

### Subpart A—Receiving and Processing Applications

2. In § 1910.4 revise paragraph (b) by removing paragraph 21 and redesignating paragraph 22 as paragraph 21.

3. In § 1910.4 revise paragraph (j)(1)(i) to read as follows:

#### § 1910.4 Processing applications.

\* \* \* \* \*

(j) \* \* \*

(1) \* \* \*

(i) Receipt by the applicant of a signed copy of the Agency's request for obligation of funds on the appropriate Agency form is written notice of loan approval and any conditions that must be met prior to loan closing. Loan approval conditions may include, but are not limited to, obtaining required real estate and chattel appraisals.

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### PART 1941—OPERATING LOANS

4. The authority citation for part 1941 continues to read as follows:

**Authority:** 5 U.S.C. 301 and 7 U.S.C. 1989.

#### Subpart A—Operating Loan Policies, Procedures, and Authorizations

5. Revise § 1941.25 paragraph (a)(4) to read as follows:

#### § 1941.25 Appraisals.

(a) \* \* \*

(4) A real estate appraisal is required when real estate is taken as primary security, as defined in § 1941.4, and the amount of the loan to be secured by the real estate exceeds \$50,000.

\* \* \* \* \*

### PART 1965—REAL ESTATE

6. The authority citation for part 1965 continues to read as follows:

**Authority:** 5 U.S.C. 301, 7 U.S.C. 1989 and 42 U.S.C. 1480.

#### Subpart A—Servicing of Real Estate Security for Farm Loan Programs Loans and Certain Note-Only Cases

7. In § 1965.13 revise introductory paragraph (d) to read as follows:

**§ 1965.13 Consent by partial release or otherwise to sale, exchange or other disposition of a portion of or interest in security, except leases.**

\* \* \* \* \*

(d) *Appraisals.* A new appraisal report for the security to be transferred or released will be obtained in accordance with § 761.7 of this title as necessary to protect the financial interests of the Government or when the transaction

involves more than \$25,000. A new appraisal report for the security to be retained will be obtained in accordance with that section as necessary to protect the financial interests of the Government. Appraisal reports under this section may show the present market value of the property being transferred or released and the property being retained on a single appraisal report or on separate appraisal reports. The value of rights to mining products, gravel, oil, gas, coal or other minerals will be specifically included as a part of the appraised value of the real estate security.

\* \* \* \* \*

Signed in Washington, DC, on August 14, 2003.

**J.B. Penn,**

*Under Secretary for Farm and Foreign Agricultural Services.*

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### FEDERAL ELECTION COMMISSION

#### 11 CFR Parts 100, 106, 114, 9004, and 9034

[Notice 2003-14]

#### Candidate Travel

**AGENCY:** Federal Election Commission.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission requests comments on proposed changes to its rules covering the proper rates and timing for payment of candidate travel on private means of transportation that are not offered for commercial use, including government conveyances. The proposed rule would provide more comprehensive guidance than the current regulations by establishing a single, uniform valuation scheme for campaign travel that does not depend on whether the service provider is a corporation, labor organization, individual, partnership, limited liability company or other entity, or on whether the destination city is served by regularly scheduled commercial service. The proposed rules would apply to all Federal candidates including publicly funded presidential candidates. No final decisions have been made by the Commission on any of the proposed revisions in this Notice. Further information is provided in the supplementary information that follows.  
**DATES:** Comments must be received on or before September 19, 2003. If the Commission receives sufficient requests to testify, it will hold a hearing on these proposed rules on October 1, 2003, at

9:30 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments.

**ADDRESSES:** All comments should be addressed to Ms. Mai T. Dinh, Acting Assistant General Counsel, and must be submitted in either electronic or written form. Electronic mail comments should be sent to *travel2003@fec.gov* and must include the full name, electronic mail address and postal service address of the commenter. Electronic mail comments that do not contain the full name, electronic mail address and postal service address of the commenter will not be considered. If the electronic mail comments include an attachment, the attachment must be in the Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments should be sent to (202) 219-3923, with printed copy follow-up to ensure legibility. Written comments and printed copies of faxed comments should be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

Commenters are strongly encouraged to submit comments electronically to ensure timely receipt and consideration. The Commission will make every effort to post public comments on its Web site within ten business days of the close of the comment period. The hearing will be held in the Commission's ninth floor meeting room, 999 E Street NW., Washington, DC.

**FOR FURTHER INFORMATION CONTACT:** Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr. Richard T. Ewell, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694-1650 or (800) 424-9530.

**SUPPLEMENTARY INFORMATION:** The Commission is proposing several changes to its rules to establish a simple, uniform payment scheme covering all candidate travel on either government or private aircraft and other conveyances. The current regulation at 11 CFR 114.9(e) establishes the timing for reimbursement and the amount that a candidate must reimburse a corporation or labor organization for the use of a private airplane or other means of transportation, but does not address means of travel furnished by individuals, partnerships, and other entities. The current rules in section 114.9(e) are also not fully consistent with the Commission's treatment of similar travel by presidential and vice-presidential candidates using government-provided transportation under 11 CFR 9004.7 and 9034.7.

