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FEDERAL ELECTION COMMISSION

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

[Notice 2003–24]

Travel on Behalf of Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is promulgating new and revised rules regarding the proper rates and timing for payment for travel on behalf of political committees and candidates on means of transportation that are not offered for commercial passenger service, including government conveyances. The final rules provide more comprehensive guidance than the previous 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. The final rules apply to all Federal candidates, including publicly funded presidential candidates as well as other individuals traveling on behalf of candidates, party committees, and other political committees where the travel is in connection with Federal elections. Further information is provided in the supplementary information that follows.

EFFECTIVE DATE: The effective date for the revisions to 11 CFR parts 100, 106, 114 and 9034 is January 14, 2004. Further action on revisions to 11 CFR part 9004, including the publication of a document in the **Federal Register** announcing an effective date, will be taken after these regulations have been before Congress for 30 legislative days pursuant to 26 U.S.C. 9009(c).

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vergelli, 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 implementing several changes to its rules governing travel in connection with a Federal election. These final rules establish a simple, uniform payment scheme covering all Federal election travel on either government or private aircraft and other conveyances. The previous regulation at 11 CFR 114.9(e) established the amount and timing for reimbursement by a candidate to a corporation or labor organization for the use of a private airplane or other means of transportation, but did not address means of travel furnished by individuals, partnerships, and other entities. The previous rules in section 114.9(e) also were 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. Nor did the previous rules in 11 CFR 114.9(e) establish specific guidance for those traveling on behalf of party committees or other unauthorized committees.

The Notice of Proposed Rulemaking ("NPRM") on which these final rules are based was published in the **Federal Register** on August 21, 2003. 68 FR 50,481 (August 21, 2003). The comment period was originally set to close on September 19, 2003, but the Commission extended the comment period until September 29, 2003. The Commission received nine comments from ten commenters,¹ and held a public hearing on this and two other rulemakings on October 1, 2003. Seven witnesses testified during the hearing. Transcripts of the hearing are available at <http://www.fec.gov/register.htm>. Please note that, for purposes of this document, the terms "commenter" and "comment" apply to both written

¹ The Commission received written comments from: Perkins, Coie LLP; The Campaign Legal Center; FEC Watch; the Center for Responsive Politics; National Republican Senatorial Committee; National Republican Congressional Committee; National Business Aviation Association, Inc.; Nancy J. Lally; attorneys Lyn Utrecht, Eric Kleinfeld, Pat Fiori, and James Lamb of Ryan, Phillips, Utrecht & MacKinnon; and the Internal Revenue Service.

comments and oral testimony at the public hearing.

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. In addition, 26 U.S.C. 9009(c) requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Presidential Election Campaign Fund Act be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. The final rules that follow were transmitted to Congress on December 10, 2003.

Explanation and Justification

I. 11 CFR 100.93 Travel by Airplane or Other Means of Transportation

A. Introduction

The Commission's previous candidate travel rules in 11 CFR 114.9(e) focused only on means of travel owned or leased by corporations or labor organizations. In the NPRM, the Commission proposed broadening the rules to include airplanes and other means of travel owned by other persons. The NPRM proposed the addition of new section 11 CFR 100.93, based on the previous 11 CFR 114.9(e) with the organizational and substantive changes described in the NPRM and below. New § 100.93 is one of the enumerated exceptions to the definition of "contribution" in 11 CFR part 100, subpart C, and identifies circumstances in which the use of a private means of transportation not owned or leased by candidates, their authorized committees, or other political committees would *not* be contributions.

B. 11 CFR 100.93(a) Scope and Definitions

1. Paragraph (a)(1) Means of Transportation Within the Scope of 11 CFR 100.93

(i) Paragraph (a)(1)(i)—Airplanes not licensed by the FAA to operate for compensation or hire under 14 CFR parts 121, 129, or 135.

Previous 11 CFR 114.9(e)(1) focused on the use of airplanes owned by

corporations or labor organizations not “licensed to offer commercial services for travel in connection with a Federal election.” Thus, the previous rule distinguished between the use of airplanes owned or leased by a corporation or labor organization licensed to offer commercial services for travel, and airplanes owned by other corporations or labor organizations not normally engaged in commercial air passenger service. This distinction required an examination of the plane’s ownership or lease structure to determine the proper reimbursement timing and amount.

One district court found the wording “licensed to offer commercial services for travel in connection with a Federal election” to be ambiguous. See *Federal Election Commission v. Arlen Specter* ’96, 150 F. Supp. 2d 797, 804 and 808 (E.D. Pa. 2001). In that case, a presidential candidate claimed that 11 CFR 114.9(e) 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. The final rules are intended, in part, to remedy this ambiguity. The Court noted that no such license existed and ultimately deferred to the Commission’s longstanding position that 11 CFR 114.9(e) applied only to airplanes owned by corporations or labor organizations not engaged in the business of providing commercial air service generally, without regard to providing service specifically in connection with a Federal election. *Id.* at 812.

In the NPRM, the Commission proposed the normal use of the airplane as the criterion for the applicability of section 100.93. Specifically, if the plane was normally operated for passenger service for a fee, 11 CFR 100.52 would apply, and if it was not, then section 100.93 would apply. Under section 100.52, “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” is 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.

The Commission received four comments addressing the scope of section 100.93. Three of the commenters supported the elimination of 11 CFR 114.9(e). Two commenters expressed support for the proposed distinction based on whether the airplane is

“normally operated for commercial passenger service.” A different commenter, however, recommended that the rule focus on whether the person providing the service normally provides the service as a commercial service, rather than whether a particular airplane is normally operated for commercial passenger service. This commenter asserted that “when a commercial provider of transportation services leases an airplane specifically for the purpose of providing services to a campaign, the Commission should treat the commercial provider the same as if it owned the airplane. The fact that the airplane had never previously been used as a commercial aircraft would be irrelevant.”

Likewise, another commenter urged the Commission to “focus on the provider of the air transportation and the primary business of that provider rather than the ‘normal use’ of a particular aircraft.” This commenter asserted that it would be too difficult to determine the “normal use” of an aircraft in light of the varied ownership structures and shared users and uses of a single plane. The commenter argued that a rule focusing on the “normal use” of an aircraft would require significant clarification, including an explanation of whether the “normal use” pertained only to use by the usual operator or whether it would also apply to use by other persons leasing the aircraft for particular flights or for a longer period of time. This commenter recommended basing the distinction instead on the “FAA’s long established primary business test.” Under that test, the commenter stated, any aircraft offered to a candidate or other campaign traveler would be covered by 11 CFR 100.93 so long as air transportation is not the primary business of the provider. This approach is similar to an alternative proposed in the NPRM, which would delineate the airplanes covered by this new section based on whether the service provider is a “commercial vendor,” as defined in 11 CFR 116.1(c), of air transportation services.

These comments raise a number of concerns about the difficulties inherent in basing a rule on “normal use” of an airplane. The approaches suggested by the commenters would be, to the extent they require a determination of the ownership structure or consideration of the prior use of the airplane, subject to manipulation and would perpetuate the difficulties presented by the previous rule. The Commission rejects the “commercial vendor” standard and the commenter’s suggested “primary business test,” because each would require analysis of the service provider’s

structure and business practices. One impetus for this rulemaking is to avoid an ownership-dependent analysis in establishing the proper valuation of election-related travel where the value of that travel is not readily ascertainable from a normal and usual charge. The purpose of new § 100.93 is to provide clear guidance to campaign travelers, not to describe the business practices of service providers.

The Commission concludes that the legal operating authority for the airplane, rather than the ownership or leasing arrangement, is the relevant determinant because it indicates the applicability of 11 CFR 100.52(d) or new § 100.93. The service provider’s business practice is relevant only to the extent that it discloses the operating authority of the airplane. Because the commenters are correct that a determination of the “normal use” of an airplane could be complex, the final rule relies on the classifications already established by the Federal Aviation Administration (“FAA”).

The new rules in § 100.93 apply to all airplanes not licensed by the FAA to operate for compensation or hire under 14 CFR parts 121, 129, or 135.² 11 CFR 100.93(a)(1). This phrase eliminates any potential ambiguity in the current language at 11 CFR 114.9(e) and provides a readily discernible bright line based on existing FAA regulations. Paragraph (a) further clarifies that new section 100.93 also applies to airplanes operated by a Federal, State or local government in the United States.

