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FEDERAL ELECTION COMMISSION
Washington, DC 20463

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MEMORANDUM

AUG 08 2003

TO: The Commission

THROUGH: James A. Pehrkon
Staff Director

FROM: Lawrence H. Norton
General Counsel

Rosemary C. Smith
Acting Associate General Counsel

Mai T. Dinh
Acting Assistant General Counsel

Richard Ewell
Attorney

AGENDA ITEM

For Meeting of: 08-14-03

SUBMITTED LATE

SUBJECT: Draft Notice of Proposed Rulemaking on Candidate Travel

Attached is the draft Notice of Proposed Rulemaking addressing issues related to the valuation of candidate travel using private airplanes and other conveyances.

Recommendation:

The Office of the General Counsel recommends that the Commission approve the attached NPRM for publication in the *Federal Register*.

Attachment

1 **FEDERAL ELECTION COMMISSION**

2 **11 CFR Parts 100, 106, 114, 9004, 9034**

3 **[Notice 2003 - >]**

4 **Candidate Travel**

5 **AGENCY:** Federal Election Commission.

6 **ACTION:** Notice of Proposed Rulemaking.

7 **SUMMARY:** The Federal Election Commission requests comments on proposed
8 changes to its rules covering the proper rates and timing for
9 payment of candidate travel on private means of transportation that
10 are not offered for commercial use, including government
11 conveyances. The proposed rule would provide more
12 comprehensive guidance than the current regulations by
13 establishing a single, uniform valuation scheme for campaign
14 travel that does not depend on whether the service provider is a
15 corporation, labor organization, individual, partnership, limited
16 liability company or other entity, or on whether the destination city
17 is served by regularly scheduled commercial service. The
18 proposed rules would apply to all Federal candidates including
19 publicly funded presidential candidates. No final decisions have
20 been made by the Commission on any of the proposed revisions in
21 this Notice. Further information is provided in the supplementary
22 information that follows.

1 **DATES:**

Comments must be received on or before September 19, 2003. If
2 the Commission receives sufficient requests to testify, it will hold a
3 hearing on these proposed rules on October 1, 2003, at 9:30 a.m.
4 Commenters wishing to testify at the hearing must so indicate in
5 their written or electronic comments.

6 **ADDRESSES:**

All comments should be addressed to Ms. Mai T. Dinh, Acting
7 Assistant General Counsel, and must be submitted in either
8 electronic or written form. Electronic mail comments should be
9 sent to travel2003@fec.gov and must include the full name,
10 electronic mail address and postal service address of the
11 commenter. Electronic mail comments that do not contain the full
12 name, electronic mail address and postal service address of the
13 commenter will not be considered. If the electronic mail
14 comments include an attachment, the attachment must be in the
15 Adobe Acrobat (.pdf) or Microsoft Word (.doc) format. Faxed
16 comments should be sent to (202) 219-3923, with printed copy
17 follow-up to ensure legibility. Written comments and printed
18 copies of faxed comments should be sent to the Federal Election
19 Commission, 999 E Street, N.W., Washington, D.C. 20463.
20 Commenters are strongly encouraged to submit comments
21 electronically to ensure timely receipt and consideration. The
22 Commission will make every effort to post public comments on its
23 Web site within ten business days of the close of the comment

1 period. The hearing will be held in the Commission's ninth floor
2 meeting room, 999 E Street N.W., Washington, D.C.

3 **FOR FURTHER**
4 **INFORMATION**
5 **CONTACT:**

Ms. Mai T. Dinh, Acting Assistant General Counsel, or Mr.
6 Richard T. Ewell, Attorney, 999 E Street N.W., Washington, DC
7 20463, (202) 694-1650 or (800) 424-9530.

8 **SUPPLEMENTARY**
9 **INFORMATION:**

The Commission is proposing several changes to its rules to
10 establish a simple, uniform payment scheme covering all candidate travel on either
11 government or private aircraft and other conveyances. The current regulation at 11 CFR
12 114.9(e) establishes the timing for reimbursement and the amount that a candidate must
13 reimburse a corporation or labor organization for the use of a private airplane or other
14 means of transportation, but does not address means of travel furnished by individuals,
15 partnerships, and other entities. The current rules in section 114.9(e) are also not fully
16 consistent with the Commission's treatment of similar travel by presidential and vice-
17 presidential candidates using government-provided transportation under 11 CFR 9004.7
18 and 9034.7.

