Authority: 7 U.S.C. 601–674.

Dated: November 9, 1999.

Richard M. McKee,

Deputy Administrator, Dairy Programs.

[FR Doc. 99–29725 Filed 11–12–99; 8:45 am]

BILLING CODE 3410–02–P

FEDERAL ELECTION COMMISSION

11 CFR Parts 9007, 9034, 9035 and 9038

[Notice 1999–26]

Public Financing of Presidential Primary and General Election Candidates

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: The Commission is revising several portions of its regulations governing the public financing of Presidential primary and general election campaigns. 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 indicate how funds received under the public financing system may be spent. In addition, these statutes require the Commission to audit publicly financed campaigns and seek repayment where appropriate. The revised rules modify the Commission's audit procedures. They also address the ''bright line'' between primary and general election expenses, and the formation of Vice Presidential committees prior to nomination. Further information is provided in the supplementary information that 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. Rosemary C. Smith, Assistant General Counsel, 999 E Street, NW., Washington, DC. 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 governing audits of public financing of Presidential campaigns, 11 CFR 9007.1 and 9038.1. In addition, the final rules at 11 CFR 9034.4(e)(1) and (3) govern the division of expenditures between primary and general election campaign committees. New rules set out in 11 CFR 9035.3 address situations where a Vice Presidential campaign committee is formed prior to the date on which that candidate's political party selects its Presidential and Vice Presidential nominees. The new and revised regulations implement 26 U.S.C. 9007, 9034, 9035, and 9038.

On December 16, 1998, the Commission issued a Notice of Proposed Rulemaking (NPRM) in which it sought comments on proposed revisions to these regulations and on a number of other aspects of the Commission's public funding regulations. 63 FR 69524 (Dec. 16, 1998). In response to the NPRM, written comments addressing these topics were received from Perot for President '96; Common Cause and Democracy 21 (joint comment); Lyn Utrecht, Eric Kleinfeld, and Patricia Fiori (joint comment); the Democratic National Committee; and the Republican National Committee. The Internal Revenue Service stated that it has reviewed the NPRM and finds no conflict with the Internal Revenue Code or regulations thereunder. Subsequently, the Commission reopened the comment period and held a public hearing on March 24, 1999, at which the following witnesses presented testimony on these issues: Lyn Utrecht (Ryan, Phillips, Utrecht & MacKinnon), Joseph E. Sandler (Democratic National Committee), and Thomas J. Josefiak (Republican National Committee).

Please note that the Commission has already published separately final rules regarding other aspects of the public funding system. For example, revised candidate agreement regulations require federally financed Presidential committees to file their reports electronically. *See* Explanation and Justification of 11 CFR 9003.1 and 9033.1, 63 FR 45679 (August 27, 1998). Those regulations took effect on November 13, 1998. *See* Announcement of Effective Date, 63 FR 63388 (November 13, 1998). In addition, the Commission has issued two sets of final rules governing the matchability of contributions made by credit and debit cards, including those transmitted over the Internet. *See* Explanation and Justification of 11 CFR 9034.2 and 9034.3, 64 FR 32394 (June 17, 1999); Explanation and Justification of 11 CFR 9036.1 and 9036.2, 64 FR 42584 (Aug. 5, 1999). The effective date for the new matching fund rules was January 1, 1999. *See* Announcements of Effective Date, 64 FR 51422 (Sept. 23, 1999) and 64 FR 59607, (Nov. 3, 1999). Final rules concerning coordinated party committee expenditures in the pre-nomination period and reimbursement by the news media for travel expenses have also been issued. *See* Explanation and Justification of 11 CFR 110.7, 9004.6 and 9034.6, 64 FR 42579 (Aug. 5, 1999) and Announcement of Effective Date, 64 FR 59606 (Nov. 3, 1999). In addition, final rules concerning GELAC funds, capital assets, primary compliance and winding down costs, documentation of disbursements, digital images of matching fund documentation, convention committees and host committees have also been issued. *See* Explanation and Justification, 64 FR 49355 (Sept. 13, 1999).

Sections 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. The final rules that follow were transmitted to Congress on Nov. 9, 1999.

