: Expenditures

Immediate family of..... § 9035.2(b)

Inactive candidacy..... § 9033.6

Ineligibility for matching funds..... § 9033.3; § 9033.5; § 9033.6

See also: Eligibility

Personal funds of..... § 9035.2(a)

Net outstanding campaign obligation of..... § 9034.5(a)

Reporting of..... § 9033.1(a)(8)

Repayments

See: Repayments

Use of funds

See: Use of funds

Certifications:

Certifications for Primary Matching Funds

By candidates to FEC

Date for submitting..... § 9033.2(e)

For threshold amount..... § 9033.2; § 9036.1

Of inactive candidacy..... § 9033.5(b)

Of satisfying requirement for each State..... § 9033.2(c)(2)

To comply with expenditure limitations..... § 9033.2(b)

By FEC concerning expenditure limitations § 9033.3

By FEC to Secretary of Treasury

Additional certifications..... § 9036.2

Continued certifications..... § 9036.6

Initial certifications..... § 9036.1

May be suspended for noncompliance..... § 9033.2(f); § 9033.9

Index

Certifications—Continued

Certifications for Primary Matching Funds—Continued

By FEC to Secretary of Treasury—Continued

Section

None made if expenditure limit exceeded.....	§ 9033.3
None made if insufficient documentation.....	§ 9036.3
Payments of less than requested amount.....	§ 9036.4(a)
Required for payments to candidate.....	§ 9037.1
Required for resubmissions.....	§ 9036.5(c)
Requirements for.....	§ 9036.1; § 9036.2

See also: Payments

Contributions:

Primary Contributions

By money order.....	§ 9034.2(c)(2)
By written instrument.....	§ 9034.2(a)(4)
Certification of threshold amount of.....	§ 9036.1
Deposit on receipt of.....	§ 9037.3
Documentation of excess over purchase price.....	§ 9034.3(i)(1)
From escrow/trust account.....	§ 9034.2(c)(3)
From immediate family.....	§ 9035.2
From joint account.....	§ 9034.2(c)(1)
From partnership, unincorporated business.....	§ 9034.2(c)(4)
Insufficiently documented.....	§ 9033.2(c)(3); § 9036.3

Matchable

Definition of.....	§ 9034.2
Money.....	§ 9034.2(a)
Must comply with Guideline for Presentation in Good Order... 9036.2(d)	§ 9036.1(b); 9036.2(d)

Nonmatchable

Check drawn on account of committee, corporation, labor organi- zation, government contractor.....	§ 9034.3(f)
Contract, promise.....	§ 9034.3(c)
Credit card.....	§ 9034.3(c)
Currency.....	§ 9034.3(k)
Definition of.....	§ 9034.3
From corporation, labor organization, government contractor, po- litical committee.....	§ 9034.3(d)
Illegally made or accepted.....	§ 9034.3(e)
In-kind.....	§ 9034.3(a)
Made without donative intent.....	§ 9034.3(j)
Pledge card.....	§ 9034.3(c)
Purchase price of drawing, raffle.....	§ 9034.3(h)
Purchase price of entertainment.....	§ 9034.3(i)
Purchase price of item of value.....	§ 9034.3(g)
Subscription, loan, advance, etc.....	§ 9034.3(b)
Not qualified after submission for matching.....	§ 9036.4(b)
Prohibited.....	§ 9034.3(d); § 9034.3(f)
Rejected for matching.....	§ 9036.5(a)
Resubmission of.....	§ 9036.4; § 9036.5
Solicitation of in determining active candidacy.....	§ 9033.6(e)(2); § 9033.7
Submission of, for matching	
After date of ineligibility.....	§ 9034.1(b); § 9034.4(h)
Alphabetical listing required.....	§ 9033.2(c)(2)(i)
Deadline for.....	§ 9036.6(b)
FEC review of.....	§ 9033.4; § 9036.4(a)
For additional payments.....	§ 9036.2
For threshold purposes.....	§ 9033.2(a)(2); § 9036.1(b)
Must comply with Guideline for Presentation in Good Order.....	§ 9033.1(a)(7); § 9036.1(b); § 9036.2(d)
Photocopy required.....	§ 9033.2(c)(2)(ii)

Contributions—Continued

Primary Contributions—Continued

Use of contributions and matching payments	<i>Section</i>
Defray qualified campaign expenses.....	§ 9034.4(a)
“Testing-the-waters”.....	§ 9034.4(f)
Transfer between principal and authorized committees.....	§ 9034.4(g)
Winding down costs.....	§ 9034.4(c)

See also: Use of funds

Corporation:

Role in Primary Elections

Nonmatchable contributions from corporate account....	§ 9034.3(d); § 9034.3(f)
---	--------------------------

D

Definitions:

Authorized committee

General election.....	§ 140.1
Primary election.....	§ 9032.1

Candidacy.....	§ 9032.2; § 9033.6; § 9033.7
----------------	------------------------------

Candidate

General election.....	§ 140.2
Primary election.....	§ 9032.2

Candidate certifications.....	§ 9033.2
-------------------------------	----------

Capital assets.....	§ 9034.5(c)
---------------------	-------------

Commission.....	§ 9032.3
-----------------	----------

Contribution.....	§ 9032.4
-------------------	----------

Convention expenses.....	§ 120.2(f); § 125.5
--------------------------	---------------------

Eligible candidates.....	§ 140.4
--------------------------	---------

Essentially political.....	§ 9034.3(i)(2)
----------------------------	----------------

Expenditure report period.....	§ 140.12
--------------------------------	----------

Expenses or expenditures incurred with respect to a Presidential nominating convention.....	§ 120.2(f)
---	------------

Fund.....	§ 120.2(b); § 140.5
-----------	---------------------

Host committee.....	§ 120.2(h)
---------------------	------------

Immediate family.....	§ 9035.2(b); § 141.2(c)(1)
-----------------------	----------------------------

Ineligibility dates.....	§ 9033.5
--------------------------	----------

Insufficient documentation.....	§ 9036.3
---------------------------------	----------

Major party.....	§ 120.2(c); § 140.6
------------------	---------------------

Matchable campaign contributions.....	§ 9034.2
---------------------------------------	----------

Matching payment account.....	§ 9032.5
-------------------------------	----------

Matching payment period.....	§ 9032.6
------------------------------	----------

Minor party.....	§ 120.2(d); § 140.7
------------------	---------------------

Net outstanding campaign obligations.....	§ 9034.5(a)
---	-------------

New party.....	§ 120.2(e); § 140.8
----------------	---------------------

Nonmatchable contributions.....	§ 9034.3
---------------------------------	----------

Particulars.....	§ 9033.1(a)(1)(ii)(D)
------------------	-----------------------

Payee.....	§ 9033.1(a)(1)(ii)(C)
------------	-----------------------

Personal funds.....	§ 9035.2(c)
---------------------	-------------

Political committee

general election.....	§ 140.9
primary election.....	§ 9032.8

Political party.....	§ 9033.2(a)(1)
----------------------	----------------

Presidential election.....	§ 140.10
----------------------------	----------

Presidential Primary Matching Payment Account.....	§ 9032.5
--	----------

Primary election.....	§ 9032.7
-----------------------	----------

Qualified campaign expenses

general election.....	§ 140.11
primary election.....	§ 9032.9; § 9034.4

Secretary.....	§ 120.2(g); § 140.14
----------------	----------------------

Seeking nomination.....	§ 9033.2(a)
-------------------------	-------------

Index

	<i>Section</i>
Definitions—Continued	
State.....	§ 9032.10
Testing-the-waters expenses.....	§ 9034.4(f)
Total deposits.....	§ 9038.3(c)(2)
Winding down costs.....	§ 9034.4(c)
Written instrument.....	§ 9034.2(b)

E

Election:

Primary Election

Contributions

See: Contributions

Definition.....	§ 9032.7
Participation in, as factor for determining candidate eligibility... § 9033.5(b);	§ 9033.8(b)

Eligibility:

Eligibility for Primary Matching Funds

Candidate agreements.....	§ 9033.1
<i>See also: Agreements</i>	

Candidate certifications.....	§ 9033.2
<i>See also: Certifications</i>	

FEC determination of

Active candidacy.....	§ 9033.5(b)(1)
Inactive candidacy.....	§ 9033.6(f)
Ineligibility.....	§ 9033.3(a)
Threshold requirement.....	§ 9033.4

Reestablishment of.....	§ 9033.8
-------------------------	----------

Residence requirements.....	§ 9033.2(c)(1)(ii)
-----------------------------	--------------------

Terminated for

Exceeding expenditure limits.....	§ 9033.2(f); § 9033.9(a)
Failure to report fully.....	§ 9033.9(a)
Inactive candidacy.....	§ 9033.5; § 9033.6

Entitlement:

Entitlement for Primary Matching Funds

Adjustment of entitlement

Inactive status.....	§ 9033.6
Unqualified contribution.....	§ 9036.4(b)

Candidate entitlement.....	§ 9034.1
----------------------------	----------

Certification to Secretary of Treasury.....	§ 9036.1(c)
---	-------------

Matchable contributions.....	§ 9034.2; § 9034.3
------------------------------	--------------------

Maximum entitlement.....	§ 9034.1(d)
--------------------------	-------------

Payment limitation.....	§ 9034.1(d)
-------------------------	-------------

Payments after date of ineligibility.....	§ 9034.1(b) and (c); § 9034.4(h)
---	----------------------------------

Payments after suspension.....	§ 9033.9(e); § 9034.1(c); § 9034.4(h)
--------------------------------	---------------------------------------

Threshold requirement.....	§ 9033.4
----------------------------	----------

Use of contributions and matching payments.....	§ 9034.4
---	----------

See also: Certifications, Payments

Examinations and Audits:

