Region IX Las Vegas District Advisory Council; Public Meeting

The Small Business Administration, Las Vegas District Advisory Council will hold a public meeting on September 29, 1982, at the Small Business Administration Office, located at 301 E. Stewart Street, Las Vegas, Nevada, from 11:00 a.m. to 12:30 p.m. to discuss such matters as may be presented by Council members, staff of the Small Business Administration, or others present.

For further information, write or call Marie Papile, U.S. Small Business Administration, 301 E. Stewart, Las Vegas, Nevada 89101 (702) 385-6611.

Jean M. Nowak,

Acting Director, Office of Advisory Councils.

August 11, 1982.

[FR Doc. 82-22319 Filed 8-16-82; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2058]

Tennessee; Declaration of Disaster Loan Area

Knox County in the State of Tennessee constitutes a disaster area as a result of damage caused by flooding which occurred on July 31, 1982. Eligible persons, firms and organizations may file applications for loans for physical damage until the close of business on October 7, 1982, and for economic injury May 6, 1983, at the address below: Small Business Administration, Fidelity Bankers Building, Room 309, 502 South Gay Street, Knoxville, Tennessee 37902, or other locally announced locations.

Interest rates for applicants filing for assistance under this declaration are as follows:

Homeowners with credit available elsewhere, 14⅞%

Homeowners without credit available elsewhere, 7⅝%

Businesses with credit available elsewhere, 15½%

Businesses without credit available elsewhere, 8%

Businesses (EIDL) without credit available elsewhere, 8%

Other (non-profit organizations including charitable and religious organizations), 11½%

It should be noted that assistance for agriculture enterprises is the primary responsibility of the Farmers Home Administration as specified in Pub. L. 96-302.

(Catalog of Federal Domestic Assistance Programs Nos. 59002 and 59008)

Dated: August 6, 1982.

James C. Sanders,

Administrator.

[FR Doc. 82-22317 Filed 8-16-82; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF STATE

[Public Notice 818]

Fishery Conservation and Management Act of 1976; Applications for Permits To Fish Off the Coasts of the United States

The Fishery Conservation and Management Act of 1976 (Pub. L. 94-265) as amended (the "Act") provides that no fishing shall be conducted by foreign fishing vessels in the Fishery Conservation Zone of the United States after February 28, 1977, except in accordance with a valid and applicable permit issued pursuant to Section 204 of the Act.

The Act also requires that a notice of receipt of all applications for such permits, a summary of the contents of such applications, and the names of the Regional Fishery Management Councils that receive copies of these applications, be published in the **Federal Register.**

Individual vessel applications for fishing in 1982 have been received from the Governments of the Union of Soviet Socialist Republics, the German Democratic Republic, Portugal, Greece, The Netherlands, Italy, Japan, and Taiwan.

If additional information regarding any applications is desired, it may be obtained from: Permits and Regulations Division (F/CM7), National Marine Fisheries Service, Department of Commerce, Washington, D.C. 20235 (Telephone: (202) 634-7432).

Dated: August 6, 1982.

James A. Storer,

Director, Office of Fisheries Affairs.

Fishery codes and designation of Regional Councils which review applications for individual fisheries are as follows:

Code	Fishery	Regional Council
ABS	Atlantic Billfishes and Sharks	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean.
BSA	Bering Sea and Aleutian Islands Trawl, Longline and Herring Gillnet.	North Pacific.
CRB	Crab (Bering Sea)	North Pacific.
GOA	Gulf of Alaska	North Pacific.
NWA	Northwest Atlantic	New England, Mid-Atlantic.
SMT	Seamount Groundfish (Pacific Ocean).	Western Pacific.
SNA	Snails (Bering Sea)	North Pacific.
WOC	Washington, Oregon, California Trawl.	Pacific.
PBS	Pacific Billfish and Sharks	Western Pacific.

Activity codes specify categories of fishing operations applied for are as follows:

Activity Code and Fishing Operations

1 Catching, processing, and other support.
2 Processing and other support only.
3 Other support only.

Nation/vessel name/vessel type	Application No.	Fishery	Activity
JAPAN			
Eitan Maru, pot fishing vessel	JA-82-0830	BSA, GOA, SNA, NWA, SMT	1, 2, and 3.
GREECE			
Winderfrost, reefer	GR-82-0002	NWA	3.
This is a support vessel to allow transhipment of cargo on board the *De Giosa Giuseppe* (IT-82-0016-B) outside the 3-mile line U.S. territorial waters.			
THE NETHERLANDS			
Caracas Bay, reefer	NL-82-0005	NWA	3.
This is a support vessel to allow transhipment of cargo on board the *De Giosa Giuseppe* (IT-82-0016-B) outside the 3-mile line U.S. territorial waters.			
Joint Ventures			
ITALY			
De Giosa T., stern trawler/freezer catcher vessel	IT-82-0004	NWA	3.
This joint venture between Italy and I. Luie Fass, Fass Bros., Inc., 48 Water Street, Hampton, VA, may commence on April 1st 1982 and continue through the end of the calendar year. The United States and Italian joint venture parties are primarily only interested in Atlantic Squid: 800 m.t. of both Illex and Loligo.			
TAIWAN			
Golden Dragon No. 1, bottom trawler	TW-82-0004	BSA, GOA	1, 2, and 3.
Highly 303, refrigerated carrier	TW-82-0054	BSA, GOA	2 and 3.
Highly 707, refrigerated carrier	TW-82-0061	BSA, GOA	2 and 3.
Sea Light, bottom trawler	TW-82-0001	BSA, GOA	1, 2, and 3.
Chief Dragon 737, refrigerated vessel	TW-82-0055	GOA	2 and 3.

Nation/vessel name/vessel type	Application No.	Fishery	Activity
The Chong Shing Ocean Enterprise Corp., Taiwan and Swiftsure Fisheries, U.S.A., an affiliate of Koniag Inc., Alaska, have applied to engage in a joint venture of fishery aimed at producing 200 m.t. All Flounders, 1,000 m.t. Pollock, 6,000 m.t. Pacific Cod, 1,600 m.t. Sable Fish, 1,000 m.t. Rockfish and 200 m.t. Others, between the months of August 1st, 1982 through December 31, 1982.			
GERMAN DEMOCRATIC REPUBLIC			
F. C. Weiskopf, stern trawler/factory ship	GC-82-0030	NWA	1 and 2.
Peter Nell, stern trawler/factory ship	GC-82-0022	NWA	1 and 2.
Willi bredel, stern trawler/factory ship	GC-82-0024	NWA	1 and 2.
Arnold Zweig, stern trawler/factory ship	GC-82-0046	NWA	1 and 2.
The German Democratic Republic and Mr. William Quinby, President, Joint Trawlers (North America) Ltd., P.O. Box 1209, Gloucester, MA 01930, have applied to engage in a joint venture fishery aimed at producing 10,000 m.t. of Atlantic Mackerel between the months of August, 1982 and March, 1983.			
PORTUGAL			
Joao Alvares Fagundes, stern trawler	PO-82-0004	NWA	1, 2, and 3.
Portugal and Mr. William Quinby, President, Joint Trawlers (North America), Ltd., P.O. Box 1209, Gloucester, MA 01930 have applied to engage in a joint venture fishery aimed at producing 5,000 m.t. of Illex Squid and 2,000 m.t. of Lolligo Squid between the months of August 1, 1982 and December 31, 1982.			
PORTUGAL			
Coimbra, large stern trawler	PO-82-0009	NWA	1, 2, and 3.
Navegante, large side trawler	PO-82-0006	NWA	1, 2, and 3.
Inacio Cunha, large stern trawler	PO-82-0003	NWA	1, 2, and 3.
Lutador, OTB-2, OTB-3	PO-82-0012	NWA	1, 2, and 3.
Vimieiro, OTB-2/GNS	PO-82-0013	NWA	1, 2, and 3.
Luis Ferreira de Carvalho, OTB-2, OTB-3	PO-82-0005	NWA	1, 2, and 3.
Adelia Maria, OTB-2, OTB-3	PO-82-0014	NWA	1, 2, and 3.
Elisabeth, OTB-2, OTB-3	PO-82-0015	NWA	1, 2, and 3.
Vila do Conde, OTB-2, OTB-3	PO-82-0008	NWA	1, 2, and 3.
U.S.S.R.			
Sarma, factory/freezer	UR-82-0744	NWA	2 and 3.
Albatros, factory/freezer	UR-82-0743	NWA	2 and 3.
The U.S.S.R. and Mr. Richard N. Sharood of the Mid-Atlantic Fishery Export Corp have allied to engage in a joint venture fishery aimed at producing 8,000 m.t. Atlantic Mackerel between the months of August 1st, 1982-December 31, 1982, and 10,000 m.t. Atlantic Mackerel, January 1-March 31, 1983, 13,000 m.t. of Silver Hake between the months of August 1, 1982-December 31, 1982 and 10,000 m.t. of Red Hake between the months of August 1, 1982-December 31, 1982.			

[FR Doc. 82-22208 Filed 8-16-82; 8:45 am]

BILLING CODE 4710-09-M

Sunshine Act Meetings

Federal Register
Vol. 47, No. 159
Tuesday, August 17, 1982

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

CONTENTS

1

COMMODITY FUTURES TRADING COMMISSION

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10 a.m., Tuesday, August 17, 1982

CHANGES IN THE MEETING: Cancelled

[S-1178-82 Filed 8-13-82; 11:53 am]

BILLING CODE 6351-01-M

2

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors.

TIME AND DATE: Meeting of the OPIC Board of Directors: Tuesday, August 24, 1982 at 8:30 a.m. (closed portion): 11:00 a.m. (open portion).

PLACE: Offices of the Corporation. Seventh floor Board Room: 1129 20th Street N.W., Washington, D.C.

STATUS: The first part of the meeting from 8:30 a.m. to 11:00 a.m. will be closed to the public. The open portion of the meeting will start at 11:00 a.m.

MATTERS TO BE CONSIDERED: (Closed to the Public 8:30 a.m. to 11:00 a.m.):

1. Overview of OPIC's Operations, Strategic Plan, Goals and Results.
2. Proposed Budget for FY84 and Proposed Amendments to Budget for FY83.
3. Insurance Project in African Country.
4. Finance Project in East Asian Country.
5. Claims Report.
6. Information Reports: General.
7. Information Report: Project status.

FURTHER MATTERS TO BE CONSIDERED: (Open to the Public 11:00 a.m.)

1. Approval of the Minutes.
2. Confirmation of Scheduled Board Meetings.
3. Personnel Actions.
4. Determination of Countries Qualifying as Developing Countries for OPIC Programs.
5. Financial Statements.
6. Information Reports.

CONTACT PERSON FOR INFORMATION: Information with regard to this meeting may be obtained from the Secretary of the Corporation at (202) 653-2925.

August 12, 1982.

Elizabeth A. Burton,

Corporate Secretary.

[S-1177-82 Filed 8-12-82; 4:25 pm]

BILLING CODE 3210-0-M

federal register

Tuesday
August 17, 1982

Part II

Federal Election Commission

Presidential Primary Matching Fund; Proposed Regulations

FEDERAL ELECTION COMMISSION

11 CFR Parts 106 and 9031 through 9039

[Notice 1982-6]

Presidential Primary Matching Fund

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission requests comments on proposed rules to govern its administration of the Presidential Primary Matching Fund pursuant to 26 U.S.C. 9031 *et seq.* The proposed regulations would revise the provisions of current 11 CFR Parts 9031 *et seq.*, in light of the 1979 amendments to the Federal Election Campaign Act of 1971 and the Commission's experiences during the 1980 election. The revision would clarify the current submission and certification procedures to ensure that candidate submissions for matching funds are processed promptly and that matching funds are distributed properly. Furthermore, the proposed rules would address issues not covered in the current regulations, such as joint fundraising activities involving candidates receiving matching funds and the valuation of certain fundraising assets, e.g. artwork, at the conclusion of the campaign. In addition to the proposed rules in this Notice, the Commission would like to receive comments on several issues which were not addressed in this draft. Further information on the proposed revisions is provided in the supplemental information which follows.

DATE: Comments must be received on or before September 16, 1982.

ADDRESS: Susan E. Propper, Assistant General Counsel, 1325 K Street, N.W. Washington, D.C. 20463.

FOR FURTHER INFORMATION CONTACT: Susan E. Propper, Assistant General Counsel, (202) 523-4143.

SUPPLEMENTARY INFORMATION: The proposed rules represent an attempt by the Commission to re-evaluate the various stages of the primary matching fund process. The intent of the proposed revision is to clarify, and when possible simplify, the Matching Fund regulations to facilitate compliance with its provisions. Hence, a primary goal of the revision is to provide workable rules to govern many of the areas which have caused uncertainty in the past. The proposed rules would also provide a fuller explanation of the certification and audit processes. Moreover, a third focus of the draft regulations is the addition of new provisions to cover aspects of the Presidential primary process not previously addressed.

With broad goals such as these, the proposed rules offer many new possible solutions to concerns that have been raised over the last two Presidential election cycles. While the Commission welcomes comments on particular applications of the draft rules, it is also interested in commentary on the overall approaches suggested here.

For example, the draft includes a proposed revision of the state expenditure allocation requirements. Under the current rules, few guidelines are provided for candidates in allocating expenditures under the state limits set forth in 2 U.S.C. 441a(b). This approach has resulted in considerable Commission involvement in the various methods used by candidates under this section. In contrast, the draft revision of 11 CFR 106.2 proposes a system which would establish definite procedures for allocating particular types of expenditures. Under the proposed rules, certain expenditures such as costs for media production, compliance, and fundraising would be exempted from the state by state allocation requirements. Furthermore, the proposed regulations would establish a category of national campaign expenses which need not be allocated under § 106.2. The Commission requests comments on this possible shift in approach in addition to comments on the impact of the specific rules suggested.

A technical amendment to 11 CFR 106.3 has also been proposed to specify that its provisions are not applicable to candidates receiving matching funds.

Similarly, in proposed 11 CFR 9033.10 all the provisions for written hearings regarding candidates' eligibility to receive matching funds now contained in five separate sections would be consolidated into one section of the regulations. The time limits for responses by the candidates, however, have been retained in the substantive sections concerning eligibility determinations. The proposed rules would also specify that an eligibility determination made pursuant to 11 CFR 9033.10 is independent of any Commission decision to institute an enforcement proceeding under 2 U.S.C. 437g.

For purposes of providing greater clarity in the regulations, the documentation requirements for disbursements have been placed in a separate section in this draft, at 11 CFR 9033.11. Section 9033.11 as proposed would also contain an enumeration of the records a candidate must keep of receipts and disbursements as an attempt to provide a more complete list of the materials the Commission may require during the mandatory audit. While the Commission must ensure that matching funds are spent solely for qualified campaign expenses, the Commission is cognizant of the need to balance requirements for detailed documentation with an avoidance of over-specificity in the regulations. The Commission therefore requests public comment on how to enforce this requirement without undue burden on committees while still ensuring that needed records are available for Commission inspection.

The proposed rules would also revise the Presidential Primary Matching Fund regulations to clarify and more closely reflect the actual procedures involved in the submission of contributions and certification of matching funds. For example, 11 CFR Part 9036 would be reorganized to clarify and consolidate the provisions on submitting contributions for matching purposes. 11 CFR 9036.1 has been expanded in the proposed regulations to include all provisions governing threshold submissions, including the timing and format for such submissions. The proposed revisions to 11 CFR 9036.1(c) are intended to clarify the current process under which the Commission certifies matching funds during both election and non-election years. In addition, the time for certification would be enlarged under 11 CFR 9036.2, and 11 CFR 9036.2(c) would be revised to make it clear that the Commission's holdback procedures in certifying funds would apply only during the candidate's period of eligibility.

Furthermore, the proposed regulations establish procedures for conducting joint fundraising activities involving candidates receiving matching funds. Several sections of the regulations would be revised to specify that contributions from joint fundraising efforts conducted in accordance with these procedures are fully matchable and must be included in a candidate's statement of net outstanding campaign obligations. The proposed rules would also provide that, a candidate's failure to include funds received from a joint fundraiser in his or her statement of net outstanding campaign obligations could be a basis for a repayment determination under 11 CFR 9038.2.

The draft regulations also contain proposed revisions to 11 CFR Part 9038. 11 CFR 9038.1 would be revised to detail more fully the process involved in conducting a mandatory audit at the end of the matching payment period. Specifically, this section would describe the fieldwork underlying an audit, as well as the preparation, contents and public release of an audit report.

Candidates would continue to have an opportunity to contest or comment on the audit report prior to its release to the public. Additional provisions would explain the interaction of the audit and the compliance procedures under 2 U.S.C. 437g and the connection between a mandatory audit and any repayment determination under 11 CFR 9038.2 based upon its results. In addition to providing candidates an opportunity to contest the Commission's initial repayment determination, the proposed rules to revise 11 CFR 9038.2 would provide that candidates who have submitted written statements may be granted an oral hearing upon the affirmative vote of four Commission members. It is intended that the Commission would promulgate procedures for each individual hearing.

Moreover, the proposed revision also contains provisions to implement 26 U.S.C. 9039 which authorizes the Commission to require candidates to retain relevant records and information and to conduct discretionary audits and investigations to carry out its responsibilities in administering the Primary Matching Fund Act. Proposed 11 CFR 9039.1 would require candidates and their authorized committees to furnish all books and records required to be kept under the regulations to the Commission upon request. The proposed rules would also explain the routine review process involved in administering the Fund. Also, the draft sets forth proposed procedures under which any investigtion or discretionary audit would be conducted and provides that the information obtained could be the basis for a repayment determination or an enforcement action.

In addition, the proposed regulations contain several provisions to address other issues which arose during the 1980 election. One revision would establish a procedure for including donated artwork or other items of substantial value in a candidate's statement of net outstanding campaign obligations and provide a formula for determining the value of such assets. It would also increase the dollar value of the capital assets exclusion under 11 CFR 9034.5 from $500 to $1,000. Also, the provisions on campaign travel and media reimbursement of the General Election Financing regulations (11 CFR 9004.6 and 9004.7) have been incorporated into the Primary Matching Fund regulations in the proposed revisions.

The Commission also requests comments on five issues which have not been addressed in this draft. Two of these issues are concerned with matchability of certain contributions and assessment of interest. The other three issues relate to possible modifications of the matching fund procedures. While no decision has been made to implement any of these proposals, the Commission is concerned about the best use of candidate and Commission resources during the primary election cycle. Therefore, these proposals are described to elicit comments on ways to streamline the matching fund process.

Matchability of Certain Contributions

First, the Commission seeks public comment on whether contributions which are submitted in the form of money orders; which originate as the price of a concert ticket; or which are "induced" by the sale of an item should be matched and in particular, whether such contributions should be viewed as matchable in a Threshold Submission to establish eligibility in any of the requisite 20 States.

Assessment of Interest

A second consideration is whether the Commission should assess interest against candidates who make late repayments.

Matching Fund Procedures

Letter Requests

The first proposal under consideration pertains to the use of Letter Requests and supporting bank documentation in lieu of a full matching fund submission on a designated submission date for an eligible candidate. The Letter Request could specify the amount of matchable contributions that have been received after those submitted on the previous full matching fund submission and which are expected to be included and documented on the next submission. Based on the Letter Request, a payment would be certified which may be less than that requested. On the submission date following that of the letter request, a full matching fund submission would be made covering the period of the letter request and the current submission.

This proposal would in effect reduce by almost 50% the number of matching fund submissions that the candidate must prepare and that the Commission must review and process, while still providing for twice monthly matching fund payments to the candidate. The amount certified for a Letter Request would then be deducted from the amount to be certified on the next full submission.

As presently conceived, a Letter Request would be accompanied by documentation such as bank validated deposit slips which represent deposits of contributions from individuals received between the cutoff date of the previous submission and the last such deposit on the business day immediately preceding the date of the request.

