

FEDERAL ELECTION COMMISSION

11 CFR Parts 100-115, 9008

[Notice 1980-8]

Amendments to Federal Election Campaign Act of 1971; Regulations Transmitted to Congress

AGENCY: Federal Election Commission.

ACTION: Transmittal of Regulations to Congress.

SUMMARY: FEC Regulations relating to the Federal Election Campaign Act, Pub. L. 96-187, January 8, 1980, 93 Stat. 1339-69, have been written and transmitted to Congress pursuant to Pub. L. 96-187, Title III, section 303, January 8, 1980, 93 Stat. 1368-69. The amendments were proposed by the Committee on House Administration of the House of Representatives (H.R. 5010) to simplify the recordkeeping, reporting and disclosure requirements of the Act, to increase the role of State and local political parties in campaigns, to reduce the procedural requirements of the enforcement process and for other purposes. Further information on the intended effect of the proposed regulations is contained in the supplementary information below.

Pub. L. 96-187, title III, section 303 requires the Commission to transmit to the Congress prior to February 29, 1980 proposed rules and regulations prescribed by the Commission to implement the provisions and amendments made by Act. If neither House of Congress disapproves of the regulations within 15 legislative days after their receipt, the Commission may finally prescribe the regulations in question. The following regulations were transmitted to Congress on February 28, 1980.

DATE: Further action, including the announcement of an effective date and deletion of existing regulations in affected parts of 11 CFR will be taken by the Commission after these regulations have been before Congress for 15 legislative days in accordance with Pub. L. 96-187, title III, section 303.

The Administrative Procedure Act, at 5 U.S.C. 553(d)(3), provides that a substantive rule become effective not less than 30 days after publication, except as otherwise provided by the agency for good cause found and published with the rule.

It is possible that the 15 legislative day review period will expire in fewer than 30 calendar days from the date of publication of these regulations. Because the 1979 Amendments are already in effect and the 1980 election campaigns

are already underway, it is essential that these regulations take effect as soon as possible to provide guidance to candidates and committees for compliance with the new requirements of the FECA. The Commission, in accordance with 2 U.S.C. 553(d)(3), finds good cause for waiving the 30 calendar day period of the APA and intends to finally prescribe these regulations as soon as possible following either Congressional approval or the expiration of the 15 legislative day review period.

FOR FURTHER INFORMATION, CONTACT: Ms. Patricia A. Fiori, Assistant General Counsel, 1325 K Street, NW, Washington, DC 20463 (202-523-4143).

Explanation and Justification of Regulations Concerning January 8, 1980 Amendments to Federal Election Campaign Act of 1971

Part 100—Scope and Definitions

§ 100.1 Scope.

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

§ 100.2 Election.

These definitions follow current regulation 11 CFR 100.6.

§ 100.3 Candidate.

Subsections (a) (1) and (2) follow 2 USC 431(2) (A) and (B), which establish the \$5,000 threshold for becoming a candidate.

Subsection (a)(3) of this definition generally follows the disavowal requirement of current regulation 11 CFR 100.2(c), except that the \$5,000 threshold is incorporated.

Subsection (a)(4) adds to the statutory definition by providing that all contributions received or expenditures made by an individual or his or her committees will be aggregated toward the \$5,000 threshold. Thus, for example, if an individual receives \$2,000 in contributions and his or her committees receive \$3,001, that individual will become a candidate under the Act. If all contributions or expenditures were not aggregated in this manner, the \$5,000 threshold could be circumvented.

Subsection (b) defines the election cycle during which contributions or expenditures are aggregated for purposes of determining whether an individual is a candidate. This time frame begins on the day following the previous general election for the office

the candidate seeks and ends on the date when the general election for that office is held. However, where an individual receives contributions or makes expenditures designated for another election cycle, then the election cycle begins when the individual first receives contributions or makes expenditures in connection with the designated election. The establishment of this time frame is necessary to prevent the aggregation of an individual's campaign receipts or expenditures over several different election periods.

§ 100.4 Federal office.

This definition follows 2 USC 431(3).

§ 100.5 Political committee.

Subsections (a), (b) and (c) of this definition follow 2 USC 431(4) (A), (B) and (C).

Subsection (d) adds to the statutory definition and provides that when an individual becomes a candidate by exceeding the \$5,000 threshold, his or her principal campaign committee and authorized committees become political committees. Absent this provision, an individual's authorized committees would become political committees upon reaching the \$1,000 threshold even though the individual would not become a candidate until reaching the \$5,000 threshold.

Subsection (e) follows current regulation 11 CFR 100.14(a), subsection (f) follows current regulation 11 CFR 100.14(b), and subsection (g) follows current regulation 11 CFR 100.14(c).

§ 100.6 Connected organization.

Subsection (a) follows current regulation 11 CFR 100.15.

Subsections (b) and (c) add to the statutory definition and reflect language found in H.R. Rep. No. 96-422, 96th Cong., 2d Sess. (1979) (hereinafter referred to as House Report 96-422) at page 6, as follows:

Subsection (b) provides that where an entity such as a trade association establishes a political committee, member organizations of the trade association would not in turn be regarded as connected organizations of the political committee.

Subsection (c) makes it clear that an entity which makes contributions to a political committee does not become a connected organization of that committee. Rather, only an entity that pays for the establishment, administration or solicitation costs of the committee will be regarded as a connected organization.

§ 100.7 Contribution.

Subsection (a)(1) follows 2 USC 431(8)(a)(i).

Subsections (a)(1)(i) (A)-(C) clarify the relationship between the terms "loan" and "contribution." Under subsection (A), no loan may exceed the contribution limitations, regardless of whether or not it is repaid.

Subsection (B) provides that a loan is a contribution at the time it is made and for such time and to the extent that it remains unpaid. Thus, any contributions made by an individual must be added to the balance of all unpaid loans and any other contributions made by that individual from that individual to determine whether he or she has exceeded the contribution limitations.

Subsection (C) makes it clear that a loan is a contribution by each endorser or guarantor. Where a written agreement sets forth the amount of an endorser's or guarantor's liability for the loan, then he or she is deemed to have contributed that amount. Similarly, where there is a written agreement, any reduction in the unpaid balance of the loan reduces the amount guaranteed by each endorser or guarantor in accordance with the terms of such agreement. In the event that the written agreement does not state the amount of the loan for which each is liable, then the loan is reduced proportionately among the total number of endorsers or guarantors.

Subsection (D) was added to make it clear that where a political committee makes a loan to any person, the repayment of the loan shall be subject to the provisions set forth at 11 CFR Parts 110 and 114. Similarly, payment of interest on such a loan is not a contribution to the extent that it has not exceeded a commercially reasonable rate prevailing at the time the loan was made.

Subsection (a)(1)(ii) follows current regulation 11 CFR 100.4(a)(1)(i).

Subsections (a)(1)(iii) (A) and (B) essentially follow current regulations 11 CFR 100.4(a)(1)(iii) (A) and (B) (1)-(2), respectively.

Subsection (a)(2) follows current regulation 11 CFR 100.4(a)(2) and makes it clear that the entire amount paid to purchase a ticket to a fundraising or other political event is a contribution. For example, the entire amount paid to attend a fundraising dinner, including the amount paid for the cost of a meal, is a contribution. Subsection (a)(2) also adds to current regulations by specifying that the entire amount paid for a fundraising item is a contribution. This addition follows Commission policy with regard to the purchase of

fundraising items, such as watches, etc. (See AO 75-15).