Primary Election Audits

Candidate agrees to allow.....	§ 9033.1(a)(4) and (5)
--------------------------------	------------------------

Discretionary audits.....	§ 9038.1(b)
---------------------------	-------------

Eligibility for funds determined by.....	§ 9033.2
--	----------

Guideline for Presentation in Good Order.....	§ 9036.1(b); § 9036.2(d)
---	--------------------------

Repayments determined by.....	§ 9038.2
-------------------------------	----------

Required audit of candidate and authorized committee(s)...	§ 9038.1(a); § 9033.2(d)
--	-----------------------------

Expenditures:

Primary Election Expenditures	<i>Section</i>
As factor for determining active candidacy.....	§ 9033.6(e)
As factor for determining eligibility.....	§ 9033.3
From petty cash fund.....	§ 9033.1(a)(1)(ii)(A)
Independent expenditures.....	§ 9032.1
Limitations on expenditures by candidate	
Candidate will not exceed.....	§ 9033.2(b); § 9033.3; § 9035.1
For qualified campaign expenses.....	§ 9035.1
From funds of immediate family.....	§ 9035.2(a)
From personal funds.....	§ 9035.2(a)
Made on behalf of a candidate.....	§ 9032.1, § 9032.9(b)
Nonqualified expenses	
Civil or criminal penalty.....	§ 9034.4(e)
Excess of limitations.....	§ 9034.4(d)
Expenses incurred after date of ineligibility.....	§ 9034.4(b)
Qualified campaign expenses	
Agreement by candidate.....	§ 9033.1(a)(1)
Definition of.....	§ 9032.9
Payments for determination of candidacy.....	§ 9034.4(f)
Public funds to defray.....	§ 9034.4(a)
Winding down costs.....	§ 9034.4(c)

G

Government Contractors:

Contributions prohibited by, in Primary election.....	§ 9034.3(d); § 9034.3(f)
---	--------------------------

H

Hearings:

Primary Election Hearings	
<i>See:</i> Appeals	

I

Inactive Candidacy:

Primary Election	
Candidate shall notify FEC.....	§ 9033.5(b); § 9033.6(b)
Criteria for determination.....	§ 9033.6(e)
FEC determination.....	§ 9033.6(a), (c) and (e)
<i>See also:</i> Candidate	

Ineligibility:

Ineligibility for Primary Matching Funds	
Dates defined.....	§ 9033.5
For exceeding expenditure limitations.....	§ 9033.3
Net outstanding obligation after ineligibility.....	§ 9034.1(a) and (b) § 9034.5(b)
<i>See also:</i> Eligibility	

L

Labor Organization:

Contributions prohibited by, in Primary Election.....	§ 9034.3(d) and (f)
---	---------------------

Loans:

Primary election Loans	
Not matchable.....	§ 9034.3(b)
Public funds may be used to repay.....	§ 9034.4(a)

Index

M

Matchable Campaign Contributions:	<i>Section</i>
Additional submissions for.....	§ 9036.2(e)
Candidate satisfies requirements for.....	§ 9036.1
Definition of.....	§ 9034.2; § 9034.3
For "essentially political event".....	§ 9034.3(i)(2)
Insufficient documentation of.....	§ 9036.3
Must comply with Guideline for Presentation in Good Order...§ 9036.1(b);	§ 9036.2(d)
Received after reestablishment of active candidacy.....	§ 9034.1(c)
Repayment of amounts in excess of entitlement.....	§ 9038.2(a)(1)
Threshold submissions.....	§ 9036.1
<i>See also: Contributions</i>	
Matching Payment Account:	
Definition.....	§ 9032.5
<i>See also: Accounts, Payments</i>	
Matching Payment Period:	
Audits after close of.....	§ 9038.1(a)
Definition of.....	§ 9032.6
No payment of matching funds before.....	§ 9036.1(c); § 9037.1
<i>See also: Payments</i>	

N

Nonmatchable Contributions:	
<i>See: Contributions, Matchable Campaign Contributions</i>	
Notifications:	
Primary Election Notifications	
By candidate to FEC concerning	
Authorization of committee.....	§ 9032.2(d)
Candidate agreements.....	§ 9033.1
Depository.....	§ 9033.1(a)(6)
Disputed ineligibility determination.....	§ 9033.3(b)
Disputed repayment.....	§ 9038.2(b)
Disputed resubmission.....	§ 9036.5(d)
Explanation of expenditures.....	§ 9033.1(a)(2)
Extension of repayment period.....	§ 9038.2(a)(3)
Identification of person entitled to receive matching funds.....	§ 9033.1(a)(6)
Liquidation of all obligations.....	§ 9038.3(b)
Net outstanding campaign obligations.....	§ 9034.5(b)
Nonactive candidacy.....	§ 9033.5(b); § 9033.7(b)
Nonmatchable contribution submitted.....	§ 9036.4(b)
Request for resubmission.....	§ 9036.3(b); § 9036.5
Suspension of payments.....	§ 9033.9(b)
Threshold requirements.....	§ 9033.4(b)
By FEC to candidate concerning	
Audits to determine eligibility.....	§ 9033.2(d)
Certification of less than requested amount.....	§ 9036.4(a)
Determination of active candidacy.....	§ 9033.7(a) and (d)
Determination of inactive candidacy.....	§ 9033.6(b)
Determination of ineligibility.....	§ 9033.3(b) and (d)
Determination to suspend payments.....	§ 9033.9(b) and (d)
Disputed unmatchable contributions.....	§ 9036.5(d)
Eligibility and certification requirements.....	§ 9034.1(a)
Initial certification.....	§ 9036.1(a)
Noncompliance with Title 2.....	§ 9033.9(b) and (d)
Possible candidate status.....	§ 9032.2

Notifications—Continued

Primary Election Notification—Continued

By FEC to candidate concerning—Continued	<i>Section</i>
Repayments.....	§ 9038.2(a) and (d)
Resubmission of documentation.....	§ 9036.4(a)(4)
Threshold requirements.....	§ 9033.4

P

Payments:

Primary Election Payments

Audits.....	§ 9038.1
Bank depository for.....	§ 9037.3
Candidate documentation of matchable contributions	
Additional submissions.....	§ 9036.2(a) and (d)
Resubmissions.....	§ 9036.4; § 9036.5
Threshold submissions.....	§ 9033.2(b)
Candidate eligibility for	
FEC determination of.....	§ 9036.1
Reestablishment of.....	§ 9033.8
Requirements.....	§ 9033.1; § 9033.2; § 9035.1
<i>See also:</i> Eligibility	
Candidate ineligible for.....	§ 9033.3(d) and (e); § 9034.1(a)
Certification of funds by FEC to Secretary of Treasury	
Additional amounts.....	§ 9036.2
Disputed submissions.....	§ 9036.5(c)
For less than amount requested.....	§ 9036.4(a)
Initial amount.....	§ 9036.1(c)
Continuation of payments after ineligibility.....	§ 9034.1(b)
Entitlement to funds.....	§ 9034.1
Equal distribution of funds by Secretary of Treasury.....	§ 9037.2
Matchable campaign contributions.....	§ 9034.2
Matching payment account.....	§ 9032.5
Matching payment period.....	§ 9032.6
Nonmatchable campaign contributions.....	§ 9034.3
Payment schedule.....	§ 9036.1(c); § 9036.2(e)
Post-election payments.....	§ 9036.6
Repayments	
<i>See:</i> Repayments	
Secretary of the Treasury disbursements.....	§ 9037.1
Suspension of payments.....	§ 9033.1(c); § 9033.2(f); § 9033.9
Termination of payments.....	§ 9033.6(e) and (f)
Use of payments	
<i>See:</i> Use of Funds	

Personal Funds:

In Primary Election

Definition.....	§ 9035.2(c)
Limitations on.....	§ 9035.2

Political Committee:

Role in Primary Election

Contributions not matchable.....	§ 9034.3
Definition.....	§ 9032.8

Primary:

See: Election

Primary Matching Funds:

See: Entitlement, Payments

Public Funds:

See: Entitlement, Payments, Repayments, Use of Funds

Index

Q

Qualified Campaign Expenses:

Primary Election Qualified Campaign Expenses	Section
Authorization to make.....	§ 9032.9(b)
Candidate has burden of proving.....	§ 9033.1(a)(1)
Certification not to exceed limitations.....	§ 9033.2(b)
Definition.....	§ 9032.9; § 9034.4(c); § 9034.4(f)
Evidence of.....	§ 9033.1(a)
Limitation on.....	§ 9035.1
Liquidation of.....	§ 9038.3
Nonqualified campaign expenses.....	§ 9034.4(b), (d); and (e)
Reports on.....	§ 9033.1(a)(8)
Use of public funds for.....	§ 9034.4(a)
Use of public funds for other than.....	§ 9038.2(a)(2)

R

Repayments:

Repayment of Primary Matching Funds	
Candidate agreement to comply with.....	§ 9033.1(a)(5)
Dates for.....	§ 9038.2(a)(3) and (e); § 9038.3(c)(1)
Dispute on.....	§ 9038.2(b), (c) and (d)
Extension for.....	§ 9038.2(a)(3); § 9038.2(e)
Notification of need for.....	§ 9038.2(a)(3)
Required when	
Funds used for nonqualified campaign expenses.....	§ 9038.2(a)(2) and (3)
Insufficient documentation.....	§ 9038.2(a)(3)
Payments exceed entitlement.....	§ 9038.2(a)(1)
Surplus after liquidation of obligations.....	§ 9038.3(c)(1)
Surplus on date of ineligibility.....	§ 9038.3(c)(1)

Reports:

Primary Election Reports	
Requirements.....	§ 9033.1(a)(8)

S

Secretary of Treasury:

Role in Primary Election	
Equitable distribution of funds by.....	§ 9037.2
Establishment of matching payment account.....	§ 9032.5
FEC certifications to Secretary for	
Additional requests.....	§ 9036.2(e)
Disputed submissions.....	§ 9036.5
Less than requested amount.....	§ 9036.4(a)
Threshold amount.....	§ 9036.1(c)
Undisputed submissions.....	§ 9036.4(a)(3)

State:

Role in Primary Election	
Action under State law to qualify as candidate.....	§ 9032.2(a)
Activity in more than one State	
Defines eligibility of candidate.....	§ 9033.2(a)
Defines ineligibility date.....	§ 9033.5
Determines inactive candidacy.....	§ 9033.6
Reestablishes eligibility.....	§ 9033.8
Definition of State.....	§ 9032.10
Matchable contributions segregated by State	
For additional amounts, not required.....	§ 9036.2(a)(1)
For threshold.....	§ 9036.1(b)

State—Continued

Role in Primary Election—Continued

Section

Preemption of State law.....	§ 9032.9(a)(3)
Violation of State law.....	§ 9032.9(a)(3)

T

Termination of Payments:

See: Eligibility, payments

Threshold:

See: Certifications, Eligibility

Treasury:

See: Secretary of Treasury

U

Use of Funds:

Primary Election Use of Funds

Deposit in depository.....	§ 9037.3
For determining whether to become candidate.....	§ 9034.4(f)
For expenses incurred during period of ineligibility.....	§ 9034.1(c); § 9034.4(b)
For net outstanding campaign obligations.....	§ 9034.1(b)
For qualified campaign expenses.....	§ 9034.4
For winding down costs.....	§ 9034.4(c)

Table of CFR Titles and Chapters

(As of March 15, 1980)

Title 1—General Provisions

Chap.

- I Administrative Committee of the Federal Register (Parts 0-49)
- II Office of the Federal Register (Parts 50-299)
- III Administrative Conference of the United States (Parts 300-399)
- IV Miscellaneous Agencies (Part 400-end)

Title 2—[Reserved]

Title 3—The President

Proclamations

Executive Orders

Presidential Documents Other Than Proclamations and Executive Orders

- I Executive Office of the President (Parts 100 and 101)

Title 4—Accounts

- I General Accounting Office (Parts 0-99)
- II Federal Claims Collection Standards (General Accounting Office—Department of Justice) (Parts 100-299)
- III Cost Accounting Standards Board (Parts 300-499)

Title 5—Administrative Personnel

- I Office of Personnel Management (Parts 0-1199)
- II Merit Systems Protection Board (Parts 1200-1299)
- III Office of Management and Budget (Parts 1300-1399)
- IV Advisory Committee on Federal Pay (Parts 1400-1499)
- V The International Organizations Employees Loyalty Board (Parts 1500-1599)
- VII Advisory Commission on Intergovernmental Relations (Parts 1700-1799)
- IX Appalachian Regional Commission (Parts 1900-1999)
- XI United States Soldiers' and Airmen's Home (Parts 2100-2199)
- XIV Federal Labor Relations Authority, General Counsel of the Federal Labor Relations Authority, and Federal Service Impasses Panel (Parts 2400-2499)

Title 6—Economic Stabilization

Chap.

- VI Assistant Secretary for Administration, Department of the Treasury (Parts 600-699)
- VII Council on Wage and Price Stability (Parts 700-799)

Title 7—Agriculture

SUBTITLE A—Office of the Secretary of Agriculture (Parts 0-25)

SUBTITLE B—Regulations of the Department of Agriculture

- I Agricultural Marketing Service (Standards, Inspections, Marketing Practices), Department of Agriculture (Parts 26-209)
- II Food and Nutrition Service, Department of Agriculture (Parts 210-299)
- III Animal and Plant Health Inspection Service, Department of Agriculture (Parts 300-399)
- IV Federal Crop Insurance Corporation, Department of Agriculture (Parts 400-499)
- V Agricultural Research Service, Department of Agriculture (Parts 500-599)
- VI Soil Conservation Service, Department of Agriculture (Parts 600-699)
- VII Agricultural Stabilization and Conservation Service (Agricultural Adjustment), Department of Agriculture (Parts 700-799)
- VIII Federal Grain Inspection Service, Department of Agriculture (Parts 800-899)
- IX Agricultural Marketing Service (Marketing Agreements and Orders; Fruits, Vegetables, Nuts), Department of Agriculture (Parts 900-999)
- X Agricultural Marketing Service (Marketing Agreements and Orders; Milk), Department of Agriculture (Parts 1000-1199)
- XI Agricultural Marketing Service (Marketing Agreements and Orders; Miscellaneous Commodities), Department of Agriculture (Parts 1200-1299)
- XII Statistical Reporting Service (Agricultural Statistics), Department of Agriculture (Parts 1300-1399)
- XIV Commodity Credit Corporation, Department of Agriculture (Parts 1400-1499)
- XV Foreign Agricultural Service, Department of Agriculture (Parts 1500-1599)
- XVI Rural Telephone Bank, Department of Agriculture (Parts 1600-1699)
- XVII Rural Electrification Administration, Department of Agriculture (Parts 1700-1799)
- XVIII Farmers Home Administration, Department of Agriculture (Parts 1800-2099)
- XXI Foreign Economic Development Service, Department of Agriculture (Parts 2100-2199)
- XXIV Board of Contract Appeals, Department of Agriculture (Parts 2400-2499)
- XXV Office of the General Sales Manager, Department of Agriculture (Parts 2500-2599)

Title 7—Agriculture—Continued

- Chap.
XXVI Office of Investigation, Department of Agriculture (Parts 2600-2699)
XXVII Office of Audit, Department of Agriculture (Parts 2700-2799)
XXVIII Food Safety and Quality Service, Department of Agriculture (Parts 2800-2899)
XXIX Office of Energy, Department of Agriculture (Parts 2900-2999)
XXX Office of Operations and Finance, Department of Agriculture (Parts 3000-3099)
XXXI Office of Environmental Quality Activities, Department of Agriculture (Parts 3100-3199)

Title 8—Aliens and Nationality

- I Immigration and Naturalization Service, Department of Justice (Parts 0-499)

Title 9—Animals and Animal Products

- I Animal and Plant Health Inspection Service, Department of Agriculture (Parts 0-199)
II Agricultural Marketing Service (Packers and Stockyards), Department of Agriculture (Parts 200-299)
III Food Safety and Quality Service, Meat and Poultry Inspection, Department of Agriculture (Parts 300-399)
IV Agricultural Research Service, Department of Agriculture (Parts 400-499)

Title 10—Energy

- I Nuclear Regulatory Commission (Parts 0-199)
II Department of Energy (Parts 200-699)
III Department of Energy (Parts 700-899)
X Department of Energy (General Provisions) (Parts 1000-1199)

Title 11—Federal Elections

- I Federal Election Commission (Parts 1-9999)

Title 12—Banks and Banking

- I Comptroller of the Currency, Department of the Treasury (Parts 0-199)
II Federal Reserve System (Parts 200-299)
III Federal Deposit Insurance Corporation (Parts 300-399)
IV Export-Import Bank of the United States (Parts 400-499)
V Federal Home Loan Bank Board (Parts 500-599)
VI Farm Credit Administration (Parts 600-699)
VII National Credit Union Administration (Parts 700-799)
VIII Federal Financing Bank (Parts 800-899)

Title 13—Business Credit and Assistance

Chap.

- I Small Business Administration (Parts 100-199)
- III Economic Development Administration, Department of Commerce (Parts 300-399)
- IV Chrysler Corporation Loan Guarantee Board (Parts 400-499)
- V Regional Action Planning Commissions (Parts 500-599)

Title 14—Aeronautics and Space

- I Federal Aviation Administration, Department of Transportation (Parts 0-199)
- II Civil Aeronautics Board (Parts 200-399)
- V National Aeronautics and Space Administration (Parts 1200-1299)

Title 15—Commerce and Foreign Trade

SUBTITLE A—Office of the Secretary of Commerce (Parts 0-19)

SUBTITLE B—Regulations Relating to Commerce and Foreign Trade

- I Bureau of the Census, Department of Commerce (Parts 20-199)
- II National Bureau of Standards, Department of Commerce (Parts 200-299)
- III International Trade Administration, Department of Commerce (Parts 300-399)
- IV Foreign-Trade Zones Board (Parts 400-499)
- V United States Metric Board (Parts 500-599)
- VIII Bureau of Economic Analysis, Department of Commerce (Parts 800-899)
- IX National Oceanic and Atmospheric Administration, Department of Commerce (Parts 900-999)
- XII United States Travel Service, Department of Commerce (Parts 1200-1299)
- XIII East-West Foreign Trade Board (Parts 1300-1999)
- SUBTITLE C—Regulations Relating to Foreign Trade Agreements
- XX Office of the United States Trade Representative (Parts 2000-2099)
- SUBTITLE D—Regulations Relating to Telecommunications and Information
- XXIII National Telecommunications and Information Administration, Department of Commerce (Parts 2300-2399)

Title 16—Commercial Practices

- I Federal Trade Commission (Parts 0-999)
- II Consumer Product Safety Commission (Parts 1000-1799)

Title 17—Commodity and Securities Exchanges

Chap.

- I Commodity Futures Trading Commission (Parts 0-199)
- II Securities and Exchange Commission (Parts 200-299)

Title 18—Conservation of Power and Water Resources

- I Federal Energy Regulatory Commission, Department of Energy (Parts 0-299)
- III Delaware River Basin Commission (Parts 400-499)
- IV Office of Water Resources Research, Department of the Interior (Parts 500-599)
- VI Water Resources Council (Parts 701-799)
- VIII Susquehanna River Basin Commission (Parts 800-899)
- XIII Tennessee Valley Authority (Parts 1300-1399)

Title 19—Customs Duties

- I United States Customs Service, Department of the Treasury (Parts 0-199)
- II United States International Trade Commission (Parts 200-299)
- III International Trade Administration, Department of Commerce (Parts 300-399)

Title 20—Employees' Benefits

- I Office of Workers' Compensation Programs, Department of Labor (Parts 0-199)
- II Railroad Retirement Board (Parts 200-399)
- III Social Security Administration, Department of Health, Education, and Welfare (Parts 400-499)
- IV Employees' Compensation Appeals Board, Department of Labor (Parts 500-599)
- V Employment and Training Administration, Department of Labor (Parts 600-699)
- VI Employment Standards Administration, Department of Labor (Parts 700-799)
- VII Benefits Review Board, Department of Labor (Parts 800-899)
- VIII Joint Board for the Enrollment of Actuaries (Parts 900-999)

Title 21—Food and Drugs

- I Food and Drug Administration, Department of Health, Education, and Welfare (Parts 0-1299)
- II Drug Enforcement Administration, Department of Justice (Parts 1300-1399)

Title 22—Foreign Relations

- I Department of State (Parts 0-199)
- II Agency for International Development, International Development Cooperation Agency (Parts 200-299)
- III Peace Corps (Parts 300-399)

Title 22—Foreign Relations—Continued

Chap.

- IV International Joint Commission, United States and Canada (Parts 400-499)
- V International Communication Agency (Parts 500-599)
- VI United States Arms Control and Disarmament Agency (Parts 600-699)
- VII Overseas Private Investment Corporation (Parts 700-799)
- VIII Employee-Management Relations Commission (Parts 800-899)
- IX Foreign Service Grievance Board (Parts 901-999)
- X Inter-American Foundation (Parts 1000-1099)
- XI International Boundary and Water Commission, United States and Mexico, United States Section (Part 1100-end)

Title 23—Highways

- I Federal Highway Administration, Department of Transportation (Parts 0-899)
- II National Highway Traffic Safety Administration and Federal Highway Administration, Department of Transportation (Parts 1200-1299)

Title 24—Housing and Urban Development

SUBTITLE A—Office of the Secretary, Department of Housing and Urban Development (Parts 0-99)

SUBTITLE B—Regulations Relating to Housing and Urban Development

- I Office of Assistant Secretary for Equal Opportunity, Department of Housing and Urban Development (Parts 100-199)
- II Office of Assistant Secretary for Housing—Federal Housing Commissioner, Department of Housing and Urban Development (Parts 200-299)
- III Government National Mortgage Association, Department of Housing and Urban Development (Parts 300-399)
- IV Office of Assistant Secretary for Housing Management, Department of Housing and Urban Development (Parts 400-499)
- V Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 500-599)
- VI Office of Assistant Secretary for Community Planning and Development, Department of Housing and Urban Development (Parts 600-699)
- VII New Community Development Corporation, Department of Housing and Urban Development (Parts 700-799)
- VIII Low-Income Housing, Department of Housing and Urban Development (Parts 800-1299)
- IX Office of Interstate Land Sales Registration, Department of Housing and Urban Development (Parts 1700-1799)
- XV Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development (Parts 2700-2799)

Title 24—Housing and Urban Development—Continued

Chap.

- XX Office of Assistant Secretary for Neighborhoods, Voluntary Associations and Consumer Protection, Department of Housing and Urban Development (Parts 3200-3299)
- XXIV National Commission on Neighborhoods (Parts 4000-4099)
- XXV Neighborhood Reinvestment Corporation (Parts 4100-4199)

Title 25—Indians

- I Bureau of Indian Affairs, Department of the Interior (Parts 0-299)
- II Indian Arts and Crafts Board, Department of the Interior (Parts 300-399)
- III Indian Claims Commission (Parts 500-599)
- IV Navajo and Hopi Indian Relocation Commission (Part 700-end)

Title 26—Internal Revenue

- I Internal Revenue Service, Department of the Treasury (Parts 0-699)

Title 27—Alcohol, Tobacco Products and Firearms

- I Bureau of Alcohol, Tobacco and Firearms, Department of the Treasury (Parts 0-299)

Title 28—Judicial Administration

- I Department of Justice (Parts 0-199)
- III Federal Prison Industries, Department of Justice (Parts 300-399)
- V Bureau of Prisons, Department of Justice (Parts 500-599)

Title 29—Labor

SUBTITLE A—Office of the Secretary of Labor (Parts 0-99)

SUBTITLE B—Regulations Relating to Labor

- I National Labor Relations Board (Parts 100-199)
- II Office of the Assistant Secretary for Labor-Management Relations, Department of Labor (Parts 200-299)
- III National Railroad Adjustment Board (Parts 300-399)
- IV Office of Labor-Management Standards Enforcement, Department of Labor (Parts 400-499)
- V Wage and Hour Division, Department of Labor (Parts 500-899)
- IX Construction Industry Collective Bargaining Commission (Parts 900-999)
- X National Mediation Board (Parts 1200-1299)
- XII Federal Mediation and Conciliation Service (Parts 1400-1499)
- XIV Equal Employment Opportunity Commission (Parts 1600-1699)
- XVII Occupational Safety and Health Administration, Department of Labor (Parts 1900-1999)

Title 29—Labor—Continued

- Chap.
XX Occupational Safety and Health Review Commission (Parts 2100-2300)
XXV Pension and Welfare Benefit Programs, Department of Labor (Parts 2500-2599)
XXVI Pension Benefit Guaranty Corporation (Parts 2600-2699)
XXVII Federal Mine Safety and Health Review Commission (Parts 2700-2799)

Title 30—Mineral Resources

- I** Mine Safety and Health Administration, Department of Labor (Parts 0-199)
II Geological Survey, Department of the Interior (Parts 200-299)
III Board of Surface Mining and Reclamation Appeals, Department of the Interior (Parts 300-399)
VI Bureau of Mines, Department of the Interior (Parts 600-699)
VII Office of Surface Mining Reclamation and Enforcement, Department of the Interior (Parts 700-999)

Title 31—Money and Finance: Treasury

- SUBTITLE A—Office of the Secretary of the Treasury (Parts 0-50)**
SUBTITLE B—Regulations Relating to Money and Finance
I Monetary Offices, Department of the Treasury (Parts 51-199)
II Fiscal Service, Department of the Treasury (Parts 200-399)
IV Secret Service, Department of the Treasury (Parts 400-499)
V Office of Foreign Assets Control, Department of the Treasury (Parts 500-599)
VI Bureau of Engraving and Printing, Department of the Treasury (Parts 600-699)
VII Federal Law Enforcement Training Center, Department of the Treasury (Part 700-end)

Title 32—National Defense

- SUBTITLE A—Department of Defense**
I Office of the Secretary of Defense (Parts 0-399)
V Department of the Army (Parts 400-699)
VI Department of the Navy (Parts 700-799)
VII Department of the Air Force (Parts 800-1099)
SUBTITLE B—Other Regulations Relating to National Defense
XII Defense Logistics Agency (Parts 1200-1299)
XVI Selective Service System (Parts 1600-1699)
XVII Selective Service System (Clemency Program) (Parts 1700-1799)
XIX Central Intelligence Agency (Parts 1900-1999)
XX Information Security Oversight Office (Parts 2000-2099)
XXI National Security Council (Parts 2100-2199)

Title 32—National Defense—Continued

- Chap.
- XXII National Security Agency, Central Security Service (Parts 2200-2299)
 - XXIV Office of Science and Technology Policy (Parts 2400-2499)
 - XXV Executive Office of the President, Office of Administration (Parts 2500-2599)
 - XXVI Board for International Broadcasting (Parts 2600-2699)
 - XXVII Office for Micronesian Status Negotiations (Parts 2700-2799)
 - XXVIII Office of the Vice President of the United States (Parts 2800-2899)

Title 32A—National Defense, Appendix

- I Federal Preparedness Agency, General Services Administration
- VI International Trade Administration, Department of Commerce
- VII Department of Commerce and Department of Transportation
- VIII Transport Mobilization Staff, Interstate Commerce Commission
- XV Federal Reserve System
- XVIII National Shipping Authority, Maritime Administration, Department of Commerce

Title 33—Navigation and Navigable Waters

- I Coast Guard, Department of Transportation (Parts 0-199)
- II Corps of Engineers, Department of the Army (Parts 200-399)
- IV Saint Lawrence Seaway Development Corporation, Department of Transportation (Parts 400-499)

Title 34—Government Management

- I Office of Management and Budget (Parts 100-199)

Title 35—Panama Canal

- I Panama Canal Regulations (Parts 0-299)

Title 36—Parks, Forests, and Public Property

- I National Park Service, Department of the Interior (Parts 0-199)
- II Forest Service, Department of Agriculture (Parts 200-299)
- III Corps of Engineers, Department of the Army (Parts 300-399)
- IV American Battle Monuments Commission (Parts 400-499)
- V Smithsonian Institution (Parts 500-599)
- VII Library of Congress (Parts 700-799)
- VIII Advisory Council on Historic Preservation (Parts 800-899)
- IX Pennsylvania Avenue Development Corporation (Parts 900-999)
- X Commission of Fine Arts (Parts 1000-1099)
- XI Architectural and Transportation Barriers Compliance Board (Part 1100-1199)

Title 36—Parks, Forests, and Public Property—Continued

Chap.

