

subject to proposed 11 CFR 110.21(c)(2), which would apply 11 CFR 100.52 to such transaction. The Commission also seeks comment on whether donations or transfers that are not sales or rentals should trigger the requirement to include a value for a mailing list on the NOCO or NOQCE statements even if the donation or transfer is to the presidential candidate's GELAC or other authorized committees.

Finally, the proposed rules at 11 CFR 9004.9(d)(3)(iii) and 11 CFR 9034.5(c)(3)(iii) would explain how fair market value would be determined for purposes of the NOCO and NOQCE statements. The proposed rule would allow the presidential campaign committee renting or selling its list to have two choices. For primary candidates, the list would be valued at either: (1) the usual and normal rental revenue that the committee would receive if it rented the list to others over an 18 month period beginning on the date of ineligibility ("DOI"); or (2) the usual and normal sale price at DOI. For general election candidates, the list would be valued at either: (1) the usual and normal rental revenue over the 12-month period beginning on the date of the general election; or (2) the usual and normal sale price as of the date of the election.

Under these proposed rules, Presidential campaign committees would need to estimate the usual and normal rental revenue. This in turn would involve estimates as to how often the committee will rent out the mailing list over the applicable period, as well as the rental value of the list (e.g., \$X per 1,000 names). The value may depend upon the rental price of comparable mailing lists and, if comparability is not easily ascertainable, such factors as how recently the names were updated for accurate addresses, how responsive the individuals on the list have been to other similar solicitations (particularly recent solicitations), the income level of the individuals on the list, and the classification according to the list industry or other subject matter. (See the discussion above of proposed 11 CFR 110.21(a)(1).) Estimates of the sale price would be based on similar information. The Commission seeks comment on whether the presidential campaign committee should have the burden of establishing the usual and normal rental value and, if so, whether it must establish this value before the mailing list is rented. See the request for comments with respect to proposed 11 CFR 110.21.

The proposed rules would provide for a limited time period for the

measurement of the rental revenue, i.e., the 18-month and 12-month periods. This recognizes that these campaign committees are in the process of winding down their activities. The 18-month and 12-month periods generally fall within the winding down periods and may very well expire before the end of such periods. Please note that continued or frequent renting out of the mailing list to raise funds beyond what is necessary to pay off debts would be inconsistent with the winding down of campaign activities. The Commission seeks comment on whether mailing list rentals or sales by presidential campaigns should be limited by the amount necessary to pay off the authorized committee's debts.

In the case of either rental or sale, the NOCO and the NOQCE statement would be adjusted subsequently by the actual rental or sale price for the mailing list, similar to the practice of revising those statements to replace estimated winding down costs with actual cost figures. In the case of list rental, the final NOCO or NOQCE statement (which will most likely be filed after the expiration of the 18-month or one year period) would not reflect the anticipated rental figure. Instead, the actual rental proceeds would replace the estimated figure of the value of the mailing list. In the case of a sale, the estimated list sale amount would be replaced with the actual sale proceeds.

The Commission seeks comment on whether the value of mailing lists should be accounted for on the NOCO or NOQCE statements regardless of any subsequent use by the authorized committee. In the alternative, should they not be recognized on NOCO and NOQCE statements under any circumstances? The Commission also seeks comments on the appropriateness of the methods proposed for determining fair market value. Are the proposed 12-month and 18-month time periods for measuring rental value too long? Would they encourage activity by presidential campaign committees that is not consistent with winding down activities? In the alternative, should the time periods be different for some other reason? Should presidential campaigns be permitted to rent or sell their mailing lists regardless of whether such activity is related to winding down the campaign?

The Commission also seeks comment on whether the use of the sale price as of DOI is inappropriate if a list is not updated and is sold many months after DOI. Comment is also sought on what other valuation method should be applied to mailing lists for purposes of the NOCO and NOQCE statements.

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

[Regulatory Flexibility Act]

The attached proposed rules, if promulgated, would not have a significant economic impact on a substantial number of small entities. The basis for this certification is that few, if any, small entities would be affected by these proposals, which apply only to Federal candidates, their campaign committees, party committees, and other political committees. Federal candidates, their committees, and party committees are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. These rules are largely intended to adopt past Commission practice by clarifying the application of various provisions of the Act and presidential public financing statutes to mailing list transactions involving political committees and Federal candidates. Because the proposed rules would not significantly change current practice, those few proposals that might increase the cost of compliance by small entities would not do so in such an amount as to cause a significant economic impact.

List of Subjects

11 CFR Part 110

Campaign funds, Political committees and parties.

11 CFR Part 113

Campaign funds.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Federal Election Commission proposes to amend subchapters A, E, and F of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

1. The authority citation for part 110 would continue to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d, 438(a)(8), 441a, 441b, 441d, 441e, 441f, 441g, 441h and 441k.

2. Sections 110.21 and 110.22 would be added to read as follows: