

(1) The name, address and citizenship of person submitting the report;

(2) The name, address and citizenship of person or persons for whom the activity is performed; and

(3) A description of the activity, including its location.

(b) Activities to be reported:

(1) Directly or indirectly assisting in the design, construction, fabrication or operation, outside the United States, of:

(i) A nuclear reactor; or

(ii) A facility for the fabrication of uranium fuel;

(iii) A facility for the production of zirconium (hafnium-free or low-hafnium), reactor-grade graphite, or reactor-grade beryllium, or

(2) Directly or indirectly assisting in the design or fabrication outside the United States, of any component part especially designed or fabricated for a nuclear reactor or other facilities specified in paragraph (b)(1) of this section; or

(3) The furnishing of designs, drawings, or other technical data for use outside the United States in the construction or operation of a facility specified in paragraph (b)(1) of this section or in the fabrication of a component part specified in paragraph (b)(2) of this section; or

(4) The furnishing of information and assistance at an operating nuclear power plant outside the United States, related to the prevention or correction of an imminent radiological emergency posing a danger to the public health and safety.

(5) The transmittal outside the United States of conceptual design or performance characteristics of nuclear reactors or facilities specified in paragraph (b)(1) of this section.

(6) The separation outside of the United States of isotopes of uranium or plutonium;

(7) The production, outside of the United States of heavy water, zirconium (hafnium-free or low-hafnium), reactor-grade graphite, reactor-grade beryllium; or

(8) The chemical, physical or metallurgical processing or fabricating or alloying, outside the United States, of special nuclear material.

(c) The reporting requirements of this section shall not apply to:

(1) Any activity consisting only of (i) the communication of information generally available to the public in published form; or (ii) financial assistance; (iii) the furnishing of component parts which are not especially designed and which are not intended for use in a reactor, facility or component part specified in paragraph

(b) (1) or (2) of § 810.10; or (iv) the comparative evaluation of types of reactors or facilities, but not including performance characteristics; or (v) the export of a nuclear reactor and the information associated with siting, construction, operation and maintenance of that reactor, and the export of nuclear equipment or material for which an export license has been granted by the Nuclear Regulatory Commission; or (vi) any combination of the foregoing.

(2) Any person to the extent that such person engages in an activity authorized by § 810.7 as the employee of a person required to submit a report pursuant to paragraph (a) of this section.

(3) Any activity specifically authorized by the Secretary.

§ 810.11 Additional information.

The Department may at any time require any person who engages in activities authorized pursuant to § 810.8 or specified in § 810.10 to submit additional information with respect to such activity. The public may request an opinion from the Department on whether particular export circumstances or exchanges of information are generally authorized under § 810.7, require a specific authorization under § 810.8, or are a reportable activity under § 810.10.

§ 810.12 Violations.

An injunction or other court order may be obtained prohibiting any violation of any provision of the act or any regulation or order issued thereunder. Any person who willfully violates any provision of the act or any regulation or order issued thereunder may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

§ 810.13 Effective date.

These regulations are effective February 4, 1983.

[FR Doc. 83-3014 Filed 2-3-83; 8-45 am]

BILLING CODE 6450-01-M

FEDERAL ELECTION COMMISSION

11 CFR Parts 106, 9031, 9032, 9033, 9034, 9035, 9036, 9037, 9038 and 9039

[Notice 1983-3]

Presidential Primary Matching Fund

AGENCY: Federal Election Commission.

ACTION: Transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is revising its regulations

which implement the Presidential Primary Matching Payment Account Act, 26 U.S.C. 9031 et seq. and have transmitted those regulations to Congress pursuant to 26 U.S.C. 9039(c). The revisions are based on the Commission's experience in administering the Act and on public comments received on the Notice of Proposed Rulemaking. The revisions would clarify the current submission and certification procedures to ensure that candidates submissions for matching funds are processed promptly and that matching funds are distributed properly. The revisions include expanded sections governing allocation of expenditures under the State expenditure limits and audits by the Commission. They also provide a more detailed statement of the requirements for making submissions for matching payments and include a new means for making such submissions by letter request. Further information on the intended effect of the revised regulations is contained in the supplemental information below.

EFFECTIVE DATE: Further action, including the announcement of an effective date, will be taken by the Commission after these regulations have been before the Congress 30 legislative days in accordance with 26 U.S.C. 9039(c).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 1325 K Street NW, Washington, D.C. 20463, (202) 523-4143 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The revisions are based on the Commission's experience in administering the Act and on public comments received in response to the Commission's Notice of Proposed Rulemaking (47 FR 35892; August 17, 1982). A public hearing was held on the proposed rules on December 7, 1982, (47 FR 53030; November 24, 1982).

26 U.S.C. 9039(c) requires that any rule or regulation prescribed by the Commission to implement Chapter 96 of Title 26, United States Code, be transmitted to the Speaker of the House of Representatives and the President of the Senate prior to final promulgation. If neither House of Congress disapproves of the regulations within 30 legislative days of their transmittal, the Commission may finally prescribe the regulations in question. The following regulations were transmitted to Congress on January 24, 1983.

Explanation and Justification of the Presidential Primary Matching Funds Regulations, Parts 106 and 9031 Through 9039

Part 106—Allocation of Candidate and Committee Activities

Section 106.2 State Allocation of Expenditures Incurred by Authorized Committees of Presidential Primary Candidates Receiving Matching Funds.

This section, as in the current regulations, implements 2 U.S.C. 441a(b)(1)(A) and 441a(g).

Subsection (a)(1) has been redrafted to explain the scope of the application of this section. It also sets forth the general rule that an expenditure is not necessarily allocated to the State in which it is incurred or paid. For instance, an expenditure incurred or paid in State A would be allocated to State B if the purpose of the expenditure is to influence the candidate's campaign in State B. Where an expenditure is made for the purpose of influencing the nomination of a candidate in more than one State, the methods for allocating expenditures described in subsection (b) will govern allocation under this section.

Subsection (a)(2) provides that disbursements made while an individual is "testing the waters" for the purpose of determining whether to become a candidate must be allocated in accordance with this section if the individual later becomes a candidate. Therefore, individuals "testing the waters" should keep records of all disbursements made during that period to enable proper allocation in the event they become candidates.

Subsection (b)(1) sets forth the general requirement that allocations between two or more States be made on a reasonable and uniformly applied basis. For an allocation to be considered "uniformly applied", it should be based on consistent data as required under subsection (b)(2).

Subsection (b)(2) generally follows current section 106.2(b) and (c)(1) but contains more specificity regarding the actual methods to be used when allocating expenditures between two or more States. It requires that a candidate select one source of data to be used for each category of expenditures in that State. Thus, for example, once a method is used to allocate an advertisement on television in a State, the same method must be used for all allocations of television expenditures within that State unless in some portion of that State, such method is not available, in which event, a reasonable alternative method may be used.

Subsection (b)(2)(i) contains specific methods for allocating media expenditures. Under subsection (b)(2)(i)(A), expenditures for print media, such as newspaper or magazines, must be allocated based on the relative circulation percentages of that publication in each State. The amount allocated must include any commission charged. For the purpose of this section "commission" includes any amounts paid to an individual for services provided in obtaining advertising space in a publication. Allocation need not be made under this subsection to any State in which the circulation is less than 3% of the total estimated readership of that publication.

Subsection (b)(2)(i)(B) covers the allocation method for broadcast media. As in subsection (b)(2)(i)(A), the amount allocated must include any commission paid for buying media time. The industry market data that may be used to determine the allocations under this section include ADI, CCR, Grade B Contour and similar data sources. However, once a method has been selected, it must be used for all allocations of expenditures in that media category in a particular State. Examples of media categories include television broadcast, radio, and cable.

Subsection (b)(2)(i)(C) allows refunds received for media time or space not used to be credited on the same basis as the original allocation. Subsection (b)(2)(i)(D) prohibits allocation to any State in which the primary election has been held. This prohibition is based on the Act's requirement at 2 U.S.C. 441a(g) that allocation be made to each State in which the voting age population "can reasonably be expected to be influenced by such expenditure".

Subsection (b)(2)(ii) governs the allocation of salaries. If an individual is working in a State for four days or less, he or she will be presumed to be working on national campaign strategy and not influencing the primary in that particular State. Despite comments received that suggested exempting advance staff from any allocation requirement, such personnel are included in the class of persons whose salaries must be allocated if they remain in a State for five days or more. As the category of persons who could be considered "advance staff" is a difficult one to define, it was thought better to include them as persons working in a State; however, the Commission has recognized that most advance staff do not remain in a State for five days or more. For purposes of determining the length of time an individual remains in a State, the Commission will generally look to the calendar days or any portion

thereof that that person was in a State rather than using 24-hour periods. If an individual works in a State for five consecutive days or more, that individual's salary must be allocated to that State from the date of his or her arrival. While this section sets forth the basic rule for allocating salaries, a candidate may demonstrate that a particular individual or group of individuals is in a State for five days or more to work on national campaign strategy. Although the Commission expects such exemptions to be the exception rather than the rule, the Commission does recognize that national campaign strategy meetings, for example, may be held in a centrally located State for an extended period of time.

Subsection (b)(2)(iii) follows current § 106.2(c)(2) but limits this requirement to individuals remaining in a State for five days or more. This rule also applies to intra-state travel and subsistence expenses for the candidate, his or her family and the candidate's representatives if they remain in a State for five days or more.

Subsection (b)(2)(iv) describes the overhead expenditures of State and regional offices that must be allocated.

Subsection (b)(2)(v) sets forth a new method for allocating telephone charges other than base service charges. All calls made within a particular State must be allocated to that State. Calls made between two States, whether or not using toll-free service, are exempted from allocation. Calls charged to a credit card should be allocated on the same basis as calls charged to a phone number.

Subsection (b)(2)(vi) governs allocation of public opinion polls. Polls taken in two or more States must be allocated based on the number of people interviewed in each State unless the poll is a nationwide poll. Thus, candidates must keep records of the number of persons interviewed in each poll covering two or more States to support the allocations made as required by subsection (e).

Subsection (c) sets forth the categories of expenditures that are exempted from the allocation requirements. Subsection (c)(1)(i) exempts national campaign expenditures from allocation.

Under subsection (c)(1)(ii), the regulations exempt "national advertising". This exemption, however, is limited to advertising that is distributed on a nationwide basis and does not include ads that appear only in a regional edition of a national publication.

Under subsection (c)(2), the costs of producing media advertising are exempted from allocation as it is often difficult to determine, for example, what footage was used in commercials aired in particular States.

Subsection (c)(3) exempts the costs of transporting media personnel as such costs are not related to influencing the voters of any particular State.

Subsection (c)(4) generally follows current § 106.2(c)(2) with respect to interstate travel. Travel across State lines that is occasioned by transportation or lodging facilities will not be deemed exempt interstate travel. For example, a candidate or persons campaigning on a candidate's behalf in a particular State may have lodging accommodations in a contiguous State. In such cases, travel across State lines to campaign in the contiguous State would not be considered exempt interstate travel. A similar situation involves transportation. If a candidate makes a campaign trip to a particular State, but for example, arrives at an airport in a neighboring State, travel from the airport to the State in which the campaign is being conducted would not be considered interstate travel.

Under subsection (c)(5), a candidate may claim a standard exemption of 10% of salaries and overhead in each State for compliance costs. An additional 10% of such costs may be claimed as exempt fundraising expenses, subject to the 28 day limit of 11 CFR 110.8(c)(2). If the candidate wishes to exempt more than 10% of expenditures under either category, he or she must then document the entire amount spent on compliance and/or fundraising for all individuals in that State to justify claiming the larger exemption.

Subsection (d) generally follows current § 106.2(a).

Subsection (e) requires that candidates retain detailed records to support the calculations made under this section.

Section 106.3 Allocation of Expenses Between Campaign and Noncampaign related Travel.

A technical amendment has been made in subsection (a) to make clear that this section does not apply to Presidential primary candidates receiving matching funds. No other changes have been made in this section.

Part 9031—Scope

§ 9031.1 Scope.

Section 9031.1 has been revised to conform to 11 CFR 9001.1.

Part 9032—Definitions

Section 9032.1 Authorized Committee.

Subsection (a) has been revised to conform to 11 CFR 9002.1. Subsection (b) generally follows current § 9032.1(a). Subsection (c) has been added to make clear that responsibilities of the candidate are also those of his or her authorized committee(s).

Subsection (d) generally follows current § 9032.1(b). Subsection (e) has been added to cross-reference the Commission's regulations governing delegate committees.

Section 9032.2 Candidate.

This section generally follows current § 9032.2 but clarifies in subsection (d) that the time for disavowal begins to run after receipt of notification from the Commission.

Section 9032.3 Commission.

This section generally follows current § 9032.3.

Section 9032.4 Contribution.

This section generally follows current § 9032.4.

Section 9032.5 Matching Payment Account.

This section generally follows current § 9032.5.

Section 9032.6 Matching Payment Period.

This section generally follows current § 9032.6 but has been clarified to state that the period will not exceed the applicable date as determined under subsection (a) or (b).

Section 9032.7 Primary Election.

Section 9032.7 has been revised to clarify that the definition of "primary election" under this subchapter includes elections held by a State as well as by a political party. This section now also provides, in subsection (b), that if both the party and the State sponsor primary elections, the primary election will be the election held by the political party.

Section 9032.8 Political Committee.

This section generally follows current § 9032.8.

Section 9032.9 Qualified Campaign Expense.

Subsection (a) generally follows current § 9032.9(a) but includes the phrase "on behalf of" in subsection (a)(1) to clarify the intent of subsection (b). Subsection (b) generally follows current § 9032.9(b). Subsection (c) has been added to cross-reference the provisions of 11 CFR 9034.4.

Section 9032.10 Secretary

This new section has been added to permit use of the word "Secretary" to mean Secretary of the Treasury in this subchapter.

Section 9032.11 State.

This section generally follows current § 9032.10.

Part 9033—Eligibility for Payments

Section 9033.1 Candidate and Committee Agreements

Subsection (a)(1) generally follows current § 9033.1 (a) and (b). Subsection (a)(2) has been added to make clear that the candidate must submit a candidate agreement that meets the stated requirements before the Commission will review the candidate's threshold submission to determine eligibility.

Under subsection (b), references to the candidate's authorized committee(s) have been included to make clear that such committees are also subject to the requirements of this section. In subsection (b)(2), the specific documentation requirements have been moved to a new § 9033.11 and this subsection now contains an agreement by the candidate to comply with § 9033.11. Subsections (b) (4) and (5) require the candidate to maintain and furnish to the Commission all documentation relating to matching fund submissions, disbursements and receipts. Subsection (b)(6) clarifies that audits conducted under 11 CFR Part 9038 will cover both receipts and disbursements, and may include a review of disbursements by persons or entities authorized by the candidate to make expenditures on the candidate's behalf. Subsection (b) (1), (3), and (7) through (10) generally follow current § 9033.1(a) and (b).

Current subsection (c) has been deleted in these regulations as that provision is covered under 11 CFR 9033.9.

Section 9033.2 Candidate and Committee Certifications; Threshold Submission.

Subsection (a)(1) generally follows current § 9033.2. Subsection (a)(2) is a parallel provision to 11 CFR 9033.1(a)(2).

Subsection (b)(3) follows current § 9033.2(c)(1) but has been reworded for clarity. Subsection (b)(3)(iv) has been added to state that in the case of contributions from an individual who is a resident of more than one State, the candidate may count contributions from that individual towards the \$5000 threshold in only one State. This State

will be the one from which the individual's earliest contribution was made.

The format requirements for threshold submissions have been moved from current § 9033.2(c) to 11 CFR 9036.1. Subsection (c) in these regulations explains that candidates must submit proof of the contributions required to establish eligibility and cross-references 11 CFR 9036.1 for the format in which submissions must be made.

Section 9033.3 Expenditure Limitation Certification.

This section generally follows current § 9033.3 but contains cross-references to new § 9033.10 for the procedures to be followed when the Commission makes a determination under this section. The requirement that a violation of this section be done "willfully" has been deleted.

Section 9033.4 Matching Payment Eligibility Threshold Requirements.

The time for reviewing a threshold submission during a Presidential election year has been extended from 5 working days to 15 business days during a Presidential election year.

Subsection (a) and (b) generally follow current § 9033.4 but cross-reference new § 9033.10 for the procedures to be followed when determinations are made under this section.

Section 9033.5 Determination of Ineligibility Date.

