

regardless of the year in which the particular election is held. See 11 CFR 110.1(b)(6). This paragraph (c)(1) also applies to earmarked contributions and contributions to a single candidate committee that has supported or anticipates supporting the candidate.

(2) Contributions made prior to January 1, 2004.

(i) For purposes of this paragraph (c)(2), a contribution to a candidate or his or her authorized committee with respect to a particular election shall be considered to be made during the calendar year in which such election is held.

(ii) For purposes of this paragraph (c)(2), any contribution to an unauthorized committee shall not be considered to be made during the calendar year in which an election is held unless:

(A) The political committee is a single candidate committee which has supported or anticipates supporting the candidate; or

(B) The contribution is earmarked by the contributor for a particular candidate with respect to a particular election.

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Dated: November 7, 2003.

Bradley A. Smith,

Vice Chairman, Federal Election Commission.
[FR Doc. 03-28469 Filed 11-13-03; 8:45 am]

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FEDERAL ELECTION COMMISSION

11 CFR Part 106

[Notice 2003-20]

Party Committee Telephone Banks

AGENCY: Federal Election Commission.

ACTION: Final rule and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is promulgating final rules regarding the attribution of political party committee disbursements for telephone bank communications made on behalf of a clearly identified Federal candidate. The final rules address the proper attribution of a party committee's or party organization's disbursements for communications that refer to a clearly identified Federal candidate when the party's other candidates are referred to generically, but not by name. The entire disbursement must be paid for with Federal funds. Further information is provided in the Supplementary Information that follows.

EFFECTIVE DATE: December 15, 2003.

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

SUPPLEMENTARY INFORMATION: In the months leading up to a general election, political party committees, or party committees in conjunction with the principal campaign committees of Federal candidates, may conduct phone banks to get out the vote ("GOTV") or otherwise promote the party and its candidates. Such phone banks may involve the reading of scripted messages that include a statement asking the person called specifically to vote, or get their family and friends out to vote, for the named Federal candidate and that then make one or more general promotional references to the party's other candidates. An example would be: "Please tell your family and friends to come out and vote for President John Doe and our great Party team." Given that no other Federal or non-Federal candidates are specifically mentioned, the question is whether the entire cost of the communication, or only a portion of the cost, should be attributed to the Federal candidate. The Commission is issuing final rules to provide clear guidance on how to attribute the cost of these communications.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate and publish them in the **Federal Register** at least 30 calendar days before they take effect. The final rules on party committee phone banks were transmitted to Congress on November 7, 2003.

Explanation and Justification

The Commission published a Notice of Proposed Rulemaking ("NPRM") on September 4, 2003, in which it sought comment on proposed rules that would add a new section to 11 CFR part 106 to address telephone bank expenditures by political party committees and organizations. 68 FR 52529 (Sept. 4, 2003). The comment period was originally set to close on September 25, 2003, but the Commission extended the comment period until September 29, 2003. In addition to the comments concerning the proposed rules, the NPRM sought comments on a number of other issues including: (1) Whether the scope of the rulemaking should be expanded to include other types of

communications such as broadcast or print media and to include candidates for the Senate or House of Representatives; (2) whether the final rules should explicitly state that a State party committee's use of its coordinated party expenditure authority to pay for these phone banks is subject to the restrictions of 11 CFR 109.33; and (3) whether the final rules should explicitly state that party committees are prohibited from using contributions designated for a particular candidate to pay for these phone bank expenditures.

The Commission received one comment in response to the NPRM. The Commission did not receive any requests to testify on the subject of party committee's disbursements for telephone banks at its hearing on October 1, 2003.

11 CFR 106.8 Allocation of Expenses for Political Party Committee Phone Banks That Refer to a Clearly Identified Federal Candidate

The Commission is adding new section 106.8 to address the costs of phone banks conducted by national, State and local party committees and party organizations on behalf of clearly identified Federal candidates. In Federal election years, party committees and organizations conduct such phone banks to encourage voters to support the entire ticket. Although the specific mention of the clearly identified Federal candidate provides something of value to the candidate being promoted, it also provides the party with a benefit. The final rules, discussed below, reflect that such communications benefit both the candidate and the party.