## I. Proposed 11 CFR 100.93 Payment for Travel by Airplane and Other Means of Transportation

### A. Proposed Replacement of 11 CFR 114.9(e) With Proposed 11 CFR 100.93

The Commission proposes several changes to the candidate travel rules currently set forth at 11 CFR 114.9(e). While 11 CFR part 114 focuses on corporate and labor organization activity, and current 11 CFR 114.9(e)(2) focuses on means of travel owned or leased by corporations or labor organizations, the Commission seeks to broaden the rules to include airplanes and other means of travel owned by persons other than corporations and labor organizations. The Commission recognizes that in most cases the means of travel used for campaign trips is likely to be owned or leased by a corporation or labor organization, but notes that the current section heading for 11 CFR 114.9, "Use of corporate and labor organization facilities and means of transportation," would not accurately convey the scope of the proposed travel rules encompassing airplanes and other means of transportation owned by individuals, partnerships, or other entities. Therefore, the Commission proposes deleting the reference to "means of transportation" from the title of 11 CFR 114.9, removing and reserving paragraph (e) of 114.9, and relocating the substance of the travel reimbursement rules to a new section.

To accommodate the broadened scope of the travel reimbursement rules, the Commission proposes adding new section 100.93 to the enumerated exceptions to the definition of "contribution" in 11 CFR part 100, subpart C. This new section would describe circumstances in which the use of a private means of transportation not owned or leased by candidates or their authorized committees would not be contributions, much like current § 100.52 (also in subpart C), which describes when the use of commercial transportation is or is not a contribution. Proposed § 100.93 would be based on the current 11 CFR 114.9(e), with the organizational and substantive changes described below.

### B. Proposed 11 CFR 100.93(a) Scope and Definitions

#### 1. Proposed Paragraph (a)(1) Scope

Proposed paragraph (a)(1) would define the scope of the rules and clarify any perceived ambiguity regarding the scope of the current 11 CFR 114.9(e)(1). The current rule focuses on the use of airplanes owned by corporations or labor organizations that "are not

licensed to offer commercial service for travel in connection with a Federal election." One district court found this wording to be ambiguous. In this case, a presidential candidate claimed that the regulation applied to all travel on airplanes except airplanes owned or leased by a corporation or labor organization possessing a license for travel in connection with a Federal election. *See Federal Election Commission v. Arlen Specter '96*, 150 F. Supp. 2d 797, 804 and 808 (E.D. Pa. 2001). The Court noted that no such license existed and ultimately deferred to the Commission's longstanding determination that 11 CFR 114.9(e) applies to airplanes owned by corporations or labor organizations not engaged in the business of providing commercial air service generally, without regard to any connection with a Federal election. *Id.* at 812.

In order to remove this perceived ambiguity, the Commission proposes further clarification of the class of airplanes affected. As noted above, proposed 11 CFR 100.93 would apply to service providers depending on whether the airplane is or is not "normally operated for commercial passenger service," rather than whether the owner of the airplane is "licensed to offer commercial service for travel in connection with a Federal election."

The Commission notes that commercial and non-commercial air travel is subject to the authority of the Department of Transportation (DOT) and various certifications of the Federal Aviation Administration (FAA). Aircraft are permitted to operate pursuant to various FAA safety certifications based generally on passenger capacity, route frequency, and type of service offered. Private aircraft not offering commercial passenger service operations normally operate under certification provided pursuant to either 14 CFR parts 91 or 125.<sup>1</sup> Some airlines receive certificates of public necessity and convenience to operate commercial passenger service as common carriers within specified domestic locations pursuant to 14 CFR part 135. Other common carriers, such as commercial air taxi service and on-demand charter service, are permitted to operate under special certification in 14

<sup>1</sup> Aircraft operating pursuant to certification under 14 CFR parts 91 or 125 are not permitted to operate as common carriers, meaning that they cannot hold themselves out to the public as providing passenger service for compensation. *See* 14 CFR 119.1(a) (establishing additional base requirements in excess of the 14 CFR part 91 requirements for all air carriers and commercial operators that serve as common carriers) and 14 CFR 125.1(a) (applies to aircraft with a seating capacity of 20 or more persons, but only where common carriage is not involved).

CFR part 298, which exempts them from certain requirements that would be otherwise required under 14 CFR part 135. Certain other aircraft are also permitted to serve as common carriers and offer passenger service for compensation under 14 CFR parts 121 and 129. Each of the FAA certifications focuses mainly on the technical specifications and safety requirements of the aircraft and crew.

Aircraft operating under 14 CFR part 91 certification are not usually permitted to accept any form of payment or reimbursement from passengers, but a special FAA exception permits Federal candidates to reimburse the owners of such aircraft for the use of planes pursuant to the Commission's regulations. *See* 14 CFR 91.321.<sup>2</sup> The Commission therefore intends its regulations in proposed 11 CFR 100.93 to apply only to airplanes *not* authorized to conduct operations in air transportation as a common carrier (*e.g.*, 14 CFR parts 91 or 125), while the current regulations at 11 CFR 100.52 would apply to all airplanes operated pursuant to other certifications that do permit carriage of passengers for compensation. Proposed 11 CFR 100.93, however, would focus on the normal use of the airplane, rather than the operating certificate possessed by its owner, to avoid the need for title and certification checks. The Commission seeks comment on whether the type of certification with the FAA, or some other method, should be used to determine whether an airplane is normally operated for commercial passenger service such that a normal and usual rate for that passenger service could be readily and accurately ascertained.