For a regular matching fund submission, the Commission applies a holdback percentage based on the average error rate from the four (4) previous submissions. For a Letter Request, the Commission is considering placing a limitation on the amount that it will certify. The Commission is considering basing this amount upon the percentage of the verified matchable amount of contributions contained on the last submission to total deposits of indivudual contributions as reflected in the bank documentation for that submission. Although the candidate would be receiving a payment, based on a full submission, fourteen days after the Letter Request payment, the Commission is concerned that placing such a limitation on the amount it will certify may deny matching funds for a two week or more period in a case where the percentage of matchable contributions contained in the deposits may be exceptionally high. To offset this potential drawback, one alternative would be to allow the Letter Request to cover matchable contributions contained in deposits up to the last business day before the Letter Request. Therefore, the candidate would receive matching funds based upon the above described percentage for contributions that are yet being processed within the candidate's matching fund system. Another possibility would be to allow candidates to choose between making a letter request and a regular submission on those submission dates scheduled for letter requests.

Rejection Criteria

The second proposal on which the Commission seeks comment is the possible reestablishment of rejection criteria for matching fund submissions which have an error rate in excess of 15%. During the 1980 Presidential election cycle, the Commission expended considerable resources in reviewing matching fund submissions which contained a high percentage of non-matchable contributions. Under the proposed procedure, where the initial, or pilot, sample indicates a submission has an error rate in excess of, for example, 15%, the submission would be rejected from further review and returned to the candidate for corrective action. The candidate would be provided a Notice of types of non-matchable contributions identified in the sample and then have the option of making corrections or withdrawing the submission entirely. For an eligible candidate, a holdback payment would already have been certified. If the submission is not corrected and returned to the Commission, the amount previously paid would be adjusted from the payment to be certified for the next submission presented. Given the timing of the matching fund process, the candidate would have approximately one week to correct and return the submission before any delay or adjustment in a subsequent payment would occur. A rejected submission could be returned, however, at anytime after the candidate believed adequate corrections has been made.

It should be noted that the rejection criteria applied in 1976 was seldom used. However, if rejection criteria are not implemented, the Commission may consider expanding the time for review of submissions where the error rate exceeds 15% from fifteen to twenty-five business days due to the greatly increased processing time required for such submissions. An increase in the time for review may be particularly important with respect to ineligible candidates where only the actual matchable amount of a submission would be certified following the review and processing of a submission.

Submissions by Ineligible Candidates

A third proposal, based on the more effective use of Commission resources, is also being considered by the Commission. This would limit an ineligible candidate to one submission per month. If adopted, this procedure would not be operative until 30 days after the candidate's date of ineligibility. The candidate would thus be permitted two submissions during the first thirty days after his ineligibility date to submit any contributions which were backlogged. Thereafter the cycle would be once a month. Before deciding if such a procedure should be instituted, the Commission will weigh any potential hardships to individual candidates against the administrative benefits which could be expected.

Overall, in the interests of the smooth and efficient administration for both the candidates and the Commission, the Commission hopes that the proposed rules will elicit constructive suggestions from those individuals who are interested in the matching fund process, including those who have previously participated in it.

The Commission will hold hearings on the proposed revisions of the Primary Matching Fund Regulations on Wednesday September 29, 1982. Persons interested in testifying at this hearing should so indicate in their written comments on the proposed rules.

List of Subjects

11 CFR Parts 9031 Through 9035

Campaign funds, Political candidates, Elections.

11 CFR Parts 9036 Through 9039

Administrative practice and procedure, Campaign funds, Political candidates.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

1. It is proposed to amend 11 CFR Part 106 by revising §§ 106.2 and 106.3 as follows:

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

(a) *General.* This section applies to Presidential primary candidates receiving Federal matching funds pursuant to 11 CFR Parts 9031 *et. seq.* Except for expenses exempted under paragraph (c) of this section, 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. This allocation shall not necessarily be determined by the State in which the expenditure is incurred or paid.

(b) *Method of allocation among states.*—(1) *General Allocation Method.* Unless otherwise specified under paragraph (b)(2) of this section, an expense incurred by a candidate's authorized committee(s) for the purpose of influencing the nomination of that candidate in one or more States shall be allocated to each state in proportion to the voting age population in each state that can reasonably be expected to be influenced by that expenditure.

(2) *Specific allocation methods.* Expenditures that fall within the categories listed below shall be allocated based on the following methods.

(i) *Media expenses.*—(A) *Print Media.* Except for expenses exempted under paragraph (c) of this section expenditures for the publication and distribution of newspaper, magazine and other types of printed advertisements distributed in more than one State shall be allocated to each State in proportion to the estimated readership of voting age which can reasonably be expected to be influenced by these advertisements. This allocation of expenses, 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 will not be required for any state in which the advertisement is circulated to less than 3% of the total estimated readership.

(B) *Broadcast media.* Except for expenses 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 viewing audience which can reasonably be expected to be reached by the broadcast. This allocation of costs, including any commission charge for the purchase of broadcast media, shall be made using industry market data.

(C) *Refunds for media expenses.* 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 expenses.* No allocation of media expenses shall be made to any State in which the primary election has already been held, or in which the primary election is held more than 60 days after the date of broadcast or distribution.

(ii) *Salaries.* Except for expenses exempted under paragraph (c) of this section, salaries paid to persons working in a particular state, 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 expenses.* Travel and subsistence expenses for persons working in a state 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 intrastate travel and subsistence costs of the candidate and his family or the candidate's representatives.

(iv) *Overhead expenses.*—(A) *Overhead costs of state offices.* Except for expenses exempted under subsection (c), overhead costs of offices located in a particular State shall be allocated to that State. For purposes of this section, overhead costs include, but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service charges.

(B) *Overhead costs of regional offices.* Except for expenses exempted under paragraph (c) of this section, overhead costs of a regional office or any office with responsibilities in two or more States shall be allocated to each state in proportion to the voting age population of each State. For purposes of this section, overhead costs include but are not limited to, rent, utilities, office equipment, furniture, supplies, and telephone service charges.

(v) *Telephone service expenses.*—(A) *Telephone Service in State offices.* Expenses for telephone service in a State office shall be allocated to the state in which the service is used regardless of the destination of any telephone call.

(B) *Telephone service in regional offices.* Expenses for telephone service in a regional office with responsibilities in two or more States shall be allocated to each state in proportion to the voting age population in each state.

(C) *Toll free service in campaign headquarters.* Expenses for toll free service provided at National Campaign Headquarters to facilitate communication emanating from state and regional offices need not be allocated to each state.

(vi) *Transportation and services made available to media, secret service and similar personnel.* Expenses incurred by the candidate's authorized committee(s) to provide transportation and services for media, Secret Service and similar personnel within a state shall be allocated to that State. Reimbursement for such expenses shall be made in accordance with 11 CFR 9034.6 and may be deducted from the amount originally allocated.

(vii) *Public opinion poll expenses.* Expenses incurred for the taking of a public opinion poll covering only one state shall be allocated to that state. Expenses incurred for the taking of a public opinion poll covering two or more states shall be allocated to those states in proportion to their voting age population.

(c) *Exempted expenditures.*—(1) *National campaign expenditures.*—(i) *Operation costs.* Expenses incurred for administrative, staff, and overhead costs of the national campaign headquarters need not be allocated to any state. Overhead costs shall be defined as in 11 CFR 106.2(b)(2)(iv).

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

(iii) *National toll-free telephone services.* Expenses incurred for toll-free telephone service provided by national campaign headquarters for calls from State and regional offices need not be allocated as provided in 11 CFR 106.2(b)(2)(v)(C).

(2) *Media production costs.* Expenses 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) *Interstate travel.* Expenses incurred for interstate travel costs, such as travel between state campaigns or between state offices and national headquarters, need not be allocated to any state.

(4) *Compliance and fundraising costs.* An amount equal to 5% of campaign workers' salaries and overhead costs in a particular state may be excluded from allocation to that state as an exempt compliance cost. An additional amount equal to 5% of such salaries and overhead costs in a particular state may be excluded from allocation to that state as exempt fundraising costs but this exemption shall not apply within 28 days of the primary election as specified in 11 CFR 110.8(b)(2). Any amounts excluded for fundraising costs shall be applied against the fundraising expense 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 11 CFR 106.2(e).

(d) *Reporting.* All expenditures, whether or not allocated under this section, shall be reported on FEC Form 3Pc.

(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 5% exemption under 11 CFR 106.2(c)(4), such records shall include written job descriptions and 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 authorized committees or by any other political committee shall be reported.

(b)(1) Travel expenses paid for by a candidate from personal funds, or from a source other than a political committee, shall constitute reportable expenditures if the travel is campaign-related.

(2) Where a candidate's trip involves both campaign-related and non-campaign-related stops, the expenditures allocable for campaign purposes are reportable, and are calculated on the actual cost-per-mile of the means of transportation actually used, starting at the point of origin of the trip, via every campaign-related stop and ending at the point of origin.

(3) Where a candidate conducts any campaign-related activity in a stop, the stop is a campaign-related stop and travel expenditures made are reportable. Campaign-related activity shall not include any incidental contacts.

(c)(1) Where an individual, other than a candidate, conducts campaign-related activities on a trip, the portion of the trip attributed to each candidate shall be allocated on a reasonable basis.

(2) Travel expenses of a candidate's spouse and family are reportable as expenditures only if the spouse or family members conduct campaign-related activities.

(d) Costs incurred by a candidate for the United States Senate or House of Representatives for travel between Washington, D.C., and the State or district in which he or she is a candidate need not be reported herein unless the costs are paid by a candidate's authorized committee(s), or by any other political committee(s).

(e) Notwithstanding paragraphs (b) and (c) of this section, the reportable expenditure for a candidate who uses government conveyance or accommodations for travel which is campaign-related is the rate for comparable commercial conveyance or accommodation. In the case of a candidate authorized by law or required by national security to be accompanied by staff and equipment, the allocable expenditures are the costs of facilities sufficient to accommodate the party, less authorized or required personnel and equipment. If such a trip includes both campaign and non-campaign stops, equivalent costs are calculated in accordance with paragraphs (b) and (c) of this section.

(Sec. 310(8), Pub. L. 92–225, added by sec. 208, Pub. L. 93–443, 88 Stat. 1279, and amended by secs. 105 and 107(a)(1), Pub. L. 94–283, 90 Stat. 481 (2 U.S.C. 437d(a)(8)), and sec. 315(a)(10), Pub. L. 92–225, 86 Stat. 16, amended by secs. 208(a) and (c)(10), and 209(a)(1) and (b)(1), Pub. L. 93–443, 88 Stat. 1279, 1287, and sec. 105, Pub. L. 94–283, 90 Stat. 481 (2 U.S.C. 438(a)(10)))

2. It is proposed to amend 11 CFR by revising Subchapter G, 11 CFR Parts 9031 through 9038, and adding new Part 9039 as follows:

SUBCHAPTER G—PRESIDENTIAL ELECTION CAMPAIGN FUND, PRESIDENTIAL PRIMARY MATCHING FUND

PART 9031—SCOPE

§ 9031.1 Scope.

The restrictions, liabilities and obligations imposed by this subchapter are in addition to those imposed by sections 431–455 of Title 2 and regulations prescribed thereunder. Unless expressly stated to the contrary, this subchapter does not affect the restrictions, obligations and liabilities imposed by sections 431–455 of Title 2 and regulations prescribed thereunder.

(Sec. 310(8), Pub. L. 92–225, added by sec. 208, Pub. L. 93–443, 88 Stat. 1297, and amended by secs. 105 and 107(a)(1), Pub. L. 94–283, 90 Stat. 481 (2 U.S.C. 437d(a)(8)), and sec. 408(c), Pub. L. 93–443, 88 Stat. 1297 (26 U.S.C. 9039(b)))

PART 9032—DEFINITIONS

Authority: Sec. 408(c), Pub. L. 93–443, 88 Stat. 1297, as amended by sec. 115(c)(2), Pub. L. 94–283, 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 make expenditures on behalf of the candidate. The term "authorized committee" includes the candidate's 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 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 subsection (a) of this section. 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 run off 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 days 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 Chapter, "contribution" has the same meaning given the term under 2 U.S.C. 431(e) 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.

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

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

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

(c) For the purposes stated in both paragraphs (a) and (b) of this section; or

(d) To nominate a Presidential candidate.

§ 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 purposes 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, shall not be considered a State law for purpose 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 shall be considered qualified campaign expenses if they meet the provisions of 11 CFR 9034.4(a). Expenditures described under 11 CFR 9034.4(b) shall not be considered qualified campaign expenses.

PART 9033—ELIGIBILITY

Authority: Sec. 408(c), Pub. L. 93–443, 88 Stat. 1297, as amended by sec. 305(c) and 306(b)(2), Pub. L. 94–283, 90 Stat. 499–500 (26 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) shall 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 shall 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) shall comply with the documentation requirements set forth in 11 CFR 9033.11.

(3) The candidate and the candidate's authorized committee(s) shall 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) shall 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 any other information that the Commission may request.

(5) The candidate and the candidate's authorized committee(s) shall 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 any other information that the Commission may request.

(6) The candidate and the candidate's authorized committee(s) shall 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) shall 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) shall 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) shall 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 through 115 and 9031 through 9039.

(10) The candidate and the candidate's authorized committee(s) shall 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 subsection (b) 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 shall 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 pary 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 that they have received matchable contributions in excess of $5,000 in each of twenty states from individuals who are residents in that state and which with respect to each individual do not exceed $250. For purposes of this subsection, 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 9033.2(b)(3) 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 shall 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 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 by the Commission shall be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

(d) A candidate who receives a final determination of ineligibility under 11 CFR 9033.3(d) shall be ineligible to receive matching fund payments under 11 CFR 9034.1.

§ 9033.4 Matching payment threshold requirements.

The Commission shall, 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 requirement 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 shall 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 of 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 satify threshold requirements shall be made in accordance with the procedures outlined in 11 CFR 9033.10(c).

§ 9033.5 Determination of ineligibility date.

After the candidate's date of ineligibility, he or she shall only receive matching payments to the extent that he or she has net outstanding campaign obligations as defined in 11 CFR 9034.5. The candidate's date of ineligibility shall be whichever date by operation of 11 CFR 9033.5(a), (b) or (c) occurs first.

(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 earlier 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 a 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.

(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) *Re-establishment of eligiblity.* If a candidate is determined to be ineligible under 11 CFR 9033.5(a) or (b), he or she may re-establish eligibility to receive matching funds under 11 CFR 9033.8.

§ 9033.6 Determination of inactive candidacy.

(a) *In General.* The Commission may, on the basis of the factors listed in 11 CFR 9033.6(b) below, 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 shall 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; and

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

(c) *Initial determination.* The Commission shall notify the candidate of its initial determination in accordance with the procedures outlined in 11 CFR 9033.10(b) and shall 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 shall 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 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 shall 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 shall 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 shall 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 reestablishment of eligibility date.

(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 shall make its determination under paragraphs (a) and (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 or expenditure limitations.

(a) If the Commission has reason to believe 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 shall notify the Candidate of its intitial determination in accordance with the procedures outlined in 11 CFR 9033.10(b). The candidate shall be given an opportuntiy within 20 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 shall 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 shall follow the procedures set forth in this section when making an initial or final determination that a candidate may not receive matching funds for any of the following reasons. 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.

(1) The candidate has 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 has reason to believe 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 shall notify the candidate of its initial determination. The notification shall 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 11 CFR 9033.10(a), 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 submitted by the candidate before making its final determination. A final determination that the candidate has failed to satisfy the requirements at issue shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the legal and factual reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the detemination is based.

(d) *Effect on other determinations.* If the Commission makes an initial determination that a candidate may not receive matching funds under paragraph (b) of this section, but determines to take no further action under this section, 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.

§ 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 candidates, his or her authorized committees and agents or persons authorized to make expenditures of behalf of the candidate or committee(s) as provided in paragraph (b) of this section.

(b) *Documentation required.* (1) For disbursements which in a calendar year aggregate 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)(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 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 11 CFR 9033.11(b)(1)(i), (ii) or (iii) 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 and the date 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 and date 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 for an advance of $500 or less for travel and/or subsistence to an individual who will be 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 or 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

Authority: Sec. 408(c), Pub. L. 93–443, 88 Stat. 1299, as amended by sec. 307(b), Pub. L. 94–283, 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 submission there are remaining net outstanding campaign obligations, and 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 $250 of the aggregate amount contributed by an individual shall be matchable.

(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.

(b) For purposes of this section, the term written instrument means a check written on a personal, escrow or trust account containing the contributor's personal funds; a money order; or any other 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, except in the case of contributions from joint accounts; the amount and date of the contribution; and the mailing address of the contributor.

(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. 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).

(i) 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.

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

(i) The contributor has beneficial 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 beneficial ownership of the account; the account represents the personal funds of the contributor; and the giving of the contributions does not violate the conditions of the trust, estate, or escrow agreement.

(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 the 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 the 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 to the extent described below:

(i) The matchable contribution shall only include the excess of the amount paid for admission over the fair market value of all benefits available to the purchaser of the ticket, using a good faith reasonable estimate;

(ii) The promotional material and tickets for the event shall clearly and separately identify the fair market value of the admission and the amount of contribution being made to the Presidential candidate, or his or her authorized committee; and

(iii) A copy of a ticket at each admission price and a copy of all promotional material shall accompany the submission of such contributions for matching.

(6) Contributions in the form of a purchase price paid for admission to an activity that is essentially political is fully 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 fully matchable.

§ 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:

(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)(4);

(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 represented 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 prices;

(i) 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, such as a concert, motion picture, or theatrical performance, in which case the amount of the non-matchable contribution shall include the fair market value of all the benefits available to the purchaser of the ticket, using a good faith reasonable estimate;

(j) 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

(k) 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. See 11 CFR 100.7(b)(1).

(3) *Winding down costs.* The following costs shall be considered qualified campaign expenses if they are incurred within ten months after the candidate's date of ineligibility:

(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.

(iii) The candidate may request an extension of the winding down period no later than 20 calender days before the end of the winding down period. The request shall be in writing and shall state the reasons for the extension. The Commission shall consider the candidate's efforts to terminate activity, the time period sought and any other good cause reasons offered by the candidate when determining whether to approve or disapprove the request for extension.

(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 11 CFR 9034.4(a)(3). Expenses that are not qualified include, but are not limited to, litigation costs.

(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) *Repayments.* Additional funds raised to make repayments under 11 CFR Parts 9038 and 9039 shall not be subject to the contribution limits of the Act but shall be subject to the prohibitions of the Act.

(d) *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 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), 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 which has remaining useful life exceeding 1 year from the last day of the candidate's eligibility and whose value on the last day of the candidate's eligibility exceeds $1000. 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 determined by subtracting the amount of depreciation allowed under the Internal Revenue Code from the cost of the asset. The amount of depreciation shall be the same as that claimed on the committee's tax return filed under 26 U.S.C. 527. If the amount claimed is lower than that obtained by either of the above methods, the amount shall be justified by the candidate.

(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, the aggregate value of which 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 oustanding 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 subsection (c)(2)(i), 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 status of the campaign as of the close of business on the last business day preceding the date of submission for matching funds. Each change from the last statement of net outstanding campaign obligations shall be indicated and accompanied by a statement explaining the reasons for the change.

(e)(1) If, in reviewing a candidate's statement of net outstanding campaign obligations, 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 shall follow the procedures for initial and final determinations under 11 CFR 9033.10 (b) and (c). The Commission shall notify the candidate of its initial determination within 10 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 demonstate 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, Secret Service and similar personnel.

(a) If an authorized committee incurs expenses for transortation made available to media, Secret Service or other staff authorized by law or required by national security to travel with a candidate, such expenses shall be qualified campaign expenses. If reimbursement for such expenses is received by a committee, the amount of such reimbursement for each individual shall not exceed that individual's pro rata share of the actual costs of the transportation made available. An individual's pro rata share shall be calculated by dividing the total number of passengers transported into the total cost of the transportation made available.