The introductory language of this section has been reworded for clarity. Subsection (a) generally follows current § 9033.5(a). Under subsection (b), a candidate who "permitted or authorized his or her name to appear on the ballot" includes a candidate who participates or receives votes in a caucus that is a primary election. Subsections (b) (1) and (2) generally follow current § 9033.5(b) (1) and (2). Subsection (b)(2) has been expanded, however, to address the situation in which there are two or more primaries held in the same State on different dates. If one of these primaries is held by the State and the other by the party, the primary held by the party will be the primary election as provided under 11 CFR 9032.7(b).

Subsection (c) generally follows current § 9033.5(c).10. Subsection (d) has been added to cross-reference the provisions on re-establishment of eligibility under 11 CFR 9033.8.

Section 9033.6 Determination of Inactive Candidacy.

Subsection (a) generally follows current § 9033.6 (a) and (f). In subsection

(b), two additional factors that may be considered by the Commission have been included at subsections (b) (5) and (6). Subsection (c) and (d) now cross-reference the procedures for making determination under 11 CFR 9033.10.

Section 9033.7 Determination of Active Candidacy.

This section generally follows current § 9033.7 but cross-references in subsections (b) and (c) the procedures for making determinations under 11 CFR 9033.10.

Section 9033.8 Reestablishment of Eligibility.

Subsection (a) and (b) generally follows current § 9033.8 (a) and (b). Subsection (c) has been added to clarify that candidates who have re-established eligibility need not submit new candidate agreements and certifications, and that contributions received during the period of ineligibility are matchable once the candidate re-establishes eligibility regardless of whether the candidate has any net outstanding campaign obligations.

Section 9033.9 Failure to Comply With Disclosure Requirements or Expenditure Limitations

This section has been re-titled to conform to other sections in these regulations dealing with ineligibility. As in § 9033.3, the standard that violations be done "willfully" under this section before payments will be suspended has been deleted. Subsections (b) and (c) generally follow current § 9033.9 (b), (c) and (d) but contain cross-references to 11 CFR 9033.10 for the procedures to be followed in making determinations. Subsection (d) generally follows current § 9033.9(e).

Section 9033.10 Procedures for Initial and Final Determinations

This new section contains the written hearing procedures for determinations regarding a candidate's eligibility to receive matching funds under 11 CFR Part 9033. These procedures have been taken from the various substantive provisions in current Part 9033 and consolidated in this section. The time limits on responses filed by candidates have been retained in each substantive section, however, as these time limits vary. This section also specifies, in subsection (d), that an eligibility determination made pursuant to this section may be independent of any Commission decision to institute an enforcement proceeding under 2 U.S.C. 437g. In addition, the Commission may rely upon the legal and factual basis on which an initial determination was

made in the future repayment determination if the Commission took no final action to suspend payments at the time of the initial determination.

Section 9033.11 Documentation of Disbursements.

This new section generally follows current § 9033.1(a)(1). Subsection (a) reiterates the general rule, also found in 11 CFR 9033.1, that the candidate has the burden of proving that disbursements are qualified campaign expenses. In subsection (b)(1), the threshold for documentation of disbursements has been raised to \$200 and is no longer an aggregate figure, in accordance with Pub. L. No. 96-187. References to "particulars" in subsection (b) have been changed to "purpose", also in accordance with Pub. L. No. 96-187.

Subsection (b)(3)(i) has been revised to clarify that an individual to whom \$500 or less is advanced by the campaign for travel and/or subsistence and who is the recipient of the goods or services purchased will be considered a payee under this section. In that case, the candidate must retain documentation of the advance of \$500 or less to that individual.

Subsection (c) has been added to provide a list of categories of documents that must be retained by the candidate and presented to the Commission on request.

Part 9034—Entitlements

Section 9034.1 Candidate Entitlements.

This section generally follows current § 9034.1 with two exceptions. First, the language of subsection (b) has been revised to make clear that contributions deposited on or before December 31 of the Presidential election year may be matched. Second, subsection (b) has been revised to state that, to receive matching funds after the date of ineligibility, candidates must have net outstanding campaign obligations as of the date of payment rather than the date of submission. Thus, if the candidate's financial position changed between the date of his or her submission for matching funds and the date of payment, reducing the candidate's net outstanding campaign obligations, that candidate's entitlement would be reduced accordingly.

Section 9034.2 Matchable Contributions.

Subsection (a) generally follows current § 9034.2(a) except that a new provision has been added in subsection (a)(4) stating that donations received by an individual who is "testing the

waters" may be matched when the individual becomes a candidate if the donations meet the requirements for matchability.

Subsection (b) has been revised to make clear that all written instruments submitted for matching must represent contributions of the contributor's personal funds.

In subsection (c), the language excepting contributions from joint accounts and money orders has been deleted. These contributions are now subject to the provisions of subsections (c) (1) and (4). In subsection (c)(1) regarding contributions drawn on joint accounts, a provision has been added to subsection (i) requiring that joint tenants indicate that amount to be attributed to each contributor if attribution is other than equal. Subsection (c)(1)(ii) has been added to address the situation in which the imprinting on the check does not reflect whether each contributor is a joint tenant of the account on which the check is drawn. Subsection (c)(2), concerning checks drawn on escrow or trust accounts, has been revised to state that the contributor must have equitable, rather than beneficial, ownership of the account. This change is intended as a more precise definition of the contributor's interest in the account. In addition, subsection (c)(2)(ii) has been expanded to add requirements that will allow accompanying written documentation to be more easily correlated with the corresponding check. Finally, the provision in the current regulations that requires a statement that the contribution does not violate the conditions of the trust or escrow agreement has been deleted. This deletion was made in response to comments received that stressed the difficulty committees would have in seeking to assure that such contributions were lawfully made.

With respect to contributions drawn on partnership or other unincorporated association accounts, subsection (c)(3) has been revised to require a statement that the account is not maintained or controlled by a corporate entity as well as information allowing the accompanying written documentation to be correlated with the corresponding check.

Subsection (c)(4), which governs contributions made by money order or cashier's check, has been substantially revised in these regulations. In the past the Commission has faced difficulties in processing and verifying the authenticity of contributions submitted for matching in the form of money orders or cashier's checks. Unlike other written instruments (e.g., personal checks), money orders generally do not require the signature of

the individual whose funds such instrument represents. Where the money order that evidences the contribution does not clearly identify the contributor, the matchability of the contribution is placed in doubt. Moreover, the possibility of certifying for matching payments contributions which are not properly matchable increases due to the uncertainty that money order contributions represent the personal funds of listed contributions.

To preserve money orders and cashier's checks as contributions that may be matched, while ensuring that such contributions are properly matchable, subsection (c)(4) now requires that the signature of each contributor appear on the money order or cashier's check at the time it is initially submitted for matching and that the written instrument be accompanied by a signed statement evidencing that the contribution is made with the contributor's personal funds. If these requirements are not met, the money order or cashier's check may not be resubmitted for matching at a later date. Candidates should therefore obtain any additional documentation needed from the contributor before the contribution is submitted for matching purposes.

Subsection (c)(5), regarding contributions in the form of the purchase price paid to attend an entertainment activity, such as concert tickets, has also been significantly revised. These contributions are now matchable up to the full amount paid for such tickets. As a result, the submission requirements for these contributions have been substantially relaxed, although the promotional material and tickets must still reflect that the purchase price of a ticket is a contribution to the candidate.

Subsection (c)(6), regarding contributions in the form of the purchase price paid to attend a political event such as a political dinner, has been moved from current § 9034.3(i)(2).

Subsection (c)(7) has been added to provide that contributions received through joint fundraising may be matched.

Section 9034.3 Non-Matchable Contributions.

This section generally follows current § 9034.3. In subsection (h), the phrase "or otherwise induced by" has been added to make clear that this provision applies to any contribution involving a lottery or other drawing for prizes, whether or not a contribution is required for participation in the drawing. The provisions governing concert tickets and political dinners have been moved from this section to 11 CFR 9034.2.

Some of the comments received suggested that contributions made using credit cards be matchable. The Commission has rejected this suggestion because credit cards present problems for ensuring that the requirements of matchability are met. For example, credit card contributions could be made by phone and therefore lack the contributor's signature. Another problem is that of determining the source of funds contributed as many cards that appear to be personal accounts are paid for by incorporated businesses. A third difficulty is that credit card companies deduct varying amounts to pay for their services and thus candidates would be requesting more in matching funds than they had received in contributions.

Section 9034.4 Use of Contributions and Matching Payments.

This section generally follows current § 9034.4 but has been reorganized to separate qualified campaign expenses from non-qualified campaign expenses.

In subsection (a)(2), a provision has been added to make clear that disbursements made while "testing the waters" will count against the State and overall expenditure limits when the individual becomes a candidate.

In subsection (a)(3), the provisions limiting the winding down period to ten months and governing extensions of that time which were included in the Commission's Notice of Proposed Rulemaking, have been deleted from these regulations in response to the comments received opposing this proposal. The Commission has also deleted another provision contained in the Notice of Proposed Rulemaking in subsection (b)(3). That provision would have classified litigation costs incurred after the candidate's date of ineligibility as non-qualified campaign expenses. By deleting this provision, litigation costs that meet the requirements of subsection (a)(3) will be considered qualified campaign expenses.

The third provision deleted from this section was proposed in the Notice of Proposed Rulemaking as subsection (c). This provision would have allowed candidates to receive donations not subject to the contribution limitations for making repayments to the Treasury, but the Commission rejected this approach on final consideration of the regulations.

Section 9034.5 Net Outstanding Campaign Obligations.

Subsection (a) generally follows current § 9034.5 (a) and (b).

Subsection (b)(1) basically follows current § 9034.5(c) but gives examples of

property that would be considered capital assets. Also, the requirement that such property have a remaining useful life exceeding one year has been deleted.

Subsection (b)(2) has been added to cover property acquired by a campaign that does not fit the concept of "capital assets" but can be liquidated to pay outstanding debts of the campaign. Therefore, this property should be included in the candidate's statement of net outstanding campaign obligations to reflect these assets if the aggregate value of all property in this category exceeds \$5,000. Items that should be considered "other assets" include artwork, gifts such as pen sets acquired for use in fundraising, and items acquired by the campaign to be used as collateral for loans.

Subsection (c) has been added to require candidates to include in their statement funds they are due to receive from joint fundraising activity, even though such funds have not yet been transferred to the candidate by the fundraising representative. The intent of this provision is to avoid overpayment of matching funds when the candidate is due to receive additional contributions received through joint fundraising.

Subsection (d) reflects the Commission's requirement that statements be updated with each matching fund submission to reflect the candidate's current financial situation.

Subsection (e) provides the circumstances under which the Commission may temporarily suspend all or a portion of further matching payments based upon a Commission determination that a candidate's outstanding campaign obligations do not exceed campaign assets either to the extent claimed by the candidate or perhaps at all.

Section 9034.6 Reimbursements for Transportation and Services Made Available to Media Personnel.

This new section generally follows the current general election public financing regulations at 11 CFR 9004.6. However, references to expenditures for travel and services provided to Secret Service personnel and other staff required by law have been deleted as other government regulations govern payment for those expenditures.

In subsection (a), the language has been revised to make clear that expenditures for travel and services provided to media personnel will be subject to the overall expenditure limitation under 2 U.S.C. 441a(b)(1)(A) although they do not need to be allocated among the various State limits.

Under subsection (b), the reimbursements received from each person may not exceed the total cost of providing services to that person by more than 10%. The 10% figure will be based on the total cost of providing services to each person over the course of the campaign rather than on a per-trip basis. Candidates may include the cost of "down-time" for leased aircraft in the amount requested for reimbursement as this is a cost of providing transportation to the media. The reimbursements may be deducted from the amount applied to the overall expenditure limit but only to the extent that the reimbursements do not exceed the actual cost to the campaign.

Section 9034.7 Allocation of Travel Expenditures.

This new section generally follows the current general election public financing regulations at 11 CFR 9004.7 with one significant change. Subsection (b)(5) has been revised to require that candidates using government conveyance, such as government aircraft, pay the equivalent of first class commercial air fare or commercial charter fare rather than the actual cost of such government transportation. Candidates must also pay the cost of other government conveyances or accommodations used, such as government-owned cars or buses.

Section 9034.8 Joint Fundraising.

This section has been added in response to the number of questions that arose during the 1980 election cycle concerning joint fundraising by candidates receiving matching funds. The requirements of this section generally follow the procedures established in the Commission's advisory opinions and in the course of the Commission's consideration of joint fundraising events during the 1980 election cycle.

Subsection (a)(1) describes the persons or entities with whom a Presidential primary candidate may engage in joint fundraising. Subsection (a)(2) outlines the various permissible uses for funds received as a result of joint fundraising.

Subsection (b) essentially follows the Commission's advisory opinions by requiring that the participants either establish a separate political committee or select a participating political committee to act as the fundraising representative. The fundraising representative then is responsible for collecting contributions, paying the costs of the fundraising effort and disbursing net proceeds to each participant. While the participant may engage a

commercial fundraising firm to assist in conducting the activity, they must still select a fundraising representative.

Subsection (c) sets out the procedures to be followed for conducting joint fundraising activities. Under subsection (c)(1), the participants must enter into a written agreement. A copy of this agreement must be submitted by Presidential primary candidates when they submit the contributions received for matching.

Subsection (c)(2) limits the amount that can be advanced by each participant as start-up costs. Under subsection (c)(3), each solicitation for contributions to a joint fundraiser must contain a fundraising notice informing contributors of specified details of the fundraising activity.

Subsection (c)(4) requires that the participants establish a separate account for the receipt and disbursement of joint fundraising proceeds. Only funds permissible under the Act may be deposited into this account. If one of the participants can accept funds prohibited under the Act, the participants may either set up a second account to collect those funds or transfer them directly to those participants that can accept prohibited funds. In either case, the prohibited funds need not be included in the allocation formula for payment of expenses or distribution of proceeds.

Subsection (c)(4)(iii) makes clear that, although distribution of proceeds may be delayed until all expenses are paid, the participants will be deemed to have received the contributions as of the date they are received by the fundraising representative.

Subsection (c)(5) describes the recordkeeping responsibilities of the fundraising representative and participating committees. The fundraising representative should request the contributor records of each participant for those contributing to the fundraising activity to aid in screening and distributing contributions.

Subsection (c)(6) permits contributors to donate to a joint fundraiser an amount up to that which the contributor could give, in the aggregate, to all the participants subject to the applicable contribution limits. Therefore, if five Presidential primary candidates participated in a joint fundraiser, and agreed to share proceeds equally, an individual could contribute up to \$5,000, minus any amount that individual had previously contributed to any of the participants.

Subsection (c)(7) governs the manner in which the fundraising representative must allocate gross proceeds among the

participants. Subsection (c)(7)(i) prohibits any allocation method used to maximize the matchability of the contributions received. That is, the allocation method cannot be based on whether any of the participating Presidential primary candidates have received the maximum amount of matchable contributions from an individual. Thus, candidates may not "trade" contributions from individuals who have already contributed the maximum amount that could be matched.

For a candidate seeking to extinguish outstanding debts, subsection (c)(7)(ii) prohibits reallocation of the receipts of a joint fundraiser once that candidate has received sufficient matchable contributions to pay off his or her debts after those contributions have been matched. Rather, candidates must continue to receive their share of joint fundraising contributions until those contributions alone are sufficient to pay the candidate's debts. For example, assume that Candidate A has outstanding debts of \$100,000, Candidate B has outstanding debts of \$200,000 and that these two candidates have agreed to share proceeds of a joint fundraiser on a 50-50 basis. If the joint fundraiser nets \$200,000, Candidate A may not reallocate his share to Candidate B after receiving only \$50,000 in reliance on receiving another \$50,000 in matching funds to extinguish his debts. Instead, Candidate A must take his full share of \$100,000 and pay his debts with the contributions raised.

Subsection (c)(8) governs allocation of expenses and distribution of net proceeds. Under subsections (c)(8) (i) and (ii), "committees of the same political party" refers only to party committees and not to candidates running on the same party ticket.

Subsection (c)(9) explains when and how receipts and disbursements must be reported by the fundraising representative and participating political committees.

Section 9034.9 Sale of Assets Acquired for Fundraising Purposes.

Section 9034.9 has been added to the regulations to set forth rules regarding the sale of "Other Assets" as defined in § 9034.5(b)(2) of these regulations. Subsection (a) follows Advisory Opinion 1980-34 in setting forth the general rule that a candidate may sell assets donated to a campaign or otherwise acquired for fundraising purpose (e.g. artwork) provided that the sale does not violate the limitations and prohibitions of Title 2, United States Code, and the regulations prescribed thereunder (11 CFR Parts 110 and 114). Subsection (b)

provides the exception to the general rule. The exception permits a candidate who is in a debt situation at the end of the matching payment period to dispose of such assets in an arms-length transaction, without regard to the limitations and prohibitions of Title 2, United States Code and 11 CFR Parts 110 and 114, if the candidate is still in a debt position at the time of the transaction. Accordingly, under this specific factual situation a candidate may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public. Any such wholesaler or other intermediary may then sell the items to the public without regard to the limitations and prohibitions of the Act.

If the candidate has more than one category of items to dispose of, such as cars and artwork, he or she may have to sell each category of assets to a different wholesaler or wholesalers depending upon the circumstances. The Commission expects, however, that candidates will limit the number of these liquidation transactions to the fewest possible.

Part 9035—Expenditure Limitations

Section 9035.1 Campaign Expenditure Limitation.

Subsection (a) generally follows current § 9035.1 (a). Subsection (b) has been added to cross-reference the allocation requirements of 11 CFR 106.2.

Under subsection (c), candidates may exempt 10% of all salaries and overhead expenditures from the overall expenditure limitation as exempt compliance costs. Candidates may also exempt 10% of such costs as exempt fundraising expenditures. The procedures for claiming a larger exemption under this section are the same as those under 11 CFR 106.2(c)(5).

Subsection (d) generally follows current § 9035.1(b).

Section 9035.2 Limitation on Expenditures from Personal or Family Funds.

This section follows current § 9035.2.

Part 9036—Review of Submission and Certification of Payments by Commission

Section 9036.1 Threshold Submission.

Subsection (a) generally follows current § 9033.2(e) but explains that the threshold submission may be presented either with or after the candidate agreement and certifications are submitted.

Subsection (b)(1) essentially follows current § 9033.2(c)(2)(i) but has been

reorganized for clarity. In addition, the requirement in current § 9033.2(c)(2)(i) that the candidate indicate which contributions were received as a result of entertainment activity has been changed to require a notation only for contributions received as a result of joint fundraising activities.

Subsection (b)(2) generally follows current § 9033.2 (c)(2)(ii) but requires that the photocopies submitted be full-size. This new requirement was added because the Commission has had difficulty in the past with photocopies that were reduced in size and therefore difficult or impossible to read. The option of requiring that photocopies be "legible" rather than "full-size" was rejected as the former term could be subject to many varying interpretations.

In addition, some commenters suggested that the Commission permit use of microfilm in place of photocopies. This was also rejected as an option for several reasons. First, microfilm does not always reproduce as well as photocopying particularly in the case of checks on colored paper. Therefore, microfilm impedes the Commission's ability to review candidate submissions. Second, there is greater risk to candidates who use microfilm. If the film is damaged or improperly developed, it is generally too late to make new films of the checks received as they will have been deposited. In that case, the candidate cannot receive matching funds for any of the contributions involved.

Subsections (b) (3) and (4) have been added to reflect established Commission requirements.

Subsections (b)(5) generally follows current § 9036.1(b). Subsection (b)(6) generally follows current § 9033.2(c)(3).

Subsection (c)(1) essentially follows current § 9036.1(a). Subsections (c) (2) and (3) generally follow current § 9036.1(c) but explain the difference in procedure between the Presidential election year and the year preceding it.

Section 9036.2 Additional Submissions for Matching Fund Payments.

Subsection (a) generally follows current § 9036.2(b).

Subsection (b) generally follows current § 9036.2 (a) and (b). Subsection (b)(1) contains several new provisions. First, a requirement that the first submission contain all the contributions and supporting documentation from the threshold submission, in addition to the contributions presented in that submission, has been included in this subsection. Second, all documentation for each submission presented after the

threshold submission must be presented in straight alphabetical order and not segregated by State as in the threshold submission. Formerly, candidates could choose either method of presentation in additional submissions but the second method created too many problems for committees. Finally, an alternative method of submitting the supporting documentation of written instruments that accompanies contributions submitted for matching has been included in subsection (b)(1)(v). This subsection provides that a candidate may batch contributions in deposits of 50 contributions or less and cross-reference the contributions by deposit number and sequence number on the contributor list. Under this method, committees would not have to alphabetize the checks supporting a submission for matching funds but would still have to alphabetize the contributor list.

Under subsection (b)(2), candidates may request additional matching funds, on dates prescribed by the Commission, by making a letter request in lieu of a full submission as required under 11 CFR 9036.2(b)(1). These letter requests must state an amount of matchable contributions which were not previously submitted for matching and be accompanied by bank documentation, such as bank-validated deposit slips or unvalidated deposit slips and the relevant bank statement, to demonstrate that the committee has received the contributions submitted. The amount requested for matching in a letter request may include contributions received up to the last business day preceding the date of the letter request. Subsection (b)(2) also specifies that the next submission following a letter request must contain documentation for the contributions included in the letter request as well as the contributions submitted for matching in that submission. A committee may not submit two consecutive letter requests, but the committee may choose to make a full submission on a date designated as a letter request date.

Subsection (c)(1)(i) explains that, during a candidate's period of eligibility, the Commission will certify an amount based on its holdback procedure within 5 business days after receiving a regular submission. If a candidate makes a letter request, the Commission will certify an amount based upon the ratio of verified matchable contributions to total deposits for that candidate in the candidate's last regular submission. The Commission will then certify any additional amount to which the eligible candidate is entitled within 15 business

days after receipt of the candidate's submission.

Consideration was also given to incorporating rejection criteria into the regulations. As initially proposed, these criteria would have operated to reject from further Commission review a submission in which the pilot sample was determined to contain an error rate in excess of 15%. The Commission was reluctant to include these criteria in the regulations and, therefore, no provisions to this effect have been drafted. However, in recognition of the increased time which is required for Commission review of a matching fund submission which has a high error rate, subsection (c)(1)(ii) permits 25 business days, rather than 15 business days, for review of such submissions.

Subsection (c)(2) provides that the Commission's certification process under the holdback procedure will no longer apply after the candidate's date of ineligibility. Rather, the Commission will conduct its review of the submission before certifying any funds.

Subsection (d) explains that submissions made in the year before the Presidential election year must contain a minimum of \$50,000 in contributions. No certifications of matching funds will be made based on such submissions until after January 1 of the Presidential election year, in accordance with 28 U.S.C. 9037(b).

Section 9036.3 Submission Errors and Insufficient Documentation.

This section generally follows current § 9036.3 with some changes. First, this section now states that money orders and cashier's checks cannot be resubmitted as provided under 11 CFR 9034.2. Second, subsection (b) no longer provides that misspelling will be a basis for rejection. However, to the extent that misspelling triggers other errors in the submission, such as aggregation errors, other error categories may apply. Subsections (b) (3) and (4) have been added to follow established Commission practice.

A fourth change, in subsection (c)(2), represents a change in Commission policy. Formerly, the Commission considered all aggregation errors as a basis for rejection, whether the error resulted in a request for too much or too little in matching funds. As revised, this subsection now states that only aggregation errors which could cause more than \$250 to be matched for a contributor will be the basis for rejection.

Finally, subsections (c)(3) and (d) have been added to follow established Commission practice.

Section 9036.4 Commission Review of Submissions.

Section 9036.4 has been reorganized to clarify the distinction between a submission which is not accepted for review because it does not satisfy format requirements and a submission which satisfies these requirements and is reviewed. This section thus codifies the past practice of not accepting for review submissions that do not meet minimum facial standards necessary for proper processing.

Subsection (d) provides that the Commission may conduct an audit and examination under Part 9039 of contributions submitted for matching.

Section 9036.5 Resubmissions.

This section has been revised to more accurately reflect Commission resubmission procedures. Under subsection (c)(6), candidates must include a statement with each resubmission that the committee's contributor records have been corrected consistently with the resubmission. This requirement follows established Commission practice. Subsection (d) now provides that the Commission will certify any funds within 15 business, rather than calendar, days.

Section 9036.6 Continuation of Certification.

This section changes the time for making the last submission from January 21 to the last Monday in January. This deadline only applies to contributions submitted for the first time. It does not apply to resubmissions of contributions that were previously rejected for matching.

Part 9037—Payments

Section 9037.1 Payments of Presidential Primary Matching Funds.

This section follows current § 9037.1.

Section 9037.2 Equitable Distribution of Funds.

This section follows current § 9037.2.

Section 9037.3 Deposits of Presidential Primary Matching Funds.

This section follows current § 9037.3.

Part 9038—Examinations and Audits

Section 9038.1 Audit

Subsection (a)(1) Generally follows current § 9038.1(a). Subsection (a)(2) generally follows current § 9038.1(b). Subsection (a)(3) has been added to make clear that information obtained pursuant to an audit may be used as the basis for a Commission repayment determination.

Subsection (b) provides a description of audit fieldwork. Subsection (b)(1) makes clear that it is the committee's responsibility to provide adequate office space and access to committee records and personnel pursuant to the candidate and committee agreement. If the committee fails to provide adequate office space, access to records and/or personnel, the Commission will notify the candidate and recommend corrective action. If the dispute is not resolved, the Commission may seek judicial intervention to enforce the candidate and committee agreement. Subsection (b)(1)(iv) sets forth the procedures by which a candidate may seek Commission review of disputes that arise during the conduct of the audit that cannot be resolved informally.

Subsections (b) (2), (3) and (4) describe the various steps in the audit fieldwork based on past Commission practice.

Subsection (c) describes the preparation of, and candidate's response to, an interim audit report. The contents of the interim audit report are generally described in subsection (c)(1). Pursuant to subsection (c)(1)(v), the candidate will also have an opportunity to respond to the Commission's preliminary calculations regarding future repayments, in addition to any issues that may have been raised by the audit. This last provision was added in response to comments suggesting that candidates be given the earliest possible opportunity to respond to the Commission's thinking with respect to its future repayment determination. These preliminary calculations will not, however, be considered as the Commission's initial repayment determination under 11 CFR 9038.2(c)(1).

Subsection (d) describes the preparation of the audit report that is publicly released. This report is the same as the interim report with two main distinctions. First, this report may be revised based on the candidate's response to the interim report. Second, this report will contain the Commission's initial repayment determination pursuant to 11 CFR 9038.2(c)(1) instead of the preliminary calculations found in the interim report.

Subsection (e) explains the public release of the audit report. It also makes clear that addenda to the audit report may be issued later on. These addenda may be based, in part, on follow-up fieldwork conducted by the Commission.

Section 9038.2 Repayments.

Subsection (a) includes language to advise candidates to give preference to repayments required by § 9038.2 over all

other outstanding obligations of their committees once the Commission has made a final repayment determination.

Subsection (b) has been revised and reorganized to provide greater detail regarding the different bases for Commission repayment determinations. Language in the current regulations regarding specific repayment formulas (e.g., "the candidate shall repay * * * an amount equal to the amount * * *") has been deleted from this section. As that language generally follows 26 U.S.C. 9038(b), the Commission will continue to follow its past practice in applying repayment formulas. Therefore, this deletion is not intended to indicate a change in policy.

Subsection (c) sets forth each step involved in the making of a repayment determination. Under subsection (c)(3), the Commission may permit a candidate to make an oral presentation to the Commission prior to the Commission's final repayment determination.

Subsections (d) and (e) clarify the time periods in which the candidate must repay the United States Treasury.

Subsection (f) clarifies that the Commission may make additional repayment determinations on the basis of new facts.

Subsection (g) requires the candidate or committee to inform the Commission of newly-discovered assets after a repayment determination has been made.

Section 9038.3 Liquidation of Obligations; Repayment.

This section generally follows current § 9038.3, but subsection (c)(3) has been added to distinguish the Commission's ability to determine that the candidate has a surplus from the candidate's own determination and decision to voluntarily return funds to the Treasury.

Section 9038.4 Extensions of Time.

This new section governs applications for extensions of time throughout the audit and repayment process.

Part 9039—Review and Investigative Authority

Section 9039.1 Retention of Books and Records.

Part 9039 has been added to describe the Commission's review responsibilities and authority in its administration of the matching fund program. In making determinations, certifications, and findings under the Presidential Primary Matching Payment Account Act and related regulations, the Commission must perform a continuing review of candidate and committee reports and submissions, and other

relevant information. For the most part, the Commission's review is routine. In the past, however, there have been instances when the Commission has decided to conduct a more extensive review, or investigation, in order to properly discharge its statutory responsibilities. Prompted in part by a number of court decisions over the years, this new Part 9039 sets forth, for the first time in the regulations, the nature of the Commission's review in administering the matching fund program, including its authority under 26 U.S.C. 9039 to conduct investigations.

Section 9039.1 restates the responsibilities of candidates and committees to keep and furnish to the Commission certain information required by the Act and regulations.

Section 9039.2 Continuing Review.

This section briefly describes the routine Commission review conducted on a continuing basis as part of the Commission's administration of the matching fund program. Subsection (b) provides that Commission staff may contact representatives of the candidate on an informal basis.

Section 9039.3 Examination and Audits; Investigations.

This section describes the Commission's investigations under Part 9039. Generally, the Commission will exercise its authority under Part 9039 when the issues raised relate to the candidate's continuing eligibility or the amount of his or her entitlement during the course of the campaign. Part 9039 therefore provides the Commission with a means for resolving such questions expeditiously in the course of fulfilling its statutory obligation to review submissions and certify funds. Subsection (a)(1) requires that the Commission initiate an inquiry under this section on an affirmative vote of four of its members. Subsection (a)(2) sets forth the uses to which information obtained could be put, and describes the relationship between an investigation conducted under this section and one made under 2 U.S.C. 427g. Subsection (a)(3) provides that the Commission must first seek to obtain relevant information as part of its continuing review before exercising its authority to conduct an inquiry. This subsection also makes reference to the judicial standard of "patent irregularities suggesting the possibility of fraud" which the Commission must find before it can withhold matching payments prior to concluding its inquiry.

Subsection (b)(1) provides for notification to the candidate, and

subsection (b)(2) sets forth the Commission's possible methods in conducting the inquiry. Subsection (b)(3) distinguishes an inquiry conducted under part 9039 from the procedures for an investigation conducted under 2 U.S.C. 437g.

PART 106—[AMENDED]

1. The authority citation for Part 106 is revised to read as follows:

Authority: Pub. L. 92-225, title III, Sec. 315, formerly Sec. 320, as added by Pub. L. 94-283, title I, Sec. 112(2), 90 Stat. 486, renumbered by Pub. L. 96-187, title I, Sec. 105(a)(5), 93 Stat. 1354 (2 U.S.C. 441a(b), 441a(g)).

2. 11 CFR Part 106 is amended by revising §§ 106.2 and 106.3(a) to read as follows:

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

(a) General.

(1) This section applies to Presidential primary candidates receiving or expecting to receive Federal matching funds pursuant to 11 CFR Parts 9031 *et seq.* Except for expenditures exempted under 11 CFR 106.2(c), expenditures incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate for the office of President with respect to a particular State shall be allocated to that State. An expenditure shall not necessarily be allocated to the State in which the expenditure is incurred or paid.

(2) Disbursements made prior to the time an individual becomes a candidate for the purpose of determining whether that individual should become a candidate pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1), i.e., payments for testing the waters, shall be allocable expenditures under this section if the individual becomes a candidate.

(b) Method of Allocating Expenditures Among States.

(1) *General Allocation Method.* Unless otherwise specified under paragraph (b) (2) of this section, an expenditure incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate in more than one State shall be allocated to each State on a reasonable and uniformly applied basis.

(2) *Specific Allocation Methods.* Expenditures that fall within the categories listed below shall be allocated based on the following methods. The method used to allocate a category of expenditures shall be based on consistent data for each State to which an allocation is made.

(i) *Media Expenditures.*—(A) *Print Media.* Except for expenditures exempted under paragraph (c) of this section, allocation of expenditures for the publication and distribution of newspaper, magazine and other types of printed advertisements distributed in more than one State, including any commission charged for the purchase of print media, shall be made using relative circulation percentages in each State or an estimate thereof. For purposes of this section, allocation to a particular State will not be required for a publication which is circulated to less than 3% of the total estimated readership of that publication in that State.

(B) *Broadcast Media.* Except for expenditures exempted under paragraph (c) of this section, expenditures for radio, television and similar types of advertisements purchased in a particular media market that covers more than one State shall be allocated to each State in proportion to the estimated audience. This allocation of expenditures, including any commission charged for the purchase of broadcast media, shall be made using industry market data.

(C) *Refunds for Media Expenditures.* Refunds for broadcast time or advertisement space, purchased but not used, shall be credited to the States on the same basis as the original allocation.

(D) *Limits on Allocation of Media Expenditures.* No allocation of media expenditures shall be made to any State in which the primary election has already been held.

(ii) *Salaries.* Except for expenditures exempted under paragraph (c) of this section, salaries paid to persons working in a particular State for five consecutive days or more, including advance staff, shall be allocated to each State in proportion to the amount of time spent in that State during a payroll period.