1. 11 CFR 106.8(a) Scope

New section 106.8(a) begins by stating the conditions under which the special attribution rule in paragraph (b) would apply. Paragraphs (a)(1) through (a)(5) of new section 106.8 describe the communications that are subject to the final rule. The proposed rules would have limited the scope of the new section 106.8 to presidential and vice presidential nominees, although the Commission asked whether they should be expanded to include candidates for the Senate and the House of Representatives. The commenter urged that the rules be extended to these candidates while noting that the underlying coordinated party expenditure limits would differ for these candidates. Because there is no apparent reason to distinguish presidential and vice presidential candidates from other Federal candidates, and to maintain a consistent approach for all Federal candidates, the

Commission is extending the final rules to all Federal candidates.

Consequently, the conditions set forth in 11 CFR 106.8(a)(1) through (a)(5) implement this approach. Under paragraph (a)(1) the communication must refer to a clearly identified Federal candidate. The term “clearly identified” is defined in 2 U.S.C. 431(18) and 11 CFR 100.17. Second, the communication must also refer to no other clearly identified Federal or non-Federal candidate under paragraph (a)(2). Third, under paragraph (a)(3), the communication must refer generically to the other candidates of the clearly identified Federal candidate’s party without clearly identifying them. Generic references to “our great Republican team” or “our great Democratic ticket” would satisfy the latter requirement. The commenter suggested that the final rules make clear that the generic reference is to other candidates and not to the clearly identified Federal candidate. For instance, according to the commenter, a reference to the “great Presidential Candidate X team” with no other generic reference to other candidates should not fall within the scope of the final rules because the word “team” should be treated as a reference to the presidential ticket and not as a reference to other candidates of the same party. The language in paragraph (a)(3) is slightly different from the proposed rule to make clear that the communication must include another reference that generically refers to other candidates and not the clearly identified Federal candidate.

Under paragraph (a)(4), the communication must not solicit contributions, donations, or any funds from any person for any Federal or non-Federal candidate, or for any political committee or political organization, or any entity disbursing funds in connection with a Federal or non-Federal election. If such a solicitation were made, it would change the nature of the communication and may require a different determination as to the attribution of the party’s spending for the communication among candidates or committees.

Under paragraph (a)(5), the phone bank must not be exempt from the definitions of “contribution” and “expenditure” under 11 CFR 100.89 and 100.149. These sections implement the statutory exceptions for certain voter registration and GOTV activities conducted by party committees under 2 U.S.C. 431(8)(B)(xi) and 431(9)(B)(ix). Consequently, a State or local party committee’s voter registration and GOTV activities, including phone banks

operated by volunteers under 11 CFR 100.89(e) or 100.149(e) conducted on behalf of a presidential or vice presidential nominee, which are exempt from the definitions of “contribution” and “expenditure,” are not affected by new section 106.8, provided that the conditions set forth in 11 CFR 100.89(a) through (g) or 100.149(a) through (g) are satisfied. Thus, State and local party committees may continue to spend on behalf of publicly financed presidential candidates for these purposes without making an expenditure or a contribution.

The Commission did not receive any comments in response to its question as to whether the final rules should specifically prohibit State and local party committees from using contributions that were designated for a particular Federal candidate to make expenditures for these phone banks. *See* 11 CFR 100.89(c) and 100.149(c). This situation is already governed by the “coattails” exception in 2 U.S.C. 431(8)(B)(xi) and (9)(B)(ix) and is not relevant to situations addressed in new section 106.8. The Commission therefore is not including this prohibition in the final rules. In answer to the Commission’s question of whether 11 CFR 106.8 should include other forms of communications such as broadcast or print media, the commenter urged the Commission to defer consideration of extending the final rules to include other forms of communications. The Commission has decided to limit the scope of new section 106.8 to phone banks at this time because each type of communication presents different issues that need to be considered in further detail before establishing new rules.

2. 11 CFR 106.8(b) Attribution

The NPRM included two alternatives for new section 106.8(b) to establish the attribution of the party committee’s payments for the phone bank. Under Alternative A, party committees and organizations would have attributed fifty percent of the disbursement to clearly identified presidential and vice presidential nominees, and the remaining fifty percent would not have been attributable to any Federal or non-Federal candidate but would have to be paid solely with Federal funds. Alternative B would have provided that 100 percent of the disbursement must be attributed to the clearly identified presidential and vice presidential nominees.