As noted above, the current rule distinguishes between the use of airplanes owned or leased by a corporation or labor organization licensed to offer commercial services for travel, and airplanes that are owned by other corporations or labor organizations not normally engaged in commercial air passenger service. This distinction requires an examination of the plane's ownership or lease structure to determine the proper reimbursement timing and amount. The Commission is concerned that the ownership determination may add unnecessary confusion to the payment process and is proposing to shift the focus of the rule away from whether the airplane's owner is a corporation or labor organization

<sup>2</sup> Aircraft operating under 14 CFR part 125 certification are similarly prohibited from operating as common carriers, but there is no similar general prohibition on the acceptance of payment from passengers to warrant an identical exception.

and onto the normal use of the airplane. The proposed rules would therefore apply not only to airplanes owned by corporations or labor organizations, but also to airplanes owned by any "person," as defined at 11 CFR 100.10, as well as airplanes owned by the Federal government or a State or local government.

An alternative approach, which is not incorporated into the proposed rules, would be to focus the distinction on whether the service provider is a "commercial vendor," as defined in 11 CFR 116.1(c), with respect to the transportation services. This approach would continue to require an examination of the ownership structure of service provider. Relying on the term "commercial vendor" could also lead to a different result in certain circumstances. For example, Commercial Airline A owns a specially configured jet that is reserved for its corporate executives and offers the use of that jet to Candidate B. Under the "commercial vendor" alternative, Commercial Airline A would likely qualify as a "commercial vendor" of transportation services, meaning that 11 CFR 100.52(d), rather than 11 CFR 100.93, would govern the reimbursement requirements for Candidate B's travel on the jet. This result would require Candidate B to calculate the "usual and normal rate" for the use of the jet under 11 CFR 100.52(d)(2), which could be difficult to ascertain because passengers on the jet are not normally charged any fee. However, under the proposed "not normally operated for commercial passenger service" approach, Candidate B's use of the jet would be governed by proposed § 100.93, not § 100.52, and the proper reimbursement could be calculated by referring to first-class or charter rates to that destination.

The Commission seeks comments on broadening the coverage of these travel rules from corporations and labor organizations to any "person" or government, as well as the proposed shift in focus from the ownership of the airplane to the normal use of the airplane.

The scope of proposed § 100.93, however, would be limited to non-commercial means of transportation. A campaign traveler using a commercial airline or other means of commercial transportation would continue to be subject to the more general definition in 11 CFR 100.52, which categorizes "the provision of any goods or services without charge or at a charge that is less than the usual and normal charge for such goods or services" as an "in-kind contribution." 11 CFR 100.52(d). Thus,

a candidate or other campaign traveler receives an in-kind contribution when he or she is provided commercial transportation without charge or at a charge that is less than the usual and normal charge for that transportation. Proposed § 100.93(a) would include a cross-reference to 11 CFR 100.52(a) and (d) to affirm the continued application of these rules to providers of commercial transportation.

## 2. Proposed Paragraph (a)(2) Definitions

Proposed paragraph (a)(2) would define several terms used in new § 100.93. The term "campaign traveler" would be defined to provide a succinct term covering the candidate, candidate's agent, or other individual traveling on behalf of a candidate or a candidate's authorized committee. "Service provider" would describe the person or entity providing the transportation to the campaign traveler. Given the complex ownership and leasing arrangements often associated with airplanes and other means of transportation, a "service provider" may be either the owner of the conveyance or a different person who is leasing the conveyance from the owner and making it available for the campaign traveler's use.

Under proposed paragraph (a)(2), the term "unreimbursed value" would be defined as the portion of the value provided to the campaign traveler, calculated according to the rules in this section, that is not reimbursed by the candidate's authorized committee. A late payment would not qualify as a reimbursement under this section, which means that the value of the service provided would be an in-kind contribution to the candidate. By contrast, a service provider would not make an in-kind contribution if the candidate's authorized committee provides payment within the time specified in this proposed section. The Commission seeks comments on each of these definitions.

### C. 11 CFR 100.93(b) General Rule

Proposed § 100.93(b) would set forth the general rule for when travel by private means of transportation would not constitute a contribution to a candidate or authorized committee, as well as when and to what extent such travel is an in-kind contribution. Under proposed paragraph (b)(1), a candidate's authorized committee would not receive or accept a contribution if the authorized committee pays the service provider the full value of the transportation within the specified time, as determined in this proposed section. This proposed paragraph would

generally require that the candidate's authorized committee, rather than the campaign traveler, pay the service provider to avoid receiving or accepting a contribution. The campaign traveler could pay the service provider directly for his or her own travel rather than having the campaign committee do so. Such payment would constitute an in-kind contribution by the campaign traveler to the candidate, unless it qualifies for the transportation expense exception set forth in 11 CFR 100.79.

In light of the fact that the current rules at 11 CFR 114.9(e) are limited to airplanes owned by corporations or labor organizations, payment is required because the unpaid use of the airplanes would constitute a contribution in violation of 2 U.S.C. 441b. In contrast, individuals, partnerships, and certain other persons are permitted to make in-kind contributions to candidates up to the amounts set forth in 2 U.S.C. 441a. Thus, a campaign traveler may use an airplane provided by someone permitted to make an in-kind contribution, and this use would be an in-kind contribution. Proposed 100.93(b)(2) would recognize this possibility by describing when a service provider would be making an in-kind contribution. For an in-kind contribution to be permissible, however, the candidate's authorized committee must comply with the payment conditions in proposed 11 CFR 100.93. If these conditions are not met, then the provision of the airplane would be prohibited if the service provider is a corporation or labor organization, or if the value of the service would, when added to other contributions to the same candidate by the service provider, exceed that service provider's contribution limit. See proposed 11 CFR 100.93(b)(2). The value of the in-kind contribution would be determined in the same manner as the amount of the reimbursement would normally be determined under proposed paragraphs (c), (d) or (e) of new section 100.93.

