

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100, 113, 9004, and 9034

[Notice 2007–20]

Candidate Travel

AGENCY: Federal Election Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Election Commission requests comments on proposed changes to its rules implementing new statutory provisions governing the rates and timing of payment for non-commercial campaign travel on aircraft, and a proposed definition of “Leadership PAC.” These proposed changes, consistent with the new statutory provisions, would restrict and in some cases prohibit Federal candidates and their political committees from expending campaign funds for non-commercial air travel. The proposed rules would apply to all Federal candidates, including publicly funded presidential candidates. No final decisions have been made by the Commission on any of the proposed revisions in this Notice. Further information is provided in the supplementary information that follows.

DATES: Comments must be received on or before November 13, 2007. The Commission will hold a hearing on these proposed rules on November 15, 2007, at 10 a.m. Commenters wishing to testify at the hearing must so indicate in their written or electronic comments. Anyone seeking to testify at the hearing must file written comments by the due date and must include a request to testify in the written comments.

ADDRESSES: All comments must be in writing, must be addressed to Ms. Amy L. Rothstein, Assistant General Counsel, and must be submitted in e-mail, facsimile, or paper copy form. Commenters are strongly encouraged to submit comments by e-mail or fax to ensure timely receipt and consideration. E-mail comments must be sent to travel07@fec.gov. If e-mail comments include an attachment, the attachment

must be in Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed comments must be sent to (202) 219–3923, with paper copy follow-up. Paper comments and paper copy follow-up of faxed comments must be sent to the Federal Election Commission, 999 E Street, NW., Washington, DC 20463. All comments must include the full name and postal service address of the commenter or they will not be considered. The Commission will post comments on its Web site after the comment period ends. The Commission hearing on this rulemaking will be held in the Commission’s ninth floor meeting room, 999 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Amy L. Rothstein, Assistant General Counsel, Mr. Joshua S. Blume, Attorney, or Mr. Richard Ewell, Attorney, 999 E Street, NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is proposing changes to its rules to implement section 601 of Pub. L. 110–81, 121 Stat. 735, the “Honest Leadership and Open Government Act of 2007,” signed September 14, 2007. The new law amended the Federal Election Campaign Act of 1971, as amended (2 U.S.C. 431 *et seq.*) (“the Act”) by restricting, and in some cases prohibiting, the expenditure of campaign funds by candidates for Federal office for non-commercial travel aboard aircraft. *See* 2 U.S.C. 439a(c) (henceforth referred to as “new 2 U.S.C. 439a(c)” or “the new law”).

The Commission proposes to implement these new provisions by adding new section 11 CFR 113.5 to Part 113, which governs the expenditure of campaign funds by candidates for Federal office and their authorized political committees. In addition, the Commission is proposing conforming revisions to 11 CFR 100.93, which provides an exception to the definition of “contribution” for non-commercial travel aboard aircraft by, or on behalf of, Federal candidates and political committees, if the candidates and political committees reimburse the service providers at specified rates. With respect to the scope of the proposed changes, the Commission presents two alternatives. Under Alternative 1, the proposed changes would also affect travel by other persons, such as a staff member of a

political party committee, separate segregated fund (“SSF”), or nonconnected political committee, if they are not traveling on behalf of a specific candidate. Under Alternative 2, the proposed changes would affect only candidates for Federal office and those traveling on behalf of a candidate for Federal office and his or her authorized committee. The proposed changes would not alter the Commission’s treatment of travel by means of transportation other than aircraft, or on travel aboard commercial airliners or charter flights.

In addition, Congress defined the term “Leadership PAC” in section 204(8)(B) of Public Law 110–81. This type of political committee is subject to certain restrictions under the provisions of new 2 U.S.C. 439a(c), and is also subject to certain requirements set forth in another section of Public Law 110–81 pertaining to the practice of “bundling” contributions. *See* section 204 of Public Law 110–81. The Commission is therefore proposing that the term be defined in the Commission’s regulations at 11 CFR 100.5(e) (examples of “political committees”).¹

I. Background

A. The Current Statutory and Regulatory Framework

The Act defines a “contribution” to include “any gift, subscription, loan, advance, or deposit of money or anything of value made by any person for the purpose of influencing any election for Federal office.” 2 U.S.C. 431(8)(A)(i); *see also* 11 CFR 100.52(a). The phrase “anything of value” encompasses “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.” 11 CFR 100.52(d)(1). When goods or services are provided at less than the usual and normal charge, “the amount of the in-kind contribution is the difference between the usual and normal charge for the goods or services at the time of the contribution and the amount charged the political committee.” *Id.*

As a result, candidates who travel aboard a commercial airliner or other conveyance for which a fee is normally

¹ The Commission is initiating a separate rulemaking to address the bundling provisions of the new law and intends to issue a Notice of Proposed Rulemaking shortly.

charged must pay the normal and usual charge for that service in order to avoid receiving an in-kind contribution from the person providing the travel service. Such in-kind contributions would be prohibited if provided by certain entities, including corporations, labor organizations, Federal contractors, and foreign nationals. See 2 U.S.C. 441b, 441c, and 441e; 11 CFR 110.20, 114.2(b), and 115.2. Even where the in-kind contributions are not prohibited, they would be subject to the contribution limits in the Act and Commission regulations. See 2 U.S.C. 441a through 441k; 11 CFR Parts 110, 114, and 115.

1. Current 11 CFR 100.93—Payment for Non-Commercial Travel

The normal and usual charge for travel aboard a commercial airliner is the publicly available price for a ticket, and the normal and usual charge for a chartered jet is the publicly available charter or lease rate. The normal and usual charge for travel aboard a non-commercial flight, however, may not be as apparent. For example, there is generally not a ticket price for a seat aboard a corporate jet that is operated exclusively for the private travel of the corporation's executives and their guests. Because candidates for Federal office have traveled in the past on these privately operated flights, the Commission has provided specific guidance in its regulations regarding the rate of reimbursement that candidates and others must pay to avoid receiving an in-kind contribution for travel aboard such flights.

On December 15, 2003, the Commission promulgated final rules adding 11 CFR 100.93. See *Final Rules and Explanation and Justification for Travel on Behalf of Candidates and Political Committees*, 68 FR 69,583 (Dec. 15, 2003) ("2003 E&J"). Those final rules established an exception from the definition of contribution for payments at specified rates for non-commercial travel in connection with a Federal election. The payment required for non-commercial air travel by "campaign travelers"—a term that includes individuals traveling in connection with elections for Federal office on behalf of candidates or political committees, and members of the news media traveling with a candidate—depends on whether the travel is between cities served by regularly scheduled commercial airline service, and whether that service is available at a first-class or coach rate. See 11 CFR 100.93(a)(3)(i) and 100.93(c). If travel between the origin and destination cities is regularly served by commercial first-class airline service, then a first-class rate applies. 11 CFR

100.93(c)(1). If such travel is served at both origin and destination by coach-class commercial service and the origin city is not served by first-class service, then a coach-class rate applies. 11 CFR 100.93(c)(2). If either the origin or the destination city is not served by commercial airline service, then the rate is the normal and usual charter fare for a comparable airplane sufficient in size to accommodate all campaign travelers. 11 CFR 100.93(c)(3). The same rates apply to travel on an airplane provided by a government entity, unless the travel is to or from a military base or other relatively publicly inaccessible location.² The candidate or political committee responsible for the reimbursement must pay the service provider within seven business days of the trip. 11 CFR 100.93(c).

2. Current 11 CFR 9004.7 and 9034.7—Travel by Presidential and Vice-Presidential Candidates Accepting Public Funds

Candidates for President of the United States may elect to receive matching funds from the Federal government to contest their primary elections and presidential nominees may elect to receive public funding to contest the general election. In both cases, the candidates must agree, among other things, to use the public funds they receive solely for "qualified campaign expenses" and not to exceed specified expenditure limits. 2 U.S.C. 441a(b)(1)(A) and (B), 26 U.S.C. 9004(c)(1), 9038(b)(2).

The Commission has promulgated separate regulations at 11 CFR 9004.7(b)(5)(i) and (v), (b)(8), and 9034.7(b)(5)(i) and (v) and (b)(8), setting forth the appropriate reimbursement rates that publicly funded candidates must use for campaign-related travel on non-commercial transportation. While 11 CFR 100.93 is focused on the potential underpayment for travel resulting in a contribution, 11 CFR 9004.7 and 9034.7 are focused on the appropriate use of public funds, and thus on whether, and to what extent, expenses for campaign-related travel constitute qualified campaign expenses for which the candidate may use public funds. The rates and recordkeeping requirements for presidential and vice-presidential candidates accepting public funds are the same as those in 11 CFR 100.93 and are mainly set forth through cross-references to 11 CFR 100.93.

² If such is the case, then a first-class rate applies, drawn from the closest city with regular first-class commercial service. 11 CFR 100.93(e)(1).

II. Revisions to 2 U.S.C. 439a—Use of Campaign Funds

New 2 U.S.C. 439a(c) prohibits House, Senate, and presidential candidates from making any expenditure for non-commercial travel on aircraft except at specified rates and subject to certain conditions. An "expenditure" includes any payment by any person "made for the purpose of influencing any election for Federal office." 2 U.S.C. 431(9)(A)(i). Like the current regulations at 11 CFR 100.93, the new law focuses on the appropriate reimbursement rates for non-commercial travel. Travel on commercial flights is still governed by the current requirements for reimbursement at the normal and usual charge. The new law, however, directly limits expenditures by a candidate, candidate's authorized committee, or a leadership PAC, rather than merely specifying how to avoid the receipt of an in-kind contribution as in 11 CFR 100.93.