The Commission sought comment on which of these two alternatives would be preferable, or on whether the percentage should be based on the

actual space or time used to refer to the presidential nominee, or some other factor. The commenter argued that a fifty percent attribution to the presidential or vice presidential nominee is permissible provided that the entire phone bank expenditure is paid for with Federal funds.

The Commission is incorporating Alternative A in the final rules. Because these phone bank communications contain two references—one to a clearly identified Federal candidate and one that generically refers to other candidates—it is appropriate that the disbursement for the communications be attributed evenly between the two references. Thus, new section 106.8(b)(1) states that fifty percent of the disbursement for the phone bank is not attributed to any candidate because the generic reference does not refer to any clearly identified candidate and therefore cannot be attributed to any specific candidate.

The Commission has determined that Federal funds must be used to pay for all disbursements for telephone banks that fall within the scope of new section 106.8, even the portion that is not attributed to any particular candidate. Barring the unlikely event that the phone bank will involve 500 or fewer calls, a message such as, “Please vote for President John Doe and our great Party team,” would be a public communication that refers to a clearly identified Federal candidate and promotes that candidate. It would thus be a form of Federal election activity that must be paid for entirely with Federal funds, pursuant to 11 CFR 300.33(c)(1), if conducted by a State, district, or local party committee. *See* 11 CFR 100.24(b)(3), 100.26 and 100.28. It must also be paid for entirely with Federal funds if conducted by a national party committee, which only has Federal funds under 2 U.S.C. 441i(a) and 11 CFR 300.10. The amount that is not attributed to a Federal candidate, however, is not considered an in-kind contribution to any candidate, a coordinated party expenditure, or an independent expenditure by the party committee or organization.

Section 106.8(b)(2) requires that the remaining fifty percent of the disbursement be attributed to the clearly identified Federal candidate and that this portion of the disbursement must be paid for with Federal funds. Generally, party committees have several options in how to treat the attributed portion of a disbursement “as an in-kind contribution, a coordinated party expenditure, or an independent expenditure, depending on the circumstances. They may also obtain

reimbursement from the clearly identified Federal candidate of some or the entire attributed portion of the disbursement. Consequently, paragraph (b)(2) allows party committees and organizations to treat the portions of disbursements attributed to clearly identified Federal candidates as in-kind contributions, or as coordinated or independent expenditures, or as expenses to be reimbursed by the clearly identified Federal candidates, or a combination of any of these. Under paragraph (b)(2)(i), if the disbursement is treated as an in-kind contribution, it is subject to the contribution limitations of 11 CFR 110.1 or 110.2.

The Commission notes that a State party committee would be able to make coordinated party expenditures (under 2 U.S.C. 441a(d)) to pay for phone bank communications on behalf of its presidential candidate subject to new 11 CFR 106.8 only if the national party committee has made a written assignment of a specific amount of its coordinated party expenditure authority to the State party committee. See 11 CFR 109.33(a). Similarly, a district or local party committee may spend some of the amount authorized by the national or the State party committee upon receiving a written authorization to do so. See 11 CFR 109.33(b). The Commission did not receive any comments in response to its question on whether the final rule should refer to this requirement or whether it is understood that this final rule would not exempt a State, district, or local party committee from these requirements. The Commission is including a reference to 11 CFR 109.33 as well as to section 109.32 in new section 106.8(b)(2)(ii) to ensure that party committees understand that these sections apply to disbursements for phone banks that are treated as coordinated expenditures.

New section 106.8(b)(2)(ii) also provides for the disbursements attributed to the clearly identified Federal candidate to be treated as independent expenditures. As independent expenditures, they are also subject to the requirements of 11 CFR 109.10, and a reference to that section is included in paragraph (b)(2)(ii). This paragraph also includes a reference to 11 CFR 109.35 requiring party committees to choose between making either coordinated party expenditures or independent expenditures, but not both, on behalf of a Federal candidate after the party has nominated that candidate. Once, a party committee makes a coordinated party expenditure on behalf of a Federal candidate, it may not make an independent expenditure on behalf

of that Federal candidate, and vice versa.

3. Examples

The following examples illustrate the scope and operation of new section 106.8.