The Commission recognizes that this approach could, in some cases, require the same type of ownership analysis that otherwise would be avoided by the proposed rules. This analysis, however, would no longer be a necessary step in every circumstance because it would be employed only where the airplane's provider elects not to seek full or partial reimbursement from the candidate's authorized committee, or when the committee fails to reimburse the service provider. The Commission seeks comments on whether reimbursement should always be required, regardless of the ownership of the airplane, or whether the possibility of an in-kind

contribution from a permissible source should be addressed in some other fashion.

*D. Proposed 11 CFR 100.93(c) Travel by Airplane*

When a candidate or other campaign passenger uses an airplane owned by a person who is not in the business of providing commercial air travel, the current rules set the rate of reimbursement at either the first-class airfare or the normal charter rate, depending on whether a destination city is served by regularly scheduled commercial air service. 11 CFR 114.9(e)(1). The charter rate, which is normally higher than first-class airfare to an airport in the same area, represents the actual cost that a campaign would incur, but for the use of the corporate or labor airplane, to reach a particular destination by air when that destination is not served by commercial air service. Nevertheless, the Commission recognizes that candidates who campaign in major metropolitan areas that have regularly scheduled airline service will generally be able to use a private plane and reimburse only the equivalent of a first-class airfare, whereas the candidates who campaign in more rural areas that have little, if any, commercial air service would be required to reimburse the equivalent charter rate. The Commission is concerned that the current reimbursement scheme might be unnecessarily complex and negatively affects campaigning in rural areas.

To address these concerns, the Commission seeks comments on three alternative reimbursement rules in proposed 11 CFR 100.93(c), as well as any other appropriate payment schemes. The Commission also seeks comments on whether and how it should further simplify the rules and address other inequities, if any, arising from the current application of 11 CFR 114.9(e) or the changes proposed for § 100.93.

In addition, the Commission notes that many charter services charge a traveler for "deadhead miles," those miles the airplane travels empty while returning to its home base after a one-way flight. In some cases, charter services also require compensation for positioning costs for airplanes based many miles from the pickup and drop-off points. The Commission therefore seeks comments on how, if at all, the three alternative payment schemes should account for these expenses associated with the positioning of the airplane or "deadhead miles." For example, when a candidate travels one-way from California to Virginia on a private airplane based in Nevada and

that airplane returns empty to Nevada, should that candidate's authorized committee be required to pay the expenses associated with the Nevada-to-California and Virginia-to-Nevada flights? If so, should each of these positioning or "deadhead" flights be determined in the same manner as described in the three alternative payment schemes below, or by using some other method?

1. Alternative A: Payment Based on First-Class Airfare

Alternative A would set the payment rate, for each individual traveling for campaign purposes, at the amount of the lowest non-discounted first-class airfare to the closest airport that has such service, regardless of whether the actual destination airport is served by regularly scheduled commercial air service. The proposed rule would focus on the closest destination airport, rather than the destination city, to avoid further confusion in light of the various geographic considerations discussed in Advisory Opinion ("AO") 1999-13.<sup>3</sup> Because airfares may vary based on the date of travel, the rate used in calculating the payment amount would have to correspond to the date of actual travel. The Commission seeks comments on how precisely the base rate should correspond to the actual date of travel. For example, some airlines or charter companies may set a base rate for tickets purchased over a month in advance of the travel date that is different than the price of the same ticket when purchased on the date of travel. Should a campaign be permitted to use the normal advance ticket price when calculating the comparable base rate as required in proposed § 100.93, or should a campaign be required to calculate the comparable rate based on purchase on a fixed date or period, such as the actual date of travel or the lowest price within seven days of the travel date?

Alternative A would also allow an authorized committee to reimburse the provider of a private airplane at the coach rate to the destination airport where the same airport is served by regularly scheduled coach airline

service but not regularly scheduled first-class airline service. This distinction for coach service would accommodate industry trends and is based on the current rules governing presidential candidates' payments for the use of government aircraft. See 11 CFR 9004.7(b)(5)(i)(B) and 9034.7(b)(5)(i)(B). Please note, however, that if the actual destination is an airport that is not served by any regularly scheduled commercial air service, and the closest airport is served by regularly scheduled coach airline service but not regularly scheduled first-class airline service, the proposed reimbursement amount would still be the lowest non-discounted first-class airfare for the closest airport that is served by regularly scheduled first-class airline service and not the coach fare for the closest airport.

In addition, Alternative A would eliminate the advance payment requirement in 11 CFR 114.9(e)(1). Currently, because payment must be made prior to travel, the campaign must provide a check in advance to the corporation to cover a certain number of passengers. If last minute passengers are not paid for prior to boarding the airplane, the campaign has failed to comply with the requirements of current 11 CFR 114.9(e)(1), regardless of how promptly the campaign subsequently makes an after-the-fact reimbursement. However, where candidates use other means of transportation addressed in 11 CFR 109.2(e)(2), last minute passengers do not cause the same complications because the reimbursement may be made "within a commercially reasonable time," rather than in advance, so that the number of passengers is settled at the time the reimbursement is made.

