

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. In § 1753.6, a new sentence is added at the end of paragraph (c) to read as follows:

§ 1753.6 Standards, specifications, and general requirements.

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(c) * * * The materials and equipment must be year 2000 compliant, as defined in 7 CFR 1735.22(e).

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Dated: August 12, 1998.

Jill Long Thompson,

Under Secretary, Rural Development.

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FEDERAL ELECTION COMMISSION

11 CFR Parts 9003 and 9033

[Notice 1998-13]

Electronic Filing of Reports by Publicly Financed Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: The Commission is issuing regulations concerning the electronic filing of reports by publicly financed Presidential primary and general election candidates. The rules specify that if Presidential candidates and their authorized committees have computerized their campaign finance records, they must agree to participate in the Commission's recently established electronic filing program as a condition of voluntarily accepting federal funding. These regulations implement the provisions of the Presidential Election Campaign Fund Act ("Fund Act") and the Presidential Primary Matching Payment Account Act ("Matching Payment Act"), which establish eligibility requirements for Presidential candidates seeking public financing, as well as Public Law 104-79, which amended the reporting provisions of the Federal Election Campaign Act of 1971 ("FECA"). Further information is provided in the supplementary information which follows.

DATES: Further action, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9009(c) and 9039(c).

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, or Ms. Rosemary C. Smith, Senior Attorney, 999 E Street, N.W., Washington, D.C. 20463, (202) 694-1650 or toll free (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission is publishing today the final text of revisions to its regulations at 11 CFR 9003.1(b)(11) and 9033.1(b)(13), which set forth conditions that Presidential candidates agree to abide by in exchange for receiving public financing for their campaigns. The amendments indicate that Presidential candidates and their authorized committees must agree to file their campaign finance reports electronically. On June 17, 1998, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations. 63 F.R. 33012 (June 17, 1998). Written comments were received from the Internal Revenue Service and Bob DeWeese of Seattle, Washington in response to the NPRM. Other aspects of the public financing process for Presidential primary and general elections will be addressed separately in a forthcoming Notice of Proposed Rulemaking.

Since these rules are not major rules within the meaning of 5 U.S.C. 804(2), the Fund Act and Matching Payment Act control the legislative review process. See 5 U.S.C. 801(a)(4), Small Business Regulatory Reform Enforcement Fairness Act, Pub. L. No. 104-121, section 251, 110 Stat. 857, 869 (1996). Section 9009(c) and 9039(c) of Title 26, United States Code, require that any rules or regulations prescribed by the Commission to carry out the provisions of Title 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. These regulations were transmitted to Congress on August 21, 1998.

Explanation and Justification

§ 9003.1 Candidate and committee agreements; and § 9033.1 Candidate and committee agreements

Recently, the Federal Election Commission implemented a system permitting political committees and other persons to file reports of campaign finance activity via computer diskettes and direct transmission of electronic data. See Explanation and Justification of 11 CFR 104.18, 61 F.R. 42371 (Aug. 15, 1996). The Commission was required to make the electronic filing

option available for all "report[s], designation[s], or statement[s] required by this Act to be filed with the Commission." Public Law 104-79, 109 Stat. 791 (1995) (adding 2 U.S.C. 434(a)(11)). The goals of the new system include the enhancement of on-line access to reports on file with the Commission, the reduction of paper filing and manual processing, and the promotion of more efficient and more cost-effective methods of operation for the filers and for the Commission. While the Commission encourages all political committees and other persons to file their reports electronically, under Public Law 104-79, participation in the Commission's electronic filing program is voluntary.

With the advent of the first Presidential election cycle since the implementation of the new electronic filing system, the Commission published a NPRM seeking comments on modifying its candidate agreement regulations at 11 CFR 9003.1 and 9033.1 to provide that certain Presidential committees must agree to file their campaign finance reports electronically as a condition of voluntarily accepting public funding.

Two comments were received in response to the NPRM. The Internal Revenue Service stated that it does not anticipate that the changes to the FEC's rules will conflict with the Internal Revenue Code or any rules or regulations thereunder. The other comment strongly urged the Commission to adopt the proposed changes to greatly improve the Commission's ability to provide timely and useful disclosure data to the public and to ensure ongoing campaign compliance by candidates throughout the campaign. This commenter pointed out that when the House of Representatives debated another portion of H.R. 2527 (Public Law 104-79), several members extolled the bill's elimination of the three day delay for paper filings traveling from the Clerk of the House to the Commission, thereby demonstrating the importance of timeliness in the public availability of campaign finance reports. This commenter also believed that change in the Commission's rules would enhance the accuracy and usefulness of the information disclosed, improve the news media's ability to file timely stories on candidates' finances, and assist Commission staff in monitoring compliance with campaign finance laws during the campaign.

The Commission has decided to proceed with the changes to the candidate agreement regulations that were described in the NPRM.