- XII** Heritage Conservation and Recreation Service, Department of the Interior (Part 1200-1299)

Title 37—Patents, Trademarks, and Copyrights

- I** Patent and Trademark Office, Department of Commerce (Parts 0-199)
II Copyright Office, Library of Congress (Parts 200-299)
III Copyright Royalty Tribunal (Parts 300-399)

Title 38—Pensions, Bonuses, and Veterans' Relief

- I** Veterans Administration (Parts 0-99)

Title 39—Postal Service

- I** United States Postal Service (Parts 0-999)
III Postal Rate Commission (Parts 3000-3099)

Title 40—Protection of Environment

- I** Environmental Protection Agency (Parts 0-1399)
IV Low-Emission Vehicle Certification Board (Parts 1400-1499)
V Council on Environmental Quality (Parts 1500-1599)

Title 41—Public Contracts and Property Management

SUBTITLE A—Federal Procurement Regulations System

- 1** Federal Procurement Regulations (Parts 1-1—1-30)
3 Department of Health, Education, and Welfare (Parts 3-1—3-75)
4 Department of Agriculture (Parts 4-1—4-50)
5 General Services Administration (Part 5-1)
5A Office of Acquisition Policy, General Services Administration (Parts 5A-1—5A-76)
5B Office of Acquisition Policy, General Services Administration (Parts 5B-1—5B-63)
6 Department of State (Parts 6-1—6-60)
7 Agency for International Development, International Development Cooperation Agency (Parts 7-1—7-60)
8 Veterans Administration (Parts 8-1—8-95)
9 Department of Energy (Parts 9-1—9-59)
10 Department of the Treasury (Parts 10-12—10-60)
12 Department of Transportation (Parts 12-1—12-99)
13 Department of Commerce (Part 13-1)
14 Department of the Interior (Parts 14-1—14-63)
14H Bureau of Indian Affairs, Department of the Interior (Parts 14H-1—14H-70)
14R Office of Saline Water, Department of the Interior (Part 14R-9)

Title 41—Public Contracts and Property Management—Continued

Chap.

- 15 Environmental Protection Agency (Parts 15-1—15-60)
- 18 National Aeronautics and Space Administration (Parts 18-1—18-52)
- 19 International Communication Agency (Parts 19-1—19-60)
- 20 Nuclear Regulatory Commission (Part 20-1)
- 22 Community Services Administration (Parts 22-1—22-60)
- 23 United States Arms Control and Disarmament Agency (Parts 23-1—23-52)
- 24 Department of Housing and Urban Development (Parts 24-1—24-50)
- 25 National Science Foundation (Parts 25-1—25-50)
- 28 Department of Justice (Part 28-1)
- 29 Department of Labor (Parts 29-1—29-60)
- 44 Federal Emergency Management Agency (Parts 44-1—44-30)
- SUBTITLE B—Other Provisions Relating to Public Contracts
- 50 Public Contracts, Department of Labor (Parts 50-201—50-250)
- 51 Committee for Purchase from the Blind and Other Severely Handicapped (Parts 51-1—51-8)
- 60 Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor (Parts 60-1—60-741)
- SUBTITLE C—Federal Property Management Regulations System
- 101 Federal Property Management Regulations (Parts 101-1—101-47)
- 105 General Services Administration (Parts 105-1—105-735)
- 109 Department of Energy (Parts 109-1—109-51)
- 114 Department of the Interior (Parts 114-1—114-60)
- 115 Environmental Protection Agency (Part 115-1)
- 128 Department of Justice (Parts 128-1—128-18)
- SUBTITLE D—Other Provisions Relating to Property Management [Reserved]

Title 42—Public Health

- I Public Health Service, Department of Health, Education, and Welfare (Parts 0-199)
- III Saint Elizabeths Hospital, Department of Health, Education, and Welfare (Parts 300-399)
- IV Health Care Financing Administration, Department of Health, Education, and Welfare (Parts 400-499)

Title 43—Public Lands: Interior

SUBTITLE A—Office of the Secretary of the Interior (Parts 0-29)

SUBTITLE B—Regulations Relating to Public Lands

- I Water and Power Resources Service, Department of the Interior (Parts 200-499)

Title 43—Public Lands: Interior—Continued

Chap.

- II Bureau of Land Management, Department of the Interior
(Parts 1600-9299)**

Title 44—Emergency Management and Assistance

- I Federal Emergency Management Agency (Parts 0-399)**

Title 45—Public Welfare

**SUBTITLE A—Department of Health, Education, and Welfare,
General Administration (Parts 0-99)**

SUBTITLE B—Regulations Relating to Public Welfare

- I Office of Education, Department of Health, Education, and
Welfare (Parts 100-199)**
- II Office of Family Assistance (Assistance Programs), Department
of Health, Education, and Welfare (Parts 200-299)**
- III Office of Child Support Enforcement (Child Support Enforce-
ment Program), Department of Health, Education, and Wel-
fare (Parts 300-399)**
- V Foreign Claims Settlement Commission of the United States
(Parts 500-599)**
- VI National Science Foundation (Parts 600-699)**
- VII Commission on Civil Rights (Parts 700-799)**
- VIII Office of Personnel Management (Parts 800-899)**
- X Community Services Administration (Parts 1000-1099)**
- XI National Foundation on the Arts and the Humanities (Parts
1100-1199)**
- XII ACTION (Parts 1200-1299)**
- XIII Office of Human Development Services, Department of Health,
Education, and Welfare (Parts 1300-1399)**
- XIV National Institute of Education, Department of Health, Educa-
tion, and Welfare (Parts 1400-1499)**
- XV Fund for the Improvement of Postsecondary Education, De-
partment of Health, Education, and Welfare (Parts 1500-
1599)**
- XVI Legal Services Corporation (Parts 1600-1699)**
- XVII National Commission on Libraries and Information Science
(Parts 1700-1799)**
- XVIII Harry S. Truman Scholarship Foundation (Parts 1800-1899)**
- XIX National Commission on the Observance of International
Women's Year (Parts 1900-1999)**
- XXI Commission of Fine Arts (Parts 2100-2199)**

Title 46—Shipping

- I Coast Guard, Department of Transportation (Parts 0-199)**
- II Maritime Administration, Department of Commerce (Parts 200-
399)**
- III Coast Guard (Great Lakes Pilotage), Department of Transpor-
tation (Parts 400-499)**
- IV Federal Maritime Commission (Parts 500-599)**

Title 47—Telecommunication

Chap.

- I Federal Communications Commission (Parts 0-199)
- II Office of Science and Technology Policy and National Security Council (Parts 200-299)

Title 48—[Reserved]

Title 49—Transportation

SUBTITLE A—Office of the Secretary of Transportation (Parts 0-99)

SUBTITLE B—Other Regulations Relating to Transportation

- I Research and Special Programs Administration, Department of Transportation (Parts 100-199)
- II Federal Railroad Administration, Department of Transportation (Parts 200-299)
- III Federal Highway Administration, Department of Transportation (Parts 300-399)
- IV Coast Guard, Department of Transportation (Parts 400-499)
- V National Highway Traffic Safety Administration, Department of Transportation (Parts 500-599)
- VI Urban Mass Transportation Administration, Department of Transportation (Parts 600-699)
- VIII National Transportation Safety Board (Parts 800-899)
- IX United States Railway Association (Parts 900-999)
- X Interstate Commerce Commission (Parts 1000-1399)

Title 50—Wildlife and Fisheries

- I United States Fish and Wildlife Service, Department of the Interior (Parts 0-199)
- II National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 200-299)
- III International Regulatory Agencies (Fishing and Whaling) (Parts 300-399)
- IV Joint Regulations (United States Fish and Wildlife Service, Department of the Interior and National Marine Fisheries Service, National Oceanic and Atmospheric Administration, Department of Commerce); Endangered Species Committee Regulations (Parts 400-499)
- V Marine Mammal Commission (Parts 500-599)
- VI Fishery Conservation and Management, National Oceanic and Atmospheric Administration, Department of Commerce (Parts 600-699)
- VIII Endangered Species Scientific Authority (Parts 800-899)

CFR Index

- List of CFR Titles, Chapters, Subchapters, and Parts
- Parallel Tables of Statutory Authorities and Rules
- Acts Requiring Publication in the Federal Register

Alphabetical List of Agencies Appearing in the CFR

(As of March 15, 1980)

Agency	CFR Title, Subtitle or Chapter
ACTION	45, XII
Acquisition Policy, Office of	41, 5A, 5B
Administrative Committee of the Federal Register	1, I
Administrative Conference of the United States	1, III
Advisory Commission on Intergovernmental Relations	5, VII
Advisory Committee on Federal Pay	5, IV
Advisory Council on Historic Preservation	36, VIII
Agency for International Development	22, II; 41, 7
Agricultural Marketing Service	7, I, IX, X, XI; 9, II
Agricultural Research Service	7, V; 9, IV
Agricultural Stabilization and Conservation Service	7, VII
Agriculture Department	
Agricultural Marketing Service	7, I, IX, X, XI; 9, II
Agricultural Research Service	7, V; 9, IV
Agricultural Stabilization and Conservation Service	7, VII
Animal and Plant Health Inspection Service	7, III; 9, I, III
Audit, Office of	7, XXVII
Commodity Credit Corporation	7, XIV
Contract Appeals, Board of	7, XXIV
Energy, Office of	7, XXIX
Environmental Quality Activities, Office of	7, XXXI
Farmers Home Administration	7, XVIII
Federal Crop Insurance Corporation	7, IV
Federal Grain Inspection Service	7, VIII
Federal Procurement Regulations System	41, 4
Food and Nutrition Service	7, II
Food Safety and Quality Service	7, XXVIII; 9, III
Foreign Agricultural Service	7, XV
Foreign Economic Development Service	7, XXI
Forest Service	36, II
General Sales Manager, Office of	7, XXV
Investigation, Office of	7, XXVI
Operations and Finance, Office of	7, XXX
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI
Secretary of Agriculture, Office of	7, Subtitle A
Soil Conservation Service	7, VI
Statistical Reporting Service	7, XII
Air Force Department	32, VII
Alcohol, Tobacco and Firearms, Bureau of	27, I
American Battle Monuments Commission	36, IV
Animal and Plant Health Inspection Service	7, III; 9, I
Appalachian Regional Commission	5, IX
Architectural and Transportation Barriers Compliance Board	36, XI
Arms Control and Disarmament Agency, U.S.	22, VI; 41, 23
Army Department	32, V
Engineers, Corps of	33, II; 36, III
Audit, Office of	7, XXVII
Benefits Review Board	20, VII
Blind and Other Severely Handicapped, Committee for Purchases from	41, 51