The new law's rates and conditions under which candidates may spend campaign funds for aircraft travel differ depending on the office sought. Presidential and Senate candidates may pay for their pro rata share of the fair market value of a flight, which is determined by dividing the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size by the number of candidates on board the plane. 2 U.S.C. 439a(c)(1). The authorized committees and leadership PACs of House candidates are, however, generally prohibited from using any campaign funds to pay for non-commercial flights, except for flights on aircraft operated by a Federal or State government entity. 2 U.S.C. 439a(c)(2). Aircraft owned by candidates or their immediate family members are exempt from the prohibitions and rate requirements described above. 2 U.S.C. 439a(c)(3).

III. Proposed 11 CFR 100.5(e)(6)—Definition of "Leadership PAC"

The term "Leadership PAC" is defined in section 204(a) of Public Law 110-81 (2 U.S.C. 434(i)(8)(B)) as "a political committee that is directly or indirectly established, financed, maintained or controlled by [a] candidate [for Federal office] or [an] individual [holding Federal office] but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that such term does not include a political committee of a political party." The term "PAC" is an

acronym for “political action committee,” which is a term generally used to refer to all political committees other than authorized committees and committees of a political party.³

The new definition of leadership PAC is relevant to two areas of the new law that fall within the Commission’s purview: (1) The new restrictions on candidate travel that would be implemented through both proposed sections 11 CFR 100.93 and 113.5, and (2) the disclosure requirements in Section 204 of the new law for contributions bundled by lobbyists. In the provision relevant to this rulemaking, the new law generally prohibits “candidates for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, an authorized committee and a leadership PAC” from making expenditures for non-commercial air travel. Public Law 110–81, section 601(a) (codified at 2 U.S.C 439a(c)(2)) (emphasis added).

The Commission proposes to incorporate a definition of “leadership PAC” into 11 CFR 100.5, which is the general definition of “political committee.” Specifically, “leadership PAC” would be added to the list of different types of political committees in 11 CFR 100.5(e), with the new term added at 11 CFR 100.5(e)(6). The proposed definition mirrors the definition in the new law.

The Commission proposes to incorporate the definition of “leadership PAC” into the general definition section in 11 CFR Part 100, rather than within the travel rules themselves, to promote consistency and economy within the structure of its regulations.

The definition will impact several sections of the Commission’s regulations, including proposed 11 CFR 100.93, 11 CFR 113.5, and the new bundling regulations the Commission intends to promulgate in a separate rulemaking. The Commission seeks comments on the content and placement of this new definition.

IV. Proposed Revisions to 11 CFR 100.93—Payment for Travel Aboard Aircraft and Other Means of Transportation

The majority of the Commission’s current guidance regarding non-

commercial air travel is provided in 11 CFR 100.93, which provides an exception to the definition of “contribution” for non-commercial travel if the service provider is reimbursed for the travel at the specified rates. Several of the reimbursement rates permitted under current 11 CFR 100.93 are inconsistent with the new statutory requirements. For example, the statute requires a candidate for President or U.S. Senate to reimburse the service provider at the comparable charter rate, whereas current 11 CFR 100.93 allows reimbursement at the rate of the first class or coach airfare for campaign travel between two cities served by regularly scheduled commercial airline service. Therefore, the Commission is proposing conforming changes and clarifications in 11 CFR 100.93.

The Commission wishes to clarify that, although it is proposing changes to only some of the provisions in 11 CFR 100.93, it may make further revisions to this section in its final rules, in response to any public comments and additional information that it may receive regarding the proposed rules. The Commission therefore invites comments on the entirety of 11 CFR 100.93 and is opening the entire section for comments through this Notice of Proposed Rulemaking. Commenters favoring retention of current provisions of 11 CFR 100.93 should submit comments to that effect. Conversely, those preferring additional changes to 11 CFR 100.93 beyond those proposed should submit comments to that effect. In particular, the Commission seeks comments on the extent to which new 2 U.S.C. 439a(c) should be implemented solely through revisions to 11 CFR 100.93, rather than through the addition of 11 CFR 113.5.

a. General Scope of Rule—Travel on Behalf of Candidates

New 2 U.S.C. 439a specifies that “a candidate for election for Federal office * * * or any authorized committee of such a candidate, may not make any expenditure for a flight on an aircraft unless—* * *” 2 U.S.C. 439a(c)(1) (emphasis added). Given the inclusion of authorized committees in this language, the proposed rule, consistent with the current rule, would apply to the same range of individuals covered by the term “campaign traveler” in the current rule. Campaign traveler is defined in part as “any individual traveling in connection with an election for Federal office on behalf of a candidate.” 11 CFR 100.93(3)(i)(A). In other words, the proposed rule would apply to travel by candidates themselves, and also those traveling on behalf of candidates or their authorized

committees, such as campaign staff. See proposed 11 CFR 100.93(c)(1).

This interpretation is also consistent with the personal use prohibitions set out by Congress in 2 U.S.C. 439a(b) and the Commission’s regulatory interpretation of that section, which apply to personal use by “any person.” See, e.g., 11 CFR 113.1(g) (defining personal use as “any use of funds in a campaign account of a present or former candidate to fulfill a commitment, obligation or expense of any person that would exist irrespective of the candidate’s campaign or duties as a Federal officeholder”) (emphasis added); see also Explanation and Justification for final rules regarding Expenditures; Reports by Political Committees; Personal Use of Campaign Funds, 60 FR 7862, 7864 (Feb. 9, 1995) (“Section 439a states that no campaign funds ‘may be converted by any person to any personal use.’”). Thus, any use of campaign funds that would exist irrespective of the campaign or the duties of a Federal officeholder is personal use under current Commission regulations, regardless of whether the beneficiary is the candidate, a family member of the candidate, or some other person.

Moreover, the Commission notes that Congress, in its amendments to the Senate rules, set out an approach to reimbursement for non-campaign travel that includes all Congressional staff, not just the Federal officeholders themselves. That amendment requires reimbursement for non-commercial travel aboard aircraft at the normal and usual charter rate for a comparable aircraft of comparable size, “as determined by dividing such cost by the number of Members, officers, or employees of Congress on the flight.” Public Law 110–81, Section 544(c)(1), amending Paragraph 1(c)(1) of rule XXXV of the Standing Rules of the Senate (emphasis added).

The Commission seeks comments on this proposed interpretation of the new law. Is there any evidence that suggests that Congress intended to exclude campaign staff, or others traveling on the candidate’s behalf, from the general scope of the rule?

A. Proposed 100.93(a)—Scope and Definitions

1. Proposed 11 CFR 100.93(a)(3)(i)—Definition of “Campaign Traveler”

A “campaign traveler” is defined as “[a]ny individual traveling in connection with an election for Federal office on behalf of a candidate or political committee” and “[a]ny member of the news media traveling with a

³The term “PAC” has not been a term of art in the law or in Commission regulations. PACs sponsored by a corporation or a labor organization are generally described in the Commission’s regulations as separate segregated funds (“SSFs”). See 2 U.S.C. 441b(b)(2)(C); 11 CFR 100.5(b). PACs that lack corporate or labor sponsorship are referred to in the regulations as “nonconnected committees.” See, e.g., 11 CFR 104.10 and 106.6(a).

candidate.” 11 CFR 100.93(a)(3)(i). The Commission proposes to add “Any candidate for Federal office or” at the beginning of that definition to clarify that a candidate himself or herself would be included within the definition of “campaign traveler.” The Commission seeks comments on this proposed clarification and whether any additional changes to the definition would be appropriate.

2. Proposed 11 CFR 100.93(a)(3)(iv) and (v)—Definitions of “Commercial Travel” and “Non-Commercial Travel”

The Commission’s current regulations distinguish between commercial and non-commercial air travel based on the certification system of the Federal Aviation Administration (FAA). Specifically, the Commission’s rules in 11 CFR 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. 11 CFR 100.93(a)(1)(i).

The new law’s restrictions on expenditures for air travel by presidential and U.S. Senate candidates are focused on the FAA’s certification and safety requirements, but do not reference specific FAA regulatory provisions. In order to simplify and align the Commission’s regulations with the new statutory language, the Commission is proposing to replace its reliance on specific FAA regulatory provisions with the new terms “commercial travel” and “non-commercial travel.” The definition of “commercial travel” would follow the new statutory language: travel aboard an aircraft “operated by an air carrier or commercial operator certificated by the Federal Aviation Administration if the flight is required to be conducted under air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority if the flight is required to be conducted under air carrier safety rules.” Proposed 11 CFR 100.93(a)(3)(iv). Conversely, the proposed definition of “non-commercial air travel” would encompass travel not included in the definition of “commercial travel.” Proposed 11 CFR 100.93(a)(3)(v).

The Commission seeks comments on these proposed definitions. Is there any difference between the universe of aircraft encompassed by the new term “non-commercial travel” and the aircraft included in current 11 CFR 100.93(c) (“an airplane not licensed by the Federal Aviation Administration to operate for compensation or hire under 14 CFR parts 121, 129, or 135”)? Would

additional guidance in the form of references to FAA regulatory provisions be helpful in discerning what aircraft qualify as “non-commercial travel,” or is the proposed language sufficiently clear? In addition, the Commission seeks comments on whether additional explanation should be provided to address flights conducted in foreign countries and, if so, what it should be.

The Commission also seeks comments on whether the definitions of “commercial travel” and “non-commercial travel” should specifically address more complex multiple ownership or leasing arrangements, such as arrangements in which some of the owners of an aircraft are commercial operators certificated by the FAA but others are not.