(iii) *Intra-State Travel and Subsistence Expenditures.* Travel and subsistence expenditures for persons working in a State for five consecutive days or more shall be allocated to that State in proportion to the amount of time spent in each State during a payroll period. This same allocation method shall apply to intra-state travel and subsistence expenditures of the candidate and his family or the candidate's representatives.

(iv) *Overhead Expenditures.*—(A) *Overhead Expenditures of State Offices.* Except for expenditures exempted under paragraph (c) of this section, overhead expenditures of offices located in a particular State shall be allocated to that State. For purposes of this section, overhead expenditures include, but are not limited to, rent, utilities, office

equipment, furniture, supplies, and telephone service base charges.

(B) *Overhead Expenditures of Regional Offices.* Except for expenditures exempted under paragraph (c) of this section, overhead expenditures of a regional office or any office with responsibilities in two or more States shall be allocated to each State on a reasonable and uniformly applied basis. For purposes of this section, overhead expenditures include but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service base charges.

(v) *Telephone Service Expenditures.*—

(A) *Intra-state Telephone Calls.* Expenditures for all calls made within a particular State shall be allocated to that State.

(B) *Inter-state Telephone Calls.* Expenditures for telephone calls between two States need not be allocated to any State.

(vi) *Public Opinion Poll Expenditures.* Expenditures incurred for the taking of a public opinion poll covering only one State shall be allocated to that State. Except for expenditures incurred in conducting a nationwide poll, expenditures incurred for the taking of a public opinion poll covering two or more States shall be allocated to those States based on the number of people interviewed in each State.

(c) *Expenditures Exempted from Allocation.*—(1) *National Campaign Expenditures.*—(i) *Operating Expenditures.* Expenditures incurred for administrative, staff, and overhead expenditures of the national campaign headquarters need not be allocated to any State. Overhead expenditures shall be defined as in paragraph (b)(2)(iv) of this section.

(ii) *National Advertising.* Expenditures incurred for advertisements on national networks, national cable or in publications distributed nationwide need not be allocated to any State.

(iii) *Nationwide Polls.* Expenditures incurred for the taking of a public opinion poll which is conducted on a nationwide basis need not be allocated to any State.

(2) *Media Production Costs.* Expenditures incurred for production of Media advertising, whether or not that advertising is used in more than one State, need not be allocated to any State.

(3) *Expenditures For Transportation and Services Made Available to Media.* Expenditures incurred by the candidate's authorized committee(s) to provide transportation and services for media personnel need not be allocated

to any State. Reimbursement for such expenditures shall be made in accordance with 11 CFR 9034.6.

(4) *Interstate Travel.* Expenditures incurred for inter-state travel costs, such as travel between State campaigns or between State offices and national campaign headquarters, need not be allocated to any State.

(5) *Compliance Costs and Fundraising Expenditures.* An amount equal to 10% of campaign workers' salaries and overhead expenditures in a particular State may be excluded from allocation to that State as an exempt compliance cost. An additional amount equal to 10% of such salaries and overhead expenditures in a particular State may be excluded from allocation to that State as exempt fundraising expenditures, but this exemption shall not apply within 28 calendar days of the primary election as specified in 11 CFR 110.8(c)(2). Any amounts excluded for fundraising expenditures shall be applied against the fundraising expenditure limitation under 11 CFR 100.8(b)(21). If the candidate wishes to claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual working in that State. The candidate shall keep detailed records to support the derivation of each percentage in accordance with paragraph (e) of this section.

(d) *Reporting.* All expenditures allocated under this section shall be reported on FEC Form 3P, page 3.

(e) *Recordkeeping.* All assumptions and supporting calculations for allocations made under this section shall be documented and retained for Commission inspection. For compliance and fundraising deductions that exceed the 10% exemptions under paragraph (c)(5) of this section, such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

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

(a) This section applies to allocation for expenses between campaign and non-campaign related travel with respect to campaigns of candidates for Federal office, other than Presidential and Vice Presidential candidates who receive federal funds pursuant to 11 CFR Part 9005 or 9036. (See 11 CFR 9004.7 and 9034.7) 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.

3. 11 CFR is amended by revising Subchapter G, Parts 9031 through 9038, and by adding new Part 9039 to read as follows:

PART 9031—SCOPE

§ 9031.1 Scope.

This subchapter governs entitlement to and use of funds certified from the Presidential Primary Matching Payment Account under 26 U.S.C. 9031 *et seq.* The definitions, restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431-455 of Title 2, United States Code, and regulations prescribed thereunder (11 CFR Parts 100 through 115). Unless expressly stated to the contrary, this subchapter does not alter the effect of any definitions, restrictions, obligations and liabilities imposed by sections 431-455 of Title 2, United States Code, or regulations prescribed thereunder (11 CFR Parts 100 through 115).

(Pub. L. 93-443, title IV, sec. 408(c), 88 Stat. 1297 (26 U.S.C. 9031))

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 expenses.
- 9032.10 Secretary.
- 9032.11 State.

Authority: Pub. L. 93-443, title IV, Sec. 408(c), 88 Stat. 1297, as amended by Pub. L. 94-263, title I, sec. 115(c)(2), title III, sec. 309(b)(1), 90 Stat. 495, 500 (26 U.S.C. 9032).

§ 9032.1 Authorized committee.

(a) Notwithstanding the definition at 11 CFR 100.5, "authorized committee" means with respect to candidates (as defined at 11 CFR 9032.2) seeking the nomination of a political party for the office of President, any political committee that is authorized by a candidate to solicit or receive contributions or to incur expenditures on behalf of the candidate. The term "authorized committee" includes the candidates principal campaign committee designated in accordance with 11 CFR 102.12, any political committee authorized in writing by the candidate in accordance with 11 CFR 102.13, and any political committee not disavowed by the candidate in writing pursuant to 11 CFR 100.3(a)(3).

(b) Any withdrawal of an authorization shall be in writing and shall be addressed and filed in the same

manner provided for at 11 CFR 102.12 or 102.13.

(c) For the purposes of this subchapter, references to the "candidate" and his or her responsibilities under this subchapter shall also be deemed to refer to the candidate's authorized committee(s).

(d) An expenditure by an authorized committee on behalf of the candidate who authorized the committee cannot qualify as an independent expenditure.

(e) A delegate committee, as defined in 11 CFR 100.5(e)(5), is not an authorized committee of a candidate unless it also meets the requirements of 11 CFR 9032.1(a). Expenditures by delegate committees on behalf of a candidate may count against that candidate's expenditure limitation under the circumstances set forth in 11 CFR 110.14.

§ 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 runoff 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 calendar days after receipt 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 this subchapter, "contribution" has the same meaning given the term under 2 U.S.C. 431(8)(A) and 11 CFR 100.7, except as provided at 11 CFR 9034.4(b)(4).

§ 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 calendar year in which a Presidential general election is held and may not exceed 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.

(a) "Primary election" means an election held by a State or a political party, including a runoff election, or a nominating convention or a caucus—

(1) For the selection of delegates to a national nominating convention of a political party;

(2) For the expression of a preference for the nomination of Presidential candidates;

(3) For the purposes stated in both paragraphs (a) (1) and (2) of this section; or

(4) To nominate a Presidential candidate.

(b) If separate primary elections are held in a State by the State and a political party, the primary election for the purposes of this subchapter will be the election held by the political party.

§ 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 purpose 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 or on behalf of 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 9033.5;

(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, will 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.

(c) Expenditures incurred either before the date an individual becomes a candidate or after the last day of a candidate's eligibility will be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures described under 11 CFR 9034.4(b) will not be considered qualified campaign expenses.

§ 9032.10 Secretary.

For purposes of this subchapter, "Secretary" means the Secretary of the Treasury.

§ 9032.11 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 FOR PAYMENT

Sec.

9033.1 Candidate and committee agreements.

9033.2 Candidate and committee certifications; threshold submission.

9033.3 Expenditure limitation certification.

9033.4 Matching payment eligibility threshold requirements.

9033.5 Determination of ineligibility date.

9033.6 Determination of inactive candidacy.

9033.7 Determination of active candidacy.

9033.8 Reestablishment of eligibility.

9033.9 Failure to comply with disclosure requirements of expenditure limitations.

9033.10 Procedures for initial and final determinations.

9033.11 Documentation of disbursements.

Authority: Pub. L. 93-443, title IV, sec. 408(c), 88 Stat. 1297, as amended by Pub. L. 94-283, title III, secs. 305(c) and 306(b)(2), 90 Stat. 499-500 (28 U.S.C. 9033).

§ 9033.1 Candidate and committee agreements.

(a) *General.* (1) 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 the candidate's authorized committee(s) will comply with the conditions set forth in paragraph (b) of this section. The candidate may submit the letter containing the agreements required by this section at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted a candidate agreement that meets the requirements of this section.

(b) *Conditions.* The candidate shall agree that:

(1) The candidate has the burden of proving that disbursements by the candidate or any authorized committee(s) or agents thereof are qualified campaign expenses as defined at 11 CFR 9032.9.

(2) The candidate and the candidate's authorized committee(s) will comply with the documentation requirements set forth in 11 CFR 9033.11.

(3) The candidate and the candidate's authorized committee(s) will provide an explanation, in addition to complying with the documentation requirements, of the connection between any disbursements made by the candidate or authorized committee(s) of the candidate and the campaign if requested by the Commission.

(4) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation for matching fund submissions, any books, records (including bank records for all accounts) and supporting documentation and other information that the Commission may request.

(5) The candidate and the candidate's authorized committee(s) will keep and furnish to the Commission all documentation relating to disbursements and receipts including any books, records (including bank records for all accounts), all documentation required by this section including those required to be maintained under 11 CFR 9033.11, and other information that the Commission may request.

(6) The candidate and the candidate's authorized committee(s) will permit an audit and examination pursuant to 11 CFR Part 9038 of all receipts and disbursements including those made by the candidate, all authorized committee(s) and any agent or person authorized to make expenditures on behalf of the candidate or committee(s). The candidate and authorized committee(s) shall facilitate the audit by making available in one central location, office space, records and such personnel as are necessary to conduct the audit and examination, and shall pay any amounts required to be repaid under 11 CFR Parts 9038 and 9039.

(7) The candidate and the candidate's authorized committee(s) will 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 by 11 CFR Part 103 and 11 CFR 9037.3.

(8) The candidate and the candidate's authorized committee(s) will prepare matching fund submissions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(9) The candidate and the candidate's authorized committee(s) will comply with the applicable requirements of 2 U.S.C. 431 *et seq.*; 26 U.S.C. 9031 *et seq.* and the Commission's regulations at 11 CFR Parts 100-115, and 9031-9039.

(10) The candidate and the candidate's authorized committee(s) will pay any civil penalties included in a conciliation agreement imposed under 2 U.S.C. 437g against the candidate, any authorized committee of the candidate or any agent thereof.

§ 9033.2 Candidate and committee certifications; threshold submission.

(a) *General.* (1) A candidate seeking to become eligible to receive Presidential primary matching fund payments shall make the certifications set forth in paragraph (b) of this section to the Commission in a written statement signed by the candidate. The candidate may submit the letter containing the required certifications at any time after January 1 of the year immediately preceding the Presidential election year.

(2) The Commission will not consider a candidate's threshold submission until the candidate has submitted candidate certifications that meet the requirements of this section.

(b) *Certifications.* (1) 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. For purposes of this section, 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).

(2) The candidate and the candidate's 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.

(3) The candidate and the candidate's authorized committee(s) shall certify:

(i) That they have received matchable contributions totalling more than \$5,000 in each of at least 20 States; and

(ii) That the matchable contributions are from individuals who are residents of the State for which their contributions are submitted.

(iii) A maximum of \$250 of each individual's aggregate contributions will be considered as matchable contributions for the purpose of meeting the thresholds of this section.

(iv) For purposes of this section, contributions of an individual who maintains residences in more than one State may only be counted toward the \$5,000 threshold for the State from which the earliest contribution was made by that contributor.

(c) *Threshold Submission.* To become eligible to receive matching payments, the candidate shall submit documentation of the contributions described in 11 CFR paragraph (b)(3) of this section to the Commission for review. The submission shall follow the format and requirements of 11 CFR 9036.1.

§ 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 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 will notify the candidate of its initial determination, in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may submit, within 20 calendar days after receipt of the Commission's notice, written legal or factual materials, in accordance with 11 CFR 9033.10(b), demonstrating that he or she has not knowingly and substantially exceeded the expenditure limitations at 11 CFR Part 9035.

(c) A final determination of the candidate's ineligibility will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d) A candidate who receives a final determination of ineligibility under paragraph (c) of this section shall be ineligible to receive matching fund payments under 11 CFR 9034.1.

§ 9033.4 Matching payment eligibility threshold requirements.

The Commission will, as soon as practicable and, during the Presidential election year generally within 15 business days, examine the submission made under 11 CFR 9033.1 and 9033.2 and either—

(a) Make a determination that the candidate has satisfied the minimum contribution threshold requirements 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 will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate may, within 30 calendar days after receipt of the Commission's notice, satisfy the threshold requirements or submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she has satisfied those requirements. A final determination by the Commission that the candidate has failed to satisfy threshold requirements will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.5 Determination of ineligibility date.

The candidate's date of ineligibility shall be whichever date by operation of paragraph (a), (b) or (c) of this section occurs first. After the candidate's date of ineligibility, he or she may only receive matching payments to the extent that he or she has net outstanding campaign obligations as defined in 11 CFR 9034.5

(a) *Inactive Candidate.* 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 earliest 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) *Insufficient Votes.* 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 the 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. If two or more primaries are held in the same State on different dates, the earliest primary will govern.

(c) *End of Matching Payment Period.* The ineligibility date shall be the last day of the matching payment period for the candidate as specified in 11 CFR 9032.6

(d) *Reestablishment of Eligibility.* If the Commission has determined that a candidate is ineligible under paragraph

(a) or (b) of this section, the candidate may reestablish eligibility to receive matching funds under 11 CFR 9033.8.

§ 9033.6 Determination of inactive candidacy.

(a) *General.* The Commission may, on the basis of the factors listed in paragraph (b) of this section, make a 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. Upon a final determination by the Commission that a candidate is inactive, that candidate will become ineligible as provided in 11 CFR 9033.5.

(b) *Factors Considered.* In making its determination of inactive candidacy, the Commission may 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;

(4) The release of committed delegates;

(5) The candidate urges his or her delegates to support another candidate while not actually releasing committed delegates;

(6) The candidate urges supporters to support another candidate.

(c) *Initial Determination.* The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b) and will advise the candidate of the date on which active campaigning in more than one State ceased. The candidate may, within 15 business days of receipt of the Commission's notice, submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is actively campaigning in more than one State.

(d) *Final Determination.* A final determination of inactive candidacy will be made by the Commission in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.7 Determination of active candidacy.

(a) Where a candidate certifies to the Commission under 11 CFR 9033.5(b) that he or she will not be an active candidate in an upcoming primary, the Commission may, nevertheless, on the basis of factors listed in 11 CFR 9033.6(b), make an initial determination

that the candidate is an active candidate in the primary involved.

(b) The Commission will notify the candidate of its initial determination within 10 business days of receiving the candidate's certification under 11 CFR 9033.5(b). The Commission's initial determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(b). Within 10 business days of receipt of the Commission's notice the candidate may submit, in accordance with 11 CFR 9033.10(b), written legal or factual materials to demonstrate that he or she is not an active candidate in the primary involved.

(c) A final determination by the Commission that the candidate is active will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.8 Reestablishment of eligibility.

(a) *Candidates Found to be Inactive.* 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(b). The day the Commission determines to be the day the candidate becomes active again will be the date on which eligibility is reestablished.

(b) *Candidates Receiving Insufficient Votes.* 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.

(c) The Commission will make its determination under paragraphs (a) or (b) of this section without requiring the individual to reestablish eligibility under 11 CFR 9033.1 and 2. A candidate whose eligibility is reestablished under this section may submit, for matching payment, contributions received during ineligibility.

§ 9033.9 Failure to comply with disclosure requirements of expenditure limitations.

(a) If the Commission receives information indicating that a candidate

or his or her authorized committee(s) has knowingly and substantially failed to comply with the disclosure requirements of 2 U.S.C. 434 and 11 CFR Part 104, or that a candidate has knowingly and substantially exceeded the expenditure limitations at 11 CFR Part 9035, the Commission may make an initial determination to suspend payments to that candidate.

(b) The Commission will notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate will be given an opportunity, within 20 calendar days of the Commission's notice, to comply with the above cited provisions or to submit in accordance with 11 CFR 9033.10(b) written legal or factual materials to demonstrate that he or she is not in violation of those provisions.

