

RECORD

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REGULATIONS

FEC PRESCRIBES TECHNICAL AMENDMENTS TO RULES FOR PUBLIC FUNDING OF PRESIDENTIAL NOMINATING CONVENTIONS

On July 21, 1983, the Commission prescribed technical conforming amendments to its regulations governing public funding of Presidential nominating conventions. 11 CFR Part 9008. Since the conforming amendments were not a substantive rule representing an FEC policy decision, they were not submitted for Congressional review but became effective upon publication in the Federal Register on July 21 (48 Fed. Reg. 33244).

Copies of the Federal Register notice may be obtained by writing the FEC's Public Communications Office, 1325 K Street, N.W., Washington, D.C. 20463 or by calling: 202/523-4068 or toll free 800/424-9530.

Changes Consistent With 1979 Amendments to the Act

To conform with 1979 amendments to the election law, the modified rules:

- Increase the amount of convention financing available to major and minor political parties from \$2 million to \$3 million (plus a cost-of-living adjustment); and
- Modify the convention committee's* requirements for documenting expenditures so that the requirements apply only to those expenditures exceeding \$200 (formerly \$100) and not to aggregate expenditures to the same payee (as formerly required).

Use of New Term: "Metropolitan Statistical Area"

The amended rules incorporate, where appropriate, the new term used by the Office of Management and Budget to define a metropolitan area, that is, "metropolitan statistical area" (formerly "standard metropolitan statistical area").

*To establish eligibility for a convention grant, the national committee of a political party must register a convention committee, in addition to meeting all the other eligibility requirements. See Part 9008 of FEC Regulations.

1984 PRIMARY DATES AVAILABLE

A state-by-state listing of 1984 primary election dates is now available from the FEC's Public Communications Office. Covering both Presidential and Congressional primaries, the list is based on information obtained from Secretaries of State. It also includes state filing deadlines for primary candidates seeking ballot access. The list, still not complete, will be updated periodically as new information becomes available. To obtain a copy, or for more information, contact the Public Communications Office at 202/523-4068 or toll free 800/424-9530.

For example, the amendments specify that a business located within the same metropolitan statistical area as the convention city is considered a local business, eligible to sell promotional items to convention attendees.

GENERAL ELECTION REGULATIONS SENT TO CONGRESS

On July 1, 1983, the Commission transmitted to Congress revised regulations governing the public financing of Presidential general election campaigns. The revised regulations contain clarifications based on the Commission's experience in administering the public funding of the 1980 general election. They also ensure that the rules governing general election campaigns are consistent with recent revisions to the FEC's primary matching fund regulations. (For a summary of those regulations, see page 1 of the March 1983 Record.) Moreover, the proposed rules add new provisions to cover aspects of the Presidential general election process not previously addressed in the regulations.

The regulations governing the public funding of Presidential general election campaigns were published in the Federal Register on April 4, 1983 (48 Fed. Reg. 14532). They may be prescribed 30 legislative days after their transmittal to Congress. The following paragraphs highlight the major modifications. Readers should not rely sole-

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ADVISORY OPINION REQUESTS

The following chart lists recent requests for advisory opinions (AORs). The full text of each AOR is available to the public in the Commission's Office of Public Records.

AOR	Subject
1983-19	Administrative expenses of joint venture corporation's PAC absorbed by parent corporation; affiliation of PAC with parent corporation's PAC. (Date made public: July 12, 1983; Length: 4 pages, plus 43-page supplement)
1983-20	Independent expenditures (in excess of \$1,000) made by unauthorized committee to oppose election of publicly funded Presidential nominee. (Date made public: July 6, 1983; Length: 2 pages)

ADVISORY OPINIONS: SUMMARIES

An Advisory Opinion (AO) issued by the Commission provides guidance with regard to the specific situation described in the AOR. Any qualified person who has requested an AO and acts in accordance with the opinion will not be subject to any sanctions under the Act. Other persons may rely on the opinion if they are involved in a specific activity which is indistinguishable in all material aspects from the activity discussed in the AO. Those seeking guidance for their own activity, however, should consult the full text of an AO and not rely only on the summary given here.

AO 1983-16: Party Expenditures in Special General Election and Runoff Election

The national and state committees of Mrs. Sala Burton's party could each have made special limited (§441a(d)) expenditures on her behalf in a California special election held on June 21. Each committee had a separate spending limit. If a runoff election had been held (because no candidate obtained a majority of the votes in the

special election), the national and state party committees would each have had a single limit for both elections, regardless of the number of candidates they supported.