Example 1: A week before the general election, a local party committee operates a phone bank through the use of volunteers and the message is: "You can show your support for the Green Party presidential nominee by going to the polls next Tuesday and contributing to the local party committee so that it can help others to get to the polls too."

The costs of the phone bank would not fall within the scope of 11 CFR 106.8 for three reasons. First, by using volunteers to run a phone bank that seeks to get out the vote for the presidential and vice presidential nominee, and by complying with other requirements in 11 CFR 100.89(e) and 100.149(e), the local party committee does not make a contribution or expenditure under 11 CFR 100.89 and 100.149, and, therefore, these costs are excluded from the provisions of section 106.8. Second, the communication only contains a reference to the clearly identified Federal candidate ("Green Party presidential nominee") and does not refer generically to other candidates. Thus, it does not meet the condition set forth in 11 CFR 106.8(a)(3). Finally, the message includes a solicitation for the local party committee, and, therefore, does not meet the condition set forth in section 106.8(a)(4).

Example 2: The Republican National Committee ("RNC") operates a phone bank and the message is: "When you vote for Representative Jane Smith on Tuesday, remember to vote for the other Republican candidates." The cost of operating this phone bank is \$20,000. The RNC has already made an independent expenditure on behalf of Representative Smith but has not made any contributions to her authorized committee.

The costs of the phone bank would come within the scope of 11 CFR 106.8 because the communication: (1) Contains a reference to a clearly identified Federal candidate ("Representative Jane Smith"); (2) contains a generic reference to other Republican candidates; (3) does not include a reference to any other clearly identified candidate; (4) does not solicit a contribution or donation from any person; and (5) is conveyed by paid workers, not volunteers, and is thus not exempt from the definitions of "contribution" and "expenditure." The RNC must attribute \$10,000 to Representative Smith. Because the RNC

has already made an independent expenditure on behalf of Representative Smith, it cannot treat this \$10,000 as a coordinated party expenditure. See 2 U.S.C. 441a(d)(4)(A)(i); 11 CFR 109.35(b)(1). Rather it may treat the entire amount as an independent expenditure provided that it has not coordinated with Representative Smith or her authorized committee or agents. If the RNC or its agents coordinated this phone bank with Representative Smith or her agents, then it may treat \$5,000 as an in-kind contribution to her authorized committee under the limits of 2 U.S.C. 441a(a)(2)(A), and it must seek reimbursement from her authorized committee for the other \$5,000. The remaining fifty percent of the expenditure (\$10,000) is not attributed to any candidate and the entire \$20,000 must be paid for with Federal funds.

Example 3: A State party committee operates a phone bank and the message is: "Show your support for Senator John Doe and the great Democratic team by voting for them." The cost of operating the phone bank is \$34,000. The State party committee's coordinated party expenditure limit under 2 U.S.C. 441a(d) is \$20,000 and it already spent \$5,000 in coordinated party expenditures on behalf of Senator Doe. The State party committee is a multicanidate committee and has made a \$1,000 contribution to his campaign.

The costs of this phone bank are within the scope of 11 CFR 106.8 because the communication: (1) Contains a reference to a clearly identified Federal candidate ("Senator John Doe"); (2) contains a generic reference to other Democratic candidates; (3) does not include a reference to any other clearly identified candidate; (4) does not solicit a contribution or donation from any person; and (5) does not qualify for the 11 CFR 100.89 and 100.149 exceptions. Because the State party committee has already made a coordinated party expenditure on behalf of Senator Doe after the nomination, the State party committee cannot make a subsequent independent expenditure on his behalf. See 2 U.S.C. 441a(d)(4)(A)(ii); 11 CFR 109.35(b)(2). The State party committee does not have to attribute \$17,000 to any candidate but must still use all Federal funds to pay for that \$17,000. The remaining \$17,000 must be attributed to Senator Doe and must also be paid for with Federal funds. The State party committee may treat \$15,000, which is equal to its remaining coordinated party spending authority, of the attributed amount as a coordinated party expenditure. The remaining \$2,000 may

be treated as an in-kind contribution because when aggregated with the earlier \$1,000 contribution, it does not exceed the State party committee's \$5,000 contribution limit under 11 CFR 110.2.