B. Proposed 11 CFR 100.93(c)(1)—Non-Commercial Air Travel by Candidates for President, Vice-President, and U.S. Senate

New 2 U.S.C. 439a(c)(1)(B) requires candidates for President, Vice President, and U.S. Senate to pay their “pro rata share of the fair market value” of non-commercial flights aboard aircraft. The pro rata share is “determined by dividing the fair market value of the normal and usual charter fare or rental charge for a comparable plane of comparable size by the number of candidates on the flight.” *Id.* Because the statutory language is specific that the “number of candidates on the flight” determines the “pro rata share,” the Commission proposes to define “pro rata share of the fair market value of a flight” based solely on the number of candidates on the flight, regardless of whether there are other campaign travelers or passengers aboard. Moreover, because the statutory language applies to expenditures made not only by candidates, but also by authorized committees, the Commission proposes to define “pro rata share” based on the number of candidates represented on a flight. *See* proposed 11 CFR 100.93(c)(1) and (3). A candidate is represented on a flight if a person is traveling on behalf of that candidate, the candidate’s authorized committee, or the candidate’s leadership PAC.⁴ *See* proposed 11 CFR 100.93(c)(1). This reimbursement rate does not apply to travel aboard government aircraft or aircraft owned by a candidate or a member of candidate’s immediate family, which are covered under proposed section 100.93(e) and (g), respectively, and discussed below. *See* subsections F and G of this section. This

⁴ *See* discussion of leadership PACs in subsection E.4 of this section.

reimbursement rate also would not apply when a candidate or representative of the candidate is traveling on behalf of another committee (such as a political party committee), rather than on behalf of the candidate’s own campaign. Reimbursement for a candidate’s travel on behalf of another committee is the responsibility of the committee on whose behalf the travel occurs, at the appropriate reimbursement rate for that committee as set forth in proposed 11 CFR 100.93(c).

1. Application of Proposed Rule

Candidate A, Candidate B, and Candidate B’s campaign manager travel on a plane on behalf of their respective campaigns, along with PAC Representative P traveling on behalf of the PAC. The pro rata share of the fair market value of the flight would be determined by dividing the normal and usual charter rate for the plane by two because there are two candidates represented on the flight (Candidate A and B). Each candidate, or the candidate’s authorized committee, would therefore be required to pay 50% of the charter rate to avoid receiving an in-kind contribution from the non-commercial aircraft’s owner. Because the full costs of the flight would be reimbursed by the candidate travelers (*i.e.*, Candidate A and Candidate B), and the candidate committees would fully compensate the aircraft’s owner for the costs of the flight, PAC Representative P’s travel would not need to be reimbursed. The Commission invites comment on whether this result—PAC Representative P traveling without paying fair market value for the cost associated with her travel—should be treated as an in-kind contribution to the PAC from one or more of the candidates paying for the cost of the flight. If so, what would the value be? If the value of the travel by a non-candidate traveler is a reportable expenditure by one or more of the candidates when the non-candidate traveler is the representative of a political committee, should the expenditure also be a reportable expenditure if the non-candidate traveler is not a political committee representative? Does it matter whether the non-candidate traveler is traveling at the invitation of one of the candidates or at the invitation of the service provider?

Repayment under the proposed rule would not vary based on the number of non-campaign travelers on the plane. For example, Candidate A, Candidate B, Candidate B’s campaign manager and PAC Representative P travel on a twenty-seat plane with six other

passengers that are not campaign travelers. Candidate A and Candidate B would still be required to pay 50% each of the entire normal and usual charter fare or rental charge for a “comparable plane” seating twenty passengers. Because the candidate committees would fully compensate the aircraft’s owner for the costs of the flight, PAC Representative P and the six additional travelers would not be required to provide reimbursement.

2. Per Represented Committee Alternative

As an alternative, the Commission proposes requiring reimbursement based on the number of represented committees of any type, rather than the number of represented candidates or candidate committees. The Commission proposes two variations of this alternative.

(a) For example, Candidate A, Candidate B, and Candidate B’s campaign manager travel on a plane on behalf of their respective campaigns, along with PAC Representative P traveling on behalf of the PAC. The pro rata share of the fair market value of the flight would be determined by dividing the normal and usual charter rate for the plane by three because there are three represented committees on the flight (Candidate A, Candidate B, and PAC). Each committee would be required to pay 33% of the charter rate to avoid receiving an in-kind contribution from the aircraft’s owner.

(b) Using the same hypothetical situation set forth above, PAC Representative P would then have the option of paying either 33% of the calculated charter rate, or the amount that would be required under current 11 CFR 100.93.

3. Per Passenger Alternative

As an alternative, the Commission proposes requiring reimbursement only for the portion of the normal and usual charter rate that reflects the number of candidate representatives as a percentage of all passengers on the aircraft.

For example, Candidate A, Candidate B, and Candidate B’s campaign manager travel on a plane on behalf of their respective campaigns, along with PAC Representative P traveling on behalf of the PAC. The pro rata share of the fair market value of the flight would be determined by dividing the normal and usual charter rate for the plane by four because there are four passengers on the flight. Each passenger would therefore be required to pay $\frac{1}{4}$, or 25%, of the charter rate to avoid receiving a contribution. Candidate A and PAC,

with one passenger each, would pay 25% each, while Candidate B, with two passengers would be responsible for 50% of the charter rate.

Under this alternative, the repayment would also vary based on the number of non-campaign travelers on the plane. For example, Candidate A, Candidate B, Candidate B’s campaign manager, and PAC Representative P travel on a twenty-seat plane with six other passengers who are not candidates or are not traveling on behalf of candidates. Because Candidate A was only one passenger among ten, Candidate A would be required to pay 10% of the normal and usual charter fare or rental charge for a “comparable plane” seating twenty passengers. Candidate B, with two passengers, would pay 20%, and PAC, with one passenger, would pay 10%.

4. Comparable Aircraft Alternative

As a further alternative, the Commission proposes to follow the approach in its current regulations and permit reimbursement at the normal and usual charter rate or rental charge for an aircraft of sufficient size to carry the campaign travelers. See current 11 CFR 100.93(c)(3) (requiring reimbursement of “the normal and usual charter fare or rental charge for a comparable commercial airplane of sufficient size to accommodate all campaign travelers”). Under this approach, the campaign committee would be responsible for paying the normal and usual charter rate for a plane of sufficient size to seat its campaign travelers, rather than the rate for a plane comparable (in terms of seating capacity) to the one flown. For example, Candidate A, Candidate B, Candidate B’s campaign manager, and PAC Representative P travel on a twenty-seat plane with six other passengers who are not candidates and are not traveling on behalf of candidates. Under this approach, Candidate A, Candidate B, Candidate B’s campaign manager, and PAC Representative P would collectively be responsible for reimbursing the aircraft’s owner an amount equivalent to the normal and usual charter fare or rental charge for a “comparable plane” that could seat four passengers. Each candidate or committee must pay its pro rata share of that amount.

Under a variation of this alternative, each campaign traveler would be required to pay the normal and usual charter fare or rental charge for a “comparable plane” able to accommodate only himself and those traveling on his behalf. Thus, Candidate A would be required to pay the normal and usual cost of a “comparable plane”

that can seat one passenger. Similarly, Candidate B would be required to pay the normal and usual cost of a “comparable plane” that can seat two passengers.

The Commission seeks comments on this approach and the presented alternatives. In addition, the Commission seeks comments on any other calculations that might be more appropriate.

C. Proposed 11 CFR 100.93(c)(2)—Non-Commercial Air Travel by Candidates for the House of Representatives

New 2 U.S.C. 439a(c)(2) states that “in the case of a candidate for election for the office of Representative in, or Delegate or Resident Commissioner to, the Congress [hereinafter “House candidates”], an authorized committee and a leadership PAC of the candidate may not make any expenditure” for non-commercial air travel, with exceptions for travel on government airplanes and aircraft owned by the candidate or members of the candidate’s immediate family. Both exceptions are discussed below. The effect of this provision is generally to prohibit travel by House candidates on non-commercial aircraft. Proposed 11 CFR 100.93(c)(2)(i) would reflect new 2 U.S.C. 439a(c)(2) by prohibiting expenditures by House candidates for non-commercial travel on behalf of that candidate, the candidate’s authorized committee, or the candidate’s leadership PAC. The new law expressly applies to expenditures by authorized committees and leadership PACs of House candidates, including expenditures made by the candidates themselves on behalf of their authorized committees. Proposed 11 CFR 100.93(c)(2) would apply not only to House candidates, but also to persons traveling on behalf of such candidate, the candidate’s authorized committee, or the candidate’s leadership PAC. This prohibition does not apply when the travel would not be considered an expenditure by the candidate, candidate’s authorized committee, or candidate’s leadership PAC. For example, travel by a House candidate on behalf of a non-House candidate, party committee, or non-candidate committee would be required to be reimbursed by such other committee at the respective rate set forth for travel on behalf of that candidate or committee. The Commission seeks comment on this approach.

The Commission seeks comments on the treatment of House candidate travel in proposed 11 CFR 100.93(c)(2). Should House candidates be permitted to travel on non-commercial aircraft on

behalf of their own campaigns if the cost of the travel is provided as a permissible in-kind contribution? For example, if the travel was provided by a permissible source and the costs of the travel were below the contribution limit, should a non-candidate committee be able to reimburse the travel costs as an in-kind contribution to the candidate? The proposed expenditure regulations, discussed below, prohibit such in-kind contributions. See proposed 11 CFR 113.5(b). If in-kind contributions are allowed, at what rate should their value be calculated for reimbursement and reporting purposes?

D. Proposed 11 CFR 100.93(c)(3)—Non-Commercial Air Travel by Other Campaign Travelers

The Commission proposes two alternatives with respect to non-commercial air travel by non-candidate campaign travelers.