Explanation and Justification

Section 9007.1 Audits

In 1995, the Commission amended 11 CFR 9007.1, 9007.2, 9038.1, and 9038.2 to reduce the amount of time it takes to audit publicly funded Presidential committees, to make repayment determinations, and to complete the enforcement process for these committees. One change was the elimination of a Commission-approved Interim Audit Report, which was replaced by a staff-produced Exit Conference Memorandum that is provided to the audited committee at the exit conference. These steps were taken to ensure adherence to the three year time period specified in 26 U.S.C. 9007(c) and 9038(c) for notifying publicly funded committees of the Commission's repayment determinations. After operating under the streamlined procedures during the 1996 election cycle, the Commission began to consider further changes to ensure the audit and repayment processes are completed as fairly and expeditiously as possible.

The narrative portion of the 1998 NPRM presented two alternatives to the current audit procedures. The first approach is to return to the audit procedures used for the 1992 Presidential candidates who received primary or general election funding. Under the previous system, the Commission's Audit Division conducted an exit conference at the close of audit fieldwork to discuss its preliminary findings and recommendations. However, no written Exit Conference

Memorandum was prepared or presented to the committee during the exit conference. Instead, an Interim Audit Report containing a preliminary calculation of future repayment obligations was subsequently prepared for consideration and approval by the Commission in executive session. After that, the audited committee had an opportunity to submit materials disputing or commenting on matters contained in the Interim Audit Report. Next, the Audit Division prepared a Final Audit Report containing initial repayment determinations. The Final Audit Report was considered by the Commission in an open session. Twenty-four hours before the Final Audit Report was released to the public, copies were provided to the candidate and the committee.

The second alternative set out in the NPRM is to retain many of the current audit procedures, with the exception that the Exit Conference Memorandum would be approved by a majority vote of four Commissioners before it is presented to the candidate's committee during the exit conference. In addition to these alternatives, the NPRM sought comments on making no changes to the audit procedures used for the 1996 Presidential campaign committees.

Several written comments and witnesses at the public hearing addressed the Commission's audit procedures. Three written comments urged the Commission to retain the current procedures for conducting post-election audits. One of these stated that the interest of the public in a rapid resolution of each audit is paramount, particularly given that the public funds for the program come from voluntary tax check-offs by individual taxpayers. This commenter praised the streamlined process put in place for the 1996 audits for enabling the agency's audit staff to work efficiently, with no waste of time. The commenter believed that the experience with certain well-publicized 1996 audits showed that both the press and the American public understand that audit reports are staff documents until expressly approved by the Commission. Two commenters opposed any change that would cloak more of the audit process in secrecy as contrary to the spirit of the Government in the Sunshine Act. They felt there was great public benefit in seeing the staff recommendations and the Commission's disposition of them.

In contrast, two of the witnesses at the hearing urged the Commission to return to the previous system or to find a way to produce greater interaction between the Commissioners and the audited committees earlier in the process. It was suggested that at a minimum, the Commission should change the procedure so that the Exit Conference Memorandum is approved by the Commission in closed session. These witnesses indicated that the goal of the new system, which was to expedite the audit process, has not been achieved. One of them argued that it is harmful to the regulated community and the credibility of the Commission when staff exit conference findings are publicly disclosed without prior input from the Commissioners, and are later substantially modified by the Commission. Another concern expressed is that the current system forces committees to devote substantial resources to responding to Audit Division conclusions and legal theories that are not necessarily supported by the Commission. One of these witnesses also maintained that the current system does not adequately protect confidentiality, and does not produce a fair and balanced presentation of a committee's financial picture.

After carefully considering the comments and testimony on the various alternatives, the Commission has decided to retain certain elements of the current procedures, such as the exit conference, while also returning to some of the previous procedures. Thus, the Exit Conference Memorandum is being dropped in favor of a Preliminary Audit Report that will be approved by the Commission before it is provided to the audited committee after the exit conference. The Commission anticipates that a written legal analysis will be prepared to assist the Commission in its consideration of the Preliminary Audit Report. This step will ensure that before audited committees are asked for a response to the Audit staff's findings, they are apprised of the Commission's preliminary views on various financial aspects of their campaign operations as well as the legal issues raised by those activities. These changes are incorporated into revised paragraphs (b)(2)(iii), (c) and (d)(1) of section 9007.1. These portions of the regulations have also been reorganized so that the Preliminary Audit Report is addressed in paragraph (c).