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

[Regulatory Flexibility Act]

The attached final rules do 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 are affected by these rules, which apply only to committees of political parties and other party organizations. National, State and many local party committees of the two major political parties and other political committees and organizations are not small entities under 5 U.S.C. 601 because they are not small businesses, small organizations, or small governmental jurisdictions. The final rules simplify the determination as to the amount of a party committee disbursement that must be attributed to a clearly identified Federal candidate in the case of certain telephone bank communications and clarify what funding is permissible. Any increase in the cost of compliance that might result from these proposed rules would not be in an amount sufficient to cause a significant economic impact.

List of Subjects in 11 CFR Part 106

Campaign funds, political committees and parties, political candidates.

■ For the reasons set out in the preamble, the Federal Election Commission amends subchapter A of chapter 1 of title 11 of the *Code of Federal Regulations* as follows:

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

■ 1. The authority citation for part 106 continues to read as follows:

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

■ 2. New section 106.8 is added to read as follows:

§ 106.8 Allocation of expenses for political party committee phone banks that refer to a clearly identified Federal candidate.

(a) *Scope.* This section applies to the costs of a phone bank conducted by a national, State, district, or local committee or organization of a political party where—

(1) The communication refers to a clearly identified Federal candidate;

(2) The communication does not refer to any other clearly identified Federal or non-Federal candidate;

(3) The communication includes another reference that generically refers to other candidates of the Federal candidate's party without clearly identifying them;

(4) The communication does not solicit a contribution, donation, or any other funds from any person; and

(5) The phone bank is not exempt from the definition of "contribution" under 11 CFR 100.89 and is not exempt from the definition of "expenditure" under 11 CFR 100.149.

(b) *Attribution.* Each disbursement for the costs of a phone bank described in paragraph (a) of this section shall be attributed as follows:

(i) Fifty percent of the disbursement is not attributable to any other Federal or non-Federal candidate, but must be paid for entirely with Federal funds; and

(2) Fifty percent of the disbursement is attributed to the clearly identified Federal candidate and must be paid for entirely with Federal funds. This disbursement may be one or a combination of the following:

(i) An in-kind contribution, subject to the limitations set forth in 11 CFR 110.1 or 110.2; or

(ii) A coordinated expenditure or an independent expenditure, subject to the limitations, restrictions, and requirements of 11 CFR 109.10, 109.32, 109.33 and 109.35; or

(iii) Reimbursed by the clearly identified Federal candidate or his or her authorized committee.

Dated: November 7, 2003.

Bradley A. Smith,

Vice Chairman, Federal Election Commission.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 23

[Docket No. CE200, Special Condition 23-140-SC]

Special Conditions: Honeywell, Inc., Pilatus PC-12/45; Protection of Systems for High Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions; request for comments.

SUMMARY: These special conditions are issued to Honeywell, Inc., 23500 W.

105th Street, Olathe, KS 66061, for a supplemental type certificate for the Pilatus PC-12/45 airplane. This airplane will have novel and unusual design features when compared to the state of technology envisaged in the applicable airworthiness standards. These novel and unusual design features include the installation of two electronic barometric altimeters, Model AM-250, manufactured by Honeywell for which the applicable regulations do not contain adequate or appropriate airworthiness standards for the protection of these systems from the effects of high intensity radiated fields (HIRF). These special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to the airworthiness standards applicable to these airplanes.

DATES: The effective date of these special conditions is October 31, 2003. Comments must be received on or before December 15, 2003.

ADDRESSES: Comments may be mailed in duplicate to: Federal Aviation Administration, Regional Counsel, ACE-7, Attention: Rules Docket Clerk, Docket No. CE200, Room 506, 901 Locust, Kansas City, Missouri 64106. All comments must be marked: Docket No. CE200. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Wes Ryan, Aerospace Engineer, Standards Office (ACE-110), Small Airplane Directorate, Aircraft Certification Service, Federal Aviation Administration, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone (816) 329-4123.

SUPPLEMENTARY INFORMATION: The FAA has determined that notice and opportunity for prior public comment hereon are impracticable because these procedures would significantly delay issuance of the approval design and thus delivery of the affected aircraft. In addition, the substance of these special conditions has been subject to the public comment process in several prior instances with no substantive comments received. The FAA, therefore, finds that good cause exists for making these special conditions effective upon issuance.

Comments Invited

Interested persons are invited to submit such written data, views, or arguments, as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address