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

21 **A. Proposed replacement of 11 CFR 114.9(e) with proposed 11 CFR 100.93**

22 The Commission proposes several changes to the candidate travel rules currently
23 set forth at 11 CFR 114.9(e). While 11 CFR part 114 focuses on corporate and labor
24 organization activity, and current 11 CFR 114.9(e)(2) focuses on means of travel owned

1 or leased by corporations or labor organizations, the Commission seeks to broaden the
2 rules to include airplanes and other means of travel owned by persons other than
3 corporations and labor organizations. The Commission recognizes that in most cases the
4 means of travel used for campaign trips is likely to be owned or leased by a corporation or
5 labor organization, but notes that the current section heading for 11 CFR 114.9, "Use of
6 corporate and labor organization facilities and means of transportation," would not
7 accurately convey the scope of the proposed travel rules encompassing airplanes and
8 other means of transportation owned by individuals, partnerships, or other entities.
9 Therefore, the Commission proposes deleting the reference to "means of transportation"
10 from the title of 11 CFR 114.9, removing and reserving paragraph (e) of 114.9, and
11 relocating the substance of the travel reimbursement rules to a new section.

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

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

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

1 Proposed paragraph (a)(1) would define the scope of the rules and clarify any
2 perceived ambiguity regarding the scope of the current 11 CFR 114.9(e)(1). The current
3 rule focuses on the use of airplanes owned by corporations or labor organizations that
4 “are not licensed to offer commercial service for travel in connection with a Federal
5 election.” One district court found this wording to be ambiguous. In this case, a
6 presidential candidate claimed that the regulation applied to all travel on airplanes except
7 airplanes owned or leased by a corporation or labor organization possessing a license for
8 travel in connection with a Federal election. See Federal Election Commission v. Arlen
9 Specter ’96, 150 F. Supp. 2d 797, 804 and 808 (E.D. Pa. 2001). The Court noted that no
10 such license existed and ultimately deferred to the Commission’s longstanding
11 determination that 11 CFR 114.9(e) applies to airplanes owned by corporations or labor
12 organizations not engaged in the business of providing commercial air service generally,
13 without regard to any connection with a Federal election. Id. at 812.

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

19 The Commission notes that commercial and non-commercial air travel is subject
20 to the authority of the Department of Transportation (DOT) and various certifications of
21 the Federal Aviation Administration (FAA). Aircraft are permitted to operate pursuant to
22 various FAA safety certifications based generally on passenger capacity, route frequency,
23 and type of service offered. Private aircraft not offering commercial passenger service

1 operations normally operate under certification provided pursuant to either 14 CFR parts
2 91 or 125.¹ Some airlines receive certificates of public necessity and convenience to
3 operate commercial passenger service as common carriers within specified domestic
4 locations pursuant to 14 CFR part 135. Other common carriers, such as commercial air
5 taxi service and on-demand charter service, are permitted to operate under special
6 certification in 14 CFR part 298, which exempts them from certain requirements that
7 would be otherwise required under 14 CFR part 135. Certain other aircraft are also
8 permitted to serve as common carriers and offer passenger service for compensation
9 under 14 CFR parts 121 and 129. Each of the FAA certifications focuses mainly on the
10 technical specifications and safety requirements of the aircraft and crew.

