

Rules and Regulations

Federal Register

Vol. 68, No. 240

Monday, December 15, 2003

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FEDERAL ELECTION COMMISSION

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

[Notice 2003–24]

Travel on Behalf of Candidates and Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rules and transmittal of regulations to Congress.

SUMMARY: The Federal Election Commission is promulgating new and revised rules regarding the proper rates and timing for payment for travel on behalf of political committees and candidates on means of transportation that are not offered for commercial passenger service, including government conveyances. The final rules provide more comprehensive guidance than the previous regulations by establishing a single, uniform valuation scheme for campaign travel that does not depend on whether the service provider is a corporation, labor organization, individual, partnership, limited liability company or other entity. The final rules apply to all Federal candidates, including publicly funded presidential candidates as well as other individuals traveling on behalf of candidates, party committees, and other political committees where the travel is in connection with Federal elections. Further information is provided in the supplementary information that follows.

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

FOR FURTHER INFORMATION CONTACT: Mr. John C. Vergelli, Acting Assistant General Counsel, or Mr. Richard T. Ewell, Attorney, 999 E Street NW., Washington, DC 20463, (202) 694–1650 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Commission is implementing several changes to its rules governing travel in connection with a Federal election. These final rules establish a simple, uniform payment scheme covering all Federal election travel on either government or private aircraft and other conveyances. The previous regulation at 11 CFR 114.9(e) established the amount and timing for reimbursement by a candidate to a corporation or labor organization for the use of a private airplane or other means of transportation, but did not address means of travel furnished by individuals, partnerships, and other entities. The previous rules in section 114.9(e) also were not fully consistent with the Commission's treatment of similar travel by presidential and vice-presidential candidates using government-provided transportation under 11 CFR 9004.7 and 9034.7. Nor did the previous rules in 11 CFR 114.9(e) establish specific guidance for those traveling on behalf of party committees or other unauthorized committees.

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

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

comments and oral testimony at the public hearing.

Under the Administrative Procedures Act, 5 U.S.C. 553(d), and the Congressional Review of Agency Rulemaking Act, 5 U.S.C. 801(a)(1), agencies must submit final rules to the Speaker of the House of Representatives and the President of the Senate, and publish them in the **Federal Register** at least 30 calendar days before they take effect. In addition, 26 U.S.C. 9009(c) requires that any rules or regulations prescribed by the Commission to carry out the provisions of the Presidential Election Campaign Fund Act be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated. The final rules that follow were transmitted to Congress on December 10, 2003.

Explanation and Justification

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

A. Introduction

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

B. 11 CFR 100.93(a) Scope and Definitions

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

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

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