Alternative A would address this disparate treatment by allowing a fixed period of seven calendar days for payment after travel has begun. This seven-day period would be shorter than the thirty-or-sixty day period used for other forms of transportation, see below, because under Alternative A the campaign would have complete control over the timing of the reimbursement as all the necessary passenger information and costs would be fixed at the time the airplane departs. Thus, it should be possible for the candidate's authorized committee to calculate the proper reimbursement rate without a billing or invoice process to cause delay.

The Commission recognizes that the removal of the advance payment rule could be perceived as a departure from the previous approach under which corporations are prohibited from extending credit outside the ordinary course of their business. See 11 CFR

<sup>3</sup> In AO 1999-13, the Commission recognized that particular destination cities might be serviced by several airports in the surrounding region. In that advisory opinion, the Commission determined that an airport need not be within the corporate limits of a city in order for that city to be considered "served by regularly scheduled commercial air service." The Commission further agreed that it was reasonable for the requestor to determine whether a city is served by a particular airport through reference to published sources such as a FAA directory or a corporate directory regarded at the time as the charter industry's standard reference for airports.

part 116. While the creation of a fixed post-travel time period for reimbursement in these circumstances is technically an extension of credit, the Commission nevertheless seeks comments on the potential consequences of the proposed rule with respect to the use of an airplane owned by a corporation or labor organization where reimbursement does not occur in advance. The Commission also seeks comments on whether the advance payment requirement should be retained and what, if any, other reimbursement timetables would be appropriate.

## 2. Alternative B: Payment Based on a Combination of First-Class Airfare and Charter Rate

Alternative B would provide for two different payment rates, following closely the travel valuation rules set forth in the ethics rules for the House of Representatives and the United States Senate. See Select Committee on Ethics, U.S. Senate, Senate Ethics Manual, S. Pub. No. 108-1 (2003), "Private Air Travel" at p. 60; Committee on Standards of Official Conduct, U.S. House of Representatives, Rules of the U.S. House of Representatives on Gifts and Travel (2001), "Use of Private Aircraft for Travel" available at <[http://www.house.gov/ethics/Gifts\\_and\\_Travel\\_Chapter.htm#\\_Toc476623633](http://www.house.gov/ethics/Gifts_and_Travel_Chapter.htm#_Toc476623633)>. The first rate, in proposed paragraph (c)(1) of Alternative B, would apply to previously scheduled flights, as opposed to flights specifically scheduled for a campaign traveler, between cities with regularly scheduled air service. The payment rate for these trips would be the normal cost of first-class airfare between the cities. Thus, travel between airports served by regularly scheduled air service would be treated similarly under both Alternative A and Alternative B, except that Alternative B would not permit the first-class airfare amount where the airplane is chartered specifically for the campaign traveler's use. Both Alternative A and Alternative B would permit payment at the coach rate where coach service is regularly scheduled on the same route, but would not permit campaigns to pay the lower amount for discounted fares such as "supersavers," "e-savers," or a government rate.

Under proposed paragraph (c)(2) of Alternative B, the Commission would require the amount of payment for other air travel, including flights specifically scheduled for a campaign traveler or flights where the origin or destination city is not served by regularly scheduled air service, to be no less than the normal

charter rate for a similar airplane. The valuation of travel to airports not served by regularly scheduled commercial airline service would therefore differ from the valuation in proposed paragraph (c)(3) of Alternative A, which would value such travel at the amount of the first-class rate to the nearest airport. For the same reasons discussed above for Alternative A, the candidate's authorized committee would be required to make the proper payment within seven calendar days of the departure date.

## 3. Alternative C: Payment Based on Charter Rate

Alternative C would establish a uniform rule by requiring the payment amount to be the normal and usual cost of chartering a plane of sufficient size to accommodate all campaign travelers plus the news media and security personnel where applicable. This payment rate would depend on the rate for chartering the entire plane, rather than a per-passenger cost, and would not vary based on whether the destination airport is served by regularly scheduled commercial air service of any particular class. Alternative C could provide a more accurate reflection of the true value of the use of a private or governmental airplane by campaign travelers. Because the campaign would be responsible for the cost of chartering the entire plane and the addition of last minute travelers would not increase the cost, the payment amount would be known prior to the time of departure. Thus, the Commission would continue to require advance payment for the use of all airplanes not normally used for commercial passenger service. To the extent that Alternative C would increase the cost of candidate travel when private airplanes are used, should the Commission consider such a factor when it evaluates appropriate reimbursement rates?

## E. Proposed 11 CFR 100.93(d) Other Means of Transportation

The Commission proposes a set period of time for payment of travel by means other than by airplane: thirty calendar days from the receipt of the invoice, but no more than sixty calendar days following the date the travel commenced. See proposed 11 CFR 100.93(d). This fixed deadline would add more clarity and certainty than the current rule's reference to a "commercially reasonable" period, but would retain the flexibility necessary to account for costs that cannot be calculated until the completion of travel or shortly thereafter. The sixty-day cutoff would help to ensure that the

invoice will be rendered to the campaign promptly. Any extensions of credit resulting from payments not being made within the sixty-day period would be considered in-kind contributions to the candidate and would therefore result in a violation of the Act and Commission regulations where such contributions are prohibited or excessive. The payment rate would be set at the usual and normal fare or rental readily available to the general public at the time of travel.