Subsection (a)(3) follows 2 USC 431(8)(A)(ii).

Subsection (a)(4) follows current regulation 11 CFR 100.4(a)(1)(iii)(B)(6).

§ 100.7(b).

This subsection sets forth numerous activities which are excluded from the definition of contribution.

Subsection (b)(1) essentially follows current regulation 11 CFR 100.4(b)(1). In addition, this subsection makes it clear that funds received or payments made in order to amass campaign funds to be spent after the individual becomes a candidate fall within the definition of contribution. Also, funds received or payments made for general public political advertising fall within the definition of contribution.

Subsection (b)(2) follows current regulation 11 CFR 100.4(b)(8).

Subsection (b)(3) follows 2 USC 431(8)(B)(i).

Subsections (b) (4), (5) and (6) essentially follow 2 USC 431(8)(B)(ii) with the following amplifications.

Subsection (b)(4) incorporates language in House Report 96-422 at page 7, which expands the definition of residential premises to include a recreational room in an apartment complex.

Subsections (b) (4) and (5) add the proviso that such a recreational, church or community room must be available for use without regard to political affiliation.

Subsections (b) (4) and (5) further make it clear that the mere payment of a nominal fee for the use of the room which is not commensurate with its rental value does not constitute a contribution.

Subsection (b)(7) follows 2 USC 431(8)(B)(iii).

Subsection (b)(8) follows 2 USC 431(8)(B)(iv). This subsection reflects a change in the statute by expanding the travel payment exemption to encompass all individuals. House Report 96-422 at page 8 makes it clear that this travel expense exemption applies not only to individuals who volunteer their personal services (as provided under current regulation 11 CFR 100.7(b)(6)), but extends as well to individuals who are being paid by a candidate or party committee.

Subsection (b)(9) essentially follows 2 USC 431(8)(B)(v) regarding the payment by State and local party committees of costs incurred with respect to printed slate cards, sample ballots, etc. Language from House Report 96-422 at page 8 is incorporated by providing that the portion of the costs allocable to

federal candidates must be paid from funds subject to the Act's limitations and prohibitions. If made by a party committee which qualifies as a political committee, such payments must be reported as disbursements but need not be allocated to specific candidates.

Subsection (b)(10) follows 2 USC 431(8)(B)(vi).

Subsection (b)(11) regarding loans made by lending institutions in the ordinary course of business generally follows 2 USC 431(8)(B)(vii). In addition, this subsection incorporates language from House Report 96-422 at page 8 and provides that an overdraft is to be considered a contribution by the lending institution unless it is made on an account subject to automatic overdraft protection and to a definite and customary interest rate and repayment schedule.

Subsection (b)(12) follows 2 USC 431(8)(B)(viii) and provides reporting requirements for donations toward construction costs of office facilities. Such donations are to be reported only if they are made directly to a political committee. However, if the donations are made to a separate entity or committee which is not a political committee under the Act and which is established solely to receive and disburse such donations, no reporting is required.

Subsections (b) (13) and (14) concerning the provision of legal or accounting services follow 2 USC 431(8)(B)(ix) and current regulation 11 CFR 100.4(b) (11) and (12).

Subsection (b)(15) follows and clarifies the provisions of 2 USC 431(8)(B)(x) regarding the exclusion of payments made by State or local party committees for campaign materials, such as pins, bumper stickers and handbills, used in connection with volunteer activities, as follows:

Subsection (b)(15)(i) defines the term "direct mail" (see 2 USC 431(8)(B)(x)(1)) as any mailing made by a commercial vendor or from commercial lists. This definition is intended essentially to follow the definition of "direct mail" as it appears in House Report 96-422 at page 10. Thus, mailings by a commercial vendor or from commercial lists would not be included under this exemption. The term "commercial lists" refers generally to lists that were not developed by the State or local party committee, that is, to lists developed by a commercial vendor or lists purchased or obtained by such committee, except where the lists are obtained from a public office, such as voter registration lists obtained from a Secretary of State. Mailings from lists developed by a State or local committee are permissible.

Examples of lists developed by a committee are lists of contributors to a committee, lists of volunteers who have worked for the committee and lists developed as a result of substantial volunteer activity on behalf of the committee.

Subsection (b)(15)(iii) reflects language in House Report No. 96-422 at page 9 to the effect that a contribution shall not be considered "designated" (see 2 USC 431(8)(B)(x)(3)) where the party committee disbursing the funds makes the final decision regarding its use.

Subsection (b)(15)(iv) incorporates language from House Report No. 96-422 at page 9 and provides that payments by a State or local party committee for travel and subsistence or customary token payments to volunteers do not alter their volunteer status.

Subsection (b)(15)(v) makes it clear that such payments, if made by a committee which qualifies as a political committee under the Act, must be reported by the committee as disbursements but need not be allocated to specific candidates.

Subsection (b)(15)(vi) makes it clear that payments by a State candidate for his or her share of expenses for such campaign materials are not contributions so long as the amount paid does not exceed the State candidate's proportionate share of the expenses.

Subsection (b)(15)(vii) follows House Report 96-422 at page 9 and provides that campaign materials which are purchased by a national party committee for use by a State or local committee do not qualify under this exemption. Similarly, this subsection also provides that materials purchased through the use of funds donated by a national committee for the purchase of such materials do not qualify under this exemption. Rather, the costs of these materials are subject to 2 USC 441a(d) and 11 CFR 110.7 regarding party committee expenditure limitations.

Subsection (b)(16) follows 2 USC 431(8)(B)(xi) and, in addition incorporates the definition of "direct mail" from House Report 96-422, at page 10. For the purposes of this section, the term "direct mail" means mailings by commercial vendors or mailings made from lists not developed by the candidate. A mailing by a candidate from a list of contributors to his or her campaign, a list of individuals who had volunteered to work for his or her campaign or other types of lists developed by the candidate would not be considered direct mail.

Subsection (b)(17) basically follows the provisions of 2 USC 431(8)(B)(xii) concerning the payment by State or

local party committees of costs of voter registration activities.

Subsection (b)(17)(i) defines "direct mail" in the same way it is defined under 11 CFR 100.7(b)(15)(i).

Subsection (b)(17)(iii) incorporates language contained in House Report No. 96-422 at page 9, which states that a contribution shall not be considered "designated" where the party committee disbursing the funds makes the final decision as to its use.

Subsection (b)(17)(iv) incorporates language from House Report No. 96-422 at page 10, which provides that if voter registration activities by State or local party committees on behalf of presidential and vice presidential nominees include references to candidates for the House or Senate as well, the costs attributable to the House or Senate candidates would be considered contributions by the State or local party committees. If, however, the reference to the House or Senate candidates is merely incidental to the overall activity, then such incidental mention would not be considered a contribution to such candidates.

Subsection (b)(17)(v) incorporates language found in House Report No. 96-422 at page 10, concerning phone banks. When phone banks are operated by volunteers in connection with voter registration and get-out-the-vote activities, the payment of costs incurred in the use of such phone banks is not a contribution. Any payment incurred in the use of paid professionals to design the phone bank system, develop calling instructions and train supervisors is not a contribution, but, if made by a political committee must be reported as a disbursement.