The election law permits party committees to make these special limited expenditures on behalf of their Congressional candidates in general elections. 2 U.S.C. §441a(d). Commission Regulations define a "general election" as one held to make the final selection of one individual to fill a federal office. 11 CFR 100.2(b)(2). The June 21 special election met this requirement. The August 16 runoff election would have been a continuation of the June general election because the candidates would have been limited to those who ran in the June 21 election. 11 CFR 100.2(d)(2). Consequently, one limit would have applied to expenditures made in both elections.

For purposes of donors' contribution limits, however, the elections would have been considered separate elections because a separate contribution limit applies with respect to "any election," regardless of what type it is. 2 U.S.C. §441a(a).

The Commission noted that this opinion superseded an opinion of counsel (OC 1976-7), in which the Commission had concluded that a special election in Texas did not qualify as a general election because several candidates from each major party entered the race. (Date issued: June 10, 1983; Length: 5 pages)



FEDERAL REGISTER NOTICES

The item below identifies an FEC document that appeared in the Federal Register on August 22, 1983. Copies of the notice are available in the Public Records Office.

Notice	Title
1983-21	11 CFR Part 102: Transfer of Funds; Collecting Agents, Joint Fundraising (Announcement of Effective Date for Final Rules) (48 Fed. Reg. 37921)

The Record is published by the Federal Election Commission, 1325 K Street, N.W., Washington, D.C. 20463. Commissioners are: Danny Lee McDonald, Chairman; Lee Ann Elliott, Vice Chairman; Joan D. Aikens; Thomas E. Harris; John Warren McGarry; Frank P. Reiche; William F. Hildenbrand, Secretary of the Senate, Ex Officio; Benjamin J. Guthrie, Clerk of the House of Representatives, Ex Officio. For more information, call 202/523-4068 or toll-free 800/424-9530.

REGULATIONS

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ly on this summary; instead, they should consult the full text of 11 C.F.R. Parts 9001-9007 and 9012.

Candidate Eligibility: Candidate Agreements and Certifications

The revised rules consolidate under one section of the regulations all those conditions to which a candidate and his/her authorized committee(s) must agree in order to be eligible for public funds.* Consistent with recent revisions to the primary matching fund regulations, the proposed rules also add new provisions under which a candidate must agree that:

- The candidate has the burden of proving that disbursements made by his/her campaign are qualified campaign expenses;
- The candidate and his/her authorized committee(s) will comply with the documentation requirements; and
- The candidate and his/her authorized committee(s) will provide any other explanations needed to determine the connection between the campaign and disbursements made by the candidate or his/her authorized committee(s).

Certification Of Payments To Minor and New Party Candidates

Under the Presidential Election Campaign Fund Act (the Fund Act), new or minor party candidates may become eligible for partial public funding after the general election if they received between 5 and 25 percent of the total popular votes cast in the election. In a subsequent Presidential election, they may receive partial public funding prior to the general election, provided they meet certain eligibility requirements. The revised rules clarify the eligibility requirements for minor and new party candidates who seek public funding (before or after the general election) and spell out procedures for certifying payments. For example, the new rules establish deadlines for certifying post-election funds and stipulate, as a condition of receiving post-election

*All the requirements that candidates must agree to comply with to be eligible for public funds are spelled out in Part 9003 of FEC Regulations. Note that, since minor or new party candidates may receive partial public funding, the law permits them to supplement public funds with private contributions. Those candidates, however, are otherwise subject to the same requirements, including spending limits, which apply to major party candidates.

public funding, that the candidate file a preliminary statement of net outstanding qualified campaign expenses.

Qualified vs. Nonqualified Campaign Expenses

Under the election law, candidates who accept a public grant for their election campaigns must use the federal funds exclusively for qualified campaign expenses. They must also limit spending to the amount of the grant (\$20 million, plus a cost-of-living adjustment). The suggested revisions clarify the types of expenditures that would be considered qualified or nonqualified campaign expenses. For example, they make clear that qualified campaign expenses include:

- Expenditures made on behalf of a candidate by an unauthorized political committee but which are requested by the candidate or his/her campaign. (The candidate's request for the expenditures need not be in writing.)
- Expenditures incurred before or after the expenditure report period which, nevertheless, meet the definition of a qualified campaign expense as spelled out in Section 9004.4(a) of the regulations.

Conversely, a new provision states that, if a campaign invests its public funds, any net loss resulting from the investment is a nonqualified campaign expense, which the campaign must repay to the U.S. Treasury.

