

FEDERAL ELECTION COMMISSION

11 CFR Parts 106, 9003, 9007, 9033, 9035 and 9038

(Notice 1990-8)

Presidential Primary and General Election Candidates; Technical Requirements for Computerized Magnetic Media

AGENCY: Federal Election Commission.

ACTION: Final rule; transmittal of regulations to Congress.

SUMMARY: The Commission has revised its regulations concerning the production of computerized information maintained or used by publicly-funded Presidential primary and general election campaign committees. The Commission has also prepared a document entitled "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding" (CMMR) that sets forth technical standards designed to ensure the compatibility of magnetic media provided for Commission use during the mandatory audits of these publicly-funded campaign committees. The CMMR is available on request from the Commission's Public Records Office or the Audit Division. The Commission will issue a separate notice detailing revisions to other rules governing Presidential primary and general election candidates at a later date. Further information is provided in the supplementary information which follows.

EFFECTIVE DATES: Further action, including the announcement of an effective date, will be taken after these regulations have been before Congress for 90 legislative days pursuant to 2 U.S.C. 438(d) and 26 U.S.C. 9009(c) and 9039(c). A document announcing the effective date will be published in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 376-5690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of new regulations at 11 CFR 9003.6 and 9033.12, and revised regulations at 11 CFR 106.2(c), 9003.3(a), 9007.1(b), 9035.1(c) and 9038.1(b) which govern the production of computerized magnetic media, including magnetic tape and magnetic diskettes, by the authorized committees of Presidential primary and general election candidates.

On April 4, 1990 the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on

proposed revisions to these regulations. 55 FR 12499. One written comment was received in response to the Notice.

Section 438(d) of title 2, United States Code, and 26 U.S.C. 9009(c) and 9039(c), require that any rule or regulation prescribed by the Commission to carry out the provisions of titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on June 22, 1990.

Explanation and Justification

The current primary and general election regulations covering candidate agreements at 11 CFR 9003.1(b)(4) and 9033.1(b)(5) require that publicly-funded campaigns which maintain computerized financial records provide computer tapes containing this information to the Commission for use during the Commission's mandatory audit of these committees. During the 1988 election cycle, the Commission encountered difficulty in obtaining computer tapes that were uniformly formatted, thereby necessitating considerable resources for reformatting. This delayed the completion of certain audits and entailed additional expense.

Given the amount of time and the costs involved in producing compatible computer tapes, the Commission has prepared new §§ 9003.6 and 9033.12, and revisions to 11 CFR 106.2, 9003.3, 9007.1, 9035.1, and 9038.1 to clarify three aspects of this process. First, the new language provides a list of the types of computerized information the audited committees must produce. The changes in the rules also ensure that committees will understand that they must provide these materials in a prescribed format. Finally, the rules clarify that in the future the costs of production will be borne by the audited committee, not the Commission. The Commission has also developed new technical standards which are set forth in a document entitled "Computerized Magnetic Media Requirements for title 26 Candidates/Committees Receiving Federal Funding" (CMMR). These standards cover both magnetic tapes and magnetic diskettes. The Commission received one comment on these proposals from the Internal Revenue Service, which found no conflict with the Internal Revenue Code or the regulations thereunder.

The Commission intends to amend the regulations regarding candidate agreements at 11 CFR 9003.1(b)(4) and 9033.1(b)(5) when other aspects of the Presidential primary and general election regulations are addressed in a

Notice of Proposed Rulemaking. Similarly, when the Commission revises the rules governing presidential nominating conventions at 11 CFR part 9008, it will include parallel provisions requiring the production of computerized magnetic media by publicly-funded convention committees. Thus, the technical standards set out in the CMMR will also apply to these convention committees.

The following discussion of the new and revised sections follows the chronological order of the sections as they appear in 11 CFR, beginning with the allocation provision for primary candidates (§ 106.2). This is followed by the general election provisions (§§ 9003.3, 9003.6, and 9007.1), and then the rest of the primary election provisions (§§ 9033.12, 9035.1, and 9038.1). The discussion of the general election rules is very similar to the discussion of the primary rules because parallel changes have been made in the primary and general election regulations.

Section 106.2 State allocation of expenditures incurred by authorized committees of Presidential primary candidates receiving matching funds

Paragraph (c)(5)(i) of this section has been revised to clarify that exempt compliance costs may include the costs associated with producing and delivering computerized information and materials, and the costs associated with explaining the operation of a committee's computer software, if the committee maintains or uses computerized financial information. Further information regarding the types of computerized information that must be produced is located in new § 9033.12.