## F. Proposed 11 CFR 100.93(e) Government Conveyances

Paragraph (e) of proposed 11 CFR 100.93 would clarify the appropriate payment for travel using any means of transportation, including an airplane, that is owned or leased by the Federal government or any State or local government. For government airplanes, one of the three alternatives described above would be used. For other means of travel, a campaign traveler using a government conveyance would have to reimburse the government entity within thirty calendar days of the receipt of an invoice, but no later than sixty calendar days following the date on which travel commenced. The required payment rate would be the amount of the usual fare or rental charge readily available to the general public for the travel date.

## G. Proposed 11 CFR 100.93(f) Reporting

Proposed paragraph (f)(1) of 11 CFR 100.93 would refer candidates and their authorized committees to the existing reporting requirements for the receipt of an in-kind contribution. Under 11 CFR 104.13, a candidate must report the amount of unreimbursed value for travel services as both the receipt of a contribution from the service provider and an expenditure by the candidate committee.

In addition, a candidate's authorized committee would be required to record the travel dates along with the report of the disbursement for repayment of the travel service. Under proposed paragraph (f)(2) of §100.93, the Commission would require the authorized committee to report the actual date of travel in the "purpose of disbursement" field corresponding to the disbursement.

## H. Proposed 11 CFR 100.93(g) Recordkeeping

Presidential and vice-presidential candidates are currently required to maintain records documenting the rates used in calculating their travel reimbursements. 11 CFR 9004.7(b)(5)(v) and 9034.7(b)(5)(v). Under proposed 11 CFR 100.93(g), these recordkeeping

requirements would apply to other candidates.

## II. Proposed Revisions to 11 CFR 106.3(e) Reportable Expenditure for a Candidate Who Uses Government Conveyance for Campaign Related Travel

Candidates who use government conveyance or accommodations for campaign-related travel are currently required to report an expenditure in the amount equivalent to the "rate for comparable commercial conveyance or accommodation." 11 CFR 106.3(e). To eliminate disparities between campaign-related travel on private planes and travel on government planes, the Commission proposes revising 11 CFR 106.3 by replacing the reference to the "rate of comparable commercial conveyance" with a reference to the applicable rates for travel reimbursement set forth in proposed 11 CFR 100.93(c) and (d). Both the reimbursement rates and the payment due dates in proposed 11 CFR 100.93 would be applicable to travel by airplane and other means of travel, whether owned by an individual, corporation, labor organization, partnership, the Federal government, a State government, or any other person. The Commission seeks comment on this approach and the proposed revisions to 11 CFR 106.3(e).

## III. Proposed Revisions to 11 CFR 9004.7(b) and 9034.7(b) Payment for Travel on Government Conveyances by Publicly Funded Presidential Candidates

The current regulations at 11 CFR 9004.7(b) and 9034.7(b) govern travel on government conveyance by primary and general election presidential and vice-presidential candidates receiving federal funding. The two rules are virtually identical and require the presidential or vice-presidential candidate to pay the appropriate government entity at one of several specified rates. These rates are established in largely the same manner as the reimbursement rates set forth in the current 11 CFR 114.9(e). The Commission proposes revising 11 CFR 9004.7(b)(5)(i) and (8) and 9034.7(b)(5)(i) and (8) to replace the parallel rate determinations in those rules with a reference to the reimbursement rates that would be set forth in proposed 11 CFR 100.93. As with the valuation of travel on government conveyances by non-presidential or vice-presidential candidates in 11 CFR 106.3(e), the reimbursement rates in proposed 11 CFR 100.93 would serve as the applicable valuation of travel by

presidential and vice-presidential candidates aboard government conveyances. Minor changes would be made to the wording in paragraphs (b)(5)(i) through (iv) in sections 9004.7 and 9034.7 to clarify that the required reimbursement rate is a floor, not a ceiling on how much the candidate may reimburse, in order to permit a candidate to pay at a higher rate when required by other government agencies or branches. The Commission seeks comment on this approach and the proposed revisions to 11 CFR 9004.7 and 9034.7.

## V. Other Travel Issues

While the various approaches in the proposed rules may at times overstate or understate the actual cost or value of the air transportation service provided, the Commission anticipates that over time the costs will even out so that the actual disparity, if any, will be minor. The proposed rules are premised on the belief that an across-the-board approach to determining air travel costs is advisable, both for ease of compliance and for ease of administration. Nevertheless, the Commission recognizes that situations may arise that would not be readily addressed by the proposed rules. The Commission is therefore seeking comments describing how, if at all, some of these situations should be addressed in the rules.

### *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 and their campaign committees. Federal candidates and their campaign committees are not small entities. To the extent that operators of air-taxi services or on-demand air charter services are affected, the effect would result from candidate travel choices rather than Commission requirements. These rules propose no sweeping changes, and are largely intended to simplify the process of determining payment and allocation ratios and reimbursement rates. The proposed rules would not increase the cost of compliance by small entities so as to cause a significant economic impact.

### List of Subjects

11 CFR Part 100

Elections.