Please note that Commission consideration of draft Preliminary Audit Reports will usually be done either by using its tally voting procedures or in executive session. Closure of these discussions to the general public is generally appropriate under the Government in the Sunshine Act because the premature disclosure of this information would be likely to have a considerable adverse effect on future Commission actions. *See* 5 U.S.C. 552b(c) and 11 CFR 2.4(b). Closing the discussion is also appropriate for those situations where the Commission reasonably contemplates that the discussion may lead to an enforcement action, the issuance of a subpoena, or litigation.

The new procedure has the advantage that when the staff-prepared final Audit Report is subsequently released, the public and the press may be assured that this document reflects the views expressed by the Commission at the time the Preliminary Audit Report was approved, as well as the committee's response to the Preliminary Audit Report.

A significant consideration in changing these procedures is the length of time it takes to complete the entire process in light of the statutory requirement that any notification of a repayment be made no later than three years after the end of the matching payment period or after the date of the general election. 26 U.S.C. 9007(c) and 9038(c). In *Dukakis* v. *Federal Election Commission*, 53 F.3d 361 (D.C. Cir. 1995) and *Simon* v. *Federal Election Commission*, 53 F.3d 356 (D.C. Cir. 1995), the court determined that the preliminary calculation contained in the Interim Audit Report did not constitute sufficient notification of repayment obligations. Thus, the court concluded that the Commission's previous regulation at 11 CFR 9038.2(a)(2), which stated that the Interim Audit Report constituted notification, was inconsistent with the statute. *Simon* at 360.

The Commission notes that the time involved in obtaining Commission approval of the Preliminary Audit Report may, in some instances, make it more difficult to notify committees of their repayment requirements within the three year time frame established by 26 U.S.C. 9007(c) and 9038(c). Nevertheless, this initial investment of time may be balanced by significant time savings during the later stages of the process if a number of issues have been resolved earlier.

Please note that the amendments to section 9007.1 of the regulations also apply to the audits of the federally financed convention committees under 11 CFR 9008.11.

Section 9034.4 Use of Contributions and Matching Payments

The Fund Act, the Matching Payment Act, and the Commission's regulations require that publicly financed Presidential candidates use primary election funds only for expenses incurred in connection with primary elections, and that they use general

election funds only for general election expenses. 26 U.S.C. 9002(11), 9032(9); 11 CFR 9002.11 and 9032.9. These requirements are necessary to effectuate the spending limits for both the primary and the general election, as set forth at 2 U.S.C. 441a(b) and 26 U.S.C. 9035(a). *See also* 11 CFR 110.8(a) and 9035.1(a)(1).

In 1995, the Commission sought to provide more specific guidance as to which expenses should be attributed to a candidate's primary campaign and which ones should be considered general election expenses. Consequently, paragraph (e)(1) of section 9034.4 was promulgated at that time to specify that the costs of goods or services used exclusively for the primary must be attributed to the primary. Similarly, any expenditures for goods or services used exclusively for the general election had to be attributed to the general election. Paragraphs (e)(2) through (e)(7) established a number of specific attribution rules for polling expenses, campaign offices, staff costs, campaign materials, media production and distribution costs, campaign communications and travel costs, which were largely based on the timing of the expenditure. One of the purposes of these rules was to eliminate much of the time- and labor-intensive work of examining thousands of individual expenditures, thereby helping to streamline the audit process.

During the last Presidential election cycle, several questions were raised regarding the application of the ''bright line'' rules, including the application of the specific provisions in paragraphs (e)(2) through (e)(7) instead of the general rule set out in former paragraph (e)(1). The NPRM proposed adding an additional sentence to paragraph (e)(1) to indicate that the specific rules were intended to apply to ''mixed'' expenditures that are used in both the primary and the general election campaigns. One witness opposed what was perceived to be a new ''benefit derived'' standard. This witness argued for preserving the original bright line standard in the 1995 regulations in lieu of any of the changes proposed. Please note, the NPRM did not intend to suggest that the bright line rules were to be replaced by a new ''benefit derived'' standard. However, given the confusion generated by the proposed amendatory language, it is not being included in the final rules that follow. Instead, paragraph (e)(1) is being modified to more clearly state that the general rule applies only to goods or services not covered by the more specific provisions of paragraphs (e)(2) through (e)(7) of section 9034.4.