Agency	CFR Title, Subtitle or Chapter
Board for International Broadcasting	32, XXVI
Budget, Office of Management and	5, III
Census Bureau	15, I
Central Intelligence Agency	32, XIX
Child Support Enforcement, Office of	45, III
Chrysler Corporation Loan Guarantee Board	13, IV
Civil Aeronautics Board	14, II
Civil Rights Commission	45, VII
Claims Collection Standards, Federal	4, II
Clemency Program, Selective Service System	32, XVII
Coast Guard	33, I; 46, I, III; 49, IV
Commerce Department	
Census Bureau	15, I
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Federal Procurement Regulations System	41, 13
Fishery Conservation and Management	50, VI
International Trade Administration	15, III; 19, III; 32A, VI
Maritime Administration	32A, XVIII; 46, II
National Bureau of Standards	15, II
National Defense	32A, VII
National Marine Fisheries Service	50, II, IV
National Oceanic and Atmospheric Administration	15, IX; 50, II, IV
National Shipping Authority	32A, XVIII
National Telecommunications and Information Administration	15, XXIII
Patent and Trademark Office	37, I
Secretary of Commerce, Office of	15, Subtitle A
United States Travel Service	15, XII
Commission on the Review of the National Policy Toward Gambling	1, IV
Committee for Purchase from Blind and Other Severely Handicapped	41, 51
Commodity Credit Corporation	7, XIV
Commodity Futures Trading Commission	17, I
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Community Services Administration	41, 22; 45, X
Comptroller of the Currency	12, I
Construction Industry Collective Bargaining Commission	29, IX
Consumer Product Safety Commission	16, II
Contract Appeals, Board of	7, XXIV
Copyright Office	37, II
Copyright Royalty Tribunal	37, III
Cost Accounting Standards Board	4, III
Council on Environmental Quality	40, V
Council on Wage and Price Stability	6, VII
Customs Service, United States	19, I
Defense Department	32, Subtitle A
Air Force Department	32, VII
Army Department	32, V; 33, II; 36, III
Defense Civil Preparedness Agency	32, XVIII
Engineers, Corps of	33, II; 36, III
Navy Department	32, VI
Secretary of Defense, Office of	32, I
Defense Logistics Agency	32, XII
Defense Manpower Commission	1, IV
Delaware River Basin Commission	18, III
Drug Enforcement Administration	21, II
East-West Foreign Trade Board	15, XIII
Economic Analysis, Bureau of	15, VIII
Economic Development Administration	13, III
Education, Office of	45, I
Employee Benefits Security, Office of	29, XXV
Employee-Management Relations Commission	22, VIII
Employees' Compensation Appeals Board	20, IV
Employees Loyalty Board, International Organizations	5, V

Agency	CFR Title, Subtitle or Chapter
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Endangered Species Committee	50, IV
Endangered Species Scientific Authority	50, VIII
Energy, Department of	10, II, III, X; 41, 109
Federal Energy Regulatory Commission	18, I
Federal Procurement Regulations System	41, 9
Energy, Office of, Department of Agriculture	7, XXIX
Engineers, Corps of	33, II; 36, III
Engraving and Printing, Bureau of	31, VI
Environmental Protection Agency	40, I; 41, 15, 115
Environmental Quality Activities, Office of (Agriculture Department)	7, XXXI
Equal Employment Opportunity	41, 60
Equal Employment Opportunity Commission	29, XIV
Equal Opportunity, Office of Assistant Secretary for	24, I
Executive Office of the President	3, I
Administration, Office of	32, XXV
Export Marketing Service	7, XXV
Export-Import Bank of the United States	12, IV
Family Assistance, Office of	45, II
Farm Credit Administration	12, VI
Farmers Home Administration	7, XVIII
Federal Aviation Administration	14, I
Federal Claims Collection Standards	4, II
Federal Communications Commission	47, I
Federal Contract Compliance, Office of	41, 60
Federal Crop Insurance Corporation	7, IV
Federal Deposit Insurance Corporation	12, III
Federal Election Commission	11, I
Federal Emergency Management Agency	41, 44; 44, I
Federal Energy Regulatory Commission	18, I
Federal Financing Bank	12, VIII
Federal Grain Inspection Service	7, VIII
Federal Highway Administration	23, I, II; 49, III
Federal Home Loan Bank Board	12, V
Federal Labor Relations Authority, General Counsel of the	
Federal Labor Relations Authority, and Federal Service Impasses Panel	5, XIV
Federal Law Enforcement Training Center	31, VII
Federal Maritime Commission	46, IV
Federal Mediation and Conciliation Service	29, XII
Federal Mine Safety and Health Review Commission	29, XXVII
Federal Pay, Advisory Committee on	5, IV
Federal Prison Industries	28, III
Federal Procurement Regulations	41, I
Federal Procurement Regulations System	41, Subtitle A
Federal Property Management Regulations	41, 101
Federal Property Management Regulations System	41, Subtitle C
Federal Railroad Administration	49, II
Federal Register, Administrative Committee of	1, I
Federal Register, Office of	1, II
Federal Reserve System	12, II; 32A, XV
Federal Services Impasses Panel	5, XIV
Federal Trade Commission	16, I
Fine Arts Commission	36, X; 45, XXI
Fiscal Service	31, II
Fish and Wildlife Service, United States	50, I, IV
Fishery Conservation and Management	50, VI
Fishing and Whaling, International Regulatory Agencies	50, III
Food and Drug Administration	21, I
Food and Nutrition Service	7, II
Food Safety and Quality Service,	7, XXVIII; 9, III
Foreign Agricultural Service	7, XV
Foreign Assets Control, Office of	31, V
Foreign Claims Settlement Commission of United States	45, V
Foreign Economic Development Service	7, XXI

Agency	CFR Title, Subtitle or Chapter
Foreign Service Grievance Board	22, IX
Foreign-Trade Zones Board	15, IV
Forest Service	36, II
Fund for the Improvement of Postsecondary Education	45, XV
General Accounting Office	4, I, II
General Sales Manager, Office of	7, XXV
General Services Administration	41, 5
Acquisition Policy, Office of	41, 5A, 5B
Federal Preparedness Agency	32A, I
Federal Procurement Regulations System	41, 1, 5A, 5B
Federal Property Management Regulations System.	41, 101, 105
Geological Survey	30, II
Government National Mortgage Association	24, III
Great Lakes Pilotage	46, III
Harry S Truman Scholarship Foundation	45, XVIII
Health Care Financing Administration	42, IV
Health, Education, and Welfare, Department of	45, Subtitle A
Child Support Enforcement, Office of	45, III
Education, Office of	45, I
Family Assistance, Office of	45, II
Federal Procurement Regulations System	41, 3
Food and Drug Administration	21, I
Fund for the Improvement of Postsecondary Education	45, XV
Harry S Truman Scholarship Foundation	45, XVIII
Health Care Financing Administration	42, IV
Human Development Office	45, XIII
National Institute of Education	45, XIV
Public Health Service	42, I
St. Elizabeths Hospital	42, III
Social Security Administration	20, III
Heritage Conservation and Recreation Service	36, XII
Housing and Urban Development, Department of	
Community Planning and Development, Office of Assistant Secretary for	24, V, VI
Equal Opportunity, Office of Assistant Secretary for	24, I
Federal Procurement Regulations System	41, 24
Government National Mortgage Association	24, III
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II
Housing Management, Office of Assistant Secretary for	24, IV
Interstate Land Sales Registration, Office of	24, IX
Low-Income Housing	24, VIII
Mortgage Insurance and Loan Programs Under Emergency Homeowners' Relief Act	24, XV
Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary for	24, XX
New Community Development Corporation	24, VII
Secretary, Office of	24, Subtitle A
Housing—Federal Housing Commissioner, Office of Assistant Secretary for	24, II
Housing Management, Office of Assistant Secretary for	24, IV
Human Development Services Office	45, XIII
Immigration and Naturalization Service	8, I
Indian Affairs, Bureau of	25, I; 41, 14H
Indian Arts and Crafts Board	25, II
Indian Claims Commission	25, III
Information Agency, United States	22, V; 41, 19
Information Security Oversight Office	32, XX
Inter-American Foundation	22, X
Intergovernmental Relations, Advisory Commission on	5, VII
Interior Department	
Endangered Species Committee	50, IV
Federal Procurement Regulations System	41, 14
Federal Property Management Regulations System	41, 114
Fish and Wildlife Service, United States	50, I, IV
Geological Survey	30, II
Heritage Conservation and Recreation Service	36, XII