### 11 CFR Part 106

Campaign funds, political committees and parties, political candidates.

### 11 CFR Part 114

Business and industry, elections, labor.

### 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 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for part 100 would continue to read as follows:

**Authority:** 2 U.S.C. 431, 434, and 438(a)(8).

2. Section 100.93 would be added to subpart C of part 100 to read as follows:

### § 100.93 Travel by airplane or other means of travel.

(a) *Scope and definitions.*

(1) This section applies to all campaign travelers who use an airplane, or other means of transportation that is not normally operated for commercial passenger service. See 11 CFR 100.52(a) and (d) for treatment of transportation services that are normally operated for commercial passenger service.

(2) For the purposes of this section, the following terms are defined as follows:

*Campaign traveler* means a candidate, candidate's agent, or other individual traveling on behalf of a candidate or candidate's authorized committee.

*Service provider* means the owner of an airplane or other conveyance, or a person who leases an airplane or other conveyance from the owner, and uses the airplane or other conveyance to provide transportation to a campaign traveler.

*Unreimbursed value* means the difference between the actual value of the service provided, as set forth in this section, and the amount of payment for that service by the campaign traveler to the service provider within the time limits set forth in this section. A payment that is not made within the time limits set forth in this section is not a reimbursement for the purposes of this section.

(b) *General rule.*

(1) No contribution results from travel by airplane, or other means of

transportation, by a campaign traveler, if the candidate's authorized committee reimburses the service provider, within the required time, for the full value of the transportation as provided in this section.

(2) Except as provided in 11 CFR 100.79, the unreimbursed value of the transportation provided to a campaign traveler, as determined in paragraphs (c) or (d) of this section, is an in-kind contribution from the service provider to the candidate.

[Alternative A]

(c) *Travel by airplane.* If a campaign traveler uses an airplane that is not normally operated for commercial passenger service, the candidate's authorized committee must pay the service provider, no later than seven (7) calendar days after the date the flight began, the following amount:

(1) In the case of travel to an airport served by regularly scheduled first-class commercial airline service, the lowest unrestricted and non-discounted first-class air fare available for time traveled; or

(2) In the case of an airport served by regularly scheduled coach airline service, but not regularly scheduled first-class commercial airline service, the lowest unrestricted and non-discounted coach commercial air fare for the time traveled; or

(3) In the case of travel to an airport not served by regularly scheduled commercial airline service, the lowest unrestricted first-class airfare, for the time traveled, to the airport:

(i) With regularly scheduled first-class commercial service; and

(ii) That is closest to the airport actually used.

[Alternative B]

(c) *Travel by airplane.* If a campaign traveler uses an airplane that is not normally operated for commercial passenger service, the candidate's authorized committee must pay the service provider, no later than seven (7) calendar days after the date the flight began, the following amount:

(1) In the case of travel via a previously or regularly scheduled flight by the owner or operator of the airplane, where the cities between which the campaign traveler is flying have regularly scheduled commercial air service (regardless of whether such service is direct), the cost of a first-class ticket from the point of departure to the destination. If only coach service is available between those points, the amount is the coach rate. If more than one first-class or coach rate is available, the amount is the lowest fare. However,

no discount fares, such as "supersaver" fares, will be used for valuation purposes.

(2) In the case of a flight scheduled specifically for the use of a campaign traveler, or when the route does not have regularly scheduled commercial air service, the cost of chartering the same or a similar airplane for that flight. If campaign travelers for more than one candidate are traveling together between cities with no regularly scheduled service, then each candidate's authorized committee must pay its proportionate share of the cost of the charter.

[Alternative C]

(c) *Travel by airplane.* If a campaign traveler uses an airplane that is not normally operated for commercial passenger service, the candidate's authorized committee must pay the service provider, in advance, the usual commercial charter rate for an airplane sufficient in size to accommodate the campaign-related travelers, including the candidate, news media, and security personnel.

(d) *Other means of transportation.* If a campaign traveler who uses any other means of transportation, including an automobile, train, or helicopter, the candidate's authorized committee must reimburse the service provider within thirty (30) calendar days after the date of receipt of the invoice for such travel, but not later than sixty (60) calendar days after the date the travel began, at the normal and usual fare or rental charge readily available to the general public for time traveled.

(e) *Government conveyances.*

(1) If a campaign traveler uses an airplane that is provided by the Federal government, or by a State or local government, the candidate's authorized committee must pay the governmental entity in accordance with paragraph (c) of this section.

(2) If a campaign traveler uses a conveyance, other than an airplane, that is provided by the Federal government, or by a State or local government, the candidate's authorized committee must reimburse the government entity in accordance with paragraph (d) of this section.

(f) *Reporting.*

(1) In accordance with 11 CFR 104.13, a candidate's authorized committee must report the receipt of an in-kind contribution and the making of an expenditure under paragraph (b)(2) of this section.

(2) When reporting a disbursement for travel services in accordance with this section, a candidate's authorized committee must report the actual dates

of travel for which the disbursement is made in the "purpose of disbursement" field.

(g) *Recordkeeping.*

(1) For travel by airplane, the candidate's authorized committee shall maintain documentation of the lowest unrestricted nondiscounted air fare for the time traveled, including the airline, flight number and travel service providing that fare or the charter rate, as appropriate.