The NPRM indicated that the proposed regulations in 11 CFR 100.93

² The FAA requires airplane operators who hold their service out to the public as willing to transport persons or property to be certificated under 14 CFR part 119 to conduct operations in accordance with 14 CFR part 121 or part 135, as applicable, depending primarily on the size of the aircraft used. Operators must notify the FAA of the specific aircraft they intend on using in the part 121 or 135 operation. Foreign aircraft held out to the public within the United States must comply with the requirements of 14 CFR part 129. Operators conducting operations for compensation or hire that are not common carriage, or operators that are private carriage in large aircraft must be certificated by the FAA to operate under part 125. See 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). Operators conducting flights in small private aircraft not for compensation or hire are regulated by the FAA under 14 CFR part 91. Although aircraft operating under 14 CFR part 91 certification are not usually permitted to accept any form of payment or reimbursement from passengers, 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. 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.

were intended to apply only to airplanes not authorized by the FAA to conduct operations in air transportation as a common carrier, 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. The final rules in § 100.93(a)(1)(i) differ from the proposed rules by including a specific reference to the operating authority for the planes. Most operators offering passenger service for compensation or hire, such as air carriers or commercial operators, must receive special certification under 14 CFR parts 121, 129, or 135 in order to hold out the use of the airplane to the general public. A usual and normal charge will ordinarily be apparent for the use of these airplanes, so there is no need to apply new § 100.93 to the use of these airplanes. Rather, section 100.93 applies to private jets and other airplanes that are not normally held out to the public, such as airplanes operated exclusively under 14 CFR parts 91 or 125.³ The pilot of an airplane is usually aware of the operating authority in order to comply with the safety requirements and other duties required for that each different type of operating certification. The status of the airplane can be quickly determined by reference to the operations specifications for that airplane, which will identify the rule part that governs the operator.

New section 100.93 applies 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. This is intended to remedy whatever confusion might have previously resulted from the fact that previous 11 CFR 114.9(e) covered only corporate and labor organization aircraft.

(ii) Paragraph (a)(1)(ii)—Other means of transportation.

Because most conveyances other than airplanes are not operated subject to FAA authority, new § 100.93 applies to “other means of transportation not operated for commercial passenger service.” 11 CFR 100.93(a)(1). The Commission believes that a determination of the normal use of a car, bus, or similar conveyances, while requiring some examination of its normal operation, does not raise the unique complexities presented by the ownership structures, expenses, and uses of airplanes. Without any external regulatory structure to parallel the FAA

regulations of airplanes, the Commission concludes that this approach provides the most accurate means of identifying when the usual and normal charge for a conveyance can be readily ascertained for compliance with 11 CFR 100.52(d), and when it cannot.

(iii) Paragraph (a)(1)(iii)—Government conveyances.

Because the scope of the final rules is tied to FAA certification, the Commission is adding new paragraph (a)(1)(iii) to clarify that election-related travel aboard a Federal, State, or local government conveyance is within the scope of new 11 CFR 100.93.

2. Paragraph (a)(2) Means of Transportation Outside the Scope of 11 CFR 100.93

New paragraph (a)(2) of section 100.93 provides that 11 CFR 100.52(a) and (d) continue to apply to travel by means of transportation operated for commercial passenger service. However, for campaign travelers using means of transportation not operated for commercial passenger service where the normal and usual charge may not be obvious, as opposed to commercial airlines or charter or taxi services normally offered for a fee, § 100.93 establishes a substitute for the normal and usual rate for that means of travel.

3. Paragraph (a)(3) Definitions

(i) Paragraph (a)(3)(i)—Campaign traveler.

Paragraph (a)(3) defines several terms used in new section 100.93. In the NPRM, the Commission proposed defining the term “campaign traveler” 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. One commenter suggested that 11 CFR 100.93 be expanded to include payment for travel by persons traveling on behalf of political parties and other political committees, essentially inviting the Commission to expand the definition of “campaign traveler” to these other travelers. The Commission is implementing the suggestion to provide guidance to these other travelers who, if not permitted to rely on this valuation of travel as set forth in this new section, would be left without specific guidance as to the proper rate of reimbursement. By establishing a single rate for travel reimbursement, the new rules will promote greater uniformity among all individuals traveling in connection with a Federal election on behalf of a political committee.

The final rules at 11 CFR 100.93(a)(3)(i)(A) define a new term, “campaign traveler,” to include any individual traveling in connection with a Federal election on behalf of a candidate, a political party committee, or any other political committee. In addition, because the news media sometimes accompany Federal candidates on government conveyances and other means of transportation at the candidate’s discretion, the final rules address the proper amount of payment for their travel. Section 100.93(a)(3)(i)(B) specifies that members of the news media are included in the definition of “campaign traveler” when traveling with a candidate. This definition applies whether or not such candidates are running for President or Vice President or are receiving public funding. It is consistent with the provisions in former 11 CFR 9004.7(b)(5)(i)(C) and 9034.7(b)(5)(i)(C) that required the inclusion of members of the media in calculating the cost of comparable transportation. Once a service provider makes an airplane or other conveyance available for the use of a candidate and the accompanying news media, the service provider must be reimbursed for the value of that travel in order to avoid a contribution from the service provider to the candidate’s campaign. Therefore, either the candidate’s authorized committee, other political committee responsible for payment of travel expenses for the candidate, or the media travelers, must pay the travel costs, at the same rate, for the members of the media who accompany the candidate(s). See 11 CFR 100.93(b), discussed below. The news media may elect to pay the service provider directly, or to reimburse the political committee in accordance with this section and 11 CFR 9004.6 and 9034.6.

(ii) Paragraph (a)(3)(ii)—Service provider.

Given the complex ownership and leasing arrangements often associated with airplanes and other means of transportation, a person providing transportation to a campaign traveler may be either the owner of the conveyance, or may be a different person who is leasing the conveyance from the owner and making it available for the campaign traveler’s use. The NPRM proposed to define “service provider” as the owner or lessee of an airplane or other conveyance who uses the airplane or other conveyance to provide transportation to a campaign traveler. One commenter expressed concern that this definition would not allow sufficient flexibility for aircraft owners and lessees to provide

³ Aircraft operating pursuant to 14 CFR parts 91 or 125 are not permitted to operate as common carriers.

alternative transportation when their aircraft becomes unavailable and they are forced to charter different aircraft in order to fulfill their transportation commitments. Presumably, the commenter is concerned that in such instances the service provider would be the owner of the substitute aircraft. A different commenter recommended that the Commission address similar situations in which the owner or lessor of an airplane makes the airplane available to a major client, independent contractor, or other person outside the corporation or labor organization. This commenter urged that in such situations the service provider should be the "person who has been given the right to use the aircraft," rather than the owner or lessor. Likewise, one commenter suggested that the Commission specifically address situations where multiple persons or entities share access to an airplane, such as through a joint ownership or time-sharing agreement. This commenter stated that in such instances the service provider should be the person who makes the airplane available to the candidate.

The final rules at 11 CFR 100.93(a)(3)(ii) clarify that the "service provider" is the person making the airplane or other conveyance available to the campaign traveler or otherwise providing the transportation to the campaign traveler. Thus, a service provider may be the owner, a person leasing the airplane or other conveyance from the owner, or another person with a legal right to offer the use of the airplane or other conveyance to the campaign traveler.

(iii) Paragraph (a)(3)(iii)—
Unreimbursed value.

The proposed rules at paragraph (a)(2) sought to define the term "unreimbursed value" 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. The proposed definition specified that a late payment would not qualify as a reimbursement under this section, meaning 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 paragraphs (c) or (d).

One commenter argued that the rule would unfairly penalize "absentminded campaign schedulers or late reimbursers" by treating late payments as contributions, suggesting that the rule as proposed in the NPRM would remove

the incentive for *sua sponte* payments outside the permitted time frames. The timing requirements in 11 CFR 100.93 are integral components of the regulatory scheme. The definition of "unreimbursed value" in the final rule, which is located in paragraph (a)(3)(iii), is therefore substantially the same as proposed in the NPRM. The Commission does not agree that the definition of "unreimbursed value" will discourage *sua sponte* payments after the deadlines because it does not believe those acting in good faith would be deterred from taking corrective, mitigating actions.

C. 11 CFR 100.93(b) General Rule

Section 100.93(b) sets forth the general rule for when the providing of travel does not constitute a contribution to a candidate or political committee, as well as when and to what extent the unreimbursed value of such travel is an in-kind contribution. Under paragraph (b)(1), as proposed in the NPRM, 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. One commenter stated that the proposed rule was "sound and consistent" with the Act and Commission's treatment of in-kind contributions.

