

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

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

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

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

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

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

H. 11 CFR 100.93(g) Preemption

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

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

I. 11 CFR 100.93(h) Reporting

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

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

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

Paragraph (h)(1) of 11 CFR 100.93 refers the reader to the existing reporting requirements for the receipt of an in-kind contribution. Under 11 CFR 104.13, a candidate's authorized committee and other political committees must report the amount of unreimbursed value for travel services as both the receipt of a contribution from the service provider and an expenditure by the political committee.

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

J. 11 CFR 100.93(i) Recordkeeping

Presidential and vice-presidential candidates receiving public funds have

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