Subsection (b)(17)(vii) provides that if payments for voter registration and get-out-the-vote activities are made from funds donated for that purpose to a State or local party committee by a national committee, such payments are not exempt. House Report 96-422 at page 9, makes it clear that campaign materials purchased by a national party committee and given to a State or local committee do not qualify for the exemption at 2 USC 431(8)(B)(x). This subsection extends the same rationale to payments made for voter registration and get-out-the-vote activities where the national committee donates funds to the State or local committee for such activities.

Subsection (b) (18) and (19) follow 2 USC 431(8)(B)(xiii) and (xiv), respectively.

Subsection (b)(20) follows current regulation 11 CFR 100.4(b)(15).

§ 100.7(c).

This section incorporates established Commission policy into the regulations and provides that 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 his or her spouse.

§ 100.8 Expenditure.

Subsection (a) and (a)(1) follow 2 USC 431(9)(A)(i).

Subsections (a)(1) (i) and (ii) follow current regulation 11 CFR

100.7(a)(1)(i)(A)-(C).

Subsection (a)(1)(iii) follows current regulation 11 CFR 100.7(a)(1)(ii).

Subsection (a)(1)(iv)(A) essentially follows current regulation 11 CFR 100.7(a)(1)(iii).

Subsection (a)(1)(iv)(B) follows current regulations 11 CFR

100.7(a)(1)(iii)(A)-(B).

Subsection (a)(2) follows 2 USC 431(9)(A)(ii) and makes the additional clarification that such an agreement is considered an expenditure as of the date the contract, promise or obligation is made.

Subsection (a)(3) follows current regulation 11 CFR 100.7(a)(4).

§ 100.8(b).

This section sets forth numerous activities which are excluded from the definition of expenditure. The regulations under this section essentially follow the statutory language, the current regulations, or the proposed regulations pertaining to exclusions from the definition of "contribution" as discussed above.

Subsection (b)(1) follows proposed regulations at 11 CFR 100.7(b)(1).

Subsection (b)(2) follows 2 USC 431(9)(B)(i) and current regulation 11 CFR 100.7(b)(3).

Subsection (b)(3) follows 2 USC 431(9)(B)(ii) and current regulation 11 CFR 100.7(b)(4).

Subsection (b)(4) follows 2 USC 431(9)(B)(iii).

Subsection (b)(4)(i) follows current regulation 11 CFR 100.7 (b)(5)(i).

Subsection (b)(4)(ii) follows current regulation 11 CFR 100.7 (b)(5)(ii).

Subsection (b)(4)(iii) follows current regulation 11 CFR 100.7 (b)(5)(iii).

Subsections (b)(4)(iii)(A)(1)-(2) follow current regulations 11 CFR 100.7(b)(5)(iii)(A)(1)-(2).

Subsections (b)(4)(iii)(B)(1)-(4) follow current regulations 11 CFR 100.7(b)(5)(iii)(B)(1)-(4).

Subsection (b)(4)(iii)(C) follows current regulations 11 CFR 100.7(b)(5)(iii)(C).

Subsection (b)(4)(iii)(D) follows current regulations 11 CFR 100.7(b)(5)(iii)(D).

Subsections (b)(4)(iv)-(vii) follow current regulations 11 CFR 100.7(b)(5)(iv)-(vii), respectively.

Subsections (b)(5), (6), and (7) essentially follow current regulations 11 CFR 100.7(b)(6) and (7).

Subsection (b)(8) was added to reflect the addition of its parallel provision under "contribution" at 11 CFR 100.7(b)(7).

Subsection (b)(9) follows current regulations 11 CFR 100.7(b)(8) and (10) and incorporates the new \$1,000 and \$2,000 limitations established in its counterpart provision under "contribution" at 11 CFR 100.7(b)(8).

Subsections (b)(10) and (11) essentially follow 2 USC 431(9)(B)(iv) and (v). In addition, subsection (b)(10) incorporates the provisions concerning the portion of costs allocable to Federal candidates found in the parallel provision under "contribution" at 11 CFR 100.7(b)(9).

Subsection (b)(12) basically follows current regulation 11 CFR 100.7(b)(16) and incorporates those additional provisions of its counterpart provision under "contribution" at 11 CFR 100.7(b)(11).

Subsection (b)(13) was added to reflect the addition of its parallel "contribution" provision at 11 CFR 100.7(b)(12).

Subsections (b)(14) and (15) follow 2 USC 431(9)(b)(vii)(I) and (II) and incorporate the language regarding partnerships found in their parallel provisions at 11 CFR 100.7(b)(13) and (14). In addition, subsection (b)(15) makes it clear that expenditures for legal or accounting services by a candidate certified to receive public funds under 11 CFR Parts 143 or 9034 do not count against the candidate's expenditure limitations.

Subsections (b)(16)(i)-(iii) essentially follow 2 USC 431(9)(B)(viii)(1)-(3), respectively, and incorporate the additions made to their parallel provisions under "contribution" at 11 CFR 100.7(b)(15)(i)-(iii). In addition, subsections (b)(16)(iv)-(vi) were inserted to reflect the additions made at 100.7(b)(15)(iv)-(vi).

Subsection (b)(17) was added to reflect the addition of a parallel provision under "contribution" at 11 CFR 100.7(b)(16).

Subsections (b)(18)(i)-(vi) follow 2 USC 431(9)(B)(ix)(1-3) and incorporate those additions made to the parallel provisions under "contribution" at 11 CFR 100.7(b)(17)(i)-(vi).

Subsection (b)(19) follows 2 USC 431(9)(B)(x).

Subsection (b)(20) follows current regulation 11 CFR 100.7(b)(17).

Subsections (b)(21), (21)(i) and (ii) follow current regulations 11 CFR 100.7(b)(13)(i)-(iii).

Subsection (b)(22) follows current regulation 11 CFR 100.7(b)(10).

Subsection (c) was added to reflect the addition of its counterpart provision under "contribution" at 11 CFR 100.7(c).

§§ 100.9-100.18.

These definitions follow 2 USC §§ 431(10)-(19), respectively. Section 100.14(b) additionally incorporates current regulation 11 CFR 100.19(b).

§ 100.19. *File, filed or filing.*

This definition follows current regulation 11 CFR 100.9.

§ 100.20. *Occupation.*

This definition follows current regulation 11 CFR 100.11.

§ 100.21. *Employer.*

This section makes it clear that the term "employer" means the name of the organization by which an individual is employed and not the name of the individual's supervisor.

Part 101 Candidate Status and Designations.

§ 101.1. *Candidate designations.*

Subsections (a) and (b) generally follow 2 USC 432(e)(1). In addition, subsection (a) incorporates language in House Report 96-422 at page 12 and sets forth registration procedures to be followed by principal campaign committees and the Commission.

§ 101.2. *Candidate as agent of authorized committee.*

Subsection (a) follows 2 USC 432(e)(2). Under subsection (b), once an individual becomes a candidate, he or she will be deemed to have acted as an agent of his or her authorized committees in receiving funds, obtaining loans or making disbursements in connection with the campaign prior to becoming a candidate.