The Commission is implementing the final rule as proposed in the NPRM, with additional clarifications described below and the conforming changes needed to account for payment by members of the news media and for persons traveling on behalf of political party committees and other political committees. Paragraph (b)(1) sets out the rule for most campaign travelers, generally requiring that the candidate's authorized committee, in order to avoid receiving or accepting a contribution, pay the service provider for campaign travelers traveling on behalf of that candidate. Likewise, other political committees (*i.e.*, other than authorized committees) must pay the service provider for other campaign travelers who are traveling on behalf of such committees. For example, if a Federal candidate attending a fundraiser for her own campaign flies on the same private airplane with a government official traveling to appear on behalf of a non-connected political committee in connection with a Federal election, the candidate's authorized committee would pay for the candidate's travel and the non-connected political committee would pay for the government official's travel.

While the authorized committee or other political committee will generally make the reimbursement payment, paragraph (b)(1)(ii) permits a campaign traveler to pay the service provider directly for his or her own travel. However, such payment constitutes an in-kind contribution by the campaign traveler to the candidate or political committee to the extent that it does not qualify for the transportation expense exception set forth in 11 CFR 100.79.⁴ In the example above, an individual working for a Federal candidate could choose to pay up to \$1,000 from her own pocket for campaign travel without the payment constituting an in-kind contribution, assuming that she had not already made other payments for travel with respect to that election.

Paragraph (b)(1)(iii) similarly specifies that a member of the news media traveling with a candidate may choose to reimburse the service provider directly at the rate not less than the amount set forth in paragraphs (c) or (d) of section 100.93. If a member of the news media elects to have the candidate's authorized committee pay for the media's travel rather than paying the service provider directly, he or she may do so and the candidate's authorized committee is permitted to seek reimbursement from the media. Ultimately it is the candidate's responsibility to ensure that the service provider is reimbursed for the value of the transportation provided to all persons traveling with the candidate.

In light of the fact that the previous rules at 11 CFR 114.9(e) were limited to airplanes owned by corporations or labor organizations, payment was required because the unpaid use of such airplanes is a contribution in violation of 2 U.S.C. 441b. In contrast, the new rule also encompasses airplanes owned or leased by individuals, partnerships, and certain other persons who are permitted to make in-kind contributions to candidates up to the amounts set forth in 2 U.S.C. 441a. Thus, under the new rules, a candidate or political committee may elect to receive an in-kind contribution from the service provider rather than reimbursing that

⁴ 11 CFR 100.79(a) permits an individual traveling on behalf of any candidate or political party committee to incur up to \$1,000 in transportation expenses with respect to a single election, and up to \$2,000 on behalf of all political committees of each political party within a calendar year, without reimbursement and without making a contribution to a candidate or political party committee. Under 11 CFR 100.79(b), volunteers may use personal funds for usual and normal subsistence expenses incidental to volunteer activity. A substantively identical exception to the definition of "expenditure" is provided at 11 CFR 100.139.

service provider, so long as the service provider is permitted to make an in-kind contribution and the amount of the contribution does not exceed the limitations of the Act. New 11 CFR 100.93(b)(2) addresses this situation by stating when a service provider makes an in-kind contribution. A candidate's authorized committee or other political committee paying for the travel must comply with the payment conditions in 11 CFR 100.93 to avoid receiving a contribution in the amount of the unreimbursed value. If these conditions are not met, then the provision of the value of the travel would be a prohibited in-kind contribution if the service provider is a corporation or labor organization, or an excessive in-kind contribution if the value of the service would, when added to other contributions to the same candidate or political committee by the service provider, exceed that service provider's contribution limit. See 11 CFR 100.93(b)(2). The value of the in-kind contribution is determined in the same manner as the amount of the reimbursement would normally be determined under paragraphs (c), (d) or (e) of new section 100.93.

The Commission recognizes that this approach may, in some cases, require the same type of ownership analysis that is discussed above. This analysis, however, is not a necessary step in every circumstance because it must be employed only where the service's provider elects not to seek full or partial reimbursement from the political committee, or when the political committee fails to pay the service provider. The Commission sought comments on whether reimbursement should always be required, regardless of the ownership, or whether the possibility of an in-kind contribution from a permissible source should be addressed in some other fashion. One commenter stated that it is not important for the Commission to preserve the option of making an in-kind contribution because the value of the transportation will often exceed the contribution limits. While the commenter makes a valid point, there are still some circumstances in which an in-kind contribution is otherwise permissible under the Act. The Commission is therefore preserving the option of an in-kind contribution as described above.

D. 11 CFR 100.93(c) Travel by Airplane

Under the previous rules at 11 CFR 114.9(e)(1), when a candidate or other campaign passenger used an airplane owned by corporation or labor organization not in the business of

providing commercial air travel, the rate of reimbursement was either the first-class airfare or the normal charter rate, depending on whether the destination city was served by regularly scheduled commercial air service. The charter rate, which in many cases is considerably higher than first-class airfare to a city in the same area, better represents the actual cost that a political committee would incur, but for the use of the corporate or labor organization airplane, to reach a particular destination by air when that destination is not served by commercial air service. Nevertheless, the NPRM recognized that candidates who campaign in major metropolitan areas that have regularly scheduled commercial airline service will generally be able to use a private plane and reimburse only the equivalent of a first-class airfare, whereas candidates who campaign in more rural areas that have little, if any, commercial air service would be required to reimburse the equivalent charter rate. Consequently, the NPRM expressed concern that the reimbursement scheme in 11 CFR 114.9(e)(1) may have been unnecessarily complex and unfairly affected campaigning in rural areas.

1. Three Alternatives in NPRM

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

Alternative A proposed setting the payment rate at the amount of the lowest unrestricted and non-discounted first-class airfare to the closest airport that has such service. For an airport served by regularly scheduled coach airline service but not regularly scheduled first-class airline service, Alternative A proposed setting the payment at the lowest unrestricted and non-discounted commercial coach rate to that destination.

Alternative B proposed 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.⁵ The first rate, the normal cost

of first-class airfare between the cities, would have applied to previously scheduled flights, as opposed to flights specifically scheduled for a campaign traveler, between cities with regularly scheduled air service. Like Alternative A, Alternative B would also have permitted payment at the unrestricted and non-discounted commercial coach rate where coach service is regularly scheduled on the same route in cases where only coach service is available. The second rate under Alternative B, the normal charter rate for a similar airplane, would have applied to flights specifically scheduled for a campaign traveler and flights where the origin or destination city is not served by regularly scheduled commercial air service.

Alternative C would have established 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.

2. Comments on Proposed Alternatives A, B, and C

The Commission received eight comments regarding proposed alternatives A, B, and C, reflecting a lack of consensus. One commenter submitted general recommendations encouraging the Commission to adopt a "clear, uniform format."

Two of the comments criticized the previous rules at 11 CFR 114.9(e) for undervaluing the travel service provided by permitting, in some instances, candidates to pay for charter services at the lower first-class airfare rates. This undervaluation of travel services, these commenters asserted, constitutes a prohibited contribution where the service is provided by a corporation or labor organization. These commenters urged the Commission to adopt Alternative C as the most accurate reflection of the actual cost of the travel service provided, as well as the easiest of the alternatives to administer. These commenters opposed Alternative A as permitting an even greater amount of in-kind contributions than allowed under the previous 11 CFR 114.9(e). Furthermore, they stated Alternative B

⁵ 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.

would be preferable to Alternative A because it would mandate the charter rate in some cases. These commenters, however, were skeptical that a standard dependent upon whether a flight was "scheduled specifically for the use of a campaign traveler" could be enforced effectively. A different commenter, however, urged the Commission to adopt Alternative B as an effective compromise between the approaches in A and C.

In contrast, the other five commenters specifically advocated the implementation of Alternative A. These commenters stressed the simplicity of the rate structure and some expressed support for the reasons in the NPRM for Alternative A. 68 FR at 50,484. One commenter stated that Alternative A would eliminate an "arbitrary focus on the destination city" and the need to refer to the FAA's classification of whether an airport offers "commercial air service." The same commenter criticized the previous rule at 11 CFR 114.9(e) for failing to address geographic realities and benefiting "well-entrenched incumbents to the detriment of candidates running in either an open seat or challenging a well-entrenched incumbent" because the higher cost of travel would impair the ability of challengers to attract a "high ranking leader" and "other luminaries" to events in their State or district. Three of these five commenters criticized Alternatives B and C as furthering the inequities of the previous rule and causing campaign travel to be more complicated and expensive. Several commenters specifically advocated the replacement of the advance payment requirement with the seven-day post-travel repayment period.