11 Aircraft operating under 14 CFR part 91 certification are not usually permitted to
12 accept any form of payment or reimbursement from passengers, but a special FAA
13 exception permits Federal candidates to reimburse the owners of such aircraft for the use

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

1 of planes pursuant to the Commission's regulations. See 14 CFR 91.321.² The
2 Commission therefore intends its regulations in proposed 11 CFR 100.93 to apply only to
3 airplanes not authorized to conduct operations in air transportation as a common carrier
4 (e.g., 14 CFR parts 91 or 125), while the current regulations at 11 CFR 100.52 would
5 apply to all airplanes operated pursuant to other certifications that do permit carriage of
6 passengers for compensation. Proposed 11 CFR 100.93, however, would focus on the
7 normal use of the airplane, rather than the operating certificate possessed by its owner, to
8 avoid the need for title and certification checks. The Commission seeks comment on
9 whether the type of certification with the FAA, or some other method, should be used to
10 determine whether an airplane is normally operated for commercial passenger service
11 such that a normal and usual rate for that passenger service could be readily and
12 accurately ascertained.

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

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

1 shift the focus of the rule away from whether the airplane's owner is a corporation or
2 labor organization and onto the normal use of the airplane. The proposed rules would
3 therefore apply not only to airplanes owned by corporations or labor organizations, but
4 also to airplanes owned by any "person," as defined at 11 CFR 100.10, as well as
5 airplanes owned by the Federal government or a State or local government.

6 An alternative approach, which is not incorporated into the proposed rules, would
7 be to focus the distinction on whether the service provider is a "commercial vendor," as
8 defined in 11 CFR 116.1(c), with respect to the transportation services. This approach
9 would continue to require an examination of the ownership structure of service provider.
10 Relying on the term "commercial vendor" could also lead to a different result in certain
11 circumstances. For example, Commercial Airline A owns a specially configured jet that
12 is reserved for its corporate executives and offers the use of that jet to Candidate B.
13 Under the "commercial vendor" alternative, Commercial Airline A would likely qualify
14 as a "commercial vendor" of transportation services, meaning that 11 CFR 100.52(d),
15 rather than 11 CFR 100.93, would govern the reimbursement requirements for Candidate
16 B's travel on the jet. This result would require Candidate B to calculate the "usual and
17 normal rate" for the use of the jet under 11 CFR 100.52(d)(2), which could be difficult to
18 ascertain because passengers on the jet are not normally charged any fee. However, under
19 the proposed "not normally operated for commercial passenger service" approach,
20 Candidate B's use of the jet would be governed by proposed section 100.93, not section
21 100.52, and the proper reimbursement could be calculated by referring to first-class or
22 charter rates to that destination.

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

5 The scope of proposed section 100.93, however, would be limited to non-
6 commercial means of transportation. A campaign traveler using a commercial airline or
7 other means of commercial transportation would continue to be subject to the more
8 general definition in 11 CFR 100.52, which categorizes “the provision of any goods or
9 services without charge or at a charge that is less than the usual and normal charge for
10 such goods or services” as an “in-kind contribution.” 11 CFR 100.52(d). Thus, a
11 candidate or other campaign traveler receives an in-kind contribution when he or she is
12 provided commercial transportation without charge or at a charge that is less than the
13 usual and normal charge for that transportation. Proposed section 100.93(a) would
14 include a cross-reference to 11 CFR 100.52(a) and (d) to affirm the continued application
15 of these rules to providers of commercial transportation.

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

17 Proposed paragraph (a)(2) would define several terms used in new section 100.93.
18 The term “campaign traveler” would be defined to provide a succinct term covering the
19 candidate, candidate’s agent, or other individual traveling on behalf of a candidate or a
20 candidate’s authorized committee. “Service provider” would describe the person or
21 entity providing the transportation to the campaign traveler. Given the complex
22 ownership and leasing arrangements often associated with airplanes and other means of
23 transportation, a “service provider” may be either the owner of the conveyance or a

1 different person who is leasing the conveyance from the owner and making it available
2 for the campaign traveler's use.

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

11 C. 11 CFR 100.93(b) General rule

12 Proposed section 100.93(b) would set forth the general rule for when travel by
13 private means of transportation would not constitute a contribution to a candidate or
14 authorized committee, as well as when and to what extent such travel is an in-kind
15 contribution. Under proposed paragraph (b)(1), a candidate's authorized committee
16 would not receive or accept a contribution if the authorized committee pays the service
17 provider the full value of the transportation within the specified time, as determined in
18 this proposed section. This proposed paragraph would generally require that the
19 candidate's authorized committee, rather than the campaign traveler, pay the service
20 provider to avoid receiving or accepting a contribution. The campaign traveler could pay
21 the service provider directly for his or her own travel rather than having the campaign
22 committee do so. Such payment would constitute an in-kind contribution by the

1 campaign traveler to the candidate, unless it qualifies for the transportation expense
2 exception set forth in 11 CFR 100.79.