§ 101.3. *Funds received or expended prior to becoming a candidate.*

This subsection clarifies the agency principle set forth in subsection 101.2. Funds received or expended by an individual prior to becoming a candidate, which were used in connection with that individual's election campaign, are subject to the limitations and prohibitions of the Act. As these funds and payments must be reported by the individual after candidate status is attained, such individual should keep accurate records

of all such funds received and payments made. All funds received which violate the provisions of the Act must be refunded within 10 days from the date on which the individual attains candidate status.

Part 102—Registration, Organization and Recordkeeping by Political Committees.

§ 102.1. *Registration of political committees.*

Subsections (a)-(d) generally follow 2 U.S.C. 433(a) and 432(f) (1) and (2). In addition, subsection (c) makes it clear that a fund established solely for the purpose of financing State or local elections is not required to file a Statement of Organization with the Commission.

§ 102.2. *Statement of organization: Forms and committee identification numbers.*

Subsections (a)(1)(i)-(vi) generally follow 2 U.S.C. 433(b)(1)-(6), respectively. To insure that communications from the Commission reach the appropriate person, subsection (a)(1)(v) adds the requirement that the authorized committee also include the address to which communications should be sent.

Subsection (a)(2) generally follows 2 U.S.C. 433(c) and current regulation 11 CFR 102.3.

Subsections (b)(1)(i) and (b)(1)(ii)(A)-(B) generally follow current regulations 11 CFR 102.2(b)(1)(i) and (b)(1)(ii)(A)-(B), respectively.

Subsection (b)(1)(ii)(C) incorporates the committee identification number procedure set forth in current regulation 11 CFR 102.5

Subsection (b)(2) follows current regulation 11 CFR 102.2(b)(2).

§ 102.3. *Termination of registration.*

Subsections (a) and (b) essentially follow current regulation 11 CFR 102.4 (a) and (b), respectively.

§ 102.4. *Administrative termination.*

This subsection sets forth procedures to implement 2 U.S.C. 433(d)(2) which provides the Commission with authority to terminate a committee's reporting obligations. See also House Report 96-422 at page 15.

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

Subsection (a) basically tracks current regulations at 11 CFR 102.6. It sets forth requirements for organizations which finance political activity in connection with both federal and non-federal

elections where those organizations qualify as political committees under the Act. Such organizations must either (1) establish a separate account for federal activity that accepts only funds subject to the limitations and prohibitions of the Act; or (2) establish one committee to conduct both federal and non-federal activity, which committee may accept only funds subject to the limitations and prohibitions of the Act.

Subsection (b) deals with organizations which finance both federal and non-federal election activity, but which do not qualify as political committees under the Act. Such organizations must demonstrate through a reasonable accounting method that their federal activity is financed with funds subject to the limitations and prohibitions of the Act. Upon request, the committee must supply the Commission with records which will demonstrate compliance with subsection (b).

§ 102.6 *Transfers and joint fundraisers.*

Subsection (a) provides that transfers of funds may be made without limit between affiliated committees, whether or not they are political committees. For example, a committee established by a labor organization for State and local election activity may transfer funds to any political committee established by the labor organization or by any local unit of that labor organization. Similarly, a committee established by a corporation for State and local election activity may transfer funds to any political committee established by the corporation or by any of its subsidiaries, branches, divisions or departments. These transfers apply toward the thresholds for determining whether the committee becomes a political committee under the Act. Hence, if a committee established by a corporation or labor organization for State or local activity transferred any amount (other than transfers under 11 CFR 102.6(b)) to an affiliated political committee such committee would become a political committee under the Act.

With regard to party committees, subsection (a) provides that transfers of funds may be made without limit between any party committees, regardless of whether or not they are political committees or of whether or not they are affiliated. These transfers would apply toward the threshold in determining whether such committees become political committees under the Act.

Subsection (b) deals with the transfer of contributions collected by a committee which is not a political committee under the Act in joint

fundraising with or as a fundraising agent for an affiliated political committee. In transferring such contributions, a committee which is not a political committee under the Act may either: (1) establish a transmittal account for transferring contributions; (2) transmit the contributions by money order, cashier's check or similar instrument without depositing them in any account; or (3) for collections through joint fundraising or a check-off plan, deposit such contributions in its account and subsequently transfer them to the political committee with which it is affiliated. A committee which deposits contributions into its account prior to making a transfer must keep detailed records of the contributions, deposits and transfers.

Past Commission policy has been to require such committees to establish a transmittal account when engaging in joint fundraising with or when acting as a fundraising agent for a political committee. An exception was created for contributions collected through check-off plans. (See AO 78-42 and 78-98.) The proposed regulations effect a change in Commission policy by permitting contributions collected in joint fundraising to be deposited into a committee's account prior to their transfer to a political committee. This change is based on the legislative history of Public Law 96-187. During debate on H.R. 5010, both Senator Pell and Representative Thompson stated that under the new amendments a committee which is established for non-federal election activity need not establish a separate account when transferring contributions collected in joint fundraising with an affiliated political committee. (125 Cong. Rec. S19,099 (daily ed. December 18, 1979) (remarks of Senator Pell); 125 Cong. Rec. H12,365 (daily ed. December 20, 1979) (remarks of Representative Thompson)).

§ 102.7 *Organization of political committee.*

Subsection (a) follows the amendment made by 2 U.S.C. 432(a), in that a committee is only required to have a treasurer, and in addition permits the designation of an assistant treasurer as set forth in current regulation 11 CFR 102.7(b)(2).

Subsections (b) and (c) follow 2 U.S.C. 432(a) and current regulation 11 CFR 102.7(d).

Subsection (d) incorporates the provisions of 2 U.S.C. 432(e)(2) and proposed regulation 11 CFR 101.2(a) so as to make it clear that a candidate who receives contributions or makes disbursements in connection with his or her campaign shall be deemed to do so

as an agent of his or her authorized committee(s).

§ 102.8 *Receipt of contributions.*

Subsections (a) and (b)(1)-(2) basically follow 2 U.S.C. 432(b)(1) and (2)(A)-(B), respectively, and further impose the duty on every person receiving contributions in excess of \$200 to forward the identification of the contributor to the treasurer together with the contribution. Absent such a duty, the treasurer would be unable to keep an account of the identification of such contributors as required by 2 U.S.C. 432(c)(3) in situations where someone other than the treasurer received the contribution.

Similarly, subsection (c) was added to clarify the situation where an intermediary or conduit receives earmarked contributions. Under this subsection, all duties imposed upon those receiving contributions apply to intermediaries and conduits as well. In addition, this subsection makes it clear that the date of receipt of a contribution is the date on which the treasurer or any other person acting on behalf of a committee obtains possession of such contribution.

§ 102.9 *Accounting for contributions and expenditures.*

Subsections (a) and (b) basically follow 2 U.S.C. 432(c). Subsection (b)(1)(iv) clarifies the meaning of the term "purpose" of the disbursement as used in 2 U.S.C. 432(c)(5) to require a brief description of why the disbursement was made and cites to 11 CFR 104.3(b)(3)(i)(A) for examples of descriptions which would or would not satisfy this requirement.