Consequently, the final rules which follow establish electronic filing as an additional prerequisite for the receipt of public funding. Please note, however, this new language only applies to the authorized committees of Presidential primary and general election candidates that decide to rely upon a computer system to maintain and use their campaign finance data. Currently, Presidential candidates whose committees have computerized their financial records must agree to produce magnetic tapes or diskettes of receipts, disbursements and other data prior to the beginning of audit fieldwork. 11 CFR 9003.1(b)(4) and 9033.1(b)(5); see also, 11 CFR 9003.6, 9007.1(b)(1), 9033.12, and 9038.1(b)(1). Thus, the revised rules, like the current rules, do not burden campaign committees with new requirements if they are not computerized.

Electronic filing of Presidential committees' reports is intended to save a substantial amount of time and Commission resources that would otherwise be devoted to inputting these reports into the FEC's database. Although the number of political committees affected by this amendment to the regulations is relatively small, their reports can be voluminous, given the substantial number of contributions and expenditures listed in each report. Thus, these changes to the candidate agreement rules are expected to speed the reporting of campaign finance information and enhance public disclosure.

Previously, the Commission issued technical specifications for reports filed electronically in its Electronic Filing Specification Requirements (EFSR), which is available free of charge. The EFSR contains technical specifications, including file requirements, for reports filed by Presidential campaign committees. However, the electronic filing software available from the FEC at no charge will not generate the forms used by Presidential committees. On request, the Commission's Data System Development Division will work with committees to assist them in generating the proper output. Any additional costs entailed may be treated and paid for like any other compliance cost pursuant to 11 CFR 9003.3(a)(2)(i)(B) and (F) or 9035.1(c)(1) if incurred after January 1, 1999. The NPRM noted that there are a number of differences between the specifications contained in the EFSR and those found in the Computerized Magnetic Media Requirements (CMMR) used by publicly financed committees to submit financial data for the

Commission's audit and to submit digital images of contributions for matching funds. These differences are necessitated, in part, by the different purposes for which each of these databases are used. Neither of the comments received suggested ways in which these two standards could be better synchronized.

The revisions to the candidate agreement regulations do not require electronic filing for statements of candidacy or statements of organization. While Presidential candidates and their authorized committees may file these statements electronically, if they wish, these forms have not been included in the free software available from the FEC. Also please note that the candidate agreements, themselves, should not be submitted in electronic form under the changes to 11 CFR 9003.1 and 9033.1 which follow.

Congress intended the new system of electronic filing to be voluntary. 141 Cong. Rec. H 12140-41 (daily ed. Nov. 13, 1995) (statements of Reps. Thomas, Hoyer, Fazio and Livingston). The Commission believes that a candidate's agreement to file campaign finance reports electronically in exchange for public funding is a voluntary decision materially indistinguishable from the candidate's voluntary decision to abide by the spending limits in exchange for federal funds. For this reason, it appears that the rules set forth below are within the scope of the Commission's authority under the Fund Act, the Matching Payment Act, the FECA, and Public Law 104-79.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) [Regulatory Flexibility Act]

The attached final rules will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that very few small entities will be affected by these rules, and the cost is not expected to be significant. Further, any small entities affected have voluntarily chosen to receive public funding and to comply with the requirements of the Presidential Election Campaign Fund Act or the Presidential Primary Matching Payment Account Act.

List of Subjects in 11 CFR Parts 9003 and 9033

Campaign funds, Elections, Political candidates.

For the reasons set out in the preamble, Subchapters E and F of Chapter I of Title 11 of the Code of

Federal Regulations is amended as follows:

PART 9003—ELIGIBILITY FOR PAYMENTS

1. The authority citation for 11 CFR Part 9003 continues to read as follows:

Authority: 26 U.S.C. 9003 and 9009(b).

2. In § 9003.1, the introductory text of paragraph (b) is republished, and new paragraph (b)(11) is added to read as follows:

§ 9003.1 Candidate and committee agreements.

* * * * *

(b) *Conditions.* The candidates shall:

* * * * *

(11) Agree that they and their authorized committee(s) shall file all reports with the Commission in an electronic format that meets the requirements of 11 CFR 104.18 if the candidate or the candidate's authorized committee(s) maintain or use computerized information containing any of the information described in 11 CFR 104.3.

PART 9033—ELIGIBILITY FOR PAYMENTS

3. The authority citation for Part 9033 continues to read as follows:

Authority: 26 U.S.C. 9003(e), 9033 and 9039(b).

4. In § 9033.1, the introductory text of paragraph (b) is republished, and new paragraph (b)(13) is added to read as follows:

§ 9033.1 Candidate and committee agreements.

* * * * *

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

* * * * *

(13) The candidate and the candidate's authorized committee(s) will file all reports with the Commission in an electronic format that meets the requirements of 11 CFR 104.18 if the candidate or the candidate's authorized committee(s) maintain or use computerized information containing any of the information described in 11 CFR 104.3.

Dated: August 21, 1998.

Joan D. Aikens,

Chairman, Federal Election Commission.

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