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11 CFR Ch. I (1-1-04 Edition)

(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 will be decided by the Commission and may be less than the amount of time sought by the candidate in his or her application. If a candidate seeks an extension of any 60-day response period under 11 CFR part 9038, the Commission may grant no more than one extension to that candidate, which extension shall not exceed 15 days.

(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 11 CFR part 9038 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 11 CFR part 9038.

[56 FR 35945, July 29, 1991, as amended at 60 FR 31887, June 16, 1995]

§ 9038.5 Petitions for rehearing; stays of repayment determinations.

(a) *Petitions for rehearing.* (1) Following the Commission's final determination under 11 CFR 9033.10 or 9034.5(g) or the Commission's repayment determination under 11 CFR 9038.2(c), the candidate may file a petition for rehearing setting forth the relief desired and the legal and factual basis in support. To be considered by the Commission, petitions for rehearing must:

(i) Be filed within 20 calendar days after service of the Commission's final determination or repayment determination;

(ii) Raise new questions of law or fact that would materially alter the Com-

mission's final determination or repayment determination; and

(iii) Set forth clear and convincing grounds why such questions were not and could not have been presented during the original determination process.

(2) If a candidate files a timely petition under this section challenging a Commission repayment determination, the time for repayment of the amount at issue will be suspended until the Commission serves notice on the candidate of its determination on the petition. The time periods for making repayment under 11 CFR 9038.2(d) shall apply to any amounts determined to be repayable following the Commission's consideration of a petition for rehearing under this section.

(b) *Effect of failure to raise issues.* The candidate's failure to raise an argument in a timely fashion during the original determination process or in a petition for rehearing under this section, as appropriate, shall be deemed a waiver of the candidate's right to present such arguments in any future stage of proceedings including any petition for review filed under 26 U.S.C. 9041(a). An issue is not timely raised in a petition for rehearing if it could have been raised earlier in response to the Commission's original determination.

(c) *Stay of repayment determination pending appeal.* (1)(i) The candidate may apply to the Commission for a stay of all or a portion of the amount determined to be repayable under this section or under 11 CFR 9038.2 pending the candidate's appeal of that repayment determination pursuant to 26 U.S.C. 9041(a). The repayment amount requested to be stayed shall not exceed the amount at issue on appeal.

(ii) A request for a stay shall be made in writing and shall be filed within 30 calendar days after service of the Commission's decision on a petition for rehearing under paragraph (a) of this section, or, if no petition for rehearing is filed, within 30 calendar days after service of the Commission's repayment determination under 11 CFR 9038.2(c).

(2) The Commission's approval of a stay request will be conditioned upon the candidate's presentation of evidence in the stay request that he or she:

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(i) Has placed the entire amount at issue in a separate interest-bearing account pending the outcome of the appeal and that withdrawals from the account may only be made with the joint signatures of the candidate or his or her agent and a Commission representative; or

(ii) Has posted a surety bond guaranteeing payment of the entire amount at issue plus interest; or

(iii) Has met the following criteria:

(A) He or she will suffer irreparable injury in the absence of a stay; and, if so, that

(B) He or she has made a strong showing of the likelihood of success on the merits of the judicial action.

(C) Such relief is consistent with the public interest; and

(D) No other party interested in the proceedings would be substantially harmed by the stay.

(3) In determining whether the candidate has made a strong showing of the likelihood of success on the merits under paragraph (c)(2)(iii)(B) of this section, the Commission may consider whether the issue on appeal presents a novel or admittedly difficult legal question and whether the equities of the case suggest that the status quo should be maintained.

(4) All stays shall require the payment of interest on the amount at issue. The amount of interest due shall be calculated from the date 30 days after service of the Commission's repayment determination under 11 CFR 9038.2(c) and shall be the greater of:

(i) An amount calculated in accordance with 28 U.S.C. 1961 (a) and (b); or

(ii) The amount actually earned on the funds set aside under this section.

[56 FR 35945, July 29, 1991, as amended at 60 FR 31887, June 16, 1995]

§ 9038.6 Stale-dated committee checks.

If the committee has checks outstanding to creditors or contributors that have not been cashed, the committee shall notify the Commission. The committee shall inform the Commission of its efforts to locate the payees, if such efforts have been necessary, and its efforts to encourage the payees to cash the outstanding checks. The committee shall also submit a check for the total amount of such out-

standing checks, payable to the United States Treasury.

§ 9038.7 Administrative record.

(a) The Commission's administrative record for final determinations under 11 CFR part 9033, sections 9034.5, 9036.5 and part 9039, and for repayment determinations under 11 CFR 9038.2, consists of all documents or materials submitted to the Commission for its consideration in making those determinations. The administrative record will include the certification of the Commission's vote(s), the audit report that is sent to the committee (for repayment determinations), the statement(s) of reasons, and the candidate agreement. The committee may include documents or materials in the administrative record by submitting them within the time periods set forth at 11 CFR 9033.3(b), 9033.4(a)(2), 9033.6(c), 9033.7(b), 9033.9(b), 9034.5(g)(2), 9036.5(e), 9038.1(c) and 9038.2(c)(2), as appropriate.

(b) The Commission's administrative record for determinations under 11 CFR part 9033, sections 9034.5, 9036.5 and 9038.2 and part 9039 does not include:

(1) Documents and materials in the files of individual Commissioners or employees of the Commission that do not constitute a basis for the Commission's decisions because they were not circulated to the Commission and were not referenced in documents that were circulated to the Commission;

(2) Transcripts or audio tapes of Commission discussions other than transcripts or audio tapes of oral hearings pursuant to 11 CFR 9038.2(c)(2), although such transcripts or tapes may be made available under 11 CFR parts 4 or 5; or

(3) Documents properly subject to privileges such as an attorney-client privilege, or items constituting attorney work product.

(c) The administrative record identified in paragraph (a) of this section is the exclusive record for the Commission's determinations under 11 CFR part 9033, §§ 9034.5, 9036.5 and 9038.2 and part 9039.

[60 FR 31888, June 16, 1995]