Expenses for Secret Service and Other Security Personnel

Government regulations (other than FEC rules) govern payment of expenses incurred by Secret Service or other authorized personnel who must, for national security reasons, travel with a campaign. The FEC's revised rules therefore delete provisions governing the campaign's payment of these expenses and subsequent reimbursement for them.

Campaign's Use of Government Transportation

The proposed rules modify the method of allocating travel costs incurred by candidates who use government transportation. For example, rather than paying the actual cost of using a government aircraft (e.g., Air Force I), the candidate must instead pay the equivalent of first-class commercial fare or commercial charter fare.

Personal Funds

Under the Fund Act, a publicly funded general election candidate may spend personal funds of up to \$50,000 for any campaign expenditures. These expenditures are exempt from the candi-

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date's spending limit. Consistent with recent revisions to FEC rules governing a candidate's use of property in which his or her spouse has an interest, the revised regulations allow a candidate to use, as "personal funds," his or her portion of assets jointly owned with a spouse.

Legal and Accounting Compliance Fund

Although a publicly funded major party candidate may not, under the law, use private contributions to defray qualified campaign expenses, the candidate may accept private contributions and place them in a separate fund (i.e., compliance fund) used solely to ensure that the campaign complies with the law and FEC Regulations. (Disbursements from the compliance fund are exempt from the spending limit, provided they are used solely for compliance-related costs.) Under the proposed rules, publicly funded minor and new party candidates are not required to establish a separate compliance fund. Instead, they may combine in one account public funds and private contributions used to defray both qualified campaign expenses and compliance activities.

The regulations also stipulate the rules governing compliance funds established by publicly funded candidates of major parties. The new rules clarify the types of receipts that may be deposited in a compliance fund and the types of payments that may be made from the fund.

Exempt Administrative Expenses

Following the primary matching fund regulations, the revised rules specify that minor and new party candidates (as well as major party candidates who have not received full public funding due to a deficiency in the Presidential Campaign Fund) may exclude a portion of their operating expenditures from the spending limit.* A campaign may allocate a portion of these operating expenditures (e.g., payroll and overhead costs) to its compliance fund and to the limited exemption for fundraising costs.

Candidate's Withdrawal From the Campaign

Under the current regulations, candidates who withdraw from active campaigning must file a statement of withdrawal. The suggested revisions shorten the filing deadline from 60 to 30 days.

Candidate's Statement of Net Outstanding Qualified Campaign Expenses

Consistent with past Commission practice, a new provision spells out the requirements for filing statements for net outstanding qualified campaign expenses once the campaign is over. The filing deadlines vary for candidates depending on whether they withdraw from active campaigning or seek post-election public funding. (Candidates seeking post-election funding must also file a preliminary statement showing their financial status, which the Commission will use to determine their entitlement to public funds.)

Sale of Assets Acquired For Fundraising

Consistent with a new provision in the primary matching fund regulations, the amended general election regulations permit publicly funded campaigns to sell fundraising assets. The amount paid is normally considered a contribution subject to the law's limits and prohibitions. Under one exception, however, purchase of fundraising assets does not result in a contribution. If outstanding debts* exceed cash-on-hand at the end of the expenditure reporting period, minor or new party candidates (or major party candidates who have not received full public funding due to a deficiency in the Presidential Campaign Fund) may sell assets acquired for fundraising purposes to a wholesaler or other intermediary. The intermediary may, in turn, sell the assets to the public. The proposed rules specify that, in this limited case, the sale proceeds do not count as campaign contributions from either the wholesaler or the purchaser.

Documentation of Disbursements

As in the Commission's primary matching fund regulations, proposed revisions to the general election regulations require the candidate to retain records of receipts and disbursements for three years and to present these records to the Commission upon request. (Records may include, for example, campaign vouchers, worksheets, receipts and bills.)

Audit Authority

Consistent with revisions to the primary matching fund regulations, the proposed rules for general election campaigns clarify the Commission's statutorily mandated authority to conduct audits of publicly funded campaigns. They describe the audit process, including audit fieldwork and the preparation, content and public release of audit reports.

*A major party candidate who has received full public funding may also exclude a portion of the campaign's operating expenditures from the spending limit by allocating them to the compliance fund.

*Outstanding debts may consist only of qualified campaign expenditures. They may not include compliance costs.

Repayments

Again following the primary matching fund regulations, the revised rules stipulate that campaigns submitting written statements to contest a repayment determination may also be granted an oral hearing upon an affirmative vote of four Commissioners.