Agency	CFR Title, Subtitle or Chapter
Indian Affairs, Bureau of	25, I, 41, 14H
Indian Arts and Crafts Board	25, II
Land Management Bureau	43, II
Surface Mining and Reclamation Appeals, Board of	30, III
Mines, Bureau of	30, VI
National Park Service	36, I
Saline Water, Office of	41, 14R
Secretary of the Interior, Office of	43, Subtitle A
Surface Mining Reclamation and Enforcement, Office of	30, VII
United States Fish and Wildlife Service	50, I, IV
Water and Power Resources Service	43, I
Water Resources Research, Office of	18, IV
Internal Revenue Service	26, I
International Boundary and Water Commission, United States and Mexico	22, XI
International Communication Agency	22, V, 41, 19
International Development, Agency for	22, II, 41, 7
International Development Cooperation Agency	22, II, 41, 7
International Joint Commission, United States and Canada	22, IV
International Organizations Employees Loyalty Board	5, V
International Regulatory Agencies (Fishing and Whaling)	50, III
International Trade Administration	15, III; 19, III; 32A, VI
International Trade Commission, United States	19, II
Interstate Commerce Commission	49, X
Transport Mobilization Staff	32A, VIII
Interstate Land Sales Registration, Office of	24, IX
Joint Board for the Enrollment of Actuaries	20, VIII
Justice Department	28, I, 41, 128
Drug Enforcement Administration	21, II
Federal Claims Collection Standards	4, II
Federal Prison Industries	28, III
Federal Procurement Regulations System	41, 28
Immigration and Naturalization Service	8, I
Prisons, Bureau of	28, V
Labor Department	
Benefits Review Board	20, VII
Employees' Compensation Appeals Board	20, IV
Employment and Training Administration	20, V
Employment Standards Administration	20, VI
Federal Contract Compliance, Office of	41, 60
Federal Procurement Regulations System	41, 29, 50
Labor-Management Relations, Office of the Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Mine Safety and Health Administration	30, I
Occupational Safety and Health Administration	29, XVII
Pension and Welfare Benefit Programs	29, XXV
Public Contracts	41, 50
Secretary of Labor, Office of	29, Subtitle A
Wage and Hour Division	29, V
Worker's Compensation Programs, Office of	20, I
Labor Management Relations, Office of Assistant Secretary	29, II
Labor-Management Standards Enforcement, Office of	29, IV
Land Management, Bureau of	43, II
Legal Services Corporation	45, XVI
Library of Congress	36, VII
Copyright Office	37, II
Low-Emission Vehicle Certification Board	40, IV
Low-Income Housing, Department of Housing and Urban Development	24, VIII
Management and Budget, Office of	5, III, 34, I
Marine Mammal Commission	50, V
Maritime Administration	46, II
Maritime Administrator, Office of	32A, XVIII
National Shipping Authority	32A, XVIII
Merit Systems Protection Board	5, II
Micronesia Status Negotiations, Office for	32, XXVII

Agency	CFR Title, Subtitle or Chapter
Mine Safety and Health Administration	30, I
Mines, Bureau of	30, VI
Miscellaneous Agencies	1, IV
Monetary Offices	31, I
Mortgage Insurance and Loan Programs Under the Emergency Homeowners' Relief Act, Department of Housing and Urban Development	24, XV
National Aeronautics and Space Administration	14, V; 41, 18
National Bureau of Standards	15, II
National Commission on Libraries and Information Science	45, XVII
National Commission on Neighborhoods	24, XXIV
National Commission on the Observance of International Women's Year	45, XIX
National Credit Union Administration	12, VII
National Foundation on the Arts and the Humanities	45, XI
National Highway Traffic Safety Administration	23, II; 49, V
National Institute of Education	45, XIV
National Labor Relations Board	29, I
National Marine Fisheries Service	50, II, IV
National Mediation Board	29, X
National Oceanic and Atmospheric Administration	15, IX; 50, II, VI
National Park Service	36, I
National Railroad Adjustment Board	29, III
National Science Foundation	45, VI; 41, 25
National Security Agency, Central Security Service	32, XXII
National Security Council	32, XXI
National Security Council and Office of Science and Technology Policy	47, II
National Shipping Authority	32A, XVIII
National Telecommunications and Information Administration	15, XXIII
National Transportation Safety Board	49, VIII
Navajo and Hopi-Indian Relocation Commission	25, IV
Navy Department	32, VI
Neighborhood Reinvestment Corporation	24, XXV
Neighborhoods, National Commission on	24, XXIV
Neighborhoods, Voluntary Associations and Consumer Protection, Office of Assistant Secretary for	29, XX
New Community Development Corporation	24, VII
Nuclear Regulatory Commission	10, I; 41, 20
Occupational Safety and Health Administration	29, XVII
Occupational Safety and Health Review Commission	29, XX
Overseas Private Investment Corporation	22, VII
Panama Canal Regulations	35, I
Patent and Trademark Office	37, I
Peace Corps	22, III
Pennsylvania Avenue Development Corporation	36, IX
Pension Benefit Guaranty Corporation	29, XXVI
Pension and Welfare Benefit Programs, Department of Labor	29, XXV
Personnel Management, Office of	5, I; 45, VIII
Postal Rate Commission	39, III
Postal Service, United States	39, I
President's Commission on White House Fellowships	1, IV
Presidential Documents	3
Prisons, Bureau of	28, V
Privacy Protection Study Commission	1, IV
Procurement Regulations System, Federal	41, Subtitle A
Property Management Regulations System, Federal	41, Subtitle C
Public Contracts, Department of Labor	41, 50
Public Health Service	42, I
Railroad Retirement Board	20, II
Railway Association, United States	49, IX
Regional Action Planning Commissions	13, V
Research and Special Programs Administration	49, I
Rural Electrification Administration	7, XVII
Rural Telephone Bank	7, XVI

Agency	CFR Title, Subtitle or Chapter
Saint Elizabeths Hospital	42, III
Saint Lawrence Seaway Development Corporation	33, IV
Saline Water, Office of	41, 14R
Science and Technology Policy, Office of	32, XXIV
Science and Technology Policy, Office of, and National Security Council	47, II
Secret Service	31, IV
Securities and Exchange Commission	17, II
Selective Service System	32, XVI; XVII
Small Business Administration	13, I
Smithsonian Institution	36, V
Social Security Administration	20, III
Soil Conservation Service	7, VI
Soldiers' and Airmen's Home, United States	5, XI
Special Representative for Trade Negotiations, Office of State Department	15, XX
Federal Procurement Regulations System	22, I
Statistical Reporting Service, Agriculture Department	41, 6
Surface Mining and Reclamation Appeals, Board of	7, XII
Susquehanna River Basin Commission	30, III
Tennessee Valley Authority	18, VIII
Trade Representative, United States, Office of	18, XIII
Transport Mobilization Staff, Interstate Commerce Commission	15, XX
Transportation, Department of	32A, VIII
Coast Guard	33, I; 46, I, III; 49, IV
Federal Aviation Administration	14, I
Federal Highway Administration	23, I, II; 49, III
Federal Procurement Regulations System	41, 12
Federal Railroad Administration	49, II
Highway Safety Program Standards	23, II
National Defense	32A, VII
National Highway Traffic Safety Administration	23, II; 49, V
Research and Science Programs Administration	49, I
Saint Lawrence Seaway Development Corporation	33, IV
Secretary, Office of	49, Subtitle A
Urban Mass Transportation Administration	49, VI
Travel Service, United States	15, XII
Treasury Department	
Administration, Assistant Secretary for	6, VI
Alcohol, Tobacco and Firearms, Bureau of	27, I
Comptroller of the Currency	12, I
Customs Service, United States	19, I
Engraving and Printing, Bureau of	31, VI
Federal Law Enforcement Training Center	31, VII
Federal Procurement Regulations System	41, 10
Fiscal Service	31, II
Foreign Assets Control, Office of	31, V
Internal Revenue Service	26, I
Monetary Offices	31, I
Secret Service	31, IV
Secretary of the Treasury, Office of	31, Subtitle A
Truman, Harry S. Scholarship Foundation	45, XVIII
United States and Canada, International Joint Commission	22, IV
United States Arms Control and Disarmament Agency	22, VI; 41, 23
United States Customs Service	19, I
United States Fish and Wildlife Service	50, I
United States International Trade Commission	19, II
United States Metric Board	15, V
United States Postal Service	39, I
United States Railway Association	49, IX
United States Soldiers' and Airmen's Home	5, XI
United States Trade Representative, Office of	15, XX
United States Travel Service	15, XII
Urban Mass Transportation Administration	49, VI
Veterans Administration	38, I; 41, 8
Vice President of the United States, Office of	32, XXVIII

Agency	CFR Title, Subtitle or Chapter
Wage and Hour Division	29, V
Water and Power Resources Service	43, I
Water Resources Council	18, VI
Water Resources Research, Office of	18, IV
Welfare-Pension Reports, Office of Labor-Management and	29, IV
Workers' Compensation Programs, Office of	20, I

List of CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since Chapter I, Title 11 was established at 41 FR 35932, August 25, 1976, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

1976

11 CFR

	41 FR Page
Chapter I	
Chapter established.....	35932
1 Added.....	43064
100—115 (Subchapter A) Estab- lished.....	35933
100 Added.....	35933
101 Added.....	35938
102 Added.....	35938
103 Added.....	35940
104 Added.....	35941
105 Added.....	35944
106 Added.....	35944
107 Added.....	35946
108 Added.....	35946
109 Added.....	35947
110 Added.....	35948
111 Added.....	35953
112 Added.....	35954
113 Added.....	35955
114 Added.....	35955
115 Added.....	35963
120—125 (Subchapter B) Estab- lished.....	35963
120 Added.....	35963
121 Added.....	35964
122 Added.....	35965
123 Added.....	35966
124 Added.....	35967
125 Added.....	35967
130—134 (Subchapter C) Estab- lished.....	35968
130 Added.....	35968
131 Added.....	35969
132 Added.....	35970
133 Added.....	35971
134 Added.....	35972
140—146 (Subchapter D) Estab- lished.....	35972

11 CFR—Continued

	41 FR Page
Chapter I—Continued	
140 Added.....	35972
141 Added.....	35974
142 Added.....	35974
143 Added.....	35975
144 Added.....	35975
145 Added.....	35975
146 Added.....	35976