3 In light of the fact that the current rules at 11 CFR 114.9(e) are limited to
4 airplanes owned by corporations or labor organizations, payment is required because the
5 unpaid use of the airplanes would constitute a contribution in violation of 2 U.S.C. 441b.
6 In contrast, individuals, partnerships, and certain other persons are permitted to make in-
7 kind contributions to candidates up to the amounts set forth in 2 U.S.C. 441a. Thus, a
8 campaign traveler may use an airplane provided by someone permitted to make an in-kind
9 contribution, and this use would be an in-kind contribution. Proposed 100.93(b)(2)
10 would recognize this possibility by describing when a service provider would be making
11 an in-kind contribution. For an in-kind contribution to be permissible, however, the
12 candidate's authorized committee must comply with the payment conditions in proposed
13 11 CFR 100.93. If these conditions are not met, then the provision of the airplane would
14 be prohibited if the service provider is a corporation or labor organization, or if the value
15 of the service would, when added to other contributions to the same candidate by the
16 service provider, exceed that service provider's contribution limit. See proposed 11 CFR
17 100.93(b)(2). The value of the in-kind contribution would be determined in the same
18 manner as the amount of the reimbursement would normally be determined under
19 proposed paragraphs (c), (d) or (e) of new section 100.93.

20 The Commission recognizes that this approach could, in some cases, require the
21 same type of ownership analysis that otherwise would be avoided by the proposed rules.
22 This analysis, however, would no longer be a necessary step in every circumstance
23 because it would be employed only where the airplane's provider elects not to seek full or

1 partial reimbursement from the candidate's authorized committee, or when the committee
2 fails to reimburse the service provider. The Commission seeks comments on whether
3 reimbursement should always be required, regardless of the ownership of the airplane, or
4 whether the possibility of an in-kind contribution from a permissible source should be
5 addressed in some other fashion.

6 D. Proposed 11 CFR 100.93(c) Travel by airplane

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

22 To address these concerns, the Commission seeks comments on three alternative
23 reimbursement rules in proposed 11 CFR 100.93(c), as well as any other appropriate

1 payment schemes. The Commission also seeks comments on whether and how it should
2 further simplify the rules and address other inequities, if any, arising from the current
3 application of 11 CFR 114.9(e) or the changes proposed for section 100.93.

4 In addition, the Commission notes that many charter services charge a traveler for
5 "deadhead miles," those miles the airplane travels empty while returning to its home base
6 after a one-way flight. In some cases, charter services also require compensation for
7 positioning costs for airplanes based many miles from the pickup and drop-off points.
8 The Commission therefore seeks comments on how, if at all, the three alternative
9 payment schemes should account for these expenses associated with the positioning of
10 the airplane or "deadhead miles." For example, when a candidate travels one-way from
11 California to Virginia on a private airplane based in Nevada and that airplane returns
12 empty to Nevada, should that candidate's authorized committee be required to pay the
13 expenses associated with the Nevada-to-California and Virginia-to-Nevada flights? If so,
14 should each of these positioning or "deadhead" flights be determined in the same manner
15 as described in the three alternative payment schemes below, or by using some other
16 method?

17 1. Alternative A: Payment based on first-class airfare

18 Alternative A would set the payment rate, for each individual traveling for
19 campaign purposes, at the amount of the lowest non-discounted first-class airfare to the
20 closest airport that has such service, regardless of whether the actual destination airport is
21 served by regularly scheduled commercial air service. The proposed rule would focus on
22 the closest destination airport, rather than the destination city, to avoid further confusion
23 in light of the various geographic considerations discussed in Advisory Opinion ("AO")

1 1999-13.³ Because airfares may vary based on the date of travel, the rate used in
2 calculating the payment amount would have to correspond to the date of actual travel.
3 The Commission seeks comments on how precisely the base rate should correspond to
4 the actual date of travel. For example, some airlines or charter companies may set a base
5 rate for tickets purchased over a month in advance of the travel date that is different than
6 the price of the same ticket when purchased on the date of travel. Should a campaign be
7 permitted to use the normal advance ticket price when calculating the comparable base
8 rate as required in proposed section 100.93, or should a campaign be required to calculate
9 the comparable rate based on purchase on a fixed date or period, such as the actual date of
10 travel or the lowest price within seven days of the travel date?