(b) If an authorized committee incurs expenses for ground services and facilities (e.g. ground transportation, housing, meals, telephone service, typewriters) made available to media, Secret Service, or other staff authorized by law or required by national security to travel with a candidate, such expenses shall be qualified campaign expenses. If reimbursement for such expenses 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 services and facilities made available; or a reasonable estimate of the individual's pro rata share of the actual cost of the services and facilities made available. If it is determined that reimbursements related to a trip have exceeded by 10% or more the actual cost of the services and facilities made available, such excessive amount shall be deemed income to the committee and shall be repaid to the Secretary. An individual's pro rata share shall be calculated by dividing the total number of individuals to whom such services and facilities are made available into the total cost of such services and facilities.

(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 expenses.

(a) Notwithstanding the provisions of 11 CFR Part 106, expenses 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 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 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. Such payments to the government entity shall be considered qualified campaign expenses and shall be reported by the committee as expenditures.

(i) If the trip is by government conveyance or charter paid for by a government entity, the actual cost for each passenger shall be determined by dividing the total operating cost for the conveyance or charter by the total number of passengers transported. The amount payable to the government entity shall be calculated in accordance with the formula set forth at 11 CFR

9034.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers travelling for campaign purposes.

(ii) If the trip is by non-charter commercial transportation or accommodations paid for by a government entity, the actual cost shall be calculated in accordance with the formula set forth at 11 CFR 9034.7(b)(2) on the basis of commercial fare.

(iii) In the case of candidates authorized by law or required by national security to be accompanied by staff, such staff shall not be considered to be travelling for campaign purposes unless such staff engages in campaign activity during a trip.

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

(6) 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 wich is allocable to all passengers, including the candidate, travelling for campaign purposes shall 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 11 CFR 9034.7(b)(2) on the basis of the actual cost per passenger multiplied by the number of passengers travelling 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 11 CFR 9034.7(b)(2) on the basis of commercial fare. Such actual cost shall be a qualified campaign expense and a reportable expenditure.

(iii) The provisions of 11 CFR 9034.7(b)(5) (iii) and (iv) apply to calculations under this section.

§ 9034.8 Joint fundraising.

(a) *General.*—(1) *Permissible Participants.* Presidential primary candidates who receive matching funds under this Chapter 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 Guideline for Presentation in Good Order;

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

(iii) 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.

(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 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 Chapter 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) *Advances.* (i) Except as provided in 11 CFR 9034.8(c)(2) (ii) and (iii), the amount of funds advanced by each participant for fundraising costs shall be in proportion to the allocation formula agreed upon under 11 CFR 9034.8(c)(1).

(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; and

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

(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 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 the Act. 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)(8) when such funds are received from the fundraising representative.

(5) *Recordkeeping requirements.* (i) The fundraising representative 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 that total amount that the contributor could contribute to all 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(d).

(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) Designated 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 determine each participant's share of expenses based on the percentage of the total receipts each participant had been allocated. To determine 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 contributors 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.

PART 9035—EXPENDITURE LIMITATIONS

Sec.

Authority: Sec 408(c), Pub. L. 93–443, 88 Stat. 1300, as amended by sec. 305(a), 307(c), Pub. L. 94–283, 90 Stat. 494, 501 (26 U.S.C. 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) The expenditure limitations of 11 CFR 9035.1 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.

(a) 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.

Authority: Sec. 408(c), Pub. L. 93–443, 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 per 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 total amount of all matchable contributions submitted for matching purposes;

(vii) An indication of which contributions were received as a result of entertainment activity.

(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 slip.

(3) The candidate shall submit bank documentation, such as bank-validated deposit slips, 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 debt memo and bank statement.

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

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

(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 shall 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 subsection (a) in a Presidential election year, the Commission shall certify to the Secretary of the Treasury, within 10 business 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 subsection (a) in the year preceding the Presidential election year, the Commission shall 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 submission 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 in accordance with the Federal Election Commission's Guideline for Presentation in Good Order. The candidate shall file all information required for threshold eligibility under 11 CFR 9036.1, except that:

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

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

(3) 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; and

(4) The occupation and employer's name need not be disclosed for individuals whose aggregate contributions exceed $200 per calendar year, except that 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).

(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 of the Treasury 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.

(ii) The Commission shall 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. See 11 CFR 9036.4 for Commission procedures for certification of additional payments.

(2) After a candidate's date of ineligibility, the Commission shall certify to the Secretary of the Treasury within 15 business days of receipt of information submitted 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).

(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 Insufficient documentation.

Contributions which are otherwise matchable may be rejected for matching purposes because of 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 includes:

(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 accountholder 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 contribution 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; and

(2) A discrepancy in aggregation within or between submissions, or a listing of a contributor more than once within 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 meets the format requirements of 11 CFR 9036.1(b) and 9036.2(b) and the Federal Election Commision's Guideline for Presentation in Good Order. If the Commission determines that a submission does not 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 three (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 Part 9036 satisfies the format requirements of 11 CFR 9038.1(b) and 9038.2(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 of the Treasury 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 shall notify the candidate in writing of the following:

(1) An amount representing 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 Commision has rejected as non-matchable 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 of the Treasury 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.* Within 30 days of receipt of the results of the submission review pursuant to 11 CFR 9036.4, a candidate may choose to resubmit:

(1) The entire submission; or

(2) The specific contributions that were rejected for matching for which he or she has made a written request.

(b) *Resubmission of contributions.* If the candidate chooses to resubmit any contributions under subsection (a), the contributions shall be resubmitted on a date prescribed by the Commission and shall contain the following information:

(1) All the information required under 11 CFR 9036.1 for a regular submission;

(2) A list which references each contribution to its original submission;

(3) A list reflecting the aggregate amount of contributions submitted for matching from each contributor as of the original submission; and

(4) A list reflecting the aggregate amount submitted per contributor as of the date of the resubmission;

(5) But shall not contain any new or additional contributions not presented with an original submission.

(c) *Certification of resubmitted contributions.* Contributions that the Commission determines to be matchable will be certified to the Secretary of the Treasury within 15 business days. If the candidate chooses to request the specific contributions rejected for matching, the amount certified shall equal only the matchable amount of the particular contribution rather than the amount projected as being non-matchable based on that contribution due to the sampling techniques used in reviewing the original submission.

(d) *Interim determinations.* If the candidate resubmits a contribution for matching and the Commission determines that the rejected contribution is still non-matchable, the Commission shall 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 of the Commission's notice. Such materials may be submitted by counsel if the candidate so desires.

(e) *Final determinations.* The Commission will consider any written legal or factual materials submitted by the candidate in making its final determination. A final determination by the Commission that a contribution is not matchable shall be accompanied by a written statement of reasons for the Commission's action. This statement shall explain the reasons underlying the Commission's determination and shall 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 after the last Monday in January of the year following the election, regardless of the date the contribution was deposited.

PART 9037—PAYMENTS

Authority: Sec. 408(a), Pub. L. 93-443, 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 of the Treasury or his or her delegate 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 or his or her delegate will seek to achieve an equitable distribution of funds available in the matching payment account, and the Secretary or his or her delegate 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

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

§ 9038.1 Audit.

(a) *General.* (1) The Commission shall 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)(2) of this section may be used by the Commission as the basis, or partial basis, for its repayment determinations under § 9038.2.

(b) *Conduct of fieldwork.* (1) The Commission shall 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 26 U.S.C. 9040(c) to enforce the candidate and committee agreement made under 11 CFR 9033.1(b).

(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 preliminary and final repayment determinations under § 9038.2.

(3) Commission staff may conduct additional fieldwork after the completion of the fieldwork conducted pursuant to paragraphs (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 § 9038.2.

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

(c) *Preparation of 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.

(2) The candidate and his or her authorized committee will have an opportunity to submit, in writing, within 30 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. Upon application by the candidate within 20 days of receipt of the interim report, the Commission may grant an extension of time of up to 15 days for the candidate to submit such materials in response to the interim report.

(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) *Contents of audit report.* An audit report made public pursuant to paragraph (c) of this section may contain Commission findings and recommendations regarding one or more of the following areas:

(1) 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;

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

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

(4) Compliance of the candidate and committee with applicable statutory and regulatory provisions in those instances where the Commission has not instituted any enforcement action on the matter(s) under the provisions of 2 U.S.C. 437g and 11 CFR Part 111; and

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

(e) *Public release of audit report.* (1) The Commission shall make public all audit reports, based on examinations and audits conducted pursuant to this section, after the candidate and committee have had an opportunity to respond to a written interim report of the Commission, as provided in paragraph (c) 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 change and as additional information becomes available. Such addenda may be based, in part, on follow-up fieldwork conducted under paragraph (b)(2) 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 utilized 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 shall 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.

(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 Guideline For Presentation In Good Order; and

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

(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 paragraphs (b)(2)(i) (A) through (C) of this section:

(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 Part 9035;

(B) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended in violation of state or federal law; and

(C) Determinations that funds described in 11 CFR 9038.2(b)(2)(i) were expended for expenses resulting from 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 determinations.* Commission repayment determinations shall be made in accordance with the procedures set forth at paragraphs (c)(1) through (c)(4) of this section.

(1) *Initial determination.* The Commission shall provide the candidate with a written notice of its initial repayment determination(s) which sets forth the legal and factual reasons for such determination(s). Such notice shall 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 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 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 (b)(2) of this section. The candidate 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 shall be accompanied by a written statement of reasons for the Commission's actions. This statement shall explain the reasons underlying the Commission's determination and shall summarize the results of any investigation upon which the determination is based.

(d) *Repayment period.* (1) Within 90 days of the candidate's receipt of the notice of the Commission's initial repayment determination(s), the candidate shall repay to the Secretary of the Treasury 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.

(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 tolled until the Commission makes its final repayment determination(s). Within 20 days of the candidate's receipt of the notice of the Commission's final repayment determination(s), the candidate shall repay to the Secretary of the Treasury 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 shall prevent the Commission from making additional repayment determinations on one or more of the bases set forth at 11 CFR 9038.2(b) 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 shall 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 11 CFR 9038.2(f).

§ 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 days of the ineligibility date repay to the Secretary of the Treasury 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 this Part 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 this Part or by notice given thereunder, the candidate may apply 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 shall 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 this part, 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 this part.

PART 9039—REVIEW AND INVESTIGATION AUTHORITY

Authority: Sec. 310(8), Pub. L. 92-225, added by sec. 208, Pub. L. 93-443, 88 Stat. 1297, and amended by secs. 105 and 107(a)(1), Pub. L. 94-283, 90 Stat. 481 (2 U.S.C. 437(a)(8), and sec. 408(c), Pub. L. 93-443, 88 Stat. 1297 (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 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 chapter, 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; and

(2) Disclosure reports on file with the Commission.

(b) In carrying out the Commission's responsibilities under this chapter, 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 chapter. 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 shall 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. 437 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 shall 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 shall notify the candidate of its decision to conduct an inquiry under this section. The notice shall 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 condidate 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 shall 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.

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

I certify that the attached proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that no entity is required to make any expenditures under the proposed rules.

Dated: August 10, 1982.

Frank P. Reiche,

Chairman, Federal Election Commission.

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Tuesday
August 17, 1982

Part III

Department of the Interior

Bureau of Land Management

Geologic and Hobby Mineral Materials—Collecting; Operations; Rules of Conduct

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 3620, 3630 and 8360

Geologic and Hobby Mineral Materials—Collecting; Rules of Conduct

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rulemaking.

SUMMARY: This proposed rulemaking would establish procedures under which fossils, geologic materials and hobby mineral materials may be removed from the public lands administered by the Bureau of Land Management. Existing regulations provide for the collection of limited types of fossils and hobby mineral materials under the provisions of various statutes. This rulemaking would combine provisions for the collection and mangement of fossils, petrified wood and othe hobby mineral materials (crystals, agate, geodes, etc.) under a new part and would eliminate the duplication of standards and procedures found in other parts of the Code of Federal Regulations.

DATE: Comments by October 18, 1982.

ADDRESS: Comments should be sent to: Director (140), Bureau of Land Management, 1800 C Street NW., Washington, D.C. 20240.

Comments will be available for public review in Room 5555 of the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Robert J. Sulenski, (202) 343-3207.

SUPPLEMENTARY INFORMATION: Existing regulations provide for the collection of geologic and hobby mineral materials from the public lands administered by the Bureau of Land Management, but are not limited to the removal of (1) Vertebrate fossils for scientific purposes under an administrative interpretation of the Antiquities Act of 1906 (16 U.S.C. 431 et seq.); (2) common invertebrate fossils, rocks, mineral specimens and gem stones for hobby collections under the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.); and (3) petrified wood under the provisions of the Act of September 28, 1962 (30 U.S.C. 611).

The intent of this proposed rulemaking is to combine the collection provisions for petrified wood (43 CFR Subpart 3622) and for hobby specimens presently in 43 CFR 8363.2-1 with the provisions for scientific collection of vertebrate fossils authorized under the Antiquities Act. This proposed rulemaking would include all collection provisions under a new subpart 3630 and would: (1) Reduce duplication of various collection provisions; (2) simplify permitting procedures; and (3) make the scientifically collected materials more widely available for research and study. With the consolidation of the collection provisions into one subpart by this proposed rulemaking, three types of permit procedures would be provided, including a scientific free use permit, a commercial permit and a blanket authorization. In addition, this rulemaking would identify activities not requiring a permit and would clarify the limitations for collection of fossils and hobby mineral materials on public lands.

The principal author of this proposed rulemaking is Robert J. Sulenski, Division of Geology and Minerals Assessment, assisted by the staff of the Office of Legislation and Regulatory Management, Bureau of Land Management.

It is hereby determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment and that no detailed statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 and that it will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.).

The information collection requirements contained in 43 CFR Part 3630 have been submitted to the Office of Management and Budget for approval as required by 44 U.S.C. 3507. The collection of this information will not be required until it has been approved by the Office of Management and Budget.

Under the provisions of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701) and section 2 of the Act of September 28, 1962 (30 U.S.C. 611), it is proposed to amend Subchapter C, Chapter II, Title 43 of the Code of Federal Regulations by adding a new subpart 3631 as set forth below:

List of Subjects

43 CFR Part 3620

Mineral resources, Public lands—mineral resources.

43 CFR Part 3630

Administrative practice and procedure, Historic preservation, Hobbies, Public lands—mineral resources, Public lands—recreation.

43 CFR Part 8360

Environmental protection, Public lands—recreation, Traffic regulations.

1. Group 3600 is amended by adding a new Part 3630 as follows:

SUBCHAPTER C

Group 3600—Mineral Materials Disposal and Geology

PART 3630—GEOLOGIC AND HOBBY MINERAL MATERIALS

Subpart 3631—Geologic and Hobby Minerals Materials; Collecting

Authority: Secs. 202(c) and 302(b), Federal Land Management and Policy Act of 1976 (43 U.S.C. 1712(c), 1732(b)); sec. 2, Federal Land Management and Policy Act of 1962 (30 U.S.C. 611)

PART 3630—GEOLOGIC AND HOBBY MINERAL MATERIALS

Subpart 3631—Geologic and Hobby Minerals Materials; Collecting

§ 3631.0-1 Purpose.

The purpose of this part is to provide procedures to permit the collection of geologic and hobby mineral materials from the public lands and to protect or preserve significant fossils, geologic materials and other resources on the public lands from degradation.

§ 3631.0-2 Objectives.

The objective of this part is to assure that the scientific, commercial and amateur collection of geologic and hobby mineral materials is conducted under conditions that adequately protect and preserve the public lands and resources including significant fossils and geologic materials.

§ 3631.0-3 Authority.

This part is issued under the authority of section 202(c) and 302(b) of the Federal Land Management and Policy Act of 1976 (43 U.S.C. 1712(c), 1732(b)), and section 2 of the Act of September 28, 1962 (30 U.S.C. 611).

§ 3631.0-5 Definitions.

As used in this part, the term:

(a) "Authorized officer" means any employee of the Bureau of Land Management to whom has been delegated the authority to perform the duties described in this part.

(b) "Casual use" means activities ordinarily resulting in only negligible disturbance of the public lands and resources. Activities that are generally considered casual use include geologic mapping and reconnaissance, incidental collection of exposed surface materials and other such activities when they: (1) Do not involve the use of mechanized earth moving equipment or explosives; (2) do not involve the use of motorized vehicles in areas where such use is prohibited by off-road vehicle designation; (3) do not involve the excavation of more than 2 cubic meters of sample material per location or outcrop; (4) do not occur in a protected area; or (5) do not require the establishment of base camps or field stations.

(c) "Common fossil" means a fossil that is abundant, is widely distributed in time or space except those that provide unique, special, distinct or exceptional information not found in other specimens of the same species.

(d) "Fossil of significant scientific interest" means a fossil which is unique, rare or particularly well-preserved; is an unusual assemblage of common fossils; is of high scientific interest; or provides important new data concerning:

(1) Evolutionary trends;

(2) Development of biological communities or interaction between organisms;

(3) Unusual or spectacular circumstances in the history of life; or

(4) Anatomical structure.

(e) "Fossils with evidence of human association" means a fossil which shows signs, marks or other features indicative of human activity or which is found in a context that might be the result of human activity.

(f) "Museum pieces of petrified wood" means a specimen weighing over 250 pounds.

(g) "Protected area" means an area, such as a natural area, containing fossils, geologic materials or other values which is established for study, research, education or display.

(h) "Geologic materials" means rocks, fossils, mineral specimens and other similar materials primarily collected for their scientific value.

(i) "Hobby mineral materials" means rocks, common invertebrate and vertebrate fossils, petrified wood, mineral specimens, crystals, gem stones and other such materials collected primarily for their recreational value.

(j) "Fossil" means the remains or trace of an organism which has been preserved by natural processes in the earth's crust. The energy minerals, such as coal, oil shale, bitumen, lignite asphaltum and tar sands, as well as some industrial minerals, such as phosphate, limestone, diatomaceous earth and coquina, while of biologic orgin, are not considered "fossils" in this part. Fossils of significant scientific interest may occur within or in association with such materials.

(k) "Public lands" means any lands and interest in lands owned by the United States within the several States and administered by the Secretary of the Interior, through the Bureau of Land Management, without regard to how the United States acquired ownership, except:

(1) Lands located on the Outer Continental Shelf; and

(2) Lands held for the benefit of Indians, Aleuts and Eskimos.

(l) "Reasonable quantities" when applied to hobby collection means that each collector may remove up to 25 pounds of common fossils or hobby mineral materials per day, but this amount may not exceed 250 pound in any calendar year. Pooling of individual quotas to obtain pieces larger than 25 pounds shall be considered an unauthorized use.

§ 3631.1 Permits.

§ 3631.1-1 General.

(a) A permit shall be required for:

(1) Taking fossils of significant scientific interest;

(2) Collecting fossils and geologic materials in protected areas;

(3) Taking of any fossils or hobby mineral material for commercial purposes; and

(4) The establishment of base camps, field stations; the use of explosives or mechanized earth moving equipment; large scale excavations; and other such activities that constitute more than a "casual use" of the public lands.

(b) No permit shall be required for:

(1) Geologic or plaeontologic mapping and reconnaissance;

(2) Incidential scientific collection of exposed suface materials and samples;

(3) Other casual use activities as defined in § 3631.0-4(k) of this title;

(4) Collection of common fossils and other hobby mineral materials in reasonable quantities for hobby or personal use in most areas not set aside or protected for other purposes; or

(5) Collection of common fossils or other hobby mineral materials in areas designated as hobby collection areas.

(c) *Limitations.* (1) Materials collected under scientific free use permits or for hobby or recreational use shall not be used for sale. Such use constitutes unauthorized use.

(2) Fossils with evidence of human association are deemed to be cultural resources and may be collected only under the provisions of section 10 of Title 43 of the Code of Federal Regulations. When found on public lands, such fossils should be reported to the nearest Bureau of Land Management office.

(3) Collecting more than "reasonable quantities" as specified in § 3631.0-5(k)(1) of this title constitute unauthorized use.

(4) Collection of common fossils or other hobby mineral materials in areas designated as hobby collection areas may be authorized under provisions of § 8363 of this title.

(5) Fossils of significant scientific interest may not be collected at any time except under a scientific free use permit or blanket authorization.