(2) For travel by other conveyances, the candidate's authorized committee shall maintain documentation of the commercial fare or rental charge for a conveyance of sufficient size, including the service provider and the size, model and make of the conveyance.

#### **PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES**

3. The authority citation for part 106 would continue to read as follows:

**Authority:** 2 U.S.C. 438(a)(8), 441a(b), 441a(g).

4. Section 106.3 would be amended by revising paragraph (e) to read as follows:

#### **§ 106.3 Allocation of expenses between campaign and non-campaign related travel.**

\* \* \* \* \*

(e) Notwithstanding paragraphs (b) and (c) of this section, the reportable expenditure for a candidate who uses government conveyance for travel that is campaign-related is the applicable rate set forth in 11 CFR 100.93(c) or (d). The reportable expenditure for a candidate who uses government accommodations for travel that is campaign-related is the rate for comparable commercial 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 noncampaign stops, equivalent costs are calculated in accordance with paragraphs (b) and (c) of this section.

#### **PART 114—CORPORATE AND LABOR ORGANIZATION ACTIVITY**

5. The authority citation for part 114 would continue to read as follows:

**Authority:** 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8), and 441b.

6. Section 114.9 would be amended by revising the section title and removing and reserving paragraph (e) to read as follows:

**§ 114.9 Use of corporate or labor organization facilities.**

\* \* \* \* \*

(e) [Removed and reserved]

**PART 9004—ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS; USE OF PAYMENTS**

7. The authority citation for Part 9004 would continue to read as follows:

**Authority:** 26 U.S.C. 9004 and 9009(b).

8. Section 9004.7 would be amended by revising paragraphs (b)(5) and (b)(8) to read as follows:

**§ 9004.7 Allocation of travel expenditures.**

\* \* \* \* \*

(b) \* \* \*

(5) Payment for use of government conveyances and accommodations.

(i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the applicable rate set forth in 11 CFR 100.93(c).

(ii) If a government airplane is flown to a campaign-related stop where it will pick up passengers, or from a campaign-related stop where it left off passengers, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the greater of the amount billed or the amount required under 11 CFR 100.93(c) for one passenger.

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the commercial rental rate for a conveyance sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service.

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted air fare available for the time traveled, including the airline, flight number and travel service providing that fare or the

charter rate, as appropriate. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate for a conveyance of sufficient size, including the provider of the conveyance and the size, model and make of the conveyance.

\* \* \* \* \*

(8) Travel on private airplanes and other conveyances not normally operated for commercial passenger service is governed by 11 CFR 100.93.

\* \* \* \* \*

**PART 9034—ENTITLEMENTS**

9. The authority citation for part 9034 would continue to read as follows:

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

10. Section 9034.7 would be amended by revising paragraphs (b)(5) and (b)(8) to read as follows:

**§ 9034.7 Allocation of travel expenditures.**

\* \* \* \* \*

(b) \* \* \*

(5) Payment for use of government conveyances and accommodations.

(i) If any individual, including a candidate, uses a government airplane for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the applicable rate set forth in 11 CFR 100.93(c).

(ii) If a government airplane is flown to a campaign-related stop where it will pick up passengers, or from a campaign-related stop where it left off passengers, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the greater of the amount billed or the amount required under 11 CFR 100.93(c) for one passenger.

(iii) If any individual, including a candidate, uses a government conveyance, other than an airplane, for campaign-related travel, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the commercial rental rate for a conveyance sufficient in size to accommodate the campaign-related travelers, including the candidate, plus the news media and the Secret Service.

(iv) If any individual, including a candidate, uses accommodations, including lodging and meeting rooms, during campaign-related travel, and the accommodations are paid for by a government entity, the candidate's authorized committee shall pay the appropriate government entity an amount not less than the usual and normal charge for the accommodations, and shall maintain documentation supporting the amount paid.

(v) For travel by airplane, the committee shall maintain documentation of the lowest unrestricted nondiscounted air fare available for the time traveled, including the airline, flight number and travel service providing that fare or the charter rate, as appropriate. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate for a conveyance of sufficient size, including the provider of the conveyance and the size, model and make of the conveyance.

\* \* \* \* \*

(8) Travel on private airplanes and other conveyances not normally operated for commercial passenger service is governed by 11 CFR 100.93.

Dated: August 18, 2003.

**Michael E. Toner,**

*Commissioner, Federal Election Commission.*

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**FEDERAL ELECTION COMMISSION**

**11 CFR Parts 102 and 110**

[Notice 2003-13]

**Multicandidate Committees and Biennial Contribution Limits**

**AGENCY:** Federal Election Commission.  
**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** The Federal Election Commission requests comments on proposed changes to its rules covering three areas: (1) Multicandidate political committee status, (2) annual contributions by persons other than multicandidate committees to national party committees, and (3) biennial contribution limits for individuals. The proposed changes would clarify the qualifications for multicandidate political committee status and require a political committee to notify the Commission when it has qualified as a multicandidate committee. The proposed changes would also update the limit on contributions from persons other than multicandidate committees to national party committees. In addition, the proposed changes would adjust the attribution of contributions to candidates from individuals under the biennial limits. No final decisions have been made by the Commission on any of the proposed revisions in this Notice. Further information is provided in the **SUPPLEMENTARY INFORMATION** that follows.

**DATES:** Comments must be received on or before September 19, 2003. If the Commission receives sufficient requests