Subsection (b)(2) essentially follows those provisions of 2 U.S.C. 432(c)(5) concerning documentation for disbursements in excess of \$200. This subsection also sets forth documentation requirements for disbursements made by cash advance, share draft or check drawn on a credit union account, and for credit card transactions, to provide adequate notice to those committees using such methods of disbursements.

Subsection (c) essentially follows 2 U.S.C. 432(d).

Subsection (d) incorporates language from House Report 96-422, p. 14, and details more specific procedures to be followed by the treasurer in satisfying the "best efforts" test set forth in 2 USC 432(i). Unless the treasurer has made at least one written effort per transaction to obtain a duplicate copy of the receipt, invoice or cancelled check, he or she will not be deemed to have exercised his or her best efforts to comply with the

Act's recordkeeping requirements. Recordkeeping requirements for receipts, invoices and cancelled checks are extremely important. Without such documentation, it would be impossible to verify how contributions received by a committee are spent.

Subsection (e) follows current regulation 11 CFR 101.2(d). It should be noted that the procedure set forth in subsection (e) is necessary only where contributions from one contributor exceed \$1,000.

§ 102.10 Disbursement by check.

This section generally follows 2 USC 432(h)(1).

§ 102.11 Petty cash fund.

This section essentially follows 2 USC 432(h)(2).

§ 102.12 Designation of principal campaign committee.

Subsection (a) essentially follows 2 USC 432(e)(1).

Subsection (b) follows current regulation 11 CFR 102.11(b).

Subsection (c)(1) follows 2 USC 432(e)(3)(A)(i).

Subsection (c)(2) follows 2 USC 432(e)(3)(B).

§ 102.13 Authorization of political committees.

Subsections (a) and (b) generally follow current regulations 11 CFR 102.12 (a) and (b).

Subsections (c) (1) and (2) essentially follow 2 USC 432(e)(3)(A)(ii) and (e)(3)(B), respectively. In addition, subsection (c)(2) incorporates the language in House Report 96-422 at page 13 as set forth above regarding a national political party committee which has been designated the principal campaign committee of its Presidential candidate.

§ 102.14. Name of political committees.

Subsection (a) follows 2 USC 432(e)(4).

Subsection (b) (1) and (2) clarify requirements for naming delegate and draft committees. A delegate committee must include the word "delegate(s)" in its name and may also include the name of the presidential candidate it supports. Similarly, a committee established solely to draft a candidate may include the individual's name, provided that the committee's name also clearly indicates that it is a draft committee.

Subsection (c) follows 2 USC 432(e)(5) regarding names of separate segregated funds but also incorporates language from the House Report 96-422 at page 13. A fund may use a clearly recognized abbreviation or acronym by which its

connected organization is commonly known, so long as both its full name and such abbreviation or acronym are included on all required disclosure statements and on all advertisement and solicitation notices. The fund may make contributions in its acronym or abbreviation. While a newly formed labor organization or corporation may not have an acronym or abbreviation with which the public is familiar, the fund of such an organization may use an acronym or abbreviation by which the organization intends to be known. If a corporation with a number of subsidiaries establishes a fund, the fund will not have to include the name of each subsidiary in its name. By the same token, a fund established by a subsidiary is not required to include in its name the name of its parent or another subsidiary of its parent.

§ 102.15. Commingled funds.

This section follows 2 USC 432(b)(3).

§ 102.16. Notice: Solicitation of contribution.

This section was inserted to make it clear that political committees must comply with the notice requirements set forth at 2 USC 441d.

Part 103—Campaign Depositories

§ 103.1 Notification of the Commission.

This section follows current regulations at 11 CFR 103.1.

§ 103.2 Depositories.

This section follows those provisions of 2 USC 432(b)(1) and 432(h)(1) which expanded the permissible types of campaign depositories. In addition, it incorporates the provisions of current regulation 11 CFR 103.2 which permits the establishment of one or more depositories in one or more States and one or more accounts per depository.

§ 103.3 Deposit of receipts and disbursements.

This section follows 2 USC 432(h) (1) and (2) and current regulation 11 CFR 103.3.

§ 103.4 Vice Presidential candidate campaign depository.

This section follows current regulation 11 CFR 103.4.

Part 104—Reports by Political Committees

§ 104.1 Scope.

This section generally follows 2 USC 434(a)(1) and in addition permits voluntary registration and reporting by an individual seeking federal office who has not yet attained candidate status

under the Act. Subsection (b) makes it clear that such an individual does not become a candidate solely by registering and reporting and the individual's committee need not file any reports until the individual becomes a candidate.

§ 104.2 Forms.

This section was added to standardize and clarify reporting formats. Subsection (e) specifies the appropriate FEC forms to be used by various types of reporting committees. Under subsection (d), a committee is permitted to use computer-produced schedules of receipts and disbursements for reporting purposes. However, the schedules must be reduced to the size of FEC forms and the Commission must have approved the proposed format prior to its use.

§ 104.3 Contents of reports.

This section generally follows 2 USC 434. The cash-on-hand requirement of subsection (a)(1) provides a starting point for each report. It requires the reporting of all cash-on-hand, in whatever form, as of the beginning of the reporting period. The section also requires the reporting of the total amount of receipts received during the reporting period.

Subsection (a)(2)(ii) specifies that contributions from all political party committees, including party committees which are not registered committees under the Act, must be reported. The Commission believes that it is important for public disclosure purposes that contributions from unregistered party committees be reported along with contributions from registered political party committees, rather than being reported as "contributions from persons other than political committees." For the same reason, subsection (a)(2)(iii) specified that contributions from committees which are not political committees under the Act must be reported along with contributions from political committees which are registered under the Act.

Under subsection (a)(4)(i), the threshold for itemizing contributions from persons other than committees has been increased from an aggregate amount in excess of \$100 to an aggregate amount in excess of \$200. Also, under subsection (a)(4)(v) and (a)(4)(vi) the threshold for identifying persons who provide a rebate, refund, or other offset to operating expenditures to the reporting committee, or who provide any dividend, interest, or other receipt, has been raised to \$200.

The reporting requirements for disbursements are similar to the reporting requirements for receipts. The threshold for the identification of

persons to whom disbursements are made has been increased to \$200 per disbursement.

Subsection (b)(3)(A) explains the requirement for reporting the "purpose" of an expenditure, and sets forth examples of those statements and descriptions which will meet the requirements, as well as examples of those statements and descriptions which are unacceptable. The latter are illustrative of those descriptions which, in the Commission's view, would not provide sufficient public disclosure of how a committee used its funds.

Subsection (b)(3)(viii) adds the requirement that each person who receives an expenditure from the reporting committee in connection with an expenditure under 2 USC 441a(d) be identified by name and office sought, including the state and congressional district where applicable.

Subsection (c) provides for a summary of contributions and operating expenditures.

Subsection (d) requires disclosure of the amount and nature of outstanding debts and obligations owed by or to the reporting committee. Included are loans obtained by an individual prior to becoming a candidate which are used in connection with the individual's campaign.

Pursuant to 2 USC 438(a)(4), subsection (e) was added to permit a political committee to submit ten (10) pseudonyms on each report filed in order to determine if the names and addresses of its contributors are being used to solicit contributions or for commercial purposes in violation of 11 CFR 104.5. The subsection also includes the proper method of reporting amounts attributed to pseudonyms. A list of such pseudonyms must be submitted to the Commission. In addition, a limitation is placed on the amount of contributions which may be attributed to a pseudonym. This provision is designed to prevent the possibility of pseudonyms becoming the subject of Commission compliance actions.