(6) When found by hobby collectors, a specimen on public lands that is suspected or known to be a fossil of significant, scientific interest shall be reported to the nearest Bureau of Land Management office. The specimen, upon confirmation of its significance shall be donated to a museum, university or other scientific institution of the finder's choice for proper care and study.

§ 3631.1-2 Scientific free use permit.

(a) A scientific free use permit may be issued by the authorized officer for a period not to exceed 2 years for the purpose of:

(1) Excavating more than 2 cubic meters of material at any location or outcrop.

(2) Collecting fossils of significant scientific interest;

(3) Collecting fossils or geologic materials in protected areas; and

(4) Collecting museum pieces of petrified wood.

(b) A scientific free use permit issued by the authorized officer may contain such terms and conditions as he/she deems necessary to protect the public lands and their resources and:

(1) Shall not convey ownership of collected materials to the permittee; and

(2) Shall specify that the collected materials remain the property of the United States; and

(3) Shall require that a report of findings and results be submitted to the authorized officer within 6 months of the expiration of the permit; and

(4) Shall require that all materials collected under the permit be made available for study by other scientists within 2 years after the expiration of the permit.

(c) An application for a scientific free use permit requires no special form and shall be filed in the State, District or Area office of the Bureau of Land Management having jurisdiction over the lands in which the fossils or geologic materials are located. The application shall not be filed less than 6 months prior to the proposed commencement of activities and shall provide the following: name, legal mailing address, telephone number and professional affiliation of the person responsible for the operations covered by the application; a map or maps at a scale of 1:250,000 or larger delineating the proposed area of operations; a description of the major geologic features of the proposed area of operations, including rock formation names and ages; detailed plans for the extraction of the fossils or other geologic materials and reclamation of the lands; the approximate dates of commencement and termination of the operations; and a description of the purpose of the investigation or activity. Each application shall be accompanied by a non-refundable filing fee of $25.

§ 3631.1-3 Commercial permit.

(a) The authorized officer may issue a commercial permit for a period of not more than 3 years that contains terms and conditions he/she deems necessary to protect the public lands and other resources, including those resources and uses outside of the permit area and shall specify that any discovered fossils of significant scientific interest shall remain the property of the United States.

(b) An application for a commercial permit requires no special form, and shall be filed in the State, District or Area office of the Bureau of Land Management having jurisdiction over the lands in which the fossils and hobby mineral materials are located. The application shall not be filed less than 6 months prior to the proposed commencement of activities and shall provide the following: the name, legal mailing address and telephone number of the person responsible for the operations covered by the application; a map or maps at a scale of 1:250,000 or larger delineating the proposed area of operations; a description of the major geologic features of the proposed area of operations, including rock formation names and ages; detailed plans for the extraction of the fossils or other hobby mineral materials and reclamation of the lands; and the approximate dates of commencement and termination of the operations; and a description of the types of fossils or other materials sought.

(c) Each application shall be accompanied by a non-refundable filing fee of $25.

(d) In the case of commercial permits, the authorized officer shall set a fee based on the estimated fair market value of the fossils or other hobby mineral materials taken for commercial purposes.

(e) Where the authorized officer determines that there is evidence of competitive commercial interest in the fossils or other hobby mineral materials, tracts may be offerd by the authorized officer with bids beginning at the minimum appraised price.

§ 3631.1-4 Blanket authorization.

A blanket authorization is hereby granted to the U.S. Geological Survey and the Smithsonian Institution for Federally-sponsored research on the public lands. This blanket authorization:

(a) Authorizes the collection of fossils specimens, including fossils of significant scientific interest, and geologic materials only as part of a Federally-sponsored or institutionally approved research project;

(b) Authorizes surveys, surface collection of isolated finds and excavation of up to 2 cubic meters of material per location or outcrop;

(c) Does not provide for the exclusive use of any portion of the public lands;

(d) Requires that the authorized officer having jurisdiction over the lands on which the activities will take place be notified of the intent to commence activities not less than 30 days prior to their commencement; and

(e) Requires that a report of findings and results be submitted to the appropriate authorized officer within 6 months of the cessation of activities.

§ 3631.1-5 Action on an application for a permit.

Within 30 days after receipt of an application for a permit, the authorized officer shall review the application and shall notify the applicant in writing:

(a) That the application is approved and a permit issued; or

(b) That the application is disapproved and the permit denied, and the reasons therefor; or

(c) Of any changes in, or additions to, the application deemed necessary by the authorized officer to meet the purpose of the regulations of this part; or

(d) That the application is being reviewed, but additional time, not to exceed 30 days, is necessary to complete the review. The authorized officer shall set forth the reasons why additional time is necessary; or

(e) That the application, upon review by the authorized officer, is deemed to be an activity not requiring a permit.

§ 3631.2 Operations.

§ 3631.2-1 Special provisions.

(a) All commercial operations shall be conducted under 43 CFR Part 3600 (Mineral Materials Disposal) of this title.

(b) The authorized officer may inspect any permitted operation and require a change in the manner of conducting operations in order to minimize harm or disturbance to the environment and resources. The reason for such change(s) shall be furnished to the permittee in writing. If the permittee does not make the changes required, the authorized officer may suspend operations or revoke the permit.

(c) The holder of a commercial permit shall notify the authorized officer immediately if a specimen is found that is suspected or known to be a fossil of significant scientific interest. The authorized officer may temporarily suspend commercial operations, where a fossil of significant scientific interest is reported, if it is determined that continued activity would jeopardize the specimen.

§ 3631.2-2 Reports.

(a) Six months after the expiration of a scientific free use permit, a report shall be submitted describing the work done, excavations made, materials collected, catalog numbers, the preliminary scientific results of the work and the name and location of the repository of the collected materials.

(b) A report shall be submitted annually for each commercial permit describing the approximate number and the kind of fossils or other hobby mineral materials collected.

(c) One month after the expiration of a commercial permit, a report shall be submitted estimating the amount of material remaining, if any.

(d) Failure to submit a required report for a scientific free use permit or a commercial permit in a timely manner, or failure to submit a complete report, may be used as a basis for rejecting subsequent applications.

§ 3631.2-3 Bonding.

(a) The authorized officer may waive the requirement for a bond on a permit issued to a State and its political subdivisions and bona fide nonprofit research organizations.

(b) Prior to the issuance of a permit, an applicant (other than a Federal agency or institution), may be required to furnish a bond in an amount to be determined by the authorized officer conditioned upon compliance with the terms of the permit. Bonding requirements may be increased or decreased, as deemed appropriate by the authorized officer.

(c) In lieu of a bond, the applicant may deposit and maintain in a Federal depository, as directed by the authorized officer, cash in an amount equal to the required dollar amount of the bond or negotiable securities of the United States having a market value at the time of deposit of not less than the required dollar amount of the bond.

(d) When operations have been completed, the permittee shall notify the authorized officer who shall, if satisfied that the permittee has complied with the provisions of the permit, release the bond.

§ 3631.2-4 Renewal of permits.

Permits may be renewed for additional 3 year periods provided:

(a) The terms of the permit remain the same, or are adjusted as agreed to by the permittee and the authorized officer;

(b) The terms of the previous permit have not been violated;

(c) No other management activities are determined to have priority; and

(d) The need for additional time has been established.

§ 3631.2-3 Suspension of operations.

If a permittee fails to comply with required changes in operations or with any provisions of the permits or of the provisions under part 3600 of this title, the authorized officer may suspend operations. No permit shall be suspended until the permittee has been notified in writing or in person. A suspension shall be effective upon delivery.

§ 3631.2-4 Revocation of a permit.

A permit may be revoked by the authorized officer if the permittee fails to comply with required changes in operations or with any of the provisions of the permit or of the provisions under subpart 3600 of this title. No permit shall be revoked until the permittee has been notified in writing or in person. A revocation shall be effective upon delivery.

§ 3631.2-5 Appeals.

If the application is rejected or denied, the operation is suspended or permit revoked, the applicant may, in accordance with procedures in part 4 of this title, file a notice of appeal and a statement of the reasons for the appeal.

§ 3631.2-6 Unauthorized use.

The extraction, severance, injury or removal of fossils and geologic and other hobby mineral materials from the public lands except as authorized by law or regulations, is an unauthorized use. Persons committing such acts shall be liable for damages to the United States and shall be subject to prosecution for such acts.

§3631.2-7 Penalties

Any person who knowingly and willfully violates the provisions under part 3630 of this title shall, upon conviction, be subject to a fine of note more than $1,000 or to imprisonment for not more than 12 months, or both.

PART 3620—FREE USE

Subparts 3622 and 3623 [Removed]

2. Part 3620 is amended by removing Subparts 3622 and 3623 in their entirety.

PART 8360—OPERATIONS

3. Subpart 8363 is amended by revising paragraphs (a) and (c) of § 8363.2-1 to read as follows:

§ 8363.2-1 Permitted activities.

(a) *Collecting—hobby specimens.* Flowers, berries, nuts, seeds, cones, leaves and similar renewable resources may be collected in reasonable quantities for personal use, consumption or hobby collecting. Limitations on this privilege are contained in § 8363.2-2 of this title; and

* * * * *

(c) *Petrified wood and hobby mineral materials* such as rocks, mineral specimens, common fossils and gem stones may be collected under the provisions of Part 3630 of this title.

* * * * *

Garrey E. Carruthers,
Assistant Secretary of the Interior.
July 29, 1982.

[FR Doc. 82-22376 Filed 8-16-82; 8:45 am]
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Tuesday
August 17, 1982

Part IV

Department of Justice

Bureau of Prisons

Control, Custody, Care, Treatment and Instruction of Inmates; Final Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 541

Control, Custody, Care, Treatment and Instruction of Inmates

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This document contains the Bureau of Prisons final rule relating to Inmate Discipline (including withholding and forfeiture of good time credits) and Special Housing Units. The rule identifies inmate rights and responsibilities, as well as the prohibited acts and disciplinary severity scale which exists within the Bureau of Prisons. Sanctions that may be imposed on an inmate who commits a specific prohibited act are also identified. This rule is intended to allow inmates confined within a Bureau of Prisons institution the opportunity to live in a safe and orderly environment by authorizing institution authorities to impose discipline on those inmates whose behavior, as evidenced by commission of a prohibited act(s), is likely to adversely effect the security, good order, or discipline of the institution, or threaten the safety of the inmate or others.

EFFECTIVE DATE: September 20, 1982.

ADDRESS: Office of General Counsel, Bureau of Prisons, Room 760, 320 First Street, NW., Washington, D.C. 20534.

FOR FURTHER INFORMATION CONTACT: Mike Pearlman, Office of General Counsel, Bureau of Prisons, phone 202/724-3062.

SUPPLEMENTARY INFORMATION: In this document the Bureau of Prisons is publishing its final rule on Inmate Discipline and Special Housing Units. This subject was last published in the **Federal Register** as an interim rule on Inmate Discipline April 18, 1979 (at 44 FR 23174 et seq.) Interested persons were invited to submit comments on the interim rule. On the basis of these comments and internal staff review, some changes have been made. Members of the public may submit further comments concerning this final rule by writing the previously cited address. These comments will be considered but will receive no further response in the **Federal Register.**

The Bureau of Prisons has determined that this rule in not a major rule for the purpose of EO 12291. The Bureau of Prisons has determined that EO 12291 does not apply to this set of rulemaking since the rule involves agency management. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96-354), does not have a significant impact on a substantial number of small entities.

Summary of Changes/Comments

1. Section 541.10—The final rule deletes all reference to "rules" being established by the institution. The term "rules" is indicative of national policy. For this reason, this final rule on Inmate Discipline uses the term "rules" to refer to the policies of the Central Office, Bureau of Prisons. Individual institutions, where necessary to implement the Bureau's national policy, may issue institution guidelines.

Final § 541.10(b)(6) is expanded. When a person is determined not responsible for his conduct, the Incident Report is to show as a finding that the person did not commit the prohibited act because that person was determined not mentally responsible for his conduct. When a person is determined incompetent, the disciplinary proceedings are postponed until such time as the inmate is able to understand the proceedings. If competency is not restored within a reasonable period of time, the Incident Report is to show as a finding that the inmate is incompetent to assist in his defense at the disciplinary proceedings.

In response to comment, the term "mental health professional" in § 541.10(b)(6) ordinarily refers to a psychiatrist or clinical psychologist. While we agree with, and adhere to, the comment that an inmate determined incompetent should be afforded treatment and care, it is not necessary to include this statement in the final rule on Inmate Discipline.

2. Section 541.11—Section 541.11 is retitled "Notice to inmate of Bureau of Prisons rules". Tables 2 and 3 identified in interim § 541.11(b) become Tables 1 and 2 in the final rule. Final Table 1 has undergone some minor revisions. The term "staff" is substituted for "officer", and the term "correctional supervisor" is substituted for "supervisor". For clarity, Table 1 now refers to "allowable" sanctions, rather than "major" or "minor". In identifying the action that may be taken on an appeal, the Table now includes the phrase "send back with directions". Final Table 2 requires the initial hearing to be held within two work days, excluding the day of notice (rather than the interim rule's 48 hours).

Section 541.11 (c), (d), and (e) now state that the inmate is to be notified respectively of the inmate's rights and responsibilities, of the prohibited acts and disciplinary severity scale, and of the sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time. The specific information on each area, previously contained in interim § 541.11 (c), (d), and (e) is now included in new final §§ 541.12 and 541.13.

3. Section 541.12—Final § 541.12, "Inmate rights and responsibilities", contains information previously in § 541.11(c). Right #5 and Responsibility #5 refer to Bureau rules and institution guidelines, rather than to facility or institution rules. Responsibility #4 adds the phrase "to keep your area free of contraband" because an inmate is not permitted to possess contraband.

We disagree with a comment that the "Rights" are subject to arbitrary enforcement and interpretation by staff. The "Rights" provide the inmate with a general understanding of what to expect while confined. We do not consider it practicable to adopt a suggestion that specific Bureau regulations and/or Program Statements be referenced within this section. In those areas where more specific information is desired, the inmate may directly contact the appropriate area or request current information from Bureau staff.

It is unclear as to what the commenter refers with the term "arbitrary enforcement and interpretation by staff". An inmate who believes staff are abusing his rights may file a grievance through the Administrative Remedy Procedure (28 CF Part 542). In addition, the "Rights", in and of themselves, do not subject an inmate to disciplinary action. Disciplinary action may be taken only on the basis of believing that the inmate committed one or more of the prohibited acts identified in final § 541.13.

The same commenter states that the language of "Responsibilities" #6 and #7 suggests that "the Bureau either perceives that it has a right to control the content of a prisoner's communications with an attorney or the courts, or that it is falsely attempting to give the prisoner this impression." It is not the intent of the Bureau of Prisons to "chill" an inmate's right of access to attorneys or courts. The Bureau of Prisons rule on correspondence (28 CFR Part 540) clearly states that the inmate has the right to send sealed correspondence to an attorney or the courts.

4. Section 541.13—Final § 541.13, "Prohibited acts and disciplinary severity scale", contains information previously in § 541.11(d). The first undesignated paragraph of interim § 541.11(d) now becomes final

§ 541.13(a)–(d). Section 541.13(a) includes a reference to Table 3 for identification of the prohibited acts within each category. Interim Table 1, which contained a discussion of each sanction, becomes final Table 4. Interim § 541.11(d)(1)–(4) becomes final § 541.13(a)(1)–(4). Final § 541.13(e) is new. This section authorizes a disciplinary committee to impose increased sanctions for repeated, frequent offenses according to guidelines presented in new Table 5.

The prohibited acts themselves have undergone minor revisions based on the Bureau's experience with its interim rule. The introductory statement to the "Greatest Category" of prohibited acts substitutes the phrase "recommendations as to an appropriate disposition" for "with findings and recommendations as appropriate". This revision recognizes that the UDC may not always be making a finding but may be referring the case to the IDC for disposition. The Bureau's review of prohibited act 202, "Possession or introduction of an unauthorized tool" indicates that the phrase "unauthorized tool" is too broad for inclusion in the "High Category". A primary concern is whether the unauthorized tool is considered a hazardous (for example, can be used in an escape attempt or as a weapon) or a non-hazardous tool. Accordingly, interim prohibited act 202 is replaced by two new prohibited acts, with one (#108) being in the greatest category and one (#331) being in the moderate category. Prohibited act 108 refers to possession or introduction of a hazardous tool; prohibited act 331 refers to possession or introduction of a non-hazardous tool.

Prohibited act 208, "Tampering with or blocking any lock device", is expanded to include keys within the scope of the act and to state that an inmate may not possess an unauthorized locking device. An inmate, in his administrative remedy filing appealing a decision of the disciplinary committee, stated that it was misleading to include marijuana and marijuana paraphernalia within the scope of prohibited act 210, "Possession, introduction, or use of any narcotics, narcotic paraphernalia, or drugs not prescribed for the individual by the medical staff". The inmate pointed out that marijuana is not considered a narcotic and requested his Incident Report be amended to show the substance involved. To prevent similar concerns in the future, final prohibited act 210 is reworded to specifically include marijuana. The interim phrase "narcotic paraphernalia" is also replaced by "or related paraphernalia".

Because of their potentially adverse impact on institution security, discipline, and good order, prohibited act 301, "Stealing (theft)", is moved from the Moderate to High Category, becoming new prohibited act 219 and prohibited act 220, "Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill", is added.

Prohibited act 499 is new and repeats the language of existing prohibited acts 199, 299, and 399. Each of these acts refer to conduct which disrupts or interferes with the security or orderly running of the institution. To better clarify their scope, the final rule now states that a 199, 299, 399, or 499 charge is to be used only when another charge in that specific category is not applicable. We do not agree with a comment that these prohibited acts are "catch all provisions" and that they are "so vague that they provide no real notice of the prohibited conduct to prisoners and permit arbitrary decision-making by staff". While these prohibited acts are broad in scope, their language clearly states that the conduct must be of the given severity level. Internal staff instructions further structure staff requirements in stating that the disciplinary committee, in its findings, must indicate a specific finding of the severity level of the conduct, and a comparison to an offense in that severity level which the appropriate committee finds most comparable. An inmate charged under prohibited act 199, 299, 399, or 499, who believes that the charges are inappropriate, may file a request for administrative remedy to appeal the decision of the disciplinary committee.

With respect to the sanctions listed in Table 3, Sanction B now includes a statement that an extra good time sanction may not be suspended. A commenter commends the Bureau of Prisons for placing limits on the length of disciplinary segregation and amount of good time subject to forfeiture and withholding but fears that arbitrary decision-making will occur without precise criteria. The commenter also states that the "cap" figures for good time forfeiture and withholding are much too high and that the provision for consecutive sentences and post-disciplinary administrative detention is of concern with respect to the length of stay in special housing status.

We do not believe it is practicable to establish criteria more precise than that which already exists. The IDC requires some flexibility to determine an appropriate sanction. At the same time, the committee's decision-making is not considered "arbitrary" because both the good time forfeiture/withholding and disciplinary segregation sanctions have established constraints. The constraints are determined by the specific category of prohibited act, with the disciplinary committee authorized to impose sanctions up to that limit. With respect to disciplinary segregation, the limits are 60, 30, and 15 days for the Greatest, High, and Moderate categories respectively. This is not unreasonable considering the prohibited acts to which they apply. In a related aspect, based on the need to ensure institution security, good order, and discipline, we consider the existing provisions on consecutive disciplinary segregation and post-disciplinary administrative detention status appropriate. As to the withholding provisions, the maximum amount of good time that may be withheld for a single month is 5–10 days, dependent on the inmate's sentence (18 U.S.C. 4161). The limitations on forfeiture of good time is also determined by an inmate's sentence and the severity of the prohibited act. In the greatest category, which includes prohibited acts such as escape, killing, setting a fire, etc., an inmate may forfeit 100% of his good time. In the high and moderate categories, the maximum amount of days that may be forfeited is 60 days and 30 days respectively. Considering the nature of the acts in these categories, these limits are not considered "much too high" or "extremely harsh".