Alternative 1

The Commission notes that the non-candidate reimbursement rate is not addressed in new 2 U.S.C. 439a(c).⁵ These proposed changes are intended to promote uniformity and simplicity in the regulation, and make the regulation easier to understand. The Commission's long-standing travel regulations addressed travel only by candidates or on behalf of candidates. See former 11 CFR 114.9(e). In 2003, the Commission extended its travel regulations to cover all travel in connection with a Federal election, stating, "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."

Against this background, as one alternative, the Commission is proposing changes to the current reimbursement rate for campaign travelers who are not traveling on behalf of candidates. For example, this rate would apply to individuals traveling on behalf of a political party committee, SSF, or nonconnected committee. Under the proposed rule, the provider must be reimbursed at the pro rata share of the fair market value of such travel. Proposed 11 CFR 100.93(c)(3). The pro rata share is based on the number of different committees represented on the flight, and is calculated in the same

⁵ The statute does address payments by political committees other than authorized committees in describing the reimbursement rate for Senate, Vice Presidential, and Presidential candidates. See 2 U.S.C. 439a(c)(1)(B) ("the candidate, the authorized committee, or other political committee pays * * *") (emphasis added).

manner as reimbursement for travel on behalf of Senate, Vice Presidential, or Presidential candidates under proposed 11 CFR 100.93(c)(1). For example, if a non-commercial flight carried two PAC A campaign travelers and one PAC B campaign traveler, each PAC would be responsible for 50% of the fair market value of the flight.

This rate does not apply when the travel is shared with a candidate or person traveling on behalf of a candidate. The Commission is proposing this alternative to avoid permitting outside organizations to subsidize a candidate's travel. Travel on an aircraft that includes a campaign traveler flying on behalf of a candidate, candidate's authorized committee, or candidate's leadership PAC, must be fully reimbursed by that candidate, candidate's committee or, when permissible, the candidate's leadership PAC. No reimbursement would be required by the non-candidate travelers. See proposed 11 CFR 100.93(c)(3). For example, if a non-commercial flight carried two PAC A campaign travelers, one PAC B campaign traveler, and Senator A, traveling on behalf of his or her campaign, Senator A or Senator A's campaign committee would be responsible for the full fair market value of the flight. PAC A and PAC B would not have to reimburse for the flight costs.

The Commission invites comment on whether this result should be treated as an in-kind contribution to the PACs from Senator A. Does it matter whether or not the non-candidate travelers are representatives of political committees? If the value of the travel by the non-candidate travelers is a reportable expenditure by Senator A when the non-candidate travelers are political committee representatives, should the expenditure also be a reportable expenditure if the non-candidate travelers are not political committee representatives? Does it matter whether the non-candidate travelers are traveling at the invitation of Senator A or at the invitation of the service provider?

Alternative 2

Under this alternative, the Commission proposes to retain the existing reimbursement rate structure for non-candidate travel. Because non-candidate travel is not addressed in the new law, the existing rate structure would remain the same for all campaign travelers not traveling on behalf of a candidate or that candidate's authorized committee (*i.e.*, campaign travelers traveling on behalf of political party committees, SSFs, and other non-authorized committees). The

Commission notes that this might result in the service provider being paid more than the fair market value of the flight. Does the possibility of such "overcompensation" to the service provider represent a concern under FECA? And, if so, in what way?

The Commission seeks comment on this approach. Should the Commission interpret the fact that new 2 U.S.C. 439a(c) does not address non-candidate travel as a form of legislative acquiescence to the Commission's current regulations on non-candidate travel reimbursement? Do the first class and coach air fare rates reflect the fair market value of the services provided? Should the Commission adopt a different reimbursement rate for non-candidate travel, such as the per committee or per passenger alternatives discussed above?

E. Additional Proposed Revisions to 11 CFR 100.93

1. Members of the Media and Security Personnel

Members of the news media "traveling with a candidate" for Federal office are expressly included within the definition of "campaign traveler" in the Commission's current rules. See 11 CFR 100.93(a)(3)(i)(B). The Commission is not proposing changes to this definition. Under the current rules, when a member of the media is traveling with a candidate, that candidate's committee is ultimately responsible for paying the service provider for the full costs of the travel, but may seek reimbursement from the media for the media's portion of the travel expenses.⁶ The Commission proposes to revise 11 CFR 100.93(b)(1)(iii) to ensure that members of the media would not be permitted to relieve the candidates with whom they travel from responsibility for paying the service provider the full normal and usual charter rate or rental charge for travel on an aircraft, pursuant to proposed 11 CFR 100.93(c)(1). Members of the media would still be permitted to reimburse the service provider for travel on conveyances other than aircraft. The Commission seeks comments on this approach. Should the Commission instead continue to allow reimbursement from members of the

⁶ "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." 2003 E&J at 69586. See also 11 CFR 9004.6 and 9034.6.

media for travel on aircraft? At what rate should this reimbursement take place, for example, should it be calculated at a portion of the charter rate or at a first class rate?

Security personnel are treated differently under the Commission's current rules. Under the current rules, security personnel are not necessarily considered "campaign travelers," but could qualify as such depending on the nature of any additional services that they provide a candidate. Compare 11 CFR 100.93(a)(3)(i)(A) with 100.93(c)(3) and (d). For example, if Secret Service personnel travel with a candidate for Federal office to the candidate's fundraiser aboard a government airplane, the candidate's authorized committee would not be required to pay for the Secret Service member's travel under the current rules unless the Secret Service agent otherwise qualified as a campaign traveler or the flight was required to be reimbursed at the usual charter rate. See current 11 CFR 100.93(c)(3) (calculation of the usual charter rate requires "comparable commercial conveyance of sufficient size to accommodate all campaign travelers * * * and security personnel") (emphasis added) and 11 CFR 100.93(e)(1)(ii). Committees can then seek reimbursement from the Secret Service for their portion of the travel expenses. See, e.g., Advisory Opinion 1992-38 (Clinton/Gore) (loan proposal premised on reimbursement from the Secret Service); see also 11 CFR 9004.6 and 9034.6.

Under the proposed rules, when security personnel travel with a candidate or person traveling on behalf of a candidate, that candidate's committee would be responsible for the full costs of the travel. See proposed 11 CFR 100.93(c)(1). However, if the travel occurs on a government aircraft, the security personnel would not be included in the calculation. See proposed 11 CFR 100.93(e)(1). Should the Commission allow reimbursement from security personnel for travel on non-commercial, non-governmental aircraft? At what rate should this reimbursement take place, for example, should it be calculated at a portion of the charter rate or at a first class rate? Under current regulations, how and under what circumstances do committees seek reimbursement for travel expenses from the U.S. Secret Service?

2. "Comparable Plane of Comparable Size"

New 2 U.S.C. 439a(c)(1)(B) requires that the candidate or the candidate's authorized committee use the fair

market value of a "comparable plane of comparable size" for purposes of calculating the appropriate charter rate. The Commission interprets "comparable size" as an aircraft with similar physical dimensions that is able to carry a similar number of passengers.⁷

The Commission interprets "comparable plane" as an aircraft of similar make and model as the airplane that actually makes the trip, with the same amenities as that airplane. This interpretation is consistent with the Commission's current interpretation of a similar term, "comparable commercial airplane," in the current rules. See 11 CFR 100.93(c)(3); see also proposed 11 CFR 100.93(c)(3)(iii). As explained in the 2003 E&J:

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.

2003 E&J at 69588-69589.

The Commission seeks comments on this approach.

3. Presidential and Vice-Presidential Candidates Accepting Public Financing

The Commission proposes to continue its policy of promoting equal treatment of travel by publicly financed candidates and presidential or vice-presidential candidates who have not accepted public funds. Therefore, proposed 11 CFR 100.93(c)(1) would apply directly to presidential and vice-presidential candidates who have not accepted public funds, while the proposed revisions to 11 CFR 9004.7

⁷ The Commission's current rules at 11 CFR 100.93 distinguish between travel aboard an "airplane" and travel aboard all other conveyances, including helicopters. See 11 CFR 100.93(a)(3)(ii) (definition of "service provider" focuses on "person who makes the airplane or other conveyance available"), 11 CFR 100.93(c) ("travel by airplane") and 11 CFR 100.93(d) ("other means of transportation" includes "any other means of transportation" and specifically lists helicopters). For internal consistency and to promote uniformity within its regulations and avoid confusion, the Commission proposes to replace all references to "airplanes" in 11 CFR 100.93 with "aircraft." The primary impact would be that travel aboard a helicopter would be reimbursed at the pro rata share of the fair market value of the flight.

and 9034.7, discussed below, would continue to incorporate the section 100.93 rates by reference and thereby indicate that they also apply to candidates who have accepted public funds. One important distinction, however, is that a presidential candidate accepting public funds for the general election is prohibited from receiving any in-kind contribution from any person, which would include an in-kind contribution of non-commercial air travel.

The Commission seeks comments on the proposed application of the new rules to publicly financed presidential and vice-presidential candidates.

4. Travel on Behalf of Leadership PACs of Senate, Presidential, and Vice-Presidential Candidates

Under new 2 U.S.C. 439a(c), payments by leadership PACs of House candidates are subject to the same restrictions as payments by authorized committees of House candidates. See 2 U.S.C. 439a(c)(2). In contrast, new 2 U.S.C. 439a(c) is silent with respect to leadership PACs of Senate candidates and Federal officeholders with leadership PACs who are also presidential or vice-presidential candidates.

The Commission proposes to apply the new reimbursement rates to travel on behalf of a Senate candidate's leadership PAC. See 11 CFR 100.93(c)(1). The Commission seeks comment on this approach. Alternatively, should the Commission decline to extend the new reimbursement rate structure to travel on behalf of a Senate candidate's leadership PAC because the new law does not explicitly do so?