3. Selection of a Combination of First-Class Airfare, Coach Airfare, and Charter Rates in the Final Rules

After considering the written comments and hearing testimony, the Commission concludes that a combination of first-class airfare, coach airfare, and charter rates presents the most workable and accurate approach to the valuation of campaign travel. Accordingly, new 11 CFR 100.93(c) reflects the basic structure of the previous 11 CFR 114.9(e)(1), with the addition of several clarifications described below.

The new rules continue to focus on travel between cities, rather than between particular airports, to account for the various geographic considerations discussed in Advisory

Opinion ("AO") 1999-13,⁶ which remains in effect. One commenter recommended a supplementary approach incorporating the standard metropolitan statistical areas ("SMSAs"), a unit of population measurement administered by the Office of Management and Budget. While the Commission views the SMSA approach as overly complicated and unnecessary, it offers the following explanation of the new valuation rule for clarification.

New 11 CFR 100.93(c) provides three valuation methods that apply in different situations: (1) The lowest unrestricted and non-discounted *first-class* airfare available for the dates traveled or within seven calendar days thereof; (2) the lowest unrestricted and non-discounted *coach* airfare available for the dates traveled or within seven calendar days thereof; or (3) the charter rate for a comparable commercial airplane of sufficient size to accommodate all of the campaign travelers, including members of the news media, and security personnel, if applicable.

(i) Paragraph (c)(1)—Travel between cities served by regularly scheduled first-class commercial airline service.

New 11 CFR 100.93(c)(1) requires payment of at least the lowest unrestricted and non-discounted first-class rate for travel between two cities with regularly scheduled first-class airline service. As qualified by new paragraph 100.93(f), discussed below, the rate must be available to the general public for the dates traveled or within seven calendar days thereof. For travel between two cities that each have regularly scheduled first-class airline service, but no regularly scheduled direct flight between the two cities, the required rate is the lowest unrestricted and non-discounted first-class rate for an indirect flight with the same departure city and final destination city.

(ii) Paragraph (c)(2)—Travel between cities served by regularly scheduled coach, but not first-class, commercial airline service.

⁶ In AO 1999-13, the Commission recognized that particular destination cities might be served 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 an FAA directory or a corporate directory regarded at the time as the charter industry's standard reference for airports. To the extent that the advisory opinion contemplates advance payment for air travel and does not recognize that commercial coach rates may be appropriate in other situations, the opinion is superseded.

The final rules also provide a limited allowance for commercial coach service rates to reflect airline industry trends. Paragraph (c)(2) permits the use of the lower coach rate for travel between cities served by regularly scheduled coach airline service but not regularly scheduled first-class airline service. 11 CFR 100.93(c)(2). This rate is based on the previous rules governing publicly-funded presidential candidates' payments for the use of government aircraft. *See* former 11 CFR 9004.7(b)(5)(i)(B) and former 9034.7(b)(5)(i)(B). Paragraph (c)(2) also permits the use of the coach rate where the travel is between one city served by coach commercial airline service, but not first-class commercial airline service, and a second city served by coach commercial airline service, regardless of whether or not the second city is also served by first-class commercial airline service.

(iii) Paragraph (c)(3)—Travel to or from a city not served by regularly scheduled commercial airline service.

Paragraph (c)(3), like paragraph (e)(1) of current section 114.9, requires payment at the normal and usual charter rate for all other flights except certain flights on government planes (*see* discussion of paragraph (e), below.) Thus, the charter rate must be used for travel between two cities not served by regularly scheduled first-class or coach airline service, or between such a city and a different city with regularly scheduled first-class or coach commercial airline service. The charter rate must be calculated at the rate for a charter flight between the same departure and destination cities used for the actual travel. 11 CFR 100.93(c)(3). This rate must also be equivalent to the publicly available rate for a comparable commercial airplane capable of accommodating the same number of campaign travelers, including members of the news media, plus the Secret Service and other security personnel accompanying a candidate. *Id.* This rate is consistent with the previous rules governing publicly funded 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). To the extent that the candidate in Advisory Opinion 1984-48 was not required to include security personnel or news media in the calculation of the sufficient size of the comparable aircraft, that advisory opinion is hereby superseded to promote uniformity in the treatment of all candidate travel.

A "comparable commercial airplane" means an airplane of similar make and model as the airplane that actually makes the trip, and with the same

amenities as that airplane. For example, in Advisory Opinion 1984-48, the Commission interpreted a comparable airplane as being "of the same type (e.g., jet aircraft versus prop plane) and services offered (e.g., plane with dining service or lavatory versus one without)" as the plane actually used. The Commission further explained that when a candidate used a twin engine prop jet, a single engine, prop aircraft would not be a comparable aircraft. The term "comparable commercial airplane" is intended to require these distinctions as well as other differences such as when a plane is chartered with a crew or without, or with or without fuel.

4. Multi-Stop Travel

One commenter asked the Commission to address multi-stop travel. In response, the Commission is adding the following clarification to 11 CFR 100.93(c) in the final rule. For the purposes of § 100.93 only, the payment for campaign travel must be calculated for each leg of travel. For example: a candidate traveling entirely for the purposes of her own election (and not for a mixed-purpose trip addressed in 11 CFR 106.3) departs from a city in Maryland without any regularly scheduled commercial air service and flies to a city in Illinois that is also without any commercial airline service. After several hours at a campaign rally in the Illinois city, the candidate travels from Illinois to New York City for a campaign fundraising event before returning to Washington, DC. Because there is first class commercial airline service between New York City and Washington, DC, the proper payment for the entire trip would be the amount of the lowest unrestricted and non-discounted first-class airfare from one of the airports serving New York City to one of the airports serving Washington, DC, plus the equivalent charter rate for the flights from the city in Maryland to the city in Illinois, and from Illinois to New York City.

In addition, the Commission is adding language to paragraph (c) in the final rule to clarify payment for travel where several candidates and their entourages travel together aboard the same airplane not operated for commercial passenger service. In such cases, each campaign committee is expected to pay the same first-class rate for each of its campaign travelers or to pay its pro-rata share of the equivalent rate for chartering a comparable airplane of sufficient size to accommodate all campaign travelers, including members of the news media traveling with its candidate, and security personnel, if applicable. One candidate's committee is not permitted

to pay more or less than the other campaign committees with respect to each traveler on the same flight because the value each campaign traveler derives from the provision of the travel service is identical. But for the provision of the private airplane, it would presumably have been necessary for each campaign traveler to pay for a first-class or coach ticket or arrange for a charter flight to reach the same location on the same date.

5. Advance Payment Not Required

The NPRM sought comment on whether campaign travelers should be required to pay the service provider in advance for the value of travel, as they were required to do under previous 11 CFR 114.9(e)(1). Alternatives A and B proposed eliminating the previous advance payment requirement in 11 CFR 114.9(e)(1). In its place, there would be a fixed period of seven calendar days for payment after travel has begun. Under Alternative C, the Commission would have continued to require advance payment for the use of all airplanes not normally used for commercial passenger service.

The Commission recognized 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 part 116. The Commission sought comments on the potential consequences of the rule as proposed, particularly with respect to the use of an airplane owned by a corporation or labor organization where payment does not occur in advance. Several commenters argued for the inclusion of the seven-day rule as a necessary accommodation to the unavoidable constraints of campaign scheduling and last-minute changes in travel plans. One commenter insisted that the advance-payment requirement in the previous rule should be retained, asserting a potential inconsistency with 11 CFR part 116 and arguing that it would be more difficult for the campaign traveler to calculate the necessary amounts as much as the seven days after the departure date.

The Commission disagrees with this latter commenter and is permitting the seven-day post-travel window for payment because of the unique nature of campaign travel cited by the other commenters. The Commission also notes that the previous rule at 11 CFR 114.9(e)(2) had permitted payment for travel other than by airplane within a "commercially reasonable time," thereby allowing for some post-travel

payments. Other provisions in 11 CFR 114.9 also contemplate after-the-fact reimbursement for certain goods or services provided by corporations. For example, certain uses of a corporation's or labor organization's facilities under section 114.9(a) through (d) are permissible if reimbursed within a commercially reasonable time.