A commenter on the prohibited acts commended the Bureau of Prisons for introducing the principle of proportionality in its disciplinary rules. The commenter objected, however, to the sanctions for "aiding, attempting, and planning" being the same as for committing the act, stating that this is much too harsh a result, that the criminal law does not treat these crimes as harshly as do these rules.

The disciplinary process is not intended to be either a judicial process or to have the wide gradations of offenses and punishments available to the judiciary. In fact, where an offense committed within the institution warrants criminal prosecution referral to appropriate law enforcement officials is made. The purpose of the disciplinary process is to help inmates live in a safe and orderly environment. Within this context, the impact on institution security and good order resulting from, for example, an inmate assault and an attempted assault is similar, and merits consideration for similar sanctions. Where warranted, the disciplinary committee may impose a lesser, allowable sanction for "aiding, attempting, and planning" than the committee would otherwise have done for the actual commission of the prohibited act. Further, criminal statutes often do allow the same sanction for aiding, attempting, or planning as for the substantive offense.

In response to another comment, we do not believe that the prohibited acts require a finding of specific intent or "*mens rea*". While intent may be considered in determining an appropriate sanction, the conduct itself directly impacts on institution security, discipline, and good order and, absent a determination that the person is not responsible for his conduct, must be considered significant.

Another comment stated that some provisions of the rule are vague and lack a definition of terms, with others overbroad to the extent that "their application can readily interfere with First Amendment rights". The Bureau of Prisons considers, and our experience with the interim rule confirms, that the language and the meaning of the prohibited acts are clear. When an act is found to be unclear or needs further defining, the Bureau, as indicated with prohibited acts 208 and 210, will make the revisions necessary for clarification. An inmate who believes that he was unfairly charged with a prohibited act or that such act violates the inmate's First Amendment rights may appeal that issue and the decision of the disciplinary committee through the Administrative Remedy Procedure. First Amendment rights are curtailed by necessity in the prison setting. Those rights do not insulate security-threatening speech, such as statements encouraging group demonstrations, or providing false statements to staff.

Sanction B in Table 4 (Sanctions) now states that the sanction of termination or disallowance of extra good time may not be suspended. Sanction C in Table 4 is amended to recognize that the inmate also receives a UDC hearing, either at the sending or receiving institution, when a present or impending emergency requires an inmate's disciplinary transfer prior to an IDC hearing. A commenter states that providing an inmate a hearing after transfer is inherently unfair to the prisoner. While it will seldom be necessary to effect a disciplinary transfer prior to a hearing, it is necessary that the Bureau of Prisons have this option to preserve institution security and good order, and to protect the inmate and others. As stated in the rule, such transfer must have prior approval of the Regional Director. The inmate is also to receive the hearing, with all procedural requirements met, at the new institution as soon as practicable after arrival.

The reference in Sanctions B, D and F to § 541.11(e) now reads "See Table 6". In Sanction F, the clarifying phrase "total amount of" is added to indicate the limitations on withholding statutory good time. The final rule requires that the IDC specify at the time of the initial IDC hearing that good time may be withheld until the inmate elects to return to work. Within Sanction F, the extraneous phrase "if he prefers" is deleted.

Table 5, "Sanctions for repetition of prohibited acts within same category", is new. This section consist of a Table establishing sanctions for repetitive offenses (same code) occurring within a specified time period. This approach allows the Bureau of Prisons to retain a given prohibited act within its present category, while ensuring that frequent violators of that act are held accountable.

Table 6, "Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time", contains information previously in interim § 541.11(e). While the chart is unchanged, two new areas are added. The first states that restoration will be approved at the time of initial eligibility only when the inmate has shown a period of time with improved good behavior. When an inmate's application for restoration is denied, the IDC shall notify the inmate of the reasons for denial. The IDC will also establish a new eligibility date, not to exceed six months from the date of denial, for the inmate to resubmit an application. The second addition states that an inmate with forfeited good time may be placed in a community treatment center only if the inmate is otherwise eligible and there exists a documented need for such placement. Approval of the Regional Office is required for this placement.

5. Section 541.14—Interim § 542.12 becomes final § 541.14. Based on the severity of prohibited acts in the greatest category, final § 541.14(a) states that these acts may not be informally resolved, but must be referred to the IDC for a final disposition. In response to comment, while staff have the discretion to determine the initial charge, this charge is reviewed first by the correctional supervisor and, if not informally resolved, by the UDC and/or IDC. If the inmate is charged with a prohibited act not reflected within the Incident Report, the Report is amended to show the proper charge. Contrary to the inference made by a public comment, staff preparing the Incident Report do not determine the sanction.

Final § 541.14(b) is amended to state that a person who was involved in the incident may not serve as the investigating officer. That portion of interim § 541.12(b) concerning the incident being the subject of a criminal prosecution becomes final § 541.14(b)(1), with the remainder of the rule, relating to the inmate receiving a copy of the Incident Report, becoming final § 541.14(b)(2). Final § 541.14(b)(2) deletes the interim rule language "or the pendency of certain criminal proceedings" as this ordinarily does not stop the inmate from receiving a copy of the Incident Report. The Bureau disagrees with a comment that suggests the final rule state that the inmate's silence may not be used to draw any inference of guilt. The U.S. Supreme Court, in *Baxter* v. *Palmigiano* 96 S. Ct. 1551, held that there was no constitutional violation in allowing an adverse inference to be drawn from the silence of an inmate who was advised that he was not required to testify at his disciplinary hearing. As indicated in the rule, however, the inmate may not be found to have committed the prohibited act based solely on that silence.

6. Section 541.15—Interim § 541.13 becomes final § 541.15. The extraneous phrase "(usually a unit discipline committee)" is deleted from the first paragraph of the final rule. For clarity, the first paragraph is amended to state that when an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions, the UDC shall refer the charges to the IDC for further hearing. When this occurs, the UDC makes no finding on the alleged violation. The UDC must refer all greatest category charges to the IDC. In § 541.15(b), the final rule is amended to indicate that the inmate is entitled to an initial hearing ordinarily within two work days (excluding the day of notice) of the time that staff becomes aware of the inmate's involvement in the incident. The interim rule stated this hearing was to occur within 48 hours. The amended language gives a more definitive expectation of when this hearing will occur. A commenter on interim §§ 541.13(c) and 541.15(d), now final §§ 541.15(c) and 541.17(d), stated that when the inmate is not present at the hearing there should be some mechanism for informing the inmate as to what occurred at the hearing and giving the inmate the opportunity to respond. Final §§ 541.15(c) and 541.17(d) state that the inmate ordinarily is expected to attend

the hearing; however, whether the inmate attends, is excluded for security reasons, or waives the right to be present, that inmate receives a copy of the decision and disposition. A finding of the disciplinary committee (either UDC or IDC) is also reviewable under the Administrative Remedy Procedure.

Final § 541.15(f) is reworded to better describe the decision-making process. The final rule requires the disciplinary committee's decision to be supported by substantial evidence manifested in the record of the proceedings. The final rule authorizes the UDC to refer the case to the IDC for further hearing and allows the UDC to find that the inmate committed the prohibited act charged "and/or" a similar prohibited act reflected in the Incident Report. To establish a time frame, the final rule requires that the inmate receive a copy of the UDC decision and disposition by the close of business the next work day.

Final § 541.15(g) is new and requires the UDC to prepare a record of its proceedings. This section also states that a record of the hearing and supporting documents are kept in the inmate's file. Interim § 541.13(g)–(j) become final § 541.15(h)–(k). Final § 541.15(h) now includes a statement that a referral by the UDC to the IDC shall be without indication of findings as to commission of the alleged violation. For consistency with final § 541.15(f), the final rule inserts the conjunctive phrase "and/or" with respect to determining that the inmate committed the act charged and/or a similar prohibited act reflected in the Incident Report. Final § 541.15(i) now allows the inmate who waives the right to be present before the IDC to elect to have witnesses and/or a staff representative appear at the hearing in that inmate's behalf.

7. Section § 541.16—Interim § 541.14 becomes final § 541.16. Because of the renumbering of the final rule, references in final § 541.16(c) to §§ 541.13 and 541.18 are changed to §§ 541.15 and 541.20 respectively. A commenter to interim § 541.14(b), now final § 541.16(b), objects to a staff member who witnesses an incident sitting as a member of the IDC where virtually every staff member in the institution witnessed the incident in whole or in part. The commenter suggests that when this situation exists an outside Bureau official or a staff member on his day off should sit on the IDC. While it is seldom necessary to use this provision, its inclusion in the final rule is necessary both to allow the IDC hearing to be held as soon as practicable and because the procedural requirements of the discipline rule do not lend themselves to designating any Bureau employee to sit on the IDC.

8. Section 541.17—Interim § 541.15 becomes final § 541.17. Final § 541.17(b) is amended in several ways. The final rule adds a witness to the incident as a person who may not act as a staff representative. By adding the phrase, "in a particular case", the rule also clarifies the language allowing the Warden to exclude other staff from acting as staff representative when there is a potential conflict in roles. The final rule requires the Warden to "promptly" appoint a staff representative when an inmate who desires a staff representative is unable to obtain one. In a final amendment to subsection (b), the Warden is to appoint a staff representative to assist an inmate when it appears that the inmate is not able to properly make a presentation on his own behalf (for example, an illiterate inmate).

We disagree with a comment to subsection (c) that the witness should be permitted to provide information not only relevant to the charges but also relevant to the sanctions. A witness is expected to address what he knows in respect to the charges. Based on this testimony and an assessment of the information manifested in the record of the proceedings, it is the IDC's responsibility to determine the appropriate sanction. Other comments suggested that the term "reasonably available" needs further definition and that the accused should be permitted to directly question a person called to testify on an inmate's behalf. What constitutes "reasonably available", however, is best determined by the IDC chairman based on a consideration of the specific situation. In raising this point, the commenter asks, "What happens when a prisoner calls a witness and is willing to pay his way to testify?" Although a written statement from that witness is more likely, it is possible for the outside witness to testify when that person has information directly relevant to the charge(s). The final rule requires that the chairman document in the record of the hearing the reasons for declining to call a requested witness. With respect to not allowing the inmate to directly question witnesses, the Bureau considers this provision necessary to ensure institution security and good order.

To correctly reflect the intent of the section, interim § 541.15(d), now final § 541.17(d), substitutes the term "charges" for "escape charge". Final § 541.17(e) states that the IDC may postpone a hearing for good cause shown by the inmate or staff and documented in the record of the hearing. Final § 541.17(f) recognizes that the IDC may find that the inmate either committed the prohibited act charged "and/or" a similar prohibited act if reflected in the Incident Report. A second paragraph of this subsection describes Bureau of Prisons requirements with respect to the use of confidential informant information. This section requires that when a disciplinary committee decision is based on confidential informant information, the IDC or UDC shall document, ordinarily in the committee report, its finding as to the reliability of each confidential informant relied on and the factual basis for that finding. If inclusion of this information in the committee report might reveal the informant's identity, the required information may be provided in a separate report not available to the inmate. Implementing instructions to this rule require the decision that an inmate committed a prohibited act to be supported ordinarily by more than one reliable confidential source. The exception to this requirement is where the peculiar circumstances of the incident and knowledge possessed by the confidential informant convince the committee that the provided information must be reliable (for example, the statement of an assault victim in an unwitnessed assault may constitute sufficient evidence).

We do not believe it necessary that final § 541.17(f) include a commenter's suggestion that the committee may not rely upon evidence outside the record. The rule clearly requires the evidence to be manifested in the record of the proceedings.

Section 541.17(h) is new and requires that a record of the hearing and supporting documents be kept in the inmate central file. Interim § 541.15(h) becomes final § 541.17(i).

9. Section 541.18—Interim § 541.16 becomes final § 541.18. Based on the renumbering of sections, the interim rule's reference to § 541.11(d) becomes § 541.13 in the final rule.

10. Section 541.19—Interim § 541.17 becomes final § 541.19. The final rule allows the Warden, Regional Director, or General Counsel to send back with directions any disciplinary action of the UDC or IDC. These persons may not increase the sanctions imposed.

11. Section 541.20—Interim § 541.18 becomes final §541.20. Final § 541.20(a) is amended to recognize that the inmate may be placed in disciplinary segregation for a repeated offense in the low moderate category. The final rule, both in § 541.20 (a) and (d) deletes reference to "the control and

management of behavior" because this intent is included within the existing language addressing the need to regulate an inmate's behavior within acceptable limits. The final rule in both subsections now refers to "punishment and deterrence". An inmate is placed in disciplinary segregation because other available dispositions are determined inappropriate to achieve this purpose. Similarly, the question of whether this intent has been met is considered on those occasions when an inmate is considered for release from disciplinary segregation prior to completing the imposed disciplinary sanction. Interim § 541.18(b), now final § 541.20(b), is reworded but its intent is unchanged. A commenter to this section states that, "Prehearing detention in segregation by the terms of this provision will be more widely used." We disagree. The requirements for placing an inmate in a cell ordinarily set aside for disciplinary segregation, prior to a disciplinary hearing, are very stringent because three specific conditions, specified in the rule, must be met. The rule also requires that the temporary housing not exceed five days, with approval of the Warden necessary prior to placement. While it is expected, and our experience confirms, that this practice will seldom be necessary, the need to ensure institution security and good order, as well as to protect the inmate or others, requires that this option be available. We do not consider such a placement violative of an inmate's liberty interest.

The Bureau's revised procedure on placement in administrative detention responds to a comment that a hearing be held on an inmate's pre-hearing detention whenever a person is held more than 24 hours. The final rule requires the correctional supervisor review, prior to an inmate's placement in administrative detention and regardless of the reason for placement, the available information to determine whether the placement is warranted. A record review of the placement is conducted within three work days of the placement, with a hearing and formal review held after seven days. In response to public comment, it is not necessary to further define "adjustment to surroundings" or "threat" posed by the inmate. The identifying language refers to information that will be presented in a psychiatric or psychological assessment whenever the inmate's stay in disciplinary segregation extends beyond 30 days. The addressing of these terms is best left with the mental health professional who prepares the assessment. To a comment that the rule needs to provide concise standards of review, thereby allowing both the inmate and staff to know what conduct or attitude is expected to obtain an earlier release, interim § 541.18(d), now final § 541.20(d), identifies the determination that must be made to release an inmate from disciplinary segregation earlier than the sanction imposed. Because sanctions are imposed for specific periods of time based on a finding that the inmate committed a specific prohibited act, more concise standards are not considered appropriate.

12. Section 541.21—Interim § 541.19 becomes final § 541.21. A commenter to interim § 541.19 (c)(1) and (c)(3), now final § 541.21 (c)(1) and (c)(3), said there was no criteria provided for the use of strip cells or deprivation of footwear. The final rule clearly states that strip cells are not a part of the segregation unit, and that any strip cells that are utilized must be a part of the medical facility, under the supervision and control of the medical staff. The final rule also prohibits modification of the living conditions in disciplinary segregation for the purpose of reinforcing acceptable behavior. These provisions clearly show that the final rule on Inmate Discipline requires no further expansion of the strip cell information. As for footwear, the rule does not prohibit this, but rather allows the Warden in his discretion to provide cloth or paper slippers.

Several amendments, however, have been made to this section. Final § 541.21(c)(3) now requires that inmates in special housing status receive, to the extent practicable, the same opportunity for the issue and exchange of clothing, bedding, and linen, and for laundry as inmates in the general population. Exceptions are to be documented. Final § 541.21(c)(4) is reworded to better express the intent of the section; i.e., that the inmate receive nutritionally adequate meals, ordinarily from the menu of the day for the institution. Final § 541.21(c)(5) states that inmates in special housing, where practicable, are to receive barbering and hair care services, with exceptions to this procedure permitted only when found necessary by the Warden or designee. While a commenter suggests that an inmate be afforded shower and shaves at least once a day, institutional resources do not always allow for this. The rule gives an inmate the opportunity to shower and shave at least three times a week; where resources permit, the inmates will be allowed to shower and shave more frequently. As suggested in a comment, final § 541.21(c)(6) substitutes "five" for "four" in referring to the hours of exercise each week and how these are to be provided. Internal staff instructions incorporate public comment that outside exercise should be permitted, weather permitting. The reference to interim § 541.15 is amended in the final rule to read § 541.17. While a commenter states that an inmate should be deprived of exercise only when it would pose a threat to institution staff, the Bureau considers its existing rule language more appropriate. Any concern that staff may unfairly impose this restriction on an inmate's opportunity to exercise should be sufficiently addressed by the requirement that the inmate receive a hearing before the IDC prior to exercise periods (not to exceed one week) being withheld.

Final § 541.21(c)(8) substitutes the term "shall" for "may" in requiring that a reasonable amount of reading material be provided. The word "books" is substituted for "volume". A new sentence is added recognizing the inmate's opportunity to possess religious scriptures of the inmate's faith. While a commenter states that the limit on reading materials to five volumes (now books) seems arbitrary and unnecessary, such a limitation is appropriate for reasons of security, fire safety, and housekeeping. The rule does not prohibit an inmate from finishing one book and replacing it with another. Final § 541.21(c)(9) states that the Warden's designee is ordinarily a correctional supervisor. The final rule also requires that members of the program staff visit inmates who are on special housing status upon request. Finally, § 541.21(c)(10) now includes a reference to telephone privileges.

13. Section 541.22—Interim § 541.20 becomes final § 541.22. Final § 541.22(a) limits the authority to place an inmate in administrative detention to correctional supervisors. The final rule requires, prior to the inmate's placement in administrative detention, that the correctional supervisor review the available information to determine whether such a placement is warranted. The reference to § 541.21 in interim subsection (a)(5) becomes § 541.23 in the final rule. Final § 541.22(a)(6) requires the IDC to advise the inmate of both the decision and the reasons for transferring the inmate from disciplinary segregation to administrative detention status. Interim § 541.20(a)(6)(iii) becomes final § 541.22(a)(6)(ii). The reference in the interim section to paragraph (a) becomes paragraph (i) in the final rule. Interim § 541.20(a)(6)(ii) is amended and becomes final § 541.22(a)(6)(iii). The final rule substitutes the phrase "will attempt" for "is expected". Deleted is

the language authorizing two 30-day extensions of this placement. Because the security needs required for an inmate in a Security Level 6 institution may not be available outside of post-disciplinary detention, the Warden may approve an extension of this placement upon a written determination that it is not practicable to release the inmate to general population or to effect a transfer to a more suitable institution. Final § 541.22(a)(6)(iv) is amended by adding the phrases "in a Security Level 6 institution" and "90-day". The final rule requires that an inmate not transferred from post-disciplinary detention within the 90-day period will have his status regularly reviewed by the appropriate Regional Director and the Assistant Director, Correctional Programs Division. The reference in the interim rule to "paragraph (b)" becomes "paragraph (iii)" in the final rule. A commenter objects to the lack of criteria for allowing an inmate to be transferred from disciplinary segregation to administrative detention. It is not considered practicable to establish criteria more specific than serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution. The specific reasons for placement depend on the individual situation with § 541.22(a)(6) requiring that the inmate be notified of the reasons. It should also be noted that placement in administrative detention is not considered punitive. To the extent practicable, an inmate in administrative detention receives the same opportunities afforded inmates in the general population.

Final § 541.22(b), formerly interim § 541.20(b), now states that when an inmate is place in administrative detention status as a direct result of the inmate's holdover status (i.e., en route to another institution), no memorandum is necessary. We believe the existing rule adequately responds to a comment that the memorandum given the inmate detail the facts upon which the detention is based. The memorandum is required to contain the reasons for placement. To a comment that the inmate should always receive a copy of this memorandum, this does occur except in those few instances where institutional security would be compromised.

Interim § 541.20(c) is expanded in final § 541.22(c). The contents of the interim rule become subsection (c)(1) in the final rule. The final rule requires a record review within three work days of the inmate's placement in administrative detention. This review is to assess the merits of the inmate's continued placement in administrative detention. The reference to § 541.21 in the interim rule becomes § 541.23 in the final rule. The final rule states that an inmate's placement in administrative detention may be extended for exceptional circumstances, ordinarily related to security or a complex investigation. Section 541.22(c) (2)–(3) is new. Subsection (c)(2) requires the Warden to designate appropriate staff to meet weekly with an inmate whose placement in administrative detention is a direct result of the inmate's "holdover" status. Staff are also to conduct a weekly record review of this type case. Subsection (c)(3) addresses the inmate in protection status. The final rule requires that an inmate in administrative detention for protection reasons, but not at the inmate's request, should have his status reviewed within two work days of this placement to determine if continued protective custody is necessary.