(c) Suspension of payments to a candidate will occur upon a final determination by the Commission to suspend payments. Such final determination will be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d)(1) A candidate whose payments have been suspended for failure to comply with reporting requirements may become entitled to receive payments if he or she subsequently files the required reports and pays or agrees to pay any civil or criminal penalties resulting from failure to comply.

(2) A candidate whose payments are suspended for exceeding the expenditure limitations shall not be entitled to receive further matching payments under 11 CFR 9034.1.

§ 9033.10 Procedures for initial and final determinations.

(a) *General.* The Commission will follow the procedures set forth in this section when making an initial or final determination based on any of the following reasons.

(1) The candidate has knowingly and substantially exceeded the expenditure limitations of 11 CFR Part 9035 prior to the candidate's application for certification, as provided in 11 CFR 9033.3;

(2) The candidate has failed to satisfy the matching payment threshold requirements, as provided in 11 CFR 9033.4;

(3) The candidate is no longer actively seeking nomination in more than one state, as provided in 11 CFR 9033.6;

(4) The candidate is an active candidate in an upcoming primary despite the candidate's assertion to the contrary, as provided in 11 CFR 9033.7; or

(5) The Commission receives information indicating that the candidate has knowingly and substantially failed to comply with the disclosure requirements or exceeded the expenditure limits, as provided in 11 CFR 9033.9.

(b) *Initial Determination.* If the Commission makes an initial determination that a candidate may not receive matching funds for one or more of the reasons indicated in paragraph (a) of this section, the Commission will notify the candidate of its initial determination. The notification will give the legal and factual reasons for the determination and advise the candidate of the evidence on which the Commission's initial determination is based. The candidate will be given an opportunity to comply with the requirements at issue or to submit, within the time provided by the relevant section as referred to in paragraph (a) of this section, written legal or factual materials to demonstrate that the candidate has satisfied those requirements. Such materials may be submitted by counsel if the candidate so desires.

(c) *Final Determination.* The Commission will consider any written legal or factual materials timely submitted by the candidate before making its final determination. A final determination that the candidate has failed to satisfy the requirements at issue will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the legal and factual reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Effect on Other Determinations.* If the Commission makes an initial determination under this section, but decides to take no further action at that time, the Commission may use the legal and factual bases on which the initial determination was based in any future repayment determination under 11 CFR Part 9038 or 9039. A determination by the Commission under this section may be independent of any Commission decision to institute an enforcement proceeding under 2 U.S.C. 437g.

§ 9033.11 Documentation of disbursements.

(a) *Burden of Proof.* Each candidate shall have the burden of proving that disbursements made by the candidate or his or her authorized committee(s) or persons authorized to make expenditures on behalf of the candidate or committee(s) are qualified campaign expenses as defined in 11 CFR 9032.9.

The candidate and his or her authorized committee(s) shall obtain and furnish to the Commission on request any evidence regarding qualified campaign expenses made by the candidate, his or her authorized committees and agents or persons authorized to make expenditures on behalf of the candidate or committee(s) as provided in paragraph (b) of this section.

(b) Documentation Required

(1) For disbursements in excess of \$200 to a payee, the candidate shall present either:

(i) A receipted bill from the payee that states the purpose of the disbursement, or

(ii) If such a receipt is not available, a cancelled check negotiated by the payee, and

(A) One of the following documents generated by the payee: a bill, invoice, or voucher that states the purpose of the disbursement; or

(B) Where the documents specified in paragraph (b)(1)(ii)(A) of this section are not available, a voucher or contemporaneous memorandum from the candidate or the committee that states the purpose of the disbursement; or

(iii) If neither a receipted bill as specified in paragraph (b)(1)(i) of this section nor the supporting documentation specified in 11 CFR paragraph (b)(1)(ii) of this section is available, a cancelled check negotiated by the payee that states the purpose of the disbursement.

(iv) Where the supporting documentation required in paragraph (b)(1)(i), (ii) or (iii) of this section 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:

(A) Evidence demonstrating that the expenditure is part of an identifiable program or project which is otherwise sufficiently documented such as a disbursement which is one of a number of documented disbursements relating to a campaign mailing or to the operation of a campaign office;

(B) Evidence that the disbursement is covered by a preestablished written campaign committee policy, such as a per diem policy.

(2) For all other disbursements the candidate shall present:

(i) A record disclosing the identification of the payee, the amount, date and purpose of the disbursement, if made from a petty cash fund; or

(ii) A cancelled check negotiated by the payee that states the identification

of the payee, and the amount, date and purpose of the disbursement.

(3) For purposes of this section,

(i) "Payee" means the person who provides the goods or services to the candidate or committee in return for the disbursement; except that an individual will be considered a payee under this section if he or she receives \$500 or less advanced for travel and/or subsistence and if he or she is the recipient of the goods or services purchased.

(ii) "Purpose" means the identification of the payee, the date and amount of the disbursement, and a description of the goods or services purchased.

(c) *Retention of Records.* The candidate shall retain records, with respect to each disbursement and receipt, including bank records, vouchers, worksheets, receipts, bills and accounts, journals, ledgers, fundraising solicitation material, accounting systems documentation, matching fund submissions, and any related materials documenting campaign receipts and disbursements, for a period of three years pursuant to 11 CFR 102.9(c), and shall present these records to the Commission on request.

PART 9034—ENTITLEMENTS

Sec.

- 9034.1 Candidate entitlements.
- 9034.2 Matchable contributions.
- 9034.3 Non-matchable contributions.
- 9034.4 Use of contributions and matching payments.
- 9034.5 Net outstanding campaign obligations.
- 9034.6 Reimbursements for transportation and services made available to media personnel.
- 9034.7 Allocation of travel expenditures.
- 9034.8 Joint fundraising.
- 9034.9 Sale of assets acquired for fundraising purposes.

Authority: Pub. L. 93-443, title IV, Sec. 406 (c), 88 Stat. 1299, as amended by Pub. L. 94-283, title III, sec. 307 (b), 90 Stat. 501 (26 U.S.C. 9034).

§ 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 payments 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 on or before December 31 of the Presidential election year provided that on the date of payment there are remaining net outstanding campaign obligations, i.e., the sum of the contributions received on or after the date of ineligibility plus matching funds received on or after the date of ineligibility 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(d) 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 Part 9035.

§ 9034.2 Matchable contributions.

(a) Contributions meeting the following requirements will be considered matchable campaign contributions.

(1) The contribution shall be a gift of money made: by an individual; by a written instrument and for the purpose of influencing the result of a primary election.

(2) Only a maximum of \$250 of the aggregate amount contributed by an individual may be matched.

(3) Before a contribution may be submitted for matching, it must actually be received by the candidate or any of the candidate's authorized committees and deposited in a designated campaign depository maintained by the candidate's authorized committee.

(4) The written instrument used in making the contribution must 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 as defined under 11 CFR 9032.6. Donations received by an individual who is testing the waters pursuant to 11 CFR 100.7(b)(1) and 100.8(b)(1) may be matched when the individual becomes a candidate if

such donations meet the requirements of this section.

(b) For purposes of this section, the term "written instrument" means a check written on a personal, escrow or trust account representing or containing the contributor's personal funds; a money order; or any similar negotiable instrument.

(c) The written instrument shall be: payable on demand; and to the order of, or specifically endorsed without qualification to, the Presidential candidate, or his or her authorized committee. The written instrument shall contain: the full name and signature of the contributor(s); the amount and date of the contribution; and the mailing address of the contributor(s).

(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.

(i) 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). If a contribution on a joint account is to be attributed other than equally to the joint tenants, the check or other written documentation shall indicate the amount to be attributed to each joint tenant.

(ii) In the case of a check for a contribution attributed to more than one person, where it is not apparent from the face of the check that each contributor is a joint tenant of the account, a written statement shall accompany the check stating that the contribution was made from each individual's personal funds in the amount so attributed and shall be signed by each contributor.

(2) Contributions in the form of checks drawn on an escrow or trust account are matchable contributions, provided that:

(i) The contributor has equitable ownership of the account; and

(ii) The check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of contribution. This statement shall specify that: the contributor has equitable ownership of the account and the account represents the personal funds of the contributor.

(3) 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 check is accompanied by a statement, signed by each contributor to whom all or a portion of the contribution is being attributed, together with the check number, amount and date of

contribution. This statement shall specify that the contribution is made with the contributor's personal funds and that the account on which the contribution is drawn is not maintained or controlled by an incorporated entity; and

(ii) 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.

(4) Contributions in the form of money orders, cashier's checks or other similar negotiable instruments are matchable contributions, provided that:

(i) At the time it is initially submitted for matching, such instrument is signed by each contributor and is accompanied by a statement which specifies that the contribution was made in the form of a money order, cashier's check, or other similar negotiable instrument, with the contributor's personal funds;

(ii) Such statement identifies the date and amount of the contribution made by money order, cashier's check or other similar negotiable instrument and the check or serial number; and

(iii) Such statement is signed by each contributor.

(5) 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 (i.e., concerts, motion pictures) are matchable. The promotional material and tickets for the event shall clearly indicate that the ticket purchase price represents a contribution to the Presidential candidate.

(6) Contributions in the form of a purchase price paid for admission to an activity that is essentially political are matchable. An "essentially political" activity is one the principal purpose of which is political speech or discussion, such as the traditional political dinner or reception.

(7) Contributions received from a joint fundraising activity conducted in accordance with 11 CFR 9034.8 are matchable, provided that such contributions are accompanied by a copy of the joint fundraising agreement when they are submitted for matching.

§ 9034.3 Non-matchable 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, for example:

(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)(3);

(e) Contributions which are made or accepted in violation of 2 U.S.C. 441a, 441b, 441c, 441e, 441f, or 441g;

(f) Contributions in the form of a check drawn on the account of a committee, corporation, union or government contractor even though the funds represent 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 or otherwise induced by a chance to participate in a raffle, lottery, or a similar drawing for valuable prizes;

(i) 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

(j) Contributions of currency of the United States or currency of any foreign country.

§ 9034.4 Use of contributions and matching payments.

(a) *Qualified Campaign Expenses.*—

(1) *General.* Except as provided in paragraph (b)(3) 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.

(2) *Testing the Waters.* 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 and shall count against that

candidate's limits under 2 U.S.C. 441a(b). See 11 CFR 100.8(b)(1).

(3) *Winding Down Costs.* The following costs shall be considered qualified campaign expenses:

(i) Costs associated with the termination of political activity, such as the costs of complying with the post-election requirements of the Act and other necessary administrative costs associated with winding down the campaign, including office space rental, staff salaries and office supplies; or

(ii) Costs incurred before the candidate's date of ineligibility, for which written arrangement or commitment was made on or before the candidate's date of ineligibility.

(b) *Non-Qualified Campaign Expenses.*—(1) *General.* The following are examples of disbursements that are not qualified campaign expenses.

(2) *Excessive Expenditures.* An expenditure which is in excess of any of the limitations under 11 CFR Part 9035 shall not be considered a qualified campaign expense.

(3) *Post-Ineligibility Expenditures.* Any expenses incurred after a candidate's date of ineligibility, as determined under 11 CFR 9033.5, are not qualified campaign expenses except to the extent permitted under paragraph (a)(3) of this section.

(4) *Civil or Criminal Penalties.* Civil or criminal penalties paid pursuant to the Federal Election Campaign Act are not qualified campaign expenses and cannot be defrayed from contributions or matching payments. Any amounts received or expended to pay such penalties shall not be considered contributions or expenditures but all amounts so received shall be subject to the prohibitions of the Act. Amounts received and expended under this section shall be reported in accordance with 11 CFR Part 104.

(c) *Transfers to Other Campaigns.* If a candidate has received matching funds and is simultaneously seeking nomination or election to another Federal office, no transfer of funds between his or her principal campaign committees or authorized committees may be made. See 2 U.S.C. 441a(a)(5)(C) and 11 CFR 110.3(a)(2)(v).

§ 9034.5 Net outstanding campaign obligations.

(a) Within 15 calendar days after the candidate's date of ineligibility, as determined under 11 CFR 9033.5, the candidate shall submit a statement of net outstanding campaign obligations. The candidate's net outstanding campaign obligations under this section

equal the difference between paragraphs (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 as determined under 11 CFR 9033.5, plus estimated necessary winding down costs as defined under 11 CFR 9034.4(a)(3), less

(2) The total of:

(i) Cash on hand as of the close of business on the last day of eligibility (including all contributions dated on or before that date whether or not submitted for matching);

(ii) The fair market value of capital assets and other assets on hand; and

(iii) Amounts owed to the campaign in the form of credits, refunds of deposits, 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)(1) *Capital Assets.* For purposes of this section, the term "capital asset" means any property used in the operation of the campaign whose value on the last day of the candidate's eligibility exceeds \$500. Property that must be valued as capital assets under this section includes, but is not limited to, office equipment, furniture, vehicles, and fixtures acquired for use in the operation of the candidate's campaign, but does not include property defined as "other assets" under paragraph (b)(2) of this section. The value of a capital asset shall be the fair market value on the date of ineligibility or on the date the item is acquired if acquired after the date of ineligibility.

(2) *Other Assets.* The term "other assets" means any property acquired by the campaign for use in raising funds or as collateral for campaign loans. "Other assets" must be included on the candidate's statement of net outstanding campaign obligations if the aggregate value of such assets exceeds \$5,000. The value of "other assets" shall be determined by the fair market value of each item on the candidate's date of ineligibility or on the date the item is acquired if acquired after the date of ineligibility.

(c) Contributions received from joint fundraising activities conducted under 11 CFR 9034.8 may be used to pay a candidate's outstanding campaign obligations.

(1) Such contributions shall be deemed monies available to pay outstanding campaign obligations as of the date these funds are received by the fundraising representative committee and shall be included in the candidate's statement of net outstanding campaign obligations.

(2) The amount of money deemed available to pay a candidate's net outstanding campaign obligations will equal either—

(i) An amount calculated on the basis of the predetermined allocation formula, as adjusted for 2 U.S.C. 441a limitations; or

(ii) If a candidate receives an amount greater than that calculated under paragraph (c)(2)(i) of this section, the amount actually received.

(d) The candidate shall submit a revised statement of net outstanding campaign obligations with each submission for matching funds payments filed after the candidate's date of ineligibility. The revised statement shall reflect the financial status of the campaign as of the close of business on the last business day preceding the date of submission for matching funds.

(e)(1) If the Commission receives information indicating that substantial assets of the candidate's authorized committee(s) have been undervalued or not included in the statement or that the amount of outstanding campaign obligations has been otherwise overstated in relation to campaign assets, the Commission may decide to temporarily suspend further matching payments pending a final determination whether the candidate is entitled to receive all or a portion of the matching funds requested.

(2) In making a determination under paragraph (e)(1) of this section, the Commission will follow the procedures for initial and final determinations under 11 CFR 9033.10 (b) and (c). The Commission will notify the candidate of its business days after receipt of the candidate's statement of net outstanding campaign obligations. Within 10 business days after receipt of the Commission's notice, the candidate may submit written legal or factual materials to demonstrate that he or she has net outstanding campaign obligations that entitle the campaign to further matching payments.

(3) If the candidate demonstrates that the amount of outstanding campaign obligations still exceeds campaign assets, he or she may continue to receive matching payments.

§ 9034.6 Reimbursements for transportation and services made available to media personnel.

(a) If an authorized committee incurs expenditures for transportation, ground services and facilities (including air travel, ground transportation, housing, meals, telephone service, and typewriters) made available to media personnel, such expenditures will be

considered qualified campaign expenses subject to the overall expenditure limitations of 11 CFR 9035.1(a).

(b) If reimbursement for such expenditures is received by a committee, the amount of such reimbursement for each individual shall not exceed either: the individual's pro rata share of the actual cost of the transportation and services made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the transportation and services made available. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such transportation and services are made available into the total cost of the transportation and services. The total amount of reimbursements received from an individual under this section shall not exceed the actual pro rata cost of the transportation and services made available to that person by more than 10%. Reimbursements received in compliance with the requirements of this section may be deducted from the amount of expenditures that are subject to the overall expenditure limitation of 11 CFR 9035.1(a) except to the extent that such reimbursements exceed the amount actually paid by the committee for the services provided.

(c) The total amount paid by an authorized committee for the cost of transportation or for ground services and facilities shall be reported as an expenditure in accordance with 11 CFR 104.3(b)(2)(i). Any reimbursement received by such committee for transportation or ground services and facilities shall be reported in accordance with 11 CFR 104.3(a)(3)(ix).

§ 9034.7 Allocation of travel expenditures.