5. Commercially Reasonable Time Frame

Candidates for President, Vice-President, and the U.S. Senate must pay their pro rata share of non-commercial travel on aircraft "within a commercially reasonable time frame after the date on which the flight is taken." 2 U.S.C. 439a(c)(1)(B). Proposed 11 CFR 100.93(c) would define the statutory "commercially reasonable time frame" as a seven-day time frame beginning on the first day of the flight. The proposed approach would be located in the introductory clause of 11 CFR 100.93(c) and thus would be applicable to all payments required under that paragraph. The Commission seeks comment on this approach.

Is seven days a "commercially reasonable time frame" for reimbursement or is it too short a period? Would another time period for

reimbursement be more appropriate or reasonable? Should the Commission instead establish the seven-day period (or some other period) as a safe harbor, and consider longer periods on a case-by-case basis to determine if the “commercially reasonable time frame” requirement was satisfied?

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

The Commission’s current rules at 11 CFR 100.93(e) require reimbursement for travel aboard airplanes owned by the Federal government, or by any State or local government entity, at the same rate as travel aboard other airplanes (*i.e.*, the rate for a first-class or coach ticket aboard a commercial flight if the travel is between two cities served by regularly scheduled commercial airline service, or the equivalent charter rate if there is no such service between the cities).⁸ Non-commercial campaign travel aboard other government conveyances is also required to be reimbursed at the same rate as travel aboard equivalent means of transportation not owned by a government entity. 11 CFR 100.93(e)(2).

New 2 U.S.C. 439a(c) generally prohibits candidates for the U.S. House of Representatives from using campaign funds for non-commercial campaign travel, but provides an exception for travel aboard an aircraft “operated by an entity of the Federal government or the government of any State.” 2 U.S.C. 439a(c)(2)(B). The new law does not specify any particular rate of reimbursement for travel aboard government aircraft, nor does it explicitly require or prohibit reimbursement for such travel.⁹

Proposed 11 CFR 100.93(e) would require all campaign travelers, including candidates for Federal office and those traveling on their behalf, who travel on aircraft provided by a Federal or State government entity (including local governments), to reimburse the appropriate government entity for the travel. *See* proposed 11 CFR 100.93(e). The proposed rules set out two alternative rates of reimbursement for

travel by candidates and candidate representatives, and either rate would be acceptable.

The first proposed rate of reimbursement, which would be similar to current 11 CFR 100.93(c)(1), would be the pro rata share per represented candidate of the normal and usual charter fare or rental charge for the flight on a comparable aircraft of sufficient size to accommodate all of the campaign travelers. The pro rata share would be determined by dividing the normal and usual charter fare by the number of different candidates represented on the flight, regardless of the total number of campaign travelers or other passengers. Under this proposal, the “comparable aircraft” used for determining the required reimbursement amount would not be required to accommodate the non-campaign related passengers and equipment aboard the aircraft. For example, if Presidential Candidate A, two campaign staffers traveling on behalf of Presidential Candidate A, two members of the Secret Service, and PAC representative P, travel on a twenty-seat government aircraft, reimbursement would be required at the normal and usual charter rate for comparable aircraft of sufficient size to accommodate four passengers (Presidential Candidate A, his two campaign staffers, and PAC representative P; the two Secret Service agents would not be counted). Presidential Candidate A would pay the full charter rate, and PAC representative P would not be required to reimburse for his or her travel. The Commission seeks comment on this approach. Specifically, do non-candidate campaign travelers use government aircraft when not accompanied by a candidate, or person traveling on behalf of a candidate? At what rate should travel on a government plane that does not include any candidate-related campaign travelers be calculated?

The Commission seeks comments on a variation of this first reimbursement rate, in which Presidential Candidate A and PAC representative P would each be responsible for the full cost of the normal and usual charter rate for an aircraft of sufficient size to accommodate only those campaign travelers who are traveling on their behalf. Under this variation, Presidential Candidate A would pay the normal and usual charter rate for an aircraft capable of accommodating three campaign travelers: Candidate A and his two staffers. PAC representative P would be required to pay only the normal and usual charter rate for an aircraft of sufficient size to carry one passenger.

With respect to campaign travel aboard Air Force One or other government aircraft dedicated to transporting the Vice President, the Speaker of the House of Representatives, or other such officials, the Commission intends that the reimbursement amount under this proposal would be determined with reference to an aircraft of sufficient size to accommodate the campaign travelers, and excluding all non-campaign-related personnel and equipment. The Commission acknowledges that it may be difficult, if not impossible, to apply the “comparable plane of comparable size” standard to circumstances in which the campaign traveler travels exclusively aboard a specially-outfitted, government-owned aircraft by virtue of his or her status as an officeholder. For example, few, if any, aircraft exist with the “same amenities” as Air Force One. *See* proposed 11 CFR 100.93(e)(1)(i).

The second proposed rate of reimbursement would be the private traveler reimbursement rate per campaign traveler. This rate would be the rate specified by the Federal, State, or local government agency or other government entity for private travel on its aircraft by a member of the public. The Department of Defense, for example, publishes a list of hourly reimbursement rates for both fixed-wing aircraft and helicopters and includes an “All Other User” rate.¹⁰ Using the private traveler reimbursement rate, the reimbursement rate is calculated by dividing the private traveler reimbursement rate by the number of campaign travelers. Reimbursement would not be required for national security staff or other government officials on the flight that are not campaign travelers. The Commission seeks comment on this approach. Should the campaign traveler be permitted to reimburse the government entity at a lower rate specified by the government entity, such as the rate offered by some government agencies to travelers of other government agencies? Should the regulations offer a choice between alternative acceptable valuation methods, or should the Commission adopt a single method of determining the reimbursement rate? The Commission recognizes that campaign travel aboard government conveyances such as Air Force One and Air Force Two present special circumstances. Therefore, the

⁸ Travel to or from a military airbase or other location not accessible to the general public is treated as travel from the nearest city with regularly-scheduled commercial airline service. 11 CFR 100.93(e)(1)(i).

⁹ The Commission notes that Public Law 110–81 also amends the Senate ethics rules regarding travel. These amendments similarly require Senators to pay this pro rata share of the fair market value of a flight for non-commercial travel. *See* Public Law 110–81, Sec. 544(c)(1), amending Paragraph 1(c)(1) of rule XXXV of the Standing Rules of the Senate. These amendments, however, expressly except from these restrictions any travel aboard “an aircraft owned or leased by a governmental entity.” Standing Rules of the Senate, Rule XXXV, Paragraph 1(c)(1)(C)(iii).

¹⁰ *See* Fiscal Year 2008 Reimbursement Rates, available at http://www.defenselink.mil/comptroller/rates/fy2008/2008_f.pdf and http://www.defenselink.mil/comptroller/rates/fy2008/2008_h.pdf.

Commission requests comment on how it should address Air Force One and Air Force Two in its regulations.

The proposed rules would not specify a particular time for repayment for travel on government aircraft under either of the alternative rates. Should the Commission require payment within a specific time period, such as seven days, as for travel on other aircraft under proposed 11 CFR 100.93(c)?

G. Proposed 11 CFR 100.93(g)—Exception for Aircraft Owned by Federal Candidates and Their Family Members

The amendments to 2 U.S.C. 439a include an exception for travel aboard aircraft that are “owned or leased” by a candidate or candidate’s immediate family member, including an aircraft owned or leased by any entity in which the candidate or a member of the candidate’s immediate family “has an ownership interest,” provided that the entity is not a “public corporation” and the use of the aircraft is not “more than the candidate’s or immediate family member’s proportionate share of ownership allows.” 2 U.S.C. 439a(c)(3)(A). The exception would operate as an exception to all of the restrictions on expenditures for air travel in new 2 U.S.C. 439a(c). See discussion of proposed 11 CFR 113.5. The Commission seeks comment on this approach.

While the new exception relieves the restrictions on expenditures, it does not relieve candidates of the obligation to reimburse the service providers (candidates, members of their family, or entities in which either owns an interest) to avoid receiving an in-kind contribution for the use of the aircraft. See 11 CFR 100.93. Even though a candidate for Federal office may make an unlimited amount of contributions to his or her own campaign, those contributions must be reported by the candidate’s authorized committee.¹¹ 11 CFR 110.10; Advisory Opinions 1991–09 (Hoagland), 1990–09 (Mueller), 1985–33 (Collins), 1984–60 (Mulloy). Contributions by all other persons, including immediate family members, are subject to the applicable amount limits and source prohibitions. 11 CFR 110.1 *et seq.*

The Commission proposes several reimbursement alternatives. Proposed 11 CFR 100.93(g) would require

reimbursement for aircraft owned by candidates and their immediate family at the rates set forth in the Commission’s existing rules, which would be moved to 11 CFR 100.93(g)(1)(i) through (iii): first-class, coach, or charter rates, depending on whether the origin and destination cities are served by regularly scheduled commercial airline service. The charter rate would be required only if the travel is between two cities not served by regularly scheduled first class or coach commercial airline service.

1. Incremental Cost Alternative

As an alternative, the Commission proposes that such travel be reimbursed at the actual incremental cost of such travel. For example, in the case of a candidate piloting his or her own aircraft to a campaign event, the rate of reimbursement would be the actual cost of fuel and any incremental costs such as landing fees. Depreciation or the candidate’s piloting services would not be included in the reimbursement calculation. However, under this alternative, if a pilot or crew were employed for the flight, the cost of their services would be included in the reimbursement rate. Should reimbursement not be required if the pilot or crew (including family members) are volunteers for the candidate or campaign committee?

2. Actual Value Alternative

In the case of travel on an aircraft that is owned or leased under a shared-ownership or other time-share arrangement, the Commission proposes as an additional alternative that reimbursement be required at the hourly, mileage, or other applicable rate charged the candidate, corporation, or immediate family member for the costs of the travel. For example, if a candidate traveled on an aircraft leased by an immediate family member at a cost of \$1,000 per hour, the appropriate reimbursement rate to that family member would be \$1,000 per hour.