Subsection (f) explains the method by which a principal campaign committee files consolidated reports based on reports submitted to it by any authorized committees and the principal campaign committee's own report.

Subsection (g) requires the reporting on a separate schedule of any contributions received by a political committee to defray the costs of construction or the purchase of office facilities.

Subsection (h) requires that a committee which receives legal or accounting services report on a separate schedule the amounts paid for these

services by the regular employer of the persons providing such services, the date the services were performed and the name of the person performing such services.

§ 104.4 *Independent expenditures by political committees.*

The reporting requirements for political committees making independent expenditures is now wholly contained in this subsection, which includes instructions on where to file such reports, as well as requirements for reporting certain independent expenditures within 24 hours after they are made.

§ 104.5 *Filing dates.*

Subsection (a) generally follows 2 USC 434(a)(2) and (a)(8).

Subsection (b) generally follows 2 USC 434(a)(3).

Subsection (c) essentially follows 2 USC 434(a)(4) and clarifies the procedures to be followed by political committees who wish to change the frequency of their reporting and limits each committee to no more than one change in its filing status per calendar year.

Subsection (d) follows 2 USC 434(a)(10).

Subsection (e) generally follows 2 USC 434(a)(5) with the added clarification that when reports are sent by first class mail, they must be received by the required filing date.

Subsection (f) follows 2 USC 434(a)(6).

Subsection (g) generally follows the 24 hour reporting requirement for certain independent expenditures set forth in the last paragraph of 2 USC 434(c)(2).

Subsection (h) was added to incorporate 2 USC 434(a)(9).

§ 104.6 *Form and content of internal communication reports.*

Subsection (a) generally follows 2 USC 431(9)(B)(iii).

Subsection (b) generally follows 2 USC 434(a)(4)(A)(i)-(ii).

Subsection (c) incorporates well-established Commission practice regarding the specific information to be included in such reports.

§ 104.7 *Best efforts.*

This subsection incorporates language found in House Report 96-422 at page 14, which gives examples of procedures that may be followed by a treasurer in satisfying the "best efforts" test set forth at 2 USC 432(i). In determining whether or not a committee has exercised "best efforts," the Commission's primary focus will be on the system established by the committee for obtaining disclosure information. The main concern will be

whether the committee has in place a systematized method for complying with the Act's disclosure requirements. Under proposed regulation 11 CFR 104.3(a)(4), the treasurer of a political committee must report the identification of each person whose contributions to such committee and its affiliates aggregate in excess of \$200 per calendar year. The treasurer must make at least one effort, by clear written request or clear oral request contemporaneously documented in writing, to obtain identification information from the contributor. The request must also inform the contributor that the reporting of such information is required by law. The treasurer is provided with the option of making the request orally or in writing. Thus, he or she is given some latitude in deciding which type of request would be more effective in eliciting required information from the contributor. The requirement that the treasurer keep a written record of an oral request will assist in verifying that such a request was indeed made.

§ 104.8 *Uniform reporting of contributions.*

Subsections (a) and (b) were amended to conform to 2 USC 434(b)(3)(A). Subsection (a) also incorporates the provision of current regulation 11 CFR 104.5(a) regarding a change in the contributor's name. Subsection (b) adds to the statutory language by specifying procedures for the reporting of contributions received through a payroll deduction plan.

Subsections (c) and (d) follow current regulations 11 CFR 104.5(c) and (e), respectively.

§ 104.9 *Uniform reporting of expenditures.*

This section was amended to comply with 2 USC 434(b)(5)(A). In addition, the term "purpose" is defined as a brief statement or description of the reason for the disbursement. (See proposed regulation 11 CFR 104.3(b)(3).)

§ 104.10 *Allocation of expenditures among candidates.*

This section follows current regulation 11 CFR 104.7.

§ 104.11 *Continuous reporting of debts and obligations.*

This section follows current regulation 11 CFR 104.8, with the addition of the reporting requirements for those debts which were settled for less than their reported value, the authority for which is found at 2 USC 434(b)(8).

§ 104.12 Beginning cash on hand for political committees.

This section essentially follows current regulation 11 CFR 104.10.

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

This section generally follows current regulation 11 CFR 104.3.

§ 104.14 Formal requirements regarding reports and statements.

This section generally follows current regulation 11 CFR 104.12.

§ 104.15 Sale or use restriction.

This section essentially follows current regulation 11 CFR 104.13. It specifically states that the use of information copied from the FEC reports in newspapers, magazines, and similar communications is permissible so long as the principal purpose is not to communicate contributor information for any commercial purpose.

§ 104.16 Audits.

This section has been added to follow 2 USC 438(b).

§ 104.17 Content of reports: Presidential and Vice Presidential committees.

This section incorporates the effective dates provided in the footnote to 2 USC 431 and affords authorized committees of Presidential and Vice Presidential candidates for the 1980 elections the option of following the requirements set forth in proposed regulations 11 CFR 104.3 (a) and (b) or adhering to existing reporting procedures.

Part 105—Document Filing

§ 105.1 Place of filing: House candidates, their principal campaign committees, and committees supporting only house candidates.

This section follows current regulations at 11 CFR 105.1 and 105.4(a)(1).

§ 105.2 Place of filing: Senate candidates, their principal campaign committees, and committees supporting only Senate candidates.

This section follows current regulation at 11 CFR 105.2 and 105.4(a)(2).

§ 105.3 Place of filing: Presidential candidates and their principal campaign committees.

This section follows current regulation 11 CFR 105.3.

§ 105.4 Place of filing: political committees and other persons.

This section follows current regulation 11 CFR 105.4(b).

§ 105.5 Transmittal of microfilm copies and photocopies of original reports filed with the Clerk of the House and the Secretary of the Senate.

The two (2) day requirement for transmittal of records in subsection (a) follows 2 USC 432(g)(3) and subsections (b) and (c) follow current regulation 11 CFR 105.5 (a) and (b), respectively.

Part 106—Allocations of Candidate and Committee Activities

§ 106.1 Allocation of expenditures among (or between) candidates and activities.

This section follows current regulation 11 CFR 106.1 with the exception of the addition of subsection (c)(3). The addition of this subsection was necessary to make it clear that while payments made for get-out-the vote activities conducted by state and local party organizations on behalf of any Presidential or Vice Presidential candidates are exempt from the definition of expenditure (see 11 CFR 100.8(b)(18)), references to Congressional candidates, unless such references are incidental, are contributions to or expenditures on behalf of such candidates and a proportionate share of the costs will be allocated to such candidates.

§ 106.2 Allocation of expenditures among states by candidates for Presidential nomination.

This section essentially follows current regulation 11 CFR 106.2.

§ 106.3 Allocation of expenses between campaign and non-campaign related travel.

This section essentially follows current regulation 11 CFR 106.3.

§ 106.4 Allocation of polling expenses.

This section follows current regulation 11 CFR 106.4.

Part 108—Filing Copies of Reports and Statements With State Officers

§ 108.1 Filing requirements.

This section follows 2 USC 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.