New 11 CFR 100.93(c) does not require a campaign traveler to pay in advance of travel, but it does establish a strict deadline of payment within seven calendar days of the departure of the flight. For multi-stop travel over a period of more than one day, a campaign traveler may elect to pay for separate flights at different times by calculating the separate seven-day periods for each flight departing on a different day.

The seven-day airplane travel repayment period permitted in paragraph (c) of section 100.93 is shorter than the thirty/sixty day period used for other forms of transportation (see discussion of 11 CFR 100.93(d), below) because the political committee has complete control over the timing of the reimbursement as all the necessary passenger information and costs will be determinable at the time the airplane departs. Thus, it will be possible for the candidate's authorized committee, or another political committee, to calculate the proper reimbursement rate for airplane travel without a billing or invoice process to cause delay. In addition, each leg of travel by airplane is very unlikely to last more than one day and can usually be calculated separately, whereas the charter or rental rate for travel on a bus tour or by other means of travel may be based on the total miles traveled or otherwise calculable only at the completion of travel, which may not conclude until several days or weeks after it begins.

6. "Deadhead Miles" Not Considered Separately

The NPRM requested comment regarding how, if at all, to account for the expenses associated with the positioning of the airplane, known as "deadhead miles." Two commenters asserted that these costs are normally incorporated into the rates offered for commercial service, so there is no need for the Commission to address them separately. One of these commenters argued that those costs are beyond the control of the traveler. The Commission generally agrees with this reasoning and is not requiring any additional payment for these costs when campaign travelers use private airplanes. To promote uniformity between the treatment of publicly funded candidates and all

other candidates, the Commission is removing 11 CFR 9004.7(b)(5)(ii) and 9034.7(b)(5)(ii).

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

For other means of travel, such as limousines, other automobiles, trains, helicopters, and buses, a political committee must pay the service provider an amount equivalent to the normal and usual fare or rental charge for a comparable commercial conveyance that is capable of accommodating the same number of campaign travelers, including members of the news media, plus security personnel, if applicable. 11 CFR 100.93(d). This rate is consistent with the previous rules governing publicly funded presidential candidates' payments for the use of government conveyances other than airplanes. See 11 CFR 9004.7(b)(5)(iii) and 9034.7(b)(5)(iii). A "comparable commercial conveyance" is one that approximates the same class and type of the conveyance actually used, with similar features and amenities. For example, when a campaign traveler uses a private bus, a "comparable commercial conveyance" would be a similar type of motor vehicle with similar amenities and features. As with payment for travel by airplane, the rate must be available to the general public for the dates traveled or within seven calendar days thereof. See new 11 CFR 100.93(f).

Just as the Commission is no longer requiring advance payment for travel by airplane, the Commission is also setting a post-travel period of time for payment for 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 11 CFR 100.93(d). One commenter urged the Commission to fix the sixty-day time period from the date the travel ends, rather than when the travel commenced, to accommodate longer trips, invoice delays, and the resolution of any disputes between the campaign traveler and the service provider. The same commenter further cautioned against finding that a contribution occurs where a political committee fails to pay within the required time period if it has made a good faith effort to obtain or reasonably disputes an invoice. The Commission is cognizant of the potential tension between this thirty/sixty-day allowance and the general prohibitions on extension of credit outside the ordinary course of business. See 11 CFR part 116, discussed above. The Commission is permitting the

limited thirty/sixty-day provision with the expectation that the invoice will be sent within the ordinary course of business and payment will be made promptly. It therefore does not agree with the commenter's suggestion that the time period should be extended indefinitely so long as the campaign traveler continues to travel. The Commission notes that a political committee need not wait until the end of the travel to submit payment for the travel service. A political committee faced with an invoice delay or involved in a payment dispute with a service provider may, in the rare instance where the matter cannot be resolved within the sixty-day period, pay an approximate amount and seek reimbursement from the service provider. A political committee also may treat the matter as a disputed debt under 11 CFR 116.10.

This fixed deadline in new 11 CFR 100.93(d) adds greater clarity and certainty than the reference in the previous 11 CFR 114.9(e)(2) to a "commercially reasonable" period while retaining the flexibility necessary to account for costs that cannot be calculated until the completion of travel or shortly thereafter. The sixty-day cutoff will help to ensure that the invoice will be rendered to the political committee promptly. Any extensions of credit resulting from payments not being made within the sixty-day period are considered in-kind contributions to the candidate or other political committee responsible for payment of the travel, and thus violate the Act and Commission regulations where such contributions are prohibited or excessive. As set forth in new paragraph (f), the payment rate is set at the usual and normal fare or rental charge available to the general public for the dates traveled or within seven calendar days thereof.

F. 11 CFR 100.93(e) Government Conveyances

Paragraph (e) of 11 CFR 100.93 provides the required amount of 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. The required amount of payment for travel by a campaign traveler on government airplanes is the amount of payment set forth in paragraph (c) of § 100.93: A political committee must pay the first-class, coach, or charter rate in accordance with 11 CFR 100.93(c) and (f). 11 CFR 100.93(e)(1)(ii).

Under paragraph (c), however, Air Force One and many other military airplanes would be required to use a

comparable charter rate in some instances because their travel would be between military bases and not between cities served by regularly scheduled first-class commercial airline service. Because it would be difficult to find a charter airplane comparable to Air Force One and other military airplanes, new paragraph (e)(1)(i) provides a special rule for government airplanes traveling to or from a military base. When such travel occurs, the political committee may pay the lowest unrestricted and non-discounted first-class airfare to or from the city with regularly scheduled first-class service that is geographically closest to the military base actually used.

The required amount of payment for use of other means of travel owned or leased by a Federal, State, or local government is the amount of payment set forth in paragraph (d): The usual fare or rental charge available to the general public on the same travel date for a comparable vehicle that is capable of accommodating the same number of campaign travelers, including members of the news media, plus the Secret Service and other security personnel accompanying a candidate. A political committee paying for the use of government travel by airplane or other conveyance must also comply with the time limitations in paragraphs (c) and (d), respectively.

Note that paragraph (e), like all of section 100.93, is limited to travel in connection with a Federal election. Individuals traveling on official government business are not required to reimburse the service provider under this section. A significant portion of travel on government conveyances is paid for using funds authorized and appropriated by the Federal Government. The use of Federal funds is governed by general appropriations law and is subject to Congressional oversight. The prohibitions and limitations of the Act apply to a contribution or expenditure by a "person," as defined in 2 U.S.C. 431(11) and 11 CFR 100.10. See FEC Interpretation of Allocation of Candidate Travel Expenses, 67 FR 5,445 (Feb. 6, 2002). The statutory definition of the term "person" expressly excludes the Federal Government and any authority thereof.⁷ The Commission has previously concluded that the travel allocation and reporting regulations at 11 CFR 106.3(b) are not applicable to

⁷ 2 U.S.C. 431(11) provides: "The term 'person' includes an individual, partnership, committee, association, corporation, labor organization, or any other organization or group of persons, but such term does not include the Federal Government or any authority of the Federal Government."

the extent that a candidate pays for travel expenses using funds authorized and appropriated by the Federal Government. 67 FR 5,445.

G. 11 CFR 100.93(f) Date and Public Availability of Payment Rate

Because airfares vary based on the date and time of travel, the Commission sought comments on how precisely the payment 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. One commenter urged the Commission to permit the normal advance ticket price when calculating the comparable rate as required in proposed section 100.93. Another commenter indicated that a search for first-class rates with a travel agency should be sufficient, but asserted that Internet fares were "too volatile" to use in determining the proper rate. A different commenter argued that the phrase "lowest unrestricted and non-discounted first-class airfare available for time traveled" is adequately specific, so there is no need to specify "some mandated artificial purchase time-frame, such as within seven days of the travel date."

The final rules in section 100.93 include a new paragraph (f), which specifies that the payment amount must be an unrestricted non-discounted rate available to the general public for the dates traveled or within seven calendar days thereof.⁸ New paragraph (f) applies to all of the payment rates set forth in paragraphs (c), (d) and (e) of 11 CFR 100.93. The Commission agrees that special discounted fares are inappropriate for the purposes of this rule and is therefore foreclosing reliance on "e-savers" and other special fares, such as non-refundable fares or fares dependent on advance purchase, that do not approximate the normal and usual "walk-up" charge for the travel route. Paragraph (f) specifies that the rate must be available to the general public. Candidates and other campaign travelers may not, for example, use a "government rate" or membership discount to establish the proper amount of payment. The rate must approximate the amount that a campaign traveler would have to pay if he or she actually scheduled an equivalent flight at an unrestricted non-discounted fare aboard

⁸ The seven-day period is permitted to account for cities that may have commercial airline service on certain days of the week, but no commercial service on other days.

a commercial airplane or, for non-airplane travel, the unrestricted non-discounted rental charge or fare for an equivalent trip aboard a comparable commercial conveyance.