(a) Notwithstanding the provisions of 11 CFR Part 106, expenditures for travel relating to the campaign of a candidate seeking nomination for election to the office of President by any individual, including a candidate, shall, pursuant to the provisions of paragraph (b) of this section, be qualified campaign expenses and be reported by the candidate's authorized committee(s) as expenditures.

(b)(1) For a trip which is entirely campaign-related, the total cost of the trip shall be a qualified campaign expense and a reportable expenditure.

(2) For a trip which includes campaign-related and non-campaign related stops, that portion of the cost of the trip allocable to campaign activity shall be a qualified campaign expense and a reportable expenditure. Such portion shall be determined by

calculating what the trip would have cost from the point of origin of the trip to the first campaign-related stop and from that stop through each subsequent campaign-related stop, back to the point of origin. If any campaign activity, other than incidental contacts, is conducted at a stop, that stop shall be considered campaign-related.

(3) For each trip, an itinerary shall be prepared and such itinerary shall be made available for Commission inspection.

(4) For trips by government conveyance or by charter, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign-related, shall be made available for Commission inspection.

(5) If any individual, including a candidate, uses government conveyance or accommodations paid for by a government entity for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount equal to:

(i) The first class commercial air fare plus the cost of other services, in the case of travel to a city served by a regularly scheduled commercial service; or

(ii) The commercial charter rate plus the cost of other services, in the case of travel to a city not served by a regularly scheduled commercial service.

(6) Travel expenses of a candidate's spouse and family when accompanying the candidate on campaign-related travel may be treated as qualified campaign expenses and reportable expenditures. If the spouse or family members conduct campaign-related activities, their travel expenses will be treated as qualified campaign expenses and reportable expenditures.

(7) If any individual, including a candidate, incurs expenses for campaign-related travel, other than by use of government conveyance or accommodations, an amount equal to that portion of the actual cost of the conveyance or accommodations which is allocable to all passengers, including the candidate, travelling for campaign purposes will be a qualified campaign expense and shall be reported by the committee as an expenditure.

(i) If the trip is by charter, the actual cost for each passenger shall be determined by dividing the total operating cost for the charter by the total number of passengers transported. The amount which is a qualified campaign expense and a reportable expenditure shall be calculated in accordance with the formula set forth at paragraph (b)(2) of this section on the basis of the actual cost per passenger

multiplied by the number of passengers traveling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation, the actual cost shall be calculated in accordance with the formula set forth at paragraph (b)(2) of this section on the basis of the commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

§ 9034.8 Joint fundraising.

(a) *General.*—(1) *Permissible Participants.* Presidential primary candidates who receive matching funds under this subchapter may engage in joint fundraising with other candidates, political committees or unregistered committees or organizations.

(2) *Use of Funds.* Contributions received as a result of a candidate's participation in a joint fundraising activity under this section may be—

(i) Submitted for matching purposes in accordance with the requirements of 11 CFR 9034.2 and the Federal Election Commission's Guideline for Presentation in Good Order;

(ii) Used to pay a candidate's net outstanding campaign obligations as provided in 11 CFR 9034.5;

(iii) Used to defray qualified campaign expenses;

(iv) Used to defray exempt legal and accounting costs; or

(v) If in excess of a candidate's net outstanding campaign obligations or expenditure limit, used in any manner consistent with 11 CFR 113.2, including repayment of funds under 11 CFR Part 9038.

(b) *Fundraising Representatives.*—(1) *Establishment or Selection of Fundraising Representative.* The participants in a joint fundraising effort under this section shall either establish a separate committee or select a participating committee, to act as fundraising representative for all participants. The fundraising representative shall be a reporting political committee and an authorized committee of each candidate.

(2) *Separate Fundraising Committee as Fundraising Representative.* A separate fundraising committee established by the participants to act as fundraising representative for all participants shall—

(i) Be established as a reporting political committee under 11 CFR 100.5;

(ii) Collect contributions;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(3) *Participating Committee as Fundraising Representative.* A

participant selected to act as fundraising representative for all participants shall—

(i) Be a political committee as defined in 11 CFR 100.5;

(ii) Collect contributions; however, other participants may also collect contributions and then forward them to the fundraising representative as required by 11 CFR 102.8;

(iii) Pay fundraising costs from gross proceeds and funds advanced by participants; and

(iv) Disburse net proceeds to each participant.

(4) *Independent Fundraising Agent.* The participants or the fundraising representative may hire a commercial fundraising firm or other agent to assist in conducting the joint fundraising activity. In that case, however, the fundraising representative shall still be responsible for ensuring that the recordkeeping, reporting and documentation requirements set forth in this subchapter are met.

(c) *Joint Fundraising Procedures.* Any joint fundraising activity under this section shall be conducted in accordance with the following requirements:

(1) *Written Agreement.* The participants in a joint fundraising activity shall enter into a written agreement, whether or not all participants are political committees under 11 CFR 100.5. The written agreement shall identify the fundraising representative and shall state a formula for the allocation of fundraising proceeds. The participants shall also use the formula to allocate the expenses incurred for the fundraising activity. The fundraising representative shall retain the written agreement for a period of three years and shall make it available to the Commission on request.

(2) *Funds Advanced for Fundraising Costs.*

(i) Except as provided in paragraph (c)(2)(ii) of this section, the amount of funds advanced by each participant for fundraising costs shall be in proportion to the allocation formula agreed upon under paragraph (c)(i) of this section.

(ii) A participant may advance more than its proportionate share of the fundraising costs; however, the amount advanced which is in excess of the participant's proportionate share shall not exceed the amount that participant could legally contribute to the remaining participants. See 11 CFR 102.12(c)(2) and Part 110.

(3) *Fundraising Notice.* In addition to any notice required under 11 CFR 110.11, a joint fundraising notice shall be

included with every solicitation for contributions.

(i) This notice shall include the following information:

(A) The names of all committees participating in the joint fundraising activity whether or not such committees are political committees under 11 CFR 100.5;

(B) The allocation formula to be used for distributing joint fundraising proceeds;

(C) A statement informing contributors that, notwithstanding the stated allocation formula, they may designate their contributions for a particular participant or participants; and

(D) A statement informing contributors that the allocation formula may change if a contributor makes a contribution which would exceed the amount that contributor may give to any participant.

(ii) If one or more participants engage in the joint fundraising activity solely to satisfy outstanding debts, the notice shall also contain a statement informing contributors that the allocation formula may change if a participant receives sufficient funds to pay its outstanding debts.

(4) *Separate Depository Account.*

(i) The participants or the fundraising representative shall establish a separate depository account to be used solely for the receipt and disbursement of the joint fundraising proceeds. All contributions deposited into the separate depository account must be permissible under Title 2, United States Code. Each political committee shall amend its Statement of Organization to reflect the account as an additional depository.

(ii) The fundraising representative shall deposit all joint fundraising proceeds in the separate depository account within ten days of receipt as required by 11 CFR 103.3. The fundraising representative may delay distribution of the fundraising proceeds to the participants until all contributions are received and all expenses are paid.

(iii) For contribution reporting and limitation purposes, the date of receipt of a contribution by a participating political committee is the date that the contribution is received by the fundraising representative. The fundraising representative shall report contributions in the reporting period in which they are received. Participating political committees shall report joint fundraising proceeds in accordance with 11 CFR 9034.8(c)(9) when such funds are received from the fundraising representative.

(5) *Recordkeeping Requirements.* (i) The fundraising representative and

participating committees shall screen all contributions received to insure that the prohibitions and limitations of 11 CFR Parts 110 and 114 are observed.

Participating political committees shall make their contributor records available to the fundraising representative to enable the fundraising representative to carry out its duty to screen contributions.

(ii) The fundraising representative shall collect and retain contributor information with regard to gross proceeds as required under 11 CFR 102.8 and shall also forward such information to participating political committees.

(iii) The fundraising representative shall retain the records required under 11 CFR 9033.11 regarding fundraising disbursements for a period of three years. Commercial fundraising firms or agents shall forward such information to the fundraising representative.

(6) *Contribution Limitations.* Except to the extent that the contributor has previously contributed to any of the participants, a contributor may make a contribution to the joint fundraising effort which contribution represents the total amount that the contributor could contribute to all of the participants under the applicable limits of 11 CFR 110.1 and 110.2.

(7) *Allocation of Gross Proceeds.* (i) The fundraising representative shall allocate proceeds according to the formula stated in the fundraising agreement. Funds may not be distributed or reallocated so as to maximize the matchability of the contributions.

(ii) If distribution according to the allocation formula extinguishes the debts of one or more participants or if distribution under the formula results in a violation of the contribution limits of 11 CFR 110.1(a), the fundraising representative may reallocate the surplus funds. Candidates seeking to extinguish outstanding debts shall not reallocate in reliance on the receipt of matching funds to pay the remainder of their debts; rather, all funds to which a participant is entitled under the allocation formula shall be deemed funds available to pay the candidate's outstanding campaign obligations as provided in 11 CFR 9034.5(c).

(iii) Reallocation shall be based upon the remaining participants' proportionate shares under the allocation formula. If reallocation results in a violation of a contributor's limit under 11 CFR 110.1, the fundraising representative shall return to the contributor the amount of the contribution that exceeds the limit.

(iv) Earmarked contributions which exceed the contributor's limit to the

designated participant under 11 CFR Part 110 may not be reallocated by the fundraising representative without the written permission of the contributor.

(8) *Allocation of Expenses and Distribution of Net Proceeds.* (i) If participating committees are not affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity and are not committees of the same political party:

(A) After gross contributions are allocated among the participants under 11 CFR 9034.8(c)(7), the fundraising representative shall calculate each participant's share of expenses based on the percentage of the total receipts each participant had been allocated. To calculate each participant's net proceeds, the fundraising representative shall subtract the participant's share of expenses from the amount that participant has been allocated from gross proceeds.

(B) A participant may only pay expenses on behalf of another participant subject to the contribution limits of 11 CFR Part 110.

(ii) If participating committees are affiliated as defined in 11 CFR 110.3 prior to the joint fundraising activity or if participants are party committees of the same political party, expenses need not be allocated among those participants. Payment of such expenses by an unregistered committee or organization on behalf of an affiliated political committee may cause the unregistered organization to become a political committee.

(iii) Payment of expenses may be made from gross proceeds by the fundraising representative.

(9) *Reporting of Receipts and Disbursements.*—(i) *Reporting Receipts.*

(A) The fundraising representative shall report all funds received in the reporting period in which they are received. Each Schedule A filed by the fundraising representative under this section shall clearly indicate that the contributions reported on that schedule represent joint fundraising proceeds.

(B) After distribution of net proceeds, each participating political committee shall report its share of net proceeds received as a transfer-in from the fundraising representative. Each participating political committee shall also file a memo Schedule A itemizing its share of gross receipts as contributions from original contributions to the extent required under 11 CFR 104.3(a).

(ii) *Reporting Disbursements.* The fundraising representative shall report all disbursements in the reporting period in which they are made.

§ 9034.9 Sale of assets acquired for fundraising purposes.

(a) *General.* A candidate may sell assets donated to the campaign or otherwise acquired for fundraising purposes (See 11 CFR 9034.5(b)(2)), subject to the limitations and prohibitions of Title 2, United States Code and 11 CFR parts 110 and 114.

(b) *Sale After End of Matching Payment Period.* A candidate whose outstanding debts exceed his or her cash on hand after the end of the matching payment period as determined under 11 CFR 9032.6 may dispose of assets acquired for fundraising purposes in a sale to a wholesaler or other intermediary who will in turn sell such assets to the public, provided that the sale to the wholesaler or intermediary is an arms-length transaction. Sales made under this subsection will not be subject to the limitations and prohibitions of Title 2, United States Code and 11 CFR Parts 110 and 114.

PART 9035—EXPENDITURE LIMITATIONS

Sec.

9035.1 Campaign expenditure limitation.

9035.2 Limitations on expenditures from personal or family funds.

Authority: Pub. L. 93-443, title IV, Sec. 408(c), 88 Stat. 1300, as amended by Pub. L. 94-283, title III, Secs. 305(a), 307(c), 90 Stat. 494, 501 (26 U.S.C. Sec. 9035).

§ 9035.1 Campaign expenditure limitation.

(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 U.S.C. 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 U.S.C. 441a(c)) multiplied by the voting age population of the State (as certified under 2 U.S.C. 441a(e)); or \$200,000 (as adjusted under 2 U.S.C. 441a(c)).

(b) Each candidate receiving or expecting to receive matching funds under this subchapter shall also allocate his or her expenditures in accordance with the provisions of 11 CFR 106.2.

(c) A candidate may exclude from the overall expenditure limitation of this section an amount equal to 10% of salaries and overhead expenditures of his or her national campaign headquarters and state offices as an exempt legal and accounting compliance cost under 11 CFR 100.8(b)(15). For purposes of this section overhead expenditures include, but are not limited to rent, utilities, office equipment,

furniture, supplies, and telephone base service charges. An additional amount of 10% of such salaries and overhead expenditures may be excluded from the overall expenditure limitation of this section as exempt fundraising expenditures but this exemption shall not apply within 28 days of the primary election as specified in 11 CFR 110.8(c)(2). Any amount excluded for fundraising expenditures shall be applied against the fundraising expenditure limitation under 11 CFR 100.8(b)(21). If the candidate wishes to claim a larger compliance or fundraising exemption for any person, the candidate shall establish allocation percentages for each individual who spends all or a portion of his or her time to perform duties which are considered compliance or fundraising. The candidate shall keep detailed records to support the derivation of each percentage. Such records shall indicate which duties are considered compliance or fundraising and the percentage of time each person spends on such activity.

(d) The expenditure limitations of this section shall not apply to a candidate who does not receive matching funds at any time during the matching payment period.

§ 9035.2 Limitation on expenditures from personal or family funds.

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 which exceed \$50,000, in the aggregate. This section shall not operate to prohibit any member of the candidate's immediate family from contributing his or her personal funds to the candidate, subject to the limitations of 11 CFR Part 110.

(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.

PART 9036—REVIEW OF SUBMISSION AND CERTIFICATION OF PAYMENTS BY COMMISSION

Sec.

9036.1 Threshold submission.

9036.2 Additional submission for matching fund payments.

9036.3 Submission errors and insufficient documentation.

9036.4 Commission review of submissions.

9036.5 Resubmissions.

Sec.

9036.8 Continuation of certification.

Authority: Pub. L. 93-443, title IV, Sec. 408(c), 88 Stat. 1300 (26 U.S.C. 9036).

§ 9036.1 Threshold submission.

(a) *Time for Submission of Threshold Submission.* At any time after January 1 of the year immediately preceding the Presidential election year, the candidate may submit a threshold submission for matching fund payments in accordance with the format for such submissions set forth in paragraph (b) of this section. The candidate may submit the threshold submission simultaneously with or subsequent to his or her submission of the candidate agreement and certifications required by 11 CFR 9033.1 and 9033.2.

(b) *Format for Threshold Submission.*

(1) For each State in which the candidate certifies that he or she has met the requirements of the certifications in 11 CFR 9033.2(b), the candidate shall submit an alphabetical list of contributors showing:

(i) Each contributor's full name and residential address;

(ii) The occupation and name of employer for individuals whose aggregate contributions exceed \$200 in the calendar year;

(iii) The date of deposit of each contribution into the designated campaign depository;

(iv) The full dollar amount of each contribution submitted for matching purposes;

(v) The matchable portion of each contribution submitted for matching purposes;

(vi) The aggregate amount of all matchable contributions from that contributor submitted for matching purposes;

(vii) A notation indicating which contributions were received as a result of joint fundraising activities.

(2) The candidate shall submit a full-size photocopy of each check or written instrument and of supporting documentation in accordance with 11 CFR 9034.2 for each contribution that the candidate submits to establish eligibility for matching funds. For purposes of the threshold submission, the photocopies shall be segregated alphabetically by contributor within each State, and shall be accompanied by and referenced to copies of the relevant deposit slips.

(3) The candidate shall submit bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statements, which indicate that the contributions submitted were deposited into a designated campaign depository.

(4) For each State in which the candidate certifies that he or she has met the requirements to establish eligibility, the candidate shall submit a listing, alphabetically by contributor, of all checks returned by the bank to date as unpaid (e.g., stop payments, non-sufficient funds) regardless of whether the contribution was submitted for matching. This listing shall be accompanied by a full-size photocopy of each unpaid check, and copies of the associated debit memo and bank statement.

(5) The candidate shall submit all contributions in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(6) Contributions that are not submitted in compliance with this section shall not count toward the threshold amount.