This section follows current regulations 11 CFR 108.2 as amended by 2 USC 439(a) (1) and (2)(A) in that the requirement for committees of Presidential candidates to file reports pertaining to the general election with any Secretary of State has been

eliminated. See House Report 96-422 at page 25.

§ 108.3 Filing copies of reports and statements in connection with the campaign of any congressional candidates.

This section follows current regulation 11 CFR 108.3 and adds the amendment set forth at 2 USC 439(a)(2)(B) that political committees are only required to file and Secretaries of State are only required to keep that portion of each report applicable to candidates seeking election in that State.

§ 108.4 Filing copies of reports by committees other than principal campaign committees.

This section generally follows current regulation 11 CFR 108.4.

§ 108.5 Time and manner of filing copies.

This section generally follows current regulation 11 CFR 108.5.

§ 108.6 Duties of state officers.

This section has been amended to incorporate the changes made by 2 USC 439(b), which were intended to alleviate the burden on Secretaries of State. See House Report 96-422 at page 25.

§ 108.7 Effect on state law.

This section follows current regulation 11 CFR 108.7.

§ 108.8 Exemption for the District of Columbia.

This section follows current regulation 11 CFR 108.8.

Part 109—Independent Expenditures

§ 109.1 Definitions.

This section follows current regulation 11 CFR 109.1.

§ 109.2 Reporting of independent expenditures by persons other than a political committee.

This section has been amended to incorporate the changes set forth at 2 USC 434(c) (1) and (2) regarding reporting requirements for persons, other than a political committee, who make independent expenditures.

§ 109.3 Non-authorization notice.

This section generally refers to 11 CFR 110.11, which has been amended by 2 USC 441d. Such notice need not appear on the front face or page of the document. See 125 Cong. Rec. H12,366 (daily ed. December 20, 1979) (remarks of Congressman Thompson).

Part 110—Contribution and Expenditure Limitations and Prohibitions

§§ 110.1 through 110.5

These sections follow current regulations 11 CFR 110.1 through 110.5.

§ 110.6 Earmarked contributions.

This section follows current regulation 11 CFR 110.6, except that the contribution threshold for the reporting of the contributor's occupation and employer is raised to \$200.

§ 110.7 Party committee expenditure limitations.

This section follows current regulation 11 CFR 110.7, except that the provisions regarding limitations and allocations of expenditures by State and local party committees (110.7(b)(5) and 110.7(c)(2)(i)-(iii)) are deleted.

§§ 110.8 through 110.10

These sections follow current regulations 11 CFR 110.8 through 110.10.

§ 110.11 Communications: advertising.

This section essentially follows 2 USC 441d (a) and (b) and incorporates the exemption found in current regulation 11 CFR 109.4(a)(1) for small items upon which the disclaimer cannot be conveniently printed. The Act no longer requires that the notice be on the front page or face of any materials. See 125 Cong. Rec. H12,368 (daily ed. December 20, 1979) (remarks of Congressman Thompson).

§ 110.12 Honoraria.

This section was amended to reflect the 1977 Amendments to the Act (Pub. L. No. 95-216).

Subsection (a) was amended to include the guidelines set forth in the 1977 Amendments for determining the aggregate amount of honoraria accepted in a calendar year (2 USC 441i (c) and (d)).

Subsection (b)(5) has been amended to reflect the changes made in the definition of "accepted" by 2 USC 441i(b).

Subsection (b)(6) has been added to include the definition of "charitable organization" found in 2 USC 441i(b).

Part 111—Compliance Procedure

§ 111.1 Scope.

The compliance regulations provide procedures for processing possible violations of the Federal Election Campaign Act of 1971 as amended (2 USC 431, *et seq.*), the Presidential Primary Matching Payment Account Act, as amended (26 USC 9031, *et seq.*) and the Presidential General Election Campaign Fund Act, as amended (26

USC 9001, *et seq.*) (chapters 95 and 96 of the Internal Revenue Code of 1954). The procedures set forth below essentially follow 2 USC 437g and explain the steps by which the Commission exercises its power to investigate, conciliate and redress cases involving violations of those statutory provisions.

§ 111.2 Computation of time.

This section sets forth the rules for computing time to be followed in calculating the date when responses, notifications, *etc.* must be served under this Part. In accordance with House Report 96-422 at page 21, the provision of the Federal Rules of Civil Procedure which governs the calculation of time has been incorporated into this section.

§ 111.3 Initiation of compliance matters.

This section sets forth the two means by which the Commission may begin an enforcement proceeding.

§ 111.4 Complaints.

The manner for filing of complaints by members of the public alleging violations of the statutes within the Commission's jurisdiction is set forth in this section. Subsection (b) sets forth the statutory requirements with which a complaint must comply in order for the Commission to act upon it. A complaint is improper if it does not comply with this subsection, and shall not be acted upon by the Commission. Subsection (d) sets forth additional requirements which should be complied with in order to provide the Commission with sufficient information to address a complaint fully. The Commission may find that a complaint which does not comply with subsection (d) provides insufficient information, and for that reason, may vote to take no action on a complaint.

§ 111.5 Initial complaint processing.

This section sets forth the requirement that a respondent be notified within 5 days of receipt of a complaint. Subsection (b) provides that, in the case of a complaint which does not conform with the requirements of section 114.4(a), the Commission shall notify both the complainant and respondent within 5 days that no action will be taken on the basis of the improper complaint.

§ 111.6 Opportunity to demonstrate that no action should be taken on complaint-generated matters.

For any compliance matter initiated by the filing of a complaint, a respondent shall be given 15 days to respond in writing to the complaint

before the Commission takes any action other than dismissal of the complaint.

§ 111.7 General Counsel's recommendation on complaint-generated matters.

This section describes the first recommendations which the General Counsel may make to the Commission on a compliance matter initiated by the filing of a complaint.

§ 111.8 Internally generated matters: referrals.

This section sets forth the procedure for handling compliance matters initiated on the basis of information ascertained by the Commission in the normal course of its supervisory responsibilities. Referrals from other government agencies are also handled in this manner. The Commission may find reason to believe on such matters without waiting 15 days. If the Commission finds reason to believe, a copy of a staff report setting forth the factual and legal basis of the finding shall accompany the notification to the respondent as set forth in House Report 96-422 at page 22.

Subsection (c) sets forth the additional requirement of publishing the names of persons failing to file pre-election and quarterly disclosure reports due immediately prior to an election. Such names must be published before the Commission may find reason to believe the Act was violated.

§ 111.9 The reason to believe finding: notification.

If the Commission by 4 affirmative votes finds reason to believe in any compliance matter, the notification of such finding shall be signed by the Chairman and shall describe the alleged violation. Notification of any action which terminates the Commission's proceedings shall be made by the General Counsel.

§ 111.10 Investigation.

This section sets forth a general outline of the procedure for Commission investigations which occur after a finding of reason to believe. Review of reports and statements filed with the Commission may constitute an investigation.

§ 111.11 Written questions under oath.

This section sets forth the Commission's power to issue orders.

§ 111.12 Subpoenas and subpoenas duces tecum: depositions.

This section sets forth the Commission's power to issue subpoenas. Subsection (c) provid

Rule 30(e) of the Federal Rules of Civil Procedure governs the review and signing of depositions. Thus, if a deponent does not expressly waive signature, he or she must sign a deposition within 30 days.