The Commission has also decided, that certain additional revisions to these rules are warranted. For example, paragraph (e)(3) of section 9034.4 is being amended to resolve questions that have come up regarding payroll and overhead costs for the use of campaign offices prior to the candidate's nomination. The previous rules had specified that such expenses must be attributed to the primary election unless the office is used by persons working exclusively on general election preparations. ''Exclusive use'' was not defined in the rules, and questions arose as to whether the term meant several hours, or days, or weeks. The NPRM suggested changing this exception to apply to periods when the campaign office is used only by persons working ''full time'' on general election campaign preparation, or in the alternative, dropping the exclusive use exception with regard to overhead and salary expenses. The public comments indicated that a ''full time'' standard would not be clearer that ''exclusive use.''

To resolve these difficulties, the Commission has decided to remove the ''exclusive use'' exception from paragraph (e)(3) governing office overhead and salaries, and also from the general rule in paragraph (e)(1). Instead, under the revised rule, salary and overhead costs incurred between June 1 of the Presidential election year and the date of the nomination are treated as primary expenses. However, Presidential campaign committees have the option of attributing to the general election an amount of salary and overhead expenses incurred during this period up to 15% of the primary election spending limit, which is set forth at 11 CFR 110.8(a)(1). This approach recognizes that during this period, some campaign staff and a portion of the committee's state and national office space must necessarily be devoted to general election activities. The 15% figure has the advantage of simplicity and ease of application. It is intended to give campaigns a reasonable amount of flexibility, and is based on an estimate of the highest amount that similarly situated campaigns have spent on salary and overhead costs during a comparable three-month period in the 1996 election cycle. The revised regulation does not permit committees to demonstrate that they have actually incurred a higher amount because the ''bright line'' rules are intended to avoid a resource-intensive system that requires the creation, maintenance, and review of considerable paperwork to document these types of costs.

Please note that other revisions have already been made to paragraph (e) of section 9034.4 to reflect that not all candidates may accept public funding in both the primary and the general election. *See* final rules at 64 FR 49355 (Sept. 13, 1999). At that time paragraph (e) was amended to indicate that it applies to Presidential campaign committees that accept federal funds for either election. Thus, the 15% limitation specified in paragraph (e)(3) applies to those committees that accept federal funding for the general election but not the primary. In addition, a new sentence is also being added to paragraph (e)(3) to clarify that overhead and payroll expenses for winding down and compliance activities are covered by paragraph (a)(3) of section 9034.4.

Another concern expressed by the commenters is the manner in which the 1995 bright line rules were interpreted and applied during the audits of the 1996 campaigns. Some comments opposed extending the bright line rules for candidate committees to party committees. The Commission notes that a variety of issues involving party committee coordinated expenditures may be addressed in a new rulemaking.

Section 9035.3 Contributions to and Expenditures by Vice Presidential Committees

The NPRM sought comments on a possible new rule to clarify the status of expenditures made by political committees formed by Vice Presidential candidates prior to their official nomination at their parties' conventions. It has been the Commission's policy in the past to permit such committees to raise contributions and make expenditures for the purpose of defraying the travel, lodging and subsistence expenses of the eventual Vice Presidential nominee and his or her entourage during the nominating convention. However, during the 1996 Presidential election cycle, concerns were raised that these committees have the ability to raise and spend substantially more money than what is needed to cover convention costs. Consequently, this situation presented an opportunity for Vice Presidential committees to be used prior to the date of nomination to supplement the limited amounts that publicly funded Presidential candidates may spend on their primary campaigns. Another concern is that some who have made the maximum contribution permitted by the FECA to a Presidential primary candidate may seek to evade these statutory limits by making additional contributions to the campaign committee of the person

chosen to be that candidate's Vice Presidential running mate.

For these reasons, the Commission is adding new section 9035.3 to specify when contributions to, and expenditures by, Vice Presidential committees shall be aggregated with contributions to and expenditures by the primary campaign of that party's eventual Presidential nominee for purposes of the contribution and expenditure limitations. Paragraph (a) of this new section provides for such aggregation beginning on the date that either the future Presidential or Vice Presidential nominee publicly indicates that the two candidates intend to run on the same ticket. Aggregation of contributions and expenditures will also begin when the Vice Presidential candidate accepts an offer to be the running mate, or when the committees of these two candidates become affiliated under 11 CFR 100.5(g)(4). Please note that with regard to expenditures, paragraph (b) limits the application of new section 9035.3 to the campaign expenditures made by a candidate who becomes the Vice Presidential nominee of his or her party, thus excluding others who lose the Vice Presidential nomination.