11 Alternative A would also allow an authorized committee to reimburse the
12 provider of a private airplane at the coach rate to the destination airport where the same
13 airport is served by regularly scheduled coach airline service but not regularly scheduled
14 first-class airline service. This distinction for coach service would accommodate industry

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

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

9 In addition, Alternative A would eliminate the advance payment requirement in
10 11 CFR 114.9(c)(1). Currently, because payment must be made prior to travel, the
11 campaign must provide a check in advance to the corporation to cover a certain number
12 of passengers. If last minute passengers are not paid for prior to boarding the airplane,
13 the campaign has failed to comply with the requirements of current 11 CFR 114.9(c)(1),
14 regardless of how promptly the campaign subsequently makes an after-the-fact
15 reimbursement. However, where candidates use other means of transportation addressed
16 in 11 CFR 109.2(e)(2), last minute passengers do not cause the same complications
17 because the reimbursement may be made "within a commercially reasonable time," rather
18 than in advance, so that the number of passengers is settled at the time the reimbursement
19 is made.

20 Alternative A would address this disparate treatment by allowing a fixed period of
21 seven calendar days for payment after travel has begun. This seven-day period would be
22 shorter than the thirty-or-sixty day period used for other forms of transportation, see
23 below, because under Alternative A the campaign would have complete control over the

1 timing of the reimbursement as all the necessary passenger information and costs would
2 be fixed at the time the airplane departs. Thus, it should be possible for the candidate's
3 authorized committee to calculate the proper reimbursement rate without a billing or
4 invoice process to cause delay.

5 The Commission recognizes that the removal of the advance payment rule could
6 be perceived as a departure from the previous approach under which corporations are
7 prohibited from extending credit outside the ordinary course of their business. See 11
8 CFR part 116. While the creation of a fixed post-travel time period for reimbursement in
9 these circumstances is technically an extension of credit, the Commission nevertheless
10 seeks comments on the potential consequences of the proposed rule with respect to the
11 use of an airplane owned by a corporation or labor organization where reimbursement
12 does not occur in advance. The Commission also seeks comments on whether the
13 advance payment requirement should be retained and what, if any, other reimbursement
14 timetables would be appropriate.

15 2. Alternative B: Payment based on a combination of first-class airfare and
16 charter rate

17 Alternative B would provide for two different payment rates, following closely the
18 travel valuation rules set forth in the ethics rules for the House of Representatives and the
19 United States Senate. See Select Committee on Ethics, U.S. Senate, Senate Ethics
20 Manual, S. Pub. No. 108-1 (2003), "Private Air Travel" at p. 60; Committee on Standards
21 of Official Conduct, U.S. House of Representatives, Rules of the U.S House of
22 Representatives on Gifts and Travel (2001), "Use of Private Aircraft for Travel" available
23 at <http://www.house.gov/ethics/Gifts_and_Travel_Chapter.htm#_Toc476623633>. The

1 first rate, in proposed paragraph (c)(1) of Alternative B, would apply to previously
2 scheduled flights, as opposed to flights specifically scheduled for a campaign traveler,
3 between cities with regularly scheduled air service. The payment rate for these trips
4 would be the normal cost of first-class airfare between the cities. Thus, travel between
5 airports served by regularly scheduled air service would be treated similarly under both
6 Alternative A and Alternative B, except that Alternative B would not permit the first-
7 class airfare amount where the airplane is chartered specifically for the campaign
8 traveler's use. Both Alternative A and Alternative B would permit payment at the coach
9 rate where coach service is regularly scheduled on the same route, but would not permit
10 campaigns to pay the lower amount for discounted fares such as "supersavers," "e-
11 savers," or a government rate.