Section 9003.3 Allowable contributions

The Commission has revised paragraphs (a)(2), (b)(6) and (c)(3) of § 9003.3 to indicate that exempt compliance costs for general election candidates may include the costs associated with producing and delivering computerized information and materials, and the costs associated with explaining the operation of a committee's computer software, if the committee maintains or uses computerized financial information. Further information regarding the types of computerized information that must be produced is located in new § 9003.6.

Section 9003.6 Production of computer information

New § 9003.6 has been added to the regulations to indicate the types of computerized financial data the

Commission will request when it audits publicly-funded Presidential campaign committees of general election candidates that maintain or use computerized financial records. This new section also indicates that such computerized information shall be provided at the committee's expense and must conform to uniform format specifications set forth in a new document entitled "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding" (CMMR).

Paragraph (a) of this section lists examples of the types of computerized information that authorized committees would be required to supply if they maintain or use computerized information containing certain categories of data. A committee will be considered to use such information even if another person or entity maintains such information on the committee's behalf. The list has been drawn from the Commission's experience as to the types of data authorized committees of publicly-funded presidential campaign committees have tended to maintain or use in the past. However, if a presidential campaign committee does not wish to computerize part or all of its financial records, the new rules do not require it to do so.

New paragraph (b) of this section states that the costs of producing the computerized information are to be borne solely by the committee to be audited. The previous rules did not address the treatment of such costs. These costs include the costs associated with converting data to meet the proposed technical requirements, providing formats/layouts, user guides, technical manuals and other information for processing and analyzing the computerized information provided, and making personnel familiar with the materials provided and the operation of the computer system's software available to answer questions from the Commission's staff. If committees select their computer systems with the Commission's technical standards in mind, the marginal cost of meeting these standards should be significantly less than the costs of converting their data from a format that was chosen without considering the prescribed technical standards.

Paragraph (b) of new § 9003.6 also indicates that the computerized magnetic media must meet certain technical specifications established by the Commission. The new technical standards are included in the CMMR, which is available upon request from the Commission's Public Records Office or

the Audit Division. These standards include general requirements for magnetic tape and magnetic diskettes, as well as file format specifications for records of receipts and disbursements, including contributors, vendors, invoices, bank account and check files. The technical standards found in the CMMR will also be published as a supplement to the Commission's Financial Control and Compliance Manual for General Election Candidates Receiving Public Funding to ensure distribution to the committees affected by the technical specifications. The Commission encourages committees to provide samples of their magnetic tape or magnetic diskettes so that the Commission may determine whether the samples comply with the specifications established.

Paragraph (c) of new § 9003.5 requires the production of technical manuals and other materials if needed to understand the computerized magnetic tapes or magnetic diskettes provided. However, as in the past, the rules do not require production of copyrighted computer software. Upon request, the authorized committee will also be expected to make available personnel familiar with the computerized information and the operation of the computer software.

Please note that the technical requirements found in the CMMR are not intended to promote or discourage the use of any particular computer system or software. The Commission believes that committees should have as much discretion as possible in selecting the computer equipment they wish to use, determining what types of financial records and information should be computerized, and deciding how the computerized information is maintained. However, committees will be expected to present this financial information to the Commission in the format specified in the CMMR.

Section 9007.1 Audits

Paragraph (b)(1) of § 9007.1 has been revised to establish time frames under which publicly-funded presidential campaign committees of general election candidates must produce computerized magnetic tapes or magnetic diskettes which meet the technical specifications set out in the new CMMR. If the committees maintain or use computerized financial records, New § 9003.6 lists the types of computerized financial data that must be provided to the Commission if maintained or used by the committee. The Commission generally will request such computerized information prior to the commencement of audit fieldwork. The audited committee will be given 15 days

to produce the materials requested. Once the Commission has obtained the computerized magnetic media meeting the technical specifications, the committee will be given at least two weeks notice of the start of audit fieldwork. This is intended to ensure adequate time for Commission staff to review the files in preparation for fieldwork. During or after fieldwork, the Commission may request additional computerized materials. The new rules allow 15 days for the production of the additional information. These time frames take into account the fact that the authorized committee will know well in advance the technical specifications and format requirements it must meet to ensure compatibility. The Commission believes that production of computer information and materials prior to fieldwork may reduce the overall time needed to conduct fieldwork and complete the audit process.