(c) *Threshold Certification by Commission.* (1) After the Commission has determined under 11 CFR 9033.4 that the candidate has satisfied the eligibility and certification requirements of 11 CFR 9033.1 and 9033.2, the Commission will notify the candidate in writing that the candidate is eligible to receive primary matching fund payments as provided in 11 CFR Part 9034.

(2) If the Commission makes a determination of a candidate's eligibility under paragraph (a) of this section in a Presidential election year, the Commission shall certify to the Secretary, within 10 calendar days after the Commission has made its determination, the amount to which the candidate is entitled.

(3) If the Commission makes a determination of a candidate's eligibility under paragraph (a) of this section in the year preceding the Presidential election year, the Commission will notify the candidate that he or she is eligible to receive matching fund payments; however, the Commission's determination will not result in a payment of funds to the candidate until after January 1 of the Presidential election year.

§ 9036.2 Additional submissions for matching fund payments.

(a) *Time for Submission of Additional Submissions.* The candidate may submit additional submissions for payments to the Commission on dates to be determined and published by the Commission.

(b) *Format for Additional Submissions.* The candidate may obtain additional matching fund payments subsequent to the Commission's threshold certification and payment of primary matching funds to the candidate

by filing an additional submission for payment. All additional submissions for payments filed by the candidate shall be made in accordance with the Federal Election Commission's Guideline for Presentation in Good Order.

(1) The first submission for matching funds following the candidate's threshold submission shall contain all the contributions included in the threshold submission and any additional contributions to be submitted for matching in that submission. This submission shall contain all the information required for the threshold submission except that:

(i) The candidate is not required to resubmit the candidate agreement and certifications of 11 CFR 9033.1 and 9033.2;

(ii) The candidate is required to submit an alphabetical list of contributors, but not segregated by State as required in the threshold submission;

(iii) The candidate is required to submit a listing, alphabetical by contributor, of all checks returned unpaid, but not segregated by State as required in the threshold submission;

(iv) The occupation and employer's name need not be disclosed on the contributor list for individuals whose aggregate contributions exceed \$200 in the calendar year, but such information is subject to the recordkeeping and reporting requirements of 2 U.S.C. 432 (c)(3), 434(b)(3)(A) and 11 CFR 102.9(a)(2), 104.3(a)(4)(i); and

(v) The photocopies of each check or written instrument and of supporting documentation shall either be alphabetized and referenced to copies of the relevant deposit slip, but not segregated by State as required in the threshold submission; or such photocopies may be batched in deposits of 50 contributions or less and cross-referenced by deposit number and sequence number within each deposit on the contributor list.

(2) Following the first submission under paragraph (b)(1) of this section candidates may request additional matching funds on dates prescribed by the Commission by making a letter request in lieu of making a full submission as required under paragraph (b)(1) of this section. Letter requests shall state an amount of matchable contributions not previously submitted for matching and shall provide bank documentation, such as bank-validated deposit slips or unvalidated deposit slips accompanied by the relevant bank statement, demonstrating that the committee has received the funds for which matching payments are requested. The amount requested for matching may include contributions

received up to the last business day preceding the date of the request. On the next submission after a letter request has been made, the committee shall submit the documentation required under paragraph (b)(1) of this section for all contributions included in the letter request, as well as those contributions submitted for matching in that submission. A committee may not submit two consecutive letter requests, but the committee may choose to make a full regular submission on a date designated by the Commission as a letter request date for that committee.

(c) *Certification of Additional Payments by Commission.* (1)(i) When a candidate who is eligible under 11 CFR 9033.4 submits an additional submission for payment in the Presidential election year, the Commission may certify to the Secretary within 5 business days after the Commission's receipt of information submitted by the candidate under paragraph (a) of this section, an amount based on the holdback procedure described in the Federal Election Commission's Guideline for Presentation in Good Order. If the candidate makes a letter request, the Commission may certify to the Secretary an amount which is less than that requested based upon the ratio of verified matchable contributions to total deposits for that committee in the committee's last regular submission.

(ii) The Commission will certify to the Secretary any additional amount to which the eligible candidate is entitled, if any, within 15 business days after the Commission's receipt of information submitted by the candidate under paragraph (a) of this section unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 15% of the amount requested. In the latter case, the Commission will certify any additional amount within 25 business days. See 11 CFR 9036.4 for Commission procedures for certification of additional payments.

(2) After a candidate's date of ineligibility, the Commission will certify to the Secretary within 15 business days after receipt of a submission by the candidate under paragraph (a) of this section, an amount to which the ineligible candidate is entitled in accordance with 11 CFR 9034.1(b), unless the projected dollar value of the nonmatchable contributions contained in the submission exceeds 15% of the amount requested. In the latter case, the Commission will certify any amount to which the ineligible candidate is entitled within 25 business days.

(d) *Additional Submissions Submitted in Non-Presidential Election Year.* The

candidate may submit additional contributions for review during the year preceding the Presidential election year; however, the amount of each submission made during this period must exceed \$50,000. Additional submissions filed by a candidate in a non-Presidential election year will not result in payment of matching funds to the candidate until after January 1 of the Presidential election year.

§ 9036.3 Submission errors and insufficient documentation.

Contributions which are otherwise matchable may be rejected for matching purposes because of submission errors or insufficient supporting documentation. Contributions, other than those defined in 11 CFR 9034.3 or in the form of money orders, cashier's checks, or similar negotiable instruments, may become matchable if there is a proper resubmission in accordance with 11 CFR 9036.5 and 9036.6. Insufficient documentation or submission errors include but are not limited to:

(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 or date of the contribution, or the listing of the committee or candidate as payee.

(b) Discrepancies between listed contributions and the written instrument or supporting documentation, such as:

(1) The listed amount requested for matching exceeds the amount contained on the written instrument;

(2) A written instrument has not been submitted to support a listed contribution;

(3) The submitted written instrument cannot be associated either by account holder identification or signature with the listed contributor; or

(4) A discrepancy between the listed contribution and the supporting bank documentation or the bank documentation is omitted.

(c) Discrepancies within or between contributor lists submitted, such as:

(1) The address of the contributor is omitted or incomplete or the contributor's name is alphabetized incorrectly, or more than one contributor is listed per item;

(2) A discrepancy in aggregation within or between submissions which results in a request that more than \$250 be matched for that contributor, or a listing of a contributor more than once within the same submission; or

(3) A written instrument has been previously submitted and matched in full or is listed twice in the same submission.

(d) The omission of information, supporting statements, or documentation required by 11 CFR 9034.2.

§ 9036.4 Commission review of submissions.

(a) *Non-Acceptance of Submission for Review of Matchability.* The Commission will make an initial review of each submission made under 11 CFR Part 9036 to determine if it substantially meets the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order. If the Commission determines that a submission does not substantially meet these requirements, it will not review the matchability of the contributions contained therein. In such a case, the Commission will return the submission to the candidate and request that it be corrected in accordance with the format requirements. If the candidate makes a corrected submission within 3 business days after the Commission's return of the original, the Commission will review the corrected submission prior to the next regularly-scheduled submission date. Corrected submissions made after this three day period will be reviewed subsequent to the next regularly-scheduled submission date.

(b) *Acceptance of Submission for Review of Matchability.* If the Commission determines that a submission made under 11 CFR Part 9036 satisfies the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commission's Guideline for Presentation in Good Order, it will review the matchability of the contributions contained therein. The Commission, in conducting its review, may utilize statistical sampling techniques. Based on the results of its review, the Commission may calculate a matchable amount for the submission which is less than the amount requested by the candidate. If the Commission certifies for payment to the Secretary an amount that is less than the amount requested by the candidate in a particular submission, or reduces the amount of a subsequent certification to the Secretary by adjusting a previous certification made under 11 CFR 9036.2(c)(1), the Commission will notify the candidate in writing of the following:

(1) The amount of the difference between the amount requested and the amount to be certified by the Commission;

(2) The amount of each contribution and the corresponding contributor's name for each contribution that the Commission has rejected as nonmatchable and the reason that it is not matchable; or if statistical sampling is used, the estimated amount of contributions by type and the reason for rejection;

(3) The amount of contributions that have been determined to be matchable and that the Commission will certify to the Secretary for payment; and

(4) A statement that the candidate may supply the Commission with additional documentation or other information in the resubmission of any rejected contribution under 11 CFR 9036.5 in order to show that a rejected contribution is matchable under 11 CFR 9034.2.

(c) *Adjustment of Amount to be Certified by Commission.* The candidate shall notify the Commission as soon as possible if the candidate or the candidate's authorized committee(s) has knowledge that a contribution submitted for matching does not qualify under 11 CFR 9034.2 as a matchable contribution, such as a check returned to the committee for insufficient funds, so that the Commission may properly adjust the amount to be certified for payment.

(d) *Commission Audit of Submissions.* The Commission may determine, for the reasons stated in 11 CFR Part 9039, that an audit and examination of contributions submitted for matching payment is warranted. The audit and examination shall be conducted in accordance with the procedures of 11 CFR Part 9039.

§ 9036.5 Resubmissions.

(a) *Alternative Resubmission Methods.* Upon receipt of the Commission's notice of the results of the submission review pursuant to 11 CFR 9036.4(b), a candidate may choose to:

(1) Resubmit the entire submission; or

(2) Make a written request for the identification of the specific contributions that were rejected for matching, and resubmit those specific contributions.

(b) *Time for Presentation of Resubmissions.* If the candidate chooses to resubmit any contributions under paragraph (a) of this section, the contributions shall be resubmitted on dates to be determined and published by the Commission. The cutoff date for original submissions as provided by 11 CFR 9036.6 will not apply to resubmissions made under this section.

(c) *Format for Resubmissions.* All resubmissions filed by the candidate shall be made in accordance with the

Federal Election Commission's Guideline for Presentation in Good Order. In making a presentation of resubmitted contributions, the candidate shall follow the format requirements as specified in 11 CFR 9036.2(b)(1), except that:

(1) The candidate need not provide photocopies of written instruments, supporting documentation and bank documentation unless it is necessary to supplement the original documentation.

(2) Each resubmitted contribution shall be referenced to the submission in which it was first presented.

(3) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the original submission.

(4) Each list of resubmitted contributions shall reflect the aggregate amount of contributions submitted for matching from each contributor as of the date of the resubmission.

(5) Each list of resubmitted contributions shall only contain contributions previously submitted for matching and no new or additional contributions.

(6) Each resubmission shall be accompanied by a statement that the candidate has corrected his or her contributor records (including the data base for those candidates maintaining their contributor list on computer).

(d) *Certification of Resubmitted Contributions.* Contributions that the Commission determines to be matchable will be certified to the Secretary within 15 business days. If the candidate chooses to request the specific contributions rejected for matching pursuant to paragraph (a)(2) of this section, the amount certified shall equal only the matchable amount of the particular contribution that meets the standards on resubmission, rather than the amount projected as being nonmatchable based on that contribution due to the sampling techniques used in reviewing the original submission.

(e) *Interim Determinations.* If the candidate resubmits a contribution for matching and the Commission determines that the rejected contribution is still nonmatchable, 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 may submit written legal or factual materials to demonstrate that the contribution is matchable within 30 calendar days after receipt of the Commission's notice. Such materials

may be submitted by counsel if the candidate so desires.

(f) *Final Determinations.* The Commission will consider any written legal or factual materials timely submitted by the candidate in making its final determination. A final determination by the Commission that a contribution is not matchable will be accompanied by a written statement of reasons for the Commission's action. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

§ 9036.6 Continuation of certification.

Candidates who have received matching funds and who are eligible to continue to receive such funds may continue to submit additional submissions for payment to the Commission on dates specified in the Federal Election Commission's Guideline for Presentation in Good Order. No contribution will be matched if it is submitted for the first time after the last Monday in January of the year following the election, regardless of the date the contribution was 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: Pub. L. 93-443, title IV, sec. 408(c), 88 Stat. 1300 (26 U.S.C. 9037).

§ 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 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 will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary 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.

9038.4 Extensions of time.

Authority: Pub. L. 93-443, title IV, sec. 408(c), 88 Stat. 1300 (26 U.S.C. 9038).

§ 9038.1 Audit.

(a) *General.* (1) The Commission will conduct an audit of the qualified campaign expenses of every candidate and his or her authorized committee(s) who received Presidential primary matching funds. The audit may be conducted at any time after the date of the candidate's ineligibility.

(2) 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.

(3) Information obtained pursuant to any audit and examination conducted under paragraphs (a)(1) and (2) of this section may be used by the Commission as the basis, or partial basis, for its repayment determinations under 11 CFR 9038.2.

(b) *Conduct of Fieldwork.* (1) The Commission will give the candidate's authorized committee at least two weeks' notice of the Commission's intention to commence fieldwork on the audit and examination. The fieldwork shall be conducted at a site provided by the committee.

(i) *Office Space and Records.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall provide Commission staff with office space and committee records in accordance with the candidate and committee agreement under 11 CFR 9033.1(b)(6).

(ii) *Availability of Committee Personnel.* On the date scheduled for the commencement of fieldwork, the candidate or his or her authorized committee(s) shall have committee personnel present at the site of the fieldwork. Such personnel shall be familiar with the committee's records and operation and shall be available to Commission staff to answer questions and to aid in locating records.

(iii) *Failure to Provide Staff, Records or Office Space.* If the candidate or his or her authorized committee(s) fail to provide adequate office space, personnel or committee records, the

Commission may seek judicial intervention under 2 U.S.C. 437d or 28 U.S.C. 9040(c) to enforce the candidate and committee agreement made under 11 CFR 9033.1(b). Before seeking judicial intervention, the Commission will notify the candidate of his or her failure to comply with the agreement and will recommend corrective action to bring the candidate into compliance. Upon receipt of the Commission's notification, the candidate will have 10 calendar days in which to take the corrective action indicated or to otherwise demonstrate to the Commission in writing that he or she is complying with the candidate and committee agreement.

(iv) If, in the course of the audit process, a dispute arises over the documentation sought or other requirements of the candidate agreement, the candidate may seek review by the Commission of the issues raised. To seek review, the candidate shall submit a written statement, within 10 calendar days after the disputed Commission staff request is made, describing the dispute and indicating the candidate's proposed alternative(s).

(2) Fieldwork will include the following steps designed to keep the candidate and committee informed as to the progress of the audit and to expedite the process:

(i) *Entrance Conference.* At the outset of the fieldwork, Commission staff will hold an entrance conference, at which the candidate's representatives will be advised of the purpose of the audit and the general procedures to be followed. Future requirements of the candidate and his or her authorized committee, such as possible repayments to the United States Treasury, will also be discussed. Committee representatives shall provide information and records necessary to conduct the audit, and Commission staff will be available to answer committee questions.

(ii) *Review of Records.* During the fieldwork, Commission staff will review committee records and may conduct interviews of committee personnel. Commission staff will be available to explain aspects of the audit and examination as it progresses. Additional meetings between Commission staff and committee personnel may be held from time to time during the fieldwork to discuss possible audit findings and to resolve issues arising during the course of the audit.

(iii) *Exit Conference.* At the conclusion of the fieldwork, Commission staff will hold an exit conference to discuss with committee representatives the staff's preliminary findings and recommendations which the Commission staff anticipates that it may

present to the Commission for approval. Commission staff will advise committee representatives at this conference of the projected timetable regarding the issuance of an audit report, the committee's opportunity to respond thereto, and the Commission's initial and final repayment determinations under 11 CFR 9038.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to paragraph (b)(1) and (2) of this section. Factors that may necessitate such follow-up fieldwork include, but are not limited to, the following:

(i) Committee responses to audit findings;

(ii) Financial activity of the committee subsequent to the fieldwork conducted pursuant to paragraph (b)(1) of this section;

(iii) Committee responses to Commission repayment determinations made under 11 CFR 9038.2.

(4) The Commission will notify the candidate and his or her authorized committee if follow-up fieldwork is necessary. The provisions of paragraph (b)(1) and (2) of this section shall apply to any additional fieldwork conducted.

(c) *Preparation of Interim Audit Report.* (1) After the completion of the fieldwork conducted pursuant to paragraph (b)(1) of this section, the Commission will issue an interim audit report to the candidate and his or her authorized committee. The interim audit report may contain Commission findings and recommendations regarding one or more of the following areas:

(i) An evaluation of procedures and systems employed by the candidate and committee to comply with applicable provisions of the Federal Election Campaign Act, Primary Matching Payment Account Act and Commission regulations;

(ii) Eligibility of the candidate to receive primary matching payments;

(iii) Accuracy of statements and reports filed with the Commission by the candidate and committee;

(iv) Compliance of the candidate and committee with applicable statutory and regulatory provisions except for those instances where the Commission has instituted an enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR Part 111; and

(v) Preliminary calculations regarding future repayments to the United States Treasury.