§ 111.13 Service of subpoenas, orders and notifications.

This section describes the proper manner of service of all Commission subpoenas, orders and notifications (including letters). In accordance with House Report 96-422 at page 21, this section tracks the Federal Rules of Civil Procedure for service. Subsection (b) provides that all service shall be made upon the attorney in any case in which a respondent has advised the Commission in writing of representation in accordance with 11 CFR 111.23. Subsection (c) describes proper service on individuals (natural persons) and subsection (d) describes proper service on other persons, such as organizations or corporations.

§ 111.14 Witness fees and mileage.

This section sets forth the requirements for witness fees for depositions. Witness fees must be tendered in advance or within a reasonable time after a deposition.

§ 111.15 Motions to quash or modify a subpoena.

This section provides persons subpoenaed an opportunity to request that the Commission quash or modify a subpoena. Such a motion must be filed within 5 days of receipt of the subpoena.

Subsection (c) provides that the General Counsel and a person subpoenaed may agree to change the place, date or time for a deposition or for production of documents without affecting the validity of the subpoena. Such agreements must be confirmed in writing by one of the parties.

§ 111.16 The probable cause to believe recommendation; briefing procedures.

This section describes the briefing procedures prior to a finding by the Commission of probable cause. If the General Counsel intends to recommend that the Commission vote on whether or not there is probable cause, he or she shall so advise the respondent and shall provide the respondent with a brief setting forth the factual and legal issues of the case. The respondent may submit a brief in response within 15 days of receipt of the General Counsel's brief.

Subsection (d) provides that after review of the respondent's brief, the General Counsel shall notify the Commission in writing if he or she intends to proceed with

recommendation in the General Counsel's brief. Upon receipt of this notification from the General Counsel, the Commission shall consider both briefs (if respondent files one) before it proceeds to a vote.

§ 111.17 The probable cause to believe finding; notification.

The General Counsel shall notify the respondent of a Commission finding of probable cause. If the Commission finds no probable cause or otherwise terminates its proceedings, the General Counsel shall so notify both the complainant and the respondent.

§ 111.18 Conciliation.

This section sets forth the conciliation procedures.

Subsection (d) makes clear that the Commission is not precluded from conciliating, upon request of a respondent, prior to entering into that mandatory conciliation period. For example, if, in the course of an investigation, and prior to any recommendation on probable cause, a respondent indicates in writing a desire to enter conciliation the Commission may enter into conciliation negotiations. Any such conciliation agreement reached without a finding of probable cause shall carry the same force and effect as an agreement reached after a finding of probable cause.

§ 111.19 Civil proceedings.

This section sets forth the procedure for authorizing the General Counsel to seek judicial relief in the event conciliation has failed. Subsection (c) makes it clear that the Commission may enter into a conciliation agreement even after it has authorized the filing of a civil action if a respondent seeks to conciliate instead of awaiting civil suit by the Commission.

§ 111.20 Public disclosure of Commission action.

This section provides that final Commission action on all compliance matters shall be made public no later than 30 days from notification of the respondent and the complainant of such final action. In addition, the Commission shall make public as soon as possible any signed conciliation agreement.

§ 111.21 Confidentiality.

This section sets forth the confidentiality requirements of the Act. Subsection (a) describes the confidentiality provision which governs the Commission's entire compliance proceeding until such time as a case is closed and the provisions of 11 CFR 111.20 apply. Subsection (b) describes

the additional confidentiality requirement which is applicable only to conciliation efforts, and information derived therefrom, which are not finalized.

§ 111.22 Ex parte communications.

This section sets forth the prohibition on *ex parte* communications between Commissioners (and their staffs) and persons outside the Commission on any compliance matter. The section tracks current regulations except that subsection (c) makes it clear that this section does not prohibit staff of the Office of General Counsel from contacting any persons in the course of representing the Commission and conducting its investigation.

§ 111.23 Representation by counsel: Notification.

This section provides that any respondent or witness before the Commission who wishes to be represented by counsel must so notify the Commission in writing. Upon receipt of such a letter, all future communications from the Commission shall be made to the designated representative.

Part 112—Advisory Opinions

§ 112.1 Requests for advisory opinions.

Subsection (a) broadens, to any person, the class of those who have standing to request an advisory opinion, as provided in 2 USC 437f(a)(1).

Subsections (b) and (c) have been amended to follow the language of 2 USC 437f(a)(1) which requires a request to relate to a specific transaction or activity which the person requesting the opinion intends to undertake. Subsection (b) also includes language from House Report 96-422 at page 20, which precludes opinions based on requests which pose a hypothetical situation or which concern the activities of third parties.

Subsection (d) reflects the Commission's current practice of reviewing requests for sufficiency.

Subsections (e) and (f) generally incorporate current regulations 11 CFR 112.1 (d) and (e).

§ 112.2 Public availability of requests.

This section follows the requirements of 2 USC 437f(d).

§ 112.3 Written comments on requests.

This section follows 2 USC 437f(d) and elaborates on the computation of the 10 day period for submitting written comments. It also indicates that the written comment period may be extended, but without affecting the time periods in 11 CFR 112.4.

§ 112.4 Issuance of advisory opinions.

Subsections (a), (b) and (c) incorporate the specific time requirements provided in 2 USC 437f(a) (1) and (2) within which an opinion must be issued by the Commission and include in the definition of response the provision in House Report 96-422 at page 20 that a 3-3 vote by the Commission on a proposed opinion will satisfy the response time requirement.

Subsections (d), (e), (f) and (g) follow the language of 2 USC 437f(b).

§ 112.5 Reliance on advisory opinions.

This section incorporates the provisions of 2 USC 437f(c).

§ 112.6 Reconsideration of advisory opinions.

This section allows for reconsideration of an advisory opinion at the initiative of either the person to whom the opinion is issued or a Commissioner who voted with the majority in the original issuance of the opinion. It also sets forth procedures for reconsideration, and permits the original requestor, in cases where reconsideration is at the initiative of a Commissioner, to rely on the original opinion without being subject to sanction, until the requestor receives notice of the Commission's decision to reconsider its opinion.

Part 113—Excess Campaign Funds and Contributions to Support Federal Officeholder Activities**§ 113.2 Use of funds.**

This section has been amended to follow the changes made in 2 USC 439a. In particular, this section includes the new prohibition against using excess campaign funds for any personal use, other congressional officeholders on January 8, 1980. In addition, the prohibition on personal use does not apply to former members of Congress who were retired or no longer officeholders as of January 8, 1980. Those individuals are instead governed by the restrictions in effect at the time they were Members of Congress.

§ 113.3 Deposits of funds donated to a Federal or state officeholder.

This section was expanded to permit funds donated to be deposited in a separate account established for that purpose.

§ 113.4 Contribution and expenditure limitations.

This section was formerly 11 CFR 113.5. Since the 1979 Amendments drop the reporting requirement for office

accounts, former regulation 11 CFR 113.4 has been deleted.

Part 9008—Federal Financing of Presidential Nominating Conventions**§ 9008.3 Entitlement to payments from the fund.**

Subsection (a) has been amended to reflect the increase in federal financing of presidential nominating conventions from \$2 million to \$3 million as set forth in 26 USC 9008(b).