Both of the comments addressing new section 9035.3 opposed certain aspects of the proposed rule. One comment argued that Vice Presidential committees are entirely separate from any Presidential committee until the Vice Presidential candidate is nominated at the convention. This commenter also expressed concerns that by aggregating expenses, the presidential campaign committee could inadvertently exceed the spending limits. The Commission agrees that Presidential committees must monitor this spending, just as state party committees must track expenditures by subordinate party committees to ensure compliance with the coordinated spending limits of 2 U.S.C. 441a(d). The commenter also noted that those who contribute to both the Presidential candidate and the Vice Presidential candidate risk exceeding the primary contribution limits. The Commission agrees that the recipient committees need to aggregate contributions from the same contributor to prevent the making or acceptance of excessive contributions. This is no different than the requirement to aggregate contributions made to affiliated committees.

Paragraph (b) of the new section also contains an exception permitting a Vice Presidential candidate and his or her family and staff to attend the party's nominating convention without having the cost of their transportation, lodging, and subsistence attributed to the party's Presidential candidate. One commenter agreed that Vice Presidential candidates should be able to raise money to pay these expenses. It was also suggested that the Vice Presidential committee should be able to pay legal and accounting expenses incurred during the background checks of the prospective Vice Presidential nominee. The Commission agrees with this suggestion and is promulgating new language to cover these legal and accounting costs. In addition, the costs of raising funds for these limited travel, subsistence, legal and accounting expenses also do not need to be treated as expenditures of the Presidential primary candidate. Please note, if a Vice Presidential committee has excess funds after the nomination, 11 CFR 113.2 governs the use of these funds.

A commenter questioned the Commission's statutory authority for the new regulation and noted that 2 U.S.C. 441a(b)(2) treats expenditures made on behalf of a Vice Presidential nominee as expenditures on behalf of the party's Presidential nominee. *See also* 11 CFR 110.8(f). This provision of the FECA, however, is not applicable prior to the nomination of the Vice Presidential candidate. The Commission notes that at the time section 441a(b)(2) of the FECA was enacted, Congress may not have anticipated that both the Presidential candidates and their running mates may be known well before the actual date of nomination. Nevertheless, the Commission disagrees with the commenter's assumption that attribution under any other situation is contrary to the statute. In recent years, the primaries in many states have been moved to earlier dates in the election year. This means that Presidential candidates may reach their primary spending limits earlier in the election year, which may encourage the creation of Vice Presidential campaign committees at an earlier stage of the process than Congress anticipated when enacting the FECA. The Commission's new regulations merely make explicit that once a Vice Presidential running mate is chosen, the authorized committees of the two candidates would ordinarily be considered affiliated. *See* 2 U.S.C. 441a(a)(5) and 11 CFR 100.5(g)(4) and 110.3. Moreover, nothing in the FECA or the Matching Payment Act specifically bars pre-nomination aggregation of contributions or expenditures under these circumstances.

Section 9038.1 Audit

This section sets forth procedures for auditing the campaign committees of primary election candidates who receive federal funds. The changes to paragraphs (b)(2)(iii), (c) and (d)(1) of this section follow the revisions to 11 CFR 9007.1(b)(2)(iii), (c) and (d)(1), as discussed above.

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

The attached final rules will not, if promulgated, 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 in these areas.

List of Subjects

11 CFR Part 9007

Administrative practice and procedure, Campaign funds.

11 CFR Parts 9034 and 9035

Campaign funds, Reporting and recordkeeping requirements.

11 CFR Part 9038

Administrative practice and procedure, Campaign funds.

For the reasons set out in the preamble, Subchapters E and F of Chapter I of Title 11 of the Code of Federal Regulations are amended as follows:

PART 9007—EXAMINATIONS AND AUDITS; REPAYMENTS

1. The authority citation for part 9007 continues to read as follows:

Authority: 26 U.S.C. 9007 and 9009(b).

2. In § 9007.1, paragraphs (b)(2)(iii) and (c) and the second sentence of paragraph (d)(1) are revised to read as follows:

§ 9007.1 Audits.

* * * * *

(b) * * *

(2) * * *

(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 that the

staff anticipates it will present to the Commission for approval. Commission staff will advise committee representatives at this conference of the committee's opportunity to respond to these preliminary findings; the projected timetables regarding the issuance of the Preliminary Audit Report, the Audit Report, and any repayment determination; the committee's opportunity for an administrative review of any repayment determination; and the procedures involved in Commission repayment determinations under 11 CFR 9007.2.