12 Under proposed paragraph (c)(2) of Alternative B, the Commission would require
13 the amount of payment for other air travel, including flights specifically scheduled for a
14 campaign traveler or flights where the origin or destination city is not served by regularly
15 scheduled air service, to be no less than the normal charter rate for a similar airplane. The
16 valuation of travel to airports not served by regularly scheduled commercial airline
17 service would therefore differ from the valuation in proposed paragraph (c)(3) of
18 Alternative A, which would value such travel at the amount of the first-class rate to the
19 nearest airport. For the same reasons discussed above for Alternative A, the candidate's
20 authorized committee would be required to make the proper payment within seven
21 calendar days of the departure date.

22 3. Alternative C: Payment based on charter rate

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

16 E. Proposed 11 CFR 100.93(d) Other means of transportation

17 The Commission proposes a set period of time for payment of travel by means
18 other than by airplane: thirty calendar days from the receipt of the invoice, but no more
19 than sixty calendar days following the date the travel commenced. See proposed 11 CFR
20 100.93(d). This fixed deadline would add more clarity and certainty than the current
21 rule's reference to a "commercially reasonable" period, but would retain the flexibility
22 necessary to account for costs that cannot be calculated until the completion of travel or
23 shortly thereafter. The sixty-day cutoff would help to ensure that the invoice will be

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

7 F. Proposed 11 CFR 100.93(c) Government conveyances

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

17 G. Proposed 11 CFR 100.93(f) Reporting

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

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

6 H. Proposed 11 CFR 100.93(g) Recordkeeping

7 Presidential and vice-presidential candidates are currently required to maintain
8 records documenting the rates used in calculating their travel reimbursements. 11 CFR
9 9004.7(b)(5)(v) and 9034.7(b)(5)(v). Under proposed 11 CFR 100.93(g), these
10 recordkeeping requirements would apply to other candidates.

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

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

1 government, or any other person. The Commission seeks comment on this approach and
2 the proposed revisions to 11 CFR 106.3(e).

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

5 The current regulations at 11 CFR 9004.7(b) and 9034.7(b) govern travel on
6 government conveyance by primary and general election presidential and vice-
7 presidential candidates receiving federal funding. The two rules are virtually identical
8 and require the presidential or vice-presidential candidate to pay the appropriate
9 government entity at one of several specified rates. These rates are established in largely
10 the same manner as the reimbursement rates set forth in the current 11 CFR 114.9(e).

11 The Commission proposes revising 11 CFR 9004.7(b)(5)(i) and (8) and 9034.7(b)(5)(i)
12 and (8) to replace the parallel rate determinations in those rules with a reference to the
13 reimbursement rates that would be set forth in proposed 11 CFR 100.93. As with the
14 valuation of travel on government conveyances by non-presidential or vice-presidential
15 candidates in 11 CFR 106.3(e), the reimbursement rates in proposed 11 CFR 100.93
16 would serve as the applicable valuation of travel by presidential and vice-presidential
17 candidates aboard government conveyances. Minor changes would be made to the
18 wording in paragraphs (b)(5)(i) through (iv) in sections 9004.7 and 9034.7 to clarify that
19 the required reimbursement rate is a floor, not a ceiling on how much the candidate may
20 reimburse, in order to permit a candidate to pay at a higher rate when required by other
21 government agencies or branches. The Commission seeks comment on this approach and
22 the proposed revisions to 11 CFR 9004.7 and 9034.7.

1 **V. Other Travel Issues**

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

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

12 **[Regulatory Flexibility Act]**

13 The attached proposed rules, if promulgated, would not have a significant
14 economic impact on a substantial number of small entities. The basis for this certification
15 is that few, if any, small entities would be affected by these proposals, which apply only
16 to Federal candidates and their campaign committees. Federal candidates and their
17 campaign committees are not small entities. To the extent that operators of air-taxi
18 services or on-demand air charter services are affected, the effect would result from
19 candidate travel choices rather than Commission requirements. These rules propose no
20 sweeping changes, and are largely intended to simplify the process of determining
21 payment and allocation ratios and reimbursement rates. The proposed rules would not
22 increase the cost of compliance by small entities so as to cause a significant economic
23 impact.