The Commission seeks comment on the proposed approaches or any other method of calculation. For example, the Commission seeks comment on whether the exception should require reimbursement at all for travel on candidate-owned aircraft. Alternatively, should the Commission require reimbursement at the same reimbursement rate required for all other candidate travel under the proposed regulations, *i.e.*, the pro rata share of the fair market value of such flight? Moreover, should the Commission allow one or more methods

for calculating the appropriate reimbursement rate?

Because the exception in 2 U.S.C. 439a(c)(3) for travel on aircraft owned by candidates or members of their immediate family functions to permit otherwise restricted or prohibited expenditures by candidates and their committees, the Commission proposes to limit the exception to travel by candidates or persons traveling on behalf of candidates. Thus, proposed 11 CFR 100.93(g) would cover travel on an aircraft owned by a candidate, the candidate’s immediate family member, or an entity other than a public corporation in which the candidate or immediate family member has an ownership interest. The exception would not, however, be available for other candidates traveling on behalf of their own campaigns.¹² The Commission seeks comment on this approach.

In addition, the exception in new 2 U.S.C. 439a(c)(3) includes several terms warranting clarification. First, the term “ownership interest” is not defined. The Commission proposes to interpret the term “ownership interest” to include fractional ownership, equity, or use arrangements, as well as “time-sharing” arrangements in which the candidate or an immediate family member pays a fee for a specified amount of travel on the aircraft.

The Commission proposes to interpret the term “public corporation” as applying to any corporation with publicly traded shares. Therefore, aircraft owned by privately held corporations without publicly traded shares, partnerships without publicly traded equity interests, limited liability companies without publicly traded shares, and all other entities without publicly traded shares or equity interests would fall within this exception, so long as a candidate or member of the candidate’s immediate family owns an equity interest or voting interest in that entity.

The new statutory exception limits a candidate’s use of the aircraft to not “more than the candidate’s or immediate family member’s proportionate share of ownership allows.” 2 U.S.C. 439(c)(3)(A). However, the statute does not specify the exact nature of the relationship between ownership shares and use of the aircraft.

¹¹ A contribution by a candidate for the House or Senate to his own campaign may also impact separate disclosure requirements for expenditures from personal funds under 2 U.S.C. 441a(i), the so-called “Millionaires Amendment.” 2 U.S.C. 441a(i)(1)(C); 11 CFR Part 400. The Commission seeks comment on the impact of these proposed regulations on the Millionaire’s Amendment.

¹² The reimbursement rates in proposed 11 CFR 100.93(c)(3)(i) through (iii) would apply to officials of a political party committee who are traveling on behalf of the party committee, and other campaign travelers who are traveling on behalf of a political committee other than a candidate’s authorized committee or leadership PAC.

Rather than account for all of the potential ownership structures of an entity that may own or lease an aircraft, the Commission is proposing a simple condition for the exception to apply: unless the candidate or immediate family member is the sole owner of the aircraft, the amount of use of the aircraft to which each ownership share is entitled must be specified in writing prior to the candidate's use of the airplane. As long as the written policy provides a reasonable relationship between the use of the aircraft and the percentage of ownership by the candidate or candidate's immediate family member, the Commission would not delve into the various ownership structures. The Commission requests comments on this proposal. If the candidate's use of the aircraft exceeds his or her proportionate ownership share, how should that excessive use be reimbursed? Should the excessive use be prohibited altogether?

The proposed rules would not specify a particular time for repayment for travel on aircraft owned by a candidate or a member of the candidate's immediate family. Should the Commission require payment within a specific time period, such as seven days, as for travel on other aircraft under proposed 11 CFR 100.93(c)?

H. Recordkeeping Requirements

In light of the proposed changes to the reimbursement rates required for candidates and candidate representatives, the Commission proposes two revisions to its current recordkeeping requirements for non-commercial travel at 11 CFR 100.93(i), which would be relocated to proposed 11 CFR 100.93(j).

First, although the Commission's current rules permit candidates and persons traveling on their behalf to pay first-class or coach rates for certain flights, candidates and their representatives would be required to pay the normal and usual charter rates under the proposed rules. See proposed 11 CFR 100.93(c)(1) and (2). Accordingly, the Commission proposes to establish a new paragraph in its revised recordkeeping section to specify that candidates, and those paying for travel by candidates and candidate representatives, must follow the current recordkeeping requirements for persons paying the normal and usual charter rate for air travel. See proposed 11 CFR 100.93(j)(3)(i) (referencing the recordkeeping requirements in proposed paragraph (j)(2) of the same section). These requirements are intended to preserve information, such as the tail number of an aircraft and the number of

campaign travelers, that would enable the Commission to determine whether the correct amount of reimbursement was provided for specific flights. To avoid any inference that candidates would be permitted to pay the first class or coach rates, proposed paragraphs (j)(1) and (j)(2) would also be revised to expressly provide that candidates and person traveling on behalf of candidates would be governed by paragraph (j)(3), not (j)(1).

Second, the Commission would require that a record of the written agreement required for aircraft owned in part by a candidate for Federal office or a member of his or her immediate family be maintained by the committee. The Commission seeks comment on the appropriate duration of this record retention requirement. See proposed 11 CFR 100.93(j)(3)(ii). Where an aircraft is owned by an entity in which the candidate or a member of the candidate's immediate family owns an interest, this document would be required by proposed 11 CFR 100.93(g) to specify the proportionate use of the aircraft corresponding to the percentage of ownership of the candidate or member of the candidate's immediate family.

The Commission seeks comments on these proposed revisions.

V. Use of Campaign Funds for Non-Commercial Travel—11 CFR 113.5

In addition to the proposed revisions to the travel reimbursement regulations at 11 CFR 100.93, the Commission also proposes to add a new section 11 CFR 113.5 to implement the limit on expenditures for non-commercial air travel contained in new 2 U.S.C. 439a(c).

A. Proposed Change of Title for 11 CFR Part 113

Along with the proposed addition of new 11 CFR 113.5 implementing new 2 U.S.C. 439a(c), the Commission proposes to change the title of Part 113. The current title, "Use of Campaign Accounts for Non-Campaign Purposes," is insufficiently broad to encompass the subject matter of the proposed rule, which regulates a use of campaign funds for campaign purposes rather than for non-campaign purposes. The Commission proposes instead the broader title, "Permitted and Prohibited Uses of Campaign Accounts," to capture the content of both the existing regulations in this part and that of the proposed rule.

B. Proposed 11 CFR 113.5(a)—Rule for Presidential, Vice-Presidential and Senate Candidates

Proposed 11 CFR 113.5(a)(1) reflects the general prohibition in new 2 U.S.C. 439a(c) on the expenditure of funds by candidates for President, Vice-President or the Senate and their authorized committees and leadership PACs for aircraft flights, except in certain specified situations. The first situation is when air travel is taken on "commercial" flights. See proposed 11 CFR 113.5(a)(1). The second situation is when air travel is taken on "non-commercial" flights and the candidate or his or her authorized committee reimburses the provider of the airplane in the amount of the candidate's pro rata share of the fair market value of the flight within seven days of the flight. See proposed 11 CFR 113.5(a)(2). Proposed 11 CFR 113.5(a)(1) and (2) provide cross-references to definitions of the terms "commercial travel," "non-commercial travel," and "pro rata share of the fair market value of the flight" in proposed 11 CFR 100.93(a)(3)(iv), (v) and (vi).

Proposed 11 CFR 113.5(a) includes restrictions on expenditures by leadership PACs of Senate, presidential, and vice-presidential candidates, to conform to the Commission's proposed language in 11 CFR 100.93(c)(1).

The Commission requests comments on all of the above aspects of proposed 11 CFR 113.5(a).

C. Proposed 11 CFR 113.5(b)—Rule for House Candidates

New 2 U.S.C. 439a(c)(2) contains the applicable rule for candidates for election to office in the House of Representatives. Unlike candidates for President, Vice-President, or the U.S. Senate, House candidates, including authorized committees and leadership PACs of such candidates, are prohibited from spending campaign funds on private, non-commercial air travel. Instead, House candidates may spend campaign funds on air travel only when the flight is commercial or when the flight is operated by an entity of the Federal government or of a State government (including local governments). Other than travel permitted under 11 CFR 100.92(g), because House candidates, their authorized committees, and their leadership PACs are prohibited from spending campaign funds on non-commercial travel, the proposed rule also prohibits House candidates from accepting in-kind contributions in the form of non-commercial air travel. Proposed 11 CFR 113.15(b).

Proposed 11 CFR 113.5(b)(1) and (2) implement these provisions. Proposed subparagraph (1) contains the same “commercial exception” as is set forth in proposed 11 CFR 113.5(a)(2). Travel on government-operated aircraft is reflected in proposed subparagraph (2).

D. Proposed 11 CFR 113.5(c)—Exception to Rules for Aircraft Owned or Leased by Candidate or Immediate Family Member

The restrictions on expenditures in the amendments to 2 U.S.C. 439a do not apply to travel aboard aircraft that are “owned or leased” by the candidate or the candidate’s immediate family member, and aircraft owned or leased by any entity in which the candidate or a member of the candidate’s immediate family “has an ownership interest,” provided that the entity is not a “public corporation” and the use of the aircraft is not “more than the candidate’s or immediate family member’s proportionate share of ownership allows.” 2 U.S.C. 439a(c)(3)(A).