1977

11 CFR

	42 FR Page
Chapter I	
(Regulations published January 1, 1977 through May 1, 1977)	
2 Added.....	13202
3 Added.....	13202
102 Transmittal of regulations to Congress.....	15206
102.9 (c)(3)(iii), (4) introductory text and (4)(ii) revised.....	19324
102.10 Amended.....	19324
104 Transmittal of regulations to Congress.....	15206
104.2 (b)(9) amended.....	19324
114 Transmittal or regulations to Congress.....	15206
114.4 (c)(2) revised.....	19324
134 Transmittal of regulations to Congress.....	15206
134.3 (c)(2) revised.....	19324

1978

(No amendments published for 1978)

Title 11—Federal Elections

1979

11 CFR

44 FR
Page

Chapter I

4 Added..... 33368

4.3 (c) corrected..... 37491

100 (b)(16) added (effective pending congressional review)...39350, 76736

(b)(16) removed (disapproved by Congress).....59162

100.7 (b)(18) added (effective pending congressional review)..... 39350, 76376

(b)(18) removed (disapproved by Congress).....59162

107 Revised (effective pending congressional review).....63045

Authority citation corrected.....77137

110.13 Added (effective pending congressional review)...39350, 76376

Removed (disapproved by Congress)..... 59162

114 Authority citation corrected.....77137

114.1 (a)(2) introductory text and (viii) revised (effective pending congressional review)..... 63045

114.4 (e) added (effective pending congressional review)...39351, 76736

(e) removed (disapproved by Congress).....59162

120—125 (Subchapter B) Removed.....77137

130—134 (Subchapter C) Removed

9008 (Subchapter F and Part) Added (effective pending congressional review).....63039

Effective date confirmed.....77137

9008.8 (b)(4)(v)(C) and (D) corrected.....77137

9008.10 (g)(2) corrected.....77137

9031—9038 (Subchapter G) Added; regulations transferred from Chapter IX.....55781

9032.9 (a) revised (effective pending congressional review)..... 63757

9033.1 (c) amended (effective pending congressional review).....63758

9033.2 (b) revised; (f) amended (effective pending congressional review).....63758

9033.3 Redesignated as 9033.4; new 9033.3 added (effective pending congressional review).....63758

11 CFR—Continued

44 FR
Page

Chapter I—Continued

9033.4 Redesignated asd 9033.5 and introductory text, (a)(3), and (b)(1) amended; new 9033.4 redesignated from 9033.3 (effective pending congressional review).....63758

9033.5 Redesignated as 9033.6 and (a) amended; new 9033.5 redesignated from 9033.4 and introductory text, (a)(3), and (b)(1) amended; new 9033.4 redesignated from 9033.3 (effective pending congressional review).....63758

9033.6 Redesignated as 9033.7 and (a), (c), and (d) amended; new 9033.6 redesignated from 9033.5 and (a) amended (effective pending congressional review).....63758

9033.7 Redesignated as 9033.8 and (a)and (b) amended; new 9033.7 redesignated from 9033.6 and (a), (c), and (d) amended (effective pending congressional review).....63758

9033.8 Redesignated as 9033.9 and (a) amended; new 9033.8 redesignated from 9033.7 and (a) and (b) amended (effective pending congressional review).....63758

9033.9 Redesignated from 9033.8 and (a) amended (effective pending congressional review).....63758

9034.1 (a), (c), and (d) amended (effective pending congressional review)..... 63758

9034.4 (b), (d), and (h) amended (effective pending congressional review)..... 63758

9034.5 (a)(1) amended (effective pending congressional review).....63758

9035.1 Revised (effective pending congressional review).....63758

Chapter IX

Chapter established.....20341

Effective date 5-7-79.....26733

Chapter removed; regulations transferred to Chapter I, 9031—9038 (Subchapter G).....55781

List of CFR Sections Affected

11 CFR—Continued	44 FR
Chapter IX—Continued	Page
9031—9038 Added (effective pending congressional review).....	20341
Effective date 5-7-79.....	26733
9034.2 Corrected.....	22407
(c)(4) corrected (effective pending congressional review).....	25193

1980

(Regulations published from January 2, 1980 through April 1, 1980)

11 CFR	45 FR
	Page
Chapter I	
1.1 (c) amended.....	21209
1.14 (a) amended.....	21209
3.2 (a)(1) amended.....	21209
100 Revised.....	15094
100.7 (a)(1)(i)(B), (a)(1)(ii), and (c) amended.....	21209
101 Revised.....	15103
101.1 (a) amended.....	21209
102 Revised.....	15104
102.3 (a) amended.....	21209
102.5 (a)(2) amended.....	21209
102.14 (c) amended.....	21209
103 Revised.....	15108
104 Revised.....	15108
104.2 (e)(3) amended.....	21209
104.3 (d), (e)(3), (f), (g) and (h) amended; (j) added.....	21209
105 Revised.....	15116
106.1 (c)(3) added.....	15117
(e) amended.....	21209
106.2 (a) revised.....	15117
106.3 (d) revised.....	15117
106.4 (a) and (b) amended.....	21209
108 Revised.....	15117
108.4 Amended.....	21209
109 Revised.....	15118
110.1 (i)(1) and (2) amended.....	21209
110.2 (b) revised.....	15119
(b) amended.....	21210
110.3 (a)(1)(i) amended.....	21210
110.6 (c)(4) introductory text, and (c)(4)(i) revised.....	15119
110.7 (c)(2) revised; (c)(3) deleted.....	15119
110.8 (c)(2) amended.....	21210
110.11 (a)(1) and (2) revised; (c) deleted.....	15119
110.12 (a) and (b)(5) revised; (b)(6) added.....	15120

11 CFR—Continued	45 FR
Chapter I—Continued	Page
111 Revised.....	15120
111.8 (c) amended.....	21210
112 Revised.....	15123
113 Revised.....	15124
114.1 (a)(2)(v) revised.....	15125
(a)(1), (2)(vi), (vii) and (ix) amended.....	21210
114.3 (b) amended.....	21210
114.5 (e)(2)(i) amended.....	21210
114.6 (c)(3), (d) introductory text, (d)(2)(ii), (d)(3)(i) and (ii) revised.....	15125
114.9 (a)(2), (b)(2) and (d) amended.....	21210
114.12 (a) amended.....	21210
115.1 (a) amended.....	21210
9008.2 (e) amended.....	21210
9008.3 (a) amended.....	15126
9008.6 (b)(3) amended.....	21210
9008.7 (a)(3) amended.....	21210
9008.8 (a)(4) amended.....	21210
9032.4 Amended.....	21210
9032.9 (a) effective date confirmed.....	9559
9033.1 (c) effective date confirmed.....	9559
(c) amended.....	21210
9033.2 (b) and (f) effective date confirmed.....	9559
9033.3 Effective date confirmed.....	9559
9033.4 Effective date confirmed.....	9559
9033.5 Effective date confirmed.....	9559
9033.6 Effective date confirmed.....	9559
9033.7 Effective date confirmed.....	9559
9033.8 Effective date confirmed.....	9559
9033.9 Effective date confirmed.....	9559
(a) amended.....	21210
9034.1 (a), (c), and (d) effective date confirmed.....	9559
9034.2 (a)(3) amended.....	21210
9034.3 (d) amended.....	21210
9034.4 (b), (d), and (h) effective date confirmed.....	9559
9034.5 (a)(1) effective date confirmed.....	9559
9035.1 Effective date confirmed.....	9559
9036.2 (a)(3) amended.....	21210

(Regulations published April 8, and April 23, 1980)

11 CFR	45 FR
	Page
Chapter I	
100.7 (b)(21) correctly added.....	23642

Title 11—Federal Elections

11 CFR—Continued	45 FR
Chapter I—Continued	Page
100.8 (b)(23) correctly added.....	23642
110.7 (b)(5) correctly deleted.....	27435

11 CFR—Continued	45 FR
Chapter I—Continued	Page
9034.2 (a)(3) correctly ammended.....	23642
9036.2 (a)(3) correctly amended....	23642

Appendix to List CFR Sections Affected

All changes in this volume of the Code of Federal Regulations which were made by documents published in the Federal Register since Title 11 was established at 37 FR 6156, March 24, 1972, are enumerated in the following list. Entries indicate the nature of the changes effected. Page numbers refer to Federal Register pages. The user should consult the entries for chapters and parts as well as sections for revisions.

NOTE: The following is the list of changes to Title 11 prior to the reconstitution of the Federal Election Commission by the Federal Election Campaign Act Amendments of 1976 (90 Stat. 475; 2 U.S.C. 431 note).

	1972
11 CFR	37 FR Page
Chapter I	
Establishment of title	6156
Added	6156
1 Added	6156
2 Added	6156
3 Added	6157
4 Added	6157
4.4 (a) revised	22380
4.8 Added	17802
5 Added	6159
6 Added	6160
11 Added	6161
12 Added	6162
13 Added	6163
14 Added	6164
15 Added	6165
16 Added	6166
17 Added	6166
18 Added	6167
19 Added	6167
20 Added	6167
21 Added	6168

	1973
11 CFR	38 FR Page
Chapter I	
11.25 Added.....	22202
14.2 (B)(4) revised.....	22202

	11 CFR—Continued
Chapter I—Continued	
14.12 Added.....	22202
19.1 Revised.....	22202

1974

(No amendments for 1974)

1975

	11 CFR
40 FR Page	
Chapter I	
Subchapter A (Parts 1-6) Re- moved.....	23832
Subchapter B (Parts 11-21 Re- moved).....	23832
Supplement B Removed.....	23832
Chapter I	
Chapter established; redesignat- ed from Chapter II.....	32950
Interim guidelines transferred from Chapter II.....	32950
Interim guidelines added.....	32950, 33817, 40668, 40671, 43660
Chapter II	
Chapter II Interim guidelines added.....	23832, 25440, 26991, 28578
Chapter II Redesignated as Chapter I.....	32950
Interim guidelines transferred to Chapter I.....	32950