A commenter suggests that the Bureau clarify its review of the basis for holding an inmate in administrative detention, that neither inmates nor staff have an idea of what is required for holding prisoners in this status. The terms used (threat, adjustment to surroundings, etc.) for assessing an inmate in administrative detention are necessarily broad, with the reasons for placement, the periodic psychiatric or psychological assessment, helping to give the required definition. As amended, the final rule requires that the psychiatric or psychological assessment address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Any questions the inmate may have can be discussed with the inmate at each formal review, conducted after the first seven days of placement and every 30 days thereafter. These factors, plus the time constraints given in § 541.22 on an inmate's length of stay in administrative detention (ordinarily not to exceed 90 days) are considered responsive to the commenter's concerns.

Final § 541.22(d) amends the interim's rule reference to § 541.19 to read § 541.21(c). The final rule now includes a statement that the inmate in administrative detention is to be provided the opportunity for participation in various programs, including education, library services, etc. The inmate in administrative detention is also permitted to have a radio equipped with ear plugs. The final rule also references telephone privileges provided to the inmate in administrative detention. A final revision states that the Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate in administrative detention may retain.

A commenter states that the phrase in subsection (d) "if consistent with available resources" is not a legitimate basis for determining whether the inmate receives the same conditions and treatment afforded inmates in general population. The use of this phrase recognizes the constraints which may exist. For example, a protection case who wishes to participate in a specific college level program may be restricted from participation because the inmate cannot attend the program within the general population, because of his personal safety. Further, availability of resources has been recognized as a necessary and even determinative factor in correctional decision-making.

14. Section 541.23—Interim § 541.21 becomes final § 541.23. The reference in the interim rule to § 541.15 becomes § 541.17 in final § 541.23(b). For clarity, § 541.23(b) adds the phase "and advance advisement of inmate rights at the hearing". A commenter, while favoring the 90-day limit on confinement of protection cases, believes that this provision will have little meaning because extensions are obtained readily and there are no criteria or procedures to guide prisoners and staff on how to obtain release. While the final rule allows for an extension beyond 90 days, it clearly establishes an expectation that this will not occur without an attempt to reassign the inmate. Any extension beyond 90 days requires written documentation of the reasons. The rule further requires that where it appears that the inmate cannot be placed in the general population of the inmate's present institution, staff are to refer the case to the Regional Director who, after review of the forwarded material, may order the transfer of a protection case. The referral to the Regional Director is responsive to the commenter's suggestion that safe alternative placements be found. With a broader perspective, the Regional Director is able to consider additional placement options. Even with this provision, however, it is recognized that the release of an inmate from protective custody status will depend on many factors, including the reasons for protection and the resources available.

A commenter to this section suggests that a specified area be set aside and utilized solely to house inmates in protective custody. While it is not always possible for the Bureau to set aside a specific area for protective custody cases, it is expected that staff will take the additional precautions necessary to ensure the safety of inmates in protective custody status.

15. Interim § 541.22—Interim § 541.22, "Disciplinary procedures for Federal Community Treatment Centers", is deleted from the final rule because the Bureau of Prisons now uses only contract community treatment centers.

List of Subjects in 28 CFR Part 541

Prisoners.

Conclusion

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director of the Bureau of Prisons in 28 CFR 0.96(q), Chapter V of 28 CFR is amended as follows: In Subchapter C, Part 541, Subpart B is revised.

Dated: August 6, 1982.

Norman A. Carlson,

Director, Bureau of Prisons.

In Subchapter C, Part 541, Subpart B is revised as follows.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 541—INMATE DISCIPLINE AND SPECIAL HOUSING UNITS

* * * * *

Subpart B—Inmate Discipline and Special Housing Units

Sec.

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082, 4161–4166, 5015, 5039; 28 U.S.C. 509, 510; 28 CFR 0.99.

* * * * *

Subpart B—Inmate Discipline and Special Housing Units

§ 541.10 Purpose and scope.

(a) So that inmates may live in a safe and orderly environment, if it necessary for institution authorities to impose discipline on those inmates whose behavior is not in compliance with Bureau of Prisons rules.

(b) The following general principles apply in every disciplinary action taken:

(1) Only institution staff may take disciplinary action.

(2) Staff shall take disciplinary action at such times and to the degree necessary to regulate an inmate's behavior within Bureau rules and institution guidelines and to promote a safe and orderly institution environment.

(3) Staff shall control inmate behavior in a completely impartial and consistent manner.

(4) Disciplinary action may not be capricious or retaliatory.

(5) Staff may not impose or allow imposition of corporal punishment of any kind.

(6) If it appears at any stage of the disciplinary process that an inmate is mentally ill, staff shall refer the inmate to a mental health professional for determination of whether the inmate is responsible for his conduct or is incompetent. Staff may take no disciplinary action against an inmate whom mental health staff determines to be incompetent or not responsible for his conduct.

(i) A person is not responsible for his conduct if, at the time of the conduct, the person lacks substantial capacity to appreciate the wrongfulness of the conduct or to conform the conduct to the rules of the Bureau of Prisons, because of a mental disease or defect. When a person is determined not responsible for his conduct, the Incident Report is to show as a finding that the person did not commit the prohibited act because that person was found not to be mentally responsible for his conduct.

(ii) A person is incompetent if that person lacks the ability to understand the nature of the disciplinary proceedings, or to assist in his defense at the proceedings. When a person is determined incompetent, the disciplinary proceedings shall be postponed until such time as the inmate is able to understand the nature of the disciplinary proceedings and to assist in his defense at those proceedings. If competency is not restored within a reasonable period of time, the Incident Report is to show as a finding that the inmate is incompetent to assist in his defense at the disciplinary proceedings.

§ 541.11 Notice to inmate of Bureau of Prisons rules.

Staff shall advise each inmate in writing promptly after arrival at an institution of:

(a) The types of disciplinary action which may be taken by institution staff;

(b) The disciplinary system within the institution and the time limits thereof (see Tables 1 and 2);

(c) The inmate's rights and responsibilities (see §541.12);

(d) Prohibited acts and disciplinary severity scale (see §541.13, Tables 3, 4, and 5); and

(e) Sanctions by severity of prohibited act, with eligibility for restoration of forfeited and withheld statutory good time. (see Table 6).

BILLING CODE 4410-05-M

SUMMARY OF DISCIPLINARY SYSTEM

TABLE 1

Procedures		Dispositions
1. Incident involving possible commission of prohibited act.	→	Observing staff may resolve informally or drop the charges.
2. Staff prepares Incident Report and forwards it to correctional supervisor.	→	Correctional supervisor may resolve informally or drop charges.
3. Appointment of investigator who conducts investigation and forwards material to Unit Discipline Committee.		
4. Initial hearing before Unit Discipline Committee.	→	Unit Discipline Committee may drop or resolve informally any High, Moderate, or Low Moderate charge, impose allowable sanctions or refer to Institution Discipline Committee.
5. Hearing before Institution Discipline Committee.	→	Institution Discipline Committee may impose allowable sanctions, or drop the charges.
6. Appeals through Administrative Remedy Procedure.	→	The Warden, Regional Director, or General Counsel may approve, modify, send back with directions, or reverse, but may not increase any disciplinary action taken.

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TIME LIMITS IN DISCIPLINARY PROCESS

TABLE 2

1. Staff becomes aware of inmate's involvement in incident.

maximum of 24 hours

2. Staff gives inmate notice of charges by delivering Incident Report.

maximum of 2 work days (excluding day of notice, weekends, and holidays.)

3. Initial hearing.

minimum of 24 hours (unless waived)

4. Institution Discipline Committee hearing.

NOTE: These time limits are subject to exceptions as provided in the rules.

Staff may suspend disciplinary proceedings for a period not to exceed two weeks while informal resolution is attempted. If informal resolution is unsuccessful, staff may reinstitute disciplinary proceedings at the same stage at which suspended. The time requirements then begin running again, at the same point at which they were suspended.

§ 541.12 Inmate's rights and responsibilities.

Rights	Responsibilities
1. You have the right to expect that as a human being you will be treated respectfully, impartially, and fairly by all personnel.	1. You have the responsibility to treat others, both employees and inmates, in the same manner.
2. You have the right to be informed of the rules, procedures, and schedules concerning the operation of the institution.	2. You have the responsibility to know and abide by them.
3. You have the right to freedom of religious affiliation, and voluntary religious worship.	3. You have the responsibility to recognize and respect the rights of others in this regard.
4. You have the right to health care, which includes nutritious meals, proper bedding and clothing, and a laundry schedule for cleanliness of the same, an opportunity to shower regularly, proper ventilation for warmth and fresh air, a regular exercise period, toilet articles and medical and dental treatment.	4. It is your responsibility not to waste food, to follow the laundry and shower schedule, to maintain neat and clean living quarters, to keep your area free of contraband, and to seek medical and dental care as you may need it.
5. You have the right to visit and correspond with family members, and friends, and correspond with members of the news media in keeping with Bureau rules and institution guidelines.	5. It is your responsibility to conduct yourself properly during visits, not to accept or pass contraband, and not to violate the law or Bureau rules or institution guidelines through your correspondence.
6. You have the right to unrestricted and confidential access to the courts by correspondence (on matters such as the legality of your conviction, civil matters, pending criminal cases, and conditions of your imprisonment).	6. You have the responsibility to present honestly and fairly your petitions, questions, and problems to the court.
7. You have the right to legal counsel from an attorney of your choice by interviews and correspondence.	7. It is your responsibility to use the services of an attorney honestly and fairly.
8. You have the right to participate in the use of law library reference materials to assist you in resolving legal problems. You also have the right to receive help when it is available through a legal assistance program.	8. It is your responsibility to use these resources in keeping with the procedures and schedule prescribed and to respect the rights of other inmates to the use of the materials and assistance.
9. You have the right to a wide range of reading material for educational purposes and for your own enjoyment. These materials may include magazines and newspapers sent from the community, with certain restrictions.	9. It is your responsibility to seek and utilize such materials for your personal benefit, without depriving others of their equal rights to the use of this material.
10. You have the right to participate in education, vocational training and employment as far as resources are available, and in keeping with your interests, needs, and abilities.	10. You have the responsibility to take advantage of activities which may help you live a successful and law-abiding life within the institution and in the community. You will be expected to abide by the regulations governing the use of such activities.

§ 541.13 Prohibited acts and disciplinary severity scale.

(a) There are four categories of prohibited acts—Greatest, High, Moderate, and Low Moderate (see Table 3 for identification of the prohibited acts within each category). Specific sanctions are authorized for each category (see Table 4 for a discussion of each sanction). Imposition of a sanction requires that the inmate first is found to have committed a prohibited act.

(1) Greatest category offenses: The Institution Discipline Committee shall impose and execute one or more of sanctions A through E. The Committee may also suspend one or more additional sanctions A through F. The Committee may impose and execute sanction F only in addition to execution of one or more of sanctions A through E.

(2) High category offenses: The appropriate committee shall impose and execute one or more of sanctions A through M. They may also suspend one or more additional sanctions A through M.

(3) Moderate category offenses: The appropriate committee shall impose at least one sanction A through N, but may suspend any sanction or sanctions imposed.

(4) Low moderate category offenses: The appropriate committee shall impose at least one sanction E through P, but may suspend any sanction or sanctions imposed.

(b) *Aiding* another person to commit any of these offenses, *attempting* to commit any of these offenses, and *making plans* to commit any of these offenses, in all categories of severity, *shall be considered the same as a commission of the offense itself.* In these cases, the letter "A" is combined with the offense code. For example, planning an escape would be considered as Escape and coded 102A. Likewise, attempting the adulteration of any food or drink would be coded 209A.

(c) Suspensions of any sanction cannot exceed six months. Revocation and execution of a suspended sanction requires that the inmate first is found to have committed any subsequent prohibited act. Only the Institution Discipline Committee (IDC) may execute, suspend, or revoke and execute suspension of sanctions A through F. The Institution Discipline Committee or Unit Discipline Committee (UDC) may execute, suspend, or revoke and execute suspensions of sanctions G through P. Revocations and execution of suspensions may be made only at the level (IDC or UDC) which originally imposed the sanction.

(d) If the Unit Discipline Committee has previously imposed a suspended sanction and subsequently refers a case to the Institution Discipline Committee, the referral shall include an advisement to the IDC of any intent to revoke that suspension if the IDC finds that the prohibited act was committed. If the Institution Discipline Committee then finds that the prohibited act was committed, they shall so advise the Unit Discipline Committee who may then revoke the previous suspension.

(e) A discipline committee may impose increased sanctions for repeated, frequent offenses according to the guidelines presented in Table 5.

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE GREATEST CATEGORY

The UDC shall refer all Greatest Severity Prohibited Acts to the IDC with recommendation as to an appropriate disposition.

Code	Prohibited acts	Sanctions
100	Killing.	A. Recommend parole date rescission or retardation. B. Forfeit earned statutory good time (up to 100%) and/or terminate or disallow extra good time (an extra good time sanction may not be suspended). C. Disciplinary transfer (recommend). D. Disciplinary segregation (up to 60 days). E. Make monetary restitution. F. Withhold statutory good time. (NOTE.—Can be in addition to A through E—cannot be the only sanction executed.)
101	Assaulting any person (includes sexual assault).	
102	Escape from escort; escape from a secure institution (Security Level 2 through 6); or escape from a Security Level 1 institution *with* violence.	
103	Setting a fire (charged with this act in this category only when found to pose a threat to life or a threat of serious bodily harm or in furtherance of a prohibited act of Greatest Severity, e.g., in furtherance of a riot or escape; otherwise the charge is properly classified Code 218, or 329).	
104	Possession or introduction of a gun, firearm, weapon, sharpened instrument, knife, dangerous chemical, explosive or any ammunition.	
105	Rioting.	
106	Encouraging others to riot.	
107	Taking hostage(s).	

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE GREATEST CATEGORY—Continued

The UDC shall refer all Greatest Severity Prohibited Acts to the IDC with recommendation as to an appropriate disposition.

Code	Prohibited acts	Sanctions
108	Possession or introduction of a hazardous tool (Tools most likely to be used in an escape or escape attempt or to manufacture or serve as weapons capable of doing serious bodily harm to others; or those hazardous to institutional security or personal safety; e.g., hack-saw blade).	
199	Conduct which disrupts or interferes with the security or orderly running of the institution (*Conduct must be of the Greatest Severity nature.* This charge is to be used only when another charge of greatest severity is not applicable).	
200	Escape from unescorted Community Programs and activities and Open Institutions (Security Level 1) and from outside secure institutions) *without* violence.	A. Recommend parole date rescission or retardation. B. Forfeit earned statutory good time up to 50% or up to 60 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended). C. Disciplinary transfer (recommend). D. Disciplinary segregation (up to 30 days). E. Make monetary restitution. F. Withhold statutory good time. G. Loss of privileges: commissary, movies, recreation, etc. H. Change housing (quarters). I. Remove from program and/or group activity. J. Loss of job. K. Impound inmate's personal property. L. Confiscate contraband. M. Restrict to quarters.
201	Fighting with another person	
202	(Not to be used)	
203	Threatening another with bodily harm or any other offense	
204	Extortion, blackmail, protection: Demanding or receiving money or anything of value in return for protection against others, to avoid bodily harm, or under threat of informing.	
205	Engaging in sexual acts	
206	Making sexual proposals or threats to another	
207	Wearing a disguise or a mask	
208	Possession of any unauthorized locking device, or tampering with or blocking any lock device (includes keys).	
209	Adulteration of any food or drink	
210	Possession, introduction, or use of any narcotics, marijuana, drugs, or related paraphernalia not prescribed for the individual by the medical staff.	
211	Possessing any officer's or staff clothing	
212	Engaging in, or encouraging a group demonstration	Sanctions A–M.
213	Encouraging others to refuse to work, or to participate in a work stoppage	
214	Refusing to provide a urine sample or to take part in other drug-abuse testing	
215	Introduction of alcohol into BOP facility	
216	Giving or offering an official or staff member a bribe, or anything of value	
217	Giving money to, or receiving money from, any person for purposes of introducing contraband or for any other illegal or prohibited purposes.	
218	Destroying, altering, or damaging government property, or the property of another person, having a value in excess of $100.00.	
219	Stealing (theft)	
220	Demonstrating, practicing, or using martial arts, boxing (except for use of a punching bag), wrestling, or other forms of physical encounter, or military exercises or drill.	
299	Conduct which disrupts or interferes with the security or orderly running of the institution (*Conduct must be of the High Severity nature.* This charge is to be used only when another charge of high severity is not applicable).	
300	Indecent exposure	A. Recommend parole date rescission or retardation. B. Forfeit earned statutory good time up to 25% or up to 30 days, whichever is less, and/or terminate or disallow extra good time (an extra good time sanction may not be suspended). C. Disciplinary transfer (recommend). D. Disciplinary segregation (up to 15 days). E. Make monetary restitution. F. Withhold statutory good time. G. Loss of privileges: commissary, movies, recreation, etc. H. Change housing (quarters). I. Remove from program and/or group activity. J. Loss of job. K. Impound inmate's personal property. L. Confiscate contraband. M. Restrict to quarters. N. Extra duty.
301	(Not to be used)	
302	Misuse of authorized medication	
303	Possession of money or currency, unless specifically authorized	
304	Loaning of property or anything of value for profit or increased return	
305	Possession of anything not authorized for retention or receipt by the inmate, and not issued to him through regular channels.	
306	Refusing to work, or to accept a program assignment	
307	Refusing to obey an order of any staff member (May be categorized and charged in terms of greater severity, according to the nature of the order being disobeyed; e.g., failure to obey an order which furthers a riot would be charged as 105, Riotings; refusing to obey an order which furthers a fight would be charged as 201, Fighting; refusing to provide a urine sample when ordered would be charged at Code 214).	
308	Violating a condition of a furlough	
309	Violating a condition of a community program	
310	Unexcused absence from work or any assignment	
311	Failing to perform work as instructed by the supervisor	
312	Insolence towards a staff member	
313	Lying or providing false statement to a staff member	
314	Counterfeiting, forging or unauthorized reproduction of any document, article of identification, money, security, or official paper. (May be categorized in terms of greater severity according to the nature of the item being reproduced; e.g., counterfeiting release papers to effect escape, Code 102 or Code 200).	Sanctions A–N.
315	Participating in an unauthorized meeting or gathering	
316	Being in an unauthorized area	

TABLE 3.—PROHIBITED ACTS AND DISCIPLINARY SEVERITY SCALE GREATEST CATEGORY—Continued

The UDC shall refer all Greatest Severity Prohibited Acts to the IDC with recommendation as to an appropriate disposition.