Unauthorized Expenditures and Contributions

In conformance with Section 9012 of the Presidential Election Campaign Fund Act (the Fund Act), several new provisions describe trans-

actions that are unlawful under the Fund Act. For example, they stipulate that publicly funded Presidential candidates and nominating conventions may not knowingly and willfully: exceed their respective spending limits; accept private contributions (if specifically prohibited); use public funds for nonqualified expenses; falsify campaign or convention records or fail to furnish records if requested by the FEC. Finally, the proposed rules would impose a \$1,000 limit on expenditures made by an unauthorized committee to further the election of a publicly funded Presidential nomi-

*continued***STATUS OF FEC REGULATIONS SENT TO CONGRESS**

Regulations*	Date Sent to Congress	Federal Register Publication	Date Prescribed** by the Commission
11 CFR 100.7(a)(1)(i)(C), 100.7(b)(11), 100.8(b)(12), 110.10(b) and 9003.2(c)(3) Candidate's Use of Property in Which Spouse Has an Interest	4/22/83	4/27/83 48 <u>Fed. Reg.</u> 19019	7/1/83
11 CFR 102.6 and 102.17 Transfer of Funds; Collecting Agents, Joint Fundraising	6/2/83	6/7/83 48 <u>Fed. Reg.</u> 26296	8/22/83
11 CFR 110.11 Disclaimer Notices	2/25/83	3/2/83 48 <u>Fed. Reg.</u> 8809	5/13/83
11 CFR 110.12(a)(2) - (a)(4) Annual Honoraria Limit	NA	4/8/82 47 <u>Fed. Reg.</u> 15098	4/8/82
11 CFR 114.3 and 114.4 Communications by Corporations and Labor Organizations	3/1/83 (withdrawn to obtain further public comment, 4/22/83)	3/4/83 48 <u>Fed. Reg.</u> 9236; 4/22/83 48 <u>Fed. Reg.</u> 17567	
11 CFR 106 and 9031 - 9039 Presidential Primary Matching Fund	1/24/83	2/4/83 48 <u>Fed. Reg.</u> 5224	4/4/83
11 CFR 9001 et seq. General Election Campaign Fund	7/1/83	7/11/83 48 <u>Fed. Reg.</u> 31822	
11 CFR Part 9008 Fund for Presidential Nominating Conventions	NA	7/21/83 48 <u>Fed. Reg.</u> 33244	7/21/83

*The chart is cumulative, listing all amendments to the FEC Regulations proposed after the 1981 edition of 11 CFR was published, including any technical amendments.

**The Commission may prescribe its regulations 30 legislative days after it has transmitted them to Congress.

nee. However, the provision specifically exempts from the \$1,000 limit news stories and editorials produced by news media and partisan communications made by tax-exempt corporations to their members.

FEC PRESCRIBES RULES ON COLLECTING AGENTS AND JOINT FUNDRAISING

On August 22, 1983, the Commission prescribed revised regulations governing transfers of funds, collecting agents and joint fundraising. 11 CFR 102.6 and 102.17. The revised rules make a distinction between two situations: **joint fundraising**, i.e., fundraising conducted by two or more committees that are not separate segregated funds, and **collecting agents**, i.e., certain organizations which may collect and transfer contributions to separate segregated funds. The revised regulations provide a complete set of procedures for both situations. A copy of the new regulations is available, upon request, from the Public Communications Office. Call 202/523-4068 or, toll free, 800/424-9530.

AUDITS

AUDITS RELEASED TO THE PUBLIC

The following is a chronological listing of audits released by the Commission between January 25, 1983, and July 29, 1983. The audit reports are available to the general public in the Public Records Office.

1. California Republican Party (final audit report released January 25, 1983)
2. North Carolina Republican Executive Committee (final audit report released March 28, 1983)
3. Bell for Senate Committee, Inc. -- '82 (final audit report released April 15, 1983)
4. Murer for Congress Committee (final audit report released May 9, 1983)
5. National Committee for an Effective Congress (final audit report released July 1, 1983)
6. Young Republican National Federation (final audit report released July 26, 1983)
7. Life Amendment Political Action Committee, Inc. (final audit report released July 29, 1983)
8. Friends of J. T. Quigg for Congress (final audit report released July 29, 1983)

PROCEDURES

PROCEDURES FOR PRESCRIBING FEC REGULATIONS

In response to the Supreme Court's June 23, 1983, decision in Immigration and Naturalization Service v. Chadha (Chadha), the Commission adopted on June 28, 1983, a recommendation by the General Counsel regarding its procedures for prescribing new or revised regulations. FEC Agenda Document No. 83-104. The Commission will continue to submit its regulations to Congress for review and will wait 30 legislative days (or 10 days for FEC reporting forms) before prescribing them. (See 2 U.S.C. §438(d) and 26 U.S.C. §§9009(c) and 9039(c).)