1 **List of Subjects**

2 11 CFR Part 100

3 Elections.

4 11 CFR Part 106

5 Campaign funds, political committees and parties, political candidates.

6 11 CFR Part 114

7 Business and industry, elections, labor.

8 11 CFR Part 9004

9 Campaign funds.

10 11 CFR Part 9034

11 Campaign funds, reporting and recordkeeping requirements.

12

13

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

4
5 **PART 100 – SCOPE AND DEFINITIONS (2 U.S.C. 431)**

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

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

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

9 **§ 100.93 Travel by airplane or other means of travel.**

10 (a) Scope and definitions.

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

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

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

21 Service provider means the owner of an airplane or other
22 conveyance, or a person who leases an airplane or other

1 conveyance from the owner, and uses the airplane or other
2 conveyance to provide transportation to a campaign traveler.
3 Unreimbursed value means the difference between the actual value
4 of the service provided, as set forth in this section, and the amount
5 of payment for that service by the campaign traveler to the service
6 provider within the time limits set forth in this section. A payment
7 that is not made within the time limits set forth in this section is
8 not a reimbursement for the purposes of this section.

9 (b) General rule.

10 (1) No contribution results from travel by airplane, or other means of
11 transportation, by a campaign traveler, if the candidate's authorized
12 committee reimburses the service provider, within the required time, for
13 the full value of the transportation as provided in this section.

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

18 [Alternative A]

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

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

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

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

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

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

13 [Alternative B]

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

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

1 more than one first-class or coach rate is available, the amount is the
2 lowest fare. However, no discount fares, such as "supersaver" fares, will
3 be used for valuation purposes.

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

11 [Alternative C]

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

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

23 (e) Government conveyances.

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

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

9 (f) Reporting.

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

13 (2) When reporting a disbursement for travel services in accordance with this
14 section, a candidate's authorized committee must report the actual dates of
15 travel for which the disbursement is made in the "purpose of
16 disbursement" field.

17 (g) Recordkeeping.

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

22 (2) For travel by other conveyances, the candidate's authorized committee
23 shall maintain documentation of the commercial fare or rental charge for a

1 conveyance of sufficient size, including the service provider and the size,
2 model and make of the conveyance.

3
4 **PART 106 – ALLOCATIONS OF CANDIDATE AND COMMITTEE**
5 **ACTIVITIES**

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

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

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

9 **§ 106.3 Allocation of expenses between campaign and non-campaign related travel.**

10 * * * * *

11 (c) Notwithstanding paragraphs (b) and (c) of this section, the reportable expenditure
12 for a candidate who uses government conveyance ~~or accommodations~~ for travel which
13 that is campaign-related is the applicable rate for comparable commercial conveyance or
14 accommodations set forth in 11 CFR 100.93(c) or (d). The reportable expenditure for a
15 candidate who uses government accommodations for travel that is campaign-related is the
16 rate for comparable commercial accommodation. In the case of a candidate authorized by
17 law or required by national security to be accompanied by staff and equipment, the
18 allocable expenditures are the costs of facilities sufficient to accommodate the party, less
19 authorized or required personnel and equipment. If such a trip includes both campaign
20 and noncampaign stops, equivalent costs are calculated in accordance with paragraphs (b)
21 and (c) of this section.

22
23 **PART 114 – CORPORATE AND LABOR ORGANIZATION ACTIVITY**

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

2 Authority: 2 U.S.C. 431(8)(B), 431(9)(B), 432, 434, 437d(a)(8), 438(a)(8), and
3 441b.

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

6 **§ 114.9 Use of corporate or labor organization facilities and means of**
7 **transportation.**

8 * * * * *

9 (e) ~~Use of airplanes and other means of transportation.~~ [Removed and reserved]