In light of the comments and additional clarifications, the Commission is not prescribing a set period of time during which comparable rates must be ascertained, except that the rate must be determined by the time the payment is due.

H. 11 CFR 100.93(g) Preemption

The rates required by section 100.93 generally establish a floor, rather than a ceiling, on the amount of reimbursement payment required to avoid a contribution. With the exception of payment for campaign travel by publicly funded presidential and vice-presidential candidates and individuals traveling on their behalf, candidates and other campaign travelers may pay a higher amount than called for by section 100.93, such as when the service provider seeks a higher rate of payment for the use of the conveyance.

In some cases, there may be State or local laws governing the use of State or local government conveyances. In other cases, State or local laws may require certain officeholders or public employees to pay a higher rate for travel. State or local laws may also require payment in advance, or within a shorter period than the seven-day window permitted by 11 CFR 100.93(c) or the thirty-day window permitted under 11 CFR 100.93(d). A new paragraph (g) in the final rules therefore clarifies that applicable State or local laws are preempted to the extent that they purport to supplant the rates or timing requirements of 11 CFR 100.93. State or local officeholders may choose to comply with State or local laws requiring higher payment rates or more stringent requirements on the time of payment, but they cannot be *required* to comply with those laws.

I. 11 CFR 100.93(h) Reporting

The NPRM proposed requiring political committees to report the value of unreimbursed travel by campaign travelers as well as the actual date of travel. Two commenters opposed the proposed reporting requirements, arguing that they would impose unnecessary burdens and questioning whether significant violations could be exposed using the additional information reported. One of these commenters asserted that "[s]omeone intent on violating the law simply would not report the travel." Another commenter argued that the proposed reporting requirements would go further

than existing requirements, and would exceed the scope of 2 U.S.C. 434(b)(5) if it required specific dates of travel. This commenter stated that there is currently no requirement that an authorized committee must disclose the date of a fundraiser, the range of dates that a poll was taken, or the date of a mailing. Another commenter expressed a concern that the report of campaign travel payment might disclose sensitive campaign information. In contrast, a different commenter supported the proposed approach, stating that "candidate committees always are, or ought to be, aware of receiving transportation from third parties."

The Commission disagrees with the commenters who characterize the reporting requirements as overly burdensome and of minimal value. No reports other than regularly scheduled committee disclosure reports are required. Moreover, the disbursement by the political committee for the travel payment must already be reported, along with its purpose, like all other disbursements, under 11 CFR 104.1 and 104.3(b)(3) or (4). The Commission views the reporting of the date of travel to be entirely consistent with the disclosure purposes of the Act. It seems unlikely that reporting the date of travel would force the disclosure of sensitive campaign information, particularly in light of the fact that the payment and reporting of such payment will occur after the travel has been completed in most cases and in light of the fact that many campaign events are covered by the news media. For these reasons, the Commission is adopting the final rules on reporting that generally follow the proposed rules.

Paragraph (h)(1) of 11 CFR 100.93 refers the reader to the existing reporting requirements for the receipt of an in-kind contribution. Under 11 CFR 104.13, a candidate's authorized committee and other political committees 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 political committee.

In addition, the political committee on whose behalf the travel was undertaken must report the travel dates on the report disclosing the reimbursement for the travel service. Under new paragraph (h)(2) of section 100.93, the political committee must report the actual date of travel in the "purpose of disbursement" field corresponding to the disbursement.

J. 11 CFR 100.93(i) Recordkeeping

Presidential and vice-presidential candidates receiving public funds have

been required to maintain records documenting the rates used in calculating their travel reimbursements. See former 11 CFR 9004.7(b)(5)(v) and former 9034.7(b)(5)(v). To standardize the treatment of campaign travel, the Commission in the NPRM proposed extending these recordkeeping requirements to all candidates and moving them to new 11 CFR 100.93(i). Of the two commenters addressing this subject, one opposed it as a burden unwarranted by evidence of widespread abuse. The other commenter expressed support for the proposed recordkeeping requirements.

The final rules implement the recordkeeping requirements proposed in the NPRM and incorporate several other documentation requirements from 11 CFR 9004.7(b)(5)(v) and 9034.7(b)(5)(v) to standardize recordkeeping for candidate travel, to ensure accuracy in reporting, and to enhance the disclosure of disbursements for travel. These recordkeeping provisions have worked well, in practice, for presidential committees. Most of this information must be acquired regardless of any recordkeeping duty so that the campaign traveler can ensure that the political committee is paying the appropriate amount to the service provider. In addition, the final rules require that the political committee document the tail number of the airplane actually used. For military airplanes without tail numbers, some other unique identifier for that airplane will suffice. This documentation is needed to ensure accurate reporting and disclosure in light of the broadened scope of the new rules and the importance of the operating license of each aircraft.

The recordkeeping requirements for airplanes in the final rules vary slightly depending on whether the rate of payment is based on 11 CFR 100.93(c)(1) or (2) (*i.e.*, whether the actual travel was between two cities served by regularly scheduled first-class commercial airline service or not.) For travel paid for under paragraph (c)(1) or (c)(2), the political committee must maintain a record of the name of the service provider, the tail number of the airplane used, an itinerary for the trip that lists the total numbers of passengers and specifies the campaign travelers, and the information on which the first-class payment is based. 11 CFR 100.93(i)(1). For travel on a government aircraft to or from a military base (see 11 CFR 100.93(e)(1)(i)), the payment rate is also tied to the first-class rate between two cities served by regularly scheduled first-class commercial airline service so the recordkeeping requirements are the

same as for travel paid for under paragraph (c)(1). 11 CFR 100.93(i)(1).

For all other travel by airplane, payment is based on a charter or rental rate for a comparable charter airplane, so a record of the size, model, and make of the airplane used must be maintained in addition to the other information described above. 11 CFR 100.93(i)(2)(i). The itinerary for the trip must list the total numbers of passengers and specify the number of security personnel as well as campaign travelers. 11 CFR 100.93(i)(2)(ii). The political committee must document the rate for a comparable charter airplane by listing the name of the company offering that service to the public and the dates of the comparison rates. 11 CFR 100.93(i)(2)(iii). For travel other than by airplane, payment is based on a charter or rental rate for a comparable conveyance, so a record of the size, model, and make of the conveyance used must be maintained in addition to the other itinerary and service provider information described above. 11 CFR 100.93(i)(3).

II. 11 CFR 106.3 Allocation of Expenses Between Campaign and Non-Campaign Related Travel

The final rules make only one change to 11 CFR 106.3. 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 is 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 11 CFR 100.93(c),(d) and (e). Both the reimbursement rates and the payment due dates in 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 sought comment on this approach in the NPRM, but received none.

III. 11 CFR 114.9 Use of Corporate or Labor Organization Facilities

Previously, paragraph (e) of section 114.9 established the proper reimbursement rate for a candidate's use of a means of travel owned or leased by corporations or labor organizations. The Commission recognized in the NPRM

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 not in all cases. Individuals or partnerships own some airplanes and other means of travel. To accommodate more uniform and comprehensive travel reimbursement rules, the Commission proposed replacing 11 CFR 114.9(e) with new section 11 CFR 100.93. Both of the commenters who addressed this issue expressed support for the broadened scope and new location of the rule.

For the reasons explained above, the Commission is removing and reserving paragraph (e) of section 114.9. The subject matter previously addressed in 11 CFR 114.9(e) is addressed in new 11 CFR 100.93. In addition, the heading of section 114.9, previously "Use of corporate and labor organization facilities and means of transportation," is revised to remove the reference to means of transportation because the rules governing corporate and labor organization means of transportation are now located in 11 CFR 100.93.

IV. 11 CFR 9004.6 Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements

As described below, the Commission is replacing the separate reimbursement rates for general election campaign travel by presidential and vice-presidential candidates with a reference to the rates required by new 11 CFR 100.93. A technical revision to 11 CFR 9004.6(b)(2) is necessary to conform the previous reference to paragraph (C) of 9004.7(b)(5)(i), which is removed.