The Commission proposes to implement this exception in proposed 11 CFR 113.5(c). Proposed 11 CFR 113.5(c)(1) contains the exceptions. Proposed 11 CFR 113.5(c)(2) states that candidates and immediate family members will be considered to own or lease aircraft under the conditions described in proposed 11 CFR 100.93(g)(2), namely, when there is an ownership interest in an entity other than a public corporation that owns the aircraft. Proposed 11 CFR 113.5(c)(3) contains a cross-reference to proposed 11 CFR 100.93(g)(3), which defines the term “immediate family member” in accordance with new 2 U.S.C. 439a(c)(3)(B).

E. Proposed 11 CFR 113.5(d)—Unreimbursed Air Travel as Contribution

Proposed 11 CFR 113.5(d) states that the unreimbursed value of transportation provided to any campaign traveler, as defined in proposed 11 CFR 100.93(a)(3)(i), 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, and that such contributions are subject to the limits and prohibitions of the Act.

VI. Publicly-Financed Presidential and Vice-Presidential Candidates—11 CFR 9004.7 & 9034.7

Although new 2 U.S.C. 439a(c) does not amend either the Presidential Election Campaign Fund Act (Fund Act) (26 U.S.C. 9001 *et seq.*) or the Presidential Primary Matching Payment Account Act (Matching Payment Act)

(26 U.S.C. 9031 *et seq.*), the Commission proposes to make certain amendments to its regulations implementing these laws to conform to the changes it proposes to make to 11 CFR 100.93.

Sections 9004.7 and 9034.7 are identically worded regulations promulgated under the authority of the Fund Act and the Matching Payment Act, respectively, and contain cross-references to 11 CFR 100.93. Both regulations prescribe the procedures that publicly funded primary and general election presidential campaigns must follow in attributing their travel expenses to campaign-related and to non-campaign-related activities. The Commission proposes the following technical amendments to conform these regulations to proposed 11 CFR 100.93:

A. Aircraft

Proposed 11 CFR 9004.7(b)(5)(i), (iii), and (v), and 11 CFR 9004.7(b)(8) replace the word “airplane” with the word “aircraft.” These changes conform the regulations to the scope of new 2 U.S.C. 439a(c) and to proposed 11 CFR 100.93, as well as to proposed 11 CFR 113.5.

B. Recordkeeping Requirements

Currently, 11 CFR 9004.7(b)(5)(v) and 11 CFR 9034.7(b)(5)(v) require the authorized committees of presidential and vice-presidential candidates to maintain documentation of the lowest unrestricted non-discounted airfare as required in 11 CFR 100.93(i)(1) or (2). Sections 100.93(i)(1) and (2) contain recordkeeping requirements relating to rates of reimbursement prescribed in 11 CFR 100.93(c) and (e). Proposed 11 CFR 100.93 replaces the current reimbursement rate for non-commercial air travel by presidential and vice-presidential candidates with a rate based on the “pro rata share of the fair market value” of the flight and sets out the corresponding recordkeeping requirements in proposed 11 CFR 100.93(j)(3). The Commission proposes to change 11 CFR 9004.7(b)(5)(v) and 11 CFR 9034.7(b)(5)(v) to conform the recordkeeping requirements to those proposed in 11 CFR 100.93(j)(3). The Commission also proposes to make a conforming amendment to the final sentence in this provision, which addresses recordkeeping requirements for travel on other conveyances. Recordkeeping requirements in such cases would be addressed in proposed 11 CFR 100.93(j)(4). Thus, the Commission proposes to require recordkeeping in accordance with proposed 11 CFR 100.93(j)(4).

C. 11 CFR 9004.7(b)(8) and 11 CFR 9034.7(b)(8)—Scope

Sections 9004.7(b)(8) and 9034.7(b)(8) identify the scope of 11 CFR 100.93 in terminology used in current section 100.93. Specifically, the provisions speak in terms of aircraft that are “licensed for compensation or hire” under various FAA certification authorities. The Commission proposes to change this language to conform to the proposed language used in new 2 U.S.C. 439a(c) and in proposed 11 CFR 100.93. Proposed 11 CFR 9004.7(b)(8) and 11 CFR 9034.7(b)(8) state that travel on non-commercial airplanes is governed by 11 CFR 100.93 and that the term “non-commercial” is defined in accordance with proposed section 11 CFR 100.93(a)(3)(v).

The Commission invites comments from the public concerning any of the proposals outlined above. The Commission also invites comments from the public regarding any additional changes that should be made to 11 CFR 100.5(e), 100.93, 113.5, 9004.7(b)(5)(i), (iii), (v) or (b)(8), or 9034.7(b)(5)(i), (iii), (v), or (b)(8).

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

The Commission certifies that the attached proposed rules, if promulgated, 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 political party committees and other political committees entitled to rely on these rules are not small entities. These rules would generally clarify or supplement existing rules and are largely intended to implement a statutory directive and simplify the process of determining reimbursement rates. The rules would 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 would 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 113

Campaign funds, and political candidates.

11 CFR Part 9004

Campaign funds.

11 CFR Part 9034

Campaign funds, Reporting and recordkeeping requirements.

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

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

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

Authority: 2 U.S.C. 431, 434, 438(a)(8), and 439a(c).

2. Section 100.5 would be amended by adding a new paragraph (e)(6) to read as follows:

§ 100.5 Political committee (2 U.S.C. 431 (4), (5), (6)).

* * * * *

(e) The following are examples of political committees:

* * * * *

(6) *Leadership PAC.* Leadership PAC means a political committee that is directly or indirectly established, financed, maintained or controlled by a candidate for Federal office or an individual holding Federal office but which is not an authorized committee of the candidate or individual and which is not affiliated with an authorized committee of the candidate or individual, except that leadership PAC does not include a political committee of a political party.

* * * * *

3. Section 100.93 is revised to read as follows:

§ 100.93 Travel by aircraft or other means of transportation.

(a) *Scope and definitions.* (1) This section applies to all campaign travelers who use non-commercial travel

(2) Campaign travelers who use commercial travel, 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 candidate for Federal office or 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 aircraft or other conveyance, or a person who leases an aircraft or other conveyance from the owner or otherwise obtains a legal right to the use of an aircraft or other conveyance, and who uses the aircraft or other conveyance to provide transportation to a campaign traveler. For a jointly owned or leased aircraft or other conveyance, the service provider is the person who makes the aircraft 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.

(iv) *Commercial travel* means travel aboard:

(A) An aircraft operated by an air carrier or commercial operator certificated by the Federal Aviation Administration, provided that the flight is required to be conducted under Federal Aviation Administration air carrier safety rules, or, in the case of travel which is abroad, by an air carrier or commercial operator certificated by an appropriate foreign civil aviation authority, provided that the flight is required to be conducted under air carrier safety rules; or

(B) Other means of transportation operated for commercial passenger service

(v) *Non-commercial travel* means travel aboard any conveyance that is not commercial travel, as defined in paragraph (a)(3)(iv) of 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, leadership PAC, 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), (e) or (g) 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), (e) or (g) 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 (d) or (e)(2) 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 on aircraft.* When a campaign traveler uses aircraft for non-commercial travel, other than a government aircraft described in paragraph (e) of this section or an aircraft described in paragraph (g) of this section, reimbursement must be provided no later than seven (7) calendar days after the date the flight began at one of the following rates to avoid the receipt of an in-kind contribution:

(1) *Travel by or on behalf of Senate, presidential, or vice-presidential candidates.* A Senate, presidential, or vice-presidential candidate traveling on his own behalf, or any person traveling on behalf of such candidate, the candidate's authorized committee, or the candidate's leadership PAC, must pay the pro rata share *per represented candidate* of the normal and usual charter fare or rental charge for travel on a comparable aircraft of comparable size. The pro rata share shall be calculated by dividing the normal and usual charter fare or rental charge by the number of different candidates represented on the flight, regardless of the total number of campaign travelers or other passengers.

(2) *House candidates.* Except as otherwise provided in paragraphs (e) and (g) of this section, a campaign traveler who is a candidate for election

for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, or a person traveling on behalf of any such candidate or any authorized committee or leadership PAC of such candidate, is prohibited from non-commercial travel on behalf of any such candidate or any authorized committee or leadership PAC of such candidate.

(3) *Other campaign travelers.* No reimbursement is required for travel by campaign travelers not covered by paragraphs (c)(1) or (c)(2) of this section if that travel is required to be reimbursed by a candidate, or any authorized committee or leadership PAC of a candidate, pursuant to paragraphs (c)(1) or (c)(2) of this section. Otherwise, a campaign traveler not covered by paragraphs (c)(1) or (c)(2) of this section, or the political committee on whose behalf the travel is conducted, must pay the service provider the pro rata share per represented committee of the normal and usual charter fare or rental charge for travel on a comparable airplane of comparable size. The pro rata share shall be calculated by dividing the normal and usual charter fare or rental charge by the number of different committees represented on the flight, regardless of the total number of campaign travelers or other passengers.

(d) *Other means of transportation.* If a campaign traveler uses any means of transportation other than an aircraft, including an automobile, or train, or boat, 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 aircraft 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 *either*:

(i) The pro rata share per represented candidate of the normal and usual charter fare or rental charge for the flight on a comparable aircraft of sufficient size to accommodate all campaign travelers. The pro rata share shall be calculated by dividing the normal and usual charter fare or rental charge by the

number of different candidates represented on the flight, regardless of the total number of campaign travelers or other passengers. For purposes of this paragraph, the comparable aircraft need not accommodate any authorized or required government personnel and equipment; or

(ii) The private traveler reimbursement rate, as specified by the governmental entity providing the aircraft, per campaign traveler.

(2) If a campaign traveler uses a conveyance, other than an aircraft, 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), (e), and (g) 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), (d), (e) or (g) of this section.