(2) The candidate and his or her authorized committee will have an opportunity to submit, in writing, within 30 calendar days of receipt of the interim report, legal and factual

materials disputing or commenting on the contents of the interim report. Such materials may be submitted by counsel if the candidate so desires.

(3) The Commission will consider any written legal and factual materials submitted by the candidate or his or her authorized committee in accordance with paragraph (c)(2) of this section before approving and issuing an audit report to be released to the public. The contents of the publicly-released audit report may differ from that of the interim report since the Commission will consider timely submissions of legal and factual materials by the candidate or committee in response to the interim report.

(d) *Preparation of Publicly-Released Audit Report.* An audit report prepared subsequent to an interim report will be publicly released pursuant to paragraph (e) of this section. This report will contain Commission findings and recommendations addressed in the interim audit report but may contain adjustments based on the candidate's response to the interim report. In addition, this report will contain an initial repayment determination made by the Commission pursuant to 11 CFR 9038.2(c)(1) in lieu of the preliminary calculations set forth in the interim report.

(e) *Public Release of Audit Report.* (1) After the candidate and committee have had an opportunity to respond to a written interim report of the Commission, the Commission will make public the audit report prepared subsequent to the interim report, as provided in paragraph (d) of this section.

(2) If the Commission determines, on the basis of information obtained under the audit and examination process, that certain matters warrant enforcement under 2 U.S.C. 437g and 11 CFR Part 111, those matters will not be contained in the publicly-released report. In such cases, the audit report will indicate that certain other matters have been referred to the Commission's Office of General Counsel.

(3) The Commission will provide the candidate and committee copies of the audit report 24 hours prior to releasing the report to the public.

(4) Addenda to the audit report may be issued from time to time as circumstances warrant and as additional information becomes available. Such addenda may be based, in part, on follow-up fieldwork conducted under paragraph (b)(3) of this section, and will be placed on the public record.

§ 9038.2 Repayments.

(a) *General.* (1) A candidate who has received payments from the matching payment account shall pay the United States Treasury any amounts which the Commission determines to be repayable under this section. In making repayment determinations under this section, the Commission may utilize information obtained from audits and examinations conducted pursuant to 11 CFR 9038.1 and Part 9039 or otherwise obtained by the Commission in carrying out its responsibilities under this subchapter.

(2) The Commission will notify the candidate of any repayment determinations made under this section as soon as possible, but not later than 3 years after the end of the matching payment period.

(3) Once the candidate receives notice of the Commission's final repayment determination under this section, the candidate should give preference to the repayment over all other outstanding obligations of his or her committee, except for any federal taxes owed by the committee.

(b) *Bases for Repayment.*—(1) *Payments in Excess of Candidate's Entitlement.* The Commission may determine that certain portions of the payments made to a candidate from the matching payment account were in excess of the aggregate amount of payments to which such candidate was entitled. Examples of such excessive payments include, but are not limited to, the following:

(i) Payments made to the candidate after the candidate's date of ineligibility where it is later determined that the candidate had no net outstanding campaign obligations as defined in 11 CFR 9034.5;

(ii) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the operation of the Commission's expedited payment procedures as set forth in the Federal Election Commission's Guideline For Presentation In Good Order;

(iii) Payments or portions of payments made on the basis of matched contributions later determined to have been non-matchable; and

(iv) Payments or portions of payments made to the candidate which are later determined to have been excessive due to the candidate's failure to include funds received by a fundraising representative committee under 11 CFR 9034.8 on the candidate's statement of net outstanding campaign obligations under 11 CFR 9034.5.

(2) *Use of Funds For Non-Qualified Campaign Expenses.*

(i) The Commission may determine that amount(s) of any payments made to a candidate from the matching payment account, or contributions received by the candidate, were used for purposes other than those set forth in (A)-(C) below:

(A) Defrayal of qualified campaign expenses;

(B) Repayment of loans which were used to defray qualified campaign expenses; and

(C) Restoration of funds (other than contributions which were received and expended to defray qualified campaign expenses) which were used to defray qualified campaign expenses.

(ii) Examples of Commission repayment determinations under paragraph (b)(2) of this section include, but are not limited to, the following:

(A) Determinations that a candidate, a candidate's authorized committee(s) or agents have made expenditures in excess of the limitations set forth in 11 CFR 9035;

(B) Determinations that funds described in paragraph (b)(2)(i) were expended in violation of state or federal law; and

(C) Determinations that funds described in paragraph (b)(2)(i) were expended for expenses resulting from a violation of state or federal law, such as the payment of fines or penalties.

(3) *Failure to Provide Adequate Documentation.* The Commission may determine that amount(s) spent by the candidate, the candidate's authorized committee(s), or agents were not documented in accordance with 11 CFR 9033.11.

(4) *Surplus.* The Commission may determine that the candidate's net outstanding campaign obligations, as defined in 11 CFR 9034.5, reflect a surplus.

(c) *Repayment Determination Procedures.* Commission repayment determinations will be made in accordance with procedures set forth at paragraphs (c) (1) through (4) of this section.

(1) *Initial Determination.* The Commission will provide the candidate with a written notice of its initial repayment determination(s). This notice will be included in the Commission's publicly-released audit report, pursuant to 11 CFR 9038.1(d), and will set forth the legal and factual reasons for such determination(s). Such notice will also advise the candidate of the evidence upon which any such determination is based. If the candidate does not dispute an initial repayment determination of the Commission within 30 calendar days of the candidate's receipt of the notice, such initial determination will be

considered a final determination of the Commission.

(2) *Submission of Written Materials.* If the candidate disputes the Commission's initial repayment determination(s), he or she shall have an opportunity to submit in writing, within 30 calendar days of receipt of the Commission's notice, legal and factual materials to demonstrate that no repayment, or a lesser repayment, is required. The Commission will consider any written legal and factual materials submitted by the candidate within this 30 day period in making its final repayment determination(s). Such materials may be submitted by counsel if the candidate so desires.

(3) *Oral Presentation.* A candidate who has submitted written materials under paragraph (c)(2) of this section may request that the Commission provide such candidate with an opportunity to address the Commission in open session. If the Commission decides by an affirmative vote of four (4) of its members to grant the candidate's request, it will inform the candidate of the date and time set for the oral presentation. At the date and time set by the Commission, the candidate or candidate's designated representative will be allotted an amount of time in which to make an oral presentation to the Commission based upon the legal and factual materials submitted under paragraph (c)(2) of this section. The candidate or representative will also have the opportunity to answer any questions from individual members of the Commission.

(4) *Final Determination.* In making its final repayment determination(s), the Commission will consider any submission made under paragraph (c)(2) of this section and any oral presentation made under paragraph (c)(3) of this section. A final determination that a candidate must repay a certain amount will be accompanied by a written statement of reasons for the Commission's actions. This statement will explain the reasons underlying the Commission's determination and will summarize the results of any investigation upon which the determination is based.

(d) *Repayment Period.* (1) Within 90 calendar days of the candidate's receipt of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 calendar days in which to make repayment.

(2) If the candidate submits written materials under paragraph (c)(2) of this section disputing the Commission's initial repayment determination(s), the time for repayment will be suspended until the Commission makes its final repayment determination(s). Within 20 calendar days of the candidate's receipt of the notice of the Commission's final repayment determination(s), the candidate shall repay to the Secretary amounts which the Commission has determined to be repayable. Upon application by the candidate, the Commission may grant an extension of up to 90 days in which to make repayment.

(e) *Computation of Time.* The time periods established by this section shall be computed in accordance with 11 CFR 111.2.

(f) *Additional Repayments.* Nothing in this section will prevent the Commission from making additional repayment determinations on one or more of the bases set forth at paragraph (b) of this section after it has made a final determination on any such basis. The Commission may make additional repayment determinations where there exist facts not used as the basis for a previous final determination. Any such additional repayment determination will be made in accordance with the provisions of this section.

(g) *Newly-Discovered Assets.* If, after any initial or final repayment determination made under this section, a candidate or his or her authorized committee(s) receives or becomes aware of assets not previously included in any statement of net outstanding campaign obligations submitted pursuant to 11 CFR 9034.5, the candidate or his or her authorized committee(s) shall promptly notify the Commission of such newly-discovered assets. Newly-discovered assets may include refunds, rebates, late-arriving receivables, and actual receipts for capital assets in excess of the value specified in any previously-submitted statement of net outstanding campaign obligations. Newly-discovered assets may serve as a basis for additional repayment determinations under paragraph (f) of this section.

§ 9038.3 Liquidation of obligations; repayment.

(a) The candidate may retain amounts received from the matching payment account for a period not exceeding 6 months after the matching payment period 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 calendar days of the ineligibility date repay to the Secretary 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.

(3) Notwithstanding the payment of any amounts to the United States Treasury under this section, the Commission may make surplus repayment determination(s) which require repayment in accordance with 11 CFR 9038.2.

§ 9038.4 Extensions of time.

(a) It is the policy of the Commission that extensions of time under 11 CFR Part 9038 shall not be routinely granted.

(b) Whenever a candidate has a right or is required to take action within a period of time prescribed by 11 CFR Part 9038 or by notice given thereunder, the candidate may apply in writing to the Commission for an extension of time in which to exercise such right or take such action. The candidate shall demonstrate in the application for extension that good cause exists for his or her request.

(c) An application for extension of time shall be made at least 7 calendar days prior to the expiration of the time period for which the extension is sought. The Commission may, upon a showing of good cause, grant an extension of time to a candidate who has applied for such extension in a timely manner. The length of time of any extension granted hereunder will be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application.

(d) If a candidate fails to seek an extension of time, exercise a right or take a required action prior to the expiration of a time period prescribed by 11 CFR Part 9038 the Commission may, on the candidate's showing of excusable neglect:

(1) Permit such candidate to exercise his or her right(s), or take such required action(s) after the expiration of the prescribed time period; and

(2) Take into consideration any information obtained in connection with the exercise of any such right or taking of any such action before making decisions or determinations under 11 CFR Part 9038.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

Sec.

9039.1 Retention of books and records.

9039.2 Continuing review.

9039.3 Examinations and audits; investigations.

Authority: Pub. L. 93-443, title IV, sec. 408(c), 88 Stat. 1301, as amended by Pub. L. 94-283, title III, sec. 304(b), 90 Stat. 499 (26 U.S.C. 9039).

§ 9039.1 Retention of books and records.

The candidate and his or her authorized committee(s) shall keep all books, records and other information required under 11 CFR 9033.11, 9034.2 and Part 9036 for a period of three years pursuant to 11 CFR 102.9(c) and shall furnish such books, records and information to the Commission on request.

§ 9039.2 Continuing review.

(a) In reviewing candidate submissions made under 11 CFR Part 9036 and in otherwise carrying out its responsibilities under this subchapter, the Commission may routinely consider information from the following sources:

(1) Any and all materials and communications which the candidate and his or her authorized committee(s) submit or provide under 11 CFR Part 9036 and in response to inquiries or requests of the Commission and its staff;

(2) Disclosure reports on file with the Commission; and

(3) Other publicly available documents.

(b) In carrying out the Commission's responsibilities under this subchapter, Commission staff may contact representatives of the candidate and his or her authorized committee(s) to discuss questions and to request documentation concerning committee activities and any submission made under 11 CFR Part 9036.

§ 9039.3 Examinations and audits; investigations.

(a) *General.* (1) The Commission will consider information obtained in its continuing review under 11 CFR 9039.2 in making any certification, determination or finding under this subchapter. If the Commission decides by an affirmative vote of four of its members that additional information must be obtained in connection with any such certification, determination or

finding, it will conduct a further inquiry. A decision to conduct an inquiry under this section may be based on information that is obtained under 11 CFR 9039.2, received by the Commission from outside sources, or otherwise ascertained by the Commission in carrying out its supervisory responsibilities under the Presidential Primary Matching Payment Account Act and the Federal Election Campaign Act.

(2) An inquiry conducted under this section may be used to obtain information relevant to candidate eligibility, matchability of contributions and repayments to the United States Treasury. Information obtained during such an inquiry may be used as the basis, or partial basis, for Commission certifications, determinations and findings under 11 CFR Parts 9033, 9034, 9036 and 9038. Information thus obtained may also be the basis of, or be considered in connection with, an investigation under 2 U.S.C. 437g and 11 CFR Part 111.

(3) Before conducting an inquiry under this section, the Commission will attempt to obtain relevant information under the continuing review provisions of 11 CFR 9039.2. Matching payments will not be withheld pending the results of an inquiry under this section unless the Commission finds patent irregularities suggesting the possibility of fraud in materials submitted by, or in the activities of, the candidate or his or her authorized committee(s).

(b) *Procedures.* (1) The Commission will notify the candidate of its decision to conduct an inquiry under this section. The notice will summarize the legal and factual basis for the Commission's decision.

(2) The Commission's inquiry may include, but is not limited to, the following:

- (i) A field audit of the candidate's books and records;
- (ii) Field interviews of agents and representatives of the candidate and his or her authorized committee(s);
- (iii) Verification of reported contributions by contacting reported contributors;
- (iv) Verification of disbursement information by contacting reported vendors;
- (v) Written questions under order;
- (vi) Production of documents under subpoena;
- (vii) Depositions.

(3) The provisions of 2 U.S.C. 437g and 11 CFR Part 111 will not apply to inquiries conducted under this section except that the provisions of 11 CFR 111.12 through 111.15 shall apply to any orders or subpoenas issued by the Commission.

Dated: January 24, 1983.

Lee Ann Elliott,
Vice Chairman, Federal Election
Commission.

[FR Doc. 83-2268 Filed 2-3-83; 8:45 am]

BILLING CODE 6716-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 157

[Docket No. RM81-19]

Publication of Project Cost Limits Under Blanket Certificates

AGENCY: Federal Energy Regulatory
Commission DOE.

ACTION: Order of the Director, OPRR.

SUMMARY: Pursuant to the authority delegated by 18 CFR 375.307(t), the Director of the Office of Pipeline and Producer Regulation computes and publishes natural gas pipeline project cost and annual dollar limits specified in Table I of 157.208(d) and Table II of 157.215(a) for each calendar year.

EFFECTIVE DATE: January 1, 1983.

FOR FURTHER INFORMATION CONTACT:
Kenneth A. Williams, Director, OPRR,
(202) 357-8500.

SUPPLEMENTARY INFORMATION:

Section 157.208(d) of the Commission's Regulations provides for project cost limits applicable to construction, acquisition, operation and miscellaneous rearrangement of facilities (Table I) authorized under the blanket certificate procedure (Order No. 234, 19 FERC ¶ 81,216). Section 157.215(a) specifies the calendar year dollar limit which may be expended on underground storage testing and development (Table II) authorized under the blanket certificate. Section 157.208(d) requires that the "limits specified in Tables I and II shall be adjusted each calendar year to reflect the 'GNP implicit price deflator' published by the Department of Commerce for the previous calendar year."

Pursuant to § 375.307(t) of the Commission's Regulations, the authority for the publication of such cost limits, as adjusted for inflation, is delegated to the Director of the Office of Pipeline and Producer Regulation. The cost limits for calendar years 1982 and 1983, as published in Table I of § 157.208(d) and Table II of § 157.215(a), are hereby issued.

List of Subjects in 18 CFR Part 157

Natural gas.

Issued: January 28, 1983.

Kenneth A. Williams,
Director, Office of Pipeline and Producer
Regulation.

TABLE I

Year:	Limit	
	Auto. project cost limit (col. 1)	Prior notice project cost limit (col. 2)
1982	\$4,200,000	\$12,000,000
1983	4,500,000	12,800,000

TABLE II

Year:	Limit
1982	\$2,700,000
1983	2,900,000

[FR Doc. 83-3004 Filed 2-3-83; 8:45 am]

BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 5

Delegations of Authority and Organization; Director, Bureau of Foods, et al.

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the regulations for delegations of authority on food- and color-related matters to update current delegations and add new delegations to Bureau of Foods' officials. The new delegations of authority will expedite the administrative handling of certain routine actions.

EFFECTIVE DATE: February 4, 1983.

FOR FURTHER INFORMATION CONTACT:
Robert L. Miller, Office of Management
and Operations (HFA-340), Food and
Drug Administration, 5600 Fishers Lane,
Rockville, MD 20857, 301-443-4976.

SUPPLEMENTARY INFORMATION: In § 5.31 (21 CFR 5.31) a new paragraph (e) is added delegating to the Director and Deputy Director of the Bureau of Foods the authority to issue 180-day tentative responses to citizen petitions on food matters under § 10.30(e)(2)(iii) (21 CFR 10.30(e)(2)(iii)).

In § 5.61 (21 CFR 5.61) the section heading is revised, and the introductory