V. 11 CFR 9004.7 Allocation of Travel Expenditures

The regulations at 11 CFR 9004.7(b) govern travel on government conveyances by general election presidential and vice-presidential candidates receiving federal funding. This rule requires 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 previous 11 CFR 114.9(e).

In the NPRM, the Commission proposed revising 11 CFR 9004.7(b)(5)(i) and (b)(8) to replace the parallel rate determinations in this rule with a reference to the reimbursement rates set forth in 11 CFR 100.93. The Commission did not receive any comments on this proposal.

In the final rules, § 9004.7(b)(5)(i) provides that the reimbursement rates in 11 CFR 100.93 serve as the applicable

valuation of travel by presidential and vice-presidential candidates aboard government conveyances. The final rules therefore do not include previous paragraphs (A), (B), and (C) of 11 CFR 9004.7(b)(5)(i), which had set out the proper valuation rates for the use of a government airplane for campaign-related travel. For the reasons stated in the above discussion of "deadhead miles" in the Explanation and Justification for 11 CFR 100.93, the Commission is also removing and reserving 9004.7(b)(5)(ii). The final rules also include a technical revision to 11 CFR 9004.7(b)(5)(iii) to replace the specified rate for use of a government conveyance with a reference to the rate in 11 CFR 100.93(d). In addition, the recordkeeping provisions of former 11 CFR 9004.7(b)(5)(v) are being moved to new 11 CFR 100.93(i) and cross references to the latter section are being added in paragraph (b)(5)(v) of section 9004.7.

The NPRM proposed minor changes to the wording in paragraphs (b)(5)(i) through (iv) in sections 9004.7 and 9034.7 to set the required reimbursement rate as a floor, not a ceiling on how much the candidate may reimburse, in order to permit a candidate to pay at a higher rate. Such a ceiling is necessary, however, to ensure the conservation of public funds. The final rules therefore do not include these proposed changes. However, the cross reference to new 11 CFR 100.93 in 11 CFR 9004.7(b)(8) does include a revision specifying that section 100.93 governs airplanes not licensed by the FAA to operate for compensation or hire under 14 CFR part 121, 129, or 135, and government conveyances, thereby mirroring the revision to the scope of section 100.93.

VI. 11 CFR 9034.6 Expenditures for Transportation and Services Made Available to Media Personnel; Reimbursements

As with the changes to 11 CFR 9004.7, the Commission is replacing in 11 CFR 9034.7 the separate reimbursement rates for primary election campaign travel by presidential candidates with a reference to the rates required by new 11 CFR 100.93. A conforming revision to 11 CFR 9034.6(b)(2) is therefore necessary to replace the previous reference to paragraph (C) of section 9034.7(b)(5)(i), which is removed.

VII. 11 CFR 9034.7 Allocation of Travel Expenditures

The regulations at 11 CFR 9034.7(b) are substantively identical to the regulations at 11 CFR 9007.4(b), except that section 9034.7 governs travel on

government conveyance by *primary* election presidential candidates receiving public funds. The changes being made to 11 CFR 9034.7(b) follow the changes made to 11 CFR 9004.7(b) for the reasons stated above in the explanation and justification for that section.

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

The Commission certifies that the attached rules will 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 final rules, which impose obligations only on Federal candidates, their campaign committees, other individuals traveling in connection with a Federal election, and the political committees on whose behalf this travel is conducted. Federal candidates, their campaign committees, and most other political party committees and other political committees entitled to rely on these rules are not small entities. These rules generally relieve existing restrictions on the timing of reimbursement for certain travel and are largely intended to simplify the process of determining reimbursement rates. The rules do not impose compliance costs on any service providers (as defined in the rules) that are small entities so as to cause a significant economic impact. With respect to the determination of the amount of reimbursement for travel, the new rules merely reflect an extension of existing similar rules. To the extent that operators of air-taxi services or on-demand air charter services are small entities indirectly impacted by these rules, any economic effects would result from the travel choices of individual candidates or other travelers rather than Commission requirements and, in any event, are likely to be less than \$100,000,000 per year.

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 is amending 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 continues to read as follows:

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

■ 2. Section 100.93 is added to subpart C of part 100 to read as follows:

§ 100.93 Travel by airplane or other means of transportation.

(a) *Scope and definitions.*

(1) This section applies to all campaign travelers who use:

(i) An airplane not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR part 121, 129, or 135;

(ii) Other means of transportation not operated for commercial passenger service; or

(iii) An airplane or other means of transportation operated by a Federal, State, or local government.

(2) Campaign travelers who use an airplane that is licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR part 121, 129, or 135, or other means of transportation that is operated for commercial passenger service, such as a commercial airline flight, charter flight, taxi, or an automobile provided by a rental company, are governed by 11 CFR 100.52(a) and (d), not this section.

(3) For the purposes of this section:

(i) *Campaign traveler* means

(A) Any individual traveling in connection with an election for Federal office on behalf of a candidate or political committee; or

(B) Any member of the news media traveling with a candidate.

(ii) *Service provider* means the owner of an airplane or other conveyance, or a person who leases an airplane or other conveyance from the owner or otherwise obtains a legal right to the use of an airplane or other conveyance, and who uses the airplane or other conveyance to provide transportation to a campaign traveler. For a jointly owned or leased airplane or other conveyance, the service provider is the person who makes the airplane or other conveyance available to the campaign traveler.

(iii) *Unreimbursed value* means the difference between the value of the transportation service provided, as set

forth in this section, and the amount of payment for that transportation service by the political committee or campaign traveler to the service provider within the time limits set forth in this section.

(b) *General rule.*

(1) No contribution is made by a service provider to a candidate or political committee if:

(i) Every candidate's authorized committee or other political committee on behalf of which the travel is conducted pays the service provider, within the required time, for the full value of the transportation, as determined in accordance with paragraphs (c), (d) or (e) of this section, provided to all campaign travelers who are traveling on behalf of that candidate or political committee; or

(ii) Every campaign traveler for whom payment is not made under paragraph (b)(1)(i) of this section pays the service provider for the full value of the transportation provided to that campaign traveler as determined in accordance with paragraphs (c), (d) or (e) of this section. See 11 CFR 100.79 and 100.139 for treatment of certain unreimbursed transportation expenses incurred by individuals traveling on behalf of candidates, authorized committees, and political committees of political parties; and

(iii) Every member of the news media traveling with a candidate for whom payment is not made under paragraph (b)(1)(i) of this section pays the service provider for the full value of his or her transportation as determined in accordance with paragraphs (c), (d) or (e) of this section.

(2) Except as provided in 11 CFR 100.79, the unreimbursed value of transportation provided to any campaign traveler, as determined in accordance with paragraphs (c), (d) or (e) of this section, is an in-kind contribution from the service provider to the candidate or political committee on whose behalf, or with whom, the campaign traveler traveled.

(c) *Travel by airplane.* If a campaign traveler uses an airplane not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the service provider, no later than seven (7) calendar days after the date the flight began, for each such campaign traveler no less than the following amount for each leg of the trip:

(1) In the case of travel between cities served by regularly scheduled first-class commercial airline service, the lowest

unrestricted and non-discounted first-class airfare;

(2) In the case of travel between a city served by regularly scheduled coach commercial airline service, but not regularly scheduled first-class commercial airline service, and a city served by regularly scheduled coach commercial airline service (with or without first-class commercial airline service), the lowest unrestricted and non-discounted coach airfare; or

(3) In the case of travel to or from a city not served by regularly scheduled commercial airline service, the normal and usual charter fare or rental charge for a comparable commercial airplane of sufficient size to accommodate all campaign travelers, including members of the news media traveling with a candidate, and security personnel, if applicable.

(d) *Other means of transportation.* If a campaign traveler uses any other means of transportation, including an automobile, train, or helicopter, the campaign traveler, or the political committee on whose behalf the travel is conducted, must pay 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 for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers, including members of the news media traveling with a candidate, and security personnel, if applicable.

(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 campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the governmental entity:

(i) For travel to or from a military airbase or other location not accessible to the general public, the lowest unrestricted and non-discounted first-class airfare to or from the city with regularly scheduled first-class commercial airline service that is geographically closest to the military airbase or other location actually used; or

(ii) For all other travel, 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 campaign traveler, or the political committee on whose behalf the travel is conducted, must pay the government

entity in accordance with paragraph (d) of this section.

(f) *Date and public availability of payment rate.* For purposes of paragraphs (c), (d) and (e) of this section, the payment rate must be the rate available to the general public for the dates traveled or within seven (7) calendar days thereof. The payment rate must be determined by the time the payment is due under paragraph (c) or (d) of this section.