10 (e) ~~Use of airplanes and other means of transportation.~~

11 (1) ~~A candidate, candidate's agent, or person traveling on behalf of a candidate~~
12 ~~who uses an airplane which is owned or leased by a corporation or labor~~
13 ~~organization other than a corporation or labor organization licensed to~~
14 ~~offer commercial services for travel in connection with a Federal election~~
15 ~~must, in advance, reimburse the corporation or labor organization—~~

16 (i) ~~In the case of travel to a city served by regularly scheduled~~
17 ~~commercial service, the first class air fare;~~

18 (ii) ~~In the case of travel to a city not served by a regularly scheduled~~
19 ~~commercial service, the usual charter rate.~~

20 (2) ~~A candidate, candidate's agent, or person traveling on behalf of a candidate~~
21 ~~who uses other means of transportation owned or leased by a corporation~~
22 ~~or labor organization must reimburse, within a commercially reasonable~~

1 time, the corporation or labor organization at the normal and usual rental
2 charge.

3 **PART 9004 -- ENTITLEMENT OF ELIGIBLE CANDIDATES TO PAYMENTS;**
4 **USE OF PAYMENTS**

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

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

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

9 **§ 9004.7 Allocation of travel expenditures.**

10 * * * * *
11 (b) * * *

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

13 (i) If any individual, including a candidate, uses a government
14 airplane for campaign-related travel, the candidate's authorized
15 committee shall pay the appropriate government entity an amount
16 equal not less than the applicable rate set forth in 11 CFR
17 100.93(c).

18 ~~(A) — The lowest unrestricted and non-discounted first class~~
19 ~~commercial air fare available for the time traveled, in the~~
20 ~~case of travel to a city served by a regularly scheduled~~
21 ~~commercial airline service; or~~

22 ~~(B) — The lowest unrestricted and non-discounted coach~~
23 ~~commercial air fare available for the time traveled, in the~~

1 ease of travel to a city served by regularly scheduled coach
2 airline service, but not regularly scheduled first class airline
3 service; or

4 (C) — In the case of travel to a city not served by a regularly
5 scheduled commercial airline service, the commercial
6 charter rate for an airplane sufficient in size to
7 accommodate the campaign related travelers, including the
8 candidate, plus the news media and the Secret Service.

9 (ii) If a government airplane is flown to a campaign-related stop where
10 it will pick up passengers, or from a campaign-related stop where it
11 left off passengers, the candidate's authorized committee shall pay
12 the appropriate government entity an amount equal to not less than
13 the greater of the amount billed or the amount required under
14 paragraph (b)(5)(i) of this section 11 CFR 100.93(c) for one
15 passenger.

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

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

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

16 * * * * *

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

20 * * * * *

21
22 **PART 9034 - ENTITLEMENTS**

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

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

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

4 **§ 9034.7 Allocation of travel expenditures.**

5 * * * * *

6 (b) * * *

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

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

12 ~~(A) The lowest unrestricted and non-discounted first-class~~
13 ~~commercial air fare available for the time traveled, in the~~
14 ~~ease of travel to a city served by a regularly scheduled~~
15 ~~commercial airline service; or~~

16 ~~(B) The lowest unrestricted and non-discounted coach~~
17 ~~commercial air fare available for the time traveled, in the~~
18 ~~ease of travel to a city served by regularly scheduled coach~~
19 ~~airline service, but not regularly scheduled first class airline~~
20 ~~service; or~~

21 ~~(C) In the case of travel to a city not served by a regularly~~
22 ~~scheduled commercial airline service, the commercial~~
23 ~~charter rate for an airplane sufficient in size to~~

1 accommodate the campaign-related travelers, including the
2 candidate, plus the news media and the Secret Service.

3 (ii) If a government airplane is flown to a campaign-related stop where
4 it will pick up passengers, or from a campaign-related stop where it
5 left off passengers, the candidate's authorized committee shall pay
6 the appropriate government entity an amount ~~equal to~~ not less than
7 the greater of the amount billed or the amount required under 11
8 CFR 100.93(c) paragraph (b)(5)(i) of this section for one
9 passenger.

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

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

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

9 * * * * *

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

15
16 _____
17 Ellen L. Weintraub
18 Chair
19 Federal Election Commission

20 DATED _____
21 BILLING CODE: 6715-01-U
22