* * * * *

(c) *Preliminary Audit Report: Issuance by Commission and committee response.*

(1) Commission staff will prepare a written Preliminary Audit Report, which will be provided to the committee after it is approved by an affirmative vote of four (4) members of the Commission. The Preliminary Audit Report may include—

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

(ii) The accuracy of statements and reports filed with the Commission by the candidate and committee; and

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

(2) The candidate and his or her authorized committee may submit in writing within 60 calendar days after receipt of the Preliminary Audit Report, legal and factual materials disputing or commenting on the proposed findings contained in the Preliminary Audit Report. In addition, the committee shall submit any additional documentation requested by the Commission. Such materials may be submitted by counsel if the candidate so desires.

(d) * * *

(1) * * * The Commission-approved audit report may address issues other than those contained in the Preliminary Audit Report. * * *

* * * * *

PART 9034—ENTITLEMENTS

3. The authority citation for part 9034 continues to read as follows:

Authority: 26 U.S.C. 9034 and 9039(b).

4. Section 9034.4 is amended by revising paragraphs (e)(1) and (e)(3) to read as follows:

§ 9034.4 Use of contributions and matching payments.

* * * * *

(e) * * *

(1) *General rule.* Any expenditure for goods or services that are used for the primary election campaign, other than those listed in paragraphs (e)(2) through (e)(7) of this section, shall be attributed to the limits set forth at 11 CFR 9035.1. Any expenditure for goods or services that are used for the general election campaign, other than those listed in paragraphs (e)(2) through (e)(7) of this section, shall be attributed to the limits set forth at 11 CFR 110.8(a)(2), as adjusted under 11 CFR 110.9(c).

* * * * *

(3) *State or national campaign offices.* Prior to the date of the last primary election in a Presidential election year, overhead and salary costs incurred in connection with state or national campaign offices shall be attributed to the primary election. With regard to overhead and salary costs incurred on or after June 1 of the Presidential election year, but before or on the date of nomination, the committee may attribute to the general election an amount not to exceed 15% of the limitation on primary-election expenditures set forth at 11 CFR 110.8(a)(1). Overhead and payroll costs associated with winding down the campaign and compliance activities shall be governed by paragraph (a)(3) of this section.

* * * * *

PART 9035—EXPENDITURE LIMITATIONS

5. The authority citation for part 9035 continues to read as follows:

Authority: 26 U.S.C. 9035 and 9039(b).

6. Section 9035.3 is added to read as follows:

§ 9035.3 Contributions to and expenditures by Vice Presidential candidates.

(a) *Aggregation of contributions and expenditures.* For purposes of the limitations on contributions and expenditures of this part and part 110, contributions to, and expenditures by, the authorized committee of a candidate who becomes the nominee of a political party for the office of Vice President of the United States shall be aggregated with contributions to and expenditures by the publicly funded primary candidate who obtains that political party's nomination for the office of President of the United States, provided that the contributions to or expenditures by the authorized committee of the Vice Presidential candidate were made on or after the date on which—

(1) The Presidential or Vice Presidential candidate publicly indicates that the two candidates intend to run on the same ticket;

(2) The candidate for the office of Vice President accepts an offer by the publicly funded primary candidate for the office of President, or by the Presidential candidate's agent(s), to run on the same ticket; or

(3) The Presidential and Vice Presidential committees become affiliated pursuant to 11 CFR 100.5(g)(4)(i) or (ii).

(b) *Exceptions.* The following expenditures, if incurred by the authorized committee of a candidate who subsequently becomes the nominee of a political party for the office of Vice President of the United States, will not be aggregated under paragraph (a) of this section:

(1) The cost of attendance by the candidate, the candidate's family, and the candidate's authorized committee's staff at a political party's national nominating convention, including the cost of transportation, lodging, and subsistence;

(2) The cost of legal and accounting services associated with background checks during the Vice Presidential selection process; and

(3) The cost of raising funds for the expenses listed in paragraphs (b)(1) and (b)(2) of this section.

PART 9038—EXAMINATIONS AND AUDITS

7. The authority citation for part 9038 continues to read as follows:

Authority: 26 U.S.C. 9038 and 9039(b).