Code	Prohibited acts	Sanctions
317	Failure to follow safety or sanitation regulations	
318	Using any equipment or machinery which is not specifically authorized	
319	Using any equipment or machinery contrary to instructions or posted safety standards	
320	Failing to stand count	
321	Interfering with the taking of count	
322	Making, possessing, or using intoxicants	
323	Refusing to breathe into a breathalyzer or take part in other alcohol abuse testing	
324	Gambling	
325	Preparing or conducting a gambling pool	
326	Possession of gambling paraphernalia	
327	Unauthorized contacts with the public	
328	Giving money or anything of value to, or accepting money or anything of value from: another inmate, or any other person without staff authorization.	
329	Destroying, altering, or damaging government property, or the property of another person, having a value of $100.00 or less.	Sanctions A–N.
330	Being unsanitary or untidy; failing to keep one's person and one's quarters in accordance with posted standards.	
331	Possession or introduction of a non-hazardous tool (Tool not likely to be used in an escape or escape attempt, or to be manufactured or to serve as a weapon capable of doing serious bodily harm to others, or not hazardous to institutional security or personal safety).	
399	Conduct which disrupts or interferes with the security or orderly running of the institution (*Conduct must be of the Moderate Severity nature*). This charge is to be used only when another charge of moderate severity is not applicable.	
400	Possession of property belonging to another person	E. Make monetary restitution. F. Withhold statutory good time. G. Loss of privileges: commissary, movies, recreation, etc. H. Change housing (quarters). I. Remove from program and/or group activity. J. Loss of job. K. Impound inmate's personal property. L. Confiscate contraband. M. Restrict to quarters. N. Extra duty. O. Reprimand. P. Warning.
401	Possessing unauthorized clothing	
402	Malingering, feigning illness	
403	Smoking where prohibited	
404	Using abusive or obscene language	
405	Tattooing or self-mutilation	
406	Unauthorized use of mail or telephone (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G).	
407	Conduct with a visitor in violation of Bureau regulations (Restriction, or loss for a specific period of time, of these privileges may often be an appropriate sanction G).	
408	Conducting a business	
499	Conduct which disrupts or interferes with the security or orderly running of the institution (*Conduct must be of the Low Moderate Severity nature*. This charge is to be used only when another charge of low moderate severity is not applicable).	

TABLE 4.—SANCTIONS

1. *Sanctions of the Institution Discipline Committee:* (upon finding the inmate committed the prohibited act)

A. *Recommend parole date rescission or retardation.* The IDC may make recommendations to the U.S. Parole Commission for retardation or rescission of parole grants. This may require holding fact-finding hearings upon request of or for the use of the Commission.

B. *Forfeit earned statutory good time and/or terminate or disallow extra good time.* The statutory good time available for forfeiture is limited to an amount computed by multiplying the number of months served at the time of the offense for which forfeiture action is taken, by the applicable monthly rate specified in 18 USC, Section 4161 (less any previous forfeiture or withholding outstanding). Disallowance of extra good time is limited to the extra good time for the calendar month in which the violation occurs. It may not be withheld or restored. The sanction of termination or disallowance of extra good time may not be suspended. Authority to restore forfeited statutory good time delegated to *only* the Institution Discipline Committee of each institution. Limitations on this sanction and eligibility for restoration are based on the severity scale. (See Table 6)

C. *Recommend disciplinary transfer.* The IDC may recommend that an inmate be transferred to another institution for disciplinary reasons.

TABLE 4.—SANCTIONS—Continued

Where a present or impending emergency requires immediate action, the Warden may recommend for approval of the receiving Regional Director the transfer of an inmate prior to either a UDC or IDC hearing. Transfers for disciplinary reasons prior to a hearing before the UDC or IDC may be used only in emergency situations and only with approval of the receiving Regional Director. When an inmate is transferred under these circumstances, the sending institution shall forward copies of incident reports and other relevant materials with completed investigation to the receiving institution's Institution Discipline Committee. The inmate shall receive a hearing at the receiving institution as soon as practicable under the circumstances to consider the factual basis of the charge of misconduct and the reasons for the emergency transfer. All procedural requirements applicable to UDC and IDC hearings contained in this rule are appropriate, except that written statements of unavailable witnesses are liberally accepted instead of live testimony.

D. *Disciplinary segregation.* The IDC may direct that an inmate be placed or retained in disciplinary segregation pursuant to guidelines contained in this rule. Consecutive disciplinary segregation sanctions can be imposed and executed for inmates charged with and found to have committed offenses that are part of different "episodes"

TABLE 4.—SANCTIONS—Continued

only. For example, if an inmate was in an unauthorized area and set a fire, the inmate could be charged with both offenses, but if found to have committed the prohibited act, the individual would only be able to receive up to 60 days in disciplinary segregation, which is the maximum segregation sanction for setting a fire. However, if the inmate was in an unauthorized area and set a fire and later, on the way to administrative detention, struck an officer, the inmate could be charged with assaulting any person and, combined with the first two charges, could receive a maximum of 120 days in disciplinary segregation. Similarly, an inmate may be serving a 60-day sanction in disciplinary segregation and commit a High Severity Prohibited Act, whereupon the person can be given an additional, consecutive 30 days by the IDC. Specific limits on time in disciplinary segregation are based on the severity scale. (See Table 6).

E. *Make monetary restitution.* The IDC may direct that an inmate reimburse the U.S. Treasury for any damages to U.S. Government property that the individual is determined to have caused or contributed to.

F. *Withholding statutory good time.* The IDC may direct that an inmate's good time be withheld. Withholding of good time should not be applied as a universal punishment to all persons in disciplinary segregation status. Withholding is limited to the total amount of good time creditable for the single month during which the violation occurs.

TABLE 4.—SANCTIONS—Continued

Some offenses, such as refusal to work at an assignment, may be recurring, thereby permitting, when ordered by the Institution Discipline Committee, consecutive withholding actions. When this is the intent, the IDC shall specify at the time of the initial IDC hearing that good time may be withheld until the inmate elects to return to work. In addition, the Committee shall review, near the beginning of the month or at the 30-day review, the offense with the inmate. For an on-going offense, staff need not prepare a new Incident Report or conduct an investigation or initial hearing. The Committee shall provide the inmate an opportunity to appear in person and to present a statement orally or in writing. The IDC shall document its action on, or by an attachment to the initial IDC report. If further withholding is ordered, the Committee shall advise the inmate of the inmate's right to appeal through the Administrative Remedy Procedure (Part 542).

Only the Institution Discipline Committee may restore withheld statutory good time. Restoration eligibility is based on the severity scale. (See Table 6)

TABLE 4.—SANCTIONS—Continued

2. *Sanctions of the Institution Discipline Committee/Unit Discipline Committee:* (upon finding the inmate committed the prohibited act)

G. *Loss of privileges: commissary, movies, recreation, etc.* The IDC or UDC may direct that an inmate forego specific privileges for a specified period of time. Ordinarily, loss of privileges is used as a sanction in response to an abuse of that privilege; e.g., loss of telephone privileges for a specified period of time for an abuse of the telephone privilege. However, loss of leisure privileges, such as movies, television, and recreation, may be appropriate sanctions for misconduct which is not related to the privilege.

H. *Change housing (quarters).* The IDC or UDC may direct that an inmate be removed from current housing and placed in other housing.

I. *Remove from program and/or group activity.* The IDC or UDC may direct that an inmate forego participating in any program or group activity for a specified period of time.

TABLE 4.—SANCTIONS—Continued

J. *Loss of job.* The IDC or UDC may direct that an inmate be removed from present job and/or be assigned to another job.

K. *Impound inmate's personal property.* The IDC or UDC may direct that an inmate's personal property be stored in the institution (when relevant to offense) for a specified period of time.

L. *Confiscate contraband.* The IDC or UDC may direct that any contraband in the possession of an inmate be confiscated and disposed of appropriately.

M. *Restrict quarters.* The IDC or UDC may direct that an inmate be confined to quarters or in its immediate area for a specified period of time.

N. *Extra duty.* The IDC or UDC may direct that an inmate perform tasks other than those performed during regularly assigned institutional job.

O. *Reprimand.* The IDC or UDC may reprimand an inmate either verbally or in writing.

P. *Warning.* The IDC or UDC may verbally warn an inmate regarding committing prohibited act(s).

TABLE 5.—SANCTIONS FOR REPETITION OF PROHIBITED ACTS WITHIN SAME CATEGORY

When the appropriate committee finds that an inmate has committed a prohibited act in the Low Moderate, Moderate, or High category, and when there has been a repetition of the same offense(s) within recent months (offenses for violation of the same code), the IDC may impose additional sanctions according to the following chart. (Note: An informal resolution may not be considered as a prior offense for purposes of this chart.)

Category	Prior offense (same code) within time period (mo)	Frequency of repeated offense	Sanction permitted
Low moderate (400 series)	6	2d offense	Low Moderate Sanctions, plus: 1. Disciplinary segregation, up to 7 days. 2. Forfeit earned SGT up to 10% or up to 15 days, whichever is less, and/or terminate or disallow extra good time (EGT) (an EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in Moderate (300) and Low Moderate (400) series.
Moderate (300 series)	12	2d offense	Moderate Sanctions (A,C,E–N), plus: 1. Disciplinary segregation, up to 21 days. 2. Forfeit earned SGT up to 37½% or up to 45 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3d offense, or more	Any sanctions available in Moderate (300) and High (200) series.
High (200 series)	18	2d offense	High Sanctions (A,C,E–M), plus: 1. Disciplinary segregation, up to 45 days. 2. Forfeit earned SGT up to 75% or up to 90 days, whichever is less, and/or terminate or disallow EGT (an EGT sanction may not be suspended).
		3d offense or more	Any sanctions available in High (200) and Greatest (100) series.

TABLE 6.—SANCTIONS BY SEVERITY OF PROHIBITED ACT, WITH ELIGIBILITY FOR RESTORATION OF FORFEITED AND WITHHELD STATUTORY GOOD TIME

Severity of act	Sanctions	Max. amt. forf. SGT	Max. amt w/hd SGT	Elig. restoration forf. SGT (mo)	Elig. restoration w/hd SGT (mo)	Max. dis seg (days)
Greatest	A–F	100%	Good time creditable for single month during which violation occurs. Applies to all categories.	24	18	60
High	A–M	50% or 60 days, whichever is less		18	12	30
Moderate	A–N	25% or 30 days, whichever is less		12	6	15
Low Moderate	E–P	N/A		N/A	3	N/A

NOTE.—Restoration will be approved at the time of initial eligibility only when the inmate has shown a period of time with improved good behavior. When the IDC denies an inmate's application for restoration of forfeited or withheld statutory good time, the IDC shall notify the inmate of the reasons for denial. The IDC shall establish a new eligibility date, not to exceed six months from the date of denial, for the inmate to resubmit an application.

An inmate with an approaching parole effective date, or an approaching mandatory release or expiration date who also has forfeited good time may be placed in a Community Treatment Center only if that inmate is otherwise eligible under Bureau policy, and if there exists a legitimate documented need for such placement. Prior to placement, these cases shall be referred for approval of the Correctional Programs Administrator, Regional Office. The length of stay at the Community Treatment Center is to be held to the time necessary to establish residence and employment.

§ 541.14 Incident report and investigation.

(a) *Incident Report.* The Bureau of Prisons encourages informal resolution (requiring consent of both parties) of incidents involving violations of Bureau regulations. However, when staff witnesses or has a reasonable belief that a violation of Bureau regulations has been committed by an inmate, and when staff considers informal resolution of the incident inappropriate or unsuccessful, staff shall prepare an Incident Report and promptly forward it to the Greatest Severity Category, the correctional supervisor may informally dispose of the Incident Report or forward the Incident Report for investigation consistent with this section. The correctional supervisor shall expunge the inmate's file of the Incident Report if informal resolution is accomplished. Only the IDC may make a final disposition on a prohibited act in the Greatest Severity Category.

(b) *Investigation.* Staff shall conduct the investigation promptly unless circumstances beyond the control of the investigator intervene. The investigation officer should be an employee of supervisory level and may not be the employee reporting the incident, or one who was involved in the incident, in question.

(1) When it appears likely that the incident may be the subject of criminal prosecution, the investigating officer

shall suspend the investigation, and staff may not question the inmate until the Federal Bureau of Investigation or other investigative agency interviews have been completed or until the agency responsible for the criminal investigation advises that staff questioning may occur.

(2) The inmate may receive a copy of the Incident Report prior to being seen by the investigating agency. The investigating officer (Bureau of Prisons) shall give the inmate a copy of the Incident Report at the beginning of the investigation, unless there is good cause for delivery at a later date, such as absence of the inmate from the institution or a medical condition which argues against delivery. If the investigation is delayed for any reason, any employee may deliver the charge(s) to the inmate. The staff member shall note the date and time the inmate received a copy of the Incident Report. The investigator shall also read the charge(s) to the inmate and ask for the inmate's statement concerning the incident unless it appears likely that the incident may be the subject of criminal prosecution. The investigator shall advise the inmate of the right to remain silent at all stages of the disciplinary process but that the inmate's silence may be used to draw an adverse inference against the inmate at any stage of the institutional disciplinary process. The investigator shall also inform the inmate that the inmate's silence alone may not be used to support a finding that the inmate has committed a prohibited act. The investigator shall then thoroughly investigate the incident. The investigator shall record all steps and actions taken on the Incident Report and forward all relevant material to the staff holding the initial hearing. The inmate does not receive a copy of the investigation. However, if the case is ultimately forwarded to the Institution Discipline Committee, the Committee shall give a copy of the investigation and other relevant materials to the inmate's staff representative for use in presentation on the inmate's behalf.

§ 541.15 Initial hearing.

The Warden shall delegate to one or more institution staff members the authority and duty to hold an initial hearing upon completion of the investigation. The Warden shall authorize these staff members to impose minor sanctions (G through P) for violation of prohibited act(s). In order to insure impartiality, the appropriate staff member(s) (hereinafter usually referred to as the Unit Discipline Committee (UDC)) may not be the reporting or investigating officer or a witness to the incident. However, a staff member witnessing an incident may serve on the UDC where virtually every staff member in the institution witnesses the incident in whole or in part. If the UDC finds at the initial hearing that an inmate has committed a prohibited act, the UDC may impose minor dispositions and sanctions. When an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions, the UDC may impose minor dispositions and sanctions. When an alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions, the UDC shall refer the charges to the Institution Discipline Committee for further hearing. The UDC must refer all greatest category charges to the IDC. The following minimum standards apply to initial hearings in all institutions.

(a) Staff shall give each inmate charged with violating a Bureau rule a written copy of the charge(s) against the inmate within 24 hours of the time staff became aware of the inmate's involvement in the incident.

(b) Each inmate so charged is entitled to an initial hearing before the UDC, ordinarily held within two work days (excluding day of notice, weekends and holidays) of the time staff became aware of the inmate's involvement in the incident to consider the charge(s) brought against the inmate.

(c) The inmate is entitled to be present at the initial hearing except during deliberations of the decision maker(s) or when institutional security would be jeopardized by the inmate's presence. The UDC shall clearly document in the record of the hearing reasons for excluding an inmate from the hearing. An inmate may waive the right to be present at this hearing, provided that the waiver is documented by staff and reviewed by the UDC. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The UDC may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the UDC shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined.

(d) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf.

(e) The Unit Discipline Committee may informally resolve any High, Moderate, or Low Moderate charge. The UDC chall expunge the inmate's file of the Incident Report if informal resolution is accomplished.

(f) The Unit Discipline Committee shall consider all evidence presented at the hearing and shall make a decision in accordance with the greater weight of the evidence and one which is supported by substantial evidence manifested in the record of the proceedings. The UDC shall take one of the following actions:

(1) Find that the inmate committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report;

(2) Find that the inmate did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report; or

(3) Refer the case to the IDC for further hearing.

The UDC shall give the inmate a written copy of the decision and disposition by the close of business the next work day. Any action taken as a minor disposition is reviewable under the Administrative Remedy Procedure (see Part 542 of this Chapter).

(g) The UDC shall prepare a record of its proceedings which need not be verbatim. A record of the hearing and supporting documents are kept in the inmate's file.

(h) When the alleged violation of Bureau rules is serious and warrants consideration for other than minor sanctions (G through P), the UDC shall refer the charge(s) without indication of findings as to commission of the alleged violation to the Institution Discipline Committee (IDC) for hearing and disposition. The UDC shall forward copies of all relevant documents to the chairman of the IDC with a brief statement of reasons for the referral along with any recommendations for appropriate disposition if the IDC finds the inmate has committed the act charged and/or a similar prohibited act. The inmate whose charge is being referred to the Institution Discipline Committee may be retained in administrative detention or other restricted status, but the UDC may not impose a final disposition if the matter is being referred to the IDC.

(i) When charges are to be referred to the Institution Discipline Committee, the UDC shall advise the inmate of the rights afforded at a hearing before the IDC. The UDC shall ask the inmate to indicate a choice of staff representative, if any, and the names of any witnesses the inmate wishes to be called to testify at the hearing and what testimony they are expected to provide. The UDC shall advise the inmate that the inmate may waive the right to be present at the IDC hearing, but still elect to have witnesses and/or a staff representative appear in the inmate's behalf at this hearing.

(j) When the Unit Discipline Committee holds a full hearing and determines that the inmate did not commit a prohibited act of High, Moderate or Low Moderate Severity, the UDC shall expunge the inmate's file of the Incident Report and related documents. The UDC must refer to the Institution Discipline Committee all incidents involving prohibited acts of Greatest Severity.

(k) The UDC may extend time limits imposed in this section for a good cause shown by the inmate or staff and documented in the record of the hearing.

§ 541.16 Establishment and functioning of Institution Discipline Committee.

(a) The Warden shall establish a single Institution Discipline Committee. In the event of a serious disturbance or other emergency, or if an inmate commits an offense in the presence of the IDC, the Warden may establish more than one Institution Discipline Committee with approval of the appropriate Regional Director.

(b) The Warden may appoint as many members to the Institution Discipline Committee as are appropriate. At least three members, including the chairman, shall be present at any hearing to constitute a quorum. The chairman and at least one member present at the hearing must be of the department head level or higher. The third member and additional members of the Committee need not be of department head level. For the purpose of this section, "department head" includes acting department head. In order to insure impartiality, no member of the IDC may be the reporting officer, investigating officer, or UDC member or a witness to the incident or play any significant part in having the charge(s) referred to the IDC. However, a staff member witnessing an incident may sit as a member of the IDC where virtually every staff member in the institution witnessed the incident in whole or in part.

(c) The Institution Discipline Committee shall conduct hearings, make findings, and impose appropriate sanctions for incidents of inmate misconduct referred to it for disposition following the hearing required by § 541.15 before the UDC. The IDC may not hear any case or impose any sanctions in a case not heard and referred by the UDC. Only the Institution Discipline Committee shall have the authority to impose or suspend sanctions A through F. This Committee shall conduct reviews of inmates placed in disciplinary segregation in accordance with the requirements of § 541.20.

§ 541.17 Procedures in Institution Discipline Committee hearings.

The Institution Discipline Committee shall proceed as follows:

(a) The Warden shall give an inmate advance written notice of the charge(s) against the inmate no less than 24 hours before the inmate's appearance before the Institution Discipline Committee unless the inmate is to be released from custody within that time. An inmate may waive in writing the 24-hour notice requirement.

(b) The Warden shall provide an inmate the service of a full time staff member to represent the inmate at the hearing before the Institution Discipline Committee should the inmate so desire. The Warden, the members of the IDC, the reporting officer, investigating officer, a witness to the incident, and UDC members involved in the case may not act as staff representative. The Warden may exclude other staff from acting as staff representative in a particular case when there is a potential conflict in roles. The staff representative shall be available to assist the inmate if the inmate desires by speaking to witnesses and by presenting favorable evidence to the IDC on the merits of the charge(s) or in extenuation or mitigation of the charge(s). The chairman shall arrange for the presence of the staff representative selected by the inmate. If the staff member selected declines or is unavailable because of absence from the institution, the inmate has the option of selecting another representative, or in the case of an absent staff member of waiting a reasonable period for the staff member's return, or of proceeding without a staff representative. When several staff members decline this role, the Warden shall promptly appoint a staff representative to assist the inmate. The IDC shall afford a staff representative adequate time to speak with the inmate and interview requested witnesses where appropriate. While it is expected that a staff member will have had ample time to prepare prior to the hearing, delays in the hearing to allow for adequate preparation may be ordered by the chairman of the Institution Discipline Committee. When it appears that the inmate is not able to properly make a presentation on his own behalf (for example, an illiterate inmate), the Warden shall appoint a staff representative for that inmate, even if one is not requested.