Underlying the Commission's recent action was the Supreme Court's holding in the Chadha case concerning the unconstitutionality of the legislative veto provision in the Immigration and Naturalization Act of 1952 (INA). Under the INA provision, either House of Congress had the right to veto an Immigration and Naturalization Service decision involving the suspension of an alien's deportation. The Court held that the veto provision was invalid because Congress' legislative powers were limited to those contained in Article I, Section 2, of the Constitution. The Court found that Congress' use of the legislative veto constituted an impermissible exercise of its powers. The Justices concluded that the veto allowed Congress to make law without a vote by both Houses and it allowed Congress to circumvent the President's veto power.

Consistent with the Court's decision in the Chadha case, the General Counsel concluded that, if a similar determination were made with respect to the Federal Election Campaign Act (FECA), the unconstitutionality of the legislative veto provision would not affect the validity of the other statutory requirements pertaining to prescription of FEC regulations. The General Counsel noted the Court's holding that a legislative veto provision could be excised from a statute without invalidating the remainder of the statute, especially if the remaining statute was "fully operative" law. The General Counsel pointed out that, as with the provisions of the INA, the election law's provisions for prescribing regulations survived as "a workable administrative mechanism without the one-House veto."

The Counsel also noted that regulations issued in the past by the Commission under the legislative veto would remain in effect.

PROCEDURES FOR PLACING COMPLIANCE CASES ON PUBLIC RECORD

The Commission recently issued a directive spelling out its procedures for ensuring timely release of closed compliance cases (i.e., closed matters under review or MURs) to the public. Under the procedures, effective August 1, 1983, a copy of a closed MUR file will be available for public inspection in both the Public Disclosure Division and the Press Office within 30 days after the Commission has notified the complainants and respondents of its final determination in the case. (See 11 CFR 111.20(a).) The file will not include materials which are not accessible to the public under the election law or the Freedom of Information Act.

The Commission will continue to provide a list of MURs indicating the date the closed MUR was placed on the public record, its number, the respondent(s) and complainant(s), the Commission's final action in the case and the file's microfilm location.

As in the past, the Press Office will prepare press releases which list closed MURs and maintain a file of closed MURs for use by media representatives. See FEC Directive No. 48.

INFORMATION

FEC HOLDS MIDWEST REGIONAL CONFERENCE IN ILLINOIS

On September 6-8, 1983, the Commission will sponsor a Midwest Regional Conference in cooperation with state and local elections officials from Illinois. Attending the conference in Itasca, Illinois, a suburb of Chicago, will be federal candidates, state and local party officials, representatives from political action committees, state and local elections administrators, state legislators and others interested in the election process.

At an introductory session, FEC Commissioners and staff will explain the basics of the federal campaign finance law and the Commission's role in administering this law and disclosing campaign finance information to the public. Of the 36 workshops scheduled, 19 will focus on federal election finance topics, including: corporate and labor activities, federal candidates and their committees, political party activity, political action committees, Presidential elections, the FEC's enforcement of the election law and the use of FEC campaign finance reports. The remaining 17 sessions will be devoted to election administration, with emphasis on legislative and administrative functions required to run a well-organized, fair and open election.

The Midwest Conference is one of five regional conferences to be sponsored this year by the Commission in cooperation with state elections officials. The schedule for the four remaining conferences is:

- Northeast Regional Conference, Albany, New York, September 25-27;
- Southern Regional Conference, Charleston, South Carolina, October 23-25;
- Southwest Regional Conference, Tulsa, Oklahoma, November 13-15; and
- Far West Regional Conference, Los Angeles, California, December 4-6.

For more information on the conferences, contact the FEC's Public Communications Office at 202/523-4068 or toll free 800/424-9530.

CHANGE OF ADDRESS

Political Committees

Registered political committees are automatically sent the Record. Any change of address by a registered committee must, by law, be made in writing as an amendment to FEC Form 1 (Statement of Organization) and filed with the Clerk of the House, the Secretary of the Senate, or the FEC, as appropriate.

Other Subscribers

Record subscribers (who are not political committees), when calling or mailing in a change of address, are asked to provide the following information:

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3. New address.
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