(g) *Preemption.* In all respects, State or local laws are preempted with respect to travel in connection with a Federal election to the extent they purport to supplant the rates or timing requirements of 11 CFR 100.93.

(h) *Reporting.*

(1) In accordance with 11 CFR 104.13, a political committee on whose behalf the unreimbursed travel is conducted 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 political committee on whose behalf the travel is conducted must report the actual dates of travel for which the disbursement is made in the "purpose of disbursement" field.

(i) *Recordkeeping.*

(1) For travel by airplane between cities served by regularly scheduled first-class or coach commercial airline service, or for travel to or from a military base on a government airplane, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and tail number (or other unique identifier for military airplanes) of the airplane used;

(ii) An itinerary showing the departure and arrival cities and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers; and

(iii) The lowest unrestricted non-discounted airfare available in accordance with paragraphs (c), (e) and (f) of this section, including the airline offering that fare, flight number, travel service, if any, providing that fare, and the dates on which the rates are based.

(2) For travel by airplane to or from a city not served by regularly scheduled commercial airline service, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model, make and tail number (or other unique identifier for military airplanes) of the airplane used;

(ii) An itinerary showing the departure and arrival cities and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and

(iii) The rate for the comparable charter airplane available in accordance with paragraph (c), (e) and (f) of this section, including the airline, charter or air taxi operator, and travel service, if any, offering that fare to the public, and the dates on which the rates are based.

(3) For travel by other conveyances, the political committee on whose behalf the travel is conducted shall maintain documentation of:

(i) The service provider and the size, model and make of the conveyance used;

(ii) An itinerary showing the departure and destination locations and the date(s) of departure and arrival, a list of all passengers on such trip, along with a designation of which passengers are and which are not campaign travelers or security personnel; and

(iii) The commercial fare or rental charge available in accordance with paragraph (d) and (f) of this section for a comparable commercial conveyance of sufficient size to accommodate all campaign travelers including members of the news media traveling with a candidate, and security personnel, if applicable.

PART 106—ALLOCATIONS OF CANDIDATE AND COMMITTEE ACTIVITIES

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

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

■ 4. Section 106.3 is 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 accommodations for travel that is campaign-related is the rate for comparable accommodations. The reportable expenditure for a candidate who uses a government conveyance for travel that is campaign-related is the applicable rate for a comparable commercial conveyance set forth in 11 CFR 100.93(e). 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 continues 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 is 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) [Reserved]

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

■ 7. The authority citation for part 9004 continues to read as follows:

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

■ 8. Section 9004.6 is amended by revising paragraph (b)(2) to read as follows:

§ 9004.6 Expenditures for transportation and services made available to media personnel; reimbursements.

* * * * *

(b) * * *

(2) For the purposes of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 9004.7(b)(5)(i), the total number of individuals shall not include national security staff.

* * * * *

■ 9. Section 9004.7 is amended by revising paragraphs (b)(5) and (b)(8) to read as follows:

§ 9004.7 Allocation of travel expenditures.

* * * * *

(b) * * *

(5)(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 equal to the applicable rate set forth in 11 CFR 100.93(e).

(ii) [Reserved]

(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 equal to the amount required under 11 CFR 100.93(d).

(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 equal to 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 airfare as required by 11 CFR 100.93(i)(1) or (2) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(i)(3) in addition to any other documentation required in this section.

* * * * *

(8) Travel on airplanes not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135, government conveyances, and other means of transportation not operated for commercial passenger service is governed by 11 CFR 100.93.

PART 9034—ENTITLEMENTS

■ 10. The authority citation for part 9034 continues to read as follows:

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

■ 11. Section 9034.6 is amended by revising paragraph (b)(2) to read as follows:

§ 9034.6 Expenditures for transportation and services made available to media personnel; reimbursements.

* * * * *

(b) * * *

(2) For the purposes of this section, a media representative's pro rata share shall be calculated by dividing the total actual cost of the transportation and services provided by the total number of

individuals to whom such transportation and services are made available. For purposes of this calculation, the total number of individuals shall include committee staff, media personnel, Secret Service personnel, national security staff and any other individuals to whom such transportation and services are made available, except that, when seeking reimbursement for transportation costs paid by the committee under 11 CFR 100.93 and 9034.7(b)(5)(i), the total number of individuals shall not include national security staff.

* * * * *

■ 12. Section 9034.7 is amended by revising paragraphs (b)(5) and (b)(8) to read as follows:

§ 9034.7 Allocation of travel expenditures.

* * * * *

(b) * * *

(5) (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(e).

(ii) [Reserved]

(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 equal to the amount required under 11 CFR 100.93(d).

(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 equal to 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 airfare as required by 11 CFR 100.93(i)(1) or (2) in addition to any other documentation required in this section. For travel by other conveyances, the committee shall maintain documentation of the commercial rental rate as required by 11 CFR 100.93(i)(3) in addition to any other documentation required in this section.

* * * * *

(8) Travel on airplanes not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135,

government conveyances, and other means of transportation not operated for commercial passenger service is governed by 11 CFR 100.93.

Dated: December 10, 2003.

Ellen L. Weintraub,

Chair, Federal Election Commission.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 2003-SW-15-AD; Amendment 39-13384; AD 2003-25-01]

RIN 2120-AA64

Airworthiness Directives; Eurocopter France Model AS332C, C1, L, L1, AS350B, BA, B1, B2, B3 and D, and AS355E, F, F1, F2 and N Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) for the specified Eurocopter France (Eurocopter) model helicopters with a Breeze 300-pound electric hoist (hoist) installed that requires modifying and re-identifying the hoist operator control unit and replacing certain fuses. This amendment is prompted by a test of a hoist that revealed an anomaly in the electrical control circuit. The actions specified by this AD are intended to prevent failure of the hoist pyrotechnic squib electrical control unit, lack of adequate current to activate the hoist pyrotechnic squib, an inability of the pilot to cut the rescue hoist cable in the event of cable entanglement or other emergency, and subsequent loss of control of the helicopter.

DATES: Effective January 20, 2004.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 2004.

ADDRESSES: The service information referenced in this AD may be obtained from American Eurocopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, telephone (972) 641-3460, fax (972) 641-3527. This information may be examined at the FAA, Office of the Regional Counsel, Southwest Region, 2601 Meacham Blvd., Room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Carroll Wright, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5120, fax (817) 222-5961.

SUPPLEMENTARY INFORMATION: A proposal to amend 14 CFR part 39 to include an AD for the specified model helicopters was published in the **Federal Register** on August 22, 2003 (68 FR 50731). That action proposed to require, within 100 hours time-in-service (TIS) or 2 months, whichever comes first, modifying and re-identifying the hoist operator control unit and replacing certain fuses.

The Direction Generale De L'Aviation Civile (DGAC), the airworthiness authority for France, notified the FAA that an unsafe condition may exist on Eurocopter Model AS332C, C1, L, L1, Model AS350B, BA, BB, B1, B2, B3 and D, and Model AS355E, F, F1, F2 and N helicopters. The DGAC advises of the discovery of a case of failure of a rescue hoist emergency release control system to operate due to an anomaly in the electrical control circuit.

Eurocopter has issued Alert Service Bulletin (ASB) No. 25.00.71, for Model AS355E, F, F1, F2, and N helicopters; and ASB No. 25.00.79, for Model AS350B, BA, BB, B1, B2, B3, and D helicopters. Both ASBs are dated November 12, 2002, and specify embodiment of MOD 07 3190 on helicopters equipped with the fixed parts for the hoist. MOD 07 3190 consists of (1) eliminating resistor 27M in the hoist operator's control unit 26M and (2) replacing the 25A quick-response fuses on the Honeywell unit at 31 alpha or 21 delta for the Model AS350 or on the distribution panel 10 alpha for the Model 355 helicopters. Eurocopter has also issued Alert Service Bulletin No. 25.01.18, dated November 12, 2002, for Model AS332C, C1, L, and L1 helicopters. Modification 332PCS 78 288 consists of eliminating resistor 81M in hoist box 91M and re-identifying the hoist box as 332P67-2894-01, -02, -03, or -04, depending on which electrical wiring assembly is installed in the helicopter. The DGAC has classified these ASBs as mandatory and issued AD 2002-585(A) and AD 2002-584(A), both dated November 27, 2002, to ensure the continued airworthiness of these helicopters in France.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the