Section 9033.12 Production of computerized information

New § 9033.12 has been added to the regulations to indicate the types of computerized financial data the Commission will request when it audits authorized committees of publicly-funded Presidential primary election candidates that maintain or use computerized financial records. This new section also indicates that such computerized information shall be provided at the committee's expense and must conform to uniform format specifications set forth in a new document entitled "Computerized Magnetic Media Requirements for Title 26 Candidates/Committees Receiving Federal Funding" (CMMR).

Paragraph (a) of this section lists examples of the types of computerized information that authorized committees would be required to supply if they maintain or use computerized information containing certain categories of data. A committee will be considered to use such information even if another person or entity maintains such information on the committee's behalf. The list has been drawn from the Commission's experience as to the types of data authorized committees of publicly-funded presidential candidates have tended to maintain or use in the past. However, if a presidential campaign committee does not wish to computerize part or all of its financial records, the new rules do not require it to do so.

New paragraph (b) of this section states that the costs of producing the computerized information are to be

borne solely by the committee to be audited. The previous rules did not address the treatment of such costs. These costs include the costs associated with converting data to meet the proposed technical requirements, providing formats/layouts, user guides, technical manuals and other information for processing and analyzing the computerized information provided, and making personnel familiar with the materials provided and the operation of the computer system's software available to answer questions from the Commission's staff. If committees select their computer systems with the Commission's technical standards in mind, the marginal cost of meeting these standards should be significantly less than the costs of converting their data from a format that was chosen without considering the prescribed technical standards.

Paragraph (b) of new § 9033.12 also indicates that the computerized magnetic media must meet certain technical specifications established by the Commission. The new technical standards are included in the CMMR, which is available upon request from the Commission's Public Records Office or the Audit Division. These standards include general requirements for magnetic tape and magnetic diskettes, as well as file format specifications for records of receipts and disbursements, including contributors, vendors, invoices, bank account and check files. The technical standards found in the CMMR will also be published as a supplement to the Commission's Guideline for Presentation in Good Order to ensure distribution to the committees affected by the technical specifications. The Commission encourages committees to provide samples of their magnetic tape or magnetic diskettes so that the Commission may determine whether the samples comply with the specifications established.

Paragraph (c) of new § 9033.12 requires the production of technical manuals and other materials if needed to understand the computerized magnetic tapes or magnetic diskettes provided. However, as in the past, the rules do not require production of copyrighted computer software. Upon request, the authorized committee will also be expected to make available personnel familiar with the computerized information and the operation of the computer software.

Please note that the technical requirements found in the CMMR are not intended to promote or discourage the use of any particular computer

system or software. The Commission believes that committees should have as much discretion as possible in selecting the computer equipment they wish to use, determining what types of financial records and information should be computerized, and deciding how the computerized information is maintained. However, committees will be expected to present this financial information to the Commission in the format specified in the CMMR.

Section 9035.1 Campaign expenditure limitation

The Commission has revised 11 CFR 9035.1(c)(1) to indicate that exempt compliance costs for Presidential primary election candidates may include the costs associated with producing and delivering computerized information and materials, and the costs associated with explaining the operation of a committee's computer software, if the committee maintains or uses computerized financial information. Further information regarding the types of computerized information that must be produced is located in new § 9033.12.

Section 9038.1 Audit

Paragraph (b)(1) of § 9038.1 has been revised to establish time frames under which publicly-funded presidential campaign committees of primary election candidates that maintain or use computerized financial records must produce computerized magnetic tapes or magnetic diskettes which meet the technical specifications set out in the new CMMR. New § 9033.12 lists the types of computerized financial data that must be provided to the Commission if maintained or used by the committee. The Commission generally will request such computerized information prior to the commencement of audit fieldwork. The audited committee will be given 15 days to produce the materials requested. Once the Commission has obtained the computerized magnetic media meeting the technical specifications, the committee will be given at least two weeks notice of the start of audit fieldwork. This is intended to ensure adequate time for Commission staff to review the files in preparation for fieldwork. During or after fieldwork, the Commission may request additional computerized materials. The new rules allow 15 days for the production of the additional information. These time frames take into account the fact that the authorized committee will know well in advance the technical specifications and format requirements it must meet to ensure compatibility. The Commission believes that

production of computer information and materials prior to fieldwork may reduce the overall time needed to conduct fieldwork and complete and audit process.