8. In § 9038.1, paragraphs (b)(2)(iii) and (c) and the second sentence of paragraph (d)(1) are revised to read as follows:

§ 9038.1 Audit.

* * * * *

(b) * * *

(2) * * *

(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 that the staff anticipates it will present to the Commission for approval. Commission staff will advise committee representatives at this conference of the committee's opportunity to respond to these preliminary findings; the projected timetables regarding the issuance of the Preliminary Audit Report, the Audit Report, and any

repayment determination; the committee's opportunity for an administrative review of any repayment determination; and the procedures involved in Commission repayment determinations under 11 CFR 9038.2.

* * * * *

(c) *Preliminary Audit Report: Issuance by Commission and committee response.*

(1) Commission staff will prepare a written Preliminary Audit Report, which will be provided to the committee after it is approved by an affirmative vote of four (4) members of the Commission. The Preliminary Audit Report may include—

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

(ii) The accuracy of statements and reports filed with the Commission by the candidate and committee; and

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

(2) The candidate and his or her authorized committee may submit in writing within 60 calendar days after receipt of the Preliminary Audit Report, legal and factual materials disputing or commenting on the proposed findings contained in the Preliminary Audit Report. In addition, the committee shall submit any additional documentation requested by the Commission. Such materials may be submitted by counsel if the candidate so desires.

(d) * * *

(1) * * * The Commission-approved audit report may address issues other than those contained in the Preliminary Audit Report. * * *

* * * * *

Dated: November 9, 1999.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 99–29694 Filed 11–12–99; 8:45 am]

BILLING CODE 6715–01–U

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99–NM–70–AD; Amendment 39–11407; AD 99–23–11]

RIN 2120–AA64

Airworthiness Directives; British Aerospace Model BAe 146 and Avro 146–RJ Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 and Avro 146–RJ series airplanes, that requires repetitive inspections to detect signs of chafing to the fuel feed pipe, and repair or replacement of the fuel feed pipe with a serviceable part, if necessary; and ensuring that responder units, electrical connector backshells, and associated wiring are undamaged and are positioned correctly to provide maximum clearance with the fuel pipe. This amendment is prompted by issuance of mandatory continuing airworthiness information by a foreign civil airworthiness authority. The actions specified by this AD are intended to prevent damage to the fuel feed pipe, which could result in fuel leaks and an increased potential for fire on the airplane.

DATES: Effective December 20, 1999.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 20, 1999.

ADDRESSES: The service information referenced in this AD may be obtained from British Aerospace Regional Aircraft American Support, 13850 Mclearen Road, Herndon, Virginia 20171. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Norman B. Martenson, Manager, International Branch, ANM–116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (425) 227–2110; fax (425) 227–1149.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 and Avro 146–RJ series airplanes was published in the **Federal Register** on August 12, 1999 (64 FR 43955). That action proposed to require repetitive inspections to detect signs of chafing to the fuel feed pipe, and repair or replacement of the fuel feed pipe with a serviceable part, if necessary; and ensuring that responder units, electrical connector backshells, and associated wiring are undamaged and are positioned correctly to provide maximum clearance with the fuel pipe.

Comments

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Request To Change the Repetitive Inspection Interval

One commenter, the manufacturer, states that the repetitive inspection interval required by paragraph (a) of the proposed AD is not consistent with the interval described in the service bulletin. The service bulletin indicates that the interval should be at each ''C'' check, which the manufacturer has confirmed to be at 4,000 flight cycles, or within 2 years, whichever occurs first.

The FAA infers that the commenter is requesting that the inspection interval be revised to correspond to ''C'' check intervals. The FAA concurs. It was the FAA's intention to require repetitive inspections at an interval corresponding to the majority of operators' scheduled ''C'' checks. The interval in the proposed AD was erroneously stated as 3,000 flight hours. Based on the information provided by the manufacturer, the FAA has revised the repetitive inspection interval in paragraph (a) of the final rule to specify an inspection interval of 4,000 flight cycles, or within 2 years, whichever occurs first.

Request To Change the Cost Impact

The commenter estimates that there are 45 U.S.-registered airplanes affected by this AD. In the notice of proposed rulemaking, the FAA had estimated that 20 airplanes were affected.

The FAA concurs and has changed the cost impact paragraph in the final rule to indicate that 45 airplanes are affected by this AD.