(g) *Aircraft owned by a candidate or an immediate member of a candidate's family.*

(1) For non-commercial travel by a candidate for Federal office, or a person traveling on behalf of such candidate, on an aircraft owned or leased by a candidate or an immediate family member of the candidate, the candidate's authorized committee must pay

(i) 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;

(ii) 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

(iii) In the case of travel to or from a city not served by regularly scheduled commercial airline service, the rate for Senate and Presidential campaign travelers in paragraph (c)(1) of this section.

Paragraph (g)(1)—Alternative 1 (Incremental Cost Alternative)

(g) *Aircraft owned by a candidate or an immediate member of a candidate's family.*

(1) For non-commercial travel by a candidate for Federal office, or a person traveling on behalf of such candidate, on an aircraft owned or leased by a candidate or an immediate family member of the candidate, the candidate's authorized committee must pay the incremental cost of such travel. The incremental cost includes, but is not limited to, the cost of fuel and crew, but does not include depreciation costs.

Paragraph (g)(1)—Alternative 2—(Actual Value Alternative)

(g) *Aircraft owned by a candidate or an immediate member of a candidate's family.*

(1) For non-commercial travel by a candidate for Federal office, or a person traveling on behalf of such candidate, on an aircraft owned or leased by a candidate or an immediate family member of the candidate, the candidate's authorized committee must pay, in the case of travel on an aircraft that is owned or leased under a shared-ownership or other time-share arrangement, the hourly, mileage, or other applicable rate charged the candidate, corporation, or immediate family member for the costs of the travel.

(2) A candidate, or an immediate family member of the candidate, will be considered to own or lease an aircraft under paragraph (g)(1) of this section if the candidate or the immediate family member of the candidate has an ownership interest in an entity that owns the aircraft, provided that the entity is not a corporation with publicly traded shares and that the owning entity specifies in writing the amount of use of the aircraft to which that ownership interest is entitled.

(3) For the purposes of this section, an "immediate family member" of a candidate is the father, mother, son, daughter, brother, sister, husband, wife, father-in-law, or mother-in-law of the candidate.

(h) *Preemption.* In all respects, State and 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.

(i) *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.

(j) *Recordkeeping.* (1) Except as provided in paragraph (j)(3) of this section, for travel by aircraft 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 aircraft) of the aircraft 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) Except as provided in paragraph (j)(3) of this section, for travel by aircraft to or from a city not served by regularly scheduled commercial airline service, the candidate or 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 aircraft) of the aircraft 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 aircraft available in accordance with paragraphs (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 non-commercial travel on aircraft by any candidate for Federal office, or a person traveling on behalf of such candidate, the candidate's authorized committee, or the candidate's leadership PAC, the candidate or political committee on whose behalf the travel is conducted shall maintain:

- (i) The documentation required by paragraph (j)(2)(i) through (iii) of this section, and
- (ii) Where the travel is aboard an aircraft owned in part by the candidate or an immediate family member of the

candidate, the document specifying the amount of use of the aircraft corresponding to the candidate's or an immediate family member's ownership interest in the aircraft, as required by paragraph (g) of this section.

(4) 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 paragraphs (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 113—PERMITTED AND PROHIBITED USES OF CAMPAIGN ACCOUNTS

4. The authority citation for part 113 would continue to read as follows:

Authority: 2 U.S.C. 432(h), 438(a)(8), 439a, 441a.

5. The heading to part 113 would be revised to read as set forth above.

6. Part 113 would be amended by adding a new § 113.5 to read as follows:

§ 113.5 Restrictions on use of campaign funds for flights on noncommercial aircraft (2 U.S.C. 439a(c)).

(a) *Presidential, vice-presidential and Senate candidates.* Notwithstanding any other provision of the Act or Commission regulations, a presidential, vice-presidential, or Senate candidate, and any authorized committee or leadership PAC of such candidate, shall not make any expenditure for travel on an aircraft unless the flight is

- (1) Commercial travel as provided in 11 CFR 100.93(a)(3)(iv); or
- (2) Noncommercial travel as provided in 11 CFR 100.93(a)(3)(v), and the pro rata share of the fair market value of such a flight, as provided in 11 CFR 100.93(c), is paid by the candidate, the authorized committee, or other political committee on whose behalf the travel is conducted, to the owner, lessee, or other person who provides the aircraft within seven days after the date on which the flight is taken.

(b) *House candidates.* Notwithstanding any other provision of

the Act or Commission regulations, a candidate for the office of Representative in, or Delegate or Resident Commissioner to, the Congress, and any authorized committee or leadership PAC of such candidate, shall not make any expenditures, or receive any in-kind contribution, for travel on an aircraft unless the flight is

- (1) Commercial travel as provided in 11 CFR 100.93(a)(3)(iv); or
- (2) Provided by the Federal government or by a State or local government.

(c) *Exception for aircraft owned or leased by candidates and immediate family members of candidates.* (1) Paragraphs (a) and (b) of this section do not apply to flights on aircraft owned or leased by the candidate, or by an immediate family member of the candidate, provided that the candidate does not use the aircraft more than the candidate's or immediate family member's proportionate share of ownership allows.

(2) A candidate, or an immediate family member of the candidate, will be considered to own or lease an aircraft under the conditions described in 11 CFR 100.93(g)(2).

(3) An "immediate family member" is defined in 11 CFR 100.93(g)(3).

(d) *In-kind contribution.* Except as provided in 11 CFR 100.79, the unreimbursed value of transportation provided to any campaign traveler 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. Such contributions are subject to the reporting requirements, limitations and prohibitions of the Act.

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

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

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

8. Section 9004.7 would be amended by revising paragraphs (b)(5)(i), (iii), and (v) 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 aircraft 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).

* * * * *

(iii) If any individual, including a candidate, uses a government

conveyance, other than an aircraft, 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).

* * * * *

(v) For travel by aircraft, the committee shall maintain documentation as required by 11 CFR 100.93(j)(3) 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(j)(4) in addition to any other documentation required in this section.

* * * * *

(8) Non-commercial travel, as defined in 11 CFR 100.93(a)(3)(v), on aircraft, and travel on other means of transportation not operated for commercial passenger service, is governed by 11 CFR 100.93.

PART 9034—ENTITLEMENTS

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

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

10. Section 9034.7 would be amended by revising paragraphs (b)(5) (i), (iii), and (v) 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 aircraft 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).

* * * * *

(iii) If any individual, including a candidate, uses a government conveyance, other than an aircraft, 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).

* * * * *

(v) For travel by aircraft, the committee shall maintain documentation as required by 11 CFR 100.93(j)(3) 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(j)(4) in addition to any other documentation required in this section.

* * * * *

(8) Non-commercial travel on aircraft, and travel on other means of transportation not operated for commercial passenger service is governed by 11 CFR 100.93.

Dated: October 18, 2007.

Robert D. Lenhard,

Chairman, Federal Election Commission.

[FR Doc. E7-20901 Filed 10-22-07; 8:45 am]

BILLING CODE 6715-01-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. FAA-2007-0075; Directorate Identifier 2007-NM-171-AD]

RIN 2120-AA64

Airworthiness Directives; EMBRAER Model EMB-120, -120ER, -120FC, -120QC, and -120RT Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: We propose to adopt a new airworthiness directive (AD) for the products listed above. This proposed AD results from mandatory continuing airworthiness information (MCAI) originated by an aviation authority of another country to identify and correct an unsafe condition on an aviation product. The MCAI describes the unsafe condition as:

It has been found that former revisions of the Maintenance Review Board Report (MRBR) of the EMB-120() aircraft do not fully comply with some Critical Design Configuration Control Limitations (CDCCL) and Fuel System Limitations (FSL). These limitations are necessary to preclude ignition sources in the fuel system, as required by RBHA-E88/SFAR-88 (Special Federal Aviation Regulation No. 88).

* * * * *

The potential of ignition sources, in combination with flammable fuel vapors, could result in fuel tank explosions and consequent loss of the airplane. The proposed AD would require actions that are intended to address the unsafe condition described in the MCAI.

DATES: We must receive comments on this proposed AD by November 23, 2007.

ADDRESSES: You may send comments by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the instructions for submitting comments.

- *Fax:* (202) 493-2251.

- *Mail:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* U.S. Department of Transportation, Docket Operations, M-30, West Building Ground Floor, Room W12-40, 1200 New Jersey Avenue, SE., Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

Examining the AD Docket

You may examine the AD docket on the Internet at <http://www.regulations.gov>; or in person at the Docket Operations office between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays. The AD docket contains this proposed AD, the regulatory evaluation, any comments received, and other information. The street address for the Docket Operations office (telephone (800) 647-5527) is in the **ADDRESSES** section. Comments will be available in the AD docket shortly after receipt.

FOR FURTHER INFORMATION CONTACT: Dan Rodina, Aerospace Engineer, International Branch, ANM-116, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98057-3356; telephone (425) 227-2125; fax (425) 227-1149.

SUPPLEMENTARY INFORMATION:

Comments Invited

We invite you to send any written relevant data, views, or arguments about this proposed AD. Send your comments to an address listed under the **ADDRESSES** section. Include "Docket No. FAA-2007-0075; Directorate Identifier 2007-NM-171-AD" at the beginning of your comments. We specifically invite comments on the overall regulatory, economic, environmental, and energy aspects of this proposed AD. We will consider all comments received by the closing date and may amend this proposed AD based on those comments.

We will post all comments we receive, without change, to <http://www.regulations.gov>; including any personal information you provide. We will also post a report summarizing each substantive verbal contact we receive about this proposed AD.

Discussion

The Agência Nacional de Aviação Civil (ANAC), which is the airworthiness authority for Brazil, has issued Brazilian Airworthiness Directive 2007-05-02, effective June 6, 2007 (referred to after this as "the MCAI"), to