(c) The inmate is entitled to make a statement and to present documentary evidence in the inmate's own behalf. An inmate has the right to submit names of requested witnesses and have them called to testify and to present documents in the inmate's behalf, provided the calling of witnesses or the disclosure of documentary evidence does not jeopardize or threaten institutional or an individual's security. The chairman shall call those witnesses who have information directly relevant to the charge(s) and who are reasonably available. This may include witnesses from outside of the institution. The inmate charged may be excluded during the appearance of the outside witness. The appearance of the outside witness should be in an area of the institution in which outside visitors are usually allowed. The chairman need not call repetitive witnesses. The reporting officer and other adverse witnesses need not be called if their knowledge of the incident is adequately summarized in the Incident Report and other investigative materials supplied to the IDC. The chairman shall request submission of written statements from unavailable witnesses when necessary for an appreciation of the circumstances surrounding the charge(s). The chairman shall document reasons for declining to call requested witnesses in the IDC report. The inmates's staff representative, or when the inmate waives staff representation members of the Committee, shall question witnesses requested by the inmate who are called before the IDC. The inmate who has waived staff representation may submit questions for requested witnesses in writing to the Committee. The inmate may not question any witness at the hearing.

(d) An inmate has the right to be present throughout the Institution Discipline Committee hearing except during deliberations of the Committee or when institutional security would be jeopardized. The chairman must document in the record the reason(s) for excluding an inmate from the hearing. An inmate may waive the right to be present at the hearing, provided that the waiver is documented by staff and reviewed by the IDC. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. The Committee may conduct a hearing in the absence of an inmate when the inmate waives the right to appear. When an inmate escapes or is otherwise absent from custody, the Institution Discipline Committee shall conduct a hearing in the inmate's absence at the institution in which the inmate was last confined. When an inmate who has had any sanctions imposed by the IDC while absent from custody returns to custody, the Warden shall have the charges reheard before the Institution Discipline Committee at the institution to which the inmate is designated after return to custody, and following appearance before the Unit Discipline Committee at that institution. The UDC shall ensure that the inmate has all rights required for appearance at the Institution Discipline Committee, including delivery of charge(s), advisement of the right to remain silent and other rights to be exercised at the IDC. All the applicable procedural requirements of Institution Discipline Committee hearings apply to this rehearing, except that written statements of witnesses not readily available may be liberally used instead of in-person witnesses. The IDC upon rehearing may dismiss the charge(s), or may modify but may not increase the sanctions previously imposed in the inmate's absence.

(e) The IDC may postpone or, at any time prior to making a decision as to whether or not a prohibited act was committed, may continue the hearing until a later date whenever further investigation or more evidence is needed. A postponement or continuance must be for good cause (determined by the IDC chairman) shown by the inmate or staff and should be documented in the record of the hearing.

(f) The IDC shall consider all evidence presented at the hearing and shall make a decision in accordance with the greater weight of the evidence and one which is supported by substantial evidence manifested in the record of the proceedings. The Committee shall find that the inmate either:

(1) Committed the prohibited act charged and/or a similar prohibited act if reflected in the Incident Report, or

(2) Did not commit the prohibited act charged or a similar prohibited act if reflected in the Incident Report.

When a disciplinary committee decision is based on confidential informant information, the UDC or IDC shall document, ordinarily in the committee report, its finding as to the reliability of each confidential informant relied on *and the factual basis for that finding.* When it appears that this documentation in the committee report would reveal the confidential informant's identity, the finding as to the reliability of each confidential informant relied on and the factual basis for that finding shall be made part of the hearing record in a separate report, prepared by the IDC chairman, not available to the inmate.

(g) The Institution Discipline Committee shall prepare a record of its proceedings which need not be verbatim. This record must be sufficient to document the advisement of inmate rights, the Committee's findings, the Committee's decision and the specific evidence relied on by the Committee, and must include a brief statement of the reasons for the sanctions imposed. The evidence relied upon, the decision, and the reasons for the actions taken must be set out in specific terms unless doing so would jeopardize institutional security. The IDC shall give the inmate a written copy of the decision and disposition.

(h) A record of the hearing and supporting documents are to be kept in the inmate central file.

(i) The Institution Discipline Committee shall expunge an inmate's file of the Incident Report and related documents whenever the Committee finds the inmate did not commit a prohibited act. The requirement for expunging the inmate's file does not preclude maintaining for research purposes copies of disciplinary actions resulting in "not guilty" findings in a master file separate from the inmate's instutition file. However, institution staff may not use or allow the usage of the contents of this master file in a manner which would adversely affect the inmate. Likewise, the expungement requirement does not require the destruction of medical reports or other reports relating to a particular inmate which must be maintained to document medical or other treatment given in a special housing unit. If an inmate's conduct during one continuous incident may constitute more than one prohibited act, and if the incident is reported in a single Incident Report, and if the IDC finds the inmate has not committed every prohibited act charged, then the IDC shall record its findings clearly and shall mark out on the Incident Report the incident and code references to charges which were not proved. Institution staff may not use the existence of charged but unproved misconduct against the inmate.

§ 541.18 Dispositions of the Institution Discipline Committee.

The Institution Discipline Committee has available a broad range of sanctions and dispositions when it has completed a hearing. The Institution Discipline Committee may do any of the following:

(a) Dismiss any charge(s) before it upon a finding that the inmate did not commit the prohibited act(s). The IDC shall order the record of charge(s) expunged upon such finding.

(b) Impose sanctions A through P as provided in § 541.13.

(c) Suspend the execution of a sanction it imposes as provided in § 541.13.

§ 541.19 Appeals from Unit Discipline Committee or Institution Discipline Committee actions.

At the time the Unit Discipline Committee or Institution Discipline Committee gives an inmate notice of its decision, they shall also advise the inmate that the inmate may appeal the decision under Administrative Remedy Procedures (see Part 542 of this Chapter). On appeals, the Warden, Regional Director, or General Counsel may approve, modify, reverse, or send back with directions any disciplinary action of the Unit Discipline Committee or Institution Discipline Committee but may not increase the sanctions imposed. On appeals, the Warden, Regional Director, or General Counsel shall consider:

(a) Whether the Unit Discipline Committee or the Institution Discipline Committee substantially complied with the regulations on inmate discipline;

(b) Whether the Unit Discipline Committee or Institution Discipline Committee based its decision on substantial evidence; and

(c) Whether an appropriate sanction was imposed according to the severity level of the Prohibited Act.

§ 541.20 Justification for placement in disciplinary segregation and review of inmates in disciplinary segregation.

(a) Except as provided in paragraph (b) of this section, an inmate may be placed in disciplinary segregation only by order of the Institution Discipline Committee following a hearing in which the inmate has been found to have committed a prohibited act in the Greatest, High, or Moderate Category, or a repeated offense in the Low Moderate Category. The IDC may order placement in disciplinary segregation only when other available dispositions are inadequate to achieve the purpose of punishment and deterrence necessary to regulate an inmate's behavior within acceptable limits.

(b) The Warden may temporarily (not exceeding five days) move an inmate to a more secure cell (which may be in an area ordinarily set aside for disciplinary segregation and which therefore requires the withdrawal of privileges ordinarily afforded in administrative detention status, until a hearing before the Institution Discipline Committee can be held) who (1) is causing a serious disruption (threatening life, serious bodily harm, or property) in administrative detention, (2) cannot be controlled within the physical confines of administrative detention, and (3) upon advice of appropriate medical staff, does not require confinement in the institution hospital for mental or physical treatment, or who would ordinarily be housed in the institution hospital for mental or physical treatment, but who cannot safely be housed there because the hospital does not have a room or cell with adequate security provisions. The Warden may delegate this authority no further than to the official in charge of the institution at the time the move is necessary.

(c) The Institution Discipline Committee shall conduct a hearing and formally review the status of each inmate who spends seven continuous days in disciplinary segregation and thereafter shall review these cases on the record in the inmate's absence each week and shall conduct a hearing and formally review these cases at least once every 30 days. The inmate appears before the IDC at the 30-day hearings, unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when disciplinary segregation continues beyond 30 days. The assessment, submitted to the Committee in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals if segregation continues for this extended period.

(d) The Institution Discipline Committee may release an inmate from disciplinary segregation earlier than the sanction initially imposed when the Committee finds that continuation in disciplinary segregation is no longer necessary to regulate the inmate's behavior within acceptable limits or for fulfilling the purpose of punishment and deterrence which initially resulted in the inmate's placement in disciplinary segregation status. The Committee may not increase any previously imposed sanction.

§ 541.21 Conditions of disciplinary segregation.

(a) Disciplinary segregation is the status of confinement of an inmate housed in a special housing unit in a cell either alone or with other inmates, separated from the general population. Inmates housed in disciplinary segregation have significantly fewer privileges than those housed in administrative detention.

(b) The Warden shall maintain for each segregated inmate basic living levels of decency and humane treatment, regardless of the purpose for which the inmate has been segregated Living conditions may not be modified for the purpose of reinforcing acceptable behavior and different levels of living arrangements will not be established. Where it is determined necessary to deprive an inmate of a usually authorized item, staff shall prepare written documentation as to the basis for this action, and this document will be signed by the Warden, indicating the Warden's review and approval.

(c) The basic living standards for segregation are as follows:

(1) *Segregation Conditions.* The quarters used for segregation must be well-ventilated, adequately lighted, appropriately heated and maintained in a sanitary condition at all times. All cells must be equipped with beds. Strip cells may not be a part of the segregation unit. Any strip cells which are utilized must be a part of the medical facility and under the supervision and control of the medical staff.

(2) *Cell Occupancy.* Except in emergencies, the number of inmates confined to each cell or room may not exceed the number for which the space was designated. The Warden may approve temporary excess occupancy if the Warden finds there is an emergency requiring this action.

(3) *Clothing and Bedding.* An inmate in segregation may wear normal institution clothing but may not have a belt. Staff shall furnish a mattress and bedding. Cloth or paper slippers may be substituted for shoes at the discretion of the Warden. An inmate may not be segregated without clothing, mattress, blankets and pillow, except when prescribed by the medical officer for medical or psychiatric reasons.

Inmates in special housing status will be provided, as nearly as practicable, the same opportunity for the issue and exchange of clothing, bedding, and linen, and for laundry as inmates in the general population. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee. Any exception, and the reasons for this, must be recorded in the unit log.

(4) *Food.* Staff shall give a segregated inmate nutritionally adequate meals, ordinarily from the menu of the day for the institution. Staff may dispense disposable utensils when necessary.

(5) *Personal Hygiene.* Segregated inmates shall have the opportunity to maintain an acceptable level of personal hygiene. Staff shall provide toilet tissues, washbasin, toothbrush, eyeglasses, shaving utensils, etc., as needed. Staff may issue a retrievable kit of toilet articles. Each segregated inmate shall have the opportunity to shower and shave at least three times a week, unless these procedures would present an undue security hazard. This security hazard will be documented and signed by the Warden, indicating the Warden's review and approval.

Inmates in special housing will be provided, where practicable, barbering and hair care services. Exceptions to this procedure may be permitted only when found necessary by the Warden or designee.

(6) *Exercise.* Staff shall permit each segregated inmate no less than five hours exercise each week. Exercise should be provided in five one-hour periods, on five different days, but if circumstances require, one-half hour periods are acceptable if the five-hour minimum and different days schedule is maintained. These provisions must be carried out unless compelling security or safety reasons dictate otherwise. Institution staff shall document these reasons.

Exercise periods, not to exceed one week, may be withheld from an inmate by order of the Warden, upon recommendation of the Institution Discipline Committee. This recommendation may be made only following a hearing before the IDC, the hearing to be held in accordance with the provisions of § 541.17, following those provisions which are appropriate to these circumstances, and only upon a finding by the IDC that the actions of the segregated inmate pose a threat to the safety or health conditions of the unit.

(7) *Personal Property.* Institution staff shall ordinarily impound personal property.

(8) *Reading Material.* Staff shall provide a reasonable amount of non-legal reading material, not to exceed five books at any one time, on a circulating basis. Staff shall provide the inmate opportunity to possess religious scriptures of the inmate's faith. As to legal materials, see Part 543, Subpart B.

(9) *Supervision.* In addition to the direct supervision afforded by the unit officer, a member of the medical

department and one or more responsible officers designated by the Warden (ordinarily a correctional supervisor) shall see each segregated inmate daily, including weekends and holidays. Members of the program staff shall visit inmates in special housing upon request.

(10) *Correspondence and Visits.* As to correspondence privileges, see Part 540, Subpart B. Staff shall make reasonable effort to notify approved social visitors of any necessary restriction on ordinary visiting procedures so that they may be spared disappointment and unnecessary inconvenience. If ample time for correspondence exists, staff may place the burden of this notification to visitors on the inmate. As to general visiting and telephone privileges, see Part 540, Subpart D and Subpart I. In respect to legal, religious, and privileged out-going mail, the relevant regulations must be followed by institution staff (see Parts 540, 543, and 548 of this Chapter).

§ 541.22 Administrative detention.

Administrative detention is the status of confinement of an inmate in a special housing unit in a cell either by himself or with other inmates which serves to remove the inmate from the general population.

(a) *Placement in Administrative Detention.* The Warden may delegate authority to place an inmate in administrative detention to correctional supervisors. Prior to the inmate's placement in administrative detention, the correctional supervisor is to review the available information and determine whether the inmate's placement in administrative detention is warranted. The Warden may place an inmate in administrative detention when the inmate is in holdover status (i.e., en route to a designated institution) during transfer, or is a new commitment pending classification. The Warden may also place an inmate in administrative detention when the inmate's continued presence in the general population poses a serious threat to life, property, self, staff, other inmates or to the security or orderly running of the institution and when the inmate:

(1) Is pending a hearing for a violation of Bureau regulations;

(2) Is pending an investigation of a violation of Bureau regulations;

(3) Is pending investigation or trial for a criminal act;

(4) Is pending transfer;

(5) Requests admission to administrative detention for the inmate's own protection, or staff determines that admission to or continuation in administrative detention is necessary for the inmate's own protection (See § 541.23); or

(6) Is terminating confinement in disciplinary segregation and placement in general population is not prudent. The Institution Discipline Committee is to advise the inmate of this determination and the reasons for such action.

(i) In Security Level 1 through 5 and Administrative type (exception pretrial inmates) institutions, staff within 90 days of an inmate's placement in post-disciplinary detention shall either return the inmate to the general inmate population or effect a transfer to a more suitable institution.

(ii) The Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate not transferred from post-disciplinary detention within the time frame specified in paragraph (a)(6)(i) of this section.

(iii) In Security Level 6 institutions, staff will attempt to adhere to the 90-day limit for an inmate's placement in post-disciplinary detention. Because security needs required for an inmate in a Security Level 6 institution may not be available outside of post-disciplinary detention, the Warden may approve an extension of this placement upon determining in writing that it is not practicable to release the inmate to the general inmate population or to effect a transfer to a more suitable institution.

(iv) The appropriate Regional Director and the Assistant Director, Correctional Programs Division, shall review for purpose of making a disposition, the case of an inmate in a Security Level 6 institution not transferred from post-disciplinary detention within the 90-day time frame specified in paragraph (iii) of this section. A similar, subsequent review shall be conducted every 60–90 days if post-disciplinary detention continues for this extended period.

(b) *Memorandum Detailing Reasons For Placement.* The Warden shall prepare a memorandum detailing the reasons for placing an inmate in administrative detention, with a copy given to the inmate, provided institutional security is not compromised thereby. Staff shall deliver this memorandum to the inmate within 24 hours of his placement in administrative detention, unless this delivery is precluded by exceptional circumstances. A memorandum is not necessary for an inmate placed in administrative detention when this placement is a direct result of the inmate's holdover status.

(c) *Review of Inmates Housed in Administrative Detention.* (1) Except as otherwise provided in paragraphs (c)(2) and (c)(3) of this section, the Warden shall designate appropriate staff to review the status of inmates housed in administrative detention. The reviewing authority shall conduct a record review within three work days of the inmate's placement in administrative detention and shall hold a hearing and formally review the status of each inmate who spends seven continuous days in administrative detention, and thereafter shall review these cases on the record (in the inmate's absence) each week, and shall hold a hearing and review these cases formally at least every 30 days. The inmate appears before the reviewing authority at the hearing unless the inmate waives the right to appear. A waiver may be in writing, signed by the inmate, or if the inmate refuses to sign a waiver, it may be shown by a memorandum signed by staff and witnessed by a second staff member indicating the inmate's refusal to appear at the hearing. Staff shall conduct a psychiatric or psychological assessment, including a personal interview, when administrative detention continues beyond 30 days. The assessment, submitted to the reviewing authority in a written report, shall address the inmate's adjustment to surroundings and the threat the inmate poses to self, staff and other inmates. Staff shall conduct a similar psychiatric or psychological assessment and report at subsequent one-month intervals should detention continue for this extended period. Administrative detention is to be used only for short periods of time except where an inmate needs long-term protection (see § 541.23), or where there are exceptional circumstances, ordinarily tied to security or complex investigative concerns. An inmate may be kept in administrative detention for longer term protection only if the need for such protection is documented by the reviewing authority. Provided institutional security is not compromised, the inmate shall receive at each formal review a written copy of staff's decision and the basis for this finding. The reviewing authority shall release an inmate from administrative detention when reasons for placement cease to exist.

(2) The Warden shall designate appropriate staff to meet weekly with an inmate in administrative detention when this placement is a direct result of the inmate's holdover status. Staff shall also review this type of case on the record each week.

(3) When an inmate is placed in administrative detention for protection, but not at that inmate's request, the Warden or designee is to review the inmate's status within two work days of

this placement to determine if continued protective custody is necessary. A formal hearing is to be held within seven days of the inmate's placement (see § 541.23, Protection Cases).

(d) *Conditions of Administrative Detention.* The basic level of conditions as described in § 541.21(c) for disciplinary segregation also apply to administrative detention. If consistent with available resources and the security needs of the unit, the Warden shall give an inmate housed in administrative detention the same general privileges given to inmates in the general population. This includes, but is not limited to, providing an inmate with the opportunity for participation in an education program, library services, social services, counseling, religious guidance and recreation. unless there are compelling reasons to the contrary, institutions shall provide commissary privileges and reasonable amounts of personal property. An inmate in administrative detention shall be permitted to have a radio, provided that the radio is equipped with ear plugs. Exercise periods, at a minimum, will meet the level established for disciplinary segregation and will exceed this level where resources are available. The Warden shall give an inmate in administrative detention visiting, telephone, and correspondence privileges in accordance with Part 540 of this Chapter. The Warden may restrict for reasons of security, fire safety, or housekeeping the amount of personal property that an inmate may retain while in administrative detention.

§ 541.23 Protection cases.

(a) Staff may consider the following categories of inmates as protection cases:

(1) Victims of inmate assaults;

(2) Inmate informants;

(3) Inmates who have received inmate pressure to participate in sexual activity;

(4) Inmates who seek protection through detention, claiming to be former law enforcement officers, informants, or others in sensitive law enforcement positions, whether or not there is official information to verify the claim;

(5) Inmates who have previously served as inmate gun guards, dog caretakers, or in similar positions in state or local correctional facilities;

(6) Inmates who refuse to enter the general population because of alleged pressures from other unidentified inmates;

(7) Inmates who will not provide, and as to whom staff cannot determine, the reason for refusal to return to the general population;

(8) Inmates about whom staff has good reason to believe the inmate is in serious danger of bodily harm.

(b) Inmates who are placed in administrative detention for protection, but not at their own request or beyond the time when they feel they need to be detained for their own protection, are entitled to a hearing, no later than seven days from the time of their admission (or from the time of their detention beyond their own consent). This hearing is conducted in accordance with the procedural requirements of § 541.17, as to advance written notice, staff representation, right to make a statement and present documentary evidence, to request witnesses, to be present throughout the hearing, and advance advisement of inmate rights at the hearing, and as to making a record of the proceedings.

(c) Ordinarily, staff may place an inmate in administrative detention as provided in paragraph (a) of this section relating to protection cases, for a period not to exceed 90 days. Staff shall clearly document in the record the reasons for any extension beyond this 90-day period.

(d) Where appropriate, staff shall first attempt to place the inmate in the general population of their particular facility. Where inappropriate, staff shall clearly document the reason(s) and refer the case, with all relevant material, to their Regional Director, who, upon review of the material, may order the transfer of a protection case.

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